

Official Journal

of the European Union

L 323



English edition

Legislation

Volume 52

10 December 2009

Contents

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

DIRECTIVES

- ★ **Council Directive 2009/157/EC of 30 November 2009 on pure-bred breeding animals of the bovine species** ⁽¹⁾ 1

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

DECISIONS

Council

2009/914/EC:

- ★ **Council Decision of 30 November 2009 amending the Decision of the Executive Committee set up by the 1990 Schengen Convention, amending the Financial Regulation on the costs of installing and operating the technical support function for the Schengen Information System (C.SIS)** 6

2009/915/EC:

- ★ **Council Decision of 30 November 2009 amending Council Decision 2000/265/EC of 27 March 2000 on the establishment of a financial regulation governing the budgetary aspects of the management by the Deputy Secretary-General of the Council, of contracts concluded in his name, on behalf of certain Member States, relating to the installation and the functioning of the communication infrastructure for the Schengen environment, 'SISNET'** 9

⁽¹⁾ Text with EEA relevance

(Continued overleaf)

Price: EUR 4

EN

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

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

AGREEMENTS

Council

- ★ **Information concerning the date of entry into force of the Agreements on Extradition and on Mutual Legal Assistance between the European Union and the United States of America** 11
-

III *Acts adopted under the EU Treaty*

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

- ★ **Council Decision 2009/916/CFSP of 23 October 2009 concerning the signing and conclusion of the Agreement between the European Union and the Republic of Seychelles on the status of the European Union-led force in the Republic of Seychelles in the framework of the EU military operation Atalanta** 12

- Agreement between the European Union and the Republic of Seychelles on the status of the European Union-led forces in the Republic of Seychelles in the framework of the EU military operation Atalanta** 14

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

- ★ **Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes** 20
-

IV *Other acts*

EUROPEAN ECONOMIC AREA

EFTA Surveillance Authority

- ★ **EFTA Surveillance Authority Decision No 28/08/COL of 23 January 2008 on the Wood Scheme (Verdiskapningsprogrammet for tre) (Norway)** 31
-



I

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

DIRECTIVES

COUNCIL DIRECTIVE 2009/157/EC

of 30 November 2009

on pure-bred breeding animals of the bovine species

(codified version)

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Whereas:

(1) Council Directive 77/504/EEC of 25 July 1977 on pure-bred breeding animals of the bovine species ⁽³⁾ has been substantially amended several times ⁽⁴⁾. In the interests of clarity and rationality the said Directive should be codified.

(2) Cattle production occupies a very important place in Community agriculture, and satisfactory results depend to a large extent on the use of pure-bred breeding animals.

(3) Disparities between Member States as regards breeds and standards hinder intra-Community trade. If these disparities are to be removed, thereby increasing agricultural productivity in this sector, intra-Community trade in all pure-bred breeding animals should be liberalised.

(4) It should be possible for the Member States to insist on pedigree certificates drawn up in accordance with a Community procedure being presented.

(5) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁵⁾.

(6) This Directive is without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive, the following definitions shall apply:

(a) 'pure-bred breeding animal of the bovine species' means any bovine animal, including buffalo, the parents and grandparents of which are entered or registered in a herd-book of the same breed, and which is itself either entered or registered and eligible for entry in such a herd-book;

(b) 'herd-book' means any book, register, file or data medium:

(i) which is maintained by a breeders' organisation or association officially recognised by a Member State in which the breeders' organisation or association was constituted, or by an official department of the Member State concerned; and

⁽¹⁾ Opinion of 20 October 2009 (not yet published in the Official Journal).

⁽²⁾ Opinion of 15 July 2009 (not yet published in the Official Journal).

⁽³⁾ OJ L 206, 12.8.1977, p. 8.

⁽⁴⁾ See Annex I, Part A.

⁽⁵⁾ OJ L 184, 17.7.1999, p. 23.

- (ii) in which pure-bred breeding animals of a given breed of the bovine species are entered or registered with mention of their ancestors.

Article 2

The Member States shall ensure that the following shall not be prohibited, restricted or impeded on zootechnical grounds:

- (a) intra-Community trade in pure-bred breeding animals of the bovine species;
- (b) intra-Community trade in the semen, ova and embryos of pure-bred breeding animals of the bovine species;
- (c) the establishment of herd-books, provided that they comply with the requirements laid down pursuant to Article 6;
- (d) the recognition of organisations or associations which maintain herd-books, in accordance with Article 6; and
- (e) subject to Council Directive 87/328/EEC of 18 June 1987 on the acceptance for breeding purposes of pure-bred breeding animals of the bovine species⁽¹⁾, intra-Community trade in bulls used for artificial insemination.

Article 3

Breeders' organisations or associations officially recognised by a Member State may not oppose the entry in their herd-books of pure-bred breeding animals of the bovine species from other Member States provided that they satisfy the requirements laid down in accordance with Article 6.

Article 4

1. Member States shall draw up and keep up-to-date a list of bodies as referred to in Article 1(b) (i) which are officially recognised for the purpose of maintaining or establishing herd-books, and make it available to the other Member States and to the public.

2. Detailed rules for the uniform application of paragraph 1 may be adopted in accordance with the procedure referred to in Article 7(2).

Article 5

Member States may require that pure-bred breeding animals of the bovine species and the semen or ova and embryos from such animals shall be accompanied, in intra-Community trade, by a pedigree certificate which complies with a specimen drawn up in accordance with the procedure referred to in Article 7(2), particularly with regard to zootechnical performance.

Article 6

The following shall be determined in accordance with the procedure referred to in Article 7(2):

- (a) performance monitoring methods and methods for assessing cattle's genetic value;
- (b) the criteria governing the recognition of breeders' organisations and associations;
- (c) the criteria governing the establishment of herd-books;
- (d) the criteria governing entry in herd-books;
- (e) the particulars to be shown on the pedigree certificate.

Article 7

1. The Commission shall be assisted by the Standing Committee on Zootechnics established by Council Decision 77/505/EEC of 25 July 1977 setting up a Standing Committee on Zootechnics⁽²⁾.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

Article 8

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

Article 9

Directive 77/504/EEC, as amended by the acts listed in Annex I, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 10

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

It shall apply from 2 January 2010.

⁽¹⁾ OJ L 167, 26.6.1987, p. 54.

⁽²⁾ OJ L 206, 12.8.1977, p. 11.

Article 11

This Directive is addressed to the Member States.

Done at Brussels, 30 November 2009.

For the Council
The President
S. O. LITTORIN

ANNEX I

Part A

Repealed Directive with list of its successive amendments
(referred to in Article 9)

Council Directive 77/504/EEC
(OJ L 206, 12.8.1977, p. 8)

Council Directive 79/268/EEC
(OJ L 62, 13.3.1979, p. 5)

1979 Act of Accession, Annex I,
Point II.A.65 and Point II.E.6
(OJ L 291, 19.11.1979, p. 64 and p. 85)

Council Directive 85/586/EEC
(OJ L 372, 31.12.1985, p. 44)

only Article 4

Council Regulation (EEC) No 3768/85
(OJ L 362, 31.12.1985, p. 8)

only Annex, point 46

Council Directive 91/174/EEC
(OJ L 85, 5.4.1991, p. 37)

only Article 3

Council Directive 94/28/EC
(OJ L 178, 12.7.1994, p. 66)

only Article 11

1994 Act of Accession, Annex I, Point V.F.I.A.60
(OJ C 241, 29.8.1994, p. 155)

Council Regulation (EC) No 807/2003
(OJ L 122, 16.5.2003, p. 36)

only Annex III, point 23

Council Directive 2008/73/EC
(OJ L 219, 14.8.2008, p. 40)

only Article 2

Part B

List of time-limits for transposition into national law
(referred to in Article 9)

Directive	Time-limit for transposition
77/504/EEC	1 January 1979, with the exception of Article 7. Relating to Article 7, as regards each of the points which it covers, on the same dates as those on which the Member States comply with the provisions applicable in intra-Community trade, and in particular the decisions that are successively adopted pursuant to Article 6.
85/586/EEC	1 January 1986
91/174/EEC	31 December 1991
94/28/EC	1 July 1995
2008/73/EC	1 January 2010

ANNEX II

Correlation Table

Directive 77/504/EEC	This Directive
Article 1(a)	Article 1(a)
Article 1(b), first and second indents	Article 1(b)(i) and (ii)
Article 2, first paragraph, first to fifth indents	Article 2(a) to (e)
Article 2, second paragraph	—
Article 3	—
Article 4	Article 3
Article 4a	Article 4
Article 5	Article 5
Article 6(1), first to fifth indents	Article 6(a) to (e)
Article 6(2)	—
Article 8(1) and (2)	Article 7(1) and (2)
Article 8(3)	—
—	Article 8
Article 9	—
—	Article 9
—	Article 10
Article 10	Article 11
—	Annex I
—	Annex II

II

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

DECISIONS

COUNCIL

COUNCIL DECISION

of 30 November 2009

amending the Decision of the Executive Committee set up by the 1990 Schengen Convention, amending the Financial Regulation on the costs of installing and operating the technical support function for the Schengen Information System (C.SIS)

(2009/914/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Article 119 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (the 1990 Schengen Convention) ⁽¹⁾,

Whereas:

- (1) The provisions of Article 119 of the 1990 Schengen Convention provide that the costs arising from the installation and operation of C.SIS, referred to in the provisions of Article 92(3), shall be borne jointly by the Contracting Parties.
- (2) The financial obligations arising from the installation and operation of the C.SIS are regulated by a specific Financial Regulation, as modified by the Decision of the Schengen Executive Committee of 15 December 1997 amending the Financial Regulation on C.SIS ⁽²⁾ (hereinafter 'C.SIS Financial Regulation').
- (3) The C.SIS Financial Regulation applies to Denmark, Finland and Sweden, and to Iceland and Norway by

virtue of Council Decision 2000/777/EC ⁽³⁾, to the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic by virtue of Council Decision 2007/471/EC ⁽⁴⁾, as well as to Switzerland by virtue of Council Decision 2008/421/EC ⁽⁵⁾.

- (4) Bulgaria and Romania are to be integrated into the first generation Schengen Information System (SIS 1+) on a date to be set by the Council in accordance with Article 4(2) of the 2005 Act of Accession, within the framework of the SIS 1+.
- (5) From that date onwards Bulgaria and Romania should participate in the C.SIS Financial Regulation.
- (6) It is reasonable that Bulgaria and Romania contribute to historical C.SIS costs. However, since they only joined the European Union in 2007, it is considered appropriate that they should contribute to historical costs in relation to the installation of the C.SIS from 1 January 2007. It is also considered reasonable that they contribute to historical operating costs from 1 January 2010.

⁽¹⁾ OJ L 239, 22.9.2000, p. 19.

⁽²⁾ OJ L 239, 22.9.2000, p. 444.

⁽³⁾ OJ L 309, 9.12.2000, p. 24.

⁽⁴⁾ OJ L 179, 7.7.2007, p. 46.

⁽⁵⁾ OJ L 149, 7.6.2008, p. 74.

- (7) Liechtenstein is to participate in the provisions of the Schengen *acquis* related to the Schengen Information System from a date to be set by the Council in accordance with Article 10 of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*. From that date, Liechtenstein should participate in the C.SIS Financial Regulation.
- (8) It is reasonable that Liechtenstein contributes to historical costs. However, since the Protocol was signed on 28 February 2008, it is considered appropriate that it should contribute to historical costs in relation to the installation of the C.SIS from 1 January 2008. It is also considered reasonable that it contribute to operating costs from 1 January 2010.
- (9) As regards Iceland and Norway, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*⁽¹⁾ which fall within the area referred to in Article 1, point G, of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement⁽²⁾.
- (10) As regards Switzerland, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*⁽³⁾, which fall within the area referred to in Article 1, point G, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decisions 2008/146/EC⁽⁴⁾ and 2008/149/JHA⁽⁵⁾.
- (11) As regards Liechtenstein, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point G, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decisions 2008/261/EC⁽⁶⁾ and 2008/262/JHA⁽⁷⁾.
- (12) The United Kingdom is taking part in this Decision, in accordance with Article 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, and Article 8(2) of Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*⁽⁸⁾.
- (13) Ireland is taking part in this Decision, in accordance with Article 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, and Article 6(2) of Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*⁽⁹⁾.
- (14) As regards the Republic of Cyprus, this Decision constitutes an act building upon the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession.

⁽¹⁾ OJ L 176, 10.7.1999, p. 36.

⁽²⁾ OJ L 176, 10.7.1999, p. 31.

⁽³⁾ OJ L 53, 27.2.2008, p. 52.

⁽⁴⁾ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

⁽⁵⁾ Council Decision 2008/149/JHA of 28 January 2008 on the conclusion on behalf of the European Union of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 50).

⁽⁶⁾ Council Decision 2008/261/EC of 28 February 2008 on the signature, on behalf of the European Community, and on the provisional application of certain provisions of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 83, 26.3.2008, p. 3).

⁽⁷⁾ Council Decision 2008/262/JHA of 28 February 2008 on the signature, on behalf of the European Union, and on the provisional application of certain provisions of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 83, 26.3.2008, p. 5).

⁽⁸⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁹⁾ OJ L 64, 7.3.2002, p. 20.

(15) This Decision constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 4(2) of the 2005 Act of Accession,

HAS DECIDED AS FOLLOWS:

Article 1

In Title I, point 3 of the C.SIS Financial Regulation, the following indents shall be added:

- in the case of Bulgaria and Romania, the contribution shall only be calculated on the basis of the costs incurred for the installation of the C.SIS as of 1 January 2007. They shall also contribute to the operating costs of the C.SIS as of 1 January 2010;
- in the case of Liechtenstein, the contribution shall only be calculated on the basis of the costs incurred for the installation of the C.SIS as of 1 January 2008. Liechtenstein shall also contribute to the operating costs of the C.SIS as of 1 January 2010.'

Article 2

In the last paragraph of Title II, point 2, and in the eighth paragraph of Title III, point 2, the beneficiary shall be replaced by the following:

'Ministère de l'Intérieur, Direction des systèmes d'information et de communications

(Ministry of the Interior, Department for Information and Communication Systems)'

Article 3

In the Decision, the terms 'francs' and 'French francs' are replaced by 'euro'.

Article 4

The amendments as regards Liechtenstein shall take effect once the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* has entered into force.

Article 5

This Decision shall take effect from the date of its adoption.

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

Done at Brussels, 30 November 2009.

For the Council

The President

B. ASK

COUNCIL DECISION

of 30 November 2009

amending Council Decision 2000/265/EC of 27 March 2000 on the establishment of a financial regulation governing the budgetary aspects of the management by the Deputy Secretary-General of the Council, of contracts concluded in his name, on behalf of certain Member States, relating to the installation and the functioning of the communication infrastructure for the Schengen environment, 'SISNET'

(2009/915/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the first sentence of the second subparagraph of Article 2(1) of the Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community, integrating the Schengen *acquis* into the framework of the European Union,

Whereas:

- (1) The Deputy Secretary-General of the Council was authorised by Decision 1999/870/EC ⁽¹⁾ and Decision 2007/149/EC ⁽²⁾ to act, in the context of the integration of the Schengen *acquis* within the European Union, as representative of certain Member States for the purposes of concluding contracts relating to the installation and the functioning of the communication infrastructure for the Schengen environment ('SISNET') and to manage such contracts, pending its migration to a communication infrastructure at the charge of the European Community.
- (2) The financial obligations arising under those contracts are borne by a specific budget (hereinafter 'the SISNET Budget') financing the communication infrastructure referred to in those Council Decisions.
- (3) The Member States which acceded to the European Union with the 2005 Act of Accession are to be integrated into the first generation Schengen Information System (SIS 1+) on a date to be set by the Council in accordance with Article 4(2) of the 2005 Act of Accession. From that date, those Member States should participate in the budget.
- (4) Liechtenstein is to participate in the provisions of the Schengen *acquis* related to the Schengen Information System from a date to be set by the Council in accordance with Article 10 of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*. From that date, Liechtenstein should participate in the budget,

Article 1

Council Decision 2000/265/EC is hereby amended as follows:

1. In Article 25, the following paragraphs shall be inserted:

'(1a) From 1 January 2010, the list of States referred to in paragraph 1 shall be extended to Bulgaria and Romania.

(1b) From 1 January 2010, the list of States referred to in paragraph 1 shall be extended to Liechtenstein.'

2. The third sub-paragraph of Article 26 shall be deleted.

3. Article 28 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. The States referred to in Article 25 shall be required to pay 70 % of their contribution by 1 April, and 30 % by 1 October at the latest.'

(b) paragraph 1a shall be deleted;

(c) paragraph 3 shall be replaced by the following:

'3. By way of derogation from paragraph 1, and without prejudice to Article 49, Bulgaria and Romania shall pay their entire respective contributions for 2010 by 31 December 2010. Liechtenstein shall pay its entire respective contribution for 2010 by 31 December 2010.'

(d) paragraph 4 shall be deleted.

4. The fifth sub-paragraph of Article 37 shall be replaced by the following:

'The Advisory Committee shall endeavour to adopt its opinions by consensus. If such consensus is not possible, the Advisory Committee shall adopt its opinions by a simple majority of its representatives. A quorum of 19 shall be required for the proceedings to be valid. In the event of a tied vote, the Chairman shall have the casting vote. From the date referred to in Article 25(1a), a quorum of 21 shall be required.'

⁽¹⁾ OJ L 337, 30.12.1999, p. 41.

⁽²⁾ OJ L 66, 6.3.2007, p. 19.

5. Point (c) of Article 49 shall be replaced by the following:

‘(c) adjustment of the contributions of the States referred to in Article 25 in order to establish the proportion of earlier SISNET installation costs to be borne by the other State. This percentage shall be calculated on the basis of the ratio of the VAT resources paid by the other State to the total VAT resources of the European Communities for the preceding financial year. If no data on VAT resources is available, the adjustment of contributions shall be calculated on the basis of the share of each Member State concerned in the total GDP of all the Member States referred to in Article 25. The percentage contribution shall be the subject of a “credit note” to the States referred to in Article 25, for an amount pro rata to their share as calculated in accordance with Article 26.’

Article 2

As regards Liechtenstein, the amendments provided for in Article 1 shall take effect once the Protocol between the European Union, the European Community, the Swiss Confed-

eration and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* has entered into force.

Article 3

This Decision shall take effect from the date of its adoption.

Article 4

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

Done at Brussels, 30 November 2009.

For the Council

The President

B. ASK

AGREEMENTS

COUNCIL

Information concerning the date of entry into force of the Agreements on Extradition and on Mutual Legal Assistance between the European Union and the United States of America

The Agreements on Extradition and on Mutual Legal Assistance between the European Union and the United States of America, both signed in Washington DC on 25 June 2003 ⁽¹⁾, enter into force on 1 February 2010, in accordance with Article 22 of the Agreement on Extradition and Article 18 of the Agreement on Mutual Legal Assistance.

⁽¹⁾ OJ L 181, 19.7.2003, p. 27.

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL DECISION 2009/916/CFSP

of 23 October 2009

concerning the signing and conclusion of the Agreement between the European Union and the Republic of Seychelles on the status of the European Union-led force in the Republic of Seychelles in the framework of the EU military operation Atalanta

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 24 thereof,

Having regard to the Recommendation from the Presidency,

Whereas:

(1) On 15 May 2008, the United Nations Security Council (UNSC) adopted Resolution 1814 (2008) calling on States and regional organisations to take action to protect shipping involved in the transport and delivery of humanitarian aid to Somalia and in activities authorised by the United Nations.

(2) On 2 June 2008, the UNSC adopted Resolution 1816 (2008) authorising, for a period of six months from the date of that Resolution, States cooperating with the Transitional Federal Government of Somalia to enter the territorial waters of Somalia and to use, in a manner consistent with relevant international law, all necessary means to repress acts of piracy and armed robbery at sea. Those provisions were renewed for an additional period of 12 months by UNSC Resolution 1846 (2008), adopted on 2 December 2008.

(3) On 10 November 2008, the Council adopted Joint Action 2008/851/CFSP on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast ⁽¹⁾ (operation 'Atalanta').

(4) Article 11 of Joint Action 2008/851/CFSP provides that the status of the EU-led forces and their personnel who are stationed on the land territory of third States, or operate in the territorial or internal waters of third States, is to be agreed in accordance with the procedure laid down in Article 24 of the Treaty.

(5) Following authorisation by the Council on 18 September 2007, in accordance with Article 24 of the Treaty, the Presidency, assisted by the Secretary-General/High Representative, negotiated an Agreement between the European Union and the Republic of Seychelles on the status of the EU-led forces in the Republic of Seychelles.

(6) The Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Union and the Republic of Seychelles on the status of the European Union-led forces in the Republic of Seychelles in the framework of the EU military operation Atalanta is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in order to bind the European Union.

⁽¹⁾ OJ L 301, 12.11.2008, p. 33.

Article 3

This Decision shall take effect on the day of its adoption.

Article 4

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

Done at Luxembourg, 23 October 2009.

For the Council
The President
T. BILLSTRÖM

AGREEMENT

between the European Union and the Republic of Seychelles on the status of the European Union-led forces in the Republic of Seychelles in the framework of the EU military operation Atalanta

THE EUROPEAN UNION (EU),

of the one part, and

THE REPUBLIC OF SEYCHELLES, hereinafter referred to as 'the Host State',

of the other part,

together hereinafter referred to as the 'Parties',

TAKING INTO ACCOUNT:

- United Nations (UN) Security Council Resolutions (UNSCRs) 1814 (2008), 1838 (2008), 1846 (2008) and 1851 (2008),
- the letters from the Republic of Seychelles dated 2 April 2009 and 21 August 2009 requesting the presence of the EU naval force on its territory,
- Joint Action 2008/851/CFSP of the Council of the European Union of 10 November 2008 on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the coast of Somalia,
- that this Agreement will not affect the Parties' rights and obligations under international agreements and other instruments establishing international courts and tribunals, including the Statute of the International Criminal Court,

HAVE AGREED AS FOLLOWS:

Article 1

Scope and definitions

1. This Agreement shall apply to the European Union-led forces and to their personnel.
2. This Agreement shall apply only within the territory of the Host State, including its waters and airspace.
3. For the purpose of this Agreement:
 - (a) 'European Union-led Forces (EUNAVFOR)' shall mean EU military headquarters and national contingents contributing to the EU operation 'Atalanta', their vessels, their aircrafts, their equipment and their means of transport;
 - (b) 'operation' shall mean the preparation, establishment, execution and support of the military mission further to the mandate arising out of UNSCR 1814 (2008), 1838 (2008), 1846 (2008), 1851 (2008) and any subsequent relevant UN Security Council Resolutions, the UN Convention on the Law of the Sea and the invitation letters from the Republic of Seychelles, dated 2 April 2009 and 21 August 2009;
 - (c) 'Operation Commander' shall mean the Commander of the Operation;
 - (d) 'EU Force Commander' shall mean the Commander in the theatre of operations;
 - (e) 'EU military headquarters' shall mean the military headquarters and elements thereof, whatever their location, under the authority of EU military commanders exercising the military command or control of the operation;
 - (f) 'national contingents' shall mean units, vessels, aircrafts and elements, including vessel protection detachments on board merchant vessels, belonging to the Member States of the European Union and to third States participating in the operation;
 - (g) 'EUNAVFOR personnel' shall mean the civilian and military personnel assigned to EUNAVFOR as well as personnel deployed for the preparation of the operation, personnel escorting persons arrested by EUNAVFOR and personnel on mission for a Sending State or an EU institution in the framework of the operation, present, except as otherwise provided in this Agreement, within the territory of the Host State, with the exception of personnel employed locally and personnel employed by international commercial contractors;
 - (h) 'personnel employed locally' shall mean personnel who are nationals of or permanently resident in the Host State;

- (i) 'facilities' shall mean all premises, accommodation and land required for EUNAVFOR and EUNAVFOR personnel;
- (j) 'Sending State' shall mean a State providing a national contingent for EUNAVFOR, including Member States of the European Union and third States participating in the operation;
- (k) 'waters' shall mean the internal waters, the archipelagic waters and territorial sea of the Host State and the airspace above those waters;
- (l) 'official correspondence' shall mean all correspondence relating to the operation and its functions.

Article 2

General provisions

1. EUNAVFOR and EUNAVFOR personnel shall respect the laws and regulations of the Host State and shall refrain from any action or activity incompatible with the objectives of the operation.
2. EUNAVFOR shall regularly inform the government of the Host State of the number of EUNAVFOR personnel stationed within the Host State's territory and of the identity of the vessels, aircrafts and units operating in the waters of the Host State or making calls to its ports.

Article 3

Identification

1. EUNAVFOR personnel present on the land territory of the Host State must carry passports or military identity cards with them at all times.
2. EUNAVFOR vehicles, aircraft, vessels and other means of transport shall carry distinctive EUNAVFOR identification markings and/or registration plates, of which the relevant Host State authorities shall be notified in advance.
3. EUNAVFOR shall have the right to display the flag of the European Union and markings such as military insignia, titles and official symbols, on its facilities, vehicles and other means of transport. The uniforms of EUNAVFOR personnel shall carry a distinctive EUNAVFOR emblem. National flags or insignia of the constituent national contingents of the operation may be displayed on the EUNAVFOR facilities, vehicles and other means of transport and uniforms, as decided by the EU Force Commander.

Article 4

Border crossing and movement within the Host State's territory

1. Except for the crews of EUNAVFOR vessels and aircrafts, EUNAVFOR personnel shall enter the Host State's territory only on presentation of the documents provided for in Article 3(1). They shall be exempt from passport and visa regulations, immigration inspections and customs control on entering, leaving or within the Host State's territory.
2. EUNAVFOR personnel shall be exempt from the Host State's regulations on the registration and control of aliens, but shall not acquire any right to permanent residence or domicile within the Host State's territory.
3. Upon entering the airport or port of the Host State, EUNAVFOR shall respect the public health and environmental health laws and regulations of the Host State. For this purpose an implementing arrangement as referred to in Article 18 may be concluded.
4. The Host State shall be provided, for information purposes, with a general list of EUNAVFOR assets entering its territory. These assets shall carry EUNAVFOR identification markings. EUNAVFOR assets and means of transport entering, transiting or exiting the Host State's territory in support of the operation shall be exempt from any requirement to produce inventories or other customs documentation, and from any inspection.
5. EUNAVFOR personnel, whilst respecting the laws and regulations of the Host State, may drive motor vehicles, navigate vessels and operate aircrafts within the Host State's territory provided they have valid national, international or military driving licences, ship master's certificates or pilot licences, as appropriate.
6. For the purpose of the operation, the Host State shall grant EUNAVFOR and EUNAVFOR personnel freedom of movement and freedom to travel within its territory, including its waters and its air space. Freedom of movement within the waters of the Host State shall include stopping and anchoring under any circumstances.
7. For the purpose of the operation, EUNAVFOR may carry out within the Host State territory, including its territorial sea and its air space, the launching, landing or taking on board of any aircraft or military device, subject to the authorisation of the Host State authority responsible for flight safety.
8. For the purpose of the operation, EUNAVFOR submarines are not required to navigate on surface and to show their flag in the territorial sea of the Host State.

For the purpose of the operation, EUNAVFOR and the means of transport that it charters may use public roads, bridges, ferries, airports and ports without the payment of duties, fees, tolls, taxes and similar charges. EUNAVFOR shall not be exempt from reasonable charges for services requested and received, under the conditions that apply to those provided to the Host State's armed forces.

Article 5

Privileges and immunities of EUNAVFOR granted by the Host State

1. EUNAVFOR's facilities, vessels and aircrafts shall be inviolable. The Host State's agents shall not enter them without the consent of the EU Force Commander.
2. EUNAVFOR's facilities, their furnishings and other assets therein as well as its means of transport shall be immune from search, requisition, attachment or execution.
3. EUNAVFOR, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process.
4. EUNAVFOR's archives and documents shall be inviolable at any time, wherever they may be.
5. The official correspondence of EUNAVFOR shall be inviolable.
6. In respect of purchased and imported goods, services provided and facilities used by EUNAVFOR for the purposes of the operation, EUNAVFOR, as well as its providers or contractors, shall be exempt from all national, regional and communal dues, taxes and charges of a similar nature. EUNAVFOR shall not be exempt from dues, taxes or charges that represent payment for services requested and rendered.
7. The Host State shall permit the entry and exit of articles for the operation and grant them exemption from all custom duties, fees, tolls, taxes and similar charges other than charges for storage, cartage and other services requested and rendered.

Article 6

Privileges and immunities of EUNAVFOR personnel granted by the Host State

1. EUNAVFOR personnel shall not be liable to any form of arrest or detention.
2. Papers, correspondence and property of EUNAVFOR personnel shall enjoy inviolability, except in case of measures of execution which are permitted pursuant to paragraph 6.
3. EUNAVFOR personnel shall enjoy immunity from the criminal jurisdiction of the Host State under all circumstances.

The immunity from criminal jurisdiction of EUNAVFOR personnel may be waived by the Sending State or EU institution concerned, as the case may be. Such waiver must always be in writing.

4. EUNAVFOR personnel shall enjoy immunity from the civil and administrative jurisdiction of the Host State in respect of words spoken or written and all acts performed by them in the exercise of their official functions. If any civil proceeding is instituted against EUNAVFOR personnel before any Host State court, the EU Force Commander and the competent authority of the Sending State or EU institution shall be notified immediately. Prior to initiation of the proceeding before the court, the EU Force Commander and the competent authority of the Sending State or EU institution shall certify to the court whether the act in question was committed by EUNAVFOR personnel in the exercise of their official functions.

If the act was committed in the exercise of official functions, the proceeding shall not be initiated and the provisions of Article 15 shall apply. If the act was not committed in the exercise of official functions, the proceeding may continue. The certification by the EU Force Commander and the competent authority of the Sending State or EU institution is binding upon the jurisdiction of the Host State which may not contest it.

The initiation of proceedings by EUNAVFOR personnel shall preclude them from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

5. EUNAVFOR personnel cannot be compelled to give evidence as witnesses. However, EUNAVFOR and the Sending States shall endeavour to produce statements of witnesses or affidavits by EUNAVFOR personnel involved in any incident in relation to which persons have been transferred under an agreement between the European Union and the Host State on the conditions of transfer of suspected pirates and armed robbers and their assets from EUNAVFOR to the Host State.

6. No measures of execution may be taken in respect of EUNAVFOR personnel, except in the case where a civil proceeding not related to their official functions is instituted against them. Property of EUNAVFOR personnel, which is certified by the EU Force Commander to be necessary for the fulfilment of their official functions, shall be free from seizure for the satisfaction of a judgement, decision or order. In civil proceedings EUNAVFOR personnel shall not be subject to any restrictions on their personal liberty or to any other measures of constraint.

7. The immunity of EUNAVFOR personnel from the jurisdiction of the Host State does not exempt them from the jurisdictions of the respective Sending States.

8. EUNAVFOR personnel shall with respect to services rendered for EUNAVFOR be exempt from social security provisions which may be in force in the Host State.

9. EUNAVFOR personnel shall be exempt from any form of taxation in the Host State on the salary and emoluments paid to them by EUNAVFOR or the Sending States, as well as on any income received from outside the Host State.

The Host State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services to, articles for the personal use of EUNAVFOR personnel.

The personal baggage of EUNAVFOR personnel shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles that are not for the personal use of EUNAVFOR personnel, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the Host State. Such inspection shall be conducted only in the presence of the concerned EUNAVFOR personnel or of an authorised representative of EUNAVFOR.

Article 7

Personnel employed locally

Personnel employed locally shall enjoy privileges and immunities only to the extent admitted by the Host State. However, the Host State shall exercise its jurisdiction over that personnel in such a manner as not to interfere unduly with the performance of the functions of the operation.

Article 8

Criminal jurisdiction

The competent authorities of a Sending State shall have the right to exercise on the territory of the Host State all the criminal jurisdiction and disciplinary powers conferred on them by the law of the Sending State with regard to all EUNAVFOR personnel subject to the relevant law of the Sending State. Wherever possible, the Host State shall endeavour to facilitate the exercise of jurisdiction by the competent authorities of the Sending State.

Article 9

Uniform and arms

1. The wearing of uniforms shall be subject to rules adopted by the EU Force Commander.

2. At sea, EUNAVFOR military personnel, and the police personnel when escorting persons arrested by EUNAVFOR, may carry arms and ammunition on condition that they are

authorised to do so by their orders, strictly limited to operational necessities.

3. On the land territory of the Seychelles, EUNAVFOR personnel may carry arms, if authorised to do so by their orders, within their compounds and while in transit between such compounds or their ships and aircrafts and when escorting detained suspected pirates. In any other occasion arms may only be carried with prior authorisation under the Seychelles Firearms and Ammunition Act.

Article 10

Host State support and contracting

1. The Host State agrees, if requested, to assist EUNAVFOR in finding suitable facilities.

2. Within its means and capabilities, the Host State shall provide, free of charge, facilities of which it is the owner, in so far as such facilities are requested for the conduct of administrative and operational activities of EUNAVFOR with the exception of utility charges and fuel.

3. Within its means and capabilities, the Host State shall assist in the preparation, establishment, and execution of and support to the operation. The Host State's assistance and support for the operation shall be provided under the same conditions as the assistance and support given to the Host State's armed forces.

4. The law applicable to contracts concluded by EUNAVFOR in the Host State shall be determined by the contract.

5. The contract may stipulate that the dispute settlement procedure referred to in Article 15 paragraphs 3 and 4 shall be applicable to disputes arising from the application of the contract.

6. The Host State shall facilitate the implementation of contracts concluded by EUNAVFOR with commercial entities for the purposes of the operation.

Article 11

Change to facilities

1. Whilst respecting the laws and regulations of the Host State, EUNAVFOR shall be authorised to construct, alter or otherwise modify facilities as requested for its operational requirements.

2. No compensation shall be requested from EUNAVFOR by the Host State for those constructions, alterations or modification.

*Article 12***Deceased EUNAVFOR personnel**

1. The EU Force Commander shall have the right to take charge of and make suitable arrangements for the repatriation of any deceased EUNAVFOR personnel, as well as that of their personal property.
2. No autopsy shall be performed on any deceased member of EUNAVFOR without the agreement of the State of nationality of the deceased person concerned and the presence of a representative of EUNAVFOR and/or the State of nationality of the deceased person concerned.
3. The Host State and EUNAVFOR shall cooperate to the fullest extent possible with a view to early repatriation of deceased EUNAVFOR personnel.

*Article 13***Security of EUNAVFOR and military police**

1. The Host State shall take all appropriate measures to ensure the safety and security of EUNAVFOR and its personnel.
2. The EU Force Commander may establish a military police unit in order to maintain order in EUNAVFOR facilities.
3. The military police unit may also, in consultation and cooperation with the military police or the police of the Host State, act outside those facilities to ensure the maintenance of good order and discipline among EUNAVFOR personnel.
4. EUNAVFOR personnel transiting through the territory of the Host State to escort persons arrested by EUNAVFOR shall be authorised to apply the necessary measures of restraint with respect to these persons.

*Article 14***Communications**

1. EUNAVFOR may install and operate radio sending and receiving stations, as well as satellite systems. It shall cooperate with the Host State's competent authorities with a view to avoiding conflicts in the use of appropriate frequencies. The Host State shall grant access to the frequency spectrum free of charge in accordance with the laws and regulations of the Host State.
2. EUNAVFOR shall enjoy the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, telegraph, facsimile and other means, as well as the right to install the equipment necessary for the maintenance of such communications within and between

EUNAVFOR facilities, including the laying of cables and land lines for the purpose of the operation.

3. Within its own facilities EUNAVFOR may make the arrangements necessary for the conveyance of mail addressed to and from EUNAVFOR and/or EUNAVFOR personnel.

*Article 15***Claims for death, injury, damage and loss**

1. EUNAVFOR and EUNAVFOR personnel shall not be liable for any damage to or loss of civilian or government property which are caused by action taken by EUNAVFOR in the exercise of official functions or caused by activities in connection with civil disturbances or protection of EUNAVFOR.
2. With a view to reaching an amicable settlement, claims for damage to or loss of civilian or government property not covered by paragraph 1, as well as claims for death of or injury to persons and for damage to or loss of EUNAVFOR property, shall be forwarded to EUNAVFOR via the competent authorities of the Host State, as far as claims brought by legal or natural persons from the Host State are concerned, or to the competent authorities of the Host State, as far as claims brought by EUNAVFOR are concerned.
3. Where no amicable settlement can be found, the claim shall be submitted to a claims commission composed on an equal basis of representatives of EUNAVFOR and representatives of the Host State. Settlement of claims shall be reached by common agreement.
4. Where no settlement can be reached within the claims commission, the dispute shall:
 - (a) for claims up to and including EUR 40 000, be settled by diplomatic means between the Host State and EU representatives;
 - (b) for claims above the amount referred to in point (a), be submitted to an arbitration tribunal, the decisions of which shall be binding.
5. The arbitration tribunal shall be composed of three arbitrators, one arbitrator being appointed by the Host State, one arbitrator being appointed by EUNAVFOR and the third one being appointed jointly by the Host State and EUNAVFOR. Where one of the parties does not appoint an arbitrator within two months or where no agreement can be found between the Host State and EUNAVFOR on the appointment of the third arbitrator, the arbitrator in question shall be appointed by the President of the Court of Justice of the European Communities.

An administrative arrangement shall be concluded between the EU Operation/Force Commander and the administrative authorities of the Host State in order to determine the terms of reference of the claims commission and the arbitration tribunal, the procedure applicable within these bodies and the conditions under which claims are to be lodged.

Article 16

Liaison and disputes

1. All issues arising in connection with the application of this Agreement shall be examined jointly by representatives of EUNAVFOR and the Host State's competent authorities.
2. Failing any prior settlement, disputes concerning the interpretation or application of this Agreement shall be settled exclusively by diplomatic means between the representatives from the EU and the Host State.

Article 17

Other provisions

1. Whenever this Agreement refers to the privileges, immunities and rights of EUNAVFOR and of EUNAVFOR personnel, the Government of the Host State shall be responsible for their implementation and for compliance with them on the part of the appropriate Host State local authorities.
2. Nothing in this Agreement is intended or may be construed to derogate from any rights that may attach to an EU Member State or to any other State contributing to EUNAVFOR under other agreements.

Article 18

Implementing arrangements

For purposes of the application of this Agreement, operational, administrative and technical matters may be the subject of separate arrangements to be concluded between the EU Operation/Force Commander and the Host State's administrative authorities.

Article 19

Entry into force and termination

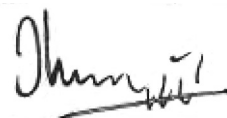
1. This Agreement shall enter into force on the day on which it is signed and shall remain in force until the date of departure of the last EUNAVFOR element and of the last EUNAVFOR personnel, as notified by EUNAVFOR. Either party may terminate this Agreement at any earlier time by giving six months' notice in writing.
2. Notwithstanding paragraph 1, the provisions contained in Articles 4(8), 5(1-3), 5(6), 5(7), 6(1), 6(3), 6(4), 6(6), 6(8-10), 10(2), 11, 13(1), 13(2) and 15 shall be deemed to have applied from the date on which the first EUNAVFOR personnel were deployed if that date is earlier than the date of entry into force of this Agreement.
3. This Agreement may be amended by written agreement between the Parties.
4. Termination of this Agreement shall not affect any rights or obligations arising out of the execution of this Agreement before such termination.

Done at Victoria, Seychelles, in duplicate, in the English language, this 10th day of November, 2009.

For the European Union



For the Republic of Seychelles



ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL DECISION 2009/917/JHA

of 30 November 2009

on the use of information technology for customs purposes

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 30(1)(a) and Article 34(2)(c) thereof,

Having regard to the initiative of the French Republic,

Having regard to the Opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) At the external borders of the Community and within its territory, customs administrations are responsible, together with other competent authorities, for the prevention, investigation and prosecution of offences not only against Community rules, but also against national laws.
- (2) The developing trend towards illicit trafficking of all kinds constitutes a serious threat to public health, morality and security.
- (3) It is necessary to reinforce cooperation between customs administrations, by laying down procedures under which customs administrations may act jointly and exchange personal and other data concerned with illicit trafficking activities, using new technology for the management and transmission of such information, taking into account Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters ⁽²⁾ and the principles contained in Recommendation No R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987 regulating the use of personal data in the police sector (hereinafter referred to as Recommendation No R (87) 15).

(4) It is also necessary to enhance complementarity with actions in the context of cooperation with the European Police Office (Europol) and the European Judicial Cooperation Unit (Eurojust), by granting those bodies access to the Customs Information System, including the customs files identification database, to fulfil their tasks within their mandate.

(5) Reading access to the Customs Information System should allow Europol to cross-check information obtained through other means with the information available in those databases, to identify new links that were so far not detectable and thus to produce a more comprehensive analysis. Reading access to the customs files identification database should allow Europol to uncover connections between cases of criminal investigations, so far unknown to Europol that have a dimension in and outside the European Union.

(6) Reading access to the Customs Information System should allow Eurojust to obtain immediate information required for an accurate initial overview enabling to identify and overcome legal obstacles and to achieve better prosecution results. Reading access to the customs files identification database should allow Eurojust to receive information of ongoing and closed investigations in different Member States and thus to enhance the support of judicial authorities in the Member States.

(7) Since customs administrations have to implement both Community and non-Community provisions in their day-to-day work, it is necessary to ensure that the provisions on mutual assistance and administrative cooperation evolve in parallel. Account should therefore be taken of the provisions on the Customs Information System and the customs files identification database in Regulation (EC) No 766/2008 ⁽³⁾.

⁽¹⁾ Opinion of 24 November 2009 (not yet published in the Official Journal).

⁽²⁾ OJ L 350, 30.12.2008, p. 60.

⁽³⁾ Regulation (EC) No 766/2008 of the European Parliament and of the Council of 9 July 2008 amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 218, 13.8.2008, p. 48).

- (8) Member States recognise the advantage which the full use of the customs files identification database will provide for coordinating and strengthening the fight against cross-border criminality and therefore commit themselves to enter data into that database to the greatest extent possible.
- (9) Experience gained since the Convention of 26 July 1995 on the use of information technology for customs purposes (hereinafter the CIS Convention) ⁽¹⁾ entered into force has shown that the use of the Customs Information System for the sole purposes of sighting and reporting, discreet surveillance or specific checks does not make it possible to achieve fully the system's objective, which is to assist in preventing, investigating and prosecuting serious contraventions of national laws.
- (10) A strategic analysis should help those responsible at the highest level to determine projects, objectives and policies for combating fraud, to plan activities and to deploy the resources needed to achieve the operational objectives.
- (11) An operational analysis of the activities, resources and intentions of certain persons or businesses that do not comply or appear not to comply with national laws should help the customs authorities to take the appropriate measures in specific cases to achieve the objectives as regards the fight against fraud.
- (12) The CIS Convention should therefore be replaced.
- (13) This Decision respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (14) This Decision does not prevent the Member States from applying their constitutional rules relating to public access to official documents,

HAS DECIDED AS FOLLOWS:

CHAPTER I

ESTABLISHMENT OF A CUSTOMS INFORMATION SYSTEM

Article 1

1. A joint automated information system for customs purposes (hereinafter referred to as the 'Customs Information System' or the 'System') is hereby established.
2. The aim of the Customs Information System, in accordance with this Decision, shall be to assist in preventing, investigating and prosecuting serious contraventions of national laws by making information available more rapidly, thereby

increasing the effectiveness of the cooperation and control procedures of the customs administrations of the Member States.

CHAPTER II

DEFINITIONS

Article 2

For the purposes of this Decision:

1. 'national laws' mean laws or regulations of a Member State, in the application of which the customs administration of that Member State has total or partial competence, concerning:
 - (a) the movement of goods subject to measures of prohibition, restriction or control, in particular those measures covered by Articles 30 and 296 of the Treaty establishing the European Community (the EC Treaty);
 - (b) measures to control cash movements within the Community, where such measures are taken in accordance with Article 58 of the EC Treaty;
 - (c) the transfer, conversion, concealment, or disguise of property or proceeds acquired or obtained directly or indirectly through illicit international drug trafficking or by infringement of:
 - (i) the laws, regulations or administrative provisions of a Member State in the application of which the customs administration of that Member State has partial or total competence, concerning the cross-border movement of goods subject to measures of prohibition, restriction or control, in particular those measures referred to in Articles 30 and 296 of the EC Treaty, and non-harmonised excise duties;
 - (ii) the body of Community provisions and associated implementing provisions governing the import, export, transit and presence of goods traded between Member States and third countries, and between Member States in the case of goods that do not have Community status within the meaning of Article 23 of the EC Treaty or goods subject to additional controls or investigations for the purposes of establishing their Community status;
 - (iii) the body of provisions adopted at Community level under the common agricultural policy and the specific provisions adopted with regard to goods resulting from the processing of agricultural products; or

⁽¹⁾ OJ C 316, 27.11.1995, p. 33.

- (iv) the body of provisions adopted at Community level for harmonised excise duties and for value-added tax on importation together with the national provisions implementing them, or those which have been used in that context;
2. 'personal data' mean any information relating to an identified or identifiable natural person (data subject), whereby an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;
3. 'supplying Member State' means a Member State which enters an item of data into the Customs Information System;
4. 'operational analysis' means analysis of operations which constitute, or appear to constitute, breaches of national laws, involving the following stages:
- (a) the collection of information, including personal data;
- (b) evaluation of the reliability of the information source and the information itself;
- (c) research, methodical presentation and interpretation of links between these items of information or between them and other significant data;
- (d) the formulation of observations, hypotheses or recommendations directly usable as risk information by the competent authorities to prevent and detect other operations in breach of national laws and/or to identify with precision the person or businesses implicated in such operations;
5. 'strategic analysis' means research and presentation of the general trends in breaches of national laws through an evaluation of the threat, scale and impact of certain types of operation in breach of national laws, with a view to setting priorities, gaining a better picture of the phenomenon or threat, reorienting action to prevent and detect fraud and reviewing departmental organisation. Only data from which identifying factors have been removed may be used for strategic analysis.

CHAPTER III

OPERATION AND USE OF THE CUSTOMS INFORMATION SYSTEM*Article 3*

1. The Customs Information System shall consist of a central database facility, accessible through terminals in each Member

State. It shall comprise exclusively data necessary to achieve its aim as stated in Article 1(2), including personal data, in the following categories:

- (a) commodities;
- (b) means of transport;
- (c) businesses;
- (d) persons;
- (e) fraud trends;
- (f) availability of expertise;
- (g) items detained, seized or confiscated;
- (h) cash detained, seized or confiscated.

2. The Commission shall ensure the technical management of the infrastructure of the Customs Information System in accordance with the rules provided for by the implementing measures adopted by the Council.

The Commission shall report on management to the Committee referred to in Article 27.

3. The Commission shall communicate to that Committee the practical arrangements adopted for technical management.

Article 4

1. Member States shall determine the items to be entered into the Customs Information System relating to each of the categories referred to in Article 3(1), to the extent that this is necessary to achieve the aim of the System. No items of personal data shall be entered in any event within the category set out in Article 3(1)(e).

2. With regard to the categories set out in Article 3(1)(a) to (d), the items of information entered in respect of persons shall comprise no more than:

- (a) name, maiden name, forenames, former surnames and aliases;
- (b) date and place of birth;
- (c) nationality;
- (d) sex;
- (e) number and place and date of issue of the identity papers (passports, identity cards, driving licences);

- (f) address;
- (g) any particular objective and permanent physical characteristics;
- (h) reason for entering data;
- (i) suggested action;
- (j) a warning code indicating any history of being armed, violent or of escaping;
- (k) registration number of the means of transport.

3. With regard to the category set out in Article 3(1)(f), the items of information entered in respect of persons shall comprise no more than the experts surnames and forenames.

4. With regard to the categories set out in Article 3(1)(g) and (h), the items of information entered in respect of persons shall comprise no more than:

- (a) name, maiden name, forenames, former surnames and aliases;
- (b) date and place of birth;
- (c) nationality;
- (d) sex;
- (e) address.

5. In no case shall personal data listed in Article 6 of the Framework Decision 2008/977/JHA be entered into the Customs Information System.

Article 5

1. Data in the categories referred to in Article 3(1)(a) to (g) shall be entered into the Customs Information System only for the purpose of sighting and reporting, discreet surveillance, specific checks and strategic or operational analysis.

Data in the category referred to in Article 3(1)(h) shall be entered into the Customs Information System only for the purpose of strategic or operational analysis.

2. For the purpose of the actions referred to in paragraph 1, personal data in any of the categories referred to in Article 3(1) may be entered into the Customs Information System only if there are real indications, in particular on the basis of prior illegal activities, to suggest that the person concerned has committed, is in the act of committing or will commit serious contraventions of national laws.

Article 6

1. If the actions referred to in Article 5(1) are carried out, the following information may in whole or in part be collected and transferred to the supplying Member State:

- (i) the fact that the commodity, means of transport, business or person reported has been found;
- (ii) the place, time and reason for the check;
- (iii) the route and destination of the journey;
- (iv) persons accompanying the person concerned or occupants of the means of transport;
- (v) the means of transport used;
- (vi) objects carried;
- (vii) the circumstances under which the commodity, means of transport, business or person was found.

When such information is collected in the course of discreet surveillance, steps have to be taken to ensure that the discreet nature of the surveillance is not jeopardised.

2. In the context of a specific check referred to in Article 5(1), persons, means of transport and objects may be searched to the extent permissible and in accordance with the laws, regulations and procedures of the Member State in which the search takes place. If the specific check is not permitted by the law of a Member State, it shall automatically be converted by that Member State into sighting and reporting or discreet surveillance.

Article 7

1. Direct access to data entered into the Customs Information System shall be reserved to the national authorities designated by each Member State. Those national authorities shall be customs administrations, but may also include other authorities competent, according to the laws, regulations and procedures of the Member State in question, to act in order to achieve the aim stated in Article 1(2).

2. Each Member State shall send the other Member States and the Committee referred to in Article 27 a list of its competent authorities which have been designated in accordance with paragraph 1 of this Article to have direct access to the Customs Information System stating, for each authority, to which data it may have access and for what purposes.

3. Notwithstanding paragraphs 1 and 2, the Council may, by a unanimous decision, permit access to the Customs Information System by international or regional organisations. In making this decision the Council shall take account of any reciprocal arrangements and any opinion on the adequacy of data protection measures by the Joint Supervisory Authority referred to in Article 25.

Article 8

1. Member States, Europol and Eurojust may use data obtained from the Customs Information System only in order to achieve the aim stated in Article 1(2). However, they may use it for administrative or other purposes with the prior authorisation of, and subject to any conditions imposed by, the Member State which entered the data in the System. Such other use shall be in accordance with the laws, regulations and procedures of the Member State which seeks to use it in accordance with Article 3(2) of Framework Decision 2008/977/JHA, and should take into account Principle 5.2.i of the Recommendation No R (87) 15.

2. Without prejudice to paragraphs 1 and 4 of this Article, Article 7(3) and Articles 11 and 12, data obtained from the Customs Information System shall only be used by national authorities in each Member State designated by the Member State in question, which are competent, in accordance with the laws, regulations and procedures of that Member State, to act in order to achieve the aim stated in Article 1(2).

3. Each Member State shall send the other Member States and the Committee referred to in Article 27 a list of the competent authorities it has designated in accordance with paragraph 2 of this Article.

4. Data obtained from the Customs Information System may, with the prior authorisation of, and subject to any conditions imposed by, the Member State which entered them into the System, be transferred for use by national authorities other than those designated under paragraph 2 of this Article, third countries, and international or regional organisations wishing to make use of them. Each Member State shall take special measures to ensure the security of such data when they are being transferred to services located outside its territory. Details of such measures have to be communicated to the Joint Supervisory Authority referred to in Article 25.

Article 9

1. The entry of data into the Customs Information System shall be governed by the laws, regulations and procedures of the supplying Member State unless this Decision lays down more stringent provisions.

2. The use of data obtained from the Customs Information System, including performance of any action under Article 5(1)

suggested by the supplying Member State, shall be governed by the laws, regulations and procedures of the Member State using such data, unless this Decision lays down more stringent provisions.

Article 10

1. Each Member State shall designate a competent customs administration which shall have national responsibility for the Customs Information System.

2. The administration referred to in paragraph 1 shall be responsible for the correct operation of the Customs Information System within the Member State and shall take the measures necessary to ensure compliance with this Decision.

3. Member States shall inform one another of the administration referred to in paragraph 1.

Article 11

1. Europol shall, within its mandate and for the fulfilment of its tasks, have the right to have access to the data entered into the Customs Information System in accordance with Articles 1, 3 to 6 and 15 to 19 and to search those data.

2. Where a search by Europol reveals the existence of a match between information processed by Europol and an entry in the Customs Information System, Europol shall, through the channels defined in Council Decision 2009/371/JHA of 6 April 2009 establishing a European Police Office (Europol) ⁽¹⁾, inform the Member State which made the entry.

3. Use of information obtained from a search in the Customs Information System is subject to the consent of the Member State which entered the data into the System. If that Member State allows the use of such information, the handling thereof shall be governed by the Decision 2009/371/JHA. Europol may transfer such information to third countries and third bodies only with the consent of the Member State which entered the data into the System.

4. Europol may request further information from the Member States concerned, in accordance with the Decision 2009/371/JHA.

5. Without prejudice to paragraphs 3 and 4, Europol shall not connect the parts of the Customs Information System to which it has access to any computer system for data collection and processing operated by or at Europol, nor transfer the data contained therein to any such system, nor download or otherwise copy any part of the Customs Information System.

Europol shall limit access to data entered into the Customs Information System to duly authorised staff of Europol.

⁽¹⁾ OJ L 121, 15.5.2009, p. 37.

Europol shall allow the Joint Supervisory Body, set up under Article 34 of the Decision 2009/371/JHA, to review the activities of Europol in the exercise of its right to accede to and to search data entered into the Customs Information System.

6. Nothing in this Article shall be interpreted as affecting the provisions of the Decision 2009/371/JHA concerning data protection and the liability for any unauthorised or incorrect processing of such data by Europol staff, or as affecting the powers of the Joint Supervisory Body set up pursuant to that Decision.

Article 12

1. The national members of Eurojust, their deputies, assistants and specifically authorised staff shall, within their mandate and for the fulfilment of Eurojust's tasks, have the right to have access to the data entered into the Customs Information System in accordance with Articles 1, 3 to 6 and 15 to 19 and to search those data.

2. Where a search by a national member of Eurojust, their deputies, assistants or specifically authorised staff reveals the existence of a match between information processed by Eurojust and an entry in the Customs Information System, he or she shall inform the Member State which made the entry. Any communication of information obtained from such a search may be communicated to third countries and third bodies only with the consent of the Member State which made the entry.

3. Nothing in this Article shall be interpreted as affecting the provisions of Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime⁽¹⁾ which concern data protection and the liability for any unauthorised or incorrect processing of such data by national members of Eurojust, their deputies, assistants and specifically authorised staff, or as affecting the powers of the Joint Supervisory Body set up pursuant to that Decision.

4. No parts of the Customs Information System to which the national members of Eurojust, their deputies, assistants and specifically authorised staff have access shall be connected to any computer system for data collection and processing in operation by or at Eurojust, nor shall any data contained in the former be transferred to the latter, nor shall any part of the Customs Information System be downloaded.

5. Access to data entered in the Customs Information System shall be limited to the national members of Eurojust, their deputies, assistants and specifically authorised staff and shall not be extended to other Eurojust staff.

CHAPTER IV AMENDMENT OF DATA

Article 13

1. Only the supplying Member State shall have the right to amend, supplement, rectify or erase data which it has entered in the Customs Information System.

2. Should a supplying Member State note, or have drawn to its attention, that the data it entered are factually inaccurate or were entered, or are stored contrary to this Decision, it shall amend, supplement, rectify or erase the data, as appropriate, and shall inform the other Member States, Europol and Eurojust accordingly.

3. If a Member State, Europol or Eurojust has evidence to suggest that an item of data is factually inaccurate, or was entered or is stored in the Customs Information System, contrary to this Decision, it shall inform thereof the supplying Member State as soon as possible. The latter shall check the data concerned and, if necessary, rectify or erase the item without delay. The supplying Member State shall inform the other Member States, Europol and Eurojust of any rectification or erasure effected.

4. If, when entering data in the Customs Information System, a Member State notes that its report conflicts with a previous report as to content or suggested action, it shall immediately inform thereof the Member State which made the previous report. The two Member States shall then attempt to resolve the matter. In the event of disagreement, the first report shall stand, but those parts of the new report which do not conflict with the first report shall be entered in the System.

5. Subject to this Decision, where in any Member State a court, or other competent authority within that Member State, makes a final decision as to amendment, supplementation, rectification or erasure of data in the Customs Information System, the Member States undertake mutually to enforce such a decision. In the event of conflict between such decisions of courts or other competent authorities in different Member States, including those referred to in Article 23(1), concerning rectification or erasure, the Member State which entered the data in question shall erase them from the System.

CHAPTER V RETENTION OF DATA

Article 14

1. Data entered into the Customs Information System shall be kept only for the time necessary to achieve the purpose for which they were entered. The need for their retention shall be reviewed at least annually by the supplying Member State.

⁽¹⁾ OJ L 138, 4.6.2009, p. 14.

2. The supplying Member State may, within the review period, decide to retain data until the next review if their retention is necessary for the purposes for which they were entered. Without prejudice to Articles 22 and 23, if there is no decision to retain data, they shall automatically be transferred to that part of the Customs Information System to which access shall be limited in accordance with paragraph 4 of this Article.

3. The Customs Information System shall automatically inform the supplying Member State of a scheduled transfer of data from the Customs Information System under paragraph 2, giving one month's notice.

4. Data transferred under paragraph 2 of this Article shall continue to be retained for one year within the Customs Information System but, without prejudice to Articles 22 and 23, shall be accessible only to a representative of the Committee referred to in Article 27 or to the supervisory authorities referred to in Articles 24 and 25(1). During that period they may consult the data only for the purposes of checking their accuracy and lawfulness, after which the data have to be erased.

CHAPTER VI

CREATION OF A CUSTOMS FILES IDENTIFICATION DATABASE

Article 15

1. The Customs Information System shall contain data in accordance with this Chapter, in addition to data contained in accordance with Article 3, in a special database (hereinafter referred to as the customs files identification database). Without prejudice to the provisions of this Chapter and of Chapters VII and VIII, all the provisions of this Decision shall also apply to the customs files identification database. However, the exception in Article 21(2) shall not apply.

2. The aim of the customs files identification database shall be to enable the national authorities responsible for carrying out customs investigations designated pursuant to Article 7, when opening a file on or investigating one or more persons or businesses, and for Europol and Eurojust, to identify competent authorities of other Member States which are investigating or have investigated those persons or businesses, in order, through information on the existence of investigation files, to achieve the aim referred to in Article 1(2).

3. For the purposes of the customs files identification database, each Member State shall send the other Member States, Europol, Eurojust and the Committee referred to in Article 27 a list of serious contraventions of its national laws.

This list shall comprise only contraventions that are punishable:

- (a) by deprivation of liberty or a detention order for a maximum period of not less than 12 months; or
- (b) by a fine of at least EUR 15 000.

4. If the Member State retrieving data from the customs files identification database requires further information on the stored investigation file on a person or a business, it shall request the assistance of the supplying Member State on the basis of the instruments in force relating to mutual assistance.

CHAPTER VII

OPERATION AND USE OF THE CUSTOMS FILES IDENTIFICATION DATABASE

Article 16

1. Data from investigation files will be entered into the customs files identification database only for the purposes set out in Article 15(2). The data shall only cover the following categories:

- (a) a person or a business which is or has been the subject of an investigation file opened by a competent authority of a Member State, and which:
 - (i) in accordance with the national law of the Member State concerned, is suspected of committing or having committed, or participating or having participated in the commission of, a serious infringement of national laws;
 - (ii) has been the subject of a report establishing that such an infringement has taken place; or
 - (iii) has been the subject of an administrative or judicial sanction for such an infringement;
- (b) the field covered by the investigation file;
- (c) the name, nationality and contact information of the Member State's authority handling the case, together with the file number.

Data referred to in points (a) to (c) shall be entered in a data record separately for each person or business. Links between data records shall not be permitted.

2. The personal data referred to in paragraph 1(a) shall consist of only the following:

- (a) for persons: name, maiden name, forenames, former surnames and aliases, date and place of birth, nationality and sex;

- (b) for businesses: business name, name under which trade is conducted, address, VAT identifier and excise duties identification number.
3. Data shall be entered for a limited period in accordance with Article 19.

Article 17

A Member State shall not be obliged to make entries pursuant to Article 16 in any particular case if, and for such time as, this would harm public policy or other essential interests, especially as this would present an immediate and serious threat to its public security or to the public security of another Member State or a third country; or where other essential interests of equal importance are at stake; or where such entries could pose serious harm to the rights of individuals or would prejudice an ongoing investigation.

Article 18

1. Entry of data in the customs files identification database and consultation thereof shall be reserved to the authorities referred to in Article 15(2).

2. Any consultation concerning the customs files identification database shall cover the following personal data:

- (a) for persons: forename, and/or name, and/or maiden name, and/or former surnames, and/or aliases, and/or date of birth;
- (b) for businesses: business name, and/or name under which trade is conducted, and/or address, and/or VAT identifier, and/or excise duties identification number.

CHAPTER VIII

PERIOD OF RETENTION OF DATA IN THE CUSTOMS FILES IDENTIFICATION DATABASE

Article 19

1. Storage periods shall be determined in accordance with the laws, regulations and procedures of the Member State entering the data. However, the following time limits, starting on the date on which the data were entered in the file, shall not be exceeded:

- (a) data relating to current investigation files shall not be retained beyond a period of three years if it has not been established that an infringement has taken place within that time period. The data shall be erased before the expiry of the three-year period if 12 months have passed since the last investigative act;
- (b) data relating to investigation files which have established that an infringement has taken place but which have not

yet led to a conviction or to imposition of a fine shall not be retained beyond a period of six years;

- (c) data relating to investigation files which have led to a conviction or a fine shall not be retained beyond a period of 10 years.

2. At all stages of an investigation as referred to in points (a) to (c) of paragraph 1, as soon as a person or business within the scope of Article 16 is eliminated from an investigation pursuant to the laws and administrative regulations of the supplying Member State, all data relating to that person or business shall be erased immediately.

3. Data shall automatically be erased from the customs files identification database as from the date on which the data retention periods laid down in paragraph 1 are exceeded.

CHAPTER IX

PERSONAL DATA PROTECTION

Article 20

Framework Decision 2008/977/JHA shall apply to the protection of the data exchange in accordance with this Decision unless otherwise provided in this Decision.

Article 21

1. Data may be duplicated only for technical purposes, provided that such duplication is necessary for direct searching by the authorities referred to in Article 7.

2. Subject to Article 8(1), personal data entered by other Member States may not be copied from the Customs Information System into other national data files, except those copies held in systems of risk management used to direct national customs controls or copies held in an operational analysis system used to coordinate actions. Such copies may be made to the extent necessary for specific cases or investigations.

3. In the two exceptional cases provided for in paragraph 2, only the analysts authorised by the national authorities of each Member State shall be empowered to process personal data obtained from the Customs Information System within the framework of a risk management system used to direct customs controls by national authorities or of an operational analysis system used to coordinate actions.

4. Each Member State shall send other Member States and the Committee referred to in Article 27 a list of the risk-management departments whose analysts are authorised to copy and process personal data entered in the Customs Information System.

5. Personal data copied from the Customs Information System shall be kept only for the time necessary to achieve the purpose for which they were copied. The need for their retention shall be reviewed at least annually by the Member State which carried out the copying. The storage period shall not exceed ten years. Personal data which are not necessary for the continuation of the operational analysis shall be erased immediately or have any identifying factors removed.

Article 22

The rights of persons with regard to personal data in the Customs Information System, in particular their right of access, to rectification, erasure or blocking shall be exercised in accordance with the laws, regulations and procedures of the Member State implementing Framework Decision 2008/977/JHA in which such rights are invoked. Access shall be refused to the extent that such refusal is necessary and proportionate in order not to jeopardise any ongoing national investigations, or during the period of discreet surveillance or sighting and reporting. When the applicability of such an exemption is assessed, the legitimate interests of the person concerned shall be taken into account.

Article 23

1. In the territory of each Member State, any person may, in accordance with the laws, regulations and procedures of the Member State in question, bring an action or, if appropriate, a complaint before the courts or the authority competent under the laws, regulations and procedures of that Member State concerning personal data relating to himself on the Customs Information System, in order to:

- (a) rectify or erase factually inaccurate personal data;
 - (b) rectify or erase personal data entered or stored in the Customs Information System contrary to this Decision;
 - (c) obtain access to personal data;
 - (d) block personal data;
 - (e) obtain compensation pursuant to Article 30(2).
2. Without prejudice to the provisions of Article 31, the Member States concerned undertake mutually to enforce the final decisions taken by a court, or other competent authority, pursuant to points (a) to (c) of paragraph 1 of this Article.

Article 24

Each Member State shall designate a national supervisory authority or authorities responsible for personal data protection to carry out independent supervision of such data included in the Customs Information System in accordance with Framework Decision 2008/977/JHA.

Article 25

1. A Joint Supervisory Authority shall be set up, consisting of two representatives from each Member State's respective independent national supervisory authority or authorities.

2. The Joint Supervisory Authority shall monitor and ensure the application of the provisions of this Decision and Framework Decision 2008/977/JHA as concerns the protection of natural persons with respect to the processing of personal data through the Customs Information System.

3. To that end, the Joint Supervisory Authority shall be competent to supervise operation of the Customs Information System, to examine any difficulties of application or interpretation which may arise during its operation, to study problems which may arise with regard to the exercise of independent supervision by the national supervisory authorities of the Member States, or in the exercise of rights of access by individuals to the System, and to draw up proposals for the purpose of finding joint solutions to problems.

4. For the purpose of fulfilling its responsibilities, the Joint Supervisory Authority shall have access to the Customs Information System.

5. Reports drawn up by the Joint Supervisory Authority shall be forwarded to the authorities to which the national supervisory authorities submit their reports, to the European Parliament and the Council.

Article 26

1. The European Data Protection Supervisor shall supervise the activities of the Commission regarding the Customs Information System. The duties and powers referred to in Articles 46 and 47 of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁽¹⁾ shall apply accordingly.

2. The Joint Supervisory Authority and the European Data Protection Supervisor, each acting within the scope of their respective competences, shall cooperate in the framework of their responsibilities and shall ensure coordinated supervision of the Customs Information System, including for issuing relevant recommendations.

3. The Joint Supervisory Authority and the European Data Protection Supervisor shall meet for that purpose at least once a year. The costs and servicing of these meetings shall be for the account of the European Data Protection Supervisor.

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

CHAPTER X

INSTITUTIONAL FRAMEWORK

Article 27

1. A Committee consisting of representatives from the customs administrations of the Member States shall be set up. The Committee shall take its decisions unanimously where the provisions of paragraph 2(a) are concerned and by a two-thirds majority where the provisions of paragraph 2(b) are concerned. It shall adopt its rules of procedure by unanimity.

2. The Committee shall be responsible:

- (a) for the implementation and correct application of the provisions of this Decision, without prejudice to the powers of the authorities referred to in Articles 24, 25(1) and 26(1);
- (b) for the proper functioning of the Customs Information System with regard to technical and operational aspects. The Committee shall take all necessary steps to ensure that the measures set out in Articles 14 and 28 are properly implemented with regard to the Customs Information System.

For the purpose of applying this paragraph, the Committee may have direct access to, and use of, data from the Customs Information System.

3. The Committee shall report annually to the Council, in accordance with Title VI of the Treaty on European Union, regarding the efficiency and effectiveness of the Customs Information System, making recommendations as necessary. That report shall be sent to the European Parliament for information.

4. The Commission shall take part in the Committee's proceedings.

CHAPTER XI

SECURITY OF THE CUSTOMS INFORMATION SYSTEM

Article 28

1. All necessary administrative measures to maintain security shall be taken:

- (a) by the competent authorities of the Member States in respect of the terminals of the Customs Information System in their respective Member States and by Europol and Eurojust;
- (b) by the Committee referred to in Article 27 in respect of the Customs Information System and the terminals located on the same premises as the System and used for technical

purposes and the checks required by paragraph 3 of this Article.

2. In particular the competent authorities, Europol, Eurojust and the Committee referred to in Article 27 shall take measures:

- (a) to prevent any unauthorised person from having access to installations used for the processing of data;
- (b) to prevent data and data media from being read, copied, modified or removed by unauthorised persons;
- (c) to prevent the unauthorised entry of data and any unauthorised consultation, modification or erasure of data;
- (d) to prevent data in the Customs Information System from being accessed by unauthorised persons by means of data transmission equipment;
- (e) to guarantee that, with respect to the use of the Customs Information System, authorised persons have right of access only to data for which they have competence;
- (f) to guarantee that it is possible to check and establish to which authorities data may be transmitted by data-transmission equipment;
- (g) to guarantee that it is possible to check and establish *a posteriori* what data have been entered in the Customs Information System, when and by whom, and to monitor searches;
- (h) to prevent the unauthorised reading, copying, modification or erasure of data during the transmission of data and the transport of data media.

3. The Committee referred to in Article 27 shall monitor queries of the Customs Information System for the purpose of checking that searches made were admissible and were made by authorised users. At least 1 % of all searches made shall be checked. A record of such searches and checks shall be maintained in the System and shall be used only for the above-mentioned purpose by that Committee and the supervisory authorities referred to in Articles 24 and 25. It shall be erased after six months.

Article 29

The competent customs administration referred to in Article 10(1) shall be responsible for the security measures set out in Article 28, in relation to the terminals located in the territory of the Member State concerned, the review functions set out in Article 14(1) and (2) and Article 19, and otherwise for the proper implementation of this Decision so far as is necessary under the laws, regulations and procedures of that Member State.

CHAPTER XII

RESPONSIBILITIES AND LIABILITIES*Article 30*

1. Each Member State shall ensure that the data it has entered into the Customs Information System in accordance with Articles 3, 4(1) and 8 of Framework Decision 2008/977/JHA are accurate, up to date, complete, reliable and entered lawfully.

2. Each Member State shall be liable in accordance with its national law for any damage caused to a person through the use of the Customs Information System. This shall also apply to damage caused by a Member State entering inaccurate data or entering or storing data unlawfully.

3. If a recipient Member State pays compensation for damage caused by the use of inaccurate data entered into the Customs Information System by another Member State, the latter Member States shall refund to the recipient Member State the amount paid in damages, taking into account any fault that may lie with the recipient Member State.

4. Europol and Eurojust shall be liable in accordance with the acts which established them.

Article 31

1. Costs relating to the acquisition, study, development and maintenance of central computer infrastructure (hardware), software and dedicated network connections, and to related production, support and training services, which cannot be kept separate from the operation of the Customs Information System for the purpose of applying the customs and agricultural rules of the Community, and costs relating to the use of the Customs Information System by the Member States in their territories, including communication costs, shall be borne by the general budget of the European Communities.

2. Costs relating to the maintenance of the national work stations/terminals incurred in the implementation of this Decision shall be borne by the Member States.

CHAPTER XIII

IMPLEMENTATION AND FINAL PROVISIONS*Article 32*

The information provided for under this Decision shall be exchanged directly between the authorities of the Member States.

Article 33

The Member States shall ensure that their national law conforms to this Decision by 27 May 2011.

Article 34

1. This Decision replaces the CIS Convention, as well as the Protocol of 12 March 1999 drawn up on the basis of Article K.3 of the Treaty on European Union, on the scope of the laundering of proceeds in the Convention on the use of information technology for customs purposes and the inclusion of the registration number of the means of transport in the Convention ⁽¹⁾ and the Protocol of 8 May 2003 established in accordance with Article 34 of the Treaty on European Union, amending, as regards the creation of a customs files identification database, the Convention on the use of information technology for customs purposes ⁽²⁾ with effect from 27 May 2011.

2. Consequently, the CIS Convention and the Protocols referred to in paragraph 1 shall be repealed with effect from the date of application of this Decision.

Article 35

Unless otherwise provided in this Decision, measures implementing the CIS Convention and Protocols referred to in Article 34(1) shall be repealed with effect from 27 May 2011.

Article 36

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

2. It shall apply from 27 May 2011.

Done at Brussels, 30 November 2009.

For the Council

The President

B. ASK

⁽¹⁾ OJ C 91, 31.3.1999, p. 2.

⁽²⁾ OJ C 139, 13.6.2003, p. 2.

IV

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

No 28/08/COL

of 23 January 2008

on the Wood Scheme (Verdiskapningsprogrammet for tre) (Norway)

THE EFTA SURVEILLANCE AUTHORITY ⁽¹⁾,

Agreement, in particular the sections on regional aid and research and development aid,

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

Having regard to the block exemption Regulations on aid for training and aid to small and medium-sized enterprises (SME) as well as the Regulation on *de minimis* aid ⁽⁵⁾,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ⁽³⁾, in particular Article 24 thereof,

Having regard to Decision No 147/06/COL of the Authority of 17 May 2006 to initiate the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3 to the Surveillance and Court Agreement,

Having regard to Article 1(2) of Part I and Articles 4(4), 6, 7(5), 13 and 14 of Part II of Protocol 3 to the Surveillance and Court Agreement,

Having called on interested parties to submit their comments pursuant to Article 6 of Part II of Protocol 3 to the Surveillance and Court Agreement ⁽⁶⁾,

Having regard to the Authority's State Aid Guidelines ⁽⁴⁾ on the application and interpretation of Articles 61 and 62 of the EEA

⁽⁵⁾ Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid (OJ L 10, 13.1.2001, p. 20); 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); and Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ L 379, 28.12.2006, p. 5). This last Regulation replaces Commission Regulation (EC) No 69/2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ L 10, 13.1.2001, p. 30) and Chapter 12 in the State Aid Guidelines (adopted by Decision No 54/96/COL of the Authority of 15 May 1996, OJ L 245, 26.9.1996, p. 28). All Regulations mentioned above have been incorporated into Annex 15 to the EEA Agreement (at point 1(d)-(f)).

⁽⁶⁾ OJ C 272, 9.11.2006, p. 19, and EEA Supplement No 55, 9.11.2006.

⁽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⁾ Procedural and Substantive Rules in the Field of State Aid — Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Part I of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19 January 1994, published in OJ L 231, 3.9.1994, p. 1, and EEA Supplement No 32, 3.9.1994, p. 1. The Guidelines were last amended by Decision No 154/07/COL of the Authority of 3 May 2007. Hereinafter referred to as the 'State Aid Guidelines'.

Whereas:

I. FACTS

1. Procedure

By letter dated 1 February 2005 (Event No 307555) the Authority received a complaint (the 'Complaint') from a trade association for the Norwegian masonry and concrete industry, 'byggutengrenser.no' (the 'Complainant'). In the Complaint, which was both received and registered by the Authority on 3 February 2005, the Complainant alleges that the Norwegian State is granting State aid to the wood construction industry on the basis of 'Verdiskapningsprogrammet for tre', also referred to as 'Treprogrammet' (hereinafter referred to as the 'Wood Scheme').

By letter dated 17 May 2006 and following various exchanges of correspondence⁽⁷⁾, the Authority informed the Norwegian authorities that it had decided to initiate the procedure laid down in Article 1(2) of Part I of Protocol 3 to the Surveillance and Court Agreement in respect of the Wood Scheme.

By letter dated 3 July 2006 from the Mission of Norway to the European Union, forwarding letters from the Ministry of Government Administration and Reform and the Ministry of Agriculture and Food, both dated 26 June 2006, the Norwegian authorities submitted comments. The letters were received and registered by the Authority on 4 July 2006 (Event No 380386, hereinafter referred to as 'Comments by the Norwegian authorities on the Decision to open the formal investigation procedure').

Decision No 147/06/COL to initiate the formal investigation procedure was published in the *Official Journal of the European Union* and the EEA Supplement thereto⁽⁸⁾. The Authority called on interested parties to submit their comments. The Authority received no comments from interested parties.

Finally, during the autumn of 2007, the Authority and the Norwegian authorities had informal contact via both telephone and electronic mail regarding the Wood Scheme. Information received by the Authority in this context has been consolidated by the Norwegian authorities in a letter submitted electronically on 10 December 2007 by the Ministry of Government Administration and Reform (Event No 456845).

2. Description of the proposed measure

2.1. Objective and administration of the Wood Scheme described in preparatory legislative works

The White Paper of 1998-99

The aim of the Wood Scheme is set out in a White Paper from the Government to the Parliament on the creation of value and

opportunities within the forest sector (St. meld. nr. 17 (1998-99 'Verdiskapning og miljø — muligheter i skogssektoren') — hereinafter referred to as the 'White Paper').

The aim of the White Paper was to establish a general policy for a rational and sustainable utilisation of forest resources and to increase the forest sector's contribution to the national economy and the general development of Norwegian society. The White Paper proposed the introduction of various measures in order to achieve this goal — one of which was the Wood Scheme. In this respect the White Paper proposed the establishment of a 5-year scheme aimed at creating value within the sector of woodwork and the (wood) processing business. More specifically, the White Paper stipulated that the aim of the Wood Scheme should be to increase the creation of value in forestry and the (wood) processing business as well as to increase the contribution of the forest sector to achieving more sustainable production and consumption patterns⁽⁹⁾. In that respect, the focus of the Wood Scheme should be on (i) improving the processing of woodwork; (ii) increasing the use of woodwork; and (iii) improving relations on different levels of trade between the forest sector and the market⁽¹⁰⁾. The White Paper also stated that the new scheme should focus on identifying possibilities in the areas of product development and design and architecture and that the scheme should pave the way for enabling woodwork to be considered as an attractive building material with a wide range of uses⁽¹¹⁾. Finally, on a more general level, the White Paper pointed out that the aim of increasing value in the processing business for woodwork should be achieved domestically⁽¹²⁾.

Recommendation (1998-1999) and Working Group Report

The framework for the establishment of the Wood Scheme was laid down in further detail in a recommendation from a Parliamentary standing committee addressed to the Parliament (Innst. S. nr. 208 (1998-1999)), dated 3 June 1999 (hereinafter referred to as the 'Recommendation'). The Recommendation suggests that a working group be established in order to identify the strategies as well as the implementation and financing needs of the new scheme.

Shortly afterwards in July 1999 a 'Working Group' was established, composed, notably, of representatives from the Ministry of Agriculture, trade associations for forest owners and producers of timber, research and development institutions as well as representatives from the retail trade sector. The Working Group issued a report (the 'Working Group Report') on 14 April 2000 on the content, organisation and financing of the Wood Scheme.

⁽⁹⁾ Section 7.3.3 of the White Paper.

⁽¹⁰⁾ Section 7.3.3 of the White Paper.

⁽¹¹⁾ Section 2.4.1 of the White Paper.

⁽¹²⁾ Section 6.1.1 of the White Paper. Regarding the focus on Norwegian industry, Section 6.1.1 of the White Paper also states that (translated by the Authority): 'For the purposes of increasing the creation of value it is important to consider both the possibility of reducing costs at the level of processing and sales and that of increasing and improving the use/exploitation of woodwork produced in Norway.'

⁽⁷⁾ For more detailed information on such correspondence, reference is made to Decision No 147/06/COL to open the formal investigation procedure, a summary of which is published in OJ C 272, 9.11.2006, p. 19, and in EEA Supplement No 55, 9.11.2006. The full decision is published on the website of the Authority: www.eftasurv.int

⁽⁸⁾ Publication details are cited in footnote 7 above.

The Working Group Report recalls the aims and objectives of the Wood Scheme referred to in the White Paper. The Working Group Report further specifies that the scheme should be limited to the processing chain between the forest sector and the mechanical wood processing industry but should also include the supply of raw material to the wood processing industry (e.g. to improve quality, precision and steady deliveries)⁽¹³⁾. The Working Group Report also states that it is an objective that the Wood Scheme is focused on Norwegian wood resources and that improvements are achieved within the Norwegian (wood) processing business.

The Working Group Report proposes that the responsibility for administration and implementation of the Wood Scheme lie with (i) 'Statens nærings- og distriktsutviklingsfond', generally referred to as 'SND' (which was reorganised and renamed 'Innovasjon Norge' as of 1 January 2004); and (ii) a management group (the 'Management Group'), composed of representatives from various ministries and market operators, appointed by the Ministry of Agriculture⁽¹⁴⁾.

According to the Working Group Report, on a practical level, the tasks of the Management Group should focus on evaluating and developing the scheme (including ensuring engagement from the value chain and verifying that activities correspond to the aim and strategies of the scheme), whereas Innovasjon Norge should be the body responsible for implementing the scheme⁽¹⁵⁾. To that end, Innovasjon Norge was authorised to approve and allocate all funding under the scheme.

⁽¹³⁾ Section 1.4 of the Working Group Report states that the Wood Scheme does not cover forest culture, infrastructure, transport, fields, forest products for green decoration purposes and bio energy which are to be addressed via other measures by the Government. Section 2.1 of the Working Group Report defines the forest based value chain (or the forest sector) as all operators involved from the stump to the end-user. 'Forest' covers the supply side (forest owners and associations of such) and the commercial level (forest entrepreneurs, including terrain transport, timber measurement and turnover, forest culture work, operational planning etc.). 'Production' covers all processing of timber into products suitable for end-users but with a focus on the wood mechanical processing chain (covering traditional work in sawmills and carpentry and further processing into doors, windows, staircases and other building elements as well as the production of wooden furniture, wooden houses and manually produced goods). The 'market' covers the end-users but includes also different trading levels and other operators in the forest based production system, such as subcontractors of goods and services to forestry and the forest based industry.

⁽¹⁴⁾ Sections 1.5, 6.2 and 6.3 of the Working Group Report. As of May 2003 the composition of the group also included representatives from alternative funding sources and the County Governor's office.

⁽¹⁵⁾ Annual reports on the activities and development of the scheme must be submitted to the Ministry of Agriculture and constitute the basis for both the preparation of the budget and guidelines to Innovasjon Norge (previously SND); cf. Sections 1.5, 6.2 and 6.3 of the Working Group Report.

During the formal investigation procedure the Norwegian authorities made it clear that the principles underlying the general working routines of Innovasjon Norge (for purposes of administering other aid schemes) were applied in the context of implementing the Wood Scheme⁽¹⁶⁾. Innovasjon Norge therefore awarded grants under the Wood Scheme on the basis of (i) the 'Superior Policy' of Innovasjon Norge⁽¹⁷⁾; (ii) the Internal EEA Guidelines of Innovasjon Norge; (iii) the first annual letter of allocation from the Ministry of Agriculture⁽¹⁸⁾; (iv) general procedures in the Instruction Book for case handlers of Innovasjon Norge; and (v) the State Aid Guidelines of the Authority⁽¹⁹⁾. From a practical point of view the most important of these are the principles laid down in the Internal EEA Guidelines, which also form the basis for the vast majority of the comments forwarded by the Norwegian authorities.

The Internal EEA Guidelines have been developed by Innovasjon Norge on the basis of existing Norwegian aid schemes administered by it. They contain an explanation of the concept of State aid within the meaning of Article 61(1) of the EEA Agreement, extracts from the State Aid Guidelines and the rules on *de minimis* aid as well as a table setting out aid intensities for existing schemes⁽²⁰⁾. The Internal EEA Guidelines have been continuously updated and five different versions have therefore been submitted to the Authority⁽²¹⁾.

The Norwegian authorities have stated that while the Working Group Report does not contain conditions which must be met in order for projects to be eligible for support, such conditions were developed in the Internal EEA Guidelines. While there is no explicit reference in the Working Group Report to the Internal EEA Guidelines, the Norwegian authorities have stated that the reference in the Working Group Report to establishing 'principles and practices' (within the limits of EEA law) for the purposes of implementing the Wood Scheme is to be

⁽¹⁶⁾ See Comments by the Norwegian authorities on the Decision to open the formal investigation procedure.

⁽¹⁷⁾ The Superior Policy is a guidance document which sets out certain outer limits on the grant of funding by Innovasjon Norge (such as ruling out the grant of operating aid and export aid) and dictates that funding must be awarded within the limits set by international agreements to which Norway is a party.

⁽¹⁸⁾ The allocation letter dated 6 October 2000 contains information on the budget for implementing the Wood Scheme while referring to the objective, sector and target groups of the scheme.

⁽¹⁹⁾ The Norwegian authorities have also referred to the law governing Innovasjon Norge and its 'Standard Terms' for awarding development funding which contain administrative rules on, inter alia, time limits, documentation, control measures and recovery of funding.

⁽²⁰⁾ Also included are provisions on cumulation, reference rates and the calculation of aid.

⁽²¹⁾ The versions are dated January 2000; August 2001; June 2003; September 2004; and July 2005 and do not differ substantially one from the other. For the sake of simplicity, the use of the term 'Internal EEA Guidelines' refers in the following to the text of the latest version and only where relevant (due to deviations or additional text) comments on the text in previous versions are made.

understood as a reference to the Internal EEA Guidelines⁽²²⁾. According to the Norwegian authorities the Internal EEA Guidelines have, in this manner, been made an integral part of the Wood Scheme⁽²³⁾. Case handlers of Innovasjon Norge are instructed to assess applications on the basis of the specific set of rules in the EEA Internal Guidelines which they consider to be appropriate. If they consider that no State aid is involved at all, the project may be 100 % financed⁽²⁴⁾.

2.2. Legal basis and annual budgets

It appears from the State budget for the relevant years that the Wood Scheme is financed by the Ministry of Agriculture and Food via annual awards directly from the State budget. Financing for the Wood Scheme was provided for in the Government proposal to the Parliament containing the State budget for the year 2000 (St. prp. nr. 1 (1999-2000)), where funding for the Wood Scheme was included in Chapter 1142 as item 71⁽²⁵⁾. The State budgets for subsequent years each earmarked amounts for the Wood Scheme⁽²⁶⁾.

The first annual allocation letter from the Ministry of Agriculture to Innovasjon Norge allocates funding to Innovasjon Norge and authorises its disbursement in line with the objective, sector and target groups as laid down in the Working Group Report⁽²⁷⁾.

By letter dated 29 September 2005, updated by letter dated 3 July 2006, the Norwegian authorities informed the Authority that the budgets for the Wood Scheme for the financial years from 2000 to 2005 were as follows:

⁽²²⁾ Section 1.3 of the Working Group Report states that funding must be awarded in compliance with EEA rules and section 7.1 states that 'The EEA Agreement's legislation on State aid must be followed. The program must establish its own principles and practices within these regulations.' See also Comments by the Norwegian authorities on the Decision to open the formal investigation procedure.

⁽²³⁾ See Comments by the Norwegian authorities on the Decision to open the formal investigation procedure and e-mail dated 18 January 2008 from the Norwegian authorities (Event No 461470).

⁽²⁴⁾ See also subsection on co-financing and 100 % funding of project costs in section I-2.4 below.

⁽²⁵⁾ See also revised budget (St. prp. nr. 61 (1999-2000)). The Wood Scheme has been referred to in different manners including 'Treprogrammet' and 'Verdiskapningsprogrammet for tre' or by means of the original Recommendation from the Standing Committee to the Parliament (Innst. S. nr. 208 (1998-1999)).

⁽²⁶⁾ 2001: St. prp. nr. 1 (2000-2001) and revised budget (St. prp. nr. 84 (2000-2001)); 2002: St. prp. nr. 1 (2001-2002) and revised budget (St. prp. nr. 1 Tillegg nr. 4 (2001-2002)); 2003: St. prp. nr. 1 (2002-2003) and revised budget (St. prp. nr. 65 (2002-2003)); 2004: St. prp. nr. 1 (2003-2004) and revised budget (St. prp. nr. 63); 2005: St. prp. nr. 1 (2004-2005) and revised budget (St. prp. nr. 65 (2004-2005)). In the first 4 years (2000-2003, both inclusive) funding for the Wood Scheme was earmarked under item 71 in Chapter 1142 of the State budget, whereas in the last 2 years (2004 and 2005) funding for the Wood Scheme was earmarked under item 71 in Chapter 1149 of the State budget.

⁽²⁷⁾ Letter dated 6 October 2000 submitted to the Authority by the Norwegian authorities as attachment 3 to the Comments by the Norwegian authorities on the Decision to open the formal investigation procedure.

Annual budget

Year	Budget (mill. NOK)	Consents (mill. NOK)
2000	17	8,8
2001	25	25,7
2002	20	18,2
2003	36	39,3
2004	35	28,4
2005	33	39,5
Total	166	159,9

Grants were paid out within 3 years of the year in which a consent (*tilsagn*) was given and upon completion of the project by the recipient. If the budget for a particular year was not fully spent the remaining amount was carried over to the subsequent year. Hence the total value of consents in any given year may be higher than the budgeted amount for the same year.

2.3. Recipients of support under the Wood Scheme

The Working Group Report provides that the Wood Scheme should be aimed at companies and other operators with concrete projects falling within the strategies and work areas of the scheme and which contribute to increased value creation⁽²⁸⁾.

The Norwegian authorities have further specified that the Wood Scheme is open to all relevant industries (referred to as 'mechanical wood-based industries') and industries which can contribute to goal achievement under the Wood Scheme, such as industries exploring the use of wood in combination with other materials⁽²⁹⁾. Within these parameters the scheme is open to 'private persons, companies, authorities and unions, regardless of the company structure or organisation' as well as 'research and educational institutions', irrespective of their country of establishment⁽³⁰⁾.

2.4. Eligible costs and aid intensity

Eligible costs

The Norwegian authorities have stated that grants under the Wood Scheme are awarded to projects that '... contribute to goal achievement within the strategies and work areas of the program' and which trigger innovation. It appears from the Working Group Report that the following three strategies

⁽²⁸⁾ Section 4.6 of the Working Group Report.

⁽²⁹⁾ See letter dated 29 September 2005 from the Norwegian authorities to the Authority, enclosed in a letter dated 3 October 2005 from the Norwegian Mission to the EU (Event No 345465).

⁽³⁰⁾ See letter dated 29 September 2005, cited above at footnote 29 and Comments by the Norwegian authorities on the Decision to open the formal investigation procedure.

should be employed in order to achieve the objectives of the Wood Scheme. Each of the strategies should be implemented by means of the activities specified below each strategy⁽³¹⁾. The costs of such activities are therefore eligible for funding under the Wood Scheme.

- (i) Profile making and communication strategy (that is, to create engagement and willingness to develop the value chain, attract competence, people and capital, increase the visibility and active profiling of the forest and woodwork and focus on the advantages of wood as a material and disseminate information).

Measures to be used to implement this strategy include campaigns which represent the forest/wood business in a positive manner, information dissemination via design/architecture journals with wood as a profile and the provision of information to professional users, universities and teaching institutions and consumers. Other measures include the establishment of an Internet portal and a network for the purposes of channelling information throughout the value chain while also functioning as a general information resource as well as the establishment of meeting points both nationally and regionally to cater for research and development groups, architects, designers, IT oriented groups, trend researchers, innovators and investors etc.

- (ii) Product development and novelties strategy (covering the realisation of new possibilities, ideas and initiatives, contributing to innovation and new creations).

Measures to be used include structural development programmes, the establishment of business fora directed at small companies, innovation projects connected to different teaching institutions, design/architecture competitions, development of new products within new market segments (such as the recreation market; facilities/infrastructure for 'public areas'; wood products for health care etc.) and development projects which focus on generating profits in the value chain (such as raw materials, side products, wood trade and electronic trade). Other measures include the establishment of a forum and structures for developing novelties and innovation, student projects for innovation and architecture and design competitions to increase the use of specific wood materials.

- (iii) Cooperation and efficiency strategy (covering improvement in the channelling of goods and processes in the value chain and in cost efficiency, value creation and profitability as well as the optimal use of human resources and infrastructure).

Measures include the development of an integrated system of logistics to improve the timing for distribution of goods and the quality and price of products, information tech-

nology to save costs on the sale/distribution level and the development of IT systems for communicating throughout the value chain to improve quality. Other measures include competitions, preparatory studies on the development of an integrated IT system and the digitalisation of information on goods throughout the value chain, competence programmes on cost efficiency in value development and (measures for) the generation of profits in the field of forest, wood industry and trade.

The Internal EEA Guidelines specify eligible costs for SMEs, training activities and research and development, as well as for 'investments' (by SMEs and in regional areas). A translated version of the eligible cost descriptions in the Internal EEA Guidelines is attached hereto as Annex I⁽³²⁾.

Aid intensities

While the Internal EEA Guidelines specify aid intensities for SMEs⁽³³⁾, aid intensities for other types of aid are indicated only by reference to a table, entitled 'Maximum funding rates for schemes administered by Innovasjon Norge — size of undertaking and areas eligible for aid'. The table, which does not include a reference to the Wood Scheme, is reproduced in a translated version in Annex II hereto.

Since the table refers to two different aid intensities with respect to preparatory studies for research and development under the schemes entitled 'OFU/IFU' and 'Omstilling og nyskaping', the authorities have explained that it is the aid intensity set out for the 'OFU/IFU' scheme which has been applied to the Wood Scheme. The difference between the aid intensities is that the aid intensity for technical feasibility studies carried out by large undertakings in the context of pre-competitive research (for large undertakings) may amount to 55 % under the 'Omstilling og nyskaping' scheme while the corresponding aid intensity under the 'OFU/IFU' scheme is only 50 %.

Aid intensities in the context of co-financing and 100 % funding of costs

Grants under the Wood Scheme are, in principle, conditional upon contributions by the recipients in the form of financing and work force⁽³⁴⁾. However, there is no minimum requirement for co-financing; rather the share of it differs depending on the objectives and character of the project. In this context the Norwegian authorities have stated that aid under the Wood Scheme is granted in accordance with the aid intensities set forth in the Internal EEA Guidelines, such that, de facto, there is always some co-financing.

⁽³²⁾ Translation by the Authority.

⁽³³⁾ In case of investment, maximum intensity is 7,5 % for medium-sized companies and 15 % for small companies while for consultancy services and trade fairs the level is fixed at 50 %.

⁽³⁴⁾ Sections 1.4 and 7.1 of the Working Group Report.

⁽³¹⁾ Sections 4.1-4.4 and 5 of the Working Group Report.

Nonetheless, the authorities have also explained that they implement a practice under the Wood Scheme whereby certain projects receive funding for 100 % of the costs — in which case there is no co-financing. In this regard the authorities have referred to the Working Group Report which provides that: 'The share of funding under the scheme vary according to the objective and character of the projects. The scheme may finance the entire project [costs] in case it is difficult to identify anyone who can benefit directly from the project, for example, in pure study projects or preparatory studies. The share of financing under the scheme may be correspondingly low in case of projects which are expected to be of important and direct use for the project participants. The EEA State aid rules must be applied. Within the limits set by such rules principles and administrative practices are to be developed for the scheme.'⁽³⁵⁾

The authorities have further explained that the practice of awarding 100 % funding has been used in cases where it has been difficult to identify stakeholders that would benefit directly from the projects (or where individual undertakings are considered to receive a modest benefit only) such as in the case of preliminary studies and reports in special target areas. An example of this, which has been referred to by the authorities, is the grant of NOK 125 000 to Norsk Treteknisk Institutt to a project for the product development of planed panels for internal use⁽³⁶⁾. The Norwegian authorities stated that the results (of the project) are accessible for its member companies, and that, in any event, much of Norsk Treteknisk Institutt's information is generally accessible via its library.

2.5. *De minimis* aid

The Norwegian authorities have submitted that grants awarded on the basis of specific provisions under the Wood Scheme fulfil the conditions for qualifying as *de minimis* aid. The authorities have explained that when *de minimis* aid has been granted, the 'consent letter' sent to the aid recipient contains a reference to the *de minimis* threshold and time frame as well as to the obligation of the aid recipient to inform the authorities of aid received from other sources within 3 years from the point in time at which the consent to be granted aid was given⁽³⁷⁾.

In addition, the authorities have explained the existence of an administrative practice whereby aid granted for, for example, research and development, may be 'topped up' with *de minimis* aid. This practice is specifically provided for in the Internal EEA Guidelines in the versions dated September 2004 and July 2005⁽³⁸⁾.

⁽³⁵⁾ Section 7.1 of the Working Group Report.

⁽³⁶⁾ Although this amount would qualify as *de minimis*, Norsk Treteknisk Institutt had also received other aid.

⁽³⁷⁾ This information request is phrased in the following manner: 'EØS-regelverket — opplysningsplikt Tildelingen av tilskuddet skjer i henhold til reglene for bagatellmessig støtte. Ved eventuelle nye søknader om offentlig støtte (uansett støttekilde) har støttmottaker plikt til å opplyse om dette tilskuddet. Opplysningsplikten gjelder i 3 år fra tilsagnstidspunktet. Støttmottakeren må ikke motta mer enn til sammen 100 000 Euro (ca. kr 815 000,-) i støtte etter reglene for bagatellmessig støtte over et tidsrom på 3 år.'

⁽³⁸⁾ Section 4.2 thereof.

2.6. *Duration*

The Norwegian authorities have stated that the Wood Scheme was operational as of 1 July 2000 (i.e. the date as of which applications for support could be made) and remained in force for 5 years, until the end of 2005 (the last consent was given on 30 December 2005)⁽³⁹⁾.

2.7. *Trade in wood products*

It appears from the White Paper from the Government to the Parliament on the creation of value and opportunities within the forest sector that Norway exports its wood products to the EU. In this regard it is specifically stated in Section 4.3 of the White Paper that 'Norway exports approximately 85-90 % of the wholesale production of wood and paper products and approximately 35 % of the timber production. Supplies to EU countries amount to 70 % and 90 % respectively of total exports. Any strategies or political interventions within the EU which can affect the EU's import of forest industry products could have significant consequences for the Norwegian forest sector'⁽⁴⁰⁾. Moreover, it appears from Eurostat statistics that wood products are extensively traded in the EU⁽⁴¹⁾. Finally, it appears from statistics produced by 'Statistics Norway' (*Statistisk sentralbyrå*) that Norway also imports substantial amounts of timber, processed wood and wood products (*Tømmer, trelast og kork ...*) from the EU⁽⁴²⁾.

2.8. *Scope of EEA Agreement*

Article 8(3) of the EEA Agreement provides that:

'Unless otherwise specified, the provisions of this Agreement shall apply only to:

- (a) products falling within Chapters 25 to 97 of the Harmonized Commodity Description and Coding System, excluding the products listed in Protocol 2;

⁽³⁹⁾ This is confirmed by the comments to the proposal for the State budget in St. prp. nr. 1 (2000-2001) and the Working Group Report.

⁽⁴⁰⁾ Translation by the Authority of the following quote: 'Norge eksporterer ca 85-90 % av produksjonen av tremasse og papirprodukter og ca 35 % av trelast-produksjonen. Leveransene til EU-land utgjør henholdsvis 70 % og 90 % av eksporten. Eventuelle strategier eller politiske vedtak innen EU som kan påvirke EUs import av skogindustriprodukter vil kunne få store konsekvenser for den norske skogsektoren.'

⁽⁴¹⁾ Statistics produced by Eurostat for the years between 1999 and 2004 (covering both imports and exports of various varieties of refined wood and timber within the EU where value is expressed either in thousands of cubic metres or tons) show that there is extensive trade within the EU of wood products. The relevant statistics are (i) intra EU-25 imports and exports of round wood; 'table fores51'; (ii) intra EU-25 imports of wood pulp and paper and paperboard; 'table fores62'; (iii) intra EU-25 exports of woodpulp 'table fores62'; (iv) intra EU-25 imports of sawn wood and wood based panels; 'table fores61'; and (v) intra EU-25 exports of sawn wood 'table fores61'. All available at <http://europa.eu.int/comm/eurostat> or by contacting Eurostat via their website.

⁽⁴²⁾ See the webpage: <http://www.ssb.no/muh/tab15-01.shtml> which shows table 15, entitled, 'Trade with selected countries by two-digit SITC. Jan-mar 2006. Million kroner'.

(b) products specified in Protocol 3, subject to the specific arrangements set out in that Protocol.'

Wood and articles of wood are covered by Chapter 44.

2.9. Grounds for initiating the procedure

The Authority opened the formal investigation procedure on the basis of the preliminary finding that the Wood Scheme involves State aid which would not qualify for any of the exemptions provided for in the EEA Agreement. Consequently the Authority had doubts that the Wood Scheme could be considered to be compatible with the functioning of the EEA Agreement. Reference was made to the fact that the documents submitted by the Norwegian authorities on the Wood Scheme did not contain specific definitions of the eligible projects, eligible costs or ceilings on the maximum amount of aid which could be granted.

The Norwegian authorities were invited to submit information on the existence of any internal instructions dictating that the scheme should be implemented in compliance with the State Aid Guidelines and/or the block exemption Regulations. The Authority pointed out, however, that even if such an administrative practice could be demonstrated, the Authority might still consider the scheme not to be compatible with the functioning of the EEA Agreement in view of the existence of the practice under the Wood Scheme of granting 100 % support to projects where the grant is assumed by the administering authority not to qualify as aid because the activity cannot be attributed to individual undertakings and is considered to result in a modest benefit only.

With respect to whether grants awarded on the basis of specific provisions on *de minimis* aid under the Wood Scheme fulfil the conditions for qualifying as *de minimis* aid under the State Aid Guidelines or the subsequent *de minimis* Regulation (which replaced the State Aid Guidelines in this respect as of 1 February 2003)⁽⁴³⁾ the Authority took the view that the relevant provisions did not appear to comply with the rules on the grant of *de minimis* aid.

3. Comments by the Norwegian authorities

3.1. Procedure

The Norwegian authorities acknowledge that the scheme should have been formally notified to the Authority but argue that the mere fact that the Wood Scheme has not been notified does not mean that the Authority can conclude, on that basis alone, that it is incompatible with the functioning of the EEA Agreement.

⁽⁴³⁾ The previous Chapter 12 of the State Aid Guidelines was deleted by Decision No 198/03/COL of the Authority of 5 November 2003. However, as of 1 February 2003, Chapter 12 was already superseded by Regulation (EC) No 69/2001, hereinafter referred to as the '*de minimis* Regulation'.

3.2. Substance

Existence of internal instructions or authoritative orders

The Norwegian authorities argue that the material State aid rules of the EEA Agreement have been complied with in practice. First, the Superior Policy of Innovasjon Norge dictates that all financing should be granted within the limits set by international agreements to which Norway is a party. Secondly, case handlers of Innovasjon Norge have (via the Working Group Report) been instructed to implement the Wood Scheme in compliance with the EEA Agreement. The Internal EEA Guidelines were developed with a view to facilitating compliance with the EEA Agreement. Thirdly, the case handlers are experienced with the State Aid Guidelines and participate in courses on the subject. If in doubt they can seek advice from the legal department of Innovasjon Norge.

Cases of no aid

As regards the practice of financing 100 % of project costs, the Norwegian authorities have argued that this practice involves projects not falling within the scope of the EEA Agreement either because there is no State aid involved within the meaning of Article 61(1) of the EEA Agreement or because aid has been granted as *de minimis* aid. The authorities have provided a table setting out how all funding awarded under the Wood Scheme has been allocated.

The authorities argue that in eight cases (represented by two examples) aid has been granted to projects involving products (such as 'standing timber') which are not listed in Chapters 25-97 Harmonised Commodity Description and Coding System and hence do not come within the scope of the EEA Agreement.

The authorities further state that 114 beneficiaries under the Wood Scheme do not qualify as 'undertakings' within the meaning of Article 61(1) of the EEA Agreement because the beneficiaries are not pursuing an economic activity. 15 cases are considered to be 'Education and Research Establishments'; 25 cases of 'Public entities' involve support to municipalities; and 74 cases concern support to 'Branch organisations'.

As regards the 'Education and Research Establishment' cases (represented by two examples, one of which involves a not-for-profit organisation) the authorities consider that they fall outside the scope of Article 61(1) of the EEA Agreement on the basis of section 2.2 in the previous Chapter 14 of the State Aid Guidelines on research and development according to which 'non-profit-making higher education research establishment is normally not covered by Article 61(1) of the EEA Agreement' and which states that 'where the results of publicly financed R&D projects carried out by such establishments are made available to European industry on a non-discriminatory basis, the EFTA Surveillance Authority will assume that State aid within the meaning of Article 61(1) of the EEA Agreement is not normally involved'.

The Norwegian authorities argue that aid to 'Branch organisations' (consisting of not-for-profit interest organisations involved in information dissemination) does not involve State aid because the funding is not directed (directly) to undertakings but is channelled via the branch organisations which are not considered to be undertakings. Reference is made to the Commission's decision regarding *Asetra* which, according to the Norwegian authorities, was cleared because *Asetra* was not an undertaking within the meaning of Article 87(1) of the EC Treaty⁽⁴⁴⁾. It is also argued that the Court of Justice has interpreted 'the concept of "economic advantage"' in several cases and that in Case C-143/99 *Adria Wien* the reasoning of the Court indicates that a line must be drawn between abstract advantages (i.e. costs that would normally not be 'included in the budget' of the undertaking) and those that would⁽⁴⁵⁾.

The authorities also argue that in a further 31 cases (of which several examples are given) the beneficiaries did not receive an economic advantage as they provided a service in return and hence the cases are not within the scope of Article 61(1) of the EEA Agreement.

De minimis aid

The Norwegian authorities refer to the consent letter which states that the recipient must provide information 'on aid received on the basis of potentially new applications for public aid ... This obligation has a duration of three years from the time of the letter of consent. The receiver of aid cannot receive *de minimis* aid exceeding a total of EUR 100 000 (approximately NOK 815 000) over any period of three years'.

The authorities argue that the reference to 'any period of three years' makes it clear that the receiver of aid is not in a position to receive *de minimis* aid during any period of 3 years whether prior to or after the letter of consent. The obligation to submit information on aid received 3 years counted from the time of the letter of consent must be read in context with the text regarding the obligation not to receive aid over 'any' period of 3 years. According to the authorities this ensures compliance with the *de minimis* Regulation. The authorities state, moreover, that in any event, most aid awards are below the *de minimis* limit.

The authorities have, however, also explained that 'the [procedural] framework of *de minimis* aid has, however, in [certain] cases not been complied with as the aid [was] deemed to comply with the substantial rules and block exemptions on aid to SMEs, R&D and training aid'. The authorities have subsequently explained that the reference to a lack of compliance with 'procedural rules' means that in 10 cases aid was awarded up to the permitted aid intensity but topped up with *de minimis* aid without informing the recipient of the *de minimis* element of the aid.

Compatibility of the aid

The Norwegian authorities argue that the Authority has not paid sufficient attention to the practices and procedures followed by Innovasjon Norge in assessing the compatibility of the aid.

The authorities basically state that no aid has been granted as regional aid under the Wood Scheme and that the overview (attached to Internal EEA Guidelines), setting out maximum aid intensities (including on regional aid) may have led to this misunderstanding. Immediately afterwards the authorities state that there are, however, examples in which aid has been granted up to the maximum aid intensities permitted for research and development aid but topped up with a 5 % regional aid bonus. Aid to *Trysil Skog AS* is referred to as an example.

As regards 78 cases of research and development (of which three examples are mentioned) the authorities argue that aid has been granted in compliance with the material principles in the State Aid Guidelines. Account has been taken of the extent to which a project foresees the development of new technology, knowledge or methods and priority has been given to the most innovative projects. Account has also been taken of whether the project is eligible for funding from other sources, such as under the 'Skattefunn' scheme.

The authorities argue that although the title and publication reference to the block exemption Regulations on SMEs and training aid are not cited in the Internal EEA Guidelines, the regulations are, 'to a large extent, incorporated'.

II. ASSESSMENT

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

Article 61(1) of the EEA Agreement provides that:

'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.'

To constitute State aid within the meaning of Article 61(1) of the EEA Agreement, a measure must meet the following four cumulative criteria: the measure must (i) confer on recipients an economic advantage which is not received in the normal course of business; (ii) the advantage must be granted by the State or through State resources; (iii) the measure must be selective by favouring certain undertakings or the production of certain goods; and (iv) it must distort competition and affect trade between the Contracting Parties.

1.1. Economic advantage

The measure must confer on recipients an economic advantage which is not received in the normal course of business.

Under the Wood Scheme the Norwegian authorities award financial grants to companies, authorities, business associations, unions, etc. which can contribute to the objectives of the scheme. The undertakings benefiting from such grants receive an economic advantage, i.e. the grant, which they would not have received in their normal course of business.

⁽⁴⁴⁾ Commission Decision of 31 March 2000 concerning State aid N 673/99 (OJ C 184, 1.7.2000, p. 25).

⁽⁴⁵⁾ Case C-143/99 *Adria Wien* [2001] ECR I-8365.

1.2. Presence of State resources

The advantage must be granted by the State or through State resources.

The grants awarded under the Wood Scheme are financed by the Ministry of Agriculture and Food and come directly from the State budget.

1.3. Favouring certain undertakings or the production of certain goods

The measure must favour certain undertakings or the production of certain goods.

It appears from various legislative preparatory works (such as the White Paper, the Recommendation and the Working Group Report) leading up to the establishment of the Wood Scheme, that the scheme is aimed at improving (i) value in the wood processing business, and (ii) the relations on different levels of trade between the forest and the market (which includes the supply of raw material to the wood processing industry), along with a general aim of increasing the actual use of woodwork.

Thus grants under the Wood Scheme are awarded only where it is considered that they may benefit the wood processing sector and related wood industries as well as the supply of raw material to such industries. The Wood Scheme therefore favours undertakings within the wood industry sector to the exclusion of other sectors and is hence selective in nature. In this respect the EFTA Court has held that a measure may be selective even if it covers (undertakings in) an entire sector⁽⁴⁶⁾.

It should be noted that although grants under the Wood Scheme may also be awarded to undertakings in other industries (for example where industries explore the use of wood in combination with other materials), this option is open only for industries which can contribute to the overall aim of the Wood Scheme of generally improving value in the wood processing business. The Authority therefore considers that even this option is ultimately aimed at favouring undertakings in the wood processing industries and related wood industries.

1.4. Distortion of competition and effect on trade between Contracting Parties

The measures must distort competition and affect trade between the Contracting Parties.

Under the Wood Scheme the Norwegian authorities award grants to undertakings in the wood processing (and related) industries. Norwegian industry exports a large share of its wholesale timber and refined wood products (up to 90 %) to other EEA countries where wood products are extensively

traded. In addition, Norway also imports timber, processed wood and wood products from the EU. In such circumstances, the grant of support to undertakings under the Wood Scheme will strengthen the position of recipients compared to other undertakings which are located in Norway or in other EEA countries and competing in the wood processing (and related) businesses. Moreover, since wood is merely one of the raw materials used in the construction business, grants received by construction companies under the Wood Scheme will strengthen their position compared to other undertakings competing in the construction business⁽⁴⁷⁾.

On this basis, the Authority considers that the grant of financial support to undertakings under the Wood Scheme will distort competition and affect trade.

1.5. Conclusion and existence of an aid scheme

In the light of the above, the conclusion of the Authority is that the Wood Scheme satisfies the test in Article 61(1) of the EEA Agreement and hence constitutes State aid. However, the Norwegian authorities have argued that certain of the individual grants awarded under the Wood Scheme do not fall within the scope of the EEA Agreement or do not qualify as State aid.

The Authority has taken the view (which is not disputed by the Norwegian authorities) that the Wood Scheme is an act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner. The Scheme therefore qualifies as an aid scheme within the meaning of Article 1(d) of Part II of Protocol 3 to the Surveillance and Court Agreement. In this regard the Authority recalls that in Case C-310/99, the European Court of Justice stated that: 'There was no need for the contested decision to include an analysis of the aid granted in individual cases on the basis of the scheme. It is only at the stage of recovery of the aid that it is necessary to look at the individual situation of each undertaking concerned.'⁽⁴⁸⁾ In line with that case law, the Authority has assessed the Wood Scheme on the basis of the characteristics of the scheme (as opposed to the specifics of the individual awards under the scheme). The arguments of the Norwegian authorities cannot affect that assessment but will only come into play if and when recovery is discussed. The conclusion as to the compatibility or not of the scheme with the functioning of the EEA Agreement does not prejudice the question of recovery in individual instances of aid having been granted. As noted in the judgment quoted above, that is a second step and recovery will only be ordered in those instances in which the substantive provisions on State aid have in fact been breached.

⁽⁴⁶⁾ Joined Cases E-5/04, E-6/04 and E-7/04 *Fesil and Finnford* [2005] EFTA Court Report p. 117, paragraph 77. This judgment confirms the case law of the European Court of Justice as laid down in Case C-75/97 *Belgium v Commission* [1999] ECR I-3671, paragraph 33. See also Case C-66/02 *Italy v Commission* [2005] ECR I-10901, paragraph 95.

⁽⁴⁷⁾ See in this respect Case 730/79 *Philip Morris v Commission* [1989] ECR p. 2671, paragraph 11, where it is stated that 'When State financial aid strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade the latter must be regarded as affected by that aid.'

⁽⁴⁸⁾ Case C-310/99 *Italy v Commission* [2002] ECR p. I-2289, paragraph 91. In Case C-66/02 *Italy v Commission* [2005] ECR p. I-10901, paragraph 91, the Court stated 'In the case of an aid scheme, the Commission may confine itself to examining the general characteristics of the scheme in question without being required to examine each particular case in which it applies [...] in order to establish whether the scheme involves elements of aid.'. See also Case E-2/05 *ESA v Iceland* [2005] EFTA Court Report p. 202, paragraph 24.

The Authority observes that the Norwegian authorities have not disputed that the Wood Scheme enables the grant of funding to recipients in respect of products covered by the EEA Agreement, such as wood. Nor have the Norwegian authorities disputed that the Wood Scheme includes the possibility to fund entities which qualify as undertakings within the meaning of Article 61(1) of the EEA Agreement. Finally, it is undisputed that the Wood Scheme did not exclusively fund beneficiaries which provided a service in return.

In other words, the scheme itself envisaged the granting of State aid. The possibility that certain recipients under the Wood Scheme may not come within the scope of the EEA Agreement (by reference to the fact that their products are not covered by the Agreement, or that they themselves are not undertakings within the meaning of Article 61(1) of the EEA Agreement) does not change the qualification of the Wood Scheme as an aid scheme within the meaning of Article 61(1) of the EEA Agreement.

2. Procedural requirements

Pursuant to Article 1(3) of 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 (...). The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision'.

The Authority first observes that in view of the fact that Chapter 44 of the Harmonized Commodity Description and Coding System (on wood and articles of wood) is covered by the EEA Agreement, the Wood Scheme must be assessed on the basis of the Agreement. The Norwegian authorities did not notify the Wood Scheme prior to its implementation and have therefore not respected their obligation pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement. State aid granted under the Wood Scheme therefore constitutes 'unlawful aid' within the meaning of Article 1(f) of Part II of Protocol 3 to the Surveillance and Court Agreement.

3. Compatibility of the aid

As a preliminary point, the Authority notes that while the Wood Scheme contained details on, for example, objectives and eligible costs, it did not appear to contain any conditions according to which aid was to be granted. A scheme without any specific limitations on the granting of aid (e.g. as regards aid intensity) is not something that could be authorised by the Authority as compatible with the functioning of the EEA Agreement. The fact that, in practice, the Authority's State Aid Guidelines may have been respected in individual instances does not alter this position but, as noted above at point I-1.5, merely has an effect on whether recovery is necessary.

However, the Authority observes, in this context, that the Norwegian authorities have stated that the reference in the

Working Group Report to implementing the scheme on the basis of 'principles and practices' within the limits of EEA law is an implicit reference to the Internal EEA Guidelines. The Authority understands the argument to be that those Guidelines, which set out, for example, maximum aid intensities allowed under EEA law in various situations, were to be regarded as the rules of the Scheme and the conditions on which aid under the Wood Scheme would be granted. In other words, the Scheme did contain an identifiable set of rules limiting the granting of aid thereunder.

To the extent that the Norwegian authorities note that 'the guidelines are continuously revised' it is recalled that the compatibility of unlawful State aid with the functioning of the EEA Agreement shall be assessed in accordance with the substantive criteria set out in the instrument in force at the time when the aid was granted or, in the case of a scheme, when the scheme was established. In addition, each revision of the rules of a scheme must be assessed in order to determine whether it constitutes an alteration to the scheme within the meaning of Decision 195/04/COL⁽⁴⁹⁾. The assessment below therefore analyses whether the Internal EEA Guidelines of Innovasjon Norge, including subsequent changes thereto, could, as the rules of the Wood Scheme, have been considered compatible with the functioning of the EEA Agreement and in particular with the Authority's State Aid Guidelines and the block exemption Regulations as they were applicable at each of those points in time.

3.1. Compatibility with Article 61(2) of the EEA Agreement

None of the exceptions in Article 61(2) of the EEA Agreement apply in this case as the Wood Scheme is not aimed at the objectives listed in those provisions.

3.2. Compatibility with Article 61(3) of the EEA Agreement

A State aid measure is considered to be compatible with the functioning of the EEA Agreement pursuant to Article 61(3)(a) of the EEA Agreement when it is designed to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. However, as there are no such areas defined by the Norwegian regional aid map, this provision is not relevant⁽⁵⁰⁾.

Moreover, the exception in Article 61(3)(b) of the EEA Agreement does not apply since the State aid granted under the Wood Scheme is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of Norway.

⁽⁴⁹⁾ Decision No 195/04/COL of the Authority of 14 July 2004 (OJ L 139, 25.5.2006, p. 37), as amended by Decision No 319/05/COL of the Authority of 14 December 2005 (OJ C 286, 23.11.2006, p. 9). See also Case T-195/01 *Gibraltar v Commission* [2001] ECR II-3915. It should be noted that since the initial establishment of the scheme was 'unlawful' in terms of procedure, all subsequent modifications of that scheme must also be treated as unlawful aid.

⁽⁵⁰⁾ See Decision No 327/99/COL of the Authority of 16 December 1999 on the map of assisted areas and levels of aid (Norway).

However, the exception laid down in Article 61(3)(c) of the EEA Agreement which provides that State aid may be considered compatible with the common market where it facilitates the development of certain economic activities or of certain economic areas and does not adversely affect trading conditions to an extent contrary to the common interest, may be applicable. This is so if the measure complies with the State Aid Guidelines or any applicable block exemption Regulations.

Regional aid

Undertakings become eligible for regional aid when they are established in certain regions defined by reference to the Norwegian regional aid map, mentioned above, and when the conditions set out in the State Aid Guidelines on regional aid are met ⁽⁵¹⁾.

The Norwegian authorities have argued that aid under the Wood Scheme has not been granted in the form of regional aid. However, the Authority observes that the Wood Scheme has been implemented on the basis of the Internal EEA Guidelines which provide for the possibility to grant regional (investment) aid ⁽⁵²⁾. Moreover, the authorities have referred to cases in which research and development aid has been topped up with a 5 % regional aid bonus (Trysil Skog AS being one example).

The Authority observes that the conditions set out in the State Aid Guidelines on the grant of regional aid must be fulfilled also in cases where the regional aid bonus is granted. However, neither the Working Group Report nor the Internal EEA Guidelines refer to the conditions which must be met for regional aid to be granted, such as the identification of regional benefits (in the form of productive investment or job creation), nor do they include a reference to the regional aid map of Norway. In such circumstances the Authority cannot reassure itself that the provisions on regional aid under the Wood Scheme are in accordance with the State Aid Guidelines on regional aid.

Aid for research and development

State aid for research and development may be regarded as compatible with the functioning of the EEA Agreement when the relevant conditions in the State Aid Guidelines are met ⁽⁵³⁾.

⁽⁵¹⁾ The previous Chapter 25 of the State Aid Guidelines on regional aid was replaced by new guidelines on 6 April 2006 and Commission Regulation (EC) No 1628/2006 (incorporated by Joint Committee Decision No 157/2006, published in OJ L 89, 29.3.2007, p. 33, and EEA Supplement No 15, 29.3.2007, p. 24). The Regulation entered into force 9 December 2006.

⁽⁵²⁾ See the (regional aid) ceilings referred to in the table attached to the Internal EEA Guidelines and the explanatory part on investment aid (section 4.6).

⁽⁵³⁾ The previous guidelines on research and development were replaced by new guidelines on 7 February 2007.

The State Aid Guidelines set out the definitions of different types of research and development, namely 'fundamental research', 'industrial research' and 'pre-competitive development activity' and the respective aid intensities which apply to each of these categories.

The Authority observes that the eligible research, eligible costs and aid intensities set out in the Internal EEA Guidelines correspond to those set out in the State Aid Guidelines on research and development except with respect to technical preparatory studies. While the table on aid intensities in the Internal EEA Guidelines refer to two different aid intensities for technical preparatory studies carried out by large undertakings in the context of pre-competitive research, namely 50 % and 55 % ⁽⁵⁴⁾, the State Aid Guidelines explicitly provide that the combination of bonuses may not result in an aid intensity exceeding 50 % for pre-competitive research ⁽⁵⁵⁾.

Given that one of the aid intensities set forth in the Internal EEA Guidelines is not in line with the State Aid Guidelines and that there is no evidence of the existence of an instruction on case handlers to apply the aid intensity for the OFU/IFU scheme, which is in line with the State Aid Guidelines, it would appear that the rules of the Wood Scheme envisage a possible aid intensity in excess of the maximum set forth in the State Aid Guidelines. Moreover, the Authority has not received any arguments for accepting a higher aid intensity than the one set forth in the State Aid Guidelines.

Aid for SMEs and training aid

Aid granted in compliance with the block exemption Regulations on SMEs and/or on training aid is considered compatible with the functioning of the EEA Agreement provided that the scheme fulfils all the conditions of the relevant block exemption Regulation and contains an express reference to it (by citing its title and publication reference in the *Official Journal of the European Union*) ⁽⁵⁶⁾. However, neither the State budgets nor the Working Group Report or any of the other legislative preparatory works regarding the Wood Scheme include a reference to the application of the block exemption Regulation on SMEs or to the block exemption Regulation on training aid. Moreover, the Authority has not received any information from the Norwegian authorities on the application of any of the block exemption Regulations for publication in the *Official Journal of the European Union*. The Norwegian authorities have therefore not complied with the requirements in the block exemption Regulations and the Wood Scheme therefore cannot be considered to be in compliance with the block exemptions.

⁽⁵⁴⁾ The 2000 and 2001 versions appear not to fix a specific aid intensity for technical preparatory studies at all.

⁽⁵⁵⁾ Section 5.3(7) of the then Chapter 14 of the State Aid Guidelines on research and development aid.

⁽⁵⁶⁾ See Article 3(3) in the block exemption Regulations on SMEs and on training aid, respectively. Compliance with the formal conditions of the block exemption exempts the aid measure from the notification requirement.

Nonetheless the Wood Scheme may be considered to be compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(c) of the EEA Agreement in the light of the material principles established in the block exemption Regulations on SMEs and training aid. In this regard the Authority observes that all definitions, eligible costs and aid intensities on training aid in the Internal EEA Guidelines⁽⁵⁷⁾ correspond to the block exemption Regulation on training aid. Moreover, the definitions, eligible costs and applicable aid intensity for consultancy services and fairs for SMEs in the Internal EEA Guidelines⁽⁵⁸⁾ correspond to the block exemption Regulation on SMEs.

However, according to section 4.3.2 of the Internal EEA Guidelines, aid for SMEs may be granted for 'network and cooperation' which is a purpose clearly falling outside the scope of the material provisions in the block exemption Regulation on SMEs. The question is therefore whether funding for such purposes may be considered compatible on the basis of the State Aid Guidelines on SMEs or on the basis of the material principles established therein directly pursuant to Article 61(3)(c) of the EEA Agreement⁽⁵⁹⁾.

The State Aid Guidelines state that funding for 'cooperation' to SMEs may be granted provided competition is not affected to an extent contrary to the common interest. On this basis the Authority considers that the possibility in the Internal EEA Guidelines to fund SMEs for the 'identification of work partners, strategies and formalisation of cooperation during the establishment phase' could be acceptable.

By contrast, the Authority considers that the possibility to fund unidentified 'extraordinary joint actions'⁽⁶⁰⁾ during the 'operational phase' opens up for the possibility to fund a wide range of measures, at any time, which would not necessarily be within the scope of cooperation between SMEs and may therefore affect competition to an extent contrary to the common interest. Upon questioning the Norwegian authorities on this matter the authorities argued that funding under this provision is aimed only at consultancy services. However, in the same context the authorities stated that the provision also opened up for the possibility to fund 'related services' in the context of network assistance.

The Authority considers that on the basis of such vague and open-ended provisions it cannot reassure itself that the rules of the scheme in respect of funding for SMEs are in accordance with the State Aid Guidelines on SMEs or the material principles therein and therefore cannot be approved pursuant to Article 61(3)(c) of the EEA Agreement as compatible with the functioning of the EEA Agreement.

⁽⁵⁷⁾ Section 4.4 thereof.

⁽⁵⁸⁾ Sections 4.3 and 4.3.1 thereof.

⁽⁵⁹⁾ The previous chapter in the State Aid Guidelines on aid for SMEs was superseded by the block exemption Regulation on SMEs as of 26 June 2002.

⁽⁶⁰⁾ Such measures include measures similar to performance improvement (*kompetanseheving*).

Practice of funding 100 % of project costs

The Working Group Report provides that the scheme may finance the entire project costs in case it is difficult to identify anyone who can benefit directly from the project. The authorities have explained that 100 % funding of project costs takes place, for example, in cases where it is difficult to identify direct beneficiaries, or recipients are considered to receive a modest benefit only (i.e. preliminary studies and reports in special target areas), on the basis that no aid is present in these cases⁽⁶¹⁾.

With regard to this practice, the following two comments must be made: 1) although the Norwegian authorities refer to preliminary studies and reports as examples of cases in which no aid is involved, the State Aid Guidelines on research and development set out maximum aid intensities for technical feasibility studies showing that funding for studies (even of a preparatory character) may involve State aid⁽⁶²⁾; and 2) unless the amount of aid involved is below the *de minimis* threshold the receipt of a modest benefit does not, in and of itself, exclude the presence of State aid.

On this basis the Authority considers that the practice of funding 100 % of the costs of a project is not based on criteria which would ensure that the presence of State aid is excluded and since 100 % funding is not acceptable under any section of the State Aid Guidelines, nor has it been argued in this case that such an aid intensity is justified directly pursuant to Article 61(3)(c) of the EEA Agreement, the Authority considers that a scheme which allows such a practice is not compatible with the functioning of the EEA Agreement.

Conclusions

As appears from the above, on several accounts the Wood Scheme is not in compliance with the State Aid Guidelines and does not qualify for the exception directly pursuant to Article 61(3)(c) of the EEA Agreement. The Authority therefore considers that the Wood Scheme cannot be considered compatible with the functioning of the EEA Agreement.

3.3. *De minimis aid*

According to the Norwegian authorities the Wood Scheme contains provisions setting out conditions which, when they are met, ensure that grants qualify as *de minimis* aid. The Authority considers that the relevant provisions under the Wood Scheme do not comply with the *de minimis* rules.

⁽⁶¹⁾ The practice of funding 100 % of project costs raises both an issue of the presence of State aid and one of compatibility. Given the reference in the Working Group Report to this possibility, it is assumed that the Scheme envisages such a practice and that the compatibility of the provisions governing that practice must be assessed for compatibility (this section). The issue concerning the presence (or absence) of State aid will be relevant only to the matter of recovery.

⁽⁶²⁾ Section 5.3(7) of the then Chapter 14 on research and development aid.

The grant of aid may qualify as *de minimis* under the State Aid Guidelines or the subsequent *de minimis* Regulation with the consequence that the measure does not constitute State aid within the meaning of Article 61(1) of the EEA Agreement and that there is no obligation to notify. As the Wood Scheme was implemented between 1 July 2000 and the end of 2005 both sets of *de minimis* rules are relevant for the assessment of the scheme⁽⁶³⁾.

Both the *de minimis* Regulation and the State Aid Guidelines provide that the national authorities can only grant *de minimis* aid after first having verified that the total amount of *de minimis* aid received by the company is not raised by virtue of other *de minimis* aid having been received during the previous 3 years. Under both the *de minimis* Regulation and the State Aid Guidelines an acceptable manner of verifying the *de minimis* threshold is by obtaining information from the recipient on this matter⁽⁶⁴⁾.

When *de minimis* aid is granted under the Wood Scheme, reference is made to the *de minimis* rules and recipients are informed of an obligation to inform the authorities of other *de minimis* aid received 3 years after the consent to receive *de minimis* aid was given.

In the decision opening the formal investigation procedure the Authority took the view that since this information obligation only concerns *de minimis* aid received *after* aid has been received under the Wood Scheme recipients have not been required to submit information on whether any *de minimis* aid has been received *prior* to receiving *de minimis* aid under the Wood Scheme. However, the Norwegian authorities have argued that the consent letter also refers to the rule that aid received over 'any period of three years' may not exceed the *de minimis* threshold.

The Authority observes that the requirement on the recipient to inform of aid granted 'from the time of the letter of consent' contradicts the reference to the rule that aid received during 'any period of three years' may not exceed the *de minimis* threshold. In such circumstances the Authority cannot reassure itself that a recipient would clearly perceive this message as an obligation to inform of aid received during 'any period of three years'. The Authority therefore maintains its initial position that, in so far as the provisions in question are to be viewed as part of the rules of the scheme, it cannot be

⁽⁶³⁾ As stated by the Norwegian authorities it is the date that the Norwegian authorities gave their consent (*tilsagn*) which determines whether the previous Chapter 12 of the State Aid Guidelines or the subsequent *de minimis* Regulation is applicable to the grant in question.

⁽⁶⁴⁾ See in this regard the reference to 'control modality' in the State Aid Guidelines.

concluded that they ensure *ex ante* that the provisions on *de minimis* aid are complied with⁽⁶⁵⁾.

Aside from this the Authority observes that, at least in the versions of the Internal EEA Guidelines dated September 2004 and July 2005, the Wood Scheme has provided for a practice whereby State aid approved for, for example, research and development, could be topped up with further aid granted as *de minimis* aid⁽⁶⁶⁾. In line with the Commission Decision in *Kahla Porzellan GmbH*, the Authority considers that if aid exceeds the *de minimis* threshold — as a result of total funding granted to the same undertaking within 3 years — the total amount must be considered as State aid⁽⁶⁷⁾. On this basis the Authority considers that a practice whereby the *de minimis* threshold is respected only for a part of the aid granted to an undertaking implies, by definition, that the total amount granted may exceed the *de minimis* threshold⁽⁶⁸⁾.

In view of the above the Authority considers that the relevant provisions under the Wood Scheme do not comply with the *de minimis* rules and that the Scheme therefore cannot be approved as compatible with the functioning of the EEA Agreement.

4. Conclusion

Based on the information submitted by the Norwegian authorities, the Authority takes the view that the Wood Scheme involves the grant of State aid within the meaning of Article 61(1) of the EEA Agreement that is not compatible with the Agreement. However, in line with the Commission's practice in this regard, the Authority considers that although the Wood Scheme, viewed as a scheme, is incompatible with the functioning of the EEA Agreement, individual aid grants awarded under the Wood Scheme which fulfil the criteria laid down in the State Aid Guidelines on SMEs and/or research and development, or with the material rules in the block exemption Regulations on aid to SMEs and training can be declared compatible with the functioning of the EEA Agreement⁽⁶⁹⁾.

⁽⁶⁵⁾ The fact that many consents may be below the *de minimis* threshold is not relevant since the Authority is, for purposes of analysing whether State aid is compatible, limited to considering the terms of the Wood Scheme. The factual situation will be relevant for the question of recovery.

⁽⁶⁶⁾ See section I-2.5 above for a description of the practice.

⁽⁶⁷⁾ Commission Decision 2003/643/EC of 13 May 2003 on the State aid implemented by Germany for Kahla Porzellan GmbH and Kahla/Thüringen Porzellan GmbH (OJ L 227, 11.9.2003, p. 12). In a similar vein, when assessing whether the relevant aid intensities set out in the State Aid Guidelines have been complied with, the total amount of aid granted to the same undertaking must be taken into account.

⁽⁶⁸⁾ It should be noted that the relevant aid intensities must also be respected. Where *de minimis* aid is granted in combination with other aid, the total amount of aid may not exceed the maximum aid intensities for the various categories of aid. This is, of course, only relevant where total aid does not qualify as *de minimis* aid.

⁽⁶⁹⁾ See, for example, Commission Decision 2004/343/EC of 16 December 2003 on the aid scheme implemented by France for the takeover of firms in difficulty (OJ L 108, 16.4.2004, p. 38), and Commission Decision 2003/86/EC of 20 December 2001 on a State aid scheme implemented by Spain in 1993 for certain newly established firms in Vizcaya (Spain) (OJ L 40, 14.2.2003, p. 11).

As the Wood Scheme has not been notified to the Authority, any aid within the meaning of Article 61(1) of the EEA Agreement granted under the Wood Scheme constitutes unlawful aid within the meaning of Article 1(f) of Part II of Protocol 3 to the Surveillance and Court Agreement. It follows from Article 14 of Part II of Protocol 3 to the Surveillance and Court Agreement that the Authority shall decide that unlawful aid which is incompatible with the State aid rules under the EEA Agreement must be recovered from the beneficiaries. This is, however, without prejudice to (i) individual aid awards fulfilling the conditions for *de minimis* aid pursuant to the State Aid Guidelines or the *de minimis* Regulation; and (ii) individual awards being found to be compatible on the basis of compliance with the State Aid Guidelines on SMEs and/or research and development, or with the material rules in the block exemption Regulations on aid to SMEs and training, and which fulfil the relevant aid intensities set forth therein,

HAS ADOPTED THIS DECISION:

Article 1

The Wood Scheme is not compatible with the functioning of the EEA Agreement within the meaning of Article 61(1) of the EEA Agreement.

Article 2

Individual aid awards granted under the Wood Scheme do not constitute state aid if they fulfil the conditions on *de minimis* aid laid down in the State Aid Guidelines or the *de minimis* Regulation, whichever was applicable at the time of the grant.

Article 3

Individual aid awards granted under the Wood Scheme which fulfil the criteria in the State Aid Guidelines on SMEs and/or research and development, or with the material rules in the block exemption Regulations on aid to SMEs and training, are compatible with the functioning of the EEA Agreement up to the amount of the admissible aid intensities.

Article 4

The Norwegian authorities shall take all necessary measures to recover the aid referred to in Article 1 other than that referred to in Articles 2 and 3.

Article 5

Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest and compound interest from the date on which it was at the disposal of the beneficiaries until the date of its recovery. Interest shall be calculated on the basis of Article 9 in Decision No 195/04/COL⁽⁷⁰⁾.

Article 6

The Norwegian authorities shall inform the EFTA Surveillance Authority, within 2 months of notification of this Decision, of the measures taken to comply with it.

Article 7

This Decision is addressed to the Kingdom of Norway.

Article 8

Only the English text is authentic.

Done at Brussels, 23 January 2008.

For the EFTA Surveillance Authority

Per SANDERUD
President

Kurt JAEGER
College Member

⁽⁷⁰⁾ See footnote 49.

ANNEX I

ELIGIBLE COSTS SET OUT IN THE INTERNAL EEA GUIDELINES

With respect to aid for small and medium-sized enterprises (SMEs) ⁽¹⁾ eligible costs are (i) consultancy services provided by outside consultants (excluding those of a continuous or periodic character and those relating to usual operating expenditure); (ii) participation, for the first time, in fairs and exhibitions; and (iii) networking and cooperation in both the establishment and start-up phase. The establishment phase covers funding for identifying work partners, developing strategies, structuring and formalising the cooperation etc. The start-up phase covers administration costs for administering the cooperation during the first 3 years (progressively decreasing) and 'extraordinary joint actions'. An example of the latter is 'competence improvement' but funding under the heading of 'extraordinary joint actions' may also be granted to other similar measures during both the establishment phase and later on during the operational phase.

For the purposes of granting aid for training a distinction is drawn between specific training and general training. The latter covers tuition directly and principally applicable to the employee's present or future position and providing qualifications which are not (or only to a limited extent) transferable to other firms or fields of work. General training is training involving tuition, not applicable only to the employee's present or future position, but providing qualifications that are largely transferable to other entities and substantially improve employability of the employee.

Eligible costs for training are trainers' personnel costs; trainers' and trainees' travel expenses; other current expenses (such as materials and supplies); depreciation of tools and equipment (to the extent that they are used exclusively for the training project); cost of guidance and counselling services with regard to the training project; trainees' personnel costs up to the amount of the total of the other eligible costs referred to. Only the hours during which the trainees actually participate in the training after deduction of any productive hours or of their equivalent may be taken into account. The eligible costs shall be supported by documentary evidence which shall be transparent and itemised.

As regards research and development the Internal EEA Guidelines provide that eligible costs are personnel costs (researchers, technicians and assistance personnel, exclusively used for the research and development activity), instruments, equipment, working space and buildings (permanently and exclusively used for the research and development activity); consultancy assistance and corresponding services (exclusively used in the context of the research and development activity) and administration directly related to the research and development activity. Other eligible costs could be operating expenses such as materials, supplies and similar products which are directly related to the research and development activity.

With respect to 'investments' (by SMEs and in the context of regional aid) eligible costs are buildings, plants, machines, fundamental investments as well as expenses in relation to patents and the acquisition of patents, licenses and technical knowledge. Special rules apply to projects in which investment costs exceed EUR 50 million.

Operating aid (defined as routine tasks or expenses for distribution, marketing and accounting) cannot be granted.

⁽¹⁾ Only the main terms of the definition of SME's are stated in the Internal EEA Guidelines. Reference is otherwise made to the original definition in the State Aid Guidelines.

ANNEX II

MAXIMUM FUNDING RATES FOR VARIOUS SCHEMES ADMINISTERED BY INNOVASJON NORGE — SIZE OF UNDERTAKINGS AND AREAS ELIGIBLE FOR AID

— () indicates that the scheme is only exceptionally relevant for the stated purposes and/or type of undertakings.

— Up to EUR 100 000 may be granted under all schemes on the basis of the rules on *de minimis* aid.

Measure — Scheme	Objective	SMEs (< 250 employees and two other criteria)		Large undertakings
		Small enterprises (< 50 employees and two other criteria)	Medium-sized enterprises (< 250 employees and two other criteria)	
'Landsdekkende innovasjonsordning'	Investments	15 %	7,5 %	0
	Soft aid	50 %		0
	Training aid (shall not be given from LI for the moment)	(Specific/general — 35 %/70 %)		(Specific/general — 25 %/50 %)
	R&D:			
	— Development activities for commercialisation	35 %		25 %
	Technical preparatory studies	75 %		50 %
	— (Individual Research, Technical preparatory studies)	(60 % 75 %)		(50 % 75 %)
'OFU/IFU'	R&D:			
	— Development activities for commercialisation	35 % (regional area + 5 %)		25 % (regional area + 5 %)
	Technical preparatory studies	75 %		50 %
	— (Individual research, Technical preparatory studies)	(60 % 75 %)		(50 % 75 %)
'Tilskudd til fylkeskommunene for regional utvikling'	Investments:			
	Zone A	30 %		25 %
	B	25 %		20 %
	C	20 % (25 %) (*)		10 % (15 %)
	Soft aid	50 %		0
	Training aid	Specific/general — 40 %/75 %		Specific/general — 30 %/55 %
	R&D:			
	— Development activities for commercialisation	40 %		30 %
	Technical preparatory studies	75 %		55 %
	— (Individual Research, Technical preparatory studies)	(65 % 75 %)		(55 % 75 %)

Measure — Scheme	Objective	SMEs (< 250 employees and two other criteria)		Large undertakings
		Small enterprises (< 50 employees and two other criteria)	Medium-sized enterprises (< 250 employees and two other criteria)	
'Omstilling og nyskapning'	Investments:			
	— Outside reg. area	15 %	7,5 %	0
	— Within reg. area	Zone A: 30 %, B: 25 % and C: 20 % (25 %) (**)		Zone A: 25 %, B: 20 % and C: 10 % (15 %)
	Soft aid:			
	— Outside reg. area	50 %		
— Within reg. area	50 %			
Training aid:	— Outside reg. area	Specific/general — 35 %/70 %		Specific/general — 25 %/50 %
	— Within reg. area	Specific/general — 40 %/75 %		Specific/general — 30 %/55 %
R&D:	<i>Outside reg. area:</i>			
	— Development activities for commercialisation	35 %		25 %
	Technical preparatory studies	75 %		50 %
	— (Individual research, Technical preparatory studies)	(60 % 75 %)		(50 % 75 %)
	<i>Within reg. area:</i>			
	— Development activities for commercialisation	40 %		30 %
Technical preparatory studies	75 %		55 %	
— (Individual research, Technical preparatory studies)	(65 % 75 %)		(55 % 75 %)	
'Etablererstipend'	<i>De minimis</i> aid	Max. NOK 400 000 (in spec. cases more but not over EUR 100 000)		

(*) Up to 25 %/15 % may be used for measures which can be expected to have a strong effect from a district policy point of view. In the counties of Vest-Agder, Rogaland and Hordaland the aid threshold may not be in excess of 20 %/10 %.

(**) Up to 25 %/15 % may be used for measures which can be expected to have a strong regional effect. In the counties of Vest-Agder, Rogaland and Hordaland the thresholds may not be in excess of 20 %/10 %.

V

(Acts adopted from 1 December 2009 under the Treaty on European Union, the Treaty on the Functioning of the European Union and the Euratom Treaty)

ACTS WHOSE PUBLICATION IS OBLIGATORY

COUNCIL IMPLEMENTING REGULATION (EU) No 1202/2009

of 7 December 2009

imposing a definitive anti-dumping duty on imports of furfuryl alcohol originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the basic Regulation) and in particular Articles 9 and 11(2) thereof,

Having regard to the proposal submitted by the Commission, after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

(1) In October 2003, the Council, by Regulation (EC) No 1905/2003 ⁽²⁾, imposed definitive anti-dumping measures in the form of a specific duty on imports of furfuryl alcohol (FA) originating in the People's Republic of China (China). The specific duty amounts ranged from EUR 84 to EUR 160 per ton for four cooperating Chinese producers, while the country-wide duty was set at EUR 250 per ton (the original investigation).

2. Request for an expiry review

(2) Following the publication, in May 2008, of a notice of impending expiry of the anti-dumping measures applicable to imports of FA originating in China ⁽³⁾, the Commission received on 30 July 2008 a request for a review pursuant to Article 11(2) of the basic Regulation.

(3) The request was lodged by International Furan Chemicals BV (the applicant) on behalf of the sole producer in the Union representing 100 % of the Union production of FA. The request was based on the grounds that the expiry of the measures would be likely to result in a continuation of dumping and recurrence of injury to the Union industry.

(4) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation, the Commission published a notice of initiation of this review in the *Official Journal of the European Union* ⁽⁴⁾.

3. Investigation

3.1. Procedure

(5) The Commission officially advised the applicant Union producer, the exporting producers in China, the Chinese authorities, the producer in the suggested analogue country, United States of America, the importers/traders and users in the Union known to be concerned, of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(6) Questionnaires were sent to all the parties that were officially advised of the initiation of the review and to those who requested a questionnaire within the time limit set out in the notice of initiation.

(7) Replies to the questionnaire were received from the applicant Union producer, two traders, ten users, two associations of users, one exporting producer in China and the producer in the analogue country.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 283, 31.10.2003, p. 1.

⁽³⁾ OJ C 111, 6.5.2008, p. 50.

⁽⁴⁾ OJ C 275, 30.10.2008, p. 21.

3.2. Interested parties and verification visits

(8) The Commission sought and verified all the information it deemed necessary for the purpose of the determination of the likelihood of continuation or recurrence of dumping and injury and for the determination of the Union interest. Verification visits were carried out at the premises of the following companies:

— Union producer and related companies:

- TransFurans Chemicals BVBA, Geel, Belgium,
- International Furan Chemicals BV, Rotterdam, the Netherlands,
- Central Romana Corporation, LTD, La Romana, Dominican Republic,

— Exporting producers in China:

- Zhucheng Taisheng Chemical Co. Ltd,

— Producer in the analogue country:

- Penn Speciality Chemicals Inc., United States of America (USA),

— Unrelated importers/traders:

- S. Chemicals, the Netherlands,

— Users:

- Kiihto OY, Finland,
- Mazzon Flli., Italy,
- SATEF Hüttenes-Albertus, Italy,
- Ashland Sudchemie Kernsfest, Germany,
- Hüttenes-Albertus, Germany,

3.3. Review investigation period and period under consideration

(9) The investigation regarding the continuation or recurrence of dumping and injury covered the period from 1 October 2007 to 30 September 2008 ('RIP' or 'Review Investigation Period').

(10) The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2005 up to the end of the RIP ('period considered' or 'period under consideration').

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. The product concerned

- (11) The product concerned is the same as in the original investigation, i.e. FA originating in China, currently falling within CN code ex 2932 13 00.
- (12) FA is a chemical product. It is a colourless to pale yellow liquid that is soluble in many common organic solvents. The raw material for the production of FA is furfural (FF), which is a chemical liquid obtained by processing different types of agricultural waste such as sugar cane, corncobs and rice hulls among others.
- (13) FA is a commodity product. The main use of FA is the production of synthetic resins, used in the production of foundry moulds which are used to make metal castings for industrial purposes.

2. Like product

- (14) As in the previous investigation, this investigation has shown that the basic physical and technical characteristics of FA produced and sold by the Union industry in the Union, FA produced and sold on the domestic Chinese market, FA imported into the Union from China as well as FA produced and sold in the USA are the same and that they have the same use.
- (15) It was therefore concluded that all these products constitute one like product within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OF DUMPING

- (16) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the measures would be likely to lead to a continuation or recurrence of dumping.
- (17) In accordance with Article 11(9) of the basic Regulation, the same methodology was used as in the original investigation. As an expiry review does not provide for any examination of changed circumstances, no further consideration was given to whether or not producers should be granted market economy treatment (MET).

1. Preliminary remarks

- (18) It is recalled that in the original investigation a total of four Chinese exporting producers cooperated with the investigation and requested MET pursuant to Article 2(7)(b) of the basic Regulation. However, none of these Chinese exporting producers fulfilled all of the required conditions for granting MET and therefore all claims for MET had to be rejected. All of them were granted individual treatment (IT) since the investigation revealed that they fulfilled the required criteria. It is noted that the only Chinese exporter which cooperated with the present expiry review was granted IT in the original investigation.

- (19) The only cooperating Chinese exporting producer accounted for 23,1 % of imports into the Union during the RIP. No reliable information on imports of the product concerned to the Union during the RIP could be gathered directly from the other exporting producers. Under these circumstances, and in accordance with Article 18 of the basic Regulation, for total import quantities and prices the Commission had to use facts available, i.e. Eurostat and the documentation submitted by the applicant in the request for the initiation of the review.
- (20) The existing anti-dumping duties, ranging from EUR 84 to EUR 160/tonne, with a country-wide residual duty of EUR 250/tonne, correspond to the level of injury established during the previous investigation.

2. Dumping in the investigation period

2.1. Analogue country

- (21) In the original investigation the United States of America (the USA) was used as an appropriate market economy country for the purpose of establishing the normal value for China. In the notice of initiation of the current investigation the Commission indicated its intention to use the USA as analogue country. Interested parties were invited to comment on this intention. The USA was considered appropriate in view of the size and openness of its domestic market and the fact that one US producer had agreed to cooperate fully in the investigation.
- (22) An importers' association opposed the choice of the USA as analogue country, arguing that there was only one main producer in the USA and that domestic prices were extremely high. One Chinese exporting producer claimed that the level of competition in the USA was lower than that on the Chinese domestic market and therefore the markets were not comparable. It was found, however, that while there was only one producer on the market in the USA, imports also played a role which ensured a sufficient level of competition on this sizeable market. Furthermore, none of the known producers contacted in other possible analogue countries, including Thailand, Turkey and South Africa, agreed to cooperate.
- (23) Based on the above, it was concluded that the USA was the most appropriate and reasonable analogue country in accordance with Article 2(7) of the basic Regulation.

2.2. Normal value

- (24) Pursuant to Article 2(7)(a) of the basic Regulation normal value was established on the basis of verified information received from the producer in the USA.
- (25) The Commission first established that the total domestic sales of the US producer were made in sufficient

quantities and could thus be considered representative within the meaning of Article 2(2) of the basic Regulation.

- (26) It was subsequently examined whether the product concerned sold in representative quantities on the analogue country's domestic market could be considered as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. It was found that the sales volume on a per type basis, sold at a net sales price equal to or above the cost of production, represented 80 % or more of the total sales volume and the weighted average price of that type was equal to or above the cost of production. Therefore the actual domestic prices, calculated as a weighted average of the prices of all domestic sales made during the RIP, irrespective of whether these sales were profitable or not, could be used.
- (27) Normal value was thus determined, as set out in Article 2(1) of the basic Regulation, on the basis of prices paid or payable, in the ordinary course of trade, by independent customers on the domestic market of the analogue country.

2.3. Export price

- (28) The only Chinese exporting producer which cooperated was granted IT in the original investigation. In accordance with Article 2(8) of the basic Regulation the export price of the product concerned for this company was established on the basis of the export prices actually paid or payable to the first independent customer located in the Union.
- (29) Given that cooperation from China was very low, the countrywide dumping margin applicable to all other exporters in China was calculated using the Chinese export statistics.

2.4. Comparison

- (30) In order to ensure a fair comparison of the normal value and the export price, due allowance, in the form of adjustments, was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments concerning transport, insurance, and credit costs were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

2.5. Dumping margin

- (31) In accordance with Article 2(11) of the basic Regulation the weighted average normal value established for the USA was compared with the weighted average export price of the cooperating Chinese exporting producer on an ex-works basis. This comparison showed the existence of significant dumping, the dumping margin amounting to more than 40 %.

(32) Based on Eurostat and Chinese statistics, for all other Chinese exports to the Union the margin of dumping was also found to be substantial, in the same range as above.

3. Development of imports should measures be allowed to lapse

3.1. Preliminary remark

(33) It is recalled that measures have been in force since October 2003.

3.2. Evolution of production and capacity utilisation in China

(34) In the absence of meaningful cooperation by the Chinese exporting producers during the current investigation no verifiable data was available on their capacity and capacity utilization.

(35) According to the applicant's estimate, the total production capacity in China in 2006 amounted to around 364 900 tonnes of FA per year.

(36) According to the China National Chemical Information Center ⁽¹⁾, 'China's production capacity for furfural and furfuryl alcohol has undergone unduly rapid expansion in recent years. The overall slackness of downstream consumption sectors such as furan resins has led to a serious oversupply in the furfural and furfuryl alcohol market'. 'Furfural and especially furfuryl alcohol production in China still has to depend on exports'. This source also states that there were more than 300 FA producers in China in 2005. The total annual production capacity of FA was 240 000 tonnes and the output was around 140 000 tonnes.

(37) According to the estimation of the sole cooperating Chinese exporting producer, total production of FA in China in 2008 amounted to 200 000 tonnes.

(38) In any event, Chinese production capacity continues to be substantial. Furthermore, despite the measures in place, Chinese exports to the Union continued to increase. Whatever the source of information it is clear that Chinese production capacity largely exceeds Union consumption.

(39) The Union market is a large and stable market for FA and given the existence of high anti-dumping measures in the USA (ranging from 43 % to 50 % and renewed in July 2006) on imports from China, it is expected that if

existing measures are allowed to lapse Chinese producers would have every incentive to ship spare capacities to the Union.

(40) On the basis of the above it may be concluded that, in the light of the huge capacity available in China and the existence of anti-dumping duties in another important market, the USA, there is a strong likelihood of increased dumped imports into the Union should measures be allowed to lapse.

3.3. Volume and price of imports from China to the Union

(41) During the RIP imports of the product concerned from China amounted to approximately 21 000 tonnes. The unit price was EUR 1 210 per tonne on average (see recital (57)). During the same period the average Union unit selling price was far above this price making the Union market very attractive to Chinese exporters should the measures be allowed to lapse.

3.4. Volume and prices of Chinese exports to third countries

(42) Based on the data provided by the cooperating Chinese exporting producer it was found that this company exported larger quantities to third countries than to the Union and at prices significantly below those of Union producers on the Union market and also below Chinese export prices to the Union.

(43) This is confirmed by publicly available Chinese statistics which showed that for most of the investigation period Chinese companies exported mainly to Asian countries at prices far below those of their exports to the Union market. In these circumstances, if measures are allowed to lapse, Chinese exporting producers may re-direct these sales to the higher priced Union market but still at dumped prices that would undercut those of the Union industry.

(44) Limited information is available on the domestic prices in China.

(45) However, based on the questionnaire reply from the sole cooperating Chinese company, this company sold the product concerned on its domestic market at a price far below that of its exports to third countries and to the Union.

3.5. Conclusion

(46) The investigation showed that, whilst the import volumes of the product concerned in the RIP were relatively high, the level of dumping found for these imports was significant.

⁽¹⁾ The China National Chemical Information Center (Chem China) was established in October 1992 after the merger of the Scientific and Technological Information Research Institute of the Ministry of the Chemical Industry established in 1959 and the Economic Information Center of the Ministry of the Chemical Industry established in 1984. http://www.chemchina.com.cn/chempwas/en/7under_8.htm

- (47) In view of the spare capacity available in China, which largely exceeds total Union consumption, the significant difference in prices charged to the Union and third countries and the resulting attractiveness of the Union market, as showed in recital (41) above, to the Chinese exporting producers, it is concluded that there is a strong likelihood of increased dumped imports into the Union should measures be allowed to lapse.

D. DEFINITION OF THE UNION INDUSTRY

- (48) As in the original investigation, there is only one producer of FA in the Union: TransFurans Chemicals, Belgium (TFC). Accordingly, the production of TFC constitutes the total Union production within the meaning of Article 4(1) of the basic Regulation.
- (49) The Union production is fully integrated in a single economic entity which consists of three companies and operates as follows:
- (50) TFC transforms the raw material, furfural, delivered by the mother company Central Romana Corporation (CRC), Dominican Republic, into the product concerned. International Furan Chemicals (IFC) situated in the Netherlands acts as the worldwide sales agent for the product concerned produced by TFC. TFC, IFC and CRC are related through common ownership.
- (51) Based on the above, TFC and its related company IFC constitute the Union industry within the meaning of Articles 5(4) and 4(1) of the basic Regulation. It should be noted, that in order to make a meaningful assessment of certain injury indicators, it was necessary to take into account also certain data from CRC.

E. SITUATION ON THE UNION MARKET

1. Preliminary remark

- (52) Given that the Union industry comprises only one company, specific data relating to the Union industry, as reported in the verified questionnaire replies, consumption and the market share of the Chinese exporting producers as well as other third countries' imports have been ed in order to preserve the confidentiality of the data submitted in accordance with Article 19 of the basic Regulation.

2. Union consumption

- (53) Union consumption was calculated on the basis of the combined volume of sales by the Union industry in the

Union of its own produced FA, imports from China as well as imports from other third countries.

- (54) With regard to the import volumes from the country concerned, and as during the original investigation, Chinese official export statistics were used rather than Eurostat import statistics, since the former appeared to be more accurate in view of the fact that certain data in Eurostat concerning this product were classified as 'secret' and therefore not publicly available. As far as the import volumes of other third countries are concerned Eurostat statistics were used since no other more reliable information was available.

Table 1 Union consumption (based on sales volume)

	2005	2006	2007	RIP
Index	100	108	158	166
Y/Y trend		8 %	47 %	5 %

Source: verified questionnaire reply of the Union industry, Eurostat, Chinese official export statistics

- (55) On this basis and as shown in table 1 above, Union consumption increased significantly during the period under consideration, i.e. by 66 %.
- (56) It is noted that the above development may be affected by the possible existence of secret data concerning imports of Thailand as mentioned below in recital (61).

3. Volume, market share and prices of imports from China

Table 2 Imports from China in volume, market share and import price

	2005	2006	2007	RIP
Imports in tonnes	16 010	10 635	19 245	21 002
Index	100	66	120	131
Market share (index)	100	62	76	79
CIF Import price EUR/tonnes	887	738	893	1 210
Index	100	83	101	136

Source: Chinese official export statistics

(57) The import volume from China increased by 31 % during the period considered, from 16 010 tonnes in 2005 to 21 002 tons in the RIP, while market share decreased by 21 % during the period considered. This development has to be seen against the background of the significant increase of Union consumption by 66 % during the same period.

(58) It should be noted that the Union industry was itself importing between 5 000 and 9 000 tons during the RIP of the product concerned from China which it resold on the Union market. The Union industry was therefore also the main importer of the product concerned from China. Imports were done by the Union industry because, producing already at full capacity (see recitals (64) and (65) below), it was not able to meet the demand in the Union market.

(59) Average import prices from China increased over the period considered by 36 %, i.e. from 887 EUR/ton in 2005 to 1 210 EUR/ton during the RIP.

(60) The comparison of the CIF import price at Union frontier charged to independent customers, including post-importation costs, with the Union industry's ex-works prices, for the same product types, revealed that Chinese import prices were not undercutting the Union industry's sales price during the RIP.

4. Volume, market share and prices of imports from other third countries

Table 3 Imports from other third country markets

	2005	2006	2007	RIP
Thailand				
Tonnes	673	208	10 660	11 450
Index	100	31	1 584	1 701
Market share indexed	100	28	1 017	1 044
Import price in EUR/tonne	1 059	822	1 086	1 302
Index	100	78	103	123
South Africa				
Tonnes	890	0	123	2 695
Index	100	0	14	303
Market share indexed	100	0	8	183

	2005	2006	2007	RIP
Import price in EUR/tonne	682	0	930	1 301
Index	100	0	136	191
Other third countries				
Tons	160	11	193	239
Index	100	7	120	149
Market share indexed	100	0	75	100
Import price in EUR/ton	1 790	7 500	3 051	3 368
Index	100	419	170	188

Source: Eurostat

(61) It is noted that Eurostat data for Thailand show an increase in import volume from insignificant quantities in 2005 and 2006 to 10 660 tonnes in 2007 and 11 450 tonnes during the RIP, with a significant increase in its market share from an index of 100 to 1 044 during the period under consideration. However, it is noted that Eurostat data contained some secret data with regard to Thai imports during 2005 and 2006 and the increase in imports and market share was in fact lower as shown above. Import prices from Thailand increased by 23 % over the period considered and were above Chinese prices as well as above the Union industry's prices during the RIP.

(62) Although imports from South Africa increased during the period considered, they remained at a relatively low level with price levels similar to the Thai imports.

(63) Imports from other third countries did not represent significant volumes.

5. Economic situation of the Union industry

5.1. Production, production capacity and capacity utilisation

(64) The Union industry's production increased by 8 % during the period under consideration. The production capacity of the Union industry remained stable during this period.

(65) Capacity utilisation increased by 8 % during the period considered, as such reaching full capacity. The Union industry was from 2006 onwards producing above its theoretical installed capacity.

Table 4 Union production

	2005	2006	2007	RIP
Index	100	104	106	108
Y/Y trend		4 %	1 %	2 %

Source: verified questionnaire reply of the Union industry

Table 5 Union production capacity

	2005	2006	2007	RIP
Index	100	100	100	100
Y/Y trend		0 %	0 %	0 %

Source: verified questionnaire reply of the Union industry

Table 6 Capacity utilisation

	2005	2006	2007	RIP
Index	100	104	106	108
Y/Y trend		4 %	1 %	2 %

Source: verified questionnaire reply of the Union industry

5.2. Inventories

- (66) Stocks decreased by 50 % during the period considered which was due to the high demand during this period, in particular during the RIP, and the Union industry's insufficient capacity to supply the Union market. As a consequence, stocks were continuously reduced.

Table 7 Inventories

	2005	2006	2007	RIP
Index	100	81	89	50
Y/Y trend		- 19 %	10 %	- 44 %

Source: verified questionnaire reply of the Union industry

5.3. Sales, market share and prices

Table 8 Sales volumes and values

	2005	2006	2007	RIP
Sales in volume — index	100	151	147	134
Y/Y trend		51 %	- 2 %	9 %

	2005	2006	2007	RIP
Sales in value — index	100	127	156	175
Y/Y trend		27 %	23 %	12 %

Source: verified questionnaire reply of the Union industry

- (67) The Union industry sales volume increased by 51 % from 2005 to 2006, reaching a peak in 2006, but then continuously decreased. At the same time, the market share of the Union industry decreased by 19 %. This is due to the fact that demands to the Union industry increased more than the overall increase in sales volume. As mentioned above, since the Union industry already produced at full capacity it was not able to increase its sales volume to the same extent as the increase in consumption.

Table 9 Union industry's market share

	2005	2006	2007	RIP
Index	100	140	93	81
Y/Y trend		40 %	- 34 %	- 13 %

Source: verified questionnaire replies of the Union industry, Eurostat, Chinese export statistics

- (68) Unit selling prices of the Union industry first decreased by 16 % from 2005 to 2006, and increased afterwards continuously. Over the total period considered, average prices of the Union industry increased thus by 31 %.

Table 10 Union industry sales prices

	2005	2006	2007	RIP
Index	100	84	106	131
Y/Y trend		- 16 %	26 %	23 %

Source: verified questionnaire reply of the Union industry

5.4. Factors affecting Union prices

- (69) The pressure from demand throughout the period considered led to, as a consequence, a significant increase in prices. The high demand during the RIP even caused temporary shortages on the Union market.
- (70) Price levels on the Union market were generally high throughout the period considered. The dumped imports from China did not exert any significant price pressure during this period. Thus, the same increasing trend can also be observed for the Chinese imports and the imports from the other third countries, with the exception of 2006, when both volumes and prices dropped.

- (71) The sales margins were less influenced by the full cost of production, and the price increases were mainly due to market developments. This is also evidenced by the exceptional increase in cost in 2006 (due to an exceptional increase in the fuel oil costs for the production of FF) which did not have a direct impact on the Union industry's sales price which decreased during this same year.

5.5. Employment, productivity and wages

- (72) Employment remained overall stable during the period considered, while productivity increased by 6 % during the same period which is due to the increase in production volume. The processing of FF into FA is a rather simple process and therefore not very labour intensive. The average wages decreased by 4 % during the period considered.

Table 11 Employment

	2005	2006	2007	RIP
Index	100	106	105	102
Y/Y trend		6 %	- 1 %	- 3 %

Source: verified questionnaire reply of the Union industry

Table 12 Productivity

	2005	2006	2007	RIP
Index	100	98	100	106
Y/Y trend		- 2 %	2 %	6 %

Source: verified questionnaire reply of the Union industry

Table 13 Wages

	2005	2006	2007	RIP
Index	100	102	95	96
Y/Y trend	—	2 %	- 6 %	1 %

Source: verified questionnaire reply of the Union industry

5.6. Profitability

- (73) The profitability of the Union industry increased overall significantly from 2005 to the RIP, i.e. by 43 % and reached a very high level during the RIP, exceeding by far the target profit set during the original investigation (15,17 %). It is noted that the profitability of the Union industry reached high levels throughout the period considered with the exception of 2006. In 2006, the

exceptional high costs for fuel oil, which is one of the main cost factors for the production of FF, combined with low sales prices resulted in losses for the Union industry.

Table 14 Profitability

	2005	2006	2007	RIP
Index	100	- 27	125	143
Y/Y trend	—	- 127 %	562 %	14 %

Source: verified questionnaire reply of the Union industry

5.7. Investments, return on investments and ability to raise capital

- (74) Investments increased during the period under consideration although the total amount was not significant, being equivalent to only a small percentage of the profits obtained. The Union industry did not invest in new capacities but these investments were rather in repairs and maintenance. The investigation also showed that the return on investments, i.e. pre-tax net profit of the like product expressed as a percentage of the net book value of fixed assets allocated to the like product, increased notably during the period considered.

Table 15 Investments

	2005	2006	2007	RIP
Index	100	116	150	187
Y/Y trend		16 %	29 %	25 %

Source: verified questionnaire reply of the Union industry

Table 16 Return on investments

	2005	2006	2007	RIP
ROI	4,3 %	- 6,1 %	8,3 %	18,4 %

Source: verified questionnaire reply of the Union industry

- (75) The investigation did not bring into light any evidence that the Union industry has major problems in raising capital.

5.8. Cash flow

- (76) Cash flow followed a similar trend as profitability, increasing significantly during the period under consideration.

Table 17 Cash flow

	2005	2006	2007	RIP
Index	100	- 167	294	661
Y/Y trend		- 267 %	276 %	125 %

Source: verified questionnaire reply of the Union industry

5.9. Growth

- (77) The Union industry did not directly benefit from the growth of the market during the period considered, since, while it increased its sales volume it lost overall market share. However, this situation is due to the Union industry's decision to maintain its production capacity at the same levels throughout the period considered. Indeed, although profitability was high, and demand was increasing, no investments were made to increase capacity.

5.10. Magnitude of the dumping margin

- (78) During the RIP, despite the measures in force substantial dumping continued albeit at lower levels than established in the original investigation, based both on the data obtained from the sole cooperating exporting producer and the calculations based on facts available (Chinese statistics).

5.11. Recovery from the effects of past dumping

- (79) Even if the Union industry has had the chance to recover from past dumping, in particular in terms of sales volume, sales prices and profitability, dumping margins are still significant.

5.12. Export activity of the Union industry

Table 18 Export volume of the Union industry

	2005	2006	2007	RIP
Index	100	82	78	96
Y/Y trend	—	- 18 %	- 5 %	23 %

Source: verified questionnaire reply of the Union industry

- (80) The Union industry's main export market is the USA. Although decreasing in 2006 and 2007, export levels of 2005 were almost reached in RIP. It should be noted that the volume exported to the USA was significant, i.e. it corresponded to 25 % of its total production volume during the RIP, while on the other hand large volumes of the product concerned were also

imported by the Union industry from China to satisfy the demand of their customers in the Union. The Union industry own production of FA was exported to the more lucrative USA market where prices were at even higher levels than on the Union market.

6. Conclusion on the situation of the Union industry

- (81) The anti-dumping measures had a clear positive impact on the situation of the Union industry. All main injury indicators, such as production (+ 8 %), sales volume (+ 34 %), sales value (+ 75 %), average sales price (+ 31 %), investments (+ 87 %), profitability (+ 43 %), cash flow (+ 561 %), stocks (- 50 %) and productivity (+ 6 %) have shown positive developments. In particular, profit levels of the Union industry were high throughout the period considered with the exception of 2006.
- (82) As far as the market share of the Union industry is concerned, the decreasing trend could not be considered as pointing to injury. Indeed, the Union industry, already producing at maximum capacity, could not supply the increasing demand, which had, despite increasing sales volumes, a negative effect on its market share.
- (83) In conclusion, in view of the positive development of the indicators pertaining to the Union industry, it is considered to be in a good situation and it could not be established that material injury has continued. Therefore, it was examined whether there is a likelihood of recurrence of injury should measures be allowed to lapse.

F. LIKELIHOOD OF RECURRENCE OF INJURY

1. Summary of the analysis of the likelihood of the continuation of dumping and the recurrence of injurious dumping

- (84) It is recalled that even with the measures in force, the exporting producers in China were still dumping at significant levels, as explained in recital (31) above. Removal of the measures could, if the export prices were reduced commensurately, lead to even higher dumping margins.
- (85) As mentioned above, the incentive to increase export volumes to the Union is considerable, since the other major export market for China, i.e. the USA has high anti-dumping measures in place against China with prohibitive character and this market is therefore practically not accessible for Chinese exports.

(86) Furthermore it was found that the Chinese producers had significant spare capacities due to a structural over-capacity in China caused by a decrease of domestic demand in China due to a shrinking market after the Olympic Games in 2008 and the effect of the global economic crisis.

(87) It was also found that Chinese export prices to third countries were at lower levels than those to the Union.

(88) It was therefore concluded that there was a likelihood of continuation of dumping and a risk of an increase of the volume of imports exerting a downward pressure on prices in the Union, at least in the short term, if measures were repealed.

(89) It is normally the case that an increase of dumped imports would exercise a downward pressure on the sales price level and would negatively affect the Union industry's profitability as well as its financial recovery that was observed during the RIP.

2. Impact of the dumped imports on the Union industry — indications and likely development during the post RIP period

(90) The market share of the Union Industry went down already as from 2006, and this during a period of increasing consumption, whilst from the same year onwards the market share of the Chinese imports increased. In view of these mixed indicators (i.e. overall recovery by the Union Industry, but loss of market share), the post-RIP developments were examined to get a clearer picture of likely future trends. It should also be recalled that the likelihood of recurrence of injury caused by a downward pressure on prices may also be influenced or accentuated by the evolution of the global economy and its effects on demand and consumption.

(91) Additional information was collected in order to determine whether the conclusions drawn on the basis of the analysis of the period considered and more in particular the RIP, remain valid after the RIP. In this regard, the Union industry submitted information on the development of their sales prices in the Union covering the period from October 2008 to April 2009 as well as on Chinese import volumes and average import prices during the same period.

(92) On this basis, a clear and continuous downward trend of the Union industry's sales prices on the Union market could be observed, i.e. sales prices in April 2009

decreased by 35 % as compared to the average sales price during the RIP. As far as sales volumes of the Union industry are concerned, while there is no continuous downward trend, sales in April 2009 were 33 % lower than in March 2009. There were indications that orders to the Union industry have been decreasing.

(93) As far as the Union industry's profitability is concerned, the negative development has been significant. Thus, profit levels shrank continuously and dropped by almost 80 % in April 2009 when compared to the profit level reached during the RIP. Thus, the Union industry's profit levels have not reached the target profit set during the original investigation since March 2009 and fell in April 2009 far below it.

(94) As far as the Chinese imports are concerned, Chinese import prices followed a continuous downward trend, however less accentuated than the decrease in import volumes and the decrease in the Union industry sales prices on the Union market. The Chinese import prices, while mostly still slightly above the Union industry's sales price, were in some months undercutting them, which shows that the price pressure on the market from these imports has increased. Similarly at the end of this period the Chinese prices were found to be underselling the Union industry prices.

(95) On the basis of the above, and given the clear downward trend of the Union industry's financial situation, it was concluded that a recurrence of injury is likely should measures be allowed to lapse.

(96) It is noted that due to the global economic crisis, demand in the Union has decreased significantly which has had a negative impact on the sales volumes, sales prices and profitability on the Union market. The financial position of the Union industry has deteriorated, making the Union industry particularly vulnerable and thus more easily affected by dumped imports from China. This situation will likely further deteriorate in case of a surge of such imports should measures be allowed to lapse.

3. Conclusions on the likelihood of recurrence of injury

(97) In summary it is considered that in case measures were repealed, there is a short-term likelihood of a significant increase of dumped imports from China to the Union with downward pressure on prices as a consequence and a recurrence of injury to the Union industry.

(98) It is noted, however, that in general the situation of the Union industry during the period considered was positive – whereby it was on the whole able to recover from past dumping and made substantial profits towards the end of the period. It is thus considered that less time than the standard five years may be needed for the Union industry to be able to recover from the current precarious situation, which may in any event be a temporary phenomenon, and to prevent injury from recurring should measures be allowed to lapse. In the medium term, demand on the Union industry may increase again. Should this be the case, and on the basis of the specifics of the Union market and in particular the need for the Union users of a fast and reliable source of supply, it is considered that the Union industry may in the medium term recover from any injury suffered or that a recurrence of injury would no longer be likely. The situation could thereafter be reviewed.

G. UNION INTEREST

1. Preliminary remark

- (99) In accordance with Article 21 of the basic Regulation it was examined whether the continuation of the existing anti-dumping measures would be against the interest of the Union as a whole. The determination of Union interest was based on an appreciation of all the other various interests involved, i.e. those of the Union industry, those of the importers/traders as well as the users of the product concerned.
- (100) It should be recalled that in the original investigation, the imposition of measures was not considered to be against the Union interest. Furthermore, the present investigation is an expiry review, thus analysing a situation in which anti-dumping measures are in place.
- (101) On this basis it was examined whether there are compelling reasons which would lead to the conclusion that it is not in the Union interest to maintain measures in this particular case, despite the above conclusions on the likelihood of continuation of dumping and recurrence of injury.

2. Interest of the Union industry

- (102) It is recalled that dumping during the RIP was still present and that there exists a likelihood of continuation of dumping of the product concerned originating in China and the likelihood of recurrence on injury to the Union industry.
- (103) The Union industry has proven to be a viable and competitive industry, confirmed by the positive development of all main injury indicators during the period

considered. The previously imposed anti-dumping measures have contributed to the price level as established during the RIP which allowed the Union industry to restore its profitability.

- (104) Therefore it is in the interest of the Union industry to maintain measures against the dumped imports from China.

3. Interest of unrelated importers/traders

- (105) The Commission sent questionnaires to all known unrelated importers/traders. Only one importer/trader cooperated with the investigation.
- (106) The investigation showed that the volumes traded by the cooperating unrelated importer during the period under consideration were not significant, and sales of the product concerned represented only a small part of its total sales.
- (107) It is considered that continuation of the measures will not change the current situation of the importers/traders. It is clear that the importers may also rely on other sources of supply, as can be seen from the market share held by other third countries, in particular Thailand which showed that competition on the Union market is ensured.
- (108) On the basis of the above, it was considered that the continuation of the measures would not significantly affect the importers/traders.

4. Interest of users

- (109) The Commission sent questionnaires to all known unrelated users. Eight users cooperated with the investigation, representing 44 % of the total imports from China. The investigation showed that these users were importing directly the product concerned from China. Additionally two user associations replied submitting their comments.
- (110) The main industrial users of FA in the Union are the furan resin manufacturers. The investigation showed that despite measures in force, at least some of the users reached still quite high profit margins during the RIP.
- (111) The users also pointed out that the Union industry should remain an important source of supply in order to grant short term availability of the product concerned and a certain reliability and consistency of the supply.
- (112) Considering the above, it was considered that the continuation of the measures would not have a significantly negative effect on the industrial users.

5. Conclusion on Union interest

- (113) Given the above, it is concluded that there are no compelling reasons, on the grounds of Union interest, against the prolongation of the anti-dumping measures.

H. ANTI-DUMPING MEASURES

- (114) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to submit comments and claims subsequent to disclosure.

- (115) It is clear that the Union industry was able to profit from the measures in force and its situation improved significantly over the period considered with respect to most injury indicators. The Union industry realised high profit margins during the RIP and sales and production volumes reached their maximum levels. On the basis of the positive economic development of the Union industry during the period considered, it could not be established that material injury continued.

- (116) Nevertheless, the investigation showed on one hand that, despite an increase in consumption, the Union industry lost market share while the Chinese imports increased their market share. On the other hand the investigation also revealed that spare capacities exist in China and that high dumping continued during the RIP.

- (117) In addition, the investigation on the likelihood of recurrence of injury showed that the situation of the Union industry deteriorated after the RIP and lead to injury towards the beginning of the second quarter of 2009. It also revealed that there were significant spare capacities available in China and the incentive to direct these spare capacities to the Union should measures be allowed to lapse was high. This expected surge of dumped imports is likely to increase the price pressure in the Union with a negative effect on the Union industry's price and profit levels. It was therefore established that there was a likelihood of recurrence of injury, should measures be allowed to lapse, at least on the short term.

- (118) This would have an even more negative impact in the context of the current economic crisis, which has led to a contraction in consumption after the RIP. In this scenario the impact of increased dumped imports would multiply its negative effects on the Union industry.

- (119) Finally, it is considered that should the economy recover in the medium term, demand for FA in the Union will

increase. Under these circumstances, the Union industry will be able to increase its sales volume accordingly.

- (120) Therefore it follows from the above that as provided in Article 11(2) of the basic Regulation, the anti-dumping measures applicable on imports of FA from China, imposed by Regulation (EC) No 1905/2003 should be maintained for an additional period of two years without prejudice to the other provisions of Article 11 of the basic Regulation.

- (121) Following disclosure, the Union industry claimed that the definitive measures should be extended for five years arguing that the sudden change in market conditions after the RIP would show that any future developments in the market are uncertain and highly difficult to predict. Thus, the assessment of the Union Institutions, i.e. that the economy may recover in the medium term and that the demand for FA in the Union may consequently improve would not be sufficiently accurate. However, as mentioned above in recitals (117) to (119), it was considered that the developments after the RIP, including the effects of the economic crisis, are likely to be of a short term nature warranting the imposition of measures for no more than two years. Therefore, the claims of the Union industry in this respect had to be rejected.

- (122) In order to minimise the risks of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures include the following:

The presentation to the Customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters.

- (123) Should the exports by one of the four companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rates and the consequent imposition of a country-wide duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of furfuryl alcohol, currently falling within CN code ex 2932 13 00 (TARIC code 2932 13 00 90), originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable for the product described in paragraph 1 shall be as follows:

Companies	Rate of anti-dumping duty (EUR per ton)	TARIC additional code
Gaoping Chemical Industry Co. Ltd	160	A442
Linzi Organic Chemical Inc.	84	A440
Zhucheng Taisheng Chemical Co. Ltd.	97	A441
Henan Huilong Chemical Industry Co. Ltd.	156	A484
All other companies	250	A999

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs

value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽¹⁾, the amount of the anti-dumping duty, calculated on the basis of paragraph 2 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

4. The application of the individual duty rates specified for the four companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex of this Regulation. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

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

Article 2

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

It and shall expire on 10 December 2011.

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

Done at Brussels, 7 December 2009.

For the Council
The President
C. MALMSTRÖM

⁽¹⁾ OJ L 253, 11.10.1993, p. 1.

ANNEX

The valid commercial invoice referred to in Article 1(4) of this Regulation must include a declaration signed by an official of the company, in the following format:

1. The name and function of the official of the company which has issued the commercial invoice.
2. The following declaration: 'I, the undersigned, certify that the [volume] of furfuryl alcohol currently classifiable within CN code ex 2932 13 00 (TARIC additional code) sold for export to the European Union covered by this invoice was manufactured by [company name and address] in the People's Republic of China; I declare that the information provided in this invoice is complete and correct.'
3. Date and signature.

COMMISSION REGULATION (EU) No 1203/2009**of 9 December 2009****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 10 December 2009.

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

Done at Brussels, 9 December 2009.

*For the Commission,
On behalf of the President,
Jean-Luc DEMARTY
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	AL	37,7
	MA	48,4
	TN	81,6
	TR	64,4
	ZZ	58,0
0707 00 05	MA	52,9
	TR	78,0
	ZZ	65,5
0709 90 70	MA	48,2
	TR	131,1
	ZZ	89,7
0805 10 20	AR	70,4
	MA	49,0
	TR	49,3
	ZA	57,8
	ZZ	56,6
0805 20 10	MA	71,9
	ZZ	71,9
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	132,8
	HR	55,6
	IL	75,3
	TR	73,7
	ZZ	84,4
0805 50 10	TR	73,4
	ZZ	73,4
0808 10 80	AU	161,8
	CA	65,1
	CN	81,4
	MK	24,5
	US	92,9
	ZZ	85,1
0808 20 50	CN	45,0
	US	242,2
	ZZ	143,6

⁽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 (EU) No 1204/2009

of 4 December 2009

amending Regulation (EC) No 968/2006 laying down detailed rules for the implementation of Council Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy ⁽¹⁾, and in particular Article 12 thereof,

Whereas:

- (1) Commission Regulation (EC) No 968/2006 ⁽²⁾ has fixed certain deadlines for the implementation of measures in the framework of restructuring plans and national diversification programmes. It has since become evident that there is the need to define a new calendar for the temporary scheme for restructuring of the sugar industry to take into account the consequences of the global financial crisis on the economies of certain Member States and the sudden important changes in the national restructuring programmes that started in 2008 and are still ongoing.
- (2) The second subparagraph of Article 1(3) of Regulation (EC) No 320/2006 provides that any remaining amounts in the temporary restructuring fund after the financing of measures are transferred to the European Agricultural Guarantee Fund. In order to ensure sound financial and budgetary management of the remaining funds, it is appropriate to postpone the existing final dates for eligibility of payments made under the restructuring fund in case the undertakings concerned update their restructuring plans.
- (3) Regulation (EC) No 968/2006 should, therefore, be amended accordingly.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Committee on the Agricultural Funds,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 968/2006 is amended as follows:

⁽¹⁾ OJ L 58, 28.2.2006, p. 42.

⁽²⁾ OJ L 176, 30.6.2006, p. 32.

1. in Article 6(1), the following second subparagraph is added:

‘By way of derogation from point (b) of the first subparagraph, upon a motivated request of the undertaking concerned, the Member States can grant an extension of the deadline fixed in that point until 30 September 2011 at the latest. In such case, the undertaking shall submit an amended restructuring plan according to Article 11.’;

2. in Article 14, paragraph 3 is replaced by the following:

‘3. The actions and measures provided for in a national restructuring programme shall be implemented by 30 September 2011.’;

3. in Article 17, paragraph 2 is replaced by the following:

‘2. The first payment may be made in September 2007. The aid for diversification, the additional aid for diversification and the transitional aid to certain Member States shall not be paid later than 30 September 2012.’;

4. in Article 22, paragraph 3 is replaced by the following:

‘3. Except in the case of *force majeure*, the security shall be forfeited if the conditions set out in paragraph 1 have not been fulfilled on 30 September 2012 at the latest.’;

5. in Article 24, the first subparagraph of paragraph 2 is replaced by the following:

‘By 30 June 2012, the Member State shall submit to the Commission a final progress report comparing the actions or measures implemented and the expenses incurred to the ones foreseen in the restructuring plans, the national restructuring programmes and the business plans and explaining the reasons for deviations.’;

6. a new Article 22b is added in Chapter V:

‘Article 22b

Eligibility of payments

Expenditure shall only be eligible for Community financing if it has been paid by the Member State to the beneficiary by 30 September 2012 at the latest.’

Article 2

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

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

Done at Brussels, 4 December 2009.

For the Commission
The President
José Manuel BARROSO

ACTS WHOSE PUBLICATION IS NOT OBLIGATORY

COMMISSION DECISION

of 7 December 2009

on extending the availability period of the exceptional Community financial assistance to Kosovo

(2009/918/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Decision 2006/880/EC of 30 November 2006 providing exceptional Community financial assistance to Kosovo ⁽¹⁾, and in particular to Article 1(3),

Whereas:

- (1) The availability of the exceptional Community financial assistance to Kosovo ⁽²⁾, according to the above mentioned Decision, expires on 11 December 2009.
- (2) Article 1(3) of Decision 2006/880/EC foresees the possibility for the Commission to extend the availability period by a maximum of one year.
- (3) The availability period should be extended by one year in order to complete the financial assistance programme.

- (4) The Economic and Financial Committee has been duly consulted on this extension,

HAS ADOPTED THIS DECISION:

Article 1

The availability period of the exceptional Community financial assistance to Kosovo is extended by one additional year, until 11 December 2010.

*Article 2*This Decision shall take effect on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 7 December 2009.

*For the Commission**The President*

José Manuel BARROSO

⁽¹⁾ OJ L 339, 6.12.2006, p. 36.

⁽²⁾ Under United Nations Security Council Resolution No 1244/1999 (UNSCR 1244/99) of 10.6.1999.

- V *Acts adopted from 1 December 2009 under the Treaty on European Union, the Treaty on the Functioning of the European Union and the Euratom Treaty*

ACTS WHOSE PUBLICATION IS OBLIGATORY

- ★ **Council implementing Regulation (EU) No 1202/2009 of 7 December 2009 imposing a definitive anti-dumping duty on imports of furfuryl alcohol originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96** 48
- Commission Regulation (EU) No 1203/2009 of 9 December 2009 establishing the standard import values for determining the entry price of certain fruit and vegetables 62
- ★ **Commission Regulation (EU) No 1204/2009 of 4 December 2009 amending Regulation (EC) No 968/2006 laying down detailed rules for the implementation of Council Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community** 64

ACTS WHOSE PUBLICATION IS NOT OBLIGATORY

2009/918/EU:

- ★ **Commission Decision of 7 December 2009 on extending the availability period of the exceptional Community financial assistance to Kosovo** 66

2009 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 1 000 per year (*)
EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 100 per month (*)
EU Official Journal, L + C series, paper + annual CD-ROM	22 official EU languages	EUR 1 200 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 700 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 70 per month
EU Official Journal, C series, paper edition only	22 official EU languages	EUR 400 per year
EU Official Journal, C series, paper edition only	22 official EU languages	EUR 40 per month
EU Official Journal, L + C series, monthly CD-ROM (cumulative)	22 official EU languages	EUR 500 per year
Supplement to the Official Journal (S series), tendering procedures for public contracts, CD-ROM, two editions per week	multilingual: 23 official EU languages	EUR 360 per year (= EUR 30 per month)
EU Official Journal, C series — recruitment competitions	Language(s) according to competition(s)	EUR 50 per year

(*) Sold in single issues: up to 32 pages: EUR 6
from 33 to 64 pages: EUR 12
over 64 pages: Priced individually.

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual CD-ROM.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

Sales and subscriptions

Priced publications issued by the Publications Office are available from our commercial distributors. The list of commercial distributors is available at:

http://publications.europa.eu/others/agents/index_en.htm

EUR-Lex (<http://eur-lex.europa.eu>) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.

For further information on the European Union, see: <http://europa.eu>

