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Price: EUR 4

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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.

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II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) No 1264/2010

of 20 December 2010

amending Regulation (EU) No 7/2010 opening and providing for the management of autonomous tariff quotas of the Union for certain agricultural and industrial products

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 31 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) In order to ensure sufficient and uninterrupted supplies of certain goods which are insufficiently produced in the Union and to avoid any disturbances on the market for certain agricultural and industrial products, autonomous tariff quotas were opened by Council Regulation (EU) No 7/2010⁽¹⁾. Products within those tariff quotas can be imported at reduced or zero duty rates. For the same reasons, with effect from 1 January 2011 new tariff quotas at a zero duty rate for an appropriate volume for certain additional products should be opened.

(2) The quota volume for autonomous tariff quotas entered with the order numbers 09.2977 and 09.2635 are insufficient to meet the needs of the industry of the Union for the current quota period ending on 31 December 2010. Consequently, those quota volumes should be increased with effect from 1 July 2010.

(3) It is no longer in the interest of the Union to continue to grant tariff quotas in 2011 for certain products for which such quotas were established for 2010. Those quotas should therefore be closed with effect from 1 January 2011 and the products concerned should be deleted from the list in Annex to Regulation (EU) No 7/2010.

(4) In view of the many changes to be made, clarity requires Annex to Regulation (EU) No 7/10 to be replaced in its entirety.

(5) Regulation (EU) No 7/2010 should therefore be amended accordingly.

(6) Since the tariff quotas have to take effect from 1 January 2011, this Regulation should apply from the same date and enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EU) No 7/2010 is replaced by the text set out in the Annex to this Regulation.

Article 2

With effect from 1 July 2010, in the Annex to Regulation (EU) No 7/2010:

— the quota volume of the tariff quota for order number 09.2977 is fixed at 40 000 tonnes,

— the quota volume of the tariff quota for order number 09.2635 is fixed at 1 300 000 km,

Article 3

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

It shall apply from 1 January 2011.

Article 2 shall apply from 1 July 2010.

⁽¹⁾ OJ L 3, 7.1.2010, p. 1.

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

Done at Brussels, 20 December 2010.

For the Council
The President
J. SCHAUVLIEGE

ANNEX

'ANNEX

| Order number | CN code | TARIC | Description | Quota period | Quota volume | Quota duty (%) |
|--------------|--|--|--|--------------|----------------|----------------|
| 09.2849 | ex 0710 80 69 | 10 | Mushrooms of the species <i>Auricularia polytricha</i> (uncooked or cooked by steaming or boiling), frozen, for the manufacture of prepared meals ⁽¹⁾ ⁽²⁾ | 1.1.-31.12. | 700 tonnes | 0 % |
| 09.2913 | ex 2401 10 35 ex 2401 10 70 ex 2401 10 95 ex 2401 10 95 ex 2401 10 95 ex 2401 20 35 ex 2401 20 70 ex 2401 20 95 ex 2401 20 95 ex 2401 20 95 | 91 10 11 21 91 91 10 11 21 91 | Natural unmanufactured tobacco, whether or not cut in regular size, having a custom value of not less than Euro 450 per 100 kg net weight, for use as binder or wrapper for the manufacture of goods falling within subheading 2402 10 00 ⁽¹⁾ | 1.1.-31.12. | 6 000 tonnes | 0 % |
| 09.2841 | ex 2712 90 99 | 10 | Blend of 1-alkenes containing 80 % by weight or more of 1-alkenes of a chain-length of 20 and 22 carbon atoms | 1.1.-31.12. | 10 000 tonnes | 0 % |
| 09.2703 | ex 2825 30 00 | 10 | Vanadium oxides and hydroxides exclusively for use in alloys ⁽¹⁾ | 1.1.-31.12. | 13 000 tonnes | 0 % |
| 09.2806 | ex 2825 90 40 | 30 | Tungsten trioxide, including blue tungsten oxide | 1.1.-31.12. | 12 000 tonnes | 0 % |
| 09.2837 | ex 2903 49 80 | 10 | Bromochloromethane | 1.1.-31.12. | 600 tonnes | 0 % |
| 09.2933 | ex 2903 69 90 | 30 | 1,3-Dichlorobenzene | 1.1.-31.12. | 2 600 tonnes | 0 % |
| 09.2950 | ex 2905 59 98 | 10 | 2-Chloroethanol, for the manufacture of liquid thioplasts of subheading 4002 99 90 ⁽¹⁾ | 1.1.-31.12. | 15 000 tonnes | 0 % |
| 09.2851 | ex 2907 12 00 | 10 | O-Cresol having a purity of not less than 98,5 % by weight | 1.1.-31.12. | 20 000 tonnes | 0 % |
| 09.2767 | ex 2910 90 00 | 80 | Allyl glycidyl ether | 1.1.-31.12. | 2 500 tonnes | 0 % |
| 09.2624 | 2912 42 00 | | Ethylvanillin (3-ethoxy-4-hydroxybenzaldehyde) | 1.1.-31.12. | 600 tonnes | 0 % |
| *09.2638 | 2915 21 00 | 10 | Acetic acid of a purity by weight of 99 % or more | 1.1.-31.12. | 500 000 tonnes | 0 % |
| 09.2972 | 2915 24 00 | | Acetic anhydride | 1.1.-31.12. | 20 000 tonnes | 0 % |
| 09.2769 | ex 2917 13 90 | 10 | Dimethyl sebacate | 1.1.-31.12. | 1 300 tonnes | 0 % |
| 09.2634 | ex 2917 19 90 | 40 | Dodecanedioic acid, of a purity by weight of more than 98,5 % | 1.1.-31.12. | 4 600 tonnes | 0 % |

| Order number | CN code | TARIC | Description | Quota period | Quota volume | Quota duty (%) |
|--------------|---------------|-------|--|--------------|----------------|----------------|
| 09.2808 | ex 2918 22 00 | 10 | <i>o</i> -Acetylsalicylic acid | 1.1.-31.12. | 120 tonnes | 0 % |
| 09.2975 | ex 2918 30 00 | 10 | Benzophenone-3,3',4,4'-tetracarboxylic dianhydride | 1.1.-31.12. | 1 000 tonnes | 0 % |
| 09.2632 | ex 2921 22 00 | 10 | Hexamethylenediamine | 1.1.-31.12. | 35 000 tonnes | 0 % |
| 09.2602 | ex 2921 51 19 | 10 | <i>o</i> -Phenylenediamine | 1.1.-31.12. | 1 800 tonnes | 0 % |
| 09.2977 | 2926 10 00 | | Acrylonitrile | 1.1.-31.12. | 30 000 tonnes | 0 % |
| 09.2917 | ex 2930 90 13 | 90 | Cystine | 1.1.-31.12. | 600 tonnes | 0 % |
| 09.2603 | ex 2930 90 99 | 79 | Bis(3-triethoxysilylpropyl)tetra-sulphide | 1.1.-31.12. | 9 000 tonnes | 0 % |
| 09.2810 | 2932 11 00 | | Tetrahydrofuran | 1.1.-31.12. | 20 000 tonnes | 0 % |
| 09.2955 | ex 2932 19 00 | 60 | Flurtamone (ISO) | 1.1.-31.12. | 300 tonnes | 0 % |
| 09.2812 | ex 2932 29 85 | 77 | Hexan-6-olide | 1.1.-31.12. | 4 000 tonnes | 0 % |
| 09.2615 | ex 2934 99 90 | 70 | Ribonucleic acid | 1.1.-31.12. | 110 tonnes | 0 % |
| 09.2945 | ex 2940 00 00 | 20 | D-Xylose | 1.1.-31.12. | 400 tonnes | 0 % |
| 09.2908 | ex 3804 00 00 | 10 | Sodium lignosulphonate | 1.1.-31.12. | 40 000 tonnes | 0 % |
| 09.2889 | 3805 10 90 | | Sulphate turpentine | 1.1.-31.12. | 20 000 tonnes | 0 % |
| 09.2935 | ex 3806 10 00 | 10 | Rosin and resin acids obtained from fresh oleoresins | 1.1.-31.12. | 280 000 tonnes | 0 % |
| 09.2814 | ex 3815 90 90 | 76 | Catalyst consisting of titanium dioxide and tungsten trioxide | 1.1.-31.12. | 2 200 tonnes | 0 % |
| 09.2829 | ex 3824 90 97 | 19 | Solid extract of the residual, insoluble in aliphatic solvents, obtained during the extraction of rosin from wood, having the following characteristics: — a resin acid content not exceeding 30 % by weight, — an acid number not exceeding 110, and — a melting point of 100 °C or more, | 1.1.-31.12. | 1 600 tonnes | 0 % |

| Order number | CN code | TARIC | Description | Quota period | Quota volume | Quota duty (%) |
|--------------|---------------|-------|--|--------------|---------------|----------------|
| 09.2986 | ex 3824 90 97 | 76 | Mixture of tertiary amines containing: — 60 % by weight of dodecyl-dimethylamine, or more, — 20 % by weight of dimethyl(tetradecyl)amine, or more, — 0,5 % by weight of hexadecyl-dimethylamine, or more, for use in the production of amine oxides ⁽¹⁾ | 1.1.-31.12. | 14 315 tonnes | 0 % |
| 09.2907 | ex 3824 90 97 | 86 | Mixture of phytosterols, in the form of powder, containing by weight: — 75 % or more of sterols, — not more than 25 % of stanols, for use in the manufacture of stanols/sterols or stanol/sterol esters ⁽¹⁾ | 1.1.-31.12. | 2 500 tonnes | 0 % |
| 09.2140 | ex 3824 90 97 | 98 | Mixture of tertiary amines containing by weight: — 2,0-4,0 % of N,N-dimethyl-1-octanamine, — 94 % minimum of N,N-dimethyl-1-decanamine, — 2 % maximum of N,N-dimethyl-1-dodecanamine, | 1.1.-31.12. | 4 500 tonnes | 0 % |
| 09.2992 | ex 3902 30 00 | 93 | Propylene-butylene copolymer, containing by weight 60 % or more but not more than 68 % of propylene and 32 % or more but not more than 40 % of butylene, of a melt viscosity of not more than 3 000 mPa at 190 °C, as determined by the ASTM D 3236 method, for use as an adhesive in the manufacture of products falling within subheading 4818 40 ⁽¹⁾ | 1.1.-31.12. | 1 000 tonnes | 0 % |
| *09.2947 | ex 3904 69 80 | 95 | Poly(vinylidene fluoride), in powder form, for the preparation of paint or varnish for coating metal ⁽¹⁾ | 1.1.-31.12. | 1 300 tonnes | 0 % |
| *09.2639 | 3905 30 00 | | Poly(vinyl alcohol) | 1.1.-31.12. | 18 000 tonnes | 0 % |
| *09.2640 | ex 3905 99 90 | 91 | Polyvinyl butyral | 1.1.-31.12. | 8 000 tonnes | 0 % |
| 09.2616 | ex 3910 00 00 | 30 | Polydimethylsiloxane with a degree of polymerisation of 2 800 monomer units (\pm 100) | 1.1.-31.12. | 1 300 tonnes | 0 % |
| *09.2816 | ex 3912 11 00 | 20 | Cellulose acetate flakes | 1.1.-31.12. | 58 500 tonnes | 0 % |

| Order number | CN code | TARIC | Description | Quota period | Quota volume | Quota duty (%) |
|--------------|---------------|-------|--|--------------|--------------------------|----------------|
| *09.2641 | ex 3913 90 00 | 87 | Sodium hyaluronate, non sterile, with: — a weight average molecular weight (Mw) of not more than 900 000, — an endotoxin level of not more than 0,008 Endotoxin units (EU)/mg, — an ethanol content of not more than 1 % by weight, — an isopropanol content of not more than 0,5 % by weight, | 1.1.-31.12. | 200 kg | 0 % |
| 09.2813 | ex 3920 91 00 | 94 | Co-extruded trilayer poly(vinyl butyral) film without a graduated colour band containing by weight 29 % or more but not more than 31 % of 2,2'-ethylenedioxydiethyl bis(2-ethylhexanoate) as a plasticiser | 1.1.-31.12. | 2 000 000 m ² | 0 % |
| 09.2818 | ex 6902 90 00 | 10 | Refractory bricks with — an edge length of more than 300mm and, — a TiO ₂ content of not more than 1 % by weight and, — a Al ₂ O ₃ content of not more than 0,4 % by weight and, — a change in volume of less than 9 % at 1 700 °C, | 1.1.-31.12. | 75 tonnes | 0 % |
| 09.2815 | ex 6909 19 00 | 70 | Supports for catalysts or filters, consisting of porous ceramics made primarily from oxides of aluminium and titanium; with a total volume of not more than 65 litres and at least one duct (open on one or both ends) per cm ² of cross section | 1.1.-31.12. | 380 000 units | 0 % |
| 09.2628 | ex 7019 52 00 | 10 | Glass web woven from glass fibre coated in plastic, of a weight of 120 g/m ² (± 10 g/m ²), of a type used in rolling insect screens with fixed frames | 1.1.-31.12. | 350 000 m ² | 0 % |
| 09.2799 | ex 7202 49 90 | 10 | Ferro-chromium containing 1,5 % or more but not more than 4 % by weight of carbon and not more than 70 % of chromium | 1.1.-31.12. | 50 000 tonnes | 0 % |
| 09.2629 | ex 7616 99 90 | 85 | Aluminium telescopic handle for use in the manufacture of luggage ⁽¹⁾ | 1.1.-31.12. | 240 000 units | 0 % |

| Order number | CN code | TARIC | Description | Quota period | Quota volume | Quota duty (%) |
|--------------|---------------|-------|--|--------------|-----------------|----------------|
| *09.2636 | ex 8411 82 80 | 20 | 64 MW industrial aero-derivative gas turbine engines for incorporation into industrial power generation sets for peaking/mid-merit duty operating less than 5 500 hours per year and with a simple-cycle efficiency of greater than 40 % | 1.1.-31.12. | 10 units | 0 % |
| 09.2763 | ex 8501 40 80 | 30 | Electric AC commutator motor, single-phase, with an output of more than 750 W, an input power of more than 1 600 W but not more than 2 700 W, an external diameter of more than 120 mm (\pm 0,2 mm) but not more than 135 mm (\pm 0,2 mm), a rated speed of more than 30 000 rpm but not more than 50 000 rpm, equipped with air-inducting ventilator, for use in the manufacture of vacuum cleaners ⁽¹⁾ | 1.1.-31.12. | 2 000 000 units | 0 % |
| *09.2642 | ex 8501 40 80 | 40 | Assembly, consisting of — a single-phase electric AC commutator motor, with an output of 480 W or more, but not more than 1 400 W, an input power of more than 900 W but not more than 1 600 W, an external diameter of more than 119,8 mm but not more than 135,2 mm and a rated speed of more than 30 000 rpm but not more than 50 000 rpm, and — an air-inducting ventilator, for use in the manufacture of vacuum cleaners ⁽¹⁾ | 1.1.-31.12. | 120 000 units | 0 % |
| *09.2633 | ex 8504 40 82 | 20 | Electric adapter, with a capacity of not more than 1 kVA, for use in the manufacture of hair removal apparatus ⁽¹⁾ | 1.1.-31.12. | 4 500 000 units | 0 % |
| *09.2643 | ex 8504 40 82 | 30 | Power supply boards for use in the manufacture of goods falling under heading 8521 and 8528 ⁽¹⁾ | 1.1.-31.12. | 1 038 000 units | 0 % |
| 09.2620 | ex 8526 91 20 | 20 | Assembly for GPS system having a position determination function | 1.1.-31.12. | 3 000 000 units | 0 % |
| 09.2003 | ex 8543 70 90 | 63 | Voltage controlled frequency generator, consisting of active and passive elements mounted on a printed circuit, contained in a housing with dimensions of not more than 30 × 30 mm | 1.1.-31.12. | 1 400 000 units | 0 % |

| Order number | CN code | TARIC | Description | Quota period | Quota volume | Quota duty (%) |
|--------------|---------------|-------|---|--------------|-----------------|----------------|
| *09.2635 | ex 9001 10 90 | 20 | Optical fibres for the manufacture of glass fibre cables under heading 8544 ⁽¹⁾ | 1.1.-31.12. | 2 600 000 km | 0 % |
| 09.2631 | ex 9001 90 00 | 80 | Unmounted glass lenses, prisms and cemented elements for use in the manufacture of goods of CN codes 9005, 9013 and 9015 ⁽¹⁾ | 1.1.-31.12. | 5 000 000 units | 0 % |

⁽¹⁾ The relief from or reduction of customs duties shall be subject to the conditions laid down in the relevant Union provisions with a view to customs control of the use of such goods (see Articles 291 to 300 of Commission Regulation (EEC) No 2454/93 (OJ L 253, 11.10.1993, p. 1)).

⁽²⁾ However, the measure is not allowed where processing is carried out by retail or catering undertakings.

^(*) New or amended position.

COUNCIL REGULATION (EU) No 1265/2010

of 20 December 2010

**amending Regulation (EC) No 1255/96 temporarily suspending the autonomous Common Customs
Tariff duties on certain industrial, agricultural and fishery products**

THE COUNCIL OF THE EUROPEAN UNION,

deleted suspensions set out in the texts of the Annex I and Annex II to this Regulation.

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 31 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) It is in the interest of the Union to suspend totally the autonomous Common Customs Tariff duties on a certain number of new products currently not listed in the Annex to Council Regulation (EC) No 1255/96 ⁽¹⁾.

(2) Seven products with CN and TARIC codes 2805 30 90 10, 2805 30 90 20, 2825 50 00 10, 2933 79 00 40, 3908 90 00 20, 3920 62 19 88 and 8525 80 19 30 currently listed in the Annex to Regulation (EC) No 1255/96 should be deleted because it is no longer in the interest of the Union to maintain the suspension of autonomous Common Customs Tariff duties for those products.

(3) It is necessary to modify the description of 18 suspensions in the Annex to Regulation (EC) No 1255/96 in order to take account of technical product developments and economic trends on the market. Those suspensions should be deleted from the list in that Annex and reinserted as new suspensions using new descriptions. Moreover, CN codes should be changed for 20 products and TARIC codes for 11 products.

(4) The suspensions for which those technical modifications are necessary should be deleted from the list of suspensions in the Annex to Regulation (EC) No 1255/96 and should be reinserted in that list using new product descriptions, new CN codes or new TARIC codes.

(5) In the interest of clarity, the modified entries should be marked with an asterisk in the lists of inserted and

(6) Experience has shown that it is necessary to provide an expiry date for the suspensions listed in Regulation (EC) No 1255/96 to ensure that account is taken of technological and economic changes. This should not exclude early termination of certain measures or their continuation beyond the expiry date, if economic justification is provided, in accordance with the principles laid down in the Commission communication of 1998 concerning autonomous tariff suspensions and quotas ⁽²⁾.

(7) Regulation (EC) No 1255/96 should therefore be amended accordingly.

(8) Since the suspensions laid down in this Regulation have to take effect from 1 January 2011, this Regulation should apply from the same date and enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 1255/96 is hereby amended as follows:

1. the rows for the products listed in Annex I to this Regulation are inserted;
2. the rows for the products for which the CN and TARIC codes are set out in Annex II to this Regulation are deleted.

Article 2

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

It shall apply from 1 January 2011.

⁽¹⁾ OJ L 158, 29.6.1996, p. 1.

⁽²⁾ OJ C 128, 25.4.1998, p. 2.

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

Done at Brussels, 20 December 2010.

For the Council
The President
J. SCHAUVLIEGE

ANNEX I

Products referred to in Article 1 (1)

| CN code | TARIC | Description | Rate of autonomous duty | Validity period |
|---------------|-------|---|-------------------------|---------------------|
| ex 2805 30 90 | 30 | Rare earth metals, scandium and yttrium of a purity by weight of 98,5 % or more | 0 % | 1.1.2011-31.12.2015 |
| ex 2825 50 00 | 11 | Copper (I or II) oxide containing by weight 78 % or more of copper and not more than 0,03 % of chloride | 0 % | 1.1.2011-31.12.2015 |
| ex 2825 50 00 | 19 | | 0 % | 1.1.2011-31.12.2013 |
| ex 2904 20 00 | 10 | Nitromethane | 0 % | 1.1.2011-31.12.2015 |
| ex 2904 20 00 | 20 | Nitroethane | 0 % | 1.1.2011-31.12.2015 |
| ex 2904 20 00 | 30 | 1-Nitropropane | 0 % | 1.1.2011-31.12.2015 |
| ex 2905 39 95 | 10 | Propane-1,3-diol | 0 % | 1.1.2011-31.12.2015 |
| ex 2909 50 00 | 20 | Ubiquinol | 0 % | 1.1.2011-31.12.2015 |
| 2912 41 00 | | Vanillin (4-hydroxy-3-methoxybenzaldehyde) | 0 % | 1.1.2011-31.12.2015 |
| ex 2914 29 00 | 30 | (R)- <i>p</i> -Mentha-1(6),8-dien-2-one | 0 % | 1.1.2011-31.12.2015 |
| ex 2914 50 00 | 20 | 3'-Hydroxyacetophenone | 0 % | 1.1.2011-31.12.2015 |
| ex 2914 70 00 | 60 | 4'- <i>tert</i> -Butyl-2',6'-dimethyl-3',5'-dinitroacetophenone | 0 % | 1.1.2011-31.12.2015 |
| ex 2915 90 00 | 60 | Ethyl-6,8-dichlorooctanoate | 0 % | 1.1.2011-31.12.2015 |
| ex 2916 20 00 | 60 | 3-Cyclohexylpropionic acid | 0 % | 1.1.2011-31.12.2015 |
| ex 2916 39 00 | 25 | 2-Methyl-3-(4-Fluorophenyl)-propionyl chloride | 0 % | 1.1.2011-31.12.2015 |
| ex 2916 39 00 | 30 | 2,4,6-Trimethylbenzoyl chloride | 0 % | 1.1.2011-31.12.2015 |
| ex 2917 19 90 | 50 | Tetradecanedioic acid | 0 % | 1.1.2011-31.12.2015 |
| ex 2917 39 95 | 20 | Dibutyl-1,4-benzenedicarboxylate | 0 % | 1.1.2011-31.12.2015 |
| ex 2917 39 95 | 30 | Benzene-1,2:4,5-tetracarboxylic dianhydride | 0 % | 1.1.2011-31.12.2015 |
| ex 2918 30 00 | 50 | Methyl (3-oxo-2-pentylcyclopentyl)acetate | 0 % | 1.1.2011-31.12.2015 |
| ex 2921 29 00 | 40 | Decamethylenediamine | 0 % | 1.1.2011-31.12.2015 |

| CN code | TARIC | Description | Rate of autonomous duty | Validity period |
|---------------|-------|--|-------------------------|---------------------|
| ex 2921 30 99 | 30 | 1,3-Cyclohexanedimethanamine | 0 % | 1.1.2011-31.12.2015 |
| ex 2921 49 00 | 70 | 2-Chlorobenzylamine | 0 % | 1.1.2011-31.12.2015 |
| ex 2922 29 00 | 75 | 4-(2-Aminoethyl)phenol | 0 % | 1.1.2011-31.12.2015 |
| ex 2922 39 00 | 20 | 2-Amino-5-chlorobenzophenone | 0 % | 1.1.2011-31.12.2015 |
| ex 2928 00 90 | 25 | Acetaldehyde oxime in an aqueous solution | 0 % | 1.1.2011-31.12.2015 |
| ex 2930 90 99 | 50 | [S-(R *, R *)]-2-Amino-1-[4-(methylthio)-phenyl]-1,3-propanediol | 0 % | 1.1.2011-31.12.2015 |
| ex 2931 00 99 | 10 | Diethylmethoxyborane | 0 % | 1.1.2011-31.12.2015 |
| ex 2931 00 99 | 15 | Triethylborane | 0 % | 1.1.2011-31.12.2015 |
| ex 2932 19 00 | 50 | 2-Methylfuran | 0 % | 1.1.2011-31.12.2015 |
| ex 2932 99 00 | 50 | 7-Methyl-3,4-dihydro-2H-1,5-benzodioxepin-3-one | 0 % | 1.1.2011-31.12.2015 |
| ex 2932 99 00 | 60 | (3aR,5aS,9aS,9bR)-3a,6,6,9a-Tetramethyl-2,4,5,5a,7,8,9,9b-octahydro-1H-benzo[e][1]benzofuran | 0 % | 1.1.2011-31.12.2015 |
| ex 2933 39 99 | 49 | 2-[[[3-Methyl-4-(2,2,2-trifluoroethoxy)-2-pyridinyl]methyl]thio]-1H-benzimidazole | 0 % | 1.1.2011-31.12.2015 |
| ex 2933 39 99 | 70 | 2-Chloromethyl-4-methoxy-3,5-dimethylpyridine hydrochloride | 0 % | 1.1.2011-31.12.2015 |
| ex 2933 39 99 | 80 | 5-Difluoromethoxy-2-[[[3,4-dimethoxy-2-pyridyl]methyl]thio]-1H-benzimidazole | 0 % | 1.1.2011-31.12.2015 |
| ex 2933 49 90 | 30 | Quinoline | 0 % | 1.1.2011-31.12.2015 |
| ex 2933 49 90 | 40 | Isoquinoline | 0 % | 1.1.2011-31.12.2015 |
| ex 2933 69 80 | 60 | Cyanuric acid | 0 % | 1.1.2011-31.12.2015 |
| ex 2933 79 00 | 70 | (S)-N-[(Diethylamino)methyl]-alpha-ethyl-2-oxo-1-pyrrolidineacetamide L-(+)-tartrate | 0 % | 1.1.2011-31.12.2015 |
| ex 2934 20 80 | 60 | Benzothiazol-2-yl-(Z)-2-trityloxyimino-2-(2-aminothiazole-4-yl)-thioacetate | 0 % | 1.1.2011-31.12.2015 |
| ex 2934 20 80 | 70 | N,N-Bis(1,3-benzothiazol-2-ylsulphanyl)-2-methylpropan-2-amine | 0 % | 1.1.2011-31.12.2015 |
| ex 2934 99 90 | 25 | 2,4-Diethyl-9H-thioxanthen-9-one | 0 % | 1.1.2011-31.12.2015 |
| ex 2934 99 90 | 40 | 2-Thiophene ethylamine | 0 % | 1.1.2011-31.12.2015 |

| CN code | TARIC | Description | Rate of autonomous duty | Validity period |
|----------------|-------|---|-------------------------|---------------------|
| ex 2934 99 90 | 50 | 10-[1,1'-Biphenyl]-4-yl-2-(1-methylethyl)-9-oxo-9H-thioxanthanium hexafluorophosphate | 0 % | 1.1.2011-31.12.2015 |
| ex 2938 90 30 | 10 | Ammonium glycyrrhizate | 0 % | 1.1.2011-31.12.2015 |
| *ex 3208 90 19 | 60 | Copolymer of hydroxystyrene with one or more of the following: — styrene, — alkoxy styrene, — alkylacrylates, dissolved in ethyl lactate | 0 % | 1.1.2011-31.12.2011 |
| ex 3402 11 90 | 10 | Sodium lauroyl methyl isethionate | 0 % | 1.1.2011-31.12.2015 |
| ex 3402 90 10 | 30 | Surface-active preparation, consisting of a mixture of sodium docusate and ethoxylated 2,4,7,9-tetramethyldec-5-yne-4,7-diol | 0 % | 1.1.2011-31.12.2015 |
| ex 3402 90 10 | 50 | Surface-active preparation, consisting of a mixture of polysiloxane and poly(ethylene glycol) | 0 % | 1.1.2011-31.12.2015 |
| ex 3701 30 00 | 30 | Waterless offset aluminium printing plate: | 0 % | 1.1.2011-31.12.2015 |
| ex 8442 50 80 | 10 | — with a plastic coating, — without a printing image, | | |
| *ex 3707 10 00 | 15 | Sensitising emulsion consisting of: — by weight not more than 12 % of diazooxonaphtalene-sulphonic acid ester, — phenolic resins, in a solution containing at least 2-methoxy-1-methylethyl acetate or ethyl lactate or methyl 3-methoxypropionate or 2-heptanone | 0 % | 1.1.2011-31.12.2013 |
| *ex 3707 10 00 | 35 | Sensitising emulsion or preparation containing one or more of: | 0 % | 1.1.2011-31.12.2011 |
| *ex 3707 90 90 | 70 | — acrylate polymers, — methacrylate polymers, — derivatives of styrene polymers, containing by weight not more than 7 % of photosensitive acid precursors, dissolved in an organic solvent containing at least 2-methoxy-1-methylethyl acetate | | |
| ex 3707 90 90 | 80 | Anti-reflection coating, consisting of either a siloxane polymer or an organic polymer having a phenolic hydroxy group modified with a chromophore group, in the form of a solution of an organic solvent containing either 1-ethoxy-2-propanol or 2-methoxy-1-methylethyl acetate containing by weight not more than 10 % of polymer | 0 % | 1.1.2011-31.12.2015 |

| CN code | TARIC | Description | Rate of autonomous duty | Validity period |
|----------------|-------|--|-------------------------|---------------------|
| ex 3808 99 90 | 10 | Oxamyl (ISO) in a solution of cyclohexanone and water | 0 % | 1.1.2011-31.12.2015 |
| ex 3812 30 80 | 40 | Mixture of: — 80 % (\pm 5 %) by weight of 2-ethylhexyl 10-ethyl-4,4-dimethyl-7-oxo-8-oxa-3,5-dithia-4-stannatetradecanoate, and, — 20 % (\pm 5 %) by weight of 2-ethylhexyl 10-ethyl-4-[[2-[(2-ethylhexyl)oxy]-2-oxoethyl]thio]-4-methyl-7-oxo-8-oxa-3,5-dithia-4-stannatetradecanoate, | 0 % | 1.1.2011-31.12.2015 |
| ex 3824 90 97 | 24 | Solution of (chloromethyl)bis(4-fluorophenyl)methylsilane of a nominal concentration of 65 % in toluene | 0 % | 1.1.2011-31.12.2015 |
| ex 3824 90 97 | 27 | Preparation, consisting of a mixture of 2,4,7,9-tetramethyldec-5-yne-4,7-diol and propan-2-ol | 0 % | 1.1.2011-31.12.2015 |
| ex 3824 90 97 | 28 | Preparation containing by weight: — 85 % or more but not more than 95 % of α -4-(2-cyano-2-butoxycarbonyl)vinyl-2-methoxy-phenyl- ω -hydroxyhexa(oxyethylene), and, — 5 % or more but not more than 15 % of polyoxyethylene (20) sorbitan monopalmitate, | 0 % | 1.1.2011-31.12.2015 |
| ex 3902 10 00 | 50 | High isotactic polypropylene (HIPP), whether or not coloured, intended for the manufacture of plastic components for air freshener with the following properties: — a density of 0,880 g/cm ³ or more but not more than 0,913 g/cm ³ (as determined by test method ASTM D1505), — a tensile strength at yield of 350 kg/cm ² or more but not more than 390 kg/cm ² (as determined by test method ASTM D638), — a heat deflection temperature of 135 °C or more under load of 0,45 MPa (as determined by test method ASTM 648), (1) | 0 % | 1.1.2011-31.12.2015 |
| ex 3903 90 90 | 50 | Crystalline copolymer of styrene and p-methylstyrene: — with a melting point of 240 °C or more but not more than 260 °C, — containing 5 % or more but not more than 15 % by weight of p-methylstyrene, | 0 % | 1.1.2011-31.12.2015 |
| *ex 3903 90 90 | 86 | Mixture containing by weight: — 45 % or more but not more than 65 % of polymers of styrene, — 35 % or more but not more than 45 % of poly(phenylene ether), — not more than 10 % of other additives, | 0 % | 1.1.2011-31.12.2013 |

| CN code | TARIC | Description | Rate of autonomous duty | Validity period |
|----------------|-------|---|-------------------------|---------------------|
| | | and with one or more of the following special colour effects: — metallic or pearlescent with a visual angular metamerism caused by at least 0,3 % flake-based pigment, — fluorescent, as characterized by emitting light during absorption of ultraviolet radiation, — bright white, as characterized by L * not less than 92 and b * not more than 2 and a * between -5 and 7 on the CIELab colour scale, | | |
| ex 3904 69 80 | 81 | Poly(vinylidene fluoride) | 0 % | 1.1.2011-31.12.2015 |
| *ex 3904 69 80 | 93 | Copolymer of ethylene with chlorotrifluoroethylene, in one of the forms mentioned in note 6 (b) to Chapter 39 | 0 % | 1.1.2011-31.12.2013 |
| *ex 3904 69 80 | 94 | Copolymer of ethylene and tetrafluoroethylene | 0 % | 1.1.2011-31.12.2013 |
| *ex 3904 69 80 | 96 | Polychlorotrifluoroethylene, in one of the forms mentioned in note 6 (a) and (b) to Chapter 39 | 0 % | 1.1.2011-31.12.2013 |
| *ex 3904 69 80 | 97 | Copolymer of chlorotrifluoroethylene and vinylidene difluoride | 0 % | 1.1.2011-31.12.2013 |
| *ex 3905 99 90 | 92 | Polymer of vinylpyrrolidone and dimethylaminoethyl methacrylate, containing by weight 97 % or more but not more than 99 % of vinylpyrrolidone, in the form of a solution in water | 0 % | 1.1.2011-31.12.2013 |
| ex 3906 90 90 | 40 | Transparent acrylic polymer in packages of not more than 1 kg, and not for retail sale with: — a viscosity of not more than 50 000 Pa.s at 120 °C as determined by the test method ASTM D 3835, — a weight average molecular weight (Mw) of more than 500 000 but not more than 1 200 000 according to the Gel Permeation Chromatography (GPC) test, — a residual monomer content of less than 1 %, | 0 % | 1.1.2011-31.12.2015 |
| ex 3907 20 11 | 40 | Polyethylene glycol with an ethylene oxide chain length of not more than 30, having butyl-2-cyano 3-(4-hydroxyphenyl) acrylate end groups, for use as a UV barrier in liquid masterbatches (1) | 0 % | 1.1.2011-31.12.2015 |
| ex 3907 99 90 | 30 | Poly(hydroxyalkanoate), predominantly consisting of poly(3-hydroxybutyrate) | 0 % | 1.1.2011-31.12.2015 |
| ex 3912 11 00 | 30 | Cellulose triacetate | 0 % | 1.1.2011-31.12.2015 |
| ex 3912 11 00 | 40 | Cellulose diacetate powder | 0 % | 1.1.2011-31.12.2015 |

| CN code | TARIC | Description | Rate of autonomous duty | Validity period |
|----------------|-------|---|-------------------------|---------------------|
| *ex 3919 10 80 | 21 | Reflecting sheet, consisting of: | 0 % | 1.1.2011-31.12.2013 |
| *ex 3919 90 00 | 21 | — a polycarbonate or acrylic polymer film totally embossed on one side in a regular shaped pattern, | | |
| *ex 3920 61 00 | 20 | — covered on both sides with one or more layers of plastic material, — whether or not covered on one side with a self-adhesive layer and a release sheet, | | |
| *ex 3919 10 80 | 50 | Adhesive film consisting of a base of a copolymer of ethylene and vinyl acetate (EVA) of a thickness of 70 µm or more and an adhesive part of acrylic type of a thickness of 5 µm or more, for use in the grinding and/or dicing process of silicon discs | 0 % | 1.1.2011-31.12.2013 |
| *ex 3919 90 00 | 41 | | | |
| *ex 3920 10 89 | 25 | (1) | | |
| *ex 3919 10 80 | 65 | Self-adhesive reflecting sheet whether or not in segmented pieces: | 0 % | 1.1.2011-31.12.2013 |
| *ex 3919 90 00 | 57 | — showing a regular pattern, — with or without an application tape layer, — consisting of a film of acrylic polymer followed by a layer of poly(methyl methacrylate) containing microprisms, — whether or not containing an additional layer of polyester and, — an adhesive with a final release sheet, | | |
| *ex 3919 90 00 | 35 | Reflecting layered sheet on rolls, with a width of more than 20 cm, showing an embossed regular pattern, consisting of poly(vinyl chloride) film coated on one side with: — a layer of polyurethane containing glass micro beads, — a layer of poly(ethylene vinyl acetate), — an adhesive layer, and, — a release sheet, | 0 % | 1.1.2011-31.12.2013 |
| *ex 3919 90 00 | 37 | UV absorbing film of poly(vinyl chloride): — with a thickness of 78 µm or more, — covered on one side with an adhesive layer and with a release sheet, — with an adhesive strength of 1 764 mN/25 mm or more, | 0 % | 1.1.2011-31.12.2014 |
| ex 3919 90 00 | 60 | Reflecting film containing: — a poly(vinyl chloride) layer, — a polyurethane layer, — a glass microspheres layer, — a layer whether or not incorporating a security and/or official mark which changes appearance with angle of view, — a metallised aluminium layer, and, — an adhesive, covered on one side with a release liner, | 0 % | 1.1.2011-31.12.2015 |

| CN code | TARIC | Description | Rate of autonomous duty | Validity period |
|--|-------|---|-------------------------|---------------------|
| ex 3919 90 00 | 65 | Self-adhesive film with a thickness of 40 µm or more, but not more than 400 µm, consisting of one or more layers of transparent, metallized or dyed poly(ethylene terephthalate), covered on one side with a scratch resistant coating and on the other side with a pressure sensitive adhesive and a silicone release liner | 0 % | 1.1.2011-31.12.2015 |
| ex 3919 90 00 | 70 | Self-adhesive polishing discs of microporous polyurethane, whether or not coated with a pad | 0 % | 1.1.2011-31.12.2015 |
| *ex 3920 20 29 | 92 | Mono-axial oriented film, of a total thickness of not more than 75 µm, consisting of two or three layers, each layer containing a mixture of polypropylene and polyethylene, with a core layer whether or not containing titanium dioxide, having: — a tensile strength in the machine direction of 140 MPa or more but not more than 270 MPa and, — a tensile strength in the transverse direction of 20 MPa or more but not more than 40 MPa, as determined by test method ASTM D882/ISO 527-3 | 0 % | 1.1.2011-31.12.2013 |
| ex 3920 62 19 | 47 | Sheets or rolls of poly(ethylene terephthalate): | 0 % | 1.1.2011-31.12.2015 |
| ex 3920 62 19 | 49 | — coated on both sides with a layer of epoxy acrylic resin, — of a total thickness of 37 µm (± 3 µm), | | |
| *4106 31 00 *4106 32 00 4106 40 90 4106 92 00 | | Leather of other animals, without hair on, not further prepared than tanned, other than leather of heading No 4114 | 0 % | 1.1.2011-31.12.2013 |
| ex 5402 47 00 | 20 | Bicomponent monofilament yarn of not more than 30 dtex, consisting of: — a polyethylene terephthalate core, and, — an outer layer of a copolymer of polyethylene terephthalate and polyethylene isophthalate, for use in the manufacture of filtration fabrics (1) | 0 % | 1.1.2011-31.12.2015 |
| *ex 5603 12 90 | 70 | Non-wovens of polypropylene: | 0 % | 1.1.2011-31.12.2013 |
| *ex 5603 13 90 | 70 | — with a melt blown layer, laminated on each side with spun-bonded filaments of polypropylene, | | |
| *ex 5603 92 90 | 40 | — with a thickness of not more than 550 µm, | | |
| *ex 5603 93 90 | 10 | — with a weight of not more than 150 g/m ² , — in the piece, or simply cut into squares or rectangles, and, — not impregnated, | | |

| CN code | TARIC | Description | Rate of autonomous duty | Validity period |
|----------------|-------|---|-------------------------|---------------------|
| ex 6805 10 00 | 10 | Abrasive in the form of identically shaped particles on a support | 0 % | 1.1.2011-31.12.2013 |
| ex 6805 20 00 | 10 | | | |
| *ex 6805 30 00 | 10 | | | |
| *ex 6909 19 00 | 20 | Silicon nitride (Si ₃ N ₄) rollers or balls | 0 % | 1.1.2011-31.12.2015 |
| ex 6909 19 00 | 50 | Ceramic articles made of continuous filaments of ceramic oxides, containing by weight: — 2 % or more of diboron trioxide, — 28 % or less of silicon dioxide and, — 60 % or more of dialuminium trioxide, | 0 % | 1.1.2011-31.12.2013 |
| *ex 6914 90 00 | 20 | | | |
| *ex 6914 90 00 | 30 | | | |
| *ex 7019 12 00 | 01 | Rovings, measuring 2 600 tex or more but not more than 3 300 tex and of a loss on ignition of 4 % or more but not more than 8 % by weight (as determined by the ASTM D 2584-94 method) | 0 % | 1.1.2011-31.12.2013 |
| *ex 7019 12 00 | 21 | | | |
| *ex 7019 12 00 | 02 | Rovings, measuring 650 tex or more but not more than 2 500 tex, coated with a layer of polyurethane whether or not mixed with other materials | 0 % | 1.1.2011-31.12.2013 |
| *ex 7019 12 00 | 22 | | | |
| *ex 7019 12 00 | 03 | Rovings, measuring 392 tex or more but not more than 2 884 tex, coated with a layer of an acrylic copolymer | 0 % | 1.1.2011-31.12.2013 |
| *ex 7019 12 00 | 23 | | | |
| *ex 7019 12 00 | 04 | Rovings, measuring 417 tex or more but not more than 3 180 tex, coated with a layer of poly(sodium acrylate) and poly(acrylic acid) | 0 % | 1.1.2011-31.12.2013 |
| *ex 7019 12 00 | 24 | | | |
| *ex 7019 19 10 | 41 | Yarn of 33 tex or a multiple thereof ($\pm 7,5$ %), obtained from continuous spun-glass filaments of a nominal diameter of 3,5 μm or of 4,5 μm , in which filaments of a diameter of 3 μm or more but not more than 5,2 μm predominate, other than those treated so as to improve their adhesion to elastomers | 0 % | 1.1.2011-31.12.2013 |
| *ex 7019 19 10 | 61 | | | |
| *ex 7019 19 10 | 42 | Yarn of E-glass of 22 tex ($\pm 1,6$ tex), obtained from continuous spun-glass filaments of a nominal diameter of 7 μm , in which filaments of a diameter of 6,35 μm or more but not more than 7,61 μm predominate | 0 % | 1.1.2011-31.12.2013 |
| *ex 7019 19 10 | 62 | | | |
| *ex 7019 19 10 | 43 | High modulus glass cord (K) impregnated with rubber, obtained from twisted high modulus glass filament yarns, coated with a latex comprising a resorcinol-formaldehyde resin with or without vinylpyridine and/or hydrogenated acrylonitrile-butadiene rubber (HNBR) | 0 % | 1.1.2011-31.12.2013 |
| *ex 7019 19 10 | 63 | | | |
| ex 7019 90 99 | 30 | | | |

| CN code | TARIC | Description | Rate of autonomous duty | Validity period |
|----------------|-------|---|-------------------------|---------------------|
| *ex 7019 19 10 | 44 | Glass cord impregnated with rubber or plastic, obtained from twisted glass filament yarns, coated with a latex comprising at least a resorcinol-formaldehyde-vinylpyridine resin and an acrylonitrile-butadiene rubber (NBR) | 0 % | 1.1.2011-31.12.2013 |
| *ex 7019 19 10 | 64 | | | |
| ex 7019 90 99 | 20 | | | |
| *ex 7019 19 10 | 45 | Glass cord impregnated with rubber or plastic, obtained from twisted glass filament yarns, coated with a latex comprising at least a resorcinol-formaldehyde resin and chlorosulphonated polyethylene | 0 % | 1.1.2011-31.12.2013 |
| *ex 7019 19 10 | 65 | | | |
| ex 7019 90 99 | 10 | | | |
| *ex 7019 19 10 | 46 | Glass cord impregnated with rubber or plastic, obtained from K or U glass filaments, made up of: | 0 % | 1.1.2011-31.12.2014 |
| *ex 7019 19 10 | 66 | | | |
| ex 7202 99 80 | 10 | Ferro-dysprosium, containing by weight: — 78 % or more of dysprosium and, — 18 % or more but no more than 22 % of iron, | 0 % | 1.1.2011-31.12.2015 |
| *ex 7606 12 92 | 20 | Strip of an alloy of aluminium and magnesium, containing by weight: — 93,3 % or more of aluminium, — 2,2 % or more but not more than 5 % of magnesium, and, — not more than 1,8 % of other elements, in rolls, of a thickness of 0,14 mm or more but not more than 0,40 mm and a width of 12,5 mm or more but not more than 89 mm, with a tensile strength of 285 N/mm ² or more and an elongation at break of 1,0 % or more | 0 % | 1.1.2011-31.12.2012 |
| ex 7607 11 90 | 20 | | | |
| *ex 7607 20 90 | 10 | Aluminium laminated film of a total thickness of not more than 0,123 mm, comprising of a layer of aluminium of a thickness of not more than 0,040 mm, polyamide and polypropylene base films, and a protective coating against corrosion by hydrofluoric acid, for use in the manufacture of lithium polymer batteries (1) | 0 % | 1.1.2011-31.12.2012 |
| ex 8108 90 30 | 30 | Titanium-aluminium-vanadium alloy (TiAl6V4) wire, complying with AMS standards 4928 and 4967 | 0 % | 1.1.2011-31.12.2015 |
| ex 8413 70 35 | 20 | Single phase centrifugal pump: — discharging at least 400 cm ³ fluid per minute, — with a noise level limited to 6 dBA, | 0 % | 1.1.2011-31.12.2015 |

| CN code | TARIC | Description | Rate of autonomous duty | Validity period |
|----------------|-------|--|-------------------------|---------------------|
| | | <ul style="list-style-type: none"> — with the inside diameter of the suction opening and discharge outlet of not more than 15 mm, and, — working at ambient temperatures down to - 10 °C, | | |
| ex 8414 59 20 | 40 | Axial fan with an electric motor, of an output of not more than 2 W, for use in the manufacture of products of heading 8528 (1) | 0 % | 1.1.2011-31.12.2015 |
| ex 8501 33 00 | 30 | Electric drive for motor vehicles, with an output of not more than 100 kW, with: <ul style="list-style-type: none"> — a DC motor with transmission, — power electronics connected by cable, | 0 % | 1.1.2011-31.12.2015 |
| ex 8504 50 95 | 40 | Coil choke with: <ul style="list-style-type: none"> — an inductance of 4,7 µH (± 20 %), — a DC resistance of not more than 0,1 Ohms, — an insulation resistance of 100 MOhms or more at 500 V (DC), for use in the manufacture of LCD and LED module power boards (1) | 0 % | 1.1.2011-31.12.2015 |
| *ex 8505 90 20 | 91 | Solenoid with a plunger, operating at a nominal supply voltage of 24 V at a nominal DC of 0,08 A, for use in the manufacture of products falling within heading No 8517 (1) | 0 % | 1.1.2011-31.12.2013 |
| ex 8507 80 30 | 60 | Lithium-ion rechargeable batteries: <ul style="list-style-type: none"> — of a length of 1 213 mm, — of a width of 245 mm, — of a height of 755 mm, — of a weight of 265 kg, — with a nominal capacity of 66,6 Ah, — put up in packs of 48 modules, | 0 % | 1.1.2011-31.12.2015 |
| ex 8507 80 30 | 70 | Rectangular modules for incorporation in lithium-ion rechargeable batteries: <ul style="list-style-type: none"> — of a length of 350 mm or 312 mm, — of a width of 79,8 mm or 225 mm, — of a height of 168 mm or 35 mm, — of a weight of 6,2 kg or 3,95 kg, — with a rating of 129 Ah or 66,6 Ah, | 0 % | 1.1.2011-31.12.2015 |
| ex 8507 80 30 | 80 | Rectangular lithium-ion-accumulator, with <ul style="list-style-type: none"> — a metal casing, — a length of 171 mm (± 3 mm), — a width of 45,5 mm (± 1 mm), — a height of 115 mm (± 1 mm), — a nominal voltage of 3,75 V and, — a nominal capacity of 50 Ah, for use in the manufacture of rechargeable batteries for motor vehicles (1) | 0 % | 1.1.2011-31.12.2015 |

| CN code | TARIC | Description | Rate of autonomous duty | Validity period |
|----------------|-------|---|-------------------------|---------------------|
| *ex 8518 40 80 | 91 | Circuit board sub-assembly, comprising digital audio signal decoding, audio signal processing and amplification with dual and/or multi-channel functionality | 0 % | 1.1.2011-31.12.2014 |
| ex 8518 40 80 | 92 | Circuit board sub-assembly, comprising power supply, active equalizer and power amplifier circuits | 0 % | 1.1.2011-31.12.2015 |
| *ex 8521 90 00 | 20 | Digital video recorder: — without a hard disk drive, — with or without a DVD-RW, — with either motion detection or capability of motion detection through IP connectivity via LAN connector, — with or without a USB serial port, for use in the manufacture of Closed-circuit television (CCTV) surveillance systems (1) | 0 % | 1.1.2011-31.12.2014 |
| *ex 8522 90 80 | 84 | Blu-ray drive mechanism, whether or not recordable, for use with Blu-ray, DVD and CD discs, comprising at least: — an optical pick up unit with laser diodes operating at three different wavelengths, — a spindle motor, — a stepping motor, | 0 % | 1.1.2011-31.12.2013 |
| ex 8525 80 19 | 31 | Closed circuit television (CCTV) cameras, whether or not contained in a housing, with: — a weight of not more than 960 g, — either a single sensor Charge-Couple Device (CCD) or a Complementary Metal-Oxide-Semiconductor (CMOS) sensor, — of not more than 440 000 effective pixels, | 0 % | 1.1.2011-31.12.2013 |
| *ex 8528 59 40 | 20 | Liquid crystal display colour video monitor having a DC input voltage of 7 V or more but not more than 30 V, with a diagonal measurement of the screen of 33,2 cm or less, suitable for the incorporation into goods of chapters 84 to 90 and 94 | 0 % | 1.1.2011-31.12.2013 |
| ex 8529 90 65 | 55 | Ambient light LED board to be incorporated in goods of heading 8528 (1) | 0 % | 1.1.2011-31.12.2015 |
| ex 8529 90 65 | 65 | Printed circuit board for distributing supply voltage and control signals directly to a control circuit on a TFT glass panel of a LCD module | 0 % | 1.1.2011-31.12.2015 |
| *ex 8529 90 65 | 75 | Modules comprising at least semiconductor chips for: — the generation of driving signals for pixel addressing, or, — driving addressing pixels, | 0 % | 1.1.2011-31.12.2012 |

| CN code | TARIC | Description | Rate of autonomous duty | Validity period |
|----------------|-------|--|-------------------------|---------------------|
| ex 8529 90 92 | 25 | LCD modules, not combined with touch screen facilities, solely consisting of: — one or more TFT glass or plastic cells, — a die cast heat sink, — a backlight unit, — one printed circuit board with micro controller, and, — LVDS (Low Voltage Differential Signalling) interface, for use in the manufacture of radios for motor vehicles (1) | 0 % | 1.1.2011-31.12.2015 |
| ex 8535 90 00 | 30 | Semiconductor module switch in a casing: | 0 % | 1.1.2011-31.12.2015 |
| ex 8536 50 80 | 83 | — consisting of an IGBT transistor chip and a diode chip on one or more lead frames, — for a voltage of 600 V or 1 200 V, | | |
| *ex 8540 11 00 | 91 | Colour cathode-ray tube with a slot mask, equipped with an electron gun and a deflection yoke and with a screen width/height ratio of 4/3 and a diagonal measurement of the screen of not more than 42 cm | 0 % | 1.1.2011-31.12.2011 |
| *ex 8540 11 00 | 92 | Full square curved screen colour cathode-ray tube, equipped with an electron gun and a deflection yoke and with a screen width/height ratio of 4/3 and a diagonal measurement of the screen of 68 cm (\pm 2 mm) | 0 % | 1.1.2011-31.12.2011 |
| *ex 8540 11 00 | 93 | Colour cathode-ray tube equipped with electron guns placed side by side (in-line technology), with a diagonal measurement of the screen of 79 cm or more | 0 % | 1.1.2011-31.12.2011 |
| *ex 8540 11 00 | 94 | Colour cathode-ray tube equipped with an electron gun and a deflection yoke, with a screen width/height ratio of 4/3 and a diagonal measurement of the screen of more than 72 cm | 0 % | 1.1.2011-31.12.2013 |
| *ex 8540 11 00 | 95 | Colour cathode-ray tube with a screen width/height ratio of 16/9 and a diagonal measurement of the screen of 39,8 cm (\pm 0,3 cm) | 0 % | 1.1.2011-31.12.2013 |
| ex 8543 70 90 | 40 | High-frequency amplifier comprising one or more integrated circuits and discrete capacitor chips on a metal flange in a housing | 0 % | 1.1.2011-31.12.2015 |
| *ex 8544 42 90 | 10 | Data transmission cable capable of a bit rate transmission of 600 Mbit/s or more, with: — a voltage of 1,25 V (\pm 0,25 V), — connectors fitted at one or both ends, at least one of which contains pins with a pitch of 0,5 mm, — outer screening shielding, used solely for communication between LCD or PDP panel and video processing electronic circuits | 0 % | 1.1.2011-31.12.2013 |
| *ex 8545 19 00 | 20 | Carbon electrodes, for use in the manufacture of zinc-carbon batteries (1) | 0 % | 1.1.2011-31.12.2013 |
| *ex 8547 10 00 | 10 | Insulated fitting of ceramics, containing by weight 90 % or more of aluminium oxide, metallised, in the form of a hollow cylindrical body of an external diameter of 20 mm or more but not more than 250 mm, for the manufacture of vacuum interrupters (1) | 0 % | 1.1.2011-31.12.2013 |

| CN code | TARIC | Description | Rate of autonomous duty | Validity period |
|----------------|-------|---|-------------------------|---------------------|
| ex 9001 90 00 | 85 | Light guide panel made of poly(methyl methacrylate), — whether or not cut, — whether or not printed, for use in the manufacture of backlight units for flat screen TVs (1) | 0 % | 1.1.2011-31.12.2015 |
| *ex 9022 90 00 | 10 | Panels for x-ray apparatus (x-ray flat panel sensors/x-ray sensors) consisting of a glass plate with a matrix of thin-film transistors, covered with a film of amorphous silicon, coated with a scintillator layer of caesium iodide and a metallised protective layer, with an active surface of 409,6 mm ² × 409,6 mm ² and a pixel size of 200 µm ² × 200 µm ² | 0 % | 1.1.2011-31.12.2013 |
| ex 9405 40 39 | 30 | Electric light assembly containing: — printed circuit boards and, — Light Emitting Diodes (LED), for the manufacture of backlight units for flat TV sets (1) | 0 % | 1.1.2011-31.12.2015 |
| ex 9503 00 75 | 10 | Plastic cable car scale models, whether or not with a motor, for printing (1) | 0 % | 1.1.2011-31.12.2015 |
| ex 9503 00 95 | 10 | | | |

(*) Suspension relating to a product in the Annex to Regulation (EC) No 1255/96 for which the CN or TARIC code or the product description is modified by this Regulation.

ANNEX II

Products referred to in Article 1(2)

| CN code | TARIC |
|----------------|-------|
| ex 2805 30 90 | 10 |
| ex 2805 30 90 | 20 |
| ex 2825 50 00 | 10 |
| ex 2933 79 00 | 40 |
| *ex 3208 90 19 | 60 |
| *ex 3707 10 00 | 15 |
| *ex 3707 10 00 | 35 |
| *ex 3707 90 90 | 70 |
| *ex 3903 90 90 | 86 |
| *ex 3904 69 90 | 81 |
| *ex 3904 69 90 | 93 |
| *ex 3904 69 90 | 94 |
| *ex 3904 69 90 | 96 |
| *ex 3904 69 90 | 97 |
| *ex 3905 99 90 | 94 |
| ex 3908 90 00 | 20 |
| *ex 3919 10 80 | 21 |
| *ex 3919 10 80 | 50 |
| *ex 3919 10 80 | 65 |
| *ex 3919 90 00 | 21 |
| *ex 3919 90 00 | 35 |
| *ex 3919 90 00 | 37 |
| *ex 3919 90 00 | 41 |
| *ex 3919 90 00 | 57 |
| *ex 3920 10 89 | 25 |
| *ex 3920 20 29 | 92 |
| *ex 3920 61 00 | 20 |
| ex 3920 62 19 | 88 |

| CN code | TARIC |
|----------------|-------|
| *4106 31 10 | |
| *4106 32 90 | |
| *4106 40 90 | |
| *4106 92 00 | |
| *ex 5603 12 90 | 70 |
| *ex 5603 13 90 | 70 |
| *ex 5603 92 90 | 40 |
| *ex 5603 93 90 | 10 |
| *ex 6805 10 00 | 10 |
| *ex 6805 20 00 | 10 |
| *ex 6805 30 80 | 10 |
| *ex 6909 19 00 | 20 |
| *ex 6909 19 00 | 50 |
| *ex 6914 90 90 | 20 |
| *ex 6914 90 90 | 30 |
| *ex 7019 12 00 | 10 |
| *ex 7019 12 00 | 15 |
| *ex 7019 12 00 | 50 |
| *ex 7019 12 00 | 70 |
| *ex 7019 19 10 | 10 |
| *ex 7019 19 10 | 30 |
| *ex 7019 19 10 | 55 |
| *ex 7019 19 10 | 60 |
| *ex 7019 19 10 | 70 |
| *ex 7019 19 10 | 80 |
| *ex 7019 90 99 | 10 |
| *ex 7019 90 99 | 20 |
| *ex 7019 90 99 | 30 |
| *ex 7606 12 10 | 10 |
| *ex 7607 11 90 | 20 |

| CN code | TARIC |
|----------------|-------|
| *ex 7607 20 99 | 10 |
| *ex 8505 90 10 | 91 |
| *ex 8518 40 89 | 91 |
| *ex 8521 90 00 | 20 |
| *ex 8522 90 80 | 84 |
| ex 8525 80 19 | 30 |
| *ex 8528 59 90 | 20 |
| *ex 8529 90 65 | 75 |
| *ex 8540 11 11 | 95 |
| *ex 8540 11 15 | 20 |
| *ex 8540 11 19 | 91 |
| *ex 8540 11 19 | 93 |
| *ex 8540 11 91 | 31 |
| *ex 8544 42 90 | 10 |
| *ex 8545 19 90 | 20 |
| *ex 8547 10 10 | 10 |
| *ex 9022 90 90 | 10 |

(*) Suspension relating to a product in the Annex to Regulation (EC) No 1255/96 for which the CN or TARIC code or the product description is modified by this Regulation.

COMMISSION REGULATION (EU) No 1266/2010
of 22 December 2010
amending Directive 2007/68/EC as regards labelling requirements for wines
(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs⁽¹⁾, and in particular Article 21 thereof,

Whereas:

- (1) Commission Directive 2007/68/EC⁽²⁾ amends the list of Annex IIIa to Directive 2000/13/EC indicating the ingredients which must be included in the labelling of foods as they are likely to cause adverse reactions in susceptible individuals; it also draws a list of certain derivatives from the ingredients included in Annex IIIa, for which it has been scientifically established that they are not likely, under specific circumstances to trigger adverse reactions and are therefore excluded from the labelling requirement. It furthermore repeals Commission Directive 2005/26/EC of 21 March 2005 establishing a list of food ingredients or substances provisionally excluded from Annex IIIa of Directive 2000/13/EC⁽³⁾.
- (2) Since changes in labelling rules affect industry, mainly small and medium-sized enterprises, which need an adaptation period to smooth the transition towards new labelling requirements, Directive 2007/68/EC provided for temporary measures to facilitate the application of the new rules by allowing the marketing of foods placed on the market or labelled before 31 May 2009 that complied with Directive 2005/26/EC until stocks were exhausted.
- (3) That transitional period provided for by those temporary measures was extended until 31 December 2010 by Commission Regulation (EC) No 415/2009⁽⁴⁾ for wines as defined in Annex IV to Council Regulation (EC) No 479/2008⁽⁵⁾.
- (4) Following the repeal of Regulation (EC) No 479/2008, wines are now defined in Annex XIb to Council Regulation (EC) No 1234/2007⁽⁶⁾. Reference should thus be made to that Annex.
- (5) In accordance with Article 6(11), first subparagraph of Directive 2000/13/EC, the list in Annex IIIa should be systematically re-examined and, where necessary, updated on the basis of the most recent scientific knowledge.
- (6) The wine sector conducted new scientific studies on the allergenicity of casein and ovalbumin, derived from milk and egg respectively, used as fining agents in the wine-making. According to the applicant, those studies are based on new scientific data demonstrating that wines fined with casein and ovalbumin according to good manufacturing practice are not likely to trigger adverse reactions in milk or egg allergic individuals.
- (7) On 8 June and 19 July 2010 the International Organisation of Vine and Wine made a request for a labelling exemption regarding casein and ovalbumin used in the manufacture of wine as clarification processing aids.
- (8) On 14 July and 30 July 2010 the Commission submitted to EFSA requests for scientific opinions on the above-mentioned substances.
- (9) In order to avoid unnecessary burdens on the economic operators due to changes in labelling rules, the mandatory application to the wine sector of Directive 2007/68/EC should be postponed pending the scientific assessment by EFSA.
- (10) The date provided for in Article 3(3) of Directive 2007/68/EC which sets out a transitional period should be consequently set for 30 June 2012 for wines placed on the market or labelled before that date and until their stocks are exhausted provided they comply with the provisions previously in force, namely those of Directive 2005/26/EC.
- (11) Directive 2007/68/EC should therefore be amended accordingly.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health, and neither the European Parliament nor the Council has opposed them,

⁽¹⁾ OJ L 109, 6.5.2000, p. 29.

⁽²⁾ OJ L 310, 28.11.2007, p. 11.

⁽³⁾ OJ L 75, 22.3.2005, p. 33.

⁽⁴⁾ OJ L 125, 21.5.2009, p. 52.

⁽⁵⁾ OJ L 148, 6.6.2008, p. 1.

⁽⁶⁾ OJ L 299, 16.11.2007, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

In Article 3 of Directive 2007/68/EC the third paragraph is replaced by the following:

'Member States shall allow wines, as defined in Annex XIb to Regulation (EC) No 1234/2007, placed on the market or

labelled before 30 June 2012, and which comply with the provisions of Directive 2005/26/EC, to be marketed until stocks are exhausted.'

Article 2

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

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

Done at Brussels, 22 December 2010.

For the Commission

The President

José Manuel BARROSO

DECISIONS

COMMISSION DECISION

of 15 December 2009

on State aid C 21/05 (ex PL 45/04) which Poland plans to implement for Poczta Polska as compensation of universal postal service obligations

(notified under document C(2009) 9962)

(Only the Polish text is authentic)

(Text with EEA relevance)

(2010/815/EU)

THE EUROPEAN COMMISSION,

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

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

Having called on interested parties to submit their comments pursuant to those provisions ⁽²⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By e-mail dated 30 April 2004, the Polish authorities notified two aid schemes in favour of the Polish postal operator Państwowe Przedsiębiorstwo Użyteczności Publicznej Poczta Polska (hereinafter 'PP'), under the 'interim mechanism procedure', provided for in Annex IV.3 of the Act of Accession, which forms part of the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union.

(2) The two aid schemes were registered under the following numbers: PL 45/04: Compensation to PP for carrying out universal postal services and PL 49/04: Aid to PP for investment related to the provision of universal postal services.

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

⁽²⁾ OJ C 274, 5.11.2005, p. 14.

(3) On 26 July 2004, 26 November 2004 and 7 February 2005, the Commission requested additional information. The Polish authorities submitted additional information by letters dated: 10 September 2004, 27 October 2004, 3 December 2004 and 29 March 2005.

(4) Two meetings between the Polish authorities and the Commission's services were held on 25 October 2004 and on 31 January 2005. On 20 June 2005, the Commission received additional information from the Polish authorities.

(5) By letter dated 29 June 2005, the Commission informed Poland that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the two aid schemes. The two aid schemes were registered under the following numbers: C 21/05: Compensation to PP for carrying out universal postal services and C 22/05: Aid to PP for investments related to the provision of universal postal services.

(6) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽³⁾. The Commission called on interested parties to submit their comments.

(7) The Commission received no comments from other interested parties.

(8) Poland submitted its comments by letter of 9 August 2005. A meeting between the Polish authorities and the Commission was held on 10 January 2006. The Commission required additional information by letter dated 24 January 2006.

⁽³⁾ See footnote 2.

- (9) By letter of 10 February 2006, the Polish authorities informed the Commission of their intention to withdraw the notification of the aid scheme C 22/05: Aid to PP for investments related to the provision of universal postal services. Following the request of the Commission of 27 February 2006, the Polish authorities indicated by letter of 13 March 2006 that they will not proceed with the aid project covered by the above notification and changed the legal framework of the scheme in order to remove the possibility to grant investment aid ⁽⁴⁾.
- (10) By decision of 27 April 2006, the Commission decided to terminate the proceedings under Article 88(2) of the EC Treaty in respect of the aid C 22/05: Aid to PP for investments related to the provision of universal postal services, because it had become without object ⁽⁵⁾ since the aid was never implemented.
- (11) By letter of 23 February 2006, the Polish authorities sent the Commission additional information in respect of the State aid case C 21/05: Compensation to PP for carrying out the universal postal service. They indicated however that in 2004 and 2005, no State compensation was granted to PP for carrying out the postal service obligation. The scheme in question was never funded and never applied in 2004 and 2005.
- (12) By decision of 9 January 2007, the Commission decided to terminate partially the proceedings under Article 88(2) of the EC Treaty in respect of the aid C 21/05: Aid to PP for carrying out the universal postal service for the period 2004-2005, because it has become without object since the aid was not implemented in 2004 and 2005. The proceedings under Article 88(2) of the EC Treaty remained open as for the period 1 January 2006 onwards ⁽⁶⁾. By letter of 3 January 2007 the Commission asked information on the aid scheme in question for the period 2006 onwards. The Polish authorities replied by letter of 1 February 2007.
- (13) PP held the status of Public Utility Company and exercised its activities on the basis of 'Act of 30 July 1997 on State Enterprise of public utility PP'. In its decision of 24 April 2007 concerning State aid case E 12/05: Unlimited State Guarantee to Poczta Polska, the Commission considered that the impossibility for PP to go bankrupt because of its legal status provided the undertaking with an unlimited State guarantee ⁽⁷⁾.
- (14) Under the plan adopted by the Council of Ministers on 11 April 2006, the transformation of the ownership of Poczta Polska was to take place in two stages, i.e. commercialization and privatisation. On 25 June 2008, Poland informed the Commission of the entry into force on 25 April 2008 of a new law dated 11 April 2008 amending the one providing PP the impossibility to be subject to ordinary bankruptcy proceedings. On the basis of the new law, it was not clear to the Commission though what legal regime applies to PP since its legal status did not appear to have been changed.
- (15) The first stage of transformation was implemented under Act of 5 September 2008 on commercialisation of the public utility PP ⁽⁸⁾, thereby PP was transformed from a State enterprise into joint-stock company (Spółka akcyjna) in which the Treasury holds 100 % of the shares. As a consequence, PP lost the legal status which prevented it to go bankrupt. The unlimited State guarantee in favour of PP has been thereby abolished and the company is now subject to ordinary bankruptcy proceedings.
- (16) Several meetings between the Polish authorities and the Commission were held on 27 June 2007, 20 July 2007, 26 September 2007 and 25 July 2008.
- (17) Following these meetings the Polish authorities transmitted complementary information which was registered by the Commission on 7 December 2007 (A/40109/a), 8 February 2008 (A/2536), 15 April 2008 (A/7047), 28 April 2008 (A/8137), 18 June 2008 (A/13261), 7 November 2008 (A/23609), 6 January 2009 (A/191), 2 February 2009 (A/2483), 29 April 2009 (A/10409), 15 June 2009 (A/14530), 4 September 2009 (A/19121), 14 September 2009 (A/19796), 25 September 2009 (A/20558), 1 October 2009 (A/20997) and 2 November 2009 (A/23309).

⁽⁴⁾ The Article 17 of the 'Act of 30 July 1997 on State Enterprise of public utility PP' stating that 'Polish Post shall receive ... subsidies from the State budget ... for financing the investments' has been annulled. The new Article 52.a in the Postal Law does not foresee the possibility to provide investment aid.

⁽⁵⁾ OJ C 223, 16.9.2006, p. 11.

⁽⁶⁾ OJ C 33, 15.2.2007, p. 9.

⁽⁷⁾ This guarantee qualified as aid within the meaning of Article 87(1) of the Treaty and, insofar covered all the activities of PP is unlimited in time and scope and is not remunerated, is incompatible with the common market. This State aid qualifies as existing aid within the meaning of Annex IV.3 point 1 of the Accession Treaty. On 25 April 2007, the Commission issued a recommendation to Poland proposing to adopt appropriate measures with regards to this guarantee, within the meaning of Article 18 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty. Since the Polish authorities already started the legislative process aimed to remove the State guarantee in favour of PP resulting from the impossibility for PP to be subject to bankruptcy proceeding and committed themselves to abolish it by 30 June 2008 at the latest, the Commission found that Polish authorities have addressed the Commission's competition concerns and closed the existing aid proceedings according to Article 19 of Regulation (EC) No 659/1999 (see OJ C 284, 27.11.2007).

⁽⁸⁾ Dziennik Ustaw No 180, item 1109.

II. DETAILED DESCRIPTION

II.1. The beneficiary

- (18) PP is the current national postal operator, which was established on 1 January 1992, by Ordinance of the Minister of Communication of 4 December 1991 and results from the transformation of the Office of Post and Telecommunications into postal and telecommunications units.
- (19) By way of 'Act of 12 June 2003 — Postal law' (hereinafter 'Postal Law')⁽⁹⁾, PP is entrusted⁽¹⁰⁾ with the obligation to provide the universal postal service on the whole territory of the Republic of Poland.
- (20) Through the implementation of the *Strategy for Development of PP for 2004-2006*, PP was transformed into a holding company. Consequent to these changes, the state-owned PP group is composed of the following subsidiaries:
- Bank Pocztowy S.A. which is 75 % owned by PP (hereinafter 'BP'),
 - Pocztylion-Arka Powszechnie Towarzystwo Emerytalne S.A., a pension fund 33 % owned by PP,
 - Poczтовая Agencja Usług Finansowych S.A. a financial services company 60 % owned by PP (hereinafter 'PAUF'),
 - Post Media Serwis Sp. z o.o.⁽¹¹⁾, a formally leasing service provider focusing now on advertising, promotion activities and publishing; it is wholly owned by PP,
 - Postdata S.A. (an IT system provider 51 % owned by PP),
 - Pocztowe Towarzystwo Ubezpieczeń Wzajemnych, a mutual insurance association wholly owned by PP (hereinafter 'PTUW').
- (21) In 2007, the company provided its services through 8 692 post offices, of which 53 % were located in rural areas and 47 % in urban areas. PP is the largest employer in Poland; in 2006, it employed over 95 000 employees.
- (22) PP is mainly active in the postal sector. The company provides, besides the universal postal service (reserved and non-reserved), free services that are not of universal character such as express delivery services, philately, and distribution of press or direct marketing services.
- (23) As a result of the continuing downward trend in volumes of public postal services, particularly at rural offices, in order to make maximum use of infrastructure and human resources while respecting its obligatory accessibility requirement, the Polish Post Office has for several years been developing financial and other commercial activities as well as cooperating with some financial or insurance companies. Some loss-making commercial services are currently being eliminated in the frame of the 'corrective program' launched at the end of 2008. Moreover, the Polish Post is aiming at increasing in the near future the number and volume of services provided for Bank Pocztowy, PAUF and PTUW which together with the current process of renegotiating the transfer prices should, according to Poland's expectations, lead in some years to ensure PP group a satisfactory return from the activities carried out on behalf of these subsidiaries.
- (24) PP's financial activities include sale of products belonging to Bank Pocztowy (a subsidiary of the bank PKO BP and PP) i.e. loans, accounts and deposits, leasing services (through PP's subsidiary-Post Media Serwis), different financial services including money transfers towards banking accounts, delivery of cash to the addressee's home in the form of a Postal Cash Payment Instruction, collection of Radio and TV licence fees and processing of banking checks issued by different banks and cash credits. PP is also active in the insurance market with the distribution of insurance and finance products from enterprises holding capital ties with Poczta Polska, i.e. PAUF, OFE Pocztylion and TUW Pocztowe⁽¹²⁾. PP also manages a pension fund called Pocztylion -Arka PTE S.A.
- (25) Finally, PP also provides IT services through its subsidiary-Postdata and e-commerce services.
- (26) From an organisational perspective, PP consists⁽¹³⁾ of
- 4 business units (profit centres): postal services centre; licensed services centre; logistics centre and postal network centre,
 - 5 support units: information technology centre; the infrastructure centre; the financial services centre the security management centre and the accounting centre,
 - the general directorate.

⁽⁹⁾ OJ No 130 (1188 as amended).

⁽¹⁰⁾ Article 46.2. The obligation of performance of the public operator's tasks described within the Postal Law shall be entrusted to Poczta Polska.

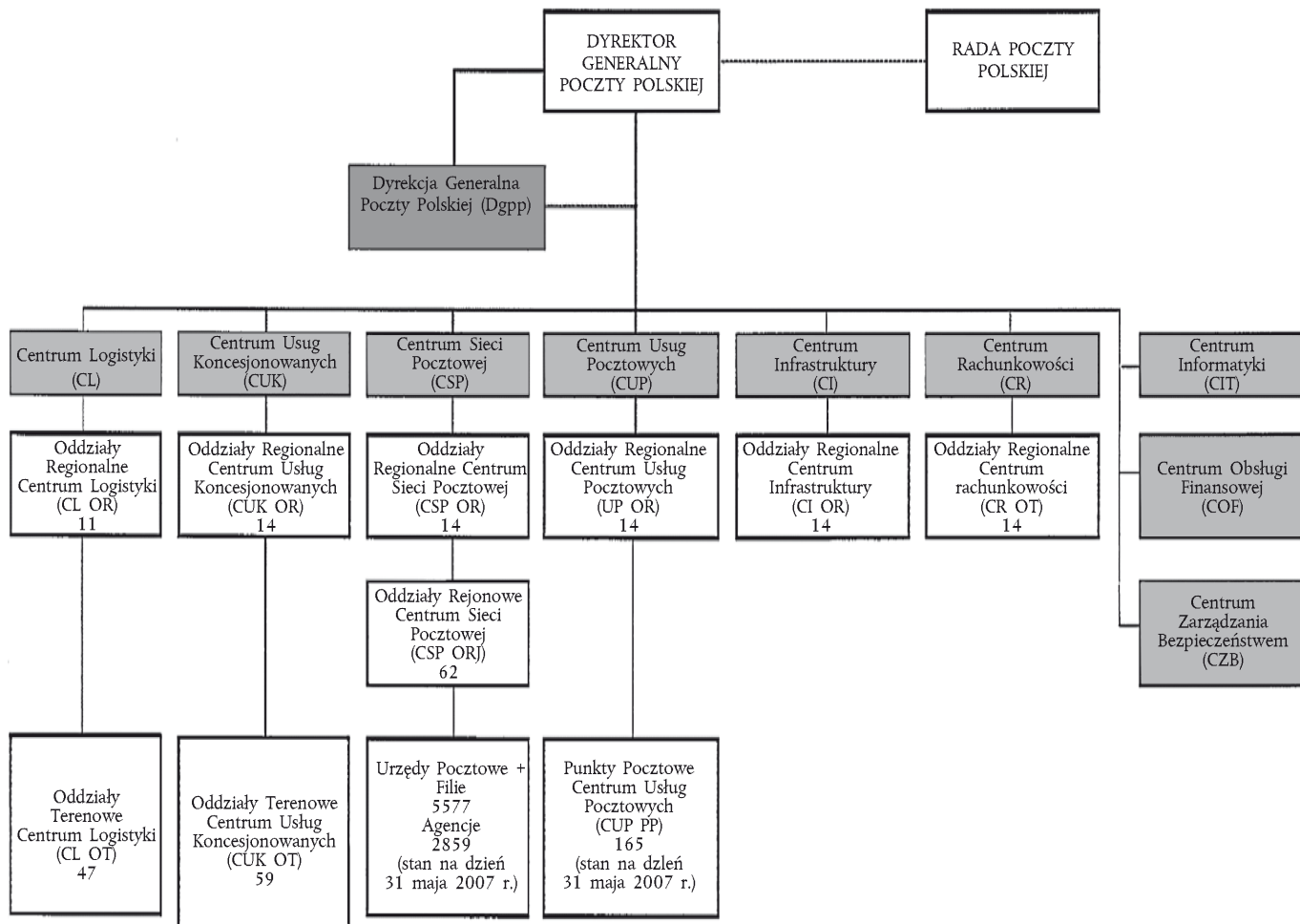
⁽¹¹⁾ Currently named POST-TEL Sp. z o.o. providing in addition IT activities.

⁽¹²⁾ Poczтовая Agencja Usług Finansowych S.A. (PAUF), Otwarty Fundusz Emerytalny Pocztylion (OFE Pocztylion) and Pocztowe Towarzystwo Ubezpieczeń Wzajemnych (PTUW).

⁽¹³⁾ The above mentioned structure has recently undergone several reorganisations. Most of the above centres have regional branches.

Schemat 1

Schemat Organizacyjny Poczty Polskiej
(Struktura organizacyjna obowiązująca do 31 lipca 2007r.)



(27) During the financial year 2006 PP achieved a turnover of PLN 6 289 million ⁽¹⁴⁾, an operating profit of PLN 146 million and a net profit of PLN 124 million. As at 31 December 2006 the own capital amounted PLN 1 573 million, the total liabilities including provisions for liabilities PLN 2 597 million of which current-liabilities were PLN 1 525 million.

(28) Poczta Polska provides services in 3 activity types:

- basic activity (universal postal services, contracted services and trade services),
- ancillary activity (auxiliary activities carried out for PP in-house needs ⁽¹⁵⁾ to support basic activities, sales and management e.g. transport services, protection of property and personnel dealing with cash convoys and storing),

⁽¹⁴⁾ If an estimative exchange rate of 1 EUR = 4 PLN is taken then the turnover would amount to EUR 1 572 mil.

⁽¹⁵⁾ If there is free capacity these activities such as transport, concession services, ancillary production can be provided to a external client.

- social activity (provision of services to employees such as housing, canteens, medical and education ⁽¹⁶⁾).
- (29) In 2006 99 % of PP's turnover was generated by basic activities, which consist of (i) universal postal services (reserved and non-reserved); (ii) contracted services (mainly other postal services falling outside the scope of the universal postal service, financial services like cash payments into bank accounts and management of Bank Pocztowy's loans and deposits, radio and television licence management and insurance mediation); and (iii) trade services (mainly sale of trade goods, philately, mail order of textbooks, trade in foreign currency).
- II.2. The universal postal service entrusted to PP**
- (30) By way of Article 46(2) of the Postal law of 12 July 2003 ⁽¹⁷⁾, PP is entrusted with the obligation to provide the universal postal service on the territory of the Republic of Poland.
- (31) Article 3(25) of the Postal law defines as universal postal services the postal services of:
- clearance, transport and delivery of:
 - letter items weighting up to 2 000 grams, including registered letters and insured letters with declared values,
 - postal parcels weighting up to 10 000 grams, including insured parcels,
 - postal items for blind persons,
 - delivery of postal parcels sent from abroad weighting up to 20 000 grams,
 - handling of postal money orders,
- provided within domestic and international traffic on the territory of the Republic of Poland, in a consistent way on compatible conditions and at affordable prices, maintaining quality required by law and ensuring of emptying the mail box and delivery of the postal items at least on every working day and no less frequently than 5 days a week.
- (32) The conditions for the provisions of the universal postal service are defined by the Ordinance of the Minister of Infrastructure of 9 January 2004 on the conditions for the provision of universal postal services ⁽¹⁸⁾.
- (33) Routing times are defines as follows:
- priority letters: D + 1 82 %, D + 2 90 %, D + 3 94 %,
 - non-priority letters: D + 3 85 %, D + 5 97 %,
 - priority parcels: D + 1 80 %,
 - non-priority parcels: D + 3 90 %.
- (34) A post office should be operated:
- for each 7 000 in habitants in urban areas,
 - for each 65 sq km in rural areas.
- (35) Also each county (gmina) of over 2 500 inhabitants should have at least one post office. A county with less than 2 500 inhabitants can be served by a neighbouring county's post office or a mobile post office provided that it ensures a better quality of service or has a prior consent of local authorities. Every outlet should be open at least 5 days a week.
- (36) Article 47 of the Postal Law defines the services which are reserved for PP. These services are:
- clearance, transport and delivery of items of domestic:
 - letter items (currently with weight not exceeding 50 grams),
 - direct mail (currently with weight not exceeding 50 grams),
 - postal items other than those just mentioned above, posted in a way making it impossible to examine their content (currently with weight not exceeding 50 grams),
 - clearance, transport and delivery of items of international mail deliveries (currently with a maximum weight limit of 50 grams).
- (37) Pursuant to Article 47 of the Postal Law fees for provision of universal postal services should be established with regard to the costs of their provision, should be uniform on the entire territory of the country, transparent and non-discriminatory.
- (38) Moreover the subsidisation of universal postal services which are not reserved with the income from reserved services is explicitly prohibited in the same law.

⁽¹⁶⁾ If there is free capacity these services such as medical services, catering services, rental of guest rooms and training facilities can be provided on a commercial basis to third persons.

⁽¹⁷⁾ 'The obligation of performance of the public operator's tasks described within the Act of Law shall be entrusted to Poczta Polska'.

⁽¹⁸⁾ OJ No 5 (34) as amended.

- (39) According to Article 12 of the 'Act of 30 July 1997 on State Enterprise of public utility PP' the Polish Post shall run its business basing upon its own plans, following the rule of cost efficiency and economic effectiveness.
- (40) On the basis of Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, Poland intends to abolish legal monopolies on postal services by 31 December 2012 at the latest.

II.3. The measure under assessment

- (41) On the basis of Article 17 of the 'Law of 30 July 1997 on State Enterprise of public utility PP' ⁽¹⁹⁾, on the basis of the 'Postal law', of the 'Ordinance of the Minister of Infrastructure of 9 January 2004 on the conditions for the provision of universal postal services' and of the 'Ordinance of the Minister of Finance of 24 December 2003', the Polish authorities intend to grant subsidies to PP to compensate potential losses incurred in connection with the provision of the universal postal service.
- (42) These subsidies will be granted *ex post* on the basis of the possible recorded losses of a certain financial year, if any. The amount of the subsidies will be limited to the amount of the incurred losses.
- (43) The scope of the Commission's in-depth assessment of the scheme focused on whether the measure is in line with the compatibility conditions set out in the Community framework for State aid in the form of public service compensation. Such examination mainly concentrated in obtaining reasonable assurance that the State will not overcompensate the net additional costs ⁽²⁰⁾ Poczta Polska will incur in discharging the universal public service obligation.

III. COMMENTS FROM INTERESTED PARTIES

- (44) No comments were received from other interested parties.

IV. COMMENTS FROM POLAND

- (45) Poland submitted its comments in the course of the investigation (see recital 17 above).

⁽¹⁹⁾ By the 'Act of 5 September 2008 on commercialization of the public utility PP' the 'Act of 30 July 1997 on State Enterprise of public utility PP' was partially annulled. The content of Article 17, concerning subsidies to PP for provision of universal postal services, was transferred to a newly created Article 52a in the existing Act of 12 June 2003.

⁽²⁰⁾ The Commission considers that the net additional cost of the public service obligation is the cost incurred in discharging the public service obligation, taking into account the relevant receipts and a reasonable profit for discharging those obligations.

IV.1. Information provided

- (46) Poland submitted information on PP's organisational structure, activities and relevant markets in which the undertaking is active (see section II.1), applicable legislation, pertinent accounting rules and methodology, different relevant data and reports from the National Regulatory authority on the compliance of the cost accounting system with Article 52 Postal Law and the Ordinance of the Minister of Finance of 24 December 2003 (hereinafter the 'Ordinance').
- (47) More particularly Poland made available to the Commission relevant legislation such as the Law of 30 July 1997 on State Enterprise of public utility PP, the Postal law of 12 July 2003 and its subsequent modification, the Ordinance of the Minister of Finance of 24 December 2003 and the Act of 5 September 2008 on commercialisation of the public utility PP.
- (48) Poland submitted detailed information on the accounting separation and the cost allocation methodology adopted by the postal operator in order to quantify the costs ⁽²¹⁾ of the universal postal service.
- (49) Poland delivered data on different categories of costs and revenues, results according to the area of activity ⁽²²⁾, detailed results for individual services, financial statements and other type of financial data.
- (50) All past reports ⁽²³⁾ issued annually by the National Regulatory Authority have been made available to the Commission.

IV.2. PP's accounting system

- (51) The Polish authorities indicated that PP's internal accounting system operates on the basis of consistently applied and objectively justifiable cost accounting principles, in conformity with the provisions of the Postal Law transposing into Polish legislation Article 14(2) of Directive 97/67/EC imposing separate accounts within the internal accounting system of the universal service providers.

⁽²¹⁾ See 'Company Cost Instruction' which establishes rules of cost recording and division, method and frequency of the calculation of keys, stages of cost settlement at the end of an accounting period and rules of determining the cost of rendering a service. It also defines the scope of responsibility of organizational units.

⁽²²⁾ Postal area: reserved-universal services (US), non-reserved US, and non-US; Financial services area and other services.

⁽²³⁾ Summary or complete reports provided for the years 2004, 2005, 2006 and 2007.

- (52) On the basis of Article 52(1) ⁽²⁴⁾ and Article 52(2) ⁽²⁵⁾ of the Polish Postal Law, PP must keep accounts in a way, which (i) allows costs to be calculated separately, for each reserved service, and collectively for non-reserved services (universal service as well as non-universal services) as well as (ii) enables the calculation of unit costs. In accordance with the Postal Law, on 24 December 2003, the Minister of Finance issued an Ordinance on the method of cost allocation of the operator providing the universal postal service ⁽²⁶⁾. This ordinance ⁽²⁷⁾, which entered into force on 1 January 2004, implements Article 14(3) of Directive 97/67/EC.
- (53) PP divides its integrated accounting system in three main categories:
- Financial accounting system: expenses and income are recorded by type;
 - Analytical accounting system: costs are allocated to PP's organisational units by cost centres;
 - System of direct or indirect allocation of costs to products.
- IV.2.1. *System of allocation of costs*
- (54) Within the financial accounting system (a), expenses are recorded by type ⁽²⁸⁾.
- (55) Within the analytical accounting system (b), accounting records of costs and revenues cover:
- responsibility centres: i.e. the organisational units responsible for the provision of services,
 - distribution channels: i.e. units responsible for sales.
- (56) Within the system of allocation of costs to services (c), costs are divided into:
- direct costs: these costs can be directly ascribed to a specific service on the basis of direct measurement or source document. In 2006, they accounted for [...] ^(*) of PP's total costs. For example, these costs include the cost of forms required for particular services, final payments to foreign postal administrations or the cost for operating RTV subscription service units,
 - indirect costs: these costs, which cannot be directly attributed to services are written to the indirect cost accounts, and then allocated among services using specific allocation keys. In 2006, they accounted for [...] of PP's total cost. Main categories of indirect costs ⁽²⁹⁾ are:
 - Operating costs ⁽³⁰⁾: in 2006, they accounted for [...] of PP's total costs. These costs relate to the technological process of rendering services such as clearance, sorting and delivery of postal items. This process involves the largest number of PP's workforce, which explains the high amount of these costs. Furthermore, these costs also include depreciation and maintenance of the equipment used in the technological process, such as sorting machines, conveyor belts, scales, etc. Operating costs are allocated to services using keys based on the time required to provide the services. Individual operations carried out in post offices, main offices and delivery areas are standardized ⁽³¹⁾. In 2006, PP counted about 600 standardized operations which are regularly updated. In 2006, the assessment covered 5 577 post offices, 242 main offices and 23 800 delivery areas;
 - Transport costs ⁽³²⁾: in 2006, they accounted for [...] of PP's total costs. These costs include the cost of carrying mail cargoes by the Logistics Centre and the cost of postal cargoes carried

^(*) Business secret.

⁽²⁹⁾ Costs related with licensed-based services are not further explained in the text given its minor relative importance i.e. [...] of PP's total costs.

⁽³⁰⁾ Accounts 511 and 515: Costs of remunerations and surcharges on remunerations; amortization of computers and computer programs; telecommunication services; consumption of materials and exploitation forms; repairs and maintenance of postal equipment.

⁽³¹⁾ The process of the provision of individual services in the Polish Post was divided into detailed operations. A standard of working time which specifies how much time is needed to perform one activity has been assigned to each operation. Then, once a year, research into workload is carried out, during which the number of performed operations is noted down. Following that, the standard working time which is devoted to the provision of a given service is estimated.

⁽³²⁾ Account 512: Costs connected with the exploitation of postal wagons; costs of remunerations including surcharges of postal guards – related to the conveyance of postal matter; personal costs of the employees responsible for postal vans; personal costs of the employees of the Wagon Management Department.

⁽²⁴⁾ 'Operator providing universal postal services shall be obliged to maintain accounting books and cost accounting in a way enabling the cost calculation: 1) separately for every service from the reserved services area; 2) collectively for non-reserved services with separation on: a) universal postal services, b) services not belonging to universal postal services category.'

⁽²⁵⁾ 'Minister competent to public financial matters, in consultation with Minister competent to post and telecommunications shall establish by Ordinance, the method of cost allocation, based on the principle, that such a method should enable calculation of unit costs, having regard to section 1.'

⁽²⁶⁾ OJ No 232 (2327).

⁽²⁷⁾ See points 2.1.1 to 2.1.4 of the Ordinance of the Minister of Finance of 24 December 2003.

⁽²⁸⁾ Under the following headings: depreciation, materials used, energy used, transport services, repair services, third-party services, wages, employee services, advertising and publicity, taxation and charges, banking services, travel costs, miscellaneous.

by foreign carriers. Transport costs are allocated to services using keys mainly based on weight ⁽³³⁾ of the postal item transported;

(c) Network maintenance costs ⁽³⁴⁾: in 2006, they accounted for [...] of PP's total costs. These costs concern post office maintenance, e.g. rent, energy, equipment, upkeep and maintenance of buildings, taxation and charges. According to Poland these costs are allocated among all types of services and not only to the public postal services for which that network was built and is maintained. They are attributed to services in function of the sum of (i) direct costs plus (ii) indirect operating costs plus (iii) indirect transport costs already attributed to services;

(d) Other indirect costs ⁽³⁵⁾: in 2006, they accounted for [...] of PP's total costs. These costs include in particular the costs of the Logistics Centre related to the delivery of packages and cash-on-delivery items, the delivery and collection of express mail, telegrams, the costs of third-party services in the emptying of letter boxes, delivery of mail, non-addressed mail and forwarding and sorting services, the cost of domestic air transportation and third-party services. The costs of delivery of these items are allocated to services using keys mainly based on records of number of delivered items,

— other costs (or 'General costs' ⁽³⁶⁾): These common costs are allocated to services on the basis of a general allocator i.e. they are allocated proportionally, so according to the percentage surcharge of the previously allocated costs. Main categories of these costs are:

(a) General, administrative and development costs ⁽³⁷⁾: in 2006, they accounted for [...] of the costs of all services. These costs relate in particular to expenditure for general administration, accounting and finance purposes, as well as development costs. They include: depreciation of buildings, structures and premises, as well as machines and equipment both for general use and those constituting equipment for administrative services work-

places, the costs of operating and maintaining administrative premises and their equipment, staff remuneration and contributions, stationery and office equipment used by administrative staff, the costs of development and implementation projects and other undertakings implemented at central level. These are assigned to a product using the 'cost to cost' methodology ⁽³⁸⁾;

(b) Selling costs and commercial costs: in 2006, they accounted for [...] of the costs of all services.

— Selling costs ⁽³⁹⁾: these are the costs accruing to the sale of services, which also include the costs of maintaining sales, marketing costs and advertising costs. Selling costs are assigned to services using the 'cost to cost' methodology.

— Commercial costs ⁽⁴⁰⁾: these are the costs incurred in carrying out commercial activities, including the marketing and distribution of commercial products in post offices, at fuel stations, in buffets and philatelic items. These are mainly the costs of the storage of commercial goods, and the personnel and material costs of this activity. These costs are assigned to the cost of purchasing goods and materials sold.

(c) Financial costs: those financial costs related with interest, exchange rate differences and lease of means of transport and other fix assets are included in the calculation of costs of services. In 2006 they accounted for [...] of the total cost of PP services.

(57) PP's analytical accounting is carried out within the general accounting.

(58) A considerable part of costs in the Polish Post constitute indirect costs for which there is a possibility to identify cost carriers and their measurement. 'Other costs', which may not be classified as direct or indirect, are allocated to services at the stage of unit cost calculation in proportion to the costs previously allocated on individual services ⁽⁴¹⁾.

⁽³³⁾ Records of the number of items x average item weight as given by statistical research.

⁽³⁴⁾ Account 510: Costs of amortization of buildings, facilities, generally applied machinery and equipment; costs of rents, real property taxes, payments for land use rights; municipal services; repairs and maintenance of buildings and facilities; energy and water supply; employing postal security guards in post offices; costs of cleaning.

⁽³⁵⁾ Account 514: Costs of external services related to the delivery of parcels and postal matter paid on delivery; express postal matter; collecting mail from mailboxes; costs of maintaining the Departments of Operation and Technical Supervision, costs of services related to delivery.

⁽³⁶⁾ 'Other costs' are costs of general nature which may not be classified as direct or indirect costs.

⁽³⁷⁾ Account 551.

⁽³⁸⁾ Costs are allocated in proportion to the costs previously allocated on service accounts.

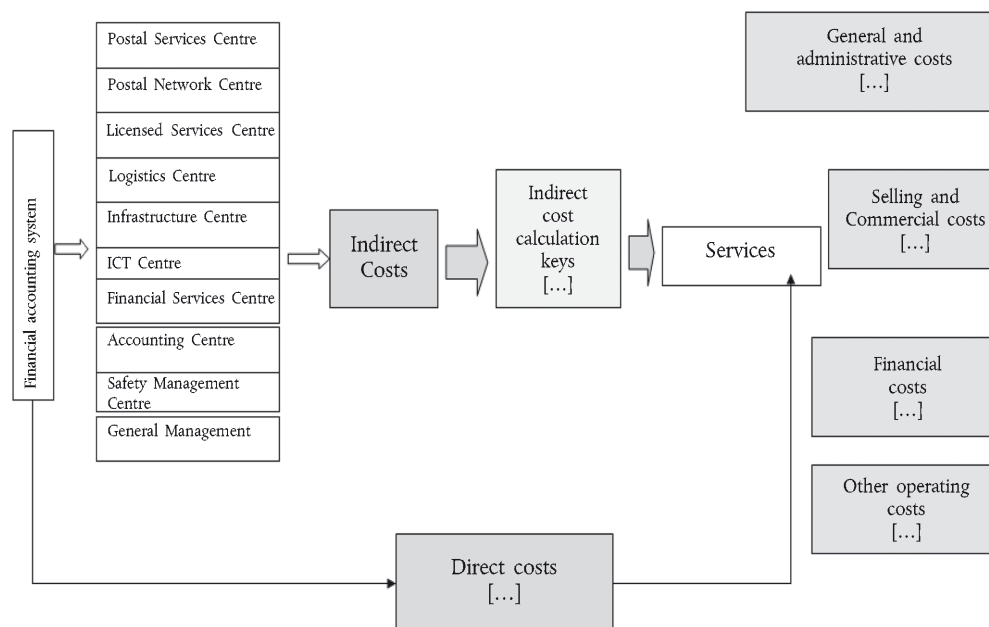
⁽³⁹⁾ Account 527.

⁽⁴⁰⁾ Account 513.

⁽⁴¹⁾ The Polish Post is planning to perform soon the first cost calculation using the ABC model. All the costs are entered into the accounts of the '5' group: 500-509 are service accounts into which the costs of the manufacture of individual services are entered; 510, 511, 512, 514 are the accounts into which indirect costs are entered; 527 and 551 are the accounts into which other costs are entered. Then the costs entered into the group of accounts '5' are transferred to accounts 710-719.

- (59) The methodology of the calculation of unit cost has been subject to changes e.g. the order of the allocation of 'other costs' settled by surcharge in proportion to the previously allocated direct and indirect costs was changed ⁽⁴²⁾. The calculation of unit cost in the Polish Post is carried out by the company's Accounting Centre.

PP's accounting model



IV.2.2. System of allocation of revenues

- (60) Revenues from sales originate from the postal, financial and other activities ⁽⁴³⁾ carried out by PP. Financial revenues include mainly dividends or interest received (e.g. on deposits, trade receivables). Other operating revenues mainly consist of revenues obtained from the disposal of non-financial fixed assets, compensation for damages, write-offs of overdue liabilities, cancellation of unused provisions and revenues from social welfare activities.
- (61) Revenues from sales can typically be directly allocated to services. Financial revenues and other operating revenues which can be directly assigned to a given group of services were allocated as follows:
- financial revenues from exchange rate differences: [...] of which are positive exchange rate differences caused as a result of settlements between the administrations for postal matter in foreign turnover were assigned to the group of (universal and non-universal) postal services and the other [...] of the revenues directly related to the sale of currencies were assigned to the third group 'others' ⁽⁴⁴⁾.
 - other operating revenues from subsidies on services subject to statutory exemption from charges: they were fully assigned to universal services which the exemptions referred to.

⁽⁴²⁾ In 2007 firstly 'financial costs' are allocated and then the surcharge for 'selling and commercial costs' and 'general, administrative and development costs' is calculated. In 2006 all three types of 'other costs' were allocated simultaneously using a common surcharge.

⁽⁴³⁾ E.g. Sale of trade goods acquired with the intention to sell in an unprocessed form, both retail and wholesale, consignment services, sale of municipal transport service rights, advertising, sale of transport services and other auxiliary services when the capacity exceeds in-house needs, etc.

⁽⁴⁴⁾ Sale of goods and materials

- (62) Financial revenues and other operating revenues which could not be assigned directly to services were assigned to service groups in proportions used for the allocation of financial costs and other operating costs to these service groups.

IV.2.3. Data on costs and revenues for PP's three service categories

- (63) PP's 151 services are grouped in 3 macro-categories: postal services, financial services and others. Each of the services has got a separate account. The breakdown of 2006 costs and revenues among PP's 3 main service categories is shown in Annex 1.

IV.3. Additional assurance on the adequacy of the accounting system

- (64) The Postal Law provides⁽⁴⁵⁾ on the one hand, that the National Regulatory Authority properly ensures that PP keeps accounting records in accordance with the provisions of the Postal Law and of the Ordinance of 23 December 2003, and, on the other hand, that the auditing firm responsible for certifying the accounts of the universal service provider must also check that the accounts comply with the abovementioned rules on separate accounting.
- (65) According to Poland, the National Regulatory Authority (UKE) has effectively evaluated, among other issues, to what extent PP fulfilled the requirements resulting from Article 52 of the Postal Law and the Regulation of the Minister of Finance of 24 December 2003. In this examination it has always been concluded that (i) unit cost calculation is performed for each service from the reserved area and (ii) cost calculation procedures covered separately non-reserved universal postal services and services which do not belong to universal postal services meaning that PP kept its account books and cost statement in compliance with the requirements specified in Article 52 section 1 of the Postal Law. Moreover, the auditors got yearly reasonable assurance that PP allocated costs to services in a direct and indirect way and the allocations were performed according to the method defined in the Regulation of the Minister of Finance of 24 December 2003 regarding the method of dividing the costs incurred by the operator that provides universal postal services.
- (66) As a result of the annual verification carried out by the National Regulatory Authority a set of recommendations is proposed in the report. According to Poland procedures and guidelines have been introduced in the last years to improve the quality or the implementation

of the allocation keys used e.g. a direct cost control procedure was introduced at PP in which following tasks are foreseen to be made (a) re-assessing whether a certain type of direct cost can occur within a particular service (b) checking the correct allocation of direct costs between the services, e.g. the reserved and non-reserved services, business and priority services (c) monitoring the uniform approach to the recording of direct costs of services in each of the Regional Branches of the Accountancy Centre and (d) periodical reviewing of overheads in order to identify any costs unrelated to the provision of postal services.

IV.4. Compensation amount of the USO

- (67) According to Article 52a.1⁽⁴⁶⁾ of Postal Law PP has a right to receive a compensation for the loss incurred on the universal services but this amount cannot exceed the difference between costs of universal postal services provisions and income which is obtained from these services (see Article 52a.2⁽⁴⁷⁾).
- (68) According to Article 52a.4 'Subsidy for the year, in which the loss incurred is granted till 31 December of each year following the year, which the subsidy refers to, on the basis of submitted by the President of UKE, till 30 November of the year following the year, which the subsidy refers to, to Minister competent to post and telecommunications: 1) copy of the financial report of the public operator examined by the auditor, which is referred to in Article 52 paragraph 6; 2) information that the conditions, as referred to in Act of Law, under which universal services are entrusted are fulfilled; 3) information concerning verified requirements to maintain accounting books and cost accounting, as referred to in Article 52 paragraph 1 and 2.; 5. Provisions of Article 33a shall be respectively applicable to the subsidy, as referred to in paragraph 1'.
- (69) The Polish authorities indicated that no losses have been incurred for the provision of the universal postal service over the period 1998-2008. Hence, no State compensation took place over that period.
- (70) A more detailed breakdown of 2006 results within the postal services is shown in Annex 2.

⁽⁴⁵⁾ See Article 52 (Section 4, 5 and 6).

⁽⁴⁶⁾ Public operator obliged to provide universal postal services, shall receive from the State budget the subsidy to the provided universal postal services, if it incurs loss.

⁽⁴⁷⁾ The amount of the subsidy shall be established within the Act of Law – Budget Law, having regard to the principle, that total amount of subsidy cannot exceed the difference between costs of universal postal services provisions and income, which is obtained from these services.

(71) According to the forecast figures for 2009-2011 a net surplus is expected to be posted in the UPS-area. Thus during the whole period of the scheme, i.e. 2006-2011, PP will presumably not receive any compensation for discharging the universal postal service obligations (see more detailed information on costs and revenues achieved and expected to be achieved in the universal postal service's area in Annex 3).

Table 1

(million PLN)

| Universal postal services | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|--------------------------------|-------|-------|-------|-------|-------|-------|
| Revenues (A) | [...] | [...] | [...] | [...] | [...] | [...] |
| Costs (B) | [...] | [...] | [...] | [...] | [...] | [...] |
| Surplus of the UPS (A)-(B) (*) | [...] | [...] | [...] | [...] | [...] | [...] |

(*) After full allocation of results (including financial results and other operating) with the exception of extraordinary results.

IV.5. Conclusion

- (72) Poland quantified costs and revenues of the universal postal service on the basis of the accounting separation and allocation methodology indicated above.
- (73) Poland indicated that considering (i) the information provided by Poland on the cost accounting methodology and related procedures, (ii) the data provided (iii) the existing legal provision for compensation and (iv) the non-inclusion of a reasonable profit into the basis for calculating the compensation amount, the scheme is not liable to overcompensate PP for the discharge of the public service obligation.

V. ASSESSMENT

V.1. Qualification of the measure as State aid

(74) According to Article 107(1) TFEU, 'save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.

V.1.1. Existence of State resources

- (75) In order to be qualified as State aid, advantages must be imputable to the State and be granted directly or indirectly by means of State resources.
- (76) In the case in point, the compensation that will be granted to PP for discharging its universal postal service

obligations will be paid from the State's budget. Specific legal instruments, like 'Law of 30.07.1997 on State Enterprise of public utility PP', 'Postal law', the 'Ordinance of the Minister of Infrastructure of 9 January 2004 on the conditions for the provision of universal postal services' and 'Ordinance of the Minister of Finance of 24 December 2003' are the legal basis for the granting of this compensation.

(77) Therefore, the two above-mentioned cumulative conditions are met in the present case.

V.1.2. Selectivity

(78) Moreover, Article 107(1) TFEU prohibits aid which 'favours certain undertakings or the production of certain goods', that is to say, selective aid.

(79) The compensation will be granted exclusively to PP, thus it is selective.

V.1.3. Advantage

(80) To constitute a State aid, a measure must confer an advantage to recipients.

(81) It is apparent from the case-law of the Court of Justice of the European Communities that public service compensation does not constitute State aid within the meaning of Article 107(1) TFEU if it fulfils certain conditions⁽⁴⁸⁾. However, if public service compensation does not meet these conditions and if the general criteria for the applicability of Article 107(1) TFEU are satisfied, such compensation constitutes State aid.

(82) In its judgment in *Altmark*, the Court laid down the conditions under which public service compensation does not constitute State aid as follows:

— '(...) First, the recipient undertaking must actually have public service obligations to discharge and those obligations must be clearly defined (...).

— (...) Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner (...).

— (...) Third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public services obligation, taking into account the relevant receipts and a reasonable profit (...).

⁽⁴⁸⁾ Judgments in Case C-280/00 *Altmark Trans* and *Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark* (2003) ECR I-7747 and Joined Cases C-34/01 to C-38/01 *Enirisorse v Ministero delle Finanze* (2003) ECR I-14243.

- (...) Fourth, where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant a public procurement procedure, which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs, which a typical undertaking, well run and adequately provided within the same sector would incur, taking into account the receipts and a reasonable profit from discharging the obligations.'
- (83) Where these four cumulative criteria are met, public service compensation does not constitute State aid because it does not grant an economic advantage and Articles 107(1) and 108 TFEU do not apply. If the Member States do not respect these criteria and if the general criteria for the applicability of Article 107(1) TFEU are met, public service compensation constitutes State aid, which must be notified pursuant to Article 108(3) TFEU.
- (84) In the case at hand, the Commission considers that the fourth criterion is not met.
- (85) Firstly, the public service was not awarded as a result of an open public procurement procedure.
- (86) Secondly, nor the Polish authorities have argued that PP is being compensated according to the costs of a typical undertaking within the sector, neither is the Commission in a position to conclude that the costs of PP are those of a typical well run undertaking. Moreover, the envisaged subsidies refer to incurred losses. Thus, it can be concluded that the selective measure in point ought to be considered as conferring an advantage to PP, which can be qualified as economic advantage within the meaning of Article 107(1) TFEU.
- V.1.4. Affectation of trade and distortion of competition*
- (87) Article 107(1) TFEU also prohibits aid which affects trade between Member States and which distorts or threatens to distort competition.
- (88) In its assessment of those two conditions, the Commission is required not to establish that the aid has a real effect on trade between Member States and that competition is actually being distorted, but only to examine whether that aid is liable to affect such trade and distort competition⁽⁴⁹⁾. When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid.
- (89) It is not necessary that PP itself be involved in intra-Union trade. Aid granted by a Member State to an undertaking may help to maintain or increase domestic activity, with the result that undertakings established in other Member States have less chance of penetrating the market of the Member State concerned. Furthermore, the strengthening of an undertaking which, until then, was not involved in intra-Union trade may place that undertaking in a position which enables it to penetrate the market of another Member State.
- (90) As regards the letter segment outside the reserved area, three operators hold licences to render these services. These companies are PP, 'Dystrybucja Polska Sp. z o.o.' and 'Indesys Dominik Steinhaus'. According to the Polish authorities, the current position of Poczta Polska on this segment is still strong, because one of the competitors ('Dystrybucja Polska Sp. z o.o.') concentrates on the distribution of printed advertising and the other limits its activities to the Masovia Region.
- (91) The Polish parcels and courier services segment is highly competitive. PP's market share of the parcels segment amount to [...] and its market share of the courier segment to [...] ⁽⁵⁰⁾. Companies operating in this market are companies providing high quality services charged at a high price (DHL, TNT, UPS) or companies providing basic services (e.g. General logistic systems, Opek, Schenker, X-Press Couriers, Blyskawica).
- (92) PP's share in the advertising deliveries segment is approx. [...], whilst in the unaddressed printed forms segment it is approx. [...] ⁽⁵¹⁾. Despite the [...] market share of PP, an aggressive policy of the growing number of competitors is observed.
- (93) Regarding financial services, the Commission recalls that the banking sector has been open to competition for many years. Progressive liberalization has enhanced the competition that may already have resulted from the free movement of capital provided for in the TFEU.
- (94) PP's financial activities include sale of products belonging to Bank Pocztowy (a subsidiary of the bank PKO BP) i.e. loans, accounts and deposits, leasing services (through PP's subsidiary-Post Media Serwis), different financial services including money transfers towards banking accounts, delivery of cash to the addressee's home in the form of a Postal Cash Payment Instruction, collection of Radio and TV licence fees and processing of banking checks issued by different banks and cash credits. PP is also active in the insurance market with the distribution of insurance and finance products from enterprises holding capital ties with Poczta Polska, i.e. PAUF, OFE Pocztylion and TUW Pocztove. PP also manages a pension fund called Pocztylion -Arka PTE S.A.

⁽⁴⁹⁾ See for instance judgment of the Court in case C-372/97 *Italy v Commission* [2004] ECR I-3679, paragraph 44.

⁽⁵⁰⁾ Figures for 2006.

⁽⁵¹⁾ Figures for 2006.

- (95) Due to the fact that the PP distributes insurance and financial products from subsidiary or related companies it is in competition with other banks, insurance companies and brokers. Additionally, over the recent years, PP has significantly broadened the range of its payment services to customers, adding to the traditional postal instruments a series of instruments that were formerly the domain of banks (debit and credit cards, credit transfers, standing debit orders for utility bills). These evolutions have increased the substitutability of the financial services offered by PP with those offered by banks.
- (96) Financial institutions from different Member States operate in Poland, either directly through branches or representative offices, or indirectly by controlling Polish-based banks and financial institutions.
- (97) To conclude, there is competition amongst companies from different Member States in the postal and financial services sectors. The public service compensation which might be granted to PP would strengthen the position of PP in relation to postal and financial undertakings established in Poland or other Member States which, as a consequence, might have more difficulties to enter the Polish market. Therefore, the measure is liable to distort competition and affect trade between Member States.

V.1.5. Conclusion

- (98) Any compensation granted under the present scheme to PP would amount to State aid within the meaning of 107(1) TFEU.

V.2. Assessment of compatibility of the aid

- (99) As mentioned in section I above, following decision of 9 January 2007, the proceedings under Article 88(2) of the EC Treaty remain open as for the period 1 January 2006 onwards.
- (100) Point 25 of the 2005 Community framework for State aid in the form of public service compensation⁽⁵²⁾ (hereinafter the 'Framework') states that 'This framework will apply for a period of six year from the date of its publication in the *Official Journal of the European Union*'. Point 26 of the framework indicates that 'The Commission will apply the provisions of this framework to all aid projects notified to it and will take a decision on those projects after the framework is published in the Official Journal, even if the projects were notified prior to such publication'.
- (101) The aid in question has been notified by the Polish authorities within the 'interim mechanism' procedure (see decision to initiate the procedure laid down in Article 88(2) of 25 June 2005). It follows that the applicable legal provisions for assessing the compatibility

of the scheme during the time period 2006-2011 is the Community framework for State aid in the form of public service compensation.

- (102) The Commission considers that, 'at the current stage of development of the internal market, public service compensation which is State aid within the meaning of Article 107(1) TFEU may be declared compatible with the Treaty under Article 106(2) if it is necessary to the operation of the service of general economic interest and does not affect the development of trade to such an extent as would be contrary to the interests of the Union'.
- (103) In order to achieve such balance, the Commission applies the provisions of the Framework to assess the compatibility of the case at hand. Under the Framework the three basic criteria of compatibility are that (i) the service in question is a genuine public service (i.e. qualifying it as a service of economic general interest is not a manifest error), that (ii) the service is entrusted to the undertaking by an official act that contains the elements specified in section 2.3 of the above mentioned Community framework, and that (iii) the undertaking is not overcompensated for the provision of public service (taking into account a reasonable profit).

V.2.1. Genuine service of general economic interest

- (104) As indicated in the Framework, Member States have a wide margin of discretion regarding the nature of services that could be classified as being services of general economic interest. The Commission's task is to ensure that the margin of discretion is applied without manifest error as regards the definition of service of general economic interest.
- (105) The public service obligation entrusted to PP is the universal postal service in accordance with the postal directive (see section II.2 above). The provision of universal postal services throughout the Polish territory in order to offer to the Polish population the same basic services at the same costs is a classic case of SGEL.
- (106) Consequently, the universal postal service entrusted to PP qualifies as service of general economic interest within the meaning of Article 106 TFEU.

V.2.2. Need for an instrument specifying the public service obligations and the methods of calculating compensation (Entrustment)

- (107) As indicated in the Framework, the concept of service of general economic interest within the meaning of Article 86 of the Treaty means that the undertaking in question has been entrusted with a special task. Responsibility of the operation of the service of general economic interest must be entrusted to the undertaking concerned by way of one or more official act.

⁽⁵²⁾ OJ C 297, 29.11.2005.

- (108) In the case at hand, the Postal law of 12 July 2003 and the 'Ordinance of the Minister of Infrastructure of 9 January 2004 on the conditions for the provision of universal postal services' constitute the legal instruments which define and entrust to PP the service of general economic interest represented by the universal postal service (see sections II.2, II.3 and IV.4 above).
- (109) In conformity with section 2.3 of the above mentioned Community framework, these acts specify, in particular:
- the precise nature of the public service obligation (universal postal service obligation) (Article 3.25 of the Postal Law),
 - the undertaking (PP) and territory concerned (the whole national territory) (Article 3.25 of the Postal Law),
 - the nature of the exclusive rights assigned to PP (Article 46.2 of the Postal Law).
- (110) Whereas Article 52 and 52.a of the Postal Law and the Ordinance of the Minister of Finance of 24 December 2003 already set some principles on compensation⁽⁵³⁾ these are insufficient to consider the requirement established in points 12(d) and 12(e) of the Framework as fully met.
- (111) Currently, according to point 2.2 of the 'Ordinance' the type of results to be allocated to services is limited to 'Costs of products, goods and materials sold', 'Selling costs', 'General and administrative costs' and 'Interest from liabilities financing postal services including foreign exchange rate differences'. Therefore, the Commission considers that not all parameters relevant for calculating compensation have been specified in the national acts. Due to the fact that certain costs and revenues⁽⁵⁴⁾ have been fully omitted in the national acts from the list of items to be allocated to services their subsequent controlling and reviewing has also been left out (see section V.2.3.3 below).
- (112) Article 52.a.4 establishes some requirements imposed on UKE to proceed with the approval of a subsidy compensating the postal operator for the discharge of the USO i.e. previous submission of (1) the financial report of the public operator examined by the auditor, (2) information of the fulfilment of entrustment conditions and (3) information concerning verified requirements to maintain accounting books and cost accounting as referred to in Article 52 paragraph 1 and 2. For the same reasons explained above, given that Article 52.2 makes a direct reference to the Ordinance and this only specifies the allocation of certain costs to services the Commission considers that not all parameters relevant for calculating compensation have been taken into account in the relevant national act(s). Consequently, if not all parameters relevant for calculating compensation were taken into account the requirement regarding the specification in the relevant national acts of the arrangements for avoiding any overcompensation has to be regarded as not fully met as well. The limited scope of the annual verifications carried out every year confirms this assertion (see further explanations in section V.2.3.5 below). Analogously, the provisions examined by the Commission do not seem to contain any arrangement for repaying any possible overcompensation.
- (113) Therefore, the Commission finds the requirements regarding the specification in the relevant national acts of (i) the parameters for calculating, controlling and reviewing the compensation (point 12(d) of the Framework) and of (ii) the arrangements for avoiding and repaying any overcompensation (point 12(e) of the Framework) as not fully met. Moreover, for the reasons explained above, the Commission considers adequate to clearly specify in the relevant national act the objective of the annual verification, namely ensuring that no overcompensation takes place.
- (114) To conclude, the entrustment does not contain all the elements required by the Framework for State aid in the form of public service compensation, namely those mentioned in point 12d and point 12e of the Framework. Consequently, the second criterion can only be deemed to be partially fulfilled and appropriate remedies to include the costs and revenues referred to in point 128.i) have to be adopted in order to assess if granting compensation to PP according to the measure at stake is necessary and to ensure the compatibility of that compensation.
- (115) The analysis of the implementation of the scheme in section V.2.3 below will show more clearly the consequences in the practice of an incomplete definition of parameters and of arrangements for avoiding overcompensation.
- V.2.3. No overcompensation
- (116) Pursuant to paragraph 14 of the Framework '(...) the amount of the compensation does not exceed what is necessary to cover the costs in discharging the public service obligations, taking into account the relevant receipts and reasonable profit for discharging these obligations.' It also indicates that '(...) the costs to be taken into consideration include all the costs incurred in the operation of the services of general economic interest. (...) Where an undertaking also carries out

⁽⁵³⁾ E.g. The total amount of compensation cannot exceed the difference between costs of the provision of UPS and income, which is obtained from these services. See additional explanations in sections II.2, II.3, IV.4 and V.3.3 of the present decision.

⁽⁵⁴⁾ Following the same terminology used in the Profit&Loss Account the mentioning of next results was omitted in the Ordinance: i.e. 'Net revenues from sales of products, goods and materials', 'Other operating revenues', 'Other operating costs', 'Financial revenues', 'Financial costs' and 'Extraordinary results' (which correspond to items A, G, H, J, K and M in the 'Profit and Loss Account').

activities outside the scope of the services of general economic interest, only the costs associated with the service of general economic interest may be taken into consideration (...).

(117) PP's activities are not confined to the services of general economic interest (see section II.1 above).

(118) In order to conclude that this criterion is fulfilled it is necessary in this case to quantify the costs of the public service obligation (universal postal service) imposed on PP by the entrustment acts and then compare them with the advantages that will be granted to PP by the State.

(119) Article 52a of the Polish Postal Law already states clearly the prohibition to overcompensate '1. The Public operator obliged to provide universal postal services, shall receive from the State budget the subsidy to the provided universal postal services, if it incurs loss. 2. The amount of the subsidy shall be established within the Act of Law – Budget Law, having regard to the principle, that total amount of subsidy cannot exceed the difference between costs of universal postal services provisions and revenue, which is obtained from these services ...'.

V.2.3.1. Results actually incurred

(120) The Commission found that the sums of certain categories of revenues and costs indicated in the analytical accounting were also recorded in the financial statements. Due to the fact that the analytical accounting is carried out within the financial accounting⁽⁵⁵⁾ and this is subject every year to an independent audit, which resulted in no material observations, the Commission has no reason to doubt that the internal revenues and costs presented did actually incur.

V.2.3.2. Adequate separation of accounts for the purpose of calculating the net result of USO

(121) As PP is not only a provider of Services of General Economic Interest (SGEI) but also a provider of other commercial services Article 14(2) of Directive 97/67/EC imposes an obligation on the undertaking to separate accounts within the internal accounting.

(122) On the basis of Article 52(1) of the Postal Law, PP must keep accounts in a way, which allows costs to be calculated separately, for each reserved service, and

collectively for non-reserved services divided into universal postal services and services other than universal postal services.

(123) The Commission has checked that the internal accounting system clearly distinguish accounts for universal (divided into reserved and non-reserved) and non-universal services. Poland has submitted evidence of such separation by showing results by individual service accounts and aggregated results by group of services.

(124) As evidenced by the information provided to the Commission and by the annual examination carried out by the National Regulator PP's results are calculated for each reserved service separately⁽⁵⁶⁾ and collectively for each of the following groups (i) non-reserved universal postal services and (ii) other commercial services (outside the SGEI) in accordance with the requirements set out in Article 52(1) of the Postal Law.

(125) In particular, for the years 2006 and 2007, the reports of the National Regulatory Authority indicate that PP, as a public operator provider of universal postal services, conducted its bookkeeping and cost accounting in a way that makes it possible to separate costs for each reserved service and collectively for non-reserved services, distinguishing between universal postal service and non-universal postal services in accordance with the requirements set out in Article 52(1) of the Postal Law.

(126) On the basis of the information sent by Poland on PP's separation of accounts, on the evidence of external verification carried out regarding the proper division of accounting for universal and non-universal services and on the checks accomplished by the Commission it can be reasonably concluded that the accounting split between commercial activities and activities operated by PP under public service obligations is appropriate. The Commission is therefore of the opinion that PP adequately separates its accounts in a manner that makes cost calculation possible separately for each service from the reserved area and collectively for unreserved services with a division into UPS and non-UPS as specified in Article 14(2) of Directive 97/67/EC.

V.2.3.3. Full allocation of costs and revenues to services

(127) As part of the examination the Commission carried out a test of completeness of the financial data provided by reconciling PP's aggregated data from the analytical accounting with the Profit & Loss Account.

⁽⁵⁵⁾ Drawn following the Accounting Act of 29 September 1994.

⁽⁵⁶⁾ With the exception of 'other operating results', 'extraordinary results' and certain 'financial results' which were only attributed to group of services after having been requested by the Commission.

- (128) The Commission found that (i) costs and revenues from certain categories i.e. 'other operating results'⁽⁵⁷⁾, 'extraordinary results' and some 'financial results' were not distributed to services and that (ii) the Ordinance of the Minister of Finance of 24 December 2003 limited the type of costs to be allocated to services to 'Costs of products, goods and materials sold', 'Selling costs', 'General and administrative costs' and 'Interest from liabilities financing postal services including foreign exchange rate differences'. The relative importance of these costs and revenues, for which an allocation is not foreseen in the national provisions, accounted for 2,5 % and 1,5 % of their respective totals in the year 2006. Although the cost and revenues that have not been allocated to services can be regarded as marginal in the past in view of their relative importance, their importance might be material in the future.
- (129) However, as regards the past, Poland has submitted new information in which such 'non-allocated results' were ex-post attributed to universal services (reserved and non-reserved) and non-universal services (broken down into postal, financial and other services). Moreover, Poland has submitted an explanation of the methodology used to allocate them to services. All this demonstrates that PP has delivered a reasonable methodology to allocate those results.
- (130) The other categories of internal costs and revenues⁽⁵⁸⁾ could be reconciled with the P & L account.
- (131) Therefore, the Commission considers necessary the systematic distribution to services of all revenues and costs referred to in point 128.i), in compliance with the principle of full allocation of results and with the conditions set out in the Framework.
- V.2.3.4. Proper method of cost allocation and its adequate implementation
- (132) As stated above Article 52(2) of the Postal Law requires that the 'Minister competent to public financial matters, in consultation with Minister competent to post and telecommunications shall establish by Ordinance, the method of cost allocation, based on the principle, that such a method should enable calculation of unit costs, having regard to section 1'.
- (133) In accordance with the above mentioned Article 52(2), on 24 December 2003, the Minister of Finance issued an Ordinance on the method of cost allocation of the operator providing the universal postal service which implements Article 14(3) of the Directive.
- (134) The reports issued by the National Regulatory Authority indicate that PP allocated costs directly or indirectly to

the costs of services provided and performed this allocation as set out in the Ordinance of the Minister of Finance of 24 December 2003 on the method for allocating costs for providers of universal postal services. The National Regulatory Authority has yearly confirmed that PP's costs were assigned in the following way:

- (i) costs connected with only one service or group of services are directly assigned to this service or group of services on the basis of accounting vouchers;
- (ii) costs directly connected with several services are assigned to each service or group of services on the basis of analyzing the value of factors causing cost generation within a given service or group of services;
- (iii) in the case when it is not possible to assign costs in a direct way, costs connected with several services are assigned to each service or group of services on the basis of their relationship with a given group of costs directly connected with this service or group of services;
- (iv) in the case when it is not possible to assign costs in a direct or indirect way, other costs are assigned to each of the services on the basis of a general indicator calculated as a ratio of the costs directly and indirectly assigned to a given service or group of services to the total cost assigned to all the services and groups of services.

(135) Although in 2006 only [...] of costs were considered direct costs the Commission found no reason to put into question the correct division of costs into direct and indirect costs. Moreover, the checks carried out by the National Regulatory Authority and the auditors have concluded that 'the direct cost control has been implemented and functions effectively'.

(136) As for indirect costs (see section 'IV.2.1. System of allocation of costs' above) the Commission is of the opinion that the keys used to distribute the different major categories of indirect costs (i.e. operating costs, transport costs, network maintenance costs and other indirect costs) to services, though limited in number, are nevertheless reasonable.

(137) For example, it seems reasonable that the key used to distribute 'operating costs' is 'working time in minutes devoted to the performance of particular services'⁽⁵⁹⁾ given the difficulty to precisely ascribe to service accounts costs for the performance of clearance, sorting and delivery activities connected with the provision of different services. The Commission is aware of the recent introduction in PP's accounting system of

⁽⁵⁷⁾ E.g. PP records other operating costs related with the business such as losses on disposal of non-financial fixed assets, costs of discontinued production, provision of services free of charge, penalties, fines and damages paid, provisions created on potential losses and reasonable risks on business operations and costs of social welfare activities. In 2006 PP recorded around PLN 147 million as other operating costs.

⁽⁵⁸⁾ See different submissions of aggregated results, title 'Results on services and activities of the Polish Post'.

⁽⁵⁹⁾ i.e. in distribution centres, in the Postal Network Centre and in the Postal Service Centre.

a more refined division of operating costs together with an increase in the number of allocation keys which should improve the accuracy of the internal accounting information.

Commission does not put into question the correct allocation of 'revenues from sales' to services.

- (138) Similarly the key 'weight of the postal item delivered' seems plausible for distributing 'transport costs'. Therefore, for the purpose of distributing transport costs to services the Commission accepts the assumption behind the established key that each kilo of any service takes up the cost element 'transport' in the same way.
- (139) In order for PP to be able to carry out the distribution of 'other indirect costs' to services it has to collect data on (i) weight of postal items delivered, (ii) volume/number of postal items delivered and (iii) working time required to perform the different operations. These statistics are collected by means of 'statistical research results' ⁽⁶⁰⁾, 'volumes of services values' ⁽⁶¹⁾ and 'research into workload' ⁽⁶²⁾ respectively. As for the research into workload this is carried out once a year during 1 month and covers all post offices, distribution centres and delivery regions. The process of provision of individual services is divided into very detailed operations performed by PP's employees for which a standard of working time is estimated based on such research. The Commission has no reason to doubt about the correctness of the periodicity of the data collected.
- (140) Last, the attribution to services of 'network maintenance costs' in function of the sum of (i) direct costs plus (ii) indirect operating costs plus (iii) indirect transport costs already attributed to services, though acceptable, seems to be more far away from the causal link than the above mentioned cost allocations.
- (141) Due to the nature of most of the revenues earned by PP they can be directly allocated to services. Hence, the
- (142) The Polish authorities had to provide the Commission, at its request ⁽⁶³⁾, with the distribution of all results according to categories of services (universal services broken down into reserved and non-reserved and non-universal services broken down into postal, financial and other services) as well as an explanation of the methodology used to allocate them to services. The fact that the required information was delivered demonstrates that this internal accounting information can be provided at the level of detail required. The Commission did not find any manifest error in the methodology applied to allocate 'other operating results' ⁽⁶⁴⁾, 'extraordinary results' ⁽⁶⁵⁾ and 'financial results' ⁽⁶⁶⁾ to group of services.
- (143) The Commission also notices that a significant part of PP's costs are allocated to services by means of a proportion method costs (around [...] of all costs were allocated to services in proportion of previously allocated costs notably those costs belonging to the category of 'other costs' i.e. 'general, administrative and development costs', 'selling costs' and 'certain financial costs' ⁽⁶⁷⁾). Consequently, efforts should be made to reduce as far as possible the relevance of the proportion method in PP's costing method so that a stronger relation between costs and services is achieved. In summary, the allocation methodology is acceptable but can be improved if the allocation keys used provide as much as possible for a link between the cost of the resources used and the service generated from those resources.
- (144) In this regard, PP has informed the Commission about the regular introduction of detailed provisions and
- ⁽⁶⁰⁾ On the basis of the statistical research the following is calculated in order to estimate weight/type of postal item: (1) average mass of letters and advertising mail in domestic and foreign turnover (outgoing movement) with a division into reserved and unreserved areas, (2) average mass of postal parcels in domestic and foreign turnover (outgoing movement) with a division into universal and contractual services, (3) average mass of letters and parcels in foreign turnover (ingoing movement), (4) indicators for the division of letters and advertising mail into reserved and unreserved area and (5) assortment structure of official postal matter (division into economy and priority postal matter) by content.
- ⁽⁶¹⁾ In order to estimate number of delivered items/type of service or group of services.
- ⁽⁶²⁾ In order to estimate working time/type of operation.
- ⁽⁶³⁾ The original submissions of results did not allocate certain results (i.e. 'other operating results', 'financial results' and 'extraordinary results') to services. Following the request of the Commission the Polish authorities provided aggregated data showing a distribution of all results into main categories of services.
- ⁽⁶⁴⁾ 'Other operating costs' are allocated proportionally to already allocated cost of services. 'Other operating revenue from subsidies to the services subject to statutory exemption from charges' was fully assigned to the group of universal services. The rest of 'Other operating revenue' is allocated proportionally to the allocation of other operating costs.
- ⁽⁶⁵⁾ In 2008 'extraordinary costs' (connected with losses incurred by postal offices in relation to natural disasters) and 'extraordinary revenues' (connected with the indemnities received after natural disasters) have been allocated to group of services in the same way as the costs of the postal network.
- ⁽⁶⁶⁾ Financial revenues (excluding the revenues that could be assigned directly to a group of service) were assigned to service groups in proportions used for the allocation of financial costs.
- ⁽⁶⁷⁾ Those financial costs related with interest, exchange rate differences and lease of means of transport and other fix assets.

procedures⁽⁶⁸⁾ as well as more refined allocation keys to better reflect the cause-and-effect links between the types of costs incurred and their allocation to services so as to improve the robustness in terms of accuracy of the internal accounting system. For the same purpose PP is also striving to completely introduce the Activity Based Costing in its management accounting which would definitely improve the traceability of costs of performing an activity to services.

- (145) Similarly specific rules of dividing costs into direct and indirect as well as rules for the calculation of division keys are updated on a regular basis e.g. in 2007 a Procedure for Direct Cost Control⁽⁶⁹⁾ has been launched with the aim to introduce more unambiguous rules for the control of simple direct cost and common direct cost recorded on service accounts⁽⁷⁰⁾. In addition, the fact that the allocation keys for indirect costs are determined at the central level⁽⁷¹⁾ should contribute to ensure a more homogeneous application of those keys throughout the company. Furthermore, since 1 January 2007 Organisational Units of the Polish Post which calculate division keys have been obliged to submit keys to the Accounting Centre. In this respect the Commission acknowledges the improvements made in the control environment of PP, more particularly as regards the control procedures concerning the records of direct and indirect costs.
- (146) Moreover, the National Regulatory Authority has been issuing recommendations to also eliminate some

⁽⁶⁸⁾ E.g. PP introduced the Company Cost Instruction in 2006 which unifies and describes the method of structuring the keys for the accounting of indirect costs and describes the method of attributing costs to services. The Company Cost Instruction is subject to regular updates. Moreover, in accordance with the direct cost control procedure introduced in 2007 at PP, the following steps are systematically carried out: (i) assessment whether a certain type of direct cost can occur within a particular service, (ii) checking the correct allocation of direct costs between the services and (iii) monitoring the uniform approach to the recording of direct costs of services in each of the Regional Branches of the Accountancy Centre. These guidelines also contain the procedure to be followed if any irregularities are found.

⁽⁶⁹⁾ Upon receipt of the balance sheet valuation of assets from the Main Ledger related to direct cost of services by Regional Branches, the Cost Calculation Department at the Accounting Centre Headquarters evaluates a possibility of the existence of a given type of direct cost on a given service, checks the correctness of the division of direct costs between services and verifies whether the approach to the recording of direct cost is coherent in particular Regional Branches. In the case of doubts related to the allocation of costs by type on a service the Cost Calculation Department employee asks the Regional Branch for explanations. The regional unit is obliged to once again check description of the source document on the basis of which the cost has been entered into the books and correctness of cost classification has been assessed. If it results from the verification that the cost has been recognised correctly the Cost Calculation Department at the Accounting Centre Headquarters is informed. If the direct cost has been incorrectly assigned to the services the entry is corrected and relevant information is submitted to the Cost Calculation Department.

⁽⁷⁰⁾ See 2007 report from the National Regulatory Authority.

⁽⁷¹⁾ By the Cost Calculation Department at the Accounting Centre.

other weaknesses⁽⁷²⁾ found during the annual verification exercise. According to the Polish authorities a number of recommendations expressed during the 2005 and 2006 exercise have already been implemented⁽⁷³⁾ or are on the way to be soon implemented. The Commission considers important that all open recommendations are put into effect as soon as possible in order to achieve a more robust internal accounting information system.

- (147) Consequently, on the basis of the information provided by Poland about the applied cost allocation method, the Commission is of the opinion that the Polish Post uses allocation keys with a reasonable causal link between the cost ascribed to a service and the source of that cost. Additionally, the Commission acknowledges the efforts made by PP (i) to strengthen the control environment related with management information and (ii) to improve the allocation cost methodology, which are the basis for the future calculation of the compensation.
- (148) However, as already mentioned above in section V.2.3.3, in order to properly calculate the net result for discharging the Universal Postal Obligation as well as the result outside the UPS, it should be ensured that no cost and revenue remains unallocated and that all results⁽⁷⁴⁾ (revenues and costs) are adequately allocated to each of the reserved and to the non-reserved services within the Universal Postal Service and to the non-Universal Postal Service.

V.2.3.5. Annual independent verification

- (149) According to Article 52(3) Postal Law the operator providing universal postal services shall submit to the President of UKE a declaration on compliance with the requirements, which are referred to in section 1, annually, till 31 March of each year in respect to the preceding year. Moreover the President of UKE shall be obliged to verify the compliance with the requirements, which are referred to in sections 1 and 2 of Article 52(4).

⁽⁷²⁾ E.g. Weaknesses in the internal control environment such as lack of procedures to apply consistently allocation keys or to control the quality of input data, Excessive simplification of cost allocation methods.

⁽⁷³⁾ E.g. PP introduced the Company Cost Instruction in 2006 which unifies and describes the method of structuring the keys for the accounting of indirect costs and describes the method of attributing costs to services. The Company Cost Instruction is subject to regular updates. Moreover, in accordance with the direct cost control procedure introduced in 2007 at PP, the following steps are systematically carried out: (i) assessment whether a certain type of direct cost can occur within a particular service, (ii) checking the correct allocation of direct costs between the services and (iii) monitoring the uniform approach to the recording of direct costs of services in each of the Regional Branches of the Accountancy Centre. These guidelines also contain the procedure to be followed if any irregularities are found.

⁽⁷⁴⁾ 'Other operating results', 'financial results' and 'extraordinary results' should also be allocated to services.

(150) The 'Public operator shall be obliged to submit to the President of UKE, not later than 31 July of each year, in respect to preceding year, the financial report examined by the auditor, in the scope consistent with the Act of Law of 29 September 1994 r. on accounting (Journal of Law of year 2002 No 76, pos. 694 and of year 2003 No 60, pos. 535) and consistent with sections 1 and 2'.

(151) As stated above the Commission has received the detailed reports drafted yearly by the National Regulatory Authority in conjunction with an independent auditor on the fulfilment of the requirements to separate accounts and to allocate costs. It was concluded in those reports that PP's internal accounting was based on generally accepted accounting principles and, thus, was suitable for quantifying the extra-costs of the universal postal service entrusted to it, so complying with Article 14(3) of the postal Directive.

(152) In view of the fact that the analytical accounting is carried out within the general accounting it is as important to have the latter reviewed as well. Every year PP's financial statements are subject to an independent audit (see section V.2.3.1 above). Moreover, the auditor will also supervise the conformity of the accounting records with the detailed requirements of the Postal Law (i.e. Article 52).

(153) However, the fact that the annual reports issued by UKE in conjunction with an independent audit company always stated that the scope of the independent annual verification is limited to evaluating to what extent the public operator fulfilled the requirements resulting from Article 52 of the Postal Law and the 'Ordinance' and this is restricted to only examining certain types of costs⁽⁷⁵⁾ demonstrate that the arrangements made so far for avoiding overcompensation are not sufficient if the remedies referred to in section V.2.3.3 above are not introduced. The Commission considers the scope of such verification as too limited to properly guarantee the fulfilment of the objective of the verification i.e. ensuring that no overcompensation takes place (see point 20 of the Framework and Article 52.a of the Postal Law⁽⁷⁶⁾).

(154) Therefore, as already stated above in section V.2.2, the Commission considers necessary to include in the scope

⁽⁷⁵⁾ i.e. 'Costs of products, goods and materials sold', 'Selling costs', 'General and administrative costs' and 'Interest from liabilities financing postal services including foreign exchange rate differences' (See point 2.2 of the 'Ordinance').

⁽⁷⁶⁾ [...] having regard to the principle, that the total amount of compensation cannot exceed the difference between costs of universal postal services provisions and revenue, which is obtained from these services.

of the annual verification 'Other operating revenues', 'Other operating costs', 'Financial revenues', 'Financial costs' and 'Extraordinary results' as well as 'revenues from sales'.

(155) In conclusion, the Commission is of the opinion that the scope of the account's verification should be enlarged so as to ensure that all categories of costs and revenues relevant for the calculation of the compensation amount are taken into account.

V.2.3.6. No overcompensation expected for 2009-2011

(156) According to the forecast of the company (see figures below) PP is expected also not to incur in net losses for the discharge of the public service obligation in the coming years of the scheme (see more detailed information in Annex 3). Consequently, no compensation is foreseen by the scheme in question for the period 2009-2011.

Table 2

| | (000 PLZ) | | | | | |
|---|-----------|-------|-------|-------|-------|-------|
| | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
| Revenues of the public service obligation | [...] | [...] | [...] | [...] | [...] | [...] |
| Costs of the public service obligation | [...] | [...] | [...] | [...] | [...] | [...] |
| Net surplus (*) | [...] | [...] | [...] | [...] | [...] | [...] |
| % Margin (Net surplus/ Revenues PSO) | [...] | [...] | [...] | [...] | [...] | [...] |

(*) After full allocation of results (including financial results and other operating) with the exception of extraordinary results.

(157) As shown above PP's net surplus achieved by the UPS is constantly reducing year after year. Despite of this actual trend PP has forecasted a constant improvement of this financial result for the coming years of the scheme. The reasons explaining the change in the trend are based on the introduction of a cost optimization program launched at the end of 2008 which should lead to cost savings and consequently to a gradual improvement of PP's financial results. This program focused not only in the SGEL-area but also in PP's commercial area outside the SGEL e.g. some services provided under the loss-making auxiliary activity will not be offered in the future. In addition some measures have been designed to increase revenues both inside and outside the SGEL e.g. sale of unnecessary real state property, modernization of some financial services to enhance PP's competitiveness, etc.

- (158) The main assumptions made to calculate forecast figures lie in parameters such as expected degree of change in organisational structure, level of prices for the different postal services, variations in labour costs and other costs, number of employees or macroeconomic indicators (growth in GDP, unemployment rate, inflation rate, exchange rate EUR/PLN and USD/PLN).
- (159) Furthermore, as already stated above, although PP would be allowed under the Framework to 'enjoy a reasonable profit' the Polish authorities have communicated to the Commission that, according to the applicable national legislation, PP will only be compensated for losses incurred in connection with the provision of universal postal services. Consequently, the amount of compensation will not cover a reasonable profit, which represents an additional assurance for the future that no overcompensation will take place.
- (160) The Commission has no ground to put into question the assumptions made to calculate costs and revenues for the rest of the years of the scheme. Moreover, the improvements that are regularly being introduced in PP's control environment and internal accounting system provides additional assurance of the correct allocation of results to the SGEI and outside the SGEI.
- (161) As PP is planning to soon introduce a new costing model grounded in the Activity-based-costing (ABC), the Commission requests to be informed within 3 months from introduction of it or of any other significant change in PP's internal accounting system.

VI. TIME-FRAME OF THE AUTHORISATION

- (162) Poland initially requested the Commission to extend the investigation until 2012. However, in view of the fact that the current rules to assess compatibility of public service compensation i.e. the 'Community Framework for State aid in the form of public service compensation' will expire in 2011, the Polish authorities accept an approval of the scheme until the year 2011.
- (163) On the basis of the above, the Commission concludes that, if a compensation for the discharge of the public service obligation would be paid in accordance with the scheme under examination in the period 2006-2011, that compensation would constitute State aid under Article 107(1) TFEU which would be compatible under Article 106(2) of the TFEU provided that the below mentioned conditions are fulfilled.

VII. CONCLUSION

- (164) It derives from the above that the scheme meets the requirements set forth in the Framework for the

Commission to consider the scheme compatible provided that the following conditions are fulfilled: (1) Poland should improve the definition of the parameters for calculating controlling and reviewing the compensation so as to ensure that all results are ascribed to services following the accepted methodology, (2) Poland should improve the arrangements for avoiding and repaying overcompensation so as to ensure all results relevant for the calculation of the compensation are taken into account and that appropriate arrangements for repaying overcompensation are put in place, and (3) Poland ensure that the new costs allocation method remains compatible with the rules of Article 14 of Directive 97/67/EC and in this connection it should inform the Commission within 3 months from implementation of any significant change in PP's internal accounting system,

HAS ADOPTED THIS DECISION:

Article 1

The measure which Poland has introduced to grant to Poczta Polska compensation for net costs incurred in the discharge of its universal postal service obligation for the period 2006-2011 is considered compatible with the internal market within the meaning of Article 106(2) TFEU subject to the fulfilment of the conditions set out in Article 2.

Article 2

Poland must introduce the necessary provisions in order to:

1. improve the definition of the parameters for calculating controlling and reviewing the compensation so as to ensure that all results are ascribed to services following the accepted methodology;
2. improve the arrangements for avoiding and repaying overcompensation so as to ensure all results relevant for the calculation of the compensation are taken into account and that appropriate arrangements for repaying overcompensation are put in place;
3. ensure that the new costs allocation method remains compatible with the rules of Article 14 of Directive 97/67/EC and in this connection inform the Commission within 3 months from implementation of any significant change in PP's internal accounting system.

Article 3

Poland shall inform the Commission, within 2 months following notification of this decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to Poland.

Done at Brussels, 15 December 2009.

For the Commission
Neelie KROES
Member of the Commission

ANNEX I

A. Costs for the year 2006

(million PLN)

| | | Postal services | Financial services | Others | Total |
|------------|-----------------------------------|-----------------|--------------------|--------|-------|
| 1. | direct costs | [...] | [...] | [...] | [...] |
| 2. | indirect costs: | [...] | [...] | [...] | [...] |
| 2a | — operating costs | [...] | [...] | [...] | [...] |
| 2b | — transport costs | [...] | [...] | [...] | [...] |
| 2c | — network maintenance costs | [...] | [...] | [...] | [...] |
| 2d | — other indirect costs | [...] | [...] | [...] | [...] |
| 3 = 1 + 2 | COST OF PROVIDING SERVICES | [...] | [...] | [...] | [...] |
| 4. | general and administrative costs: | [...] | [...] | [...] | [...] |
| 5. | selling and commercial costs | [...] | [...] | [...] | [...] |
| 6. | financial costs | [...] | [...] | [...] | [...] |
| 7. | Other operating costs | [...] | [...] | [...] | [...] |
| 8 = 3 to 7 | TOTAL COSTS | [...] | [...] | [...] | [...] |

(%)

| | | Postal services | Financial services | Others | Total |
|------------|-----------------------------------|-----------------|--------------------|--------|-------|
| 1. | direct costs | [...] | [...] | [...] | [...] |
| 2. | indirect costs: | [...] | [...] | [...] | [...] |
| 2a | — operating costs | [...] | [...] | [...] | [...] |
| 2b | — transport costs | [...] | [...] | [...] | [...] |
| 2d | — network maintenance costs | [...] | [...] | [...] | [...] |
| 2c | — other indirect costs | [...] | [...] | [...] | [...] |
| 3 = 1 + 2 | COST OF PROVIDING SERVICES | [...] | [...] | [...] | [...] |
| 4. | general and administrative costs: | [...] | [...] | [...] | [...] |
| 5. | selling and commercial costs | [...] | [...] | [...] | [...] |
| 6. | financial costs | [...] | [...] | [...] | [...] |
| 7. | Other operating costs | [...] | [...] | [...] | [...] |
| 8 = 3 to 7 | TOTAL COSTS | 100,0 | 100,0 | 100,0 | 100,0 |

B. Revenues for the year 2006*(million PLN)*

| | | Postal services | Financial services | Others | Total |
|------------|--------------------------|-----------------|--------------------|--------|-------|
| 1. | Revenue from sales | [...] | [...] | [...] | [...] |
| 2. | Financial revenues | [...] | [...] | [...] | [...] |
| 3. | Other operating revenues | [...] | [...] | [...] | [...] |
| 4 = 1 to 3 | TOTAL REVENUES | [...] | [...] | [...] | [...] |

(%)

| | | Postal services | Financial services | Others | Total |
|------------|--------------------------|-----------------|--------------------|--------|-------|
| 1. | Revenue from sales | [...] | [...] | [...] | [...] |
| 2. | Financial revenues | [...] | [...] | [...] | [...] |
| 3. | Other operating revenues | [...] | [...] | [...] | [...] |
| 4 = 1 to 3 | TOTAL REVENUES | 100,0 | 100,0 | 100,0 | 100,0 |

ANNEX 2

Results within the postal services area — Year 2006

(thousand PLN)

| Specification | | Postal services | | | | |
|---------------|--|-----------------|--------------|-----------------|------------------------|-----------------------|
| | | Universal | | Total universal | Non-universal services | Total Postal services |
| | | Reserved | Non-reserved | | | |
| | | 1 | 2 | 3 = 1 + 2 | 4 | 5 = 3 + 4 |
| 1 | Revenue from sales | [...] | [...] | [...] | [...] | [...] |
| 2 | Financial revenues | [...] | [...] | [...] | [...] | [...] |
| 3 | Other operating revenues | [...] | [...] | [...] | [...] | [...] |
| A | Total revenues (A = 1 + 2 + 3) | [...] | [...] | [...] | [...] | [...] |
| 4 | Direct costs | [...] | [...] | [...] | [...] | [...] |
| 5 | Indirect costs (5 = 5a + 5b + 5c + 5d) | [...] | [...] | [...] | [...] | [...] |
| 5a | Exploitation costs (technological of services) | [...] | [...] | [...] | [...] | [...] |
| 5b | Costs of delivery of postal matter | [...] | [...] | [...] | [...] | [...] |
| 5c | Fixed costs of maintaining postal network | [...] | [...] | [...] | [...] | [...] |
| 5d | Other indirect costs | [...] | [...] | [...] | [...] | [...] |
| 6 | General enterprise costs | [...] | [...] | [...] | [...] | [...] |
| 7 | Selling costs | [...] | [...] | [...] | [...] | [...] |
| 8 | Financial costs | [...] | [...] | [...] | [...] | [...] |
| 9 | Other operating costs | [...] | [...] | [...] | [...] | [...] |
| B | Total Costs B = 4 + 5 + 6 + 7 + 8 + 9 | [...] | [...] | [...] | [...] | [...] |
| C | Result C = A - B | [...] | [...] | [...] | [...] | [...] |

ANNEX 3

Results of the universal postal service — 2006-2011*Revenues of Universal Postal Service**(000 PLZ)*

| | 2006 | 2007 | 2008 | 2009 (*) | 2010 (*) | 2011 (*) |
|--|-------|-------|-------|----------|----------|----------|
| Revenues of the public service obligation (**) | [...] | [...] | [...] | [...] | [...] | [...] |

(*) Forecast figures.

(**) Extraordinary revenues not included.

*Costs of Universal Postal Service**(000 PLZ)*

| | 2006 | 2007 | 2008 | 2009 (*) | 2010 (*) | 2011 (*) |
|---|-------|-------|-------|----------|----------|----------|
| Costs of the public service obligation (**) | [...] | [...] | [...] | [...] | [...] | [...] |
| Direct costs | [...] | [...] | [...] | [...] | [...] | [...] |
| Indirect costs | [...] | [...] | [...] | [...] | [...] | [...] |
| Operating costs (technological services) | [...] | [...] | [...] | [...] | [...] | [...] |
| Cost of effecting postal deliveries | [...] | [...] | [...] | [...] | [...] | [...] |
| Fixed costs of maintaining the postal network | [...] | [...] | [...] | [...] | [...] | [...] |
| Other indirect costs | [...] | [...] | [...] | [...] | [...] | [...] |
| General costs (Enterprise-wide costs) | [...] | [...] | [...] | [...] | [...] | [...] |
| Selling costs | [...] | [...] | [...] | [...] | [...] | [...] |
| Financial costs | [...] | [...] | [...] | [...] | [...] | [...] |
| Other operating costs | [...] | [...] | [...] | [...] | [...] | [...] |

(*) Forecast figures.

(**) Extraordinary costs were not included.

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

**DECISION No 2/2010 OF THE JOINT COMMUNITY/SWITZERLAND AIR TRANSPORT
COMMITTEE SET UP UNDER THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY
AND THE SWISS CONFEDERATION ON AIR TRANSPORT**

of 26 November 2010

**replacing the Annex to the Agreement between the European Community and the Swiss
Confederation on Air Transport**

(2010/816/EU)

THE COMMUNITY/SWITZERLAND AIR TRANSPORT COMMITTEE,

Having regard to the Agreement between the European Community and the Swiss Confederation on Air Transport, hereinafter referred to as 'the Agreement', and in particular Article 23(4) thereof,

HAS DECIDED AS FOLLOWS:

Sole Article

The Annex to this Decision replaces the Annex to the Agreement.

Done at Geneva, on 26 November 2010.

For the Joint Committee

The Head of the European Union Delegation
Daniel CALLEJA CRESPO

The Head of the Swiss Delegation
Peter MÜLLER

ANNEX

For the purposes of this Agreement:

- By virtue of the Treaty of Lisbon, entered into force on 1 December 2009, the European Union shall replace and succeed the European Community;
- Wherever acts specified in this Annex contain references to Member States of the European Community, as replaced by the European Union, or a requirement for a link with the latter, the references shall, for the purpose of the Agreement, be understood to apply equally to Switzerland or to the requirement of a link with Switzerland;
- The references to Council Regulations (EEC) No 2407/92 and (EEC) No 2408/92 made in the Articles 4, 15, 18, 27 and 35 of the Agreement, shall be understood as references to Regulation (EC) No 1008/2008;
- Without prejudice to Article 15 of this Agreement, the term ‘Community air carrier’ referred to in the following Community directives and regulations shall include an air carrier which is licensed and has its principal place of business and, if any, its registered office in Switzerland in accordance with the provisions of Regulation of the European Parliament and of the Council (EC) No 1008/2008. Any reference to Council Regulation (EEC) No 2407/92 shall be understood as reference to Regulation (EC) No 1008/2008 of the European Parliament and of the Council;
- Any reference in the following texts to Articles 81 and 82 of the Treaty or to Articles 101 and 102 of the Treaty on the Functioning of the European Union shall be understood to mean Articles 8 and 9 of this Agreement.

1. Aviation liberalisation and other civil aviation rules

No 1008/2008

Regulation of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community

No 2000/79

Council Directive of 27 November 2000 concerning the implementation of the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA)

No 93/104

Council Directive of 23 November 1993 concerning certain aspects of the organisation of working time, as amended by:

- Directive 2000/34/EC,

No 437/2003

Regulation of the European Parliament and of the Council of 27 February 2003 on statistical returns in respect of the carriage of passengers, freight and mail by air

No 1358/2003

Commission Regulation of 31 July 2003 implementing Regulation (EC) No 437/2003 of the European Parliament and of the Council on statistical returns in respect of the carriage of passengers, freight and mail by air and amending Annexes I and II thereto

No 785/2004

Regulation of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators, as amended by:

- Commission Regulation (EU) No 285/2010,

No 95/93

Council Regulation of 18 January 1993 on common rules for the allocation of slots at Community airports (Articles 1-12), as amended by:

— Regulation (EC) No 793/2004,

No 2009/12

Directive of the European Parliament and of the Council of 11 March 2009 on airport charges (to be applied by Switzerland as from 1 July 2011)

No 96/67

Council Directive of 15 October 1996 on access to the groundhandling market at Community airports

(Articles 1-9, 11-23, and 25)

No 80/2009

Regulation of the European Parliament and of the Council of 14 January 2009 on a Code of Conduct for computerised reservation systems and repealing Council Regulation (EEC) No 2299/89

2. Competition rules

No 3975/87

Council Regulation of 14 December 1987 laying down the procedures for the application of the rules on competition to undertakings in the air transport sector (Article 6(3)), as last amended by:

— Council Regulation (EC) No 1/2003 (Articles 1-13, 15-45),

No 1/2003

Council Regulation of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Articles 1-13, 15-45)

(To the extent that this Regulation is relevant for the application of this agreement. The insertion of this Regulation does not affect the division of tasks according to this agreement.)

Regulation (EC) No 17/62 has been repealed by Regulation (EC) No 1/2003 with the exception of Article 8(3) which continues to apply to decisions adopted pursuant to Article 81(3) of the Treaty prior to the date of application of this Regulation until the date of expiration of those decisions.

No 773/2004

Commission Regulation of 7 April 2004 relating to proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, as amended by:

— Commission Regulation (EC) No 1792/2006,

No 139/2004

Council Regulation of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)

(Article 1-18, 19(1)-(2), and 20-23)

With respect to Article 4(5) of the Merger Regulation the following shall apply between the European Community and Switzerland:

1. With regard to a concentration as defined in Article 3 of Regulation (EC) No 139/2004 which does not have a Community dimension within the meaning of Article 1 of that Regulation and which is capable of being reviewed under the national competition laws of at least three EC Member States and the Swiss Confederation, the persons or undertakings referred to in Article 4(2) of that Regulation may, before any notification to the competent authorities, inform the EC Commission by means of a reasoned submission that the concentration should be examined by the Commission.
2. The European Commission shall transmit all submissions pursuant to Article 4(5) of Regulation (EC) No 139/2004 and the previous paragraph to the Swiss Confederation without delay.
3. Where the Swiss Confederation has expressed its disagreement as regards the request to refer the case, the competent Swiss competition authority shall retain its competence, and the case shall not be referred from the Swiss Confederation pursuant to this paragraph.

With respect to time limits referred to in Articles 4(4) and (5), Articles 9(2) and (6), and Articles 22(2) of the Merger Regulation:

1. The European Commission shall transmit all the relevant documents pursuant to Articles 4(4) and (5), Articles 9(2) and (6) and Article 22(2) to the competent Swiss competition authority without delay.
2. The calculation of the time limits referred to in Articles 4(4) and (5), Articles 9(2) and (6), and Article 22(2) of Regulation (EC) No 139/2004 shall start, for the Swiss Confederation, upon receipt of the relevant documents by the competent Swiss competition authority.

No 802/2004

Commission Regulation of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (Articles 1-24), as last amended by:

— Commission Regulation (EC) No 1792/2006,

No 2006/111

Commission Directive of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings

No 487/2009

Council Regulation (EC) No 487/2009 of 25 May 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector

3. Aviation safety

No 216/2008

Regulation of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC, as amended by:

— Commission Regulation (EC) No 690/2009,

— Regulation (EC) No 1108/2009,

The Agency shall enjoy also in Switzerland the powers granted to it under the provisions of the Regulation.

The Commission shall enjoy also in Switzerland the powers granted to it for decisions pursuant to Article 11(2), Article 14(5),(7), Article 24(5), Article 25(1), Article 38(3)(i), Article 39(1), Article 40(3), Article 41(3),(5), Article 42(4), Article 54(1) and Article 61(3).

Notwithstanding the horizontal adaptation provided for in the second indent of the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport, the references to the 'Member States' made in Article 65 of the Regulation or in the provisions of Decision 1999/468/EC mentioned in that provision shall not be understood to apply to Switzerland.

Nothing in this Regulation shall be construed so as to transfer to the EASA authority to act on behalf of Switzerland under international agreements for other purposes than to assist in the performance of its obligations pursuant to such agreements.

The text of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

(a) Article 12 is amended as follows:

- (i) in paragraph 1, the words 'or Switzerland' shall be inserted after the words 'the Community';
- (ii) in paragraph 2(a), the words 'or Switzerland' shall be inserted after the words 'the Community';
- (iii) in paragraphs 2 points (b) and (c) are deleted;
- (iv) the following paragraph is added:

'3. Whenever the Community negotiates with a third country in order to conclude an agreement providing that a Member State or the Agency may issue certificates on the basis of certificates issued by the aeronautical authorities of that third country, it shall endeavour to obtain for Switzerland an offer of a similar agreement with the third country in question. Switzerland shall, in turn, endeavour to conclude with third countries agreements corresponding to those of the Community.'

(b) In Article 29, the following paragraph shall be added:

'4. By way of derogation from Article 12(2)(a) of the Conditions of Employment of Other Servants of the European Communities, Swiss nationals enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Agency.'

(c) In Article 30, the following paragraph is added:

'Switzerland shall apply to the Agency the Protocol on the Privileges and Immunities of the European Union, which is set out as Annex A to the present Annex, in accordance with the Appendix to Annex A.'

(d) In Article 37, the following paragraph is added:

'Switzerland shall participate fully in the Management Board and shall within it have the same rights and obligations as European Union Member States, except for the right to vote.'

(e) In Article 59, the following paragraph shall be added:

'12. Switzerland shall participate in the financial contribution referred to in paragraph 1(b), according to the following formula:

$$S (0,2/100) + S [1 - (a + b) 0,2/100] c/C$$

where:

S = the part of the budget of the Agency not covered by the fees and charges mentioned in paragraph 1 (c) and (d)

a = the number of Associated States

b = the number of EU Member States

c = the contribution of Switzerland to the ICAO budget,

C = the total contribution of the EU Member States and of the Associated States to the ICAO budget.'

(f) In Article 61, the following paragraph is added:

'The provisions relating to financial control by the Community in Switzerland concerning the participants in the activities of the Agency are set out in Annex B to the present Annex.'

(g) Annex II to the Regulation shall be extended to include the following aircraft as products covered by Article 2(3)(a)(ii) of Commission Regulation (EC) No 1702/2003 of 24 September 2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations ⁽¹⁾:

A/c – [HB-IDJ] – type CL600-2B19

A/c – [HB-IKR, HB-IMY, HB-IWY] – type Gulfstream G-IV

A/c – [HB-IMJ, HB-IVZ, HB-JES] – type Gulfstream G-V

A/c – [HB-XJF, HB-ZCW, HB-ZDF] – type MD900.

No 1108/2009

Regulation of the European Parliament and of the Council of 21 October 2009 amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services and repealing Directive 2006/23/EC

No 91/670

Council Directive of 16 December 1991 on mutual acceptance of personnel licences for the exercise of functions in civil aviation

(Articles 1-8)

No 3922/91

Council Regulation of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation (Articles 1-3, 4(2), (5-11, and 13), as amended by:

— Regulation (EC) No 1899/2006,

— Regulation (EC) No 1900/2006,

— Commission Regulation (EC) No 8/2008,

— Commission Regulation (EC) No 859/2008,

No 94/56

Council Directive of 21 November 1994 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents

(Articles 1-13)

⁽¹⁾ OJ L 243, 27.9.2003, p. 6.

No 2004/36

Directive of the Parliament and of the Council of 21 April 2004 on the safety of third-country aircraft using Community airports (Articles 1-9, and 11-14), as last amended by:

— Commission Directive 2008/49/EC,

No 351/2008

Commission Regulation of 16 April 2008 implementing Directive 2004/36/EC of the European Parliament and of the Council as regards the prioritisation of ramp inspections on aircraft using Community airports

No 768/2006

Commission Regulation of 19 May 2006 implementing Directive 2004/36/EC of the European Parliament and of the Council as regards the collection and exchange of information on the safety of aircraft using Community airports and the management of the information system

No 2003/42

Directive of the European Parliament and the Council of 13 June 2003 on occurrence reporting in civil aviation (Articles 1-12)

No 1321/2007

Commission Regulation of 12 November 2007 laying down implementing rules for the integration into a central repository of information on civil aviation occurrences exchanged in accordance with Directive 2003/42/EC of the European Parliament and of the Council

No 1330/2007

Commission Regulation of 24 September 2007 laying down implementing rules for the dissemination to interested parties of information on civil aviation occurrences referred to in Article 7(2) of Directive 2003/42/EC of the European Parliament and of the Council

No 736/2006

Commission Regulation of 16 May 2006 on working methods of the European Aviation Safety Agency for conducting standardisation inspections

No 1702/2003

Regulation of 24 September 2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations, as amended by:

— Commission Regulation (EC) No 335/2007,

— Commission Regulation (EC) No 381/2005,

— Commission Regulation (EC) No 375/2007,

— Commission Regulation (EC) No 706/2006,

— Commission Regulation (EC) No 287/2008,

— Commission Regulation (EC) No 1057/2008,

— Commission Regulation (EC) No 1194/2009,

For the purposes of the Agreement, the provisions of the Regulation shall be read subject to the following adjustment:

Article 2 is amended as follows:

In paragraphs 3, 4, 6, 8, 10, 11, 13 and 14, the date '28 September 2003' shall be replaced by 'the date of entry into force of the Decision the Community/Switzerland Air Transport Committee which incorporates Regulation (EC) No 216/2008 into the Annex to the Regulation.'

No 2042/2003

Commission Regulation of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks, as amended by:

— Commission Regulation (EC) No 707/2006,

— Commission Regulation (EC) No 376/2007,

— Commission Regulation (EC) No 1056/2008,

— Commission Regulation (EU) No 127/2010,

No 104/2004

Commission Regulation of 22 January 2004 laying down rules on the organisation and composition of the Board of Appeal of the European Aviation Safety Agency

No 593/2007

Commission Regulation of 31 May 2007 on the fees and charges levied by the European Aviation Safety Agency, as last amended by:

— Commission Regulation (EC) No 1356/2008,

No 2111/2005

Regulation of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of directive 2004/36/EC

No 473/2006

Commission Regulation of 22 March 2006 laying down implementing rules for the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council

No 474/2006

Commission Regulation of 22 March 2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council, as last amended by:

— Commission Regulation (EU) No 1071/2010 ⁽¹⁾

4. Aviation Security

No 300/2008

Regulation of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002

⁽¹⁾ This Regulation shall apply in Switzerland as long as it is in force in the EU.

No 272/2009

Commission Regulation of 2 April 2009 supplementing the common basic standards on civil aviation security laid down in the Annex to Regulation (EC) No 300/2008 of the European Parliament and of the Council, as last amended by:

— Commission Regulation (EU) No 297/2010,

No 1254/2009

Commission Regulation (EU) of 18 December 2009 setting criteria to allow Member States to derogate from the common basic standards on civil aviation security and to adopt alternative security measures

No 18/2010

Commission Regulation (EU) of 8 January 2010 amending Regulation (EC) No 300/2008 of the European Parliament and of the Council as far as specifications for national quality control programmes in the field of civil aviation security are concerned

No 72/2010

Commission Regulation (EU) of 26 January 2010 laying down procedures for conducting Commission inspections in the field of aviation security

No 185/2010

Commission Regulation (EU) of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on aviation security, as amended by:

— Commission Regulation (EU) No 357/2010,

— Commission Regulation (EU) No 358/2010,

— Commission Regulation (EU) No 573/2010,

— Commission Regulation (EU) No 983/2010,

No 2010/774

Commission Decision (EU) of 13 April 2010 laying down detailed measures for the implementation of the common basic standards on aviation security containing information as referred to in Article 18(a) of Regulation (EC) No 300/2008, as amended by:

— Commission Decision 2010/2604/EU,

— Commission Decision 2010/3572/EU,

5. Air traffic management

No 549/2004

Regulation of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the Single European Sky (the Framework Regulation), as amended by:

— Regulation (EC) No 1070/2009,

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Articles 6, 8, 10, 11 and 12.

Article 10 shall be amended as follows:

In paragraph 2, the words 'at Community level' should be replaced by words 'at Community level, involving Switzerland'.

Notwithstanding the horizontal adjustment referred to in the second indent of the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport, the references to the 'Member States' made in Article 5 of Regulation (EC) No 549/2004 or in the provisions of Decision 1999/468/EC mentioned in that provision shall not be understood to apply to Switzerland.

No 550/2004

Regulation of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the Single European Sky (the Service Provision Regulation), as amended by:

— Regulation (EC) No 1070/2009,

The Commission shall enjoy towards Switzerland the powers granted to it pursuant to Articles 9a, 9b, 15a, 16 and 17.

The provisions of the Regulation shall, for the purposes of the Agreement, be amended as follows:

(a) Article 3 shall be amended as follows:

In paragraph 2, the words 'and Switzerland' shall be inserted after the words 'the Community'.

(b) Article 7 is amended as follows:

In paragraph 1 and paragraph 6, the words 'and Switzerland' shall be inserted after the words 'the Community'.

(c) Article 8 is amended as follows:

In paragraph 1, the words 'and Switzerland' shall be inserted after the words 'the Community'.

(d) Article 10 is amended as follows:

In paragraph 1, the words 'and Switzerland' shall be inserted after the words 'the Community'.

(e) Article 16(3) is replaced by the following:

'3. The Commission shall address its decision to the Member States and inform the service provider thereof, in so far as it is legally concerned.'

No 551/2004

Regulation of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the Single European Sky (the Airspace Regulation), as amended by:

— Regulation (EC) No 1070/2009,

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Articles 3a, 6 and 10.

No 552/2004

Regulation of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the Interoperability Regulation), as amended by:

— Regulation (EC) No 1070/2009,

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Articles 4, 7 and 10(3).

The provisions of the Regulation shall, for the purposes of the Agreement, be amended as follows:

(a) Article 5 is amended as follows:

In paragraph 2, the words 'or Switzerland' shall be inserted after the words 'the Community'.

(b) Article 7 is amended as follows:

In paragraph 4, the words 'or Switzerland' shall be inserted after the words 'the Community'.

(c) Annex III shall be amended as follows:

In section 3, second and last indents, the words 'or Switzerland' shall be inserted after the words 'the Community'.

No 2096/2005

Commission Regulation of 20 December 2005 laying down common requirements for the provision of air navigation services, as amended by:

— Commission Regulation (EC) No 1315/2007,

— Commission Regulation (EC) No 482/2008,

— Commission Regulation (EC) No 668/2008,

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Article 9.

No 2150/2005

Commission Regulation of 23 December 2005 laying down common rules for the flexible use of airspace

No 1033/2006

Commission Regulation of 4 July 2006 laying down the requirements on procedures for flight plans in the pre-flight phase for the Single European Sky

No 1032/2006

Commission Regulation of 6 July 2006 laying down requirements for automatic systems for the exchange of flight data for the purpose of notification, coordination and transfer of flights between air traffic control units, as last amended by:

— Commission Regulation (EC) No 30/2009,

No 1794/2006

Commission Regulation of 6 December 2006 laying down a common charging scheme for air navigation services (to be applied by Switzerland as from the entry into force of the relevant Swiss legislation but at the latest as from 1 January 2012)

No 2006/23

Directive of the European Parliament and of the Council of 5 April 2006 on a Community air traffic controller licence

No 730/2006

Commission Regulation of 11 May 2006 on airspace classification and access of flights operated under visual flight rules above flight level 195

No 219/2007

Council Regulation of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR), as last amended by:

— Council Regulation (EC) No 1361/2008,

No 633/2007

Commission Regulation of 7 June 2007 laying down requirements for the application of a flight message transfer protocol used for the purpose of notification, coordination and transfer of flights between air traffic control units

No 1265/2007

Commission Regulation of 26 October 2007 laying down requirements on air-ground voice channel spacing for the Single European Sky

No 29/2009

Commission Regulation of 16 January 2009 laying down requirements on data link services for the Single European Sky

No 262/2009

Commission Regulation of 30 March 2009 laying down requirements for the coordinated allocation and use of Mode S interrogator codes for the Single European Sky

No 73/2010

Commission Regulation of 26 January 2010 laying down requirements on the quality of aeronautical data and aeronautical information for the Single European Sky

No 255/2010

Commission Regulation of 25 March 2010 laying down common rules on air traffic flow management.

6. Environment and noise

No 2002/30

Directive of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports (Articles 1-12, and 14-18)

(The amendments to Annex I, arising from Annex II, Chapter 8 (Transport policy), Section G (Air transport), point 2 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, 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 and the adjustments to the Treaties on which the European Union is founded, shall apply).

No 89/629

Council Directive of 4 December 1989 on the limitation of noise emissions from civil subsonic jet aeroplanes

(Articles 1-8)

No 2006/93/EC

Directive of the European Parliament and of the Council of 12 December 2006 on the regulation of the operation of aeroplanes covered by Part II, Chapter 3, Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition (1988).

7. Consumer protection

No 90/314

Council Directive of 13 June 1990 on package travel, package holidays and package tours.

(Articles 1-10)

No 93/13

Council Directive of 5 April 1993 on unfair terms in consumer contracts.

(Articles 1-11)

No 2027/97

Council Regulation of 9 October 1997 on air carrier liability in the event of accidents (Articles 1-8), as amended by:

— Regulation (EC) No 889/2002,

No 261/2004

Regulation of the Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91

(Articles 1-18)

No 1107/2006

Regulation of the European Parliament and of the Council of 5 July 2006 concerning the right of disabled persons and persons with reduced mobility when travelling by air.

8. **Miscellaneous**

No 2003/96

Council Directive of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity

(Article 14(1)(b), and Article 14(2).

9. **Annexes**

A: Protocol on the Privileges and Immunities of the European Union

B: Provisions on financial control by the European Union as regards Swiss participants in activities of the EASA

ANNEX A

PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

CONSIDERING that, in accordance with Article 343 of the Treaty on the Functioning of the European Union and Article 191 of the Treaty establishing the European Atomic Energy Community (EAEC), the European Union and the EAEC shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community:

CHAPTER I

PROPERTY, FUNDS, ASSETS AND OPERATIONS OF THE EUROPEAN UNION*Article 1*

The premises and buildings of the Union shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Union shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice.

Article 2

The archives of the Union shall be inviolable.

Article 3

The Union, its assets, revenues and other property shall be exempt from all direct taxes.

The governments of the Member States shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Union makes, for its official use, substantial purchases the price of which includes taxes of this kind. These provisions shall not be applied, however, so as to have the effect of distorting competition within the Union.

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

Article 4

The Union shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for its official use: articles so imported shall not be disposed of, whether or not in return for payment, in the territory of the country into which they have been imported, except under conditions approved by the government of that country.

The Union shall also be exempt from any customs duties and any prohibitions and restrictions on import and exports in respect of its publications.

CHAPTER II

COMMUNICATIONS AND LAISSEZ-PASSER*Article 5*

For their official communications and the transmission of all their documents, the institutions of the Union shall enjoy in the territory of each Member State the treatment accorded by that State to diplomatic missions.

Official correspondence and other official communications of the institutions of the Union shall not be subject to censorship.

Article 6

Laissez-passer in a form to be prescribed by the Council, acting by a simple majority, which shall be recognised as valid travel documents by the authorities of the Member States, may be issued to members and servants of the institutions of the Union by the Presidents of these institutions. These *laissez-passer* shall be issued to officials and other servants under conditions laid down in the Staff Regulations of officials and the Conditions of Employment of other servants of the Union.

The Commission may conclude agreements for these *laissez-passer* to be recognised as valid travel documents within the territory of third countries.

CHAPTER III

MEMBERS OF THE EUROPEAN PARLIAMENT

Article 7

No administrative or other restriction shall be imposed on the free movement of Members of the European Parliament travelling to or from the place of meeting of the European Parliament.

Members of the European Parliament shall, in respect of customs and exchange control, be accorded:

- (a) by their own government, the same facilities as those accorded to senior officials travelling abroad on temporary official missions;
- (b) by the government of other Member States, the same facilities as those accorded to representatives of foreign governments on temporary official missions.

Article 8

Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

Article 9

During the sessions of the European Parliament, its Members shall enjoy:

- (a) in the territory of their own State, the immunities accorded to members of their parliament;
- (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

CHAPTER IV

REPRESENTATIVES OF MEMBER STATES TAKING PART IN THE WORK OF THE INSTITUTIONS OF THE EUROPEAN UNION

Article 10

Representatives of Member States taking part in the work of the institutions of the Union, their advisers and technical experts shall, in the performance of their duties and during their travel to and from the place of meeting, enjoy the customary privileges, immunities and facilities.

This Article shall also apply to members of the advisory bodies of the Union.

CHAPTER V

OFFICIALS AND OTHER SERVANTS OF THE EUROPEAN UNION

Article 11

In the territory of each Member State and whatever their nationality, officials and other servants of the Union shall:

- (a) subject to the provisions of the Treaties relating, on the one hand, to the rules on the liability of officials and other servants towards the Union and, on the other hand, to the jurisdiction of the Court of Justice of the European Union in disputes between the Union and its officials and other servants, be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office;
- (b) together with their spouses and dependent members of their families, not be subject to immigration restrictions or to formalities for the registration of aliens;
- (c) in respect of currency or exchange regulations, be accorded the same facilities as are customarily accorded to officials of international organisations;

- (d) enjoy the right to import free of duty their furniture and effects at the time of first taking up their post in the country concerned, and the right to re-export free of duty their furniture and effects, on termination of their duties in that country, subject in either case to the conditions considered to be necessary by the government of the country in which this right is exercised;
- (e) have the right to import free of duty a motor car for their personal use, acquired either in the country of their last residence or in the country of which they are nationals on the terms ruling in the home market in that country, and to re-export it free of duty, subject in either case to the conditions considered to be necessary by the government of the country concerned.

Article 12

Officials and other servants of the Union shall be liable to a tax for the benefit of the Union on salaries, wages and emoluments paid to them by the Union, in accordance with the conditions and procedure laid down by the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned.

They shall be exempt from national taxes on salaries, wages and emoluments paid by the Union.

Article 13

In the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Member States of the Union, officials and other servants of the Union who, solely by reason of the performance of their duties in the service of the Union, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Union, shall be considered, both in the country of their actual residence and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a member of the Union. This provision shall also apply to a spouse, to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.

Movable property belonging to persons referred to in the preceding paragraph and situated in the territory of the country where they are staying shall be exempt from death duties in that country; such property shall, for the assessment of such duty, be considered as being in the country of domicile for tax purposes, subject to the rights of third countries and to the possible application of provisions of international conventions on double taxation.

Any domicile acquired solely by reason of the performance of duties in the service of other international organisations shall not be taken into consideration in applying the provisions of this Article.

Article 14

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned, shall lay down the scheme of social security benefits for officials and other servants of the Union.

Article 15

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, and after consulting the other institutions concerned, shall determine the categories of officials and other servants of the Union to whom the provisions of Article 11, the second paragraph of Article 12, and Article 13 shall apply, in whole or in part.

The names, grades and addresses of officials and other servants included in such categories shall be communicated periodically to the governments of the Member States.

CHAPTER VI

PRIVILEGES AND IMMUNITIES OF MISSIONS OF THIRD COUNTRIES ACCREDITED TO THE EUROPEAN UNION

Article 16

The Member State in whose territory the Union has its seat shall accord the customary diplomatic immunities and privileges to missions of third countries accredited to the Union.

CHAPTER VII

GENERAL PROVISIONS*Article 17*

Privileges, immunities and facilities shall be accorded to officials and other servants of the Union solely in the interests of the Union.

Each institution of the Union shall be required to waive the immunity accorded to an official or other servant wherever that institution considers that the waiver of such immunity is not contrary to the interests of the Union.

Article 18

The institutions of the Union shall, for the purpose of applying this Protocol, cooperate with the responsible authorities of the Member States concerned.

Article 19

Articles 11 to 14 and Article 17 shall apply to Members of the Commission.

Article 20

Articles 11 to 14 and Article 17 shall apply to the Judges, the Advocates-General, the Registrars and the Assistant Rapporteurs of the Court of Justice of the European Union, without prejudice to the provisions of Article 3 of the Protocol on the Statute of the Court of Justice of the European Union relating to immunity from legal proceedings of Judges and Advocates-General.

Article 21

This Protocol shall also apply to the European Investment Bank, to the members of its organs, to its staff and to the representatives of the Member States taking part in its activities, without prejudice to the provisions of the Protocol on the Statute of the Bank.

The European Investment Bank shall in addition be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the Bank has its seat. Similarly, its dissolution or liquidation shall not give rise to any imposition. Finally, the activities of the Bank and of its organs carried on in accordance with its Statute shall not be subject to any turnover tax.

Article 22

This Protocol shall also apply to the European Central Bank, to the members of its organs and to its staff, without prejudice to the provisions of the Protocol on the Statute of the European System of Central Banks and the European Central Bank.

The European Central Bank shall, in addition, be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the bank has its seat. The activities of the Bank and of its organs carried on in accordance with the Statute of the European System of Central Banks and of the European Central Bank shall not be subject to any turnover tax.

*Appendix to Annex A***PROCEDURES FOR THE APPLICATION IN SWITZERLAND OF THE PROTOCOL ON PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION**

1. Extension of application to Switzerland

Wherever the Protocol on the privileges and immunities of the European Union (hereinafter called 'the Protocol') contains references to Member States, the references are to be understood to apply equally to Switzerland, unless the following provisions determine otherwise.

2. Exemption of the Agency from indirect taxation (including VAT)

Goods and services exported from Switzerland are not to be subject to Swiss value added tax (VAT). In the case of goods and services provided to the Agency in Switzerland for its official use, in accordance with the second paragraph of Article 3 of the Protocol, exemption from VAT is by way of refund. Exemption from VAT shall be granted if the actual purchase price of the goods and services mentioned in the invoice or equivalent document totals at least 100 Swiss francs (inclusive of tax).

The VAT refund is to be granted on presentation to the Federal Tax Administration's VAT Main Division of the Swiss forms provided for the purpose. As a rule, refund applications must be processed within the 3 months following the date on which they were lodged together with the necessary supporting documents.

3. Procedures for the application of the rules relating to the Agency's staff

As regards the second paragraph of Article 12 of the Protocol, Switzerland shall exempt, according to the principles of its national law, officials and other servants of the Agency within the meaning of Article 2 of Regulation (Euratom, ECSC, EEC) No 549/69 ⁽¹⁾ from federal, cantonal and communal taxes on salaries, wages and emoluments paid to them by the European Union and subject to an internal tax for its own benefit.

Switzerland shall not be considered as a Member State within the meaning of point 1 above for the application of Article 13 of the Protocol.

Officials and other servants of the Agency and members of their families who are members of the social insurance system applicable to officials and other servants of the European Union are not obliged to be members of the Swiss social security system.

The Court of Justice of the European Union shall have exclusive jurisdiction in any matters concerning relations between the Agency or the Commission and its staff with regard to the application of Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽²⁾ and the other provisions of the European Union law laying down working conditions.

⁽¹⁾ Regulation (Euratom, ECSC, EEC) No 549/69 of the Council of 25 March 1969 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply (OJ L 74, 27.3.1969, p. 1). Regulation as last amended by Council Regulation (EC, Euratom) No 1749/2002 (OJ L 264, 2.10.2002, p. 13.)

⁽²⁾ Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (Conditions of Employment of Other Servants) (OJ L 56, 4.3.1968, p. 1). Regulation last amended by Council Regulation (EC, Euratom) No 2104/2005 (OJ L 337, 22.12.2005, p. 7.)

ANNEX B

FINANCIAL CONTROL AS REGARDS SWISS PARTICIPANTS IN ACTIVITIES OF THE EUROPEAN AVIATION AGREEMENT*Article 1***Direct communication**

The Agency and the Commission shall communicate directly with all persons or entities established in Switzerland and participating in activities of the Agency, as contractors, participants in Agency programmes, recipients of payments from the Agency or the Community budget, or subcontractors. Such persons may send directly to the Commission and to the Agency all relevant information and documentation which they are required to submit on the basis of the instruments referred to in this Decision and of contracts or agreements concluded and any decisions taken pursuant to them.

*Article 2***Checks**

1. In accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾ and the Financial Regulation adopted by the Management Board of the Agency on 26 March 2003, with Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾ and with the other instruments referred to in this Decision, contracts or agreements concluded and decisions taken with beneficiaries established in Switzerland may provide for scientific, financial, technological or other audits to be conducted at any time on the premises of the beneficiaries and of their subcontractors by Agency and Commission officials or by other persons mandated by the Agency and the Commission.

2. Agency and Commission officials and other persons mandated by the Agency and the Commission shall have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including in electronic form. This right of access shall be stated explicitly in the contracts or agreements concluded to implement the instruments referred to in this Decision.

3. The European Court of Auditors is to have the same rights as the Commission.

4. The audits may take place until 5 years after the expiry of this Decision or under the terms of the contracts or agreements concluded and the decisions taken.

5. The Swiss Federal Audit Office is to be informed in advance of audits conducted on Swiss territory. This information will not be a legal condition for carrying out such audits.

*Article 3***On-the-spot checks**

1. Under this Agreement, the Commission (OLAF) is authorised to carry out on-the-spot checks and inspections on Swiss territory, under the terms and conditions set out in Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities. ⁽³⁾

2. On-the-spot checks and inspections shall be prepared and conducted by the Commission in close cooperation with the Swiss Federal Audit Office or with other competent Swiss authorities appointed by the Swiss Federal Audit Office, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end, the officials of the competent Swiss authorities may participate in the on-the-spot checks and inspections.

3. If the Swiss competent authorities concerned so wish, the on-the-spot checks and inspections may be carried out jointly by the Commission and the Swiss competent authorities.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

⁽²⁾ OJ L 357, 31.12.2002, p. 72.

⁽³⁾ OJ L 292, 15.11.1996, p. 2.

4. Where the participants in the programme resist an on-the-spot check or inspection, the Swiss authorities, acting in accordance with national rules, shall give the Commission inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.

5. The Commission shall report as soon as possible to the Swiss Federal Audit Office any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event the Commission is required to inform the aforementioned authority of the result of such checks and inspections.

Article 4

Information and consultation

1. For the purposes of proper implementation of this Annex, the competent Swiss and Community authorities shall exchange information regularly and, at the request of one of the Parties, shall conduct consultations.

2. The competent Swiss authorities shall inform the Agency and the Commission without delay of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the contracts or agreements concluded in application of the instruments referred to in this Decision.

Article 5

Confidentiality

Information communicated or acquired in any form whatsoever pursuant to this Annex will be covered by professional confidentiality and protected in the same way as similar information is protected by the national legislation of Switzerland and by the corresponding provisions applicable to the Community institutions. Such information shall not be communicated to persons other than those within the Community institutions, in the Member States, or in Switzerland whose functions require them to know it, nor may it be used for purposes other than to ensure effective protection of the financial interests of the Contracting Parties.

Article 6

Administrative measures and penalties

Without prejudice to application of Swiss criminal law, administrative measures and penalties may be imposed by the Agency or the Commission in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 and Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 and with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests. ⁽¹⁾

Article 7

Recovery and enforcement

Decisions taken by the Agency or the Commission within the scope of this Decision which impose a pecuniary obligation on persons other than States shall be enforceable in Switzerland.

The enforcement order must be issued, without any further control than verification of the authenticity of the act, by the authority designated by the Swiss government, which must inform the Agency or the Commission thereof. Enforcement must take place in accordance with the Swiss rules of procedure. The legality of the enforcement decision is subject to control by the Court of Justice of the European Union.

Judgments given by the Court of Justice of the European Union pursuant to an arbitration clause are enforceable on the same terms.

⁽¹⁾ OJ L 312, 23.12.1995, p. 1.

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