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[1] Text with EEA relevance

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 25 October 2010

on the signing, on behalf of the Union, of an Agreement in the form of a Protocol between the European Union and the Hashemite Kingdom of Jordan establishing a dispute settlement mechanism applicable to disputes under the trade provisions of the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part

(2011/87/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 24 February 2006 the Council authorised the Commission to open negotiations with partners in the Mediterranean region in order to establish a dispute settlement mechanism related to trade provisions.

(2) Negotiations have been conducted by the Commission in consultation with the committee appointed under Article 207 of the Treaty and within the framework of the negotiating directives issued by the Council.

(3) These negotiations have been concluded and an Agreement in the form of a Protocol (the Protocol) between the European Union and the Hashemite Kingdom of Jordan establishing a dispute settlement mechanism applicable to disputes under the trade provisions of the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part [1] was initialled on 9 December 2009.

(4) The Protocol should be signed,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Agreement in the form of a Protocol between the European Union and the Hashemite Kingdom of Jordan establishing a dispute settlement mechanism applicable to disputes under the trade provisions of the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part (the Protocol) is hereby approved on behalf of the Union, subject to the conclusion of the said Protocol [2].

Article 2

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

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Luxembourg, 25 October 2010.

For the Council
The President
C. ASHTON

[1] OJ L 129, 15.5.2002, p. 3.

[2] The text of the Protocol will be published with the Decision on its conclusion.

REGULATIONS

COMMISSION REGULATION (EU) No 109/2011

of 27 January 2011

implementing Regulation (EC) No 661/2009 of the European Parliament and of the Council as regards type-approval requirements for certain categories of motor vehicles and their trailers as regards spray suppression systems

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor [1], and in particular Article 14(1)(a) thereof,

Whereas:

(1) Regulation (EC) No 661/2009 is a separate Regulation for the purposes of the type-approval procedure provided for by Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) [2].

(2) Regulation (EC) No 661/2009 repeals Council Directive 91/226/EEC of 27 March 1991 on the approximation of the laws of the Member States relating to the spray suppression systems of certain categories of motor vehicles and their trailers [3].

(3) Regulation (EC) No 661/2009 lays down fundamental provisions on requirements for the type-approval of motor vehicles with regard to their spray suppression systems and the type-approval of spray suppression systems as separate technical units. It is now necessary to set out the specific procedures, tests and requirements for such type-approval.

(4) In so doing, it is appropriate to carry over to this Regulation the requirements set out in Directive 91/226/EEC adapted where necessary to the development of scientific and technical knowledge.

(5) The scope of this Regulation should be in line with that of Regulation (EC) No 661/2009 and thus limited to vehicles of categories N and O. The measures provided for in this Regulation are in accordance with the opinion of the Technical Committee — Motor Vehicles,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation applies to vehicles of categories N and O, as defined in Annex II to Directive 2007/46/EC, which are fitted with a spray suppression system, as well as to spray suppression systems intended for fitment to vehicles of categories N and O.

Article 2

Definitions

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

(1) 'spray-suppression system' means a system intended to reduce the pulverisation of water thrown upwards by the tyres of a vehicle in motion and which is made up of a mudguard, rain flaps and valances equipped with a spray-suppression device;

(2) 'mudguard' means a rigid or semi-rigid component intended to trap the water thrown up by tyres in motion and to direct it towards the ground and which may entirely or partially form an integral part of the vehicle bodywork or other parts of the vehicle such as the lower part of the load platform;

(3) 'rain flap' means a flexible component mounted vertically behind the wheel, on the lower part of the chassis or the loading surface, or on the mudguard and which must also reduce the risk of small objects, in particular pebbles, being picked up from the ground by the tyres and thrown upwards or sidewards towards other road users;

[1] OJ L 200, 31.7.2009, p. 1.
[2] OJ L 263, 9.10.2007, p. 1.
[3] OJ L 103, 23.4.1991, p. 5.

(4) 'spray-suppression device' means part of the spray-suppression system, which may comprise an air/water separator and an energy absorber;

(5) 'air/water separator' means a component forming part of the valance and/or of the rain flap through which air can pass whilst reducing pulverised water emissions;

(6) 'energy absorber' means a component forming part of the mudguard and/or valance and/or rain flap which absorbs the energy of water spray, thus reducing pulverised water spray;

(7) 'outer valance' means a component located approximately within a vertical plane that is parallel to the longitudinal plane of the vehicle and which may form part of a mudguard or of the vehicle bodywork;

(8) 'steered wheels' means the wheels actuated by the vehicle's steering system;

(9) 'self-tracking axle' means an axle pivoted about a central point in such a way that it can describe a horizontal arc;

(10) 'self-steered wheels' means wheels not actuated by the vehicle's steering device, which may swivel through an angle not exceeding 20° owing to the friction exerted by the ground.;

(11) 'retractable axle' means an axle as defined in point 2.15 of Annex I to Directive 97/27/EC of the European Parliament and of the Council [1];

(12) 'unladen vehicle' means a vehicle in running order as stated in point 2.6 of Annex I to Directive 2007/46/EC;

(13) 'tread' is the part of the tyre as defined in point 2.8 of Annex II to Council Directive 92/23/EEC [2];

(14) 'type of spray-suppression device' means devices which do not differ with respect to the following main characteristics:

(a) the physical principle adopted in order to reduce emissions (water-energy absorption, air/water separator),

(b) materials,

(c) shape,

(d) dimensions, in so far as they may influence the behaviour of the material;

(15) 'semi-trailer towing vehicle' means a towing vehicle as defined in point 2.1.1.2.2 of Annex I to Directive 97/27/EC;

(16) 'technically permissible maximum laden mass (M)' means the maximum technically permissible maximum laden mass stated by the manufacturer as described in point 2.8 of Annex I to Directive 2007/46/EC;

(17) 'vehicle type with regard to spray suppression' means complete, incomplete or completed vehicles, which do not differ with respect to the following aspects:

— type of spray suppression device installed on the vehicle,

— manufacturer's spray suppression system type designation.

Article 3

EC type-approval of a vehicle with regard to spray suppression systems

1. The manufacturer or the representative of the manufacturer shall submit to the approval authority the application for EC type-approval of a vehicle with regard to its spray suppression systems.

2. The application shall be drawn up in accordance with the model of the information document set out in Part 1 of Annex I.

3. If the relevant requirements set out in Annexes III and IV to this Regulation are met, the approval authority shall grant an EC type-approval and issue a type-approval number in accordance with the numbering system set out in Annex VII to Directive 2007/46/EC.

An approval authority may not assign the same number to another vehicle type.

4. For the purposes of paragraph 3, the approval authority shall deliver an EC type-approval certificate established in accordance with the model set out in Part 2 of Annex I.

Article 4

EC separate technical unit type-approval of spray suppression systems

1. The manufacturer or his representative shall submit to the approval authority the application for EC separate technical unit type-approval for a type of spray suppression system.

The application shall be drawn up in accordance with the model information document set out in Part 1 of Annex II.

2. If the relevant requirements set out in Annexes III and IV to this Regulation are met, the approval authority shall grant an EC separate technical unit type-approval and issue a type-approval number in accordance with the numbering system set out in Annex VII to Directive 2007/46/EC.

[1] OJ L 233, 25.8.1997, p. 1.
[2] OJ L 129, 14.5.1992, p. 95.

An approval authority may not assign the same number to another type of separate technical unit.

3. For the purposes of paragraph 2, the approval authority shall deliver an EC type-approval certificate established in accordance with the model set out in Part 2 of Annex II.

Article 5

EC separate technical unit type-approval mark

Every separate technical unit conforming to a type in respect of which EC separate technical unit type-approval has been granted pursuant to this Regulation shall bear an EC separate technical unit type-approval mark as set out in Part 3 of Annex II.

Article 6

Validity and extension of approvals granted under Directive 91/226/EEC

National authorities shall permit the sale and entry into service of vehicles and separate technical units type-approved under Directive 91/226/EEC before 1 November 2012 and continue to grant extension of approvals to those vehicles and separate technical units under the terms of Directive 91/226/EEC.

Article 7

Entry into force

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

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

Done at Brussels, 27 January 2011.

For the Commission
The President
José Manuel BARROSO

ANNEX I

ADMINISTRATIVE DOCUMENTS FOR EC TYPE-APPROVAL OF VEHICLES WITH REGARD TO THEIR SPRAY SUPPRESSION SYSTEMS

PART 1

Information document

MODEL

Information document No … relating to the EC type-approval of a vehicle with regard to its spray suppression systems (*).

The following information shall be supplied in triplicate and include a list of contents. Any drawings shall be supplied in appropriate scale and in sufficient detail on size A4 or on a folder of A4 format. Photographs, if any, shall show sufficient detail.

If the systems, components or separate technical units have electronic controls, information concerning their performance shall be supplied.

0. GENERAL

0.1. Make (trade name of manufacturer): .....

0.2. Type: .....

0.2.1. Commercial name(s) (if available): .....

0.3. Means of identification of type, if marked on the vehicle[(b)]: .....

0.3.1. Location of that marking: .....

0.4. Category of vehicle[(c)]: .....

0.5. Name and address of manufacturer: .....

0.8. Address(es) of assembly plant(s): .....

0.9. Name and address of the manufacturer's representative (if any): .....

1. GENERAL CONSTRUCTION CHARACTERISTICS OF THE VEHICLE

1.1. Photographs and/or drawings of a representative vehicle: .....

1.3. Number of axles and wheels: .....

1.3.1. Number and position of axles with twin wheels: .....

1.3.2. Number and position of steered axles: .....

2. MASSES AND DIMENSIONS[(f)(g)]

(in kg and mm) (Refer to drawing where applicable)

2.1. Wheelbase(s) (fully loaded)[(g)(l)]: .....

2.6. Mass in running order (maximum and minimum for each variant) Mass of the vehicle with bodywork and, in the case of a towing vehicle of category other than M_1, with coupling device, if fitted by manufacturer, in running order, or mass of the chassis or chassis with cab, without bodywork and/or coupling device if the manufacturer does not fit the bodywork and/or coupling device (including liquids, tools, spare wheel, if fitted, and driver and, for buses and coaches, a crew member if there is a crew seat in the vehicle)[(h)] (maximum and minimum for each variant): .....

2.6.1. Distribution of this mass among the axles and, in the case of a semi-trailer or centre-axle trailer, load on the coupling point (maximum and minimum for each variant): .....

2.8. Technically permissible maximum laden mass stated by the manufacturer[(i)(3)]: .....

9. BODYWORK

9.20. Spray-suppression system: .....

(*) For vehicles of category N1 and those of category N2 with a technically permissible maximum laden mass not exceeding 7,5 tonnes using the derogation of point 0.1 of Annex IV to this Regulation, the information document set out in Annex II to Directive 78/549/EEC may be used.

9.20.0. Presence: yes/no/incomplete[1]: .....

9.20.1. Brief description of the vehicle with regard to its spray-suppression system and the constituent components: .....

9.20.2. Detailed drawings of the spray-suppression system and its position on the vehicle showing the dimensions specified in the Figures in Annex VI to Regulation (EU) No 109/2011 and taking account of the extremes of tyre/wheel combinations: .....

9.20.3. Approval number(s) of spray-suppression device(s), if available: .....

Date, Signature

PART 2

MODEL

(maximum format: A4 (210 × 297 mm))

EC TYPE-APPROVAL CERTIFICATE

Stamp of approval authority

Communication concerning:

— EC type-approval (1)
— extension of EC type-approval (1)
— refusal of EC type-approval (1)
— withdrawal of EC type-approval (1)

} of a type of vehicle with regard to its spray suppression systems

with regard to Regulation (EU) No …/… as last amended by Regulation (EU) No …/… (1)

EC type-approval number: .....

Reason for extension: .....

SECTION I

0.1. Make (trade name of manufacturer): .....

0.2. Type: .....

0.2.1. Commercial name(s) (if available): .....

0.3. Means of identification of type, if marked on the vehicle (2): .....

0.3.1. Location of that marking: .....

0.4. Category of vehicle (3): .....

0.5. Name and address of manufacturer: .....

0.8. Name(s) and address(es) of assembly plant(s): .....

0.9. Name and address of the manufacturer's representative (if any): .....

SECTION II

1. Additional information: see Addendum.

2. Technical service responsible for carrying out the tests: .....

3. Date of test report: .....

4. Number of test report: .....

5. Remarks (if any): see Addendum.

6. Place: .....

7. Date: .....

8. Signature: .....

9. The index to the information package lodged with the approval authority, which may be obtained on request, is attached.

(1) Delete where not applicable.
(2) If the means of identification of type contains characters not relevant to describe the vehicle, component or separate technical unit types covered by this information document, such characters shall be represented in the documentation by the symbol '?' (e.g. ABC??123??).
(3) As defined in Directive 2007/46/EC, Annex II, Section A.

Addendum

to EC type-approval certificate No

1. Additional information

1.1. Characteristics of the spray suppression devices (type, brief description, trade mark or name, component type-approval number(s):

5. Remarks (if any):

ANNEX II

ADMINISTRATIVE DOCUMENTS FOR EC TYPE-APPROVAL OF SPRAY SUPPRESSION SYSTEMS AS SEPARATE TECHNICAL UNITS

PART 1

Information document

MODEL

Information document No … relating to the EC type-approval as a separate technical unit of spray suppression systems.

The following information shall be supplied in triplicate and include a list of contents. Any drawings shall be supplied in appropriate scale and in sufficient detail on size A4 or on a folder of A4 format. Photographs, if any, shall show sufficient detail.

If the systems, components or separate technical units referred to in this information document have electronic controls, information concerning their performance shall be supplied.

0. GENERAL

0.1. Make (trade name of manufacturer): .....

0.2. Type: .....

0.5. Name and address of manufacturer: .....

0.7. In the case of components and separate technical units, location and method of affixing of the EC approval mark: .....

0.8. Address(es) of assembly plant(s): .....

0.9. Name and address of the manufacturer's representative (if any): .....

1. DESCRIPTION OF THE DEVICE

1.1. A technical description of the spray suppression device indicating its physical operating principle and the relevant test to which it must be subject: .....

1.2. The materials used: .....

1.3. Drawing(s) in sufficient detail and to an appropriate scale to enable this (or these) to be identified. The drawing must show the space intended for the EC component type-approval mark: .....

Date

Signed

PART 2

MODEL

(maximum format: A4 (210 × 297 mm))

EC TYPE-APPROVAL CERTIFICATE

Stamp of approval authority

Communication concerning:

— EC type-approval (1)
— extension of EC type-approval (1)
— refusal of EC type-approval (1)
— withdrawal of EC type-approval (1)

} of a type of spray suppression system as a component/separate technical unit

with regard to Regulation (EU) No …/…, as last amended by Regulation (EU) No …/… (1)

EC type-approval number: .....

Reason for extension: .....

SECTION I

0.1. Make (trade name of manufacturer) .....

0.2. Type: .....

0.3. Means of identification of type, if marked on the separate technical unit (2): .....

0.3.1. Location of that marking: .....

0.5. Name and address of manufacturer: .....

0.7. Location and method of affixing of the EC approval mark: .....

0.8. Name(s) and address(es) of assembly plant(s): .....

0.9. Name and address of the manufacturer's representative (if any): .....

SECTION II

1. Additional information (where applicable): see Addendum.

2. Technical service responsible for carrying out the tests: .....

3. Date of test report: .....

4. Number of test report: .....

5. Remarks (if any): see Addendum.

6. Place: .....

7. Date: .....

8. Signature: .....

9. The index to the information package lodged with the approval authority, which may be obtained on request, is attached.

(1) Delete where not applicable.
(2) If the means of identification of type contains characters not relevant to describe the vehicle, component or separate technical unit types covered by this information document, such characters shall be represented in the documentation by the symbol '?' (e.g. ABC??123??).

Addendum

to EC type-approval certificate No

1. Additional information

1.1. Operating principle of device: energy-absorption/air/water separator [1]:

1.2. Characteristics of spray suppression devices (brief description, trademark or name, number(s):

5. Remarks (if any):

---

[1] Delete where not applicable.

PART 3

EC separate technical unit type-approval mark

1. The EC separate technical unit type-approval mark shall consist of:

1.1. A rectangle surrounding the lower-case letter 'e' followed by the distinguishing number of the Member State which has granted the EC separate technical unit type-approval:

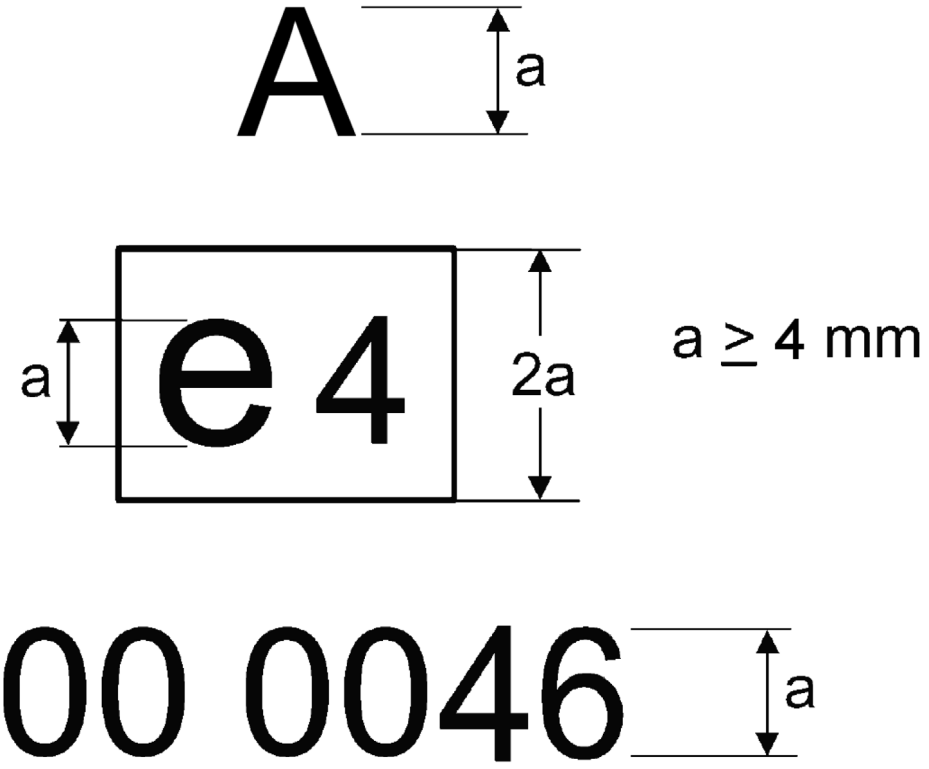
1 for Germany	19 for Romania
2 for France	20 for Poland
3 for Italy	21 for Portugal
4 for The Netherlands	23 for Greece
5 for Sweden	24 for Ireland
6 for Belgium	26 for Slovenia
7 for Hungary	27 for Slovakia
8 for the Czech Republic	29 for Estonia
9 for Spain	32 for Latvia
11 for the United Kingdom	34 for Bulgaria
12 for Austria	36 for Lithuania
13 for Luxembourg	49 for Cyprus
17 for Finland	50 for Malta
18 for Denmark	

1.2. In the vicinity of the rectangle the 'base approval number' contained in Section 4 of the type-approval number preceded by the two figures indicating the sequence number assigned to this Regulation or latest major technical amendment to this Regulation. The sequence number is '00' at present.

2. The EC separate technical unit type-approval mark shall be affixed to the spray suppression device in such a way as to be indelible as well as clearly and easily legible even if the device is fitted to a vehicle.

3. An example of an EC separate technical unit type-approval mark is shown as follows.

Example of EC separate technical unit type-approval mark



Explanatory note

Legend The EC separate technical unit type-approval was issued by The Netherlands under number 0046. The first two digits '00' indicate that the separate technical unit was approved according to this Regulation. The symbol 'A' indicates it is a device of the energy-absorption type.

ANNEX III

PART 1

Requirements for spray suppression devices

0. GENERAL SPECIFICATIONS

0.1. Spray-suppression devices must be constructed in such a way that they operate properly when used normally on wet roads. Moreover, they must incorporate no structural or manufacturing defect detrimental to their proper functioning or behaviour.

1. TESTS TO BE CARRIED OUT

1.1. Depending on their physical operating principle spray-suppression devices are subjected to the relevant tests as described in Parts 2 and 3 and must deliver the results required in point 5 of those Parts.

2. APPLICATION FOR EC COMPONENT TYPE-APPROVAL

2.1. The application for EC component type-approval pursuant to Article 7 of Directive 2007/46/EC of a type of spray-suppression device shall be submitted by the manufacturer.

2.2. A model for the information document is set out in Part 1 of Annex II.

2.3. The following shall be submitted to the technical service responsible for conducting the type-approval tests:

Four samples: three of which are for tests and a fourth is to be kept by the laboratory for any subsequent verification. The test laboratory may require further samples.

2.4. **Markings**

2.4.1. Each sample must be clearly and indelibly marked with the trade name or mark and an indication of the type and include a space that is large enough for the EC component type-approval mark.

2.4.2. A symbol 'A' for devices of the energy-absorption type or 'S' for devices of the air/water separator type shall be added to the approval mark in accordance with point 1.3 of the Appendix of Annex VII to Directive 2007/46/EC.

PART 2

Tests on spray-suppression devices of the energy-absorber type

1. PRINCIPLE

The aim of this test is to quantify the ability of a device to retain the water directed against it by a series of jets. The test assembly is intended to reproduce the conditions under which the device is to function when fitted to a vehicle as regards the volume and speed of the water thrown up from the ground by the tyre tread.

2. EQUIPMENT

See Figure 8 in Annex VI for a description of the test assembly.

3. TEST CONDITIONS

3.1. The tests must be carried out in a closed room with a still-air environment.

3.2. The ambient temperature and the temperature of the test pieces must be 21 (± 3) °C.

3.3. De-ionised water is to be used.

3.4. The test pieces must be prepared for each test by wetting.

4. PROCEDURE

4.1. Secure a 500 (+ 0/– 5) mm wide 750 mm high sample of the equipment to be tested to the vertical plate of the testing equipment, making sure that the sample lies well within the limits of the collector, and that no obstacle is able to deflect the water, either before or after its impact.

4.2. Set the water flow rate at 0,675 (+/– 0,01) l/s and direct at least 90 l, at most 120 l on to the sample from a horizontal distance of 500 (+/– 2) mm (Figure 8 of Annex VI).

4.3. Allow the water to trickle from the sample into the collector. Calculate the percentage of water collected versus the quantity of water sprayed.

4.4. Carry out the test five times on the sample according to points 4.2 and 4.3. Calculate the average percentage of the series of five tests.

5. RESULTS

5.1. The average percentage calculated in point 4.4 must be 70 % or higher.

5.2. If within a series of five tests the highest and lowest percentages of water collected depart from the average percentage by more than 5 %, the series of five tests must be repeated.

If within a second series of five tests the highest and lowest percentages of water recovered again depart from the average percentage by more than 5 % and if the lower value does not satisfy the requirements of point 5.1, type-approval shall be refused.

5.3. Test whether the vertical position of the device influences the results obtained. If it is the case, the procedure described in points 4.1 to 4.4 must be repeated in the positions giving the highest and lowest percentage of water collected; the requirements of point 5.2 remain in force.

The mean of the individual results shall then be taken to give the average percentage. This average percentage must be 70 or higher.

PART 3

Test on spray-suppression devices of the air/water separator type

1. PRINCIPLE

This test is intended to determine the effectiveness of a porous material intended to retain the water with which it has been sprayed by means of a pressurised air/water pulveriser.

The equipment used for the test must simulate the conditions to which the material would be submitted, with regard to the volume and speed of the water sprays produced by the tyres, if it were fitted to a vehicle.

2. EQUIPMENT

See Figure 9 in Annex VI for a description of the test assembly.

3. TEST CONDITIONS

3.1. The tests must be carried out in a closed room with a still-air environment.

3.2. The ambient temperature and the temperature of the test pieces must be 21 (± 3) °C.

3.3. De-ionised water must be used.

3.4. The test pieces must be prepared for each test by wetting.

4. PROCEDURE

4.1. Secure a 305 × 100 mm sample vertically in the test assembly, check that there is no space between the sample and the upper curved plate and that the tray is properly in position. Fill the pulveriser tank with 1 ± 0,005 litres of water and place this as described in the diagram.

4.2. The pulveriser must be regulated as follows:

pressure (at pulveriser): 5 bar + 10 %/– 0 %

flowrate: 1 litre/minute ± 5 seconds

pulverisation: circular, 50 ± 5 mm in diameter at 200 ± 5 mm from the sample, nozzle 5 ± 0,1 mm in diameter.

4.3. Pulverise until there is no more water mist and note the time taken. Let the water flow out of the sample on to the tray for 60 seconds and measure the volume of water collected. Measure the quantity of water left in the pulveriser tank. Calculate the percentage by volume of water collected versus the volume of water pulverised.

4.4. Carry out the test five times and calculate the average percentage of the quantity collected. Check before each test that the tray, pulveriser tank and measuring vessel are dry.

5. RESULTS

5.1. The average percentage calculated in point 4.4 must be 85 % or higher.

5.2. If within a series of five tests the highest and lowest percentages of water collected depart from the average percentage by more than 5 %, the series of five tests must be repeated. If within a second series of five tests the highest and lowest percentages of water recovered again depart from the average percentage by more than 5 %, and if the lower value does not satisfy the requirements of point 5.1, type-approval shall be refused.

5.3. Where the vertical position of the device influences the results obtained, the procedure described in points 4.1 to 4.4 must be repeated in the positions giving the highest and lowest percentages of water collected; the requirements of point 5.2 remain in force.

The requirement of point 5.1 remains in force in order to give the results of each test.

ANNEX IV

Requirements for type-approval of vehicles with regard to their spray suppression systems

0. GENERAL

0.1. Category N and O vehicles, with the exception of off-road vehicles as defined in Annex II to Directive 2007/46/EC, shall be constructed and/or fitted with spray suppression systems in such a way as to meet the requirements laid down in this Annex. In the case of chassis/cab vehicles, these requirements may only be applied to the wheels covered by the cab.

For vehicles of category N_1 and N_2 with a permissible maximum laden mass not exceeding 7,5 tonnes, the requirements of Council Directive 78/549/EEC [1] may be applied as alternative to the requirements of this Regulation at the request of the manufacturer.

0.2. The requirements of this Annex relating to spray-suppression devices, as defined in Article 2(4), are not mandatory for categories N, O_1 and O_2 vehicles with a permissible maximum laden mass not exceeding 7,5 tonnes, chassis/cab vehicles, unbodied vehicles or vehicles on which the presence of spray-suppression devices would be incompatible with their use. However, if such devices are fitted to those vehicles, they must conform to the requirements of this Regulation.

1. A vehicle representative of the vehicle type to be approved, fitted with its spray-suppression system, must be submitted to the technical service conducting the approval tests.

GENERAL REQUIREMENTS

2. AXLES

2.1. **Retractable axles**

Where a vehicle is fitted with one or more retractable axles, the spray-suppression system must cover all the wheels when the axle is lowered and the wheels in contact with the ground when the axle is raised.

2.2. **Self-tracking axles**

For the purpose of this Regulation, a self-tracking axle of the 'pivot steering' type is considered to be, and treated as, an axle fitted with steered wheels.

Where a vehicle is fitted with a self-tracking axle, the spray-suppression system must satisfy the conditions applicable to non-steered wheels if mounted on the pivoting part. If not mounted on that part it must satisfy the conditions that are applicable to steered wheels.

3. POSITION OF OUTER VALANCE

The distance 'c' between the longitudinal plane tangential to the outer tyre wall, apart from any tyre bulge near the ground, and the inner edge of the valance must not exceed 100 mm (Figures 1a and 1b of Annex VI).

4. STATE OF VEHICLE

For the checking of compliance with this Regulation the vehicle must be in the following state:

(a) it must be unladen and with the wheels in the straight-ahead position;

(b) in the case of semi-trailers, the loading surfaces must be horizontal;

(c) the tyres must be inflated to their normal pressure.

5. SPRAY-SUPPRESSION SYSTEMS

5.1. The spray-suppression system must meet the specifications set out in point 6 or 8.

[1] OJ L 168, 26.6.1978, p. 45.

5.2. The spray-suppression system for non-steered or self-steered wheels that are covered by the bodywork floor, or by the lower part of the load platform, must meet either the specifications set out in point 6 or 8 or else those in point 7.

SPECIFIC REQUIREMENTS

6. Requirements concerning energy-absorption spray suppression systems for axles fitted with steered or self-steering or non-steered wheels.

6.1. **Mudguards**

6.1.1. The mudguards must cover the zone immediately above, ahead and behind the tyre or tyres in the following manner:

(a) in the case of a single or multiple axle, the forward edge (C) must extend forwards to reach a line O-Z where Θ (theta) is no more than 45° above the horizontal.

The rearmost edge (Figure 2 of Annex VI) must extend downwards in such a way as not to be more than 100 mm above a horizontal line passing through the centre of the wheel;

(b) in the case of multiple axles the angle Θ relates only to the foremost axle and the requirement relating to the height of the rearmost edge applies only to the rearmost axle;

(c) the mudguard must possess a total width 'q' (Figure 1a of Annex VI) at least adequate to cover the width of the tyre 'b' or the entire width of two tyres 't' in the case of twin wheels, account being taken of the extremes for the tyre/wheel unit specified by the manufacturer. Dimensions 'b' and 't' shall be measured at hub height, excluding any markings, ribs, protective bands, etc., on the tyre walls.

6.1.2. The front side of the rear part of the mudguard must be fitted with a spray-reduction device complying with the specifications set out in Part 2 of Annex III. This material must cover the inside of the mudguard up to a height determined by a straight line running from the centre of the wheel and forming an angle of at least 30° with the horizontal (Figure 3 of Annex VI).

6.1.3. If the mudguards are made up of several components, when fitted, they must not incorporate any aperture enabling spray to exit while the vehicle is in motion. This requirement is deemed to be met if, when the vehicle is either laden or unladen, any radial jet running outwards from the wheel centre over the entire width of the tyre running surface and within the range covered by the mudguard always strikes against a part of the spray suppression system.

6.2. **Outer valances**

6.2.1. In the case of single axles, the lower edge of the outer valance may not be situated beyond the following distances and radii, as measured from the centre of the wheel, except at the lowest extremities that may be rounded (Figure 2 of Annex VI).

Air suspension:

(a) Axles fitted with steered wheels or self-steering wheels:
From the front edge (towards the front of the vehicle) (tip C)
To the rear edge (towards the rear of the vehicle) (tip A) } $R_v \leq 1{,}5\ R$

(b) Axles fitted with non-steered wheels:
From the front edge (tip C)
To the rear edge (tip A) } $R_v \leq 1{,}25\ R$

Mechanical suspension

(a) general case} $R_v \leq 1{,}8\ R$

(b) non-steered wheels for vehicles with a technically permissible laden mass more than 7,5 t} $R_v \leq 1{,}5\ R$

where R is the radius of the tyre fitted to the vehicle, and Rv the distance, expressed as a radius, at which the lower edge of the outer valence is situated.

6.2.2. In the case of multiple axles the requirements laid down in point 6.2.1 do not apply between the vertical transversal planes passing through the centre of the first and the last axles where the outer valance may be straight in order to ensure the continuity of the spray suppression system. (Figure 4 of Annex VI).

6.2.3. The distance between the uppermost and the lowermost points of the spray suppression system (mudguard and outer valance) measured in any cross section perpendicular to the mudguard (see Figures 1b and 2 in Annex VI) must extend to not less than 45 mm at all points behind a vertical line passing through the centre of the wheel or the first wheel in the case of multiple axles. This dimension may be gradually reduced in front of this line.

6.2.4. No openings enabling spray to emerge when the vehicle is moving are allowed in the outer valances or between the outer valances and the other parts of the mudguards.

6.2.5. The requirements of points 6.2.3 and 6.2.4 may not be respected locally when the valance is composed by different elements with relative movement.

6.2.6. Tractors for semi-trailers with a low chassis, namely those which may have a height of coupling face (defined in point 6.20 of standard ISO 612 of 1978) equal to or less than 1 100 mm, may be designed in such a way as to be exempted from the requirements of points 6.1.1(a), 6.1.3 and 6.2.4. In this regard, mudguards and valances may not cover the area immediately above the tyres of the rear axles, when these tractors are coupled to a semi-trailer, in order to avoid the spray-suppression system being destroyed. However, the mudguards and valances of these vehicles must conform to the requirements of the above points, in sectors more than 60° from the vertical line passing through the centre of the wheel, in front and behind these tyres.

Those vehicles must therefore be designed in such a way as to meet the requirements set out in the first paragraph when they are operated without a semi-trailer.

In order to be able to meet those requirements, mudguards and valances may, for example, comprise a removable part.

6.3. **Rain flaps**

6.3.1. The width of the flap must fulfil the requirement for 'q' in point 6.1.1(c), except for any part of the flap that is contained within the mudguards. In such cases this part of the flap must be at least equal in width to the tread of the tyre.

The width of the part of the rain flaps positioned beneath the mudguard must satisfy the condition laid down in this paragraph with a tolerance of ± 10 mm at each side.

6.3.2. The orientation of the flap must be basically vertical.

6.3.3. The maximum height of the bottom edge must not exceed 200 mm (Figure 3 of Annex VI).

This distance is increased to 300 mm in the case of the last axle where the radial distance of the lower edge of the outer valancing, Rv, does not exceed the dimensions of the radius of the tyres fitted to the wheels on that axle.

The maximum height of the bottom edge of the rain flap in relation to the ground, may be raised to 300 mm if the manufacturer deems it technically appropriate with regard to the suspension characteristics.

6.3.4. The rain flap must not be more than 300 mm from the rearmost edge of the tyre, measured horizontally.

6.3.5. In the case of multiple axles where distance d between the tyres on adjacent axles is less than 250 mm, only the rear set of wheels must be fitted with rain flaps. There must be a rain flap behind each wheel when distance d between the tyres on adjacent axles is at least 250 mm (Figure 4 of Annex VI).

6.3.6. Rain flaps must not be deflected by more than 100 mm towards the rear under a force of 3 N per 100 mm of flap width, applied to a point located 50 mm above the lower edge of the flaps.

6.3.7. The whole of the front face of the part of the rain flap having the minimum dimensions required must be fitted with a spray-suppression device that meets the specifications set out in Part 2 of Annex III.

6.3.8. No openings enabling spray to emerge are allowed between the lower rear edge of the mudguard and the rain flaps.

6.3.9. Where the spray-suppression device meets the specifications relating to rain flaps (point 6.3), no additional rain flap is required.

7. Requirements relating to spray-suppression systems fitted with energy-absorption spray-suppression devices for certain axles that are fitted with non-steered or self-steering wheels (see point 5.2).

7.1. **Mudguards**

7.1.1. Mudguards must cover the zone immediately above the tyre or tyres. Their front and rear extremities must extend at least to the horizontal plane that is tangent to the upper edge of the tyre or tyres (Figure 5 of Annex VI). However, the rear extremity may be replaced by the rain flap, in which case this must extend to the upper part of the mudguard (or equivalent component).

7.1.2. All of the inner rear part of the mudguard must be fitted with a spray-suppression device that meets the requirements set out in Part 2 of Annex III.

7.2. **Outer valances**

7.2.1. In the case of single or multiple axles where the distance between the adjacent tyres is at least 250 mm, the outer valance must cover the surface extending from the lower to the upper part of the mudguard up to a straight line formed by the tangent to the upper edge of the tyre or tyres and lying between the vertical plane formed by the tangent to the front of the tyre and the mudguard or rain flap located behind the wheel or wheels (Figure 5b of Annex VI).

In the case of multiple axles an outer valance must be located by each wheel.

7.2.2. No openings enabling spray to emerge are allowed between the outer valance and the inner part of the mudguard.

7.2.3. Where rain flaps are not fitted behind each wheel (see point 6.3.5), the outer valance must be unbroken between the outer edge of the rain flap to the vertical plane that is tangent to the point furthest to the front of the tyre (Figure 5a of Annex VI) of the first axle.

7.2.4. The entire inner surface of the outer valance, the height of which must not be less than 100 mm, must be fitted with an energy-absorption spray-suppression device complying with the requirements of Part 2 of Annex III.

7.3. These flaps must extend to the lower part of the mudguard and comply with points 6.3.1 to 6.3.9.

8. Requirements concerning spray-suppression systems fitted with air/water separator spray-suppression devices for axles with steered and non-steered wheels.

8.1. **Mudguards**

8.1.1. Mudguards must comply with the requirements of point 6.1.1(c).

8.1.2. Mudguards for single or multiple axles where the distance between the tyres on adjacent axles exceeds 300 mm must also comply with point 6.1.1(a).

8.1.3. In the case, of multiple axles where the distance between the tyres on adjacent axles does not exceed 300 mm the mudguards must also conform to the model shown in Figure 7.

8.2. **Outer valances**

8.2.1. The lower edges of the outer valances must be fitted with air/water separator spray-suppression devices complying with the requirements of Part 3 of Annex III.

8.2.2. In the case of single or multiple axles where the distance between the tyres on adjacent axles exceeds 300 mm, the lower edge of the spray-suppression device fitted to the outer valance must have the following maximum dimensions and radii, starting from the centre of the wheel (Figures 6 and 7 of Annex VI):

(a) Axles fitted with steered wheels or self-steering wheels: from the front edge (towards the front of the vehicle) (tip C at 30°) to the rear edge (towards the rear of the vehicle) (tip A at 100 mm)	$R_v \leq 1{,}05\ R$
(b) Axles fitted with non-steered wheels: from the front edge (tip C at 20°) to the rear edge (tip A at 100 mm)	$R_v \leq 1{,}00\ R$

where

R = is the radius of tyre fitted to the vehicle;

R_v = the radial distance from the lowest edge of the outer valance to the centre of the wheel.

8.2.3. In the case of multiple axles where the distance between the tyres on adjacent axles does not exceed 300 mm, the outer valances located in the inter-axle spaces must follow the path specified in point 8.1.3, and must extend downwards in such a way as not to be more than 100 mm above a horizontal straight line passing through the wheel centres (Figure 7 of Annex VI).

8.2.4. The depth of the outer valance must extend to not less than 45 mm, at all points behind a vertical line passing through the centre of the wheel. This depth may be gradually reduced in front of this line.

8.2.5. No openings enabling spray to emerge are allowed in the outer valances or between the outer valances and the mudguards.

8.3. **Rain flaps**

8.3.1. Rain flaps must:

(a) comply with point 6.3 (Figure 3 of Annex VI); or

(b) comply with points 6.3.1, 6.3.2, 6.3.5, 6.3.8 and 8.3.2 (Figure 6 of Annex VI).

8.3.2. Spray suppression equipment complying with the specifications set out in Annex IV, must be fitted to the rain flaps referred to in point 8.3.1(b), at least along the full edge.

8.3.2.1. The lower edge of the spray-suppression device must be not more than 200 mm from the ground.

The maximum height of the bottom edge of the rain flap in relation to the ground, may be raised to 300 mm if the manufacturer deems it technically appropriate with regard to the suspension characteristics.

8.3.2.2. The spray-suppression device must be at least 100 mm deep.

8.3.2.3. Apart from the lower part, which includes the spray-suppression device, the rain flap as referred to in point 8.3.1(b) must not bend by more than 100 mm towards the rear under the effect of a force of 3 N per 100 mm of width of the rain flap measured at the intersection of the rain flap with the spray-suppression device in its working position, applied at a distance of 50 mm above the lower edge of the rain flap.

8.3.3. The rain flap must not be more than 200 mm from the rearmost edge of the tyre, measured horizontally.

9. In the case of multiple axles, the spray-suppression system of one axle, which is not the furthest back, may not need to cover the entire width of the tread of the tyre when there is, locally, the possibility of interference between the spray-suppression system and the structure of the axles or of the suspension or of the undercarriage.

ANNEX V

Conformity of production and cessation of production

1. **Conformity of production**

1.1. Any spray-suppression device bearing the EC component type-approval mark must conform to the type that has been approved. The authority issuing the EC type-approval mark keeps one sample which, together with the EC component type-approval certificate, may be used to establish whether the devices marketed which bear the EC component type-approval mark meet the stated requirements.

1.2. A type of device is defined by the model and descriptive documents lodged at the time of application for EC component type-approval. Devices whose characteristics are identical to those of the pattern device and whose other components do not differ from those of the pattern device except for variants not affecting the properties referred to in this Annex may be considered as belonging to the same type.

1.3. The manufacturer carries out routine checks in order to guarantee the conformity of production of the type that has been approved.

To this end the manufacturer must either have available a laboratory which is sufficiently well-equipped for the execution of the essential tests, or have the production-conformity tests carried out by an approved laboratory.

The results of the production conformity checks are made available for inspection by the competent authorities for at least 1 year.

1.4. The competent authorities may also conduct spot checks.

1.5. Conformity of production with the type of device that has been approved must be checked under the conditions and in accordance with the methods provided for in Annex III.

At the request of the authorities which have granted component type-approval, manufacturers shall provide them with devices of the type previously type-approved for the purpose of tests or conformity checks.

1.6. Devices are deemed to conform if 9 out of 10 samples chosen at random satisfy the requirements of point 4 of Part 2 and point 4 of Part 3 of Annex III.

1.7. If the condition specified in point 1.6 is not satisfied, a further 10 samples chosen at random must be examined.

The average of all measurements taken must be in conformity with the specifications of point 4 of Part 2 and point 4 of Part 3 of Annex III, and no individual measurement must be less than 95 % of the value specified.

2. **Cessation of production**

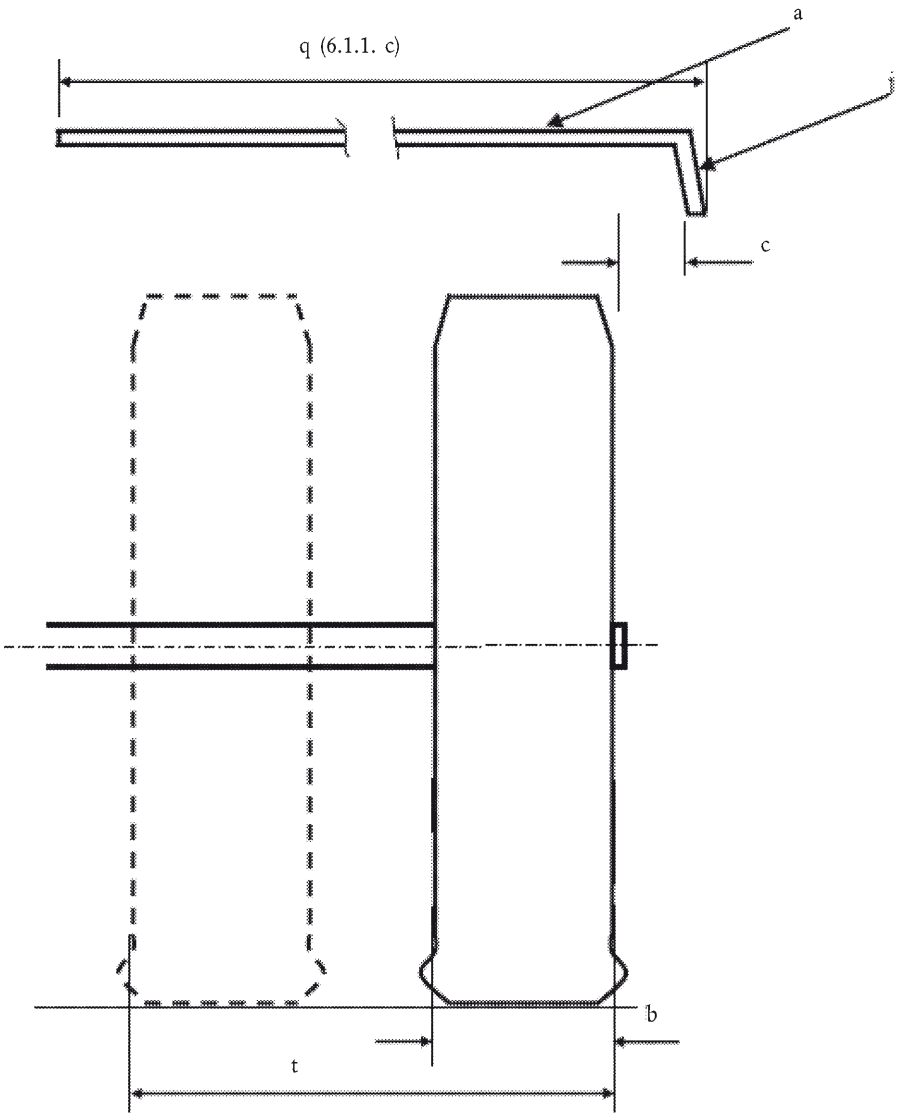
An EC component type-approval holder ceasing production must forthwith inform the competent authorities of that fact.

ANNEX VI

FIGURES

Figure 1a

Width (q) of mudguard (a) and position of valance (j)



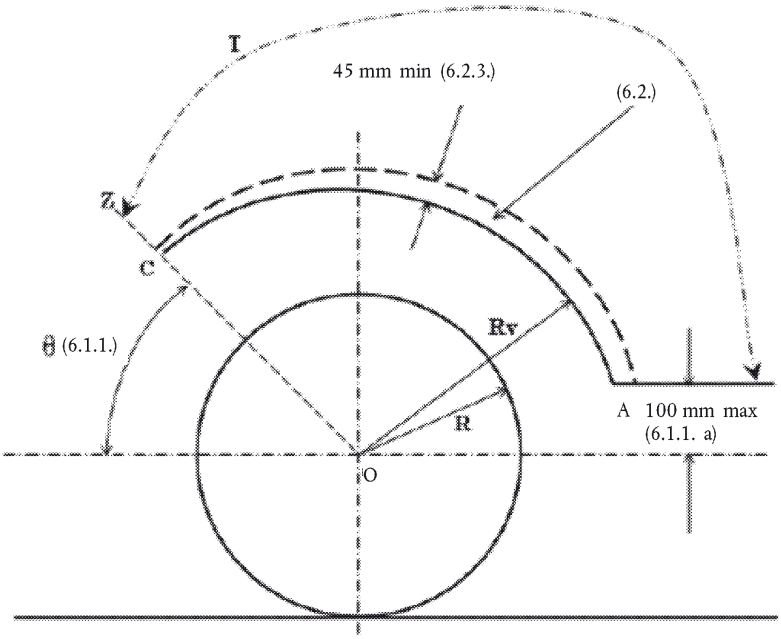
Note: The figures refer to the corresponding points in Annex IV.

Figure 1b

Example of measurement of the outer valance

Figure 2

Dimensions of mudguard and outer valance



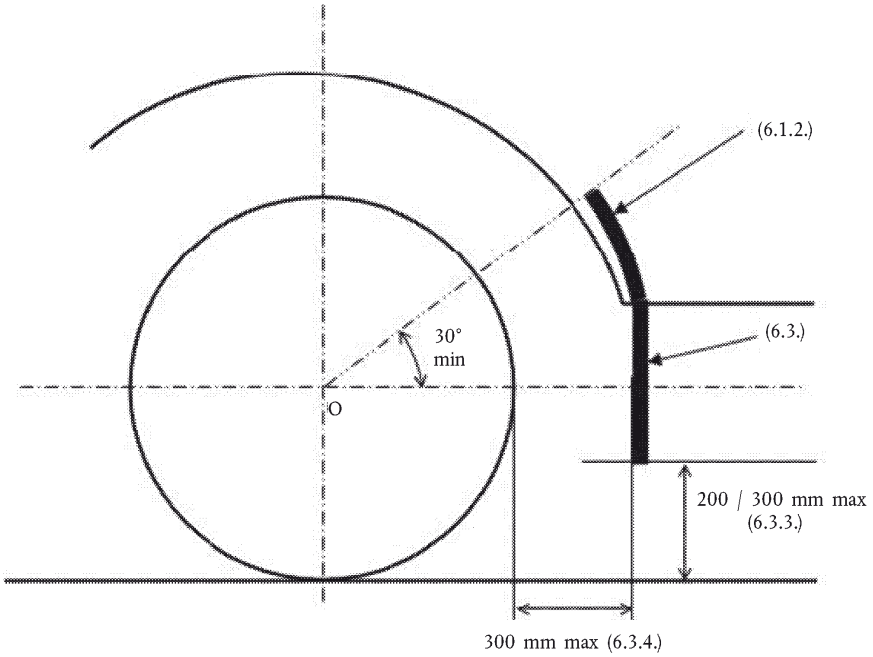
Note:

1. The figures quoted relate to the corresponding points in Annex IV.

2. T: extent of mudguard.

Figure 3

Position of mudguard and rain flap



Note: The figures quoted relate to the corresponding points in Annex IV.

Figure 4

Diagram showing assembly of a spray-suppression system (mudguard, rain flap, outer valance) incorporating spray-suppression devices (energy absorbers) for multiple axles

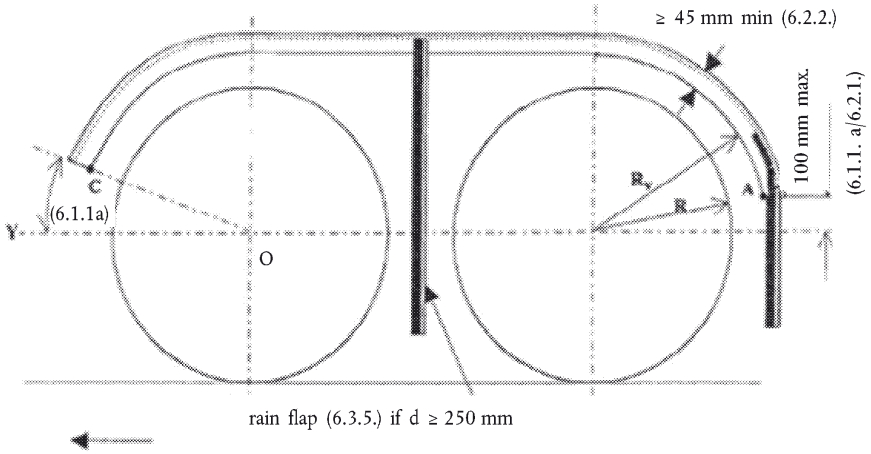
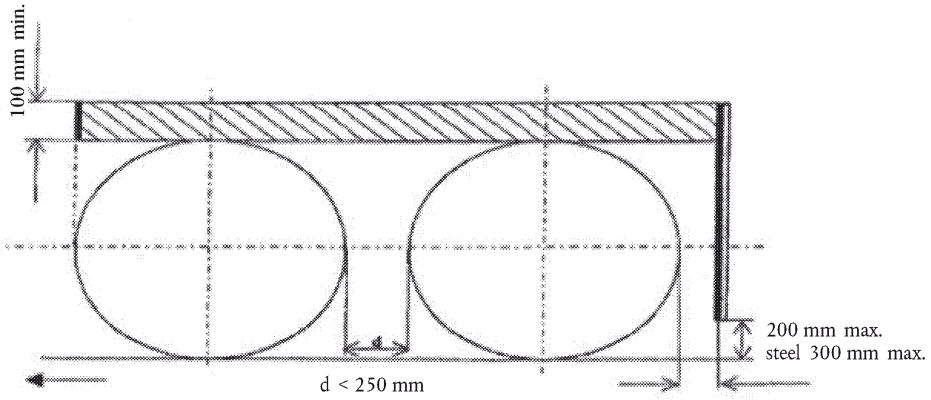


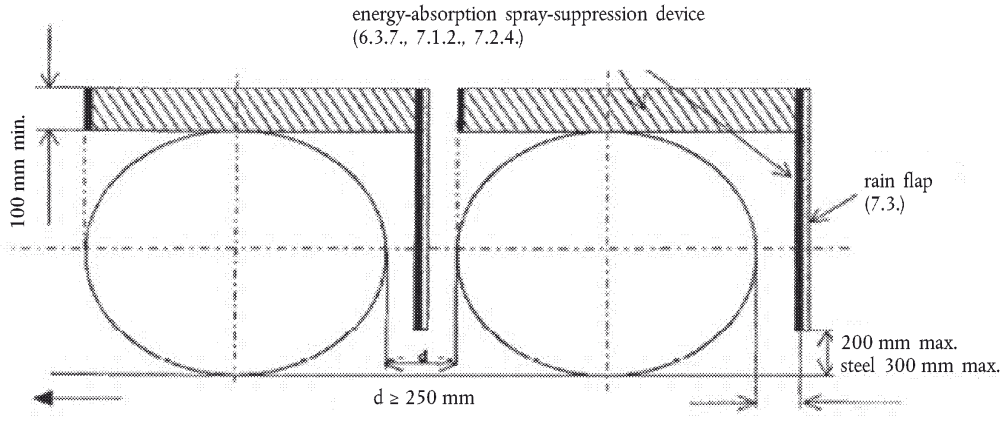
Figure 5

Diagram showing assembly of a spray-suppression system incorporating spray-suppression devices (energy absorbers) for axles fitted with non-steered or self-steering wheels

(Annex IV – points 5.2 and 7)



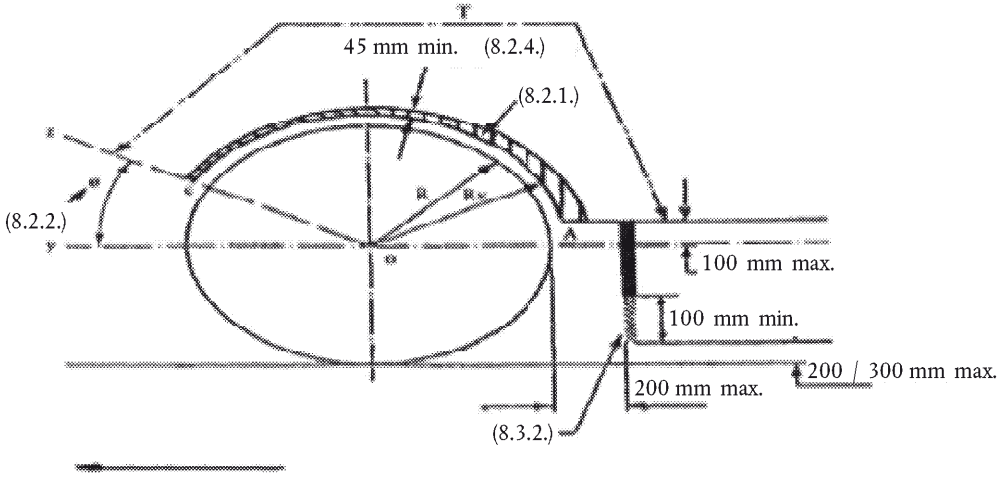
(a) Multiple axles where the distance between the tyres is less than 250 mm.



(b) Single axles or multiple axles where the distance between the tyres is not less than 250 mm.

Figure 6

Diagram showing assembly of a spray-suppression system incorporating spray-suppression devices fitted with air/water separators for axles fitted with steered, self-steering or non-steered wheels



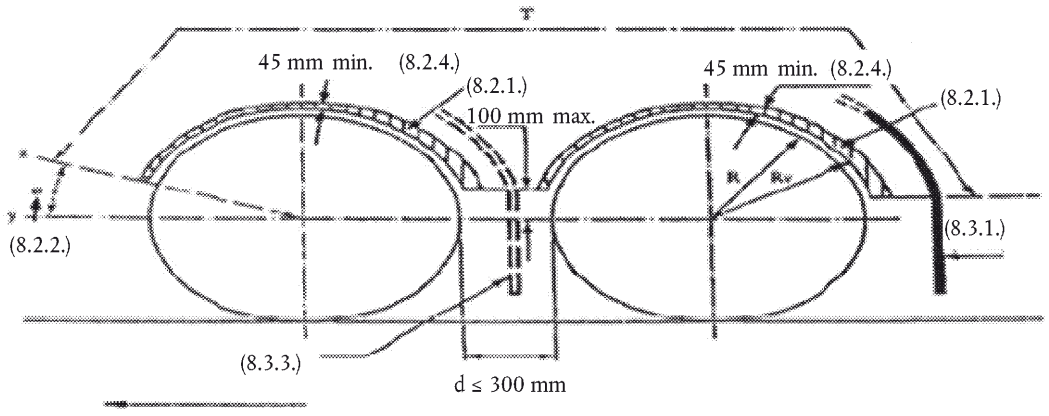
Note:

1. The figures relate to the corresponding points in Annex IV.

2. T: extent of mudguard.

Figure 7

Diagram showing assembly of a spray-suppression system incorporating spray-suppression devices (mudguard, rain flap, outer valance) for multiple axles where the distance between the tyres does not exceed 300 mm



d ≥ 250 mm; rain flap required

Note:

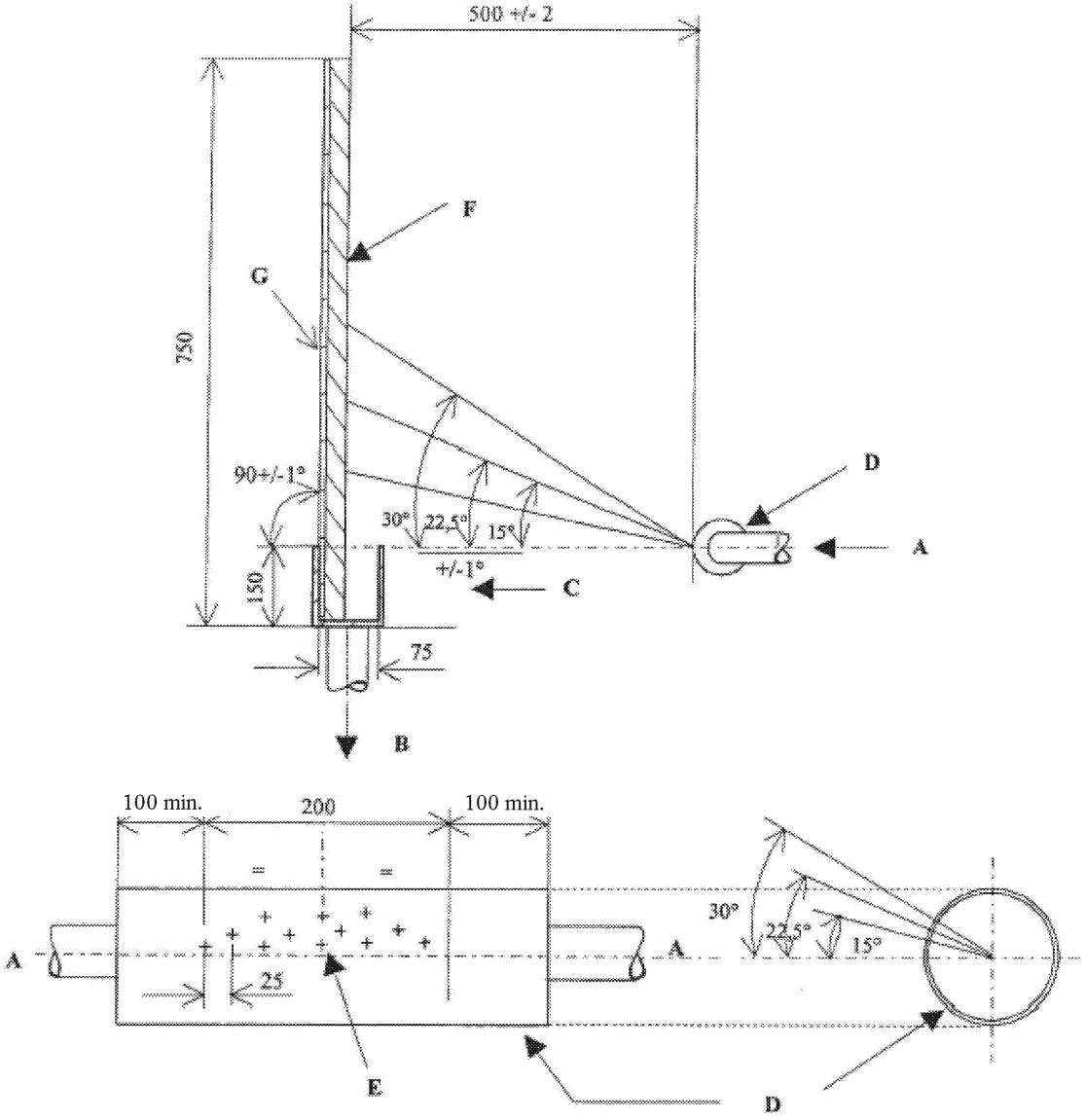
1. The figures relate to the corresponding points in Annex IV.

2. T: extent of mudguard.

Figure 8

Test assembly for energy absorption spray-suppression devices

(Annex III, PART 2)



Note:

A = water supply from pump

B = flow towards collector tank

C = collector with inside dimension of 500 (+ 5/– 0) mm length and 75 (+ 2/– 0) mm width

D = stainless steel pipe, external diameter 54 mm, wall thickness 1.2 (+/– 0,12) mm, inside and outside surface roughness Ra between 0,4 and 0,8 μm

E = 12 cylindrical radially drilled holes with burr-free square edges. Their diameter, measured on the inside and on the outside of the tube, is 1,68 (+ 0,010/– 0) mm

F = 500 (+ 0/– 5) mm-wide sample to be tested

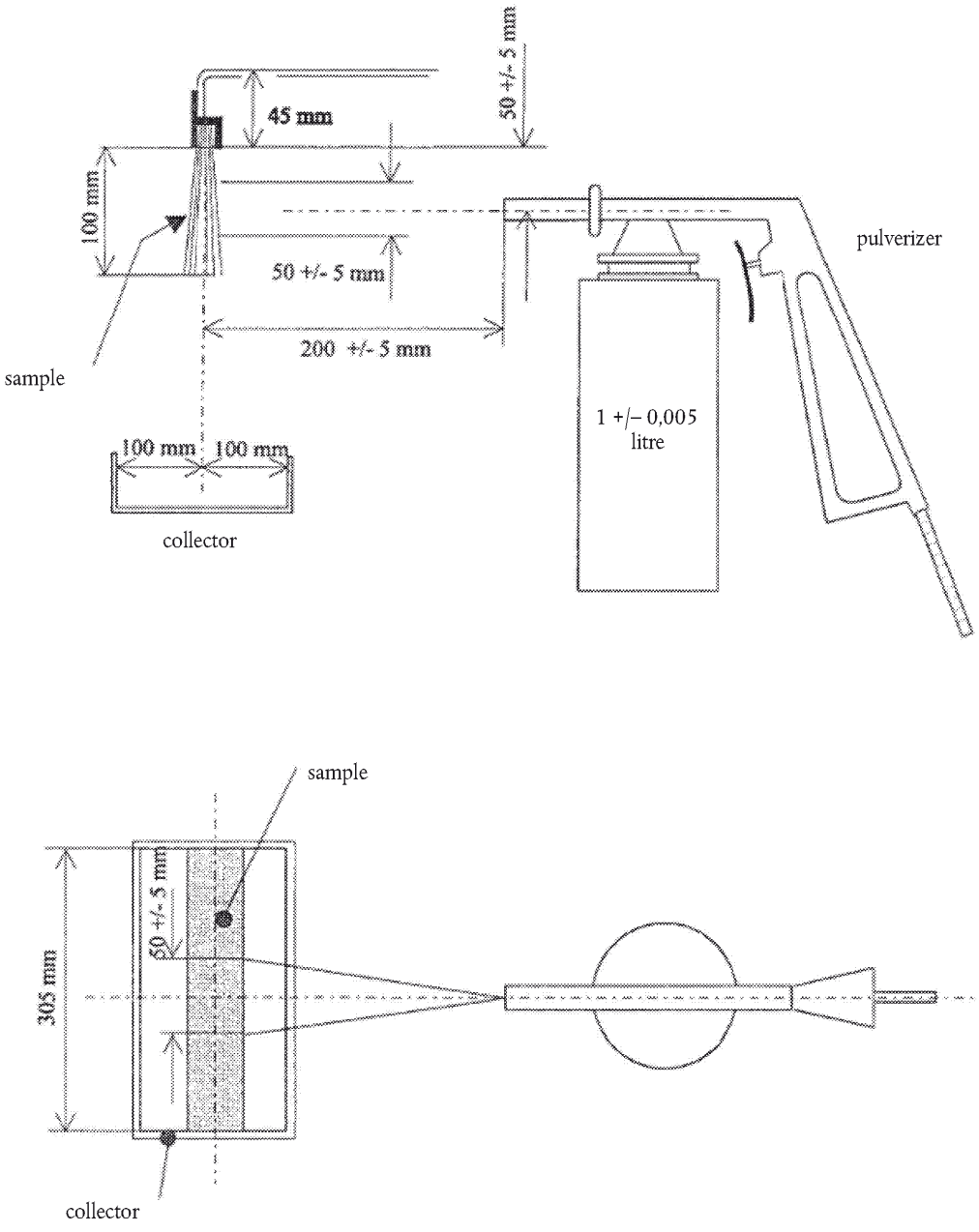
G = rigid flat plate

All linear dimensions are shown in millimetres.

Figure 9

Test assembly for air/water separator spray-suppression devices

(Annex III, PART 3)



COMMISSION REGULATION (EU) No 110/2011

of 8 February 2011

implementing Regulation (EC) No 458/2007 of the European Parliament and of the Council on the European system of integrated social protection statistics (ESSPROS) as regards the appropriate formats for the transmission of data, the results to be transmitted and the criteria for measuring quality for the ESSPROS module on net social protection benefits

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 458/2007 of the European Parliament and of the Council of 25 April 2007 on the European system of integrated social protection statistics (ESSPROS) [1], and in particular Article 7(2) thereof,

Whereas:

(1) Regulation (EC) No 458/2007 established a methodological framework to be used for compiling statistics on a comparable basis for the benefits of the European Union and time limits for the transmission and dissemination of statistics compiled in accordance with the European system of integrated social protection statistics (hereinafter referred to as 'ESSPROS').

(2) Pursuant to Article 7(2) of Regulation (EC) No 458/2007, implementing measures relating to the formats for the transmission of data, the results to be transmitted and the criteria for measuring quality for the module on net social protection benefits should be adopted.

(3) The module on net social protection benefits should be obtained using the 'restricted approach', in order to have the same population of beneficiaries of the gross social protection benefits collected in the ESSPROS core system.

(4) The measures provided for in this Regulation are in accordance with the opinion of the European Statistical System Committee,

HAS ADOPTED THIS REGULATION:

Article 1

1. The formats for the transmission of data and the results to be transmitted for the module on net social protection benefits shall be as laid down in Annex I.

2. The criteria for measuring the quality of data relating to the module on net social protection benefits shall be as laid down in Annex II.

Article 2

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

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

Done at Brussels, 8 February 2011.

For the Commission
The President
José Manuel BARROSO

[1] OJ L 113, 30.4.2007, p. 3.

ANNEX I

Formats for the transmission of data relating to the module on net social protection benefits and results to be transmitted

1. DATA TO BE TRANSMITTED

The net social protection benefits data (restricted approach) shall be transmitted according to the format provided by the Commission.

The variables to be transmitted are the following:

1.1. Average itemised tax rates (AITR) and average itemised social contribution rates (AISCR) broken down simultaneously by:

— the detailed classification of cash social protection benefits only, as specified in Appendix 1 to the ESSPROS Manual,

— the schemes listed in the 'list of schemes' table provided for in Annex I to Commission Regulation (EC) No 1322/2007 [1].

1.2. Residual fiscal benefits (to be provided only if they are not directly accounted for in AITR and/or AISCR).

Each residual fiscal benefit should be split by function corresponding to the list of risks and needs, which is defined in Article 2(b) of Regulation (EC) No 458/2007, at the first level of classification.

Data for residual fiscal benefits shall be provided in national currency.

1.3. Net social benefits (restricted approach) data broken down simultaneously by:

— the detailed classification of social protection benefits, as specified in Appendix 1 to the ESSPROS Manual,

— the schemes listed in the 'list of schemes' table provided for in Annex I to Regulation (EC) No 1322/2007 (data at 'all schemes level' equal to the sum of all the schemes should also be reported).

Net social benefits should be obtained by connecting the gross social protection benefits provided for in Annex I to Regulation (EC) No 1322/2007 to the variables listed in points 1.1 and 1.2.

2. REFERENCE MANUAL

The detailed classifications and definitions to be used for applying this Regulation are laid down in the ESSPROS Manual produced by the Commission in cooperation with Member States.

[1] OJ L 294, 13.11.2007, p. 5.

ANNEX II

A. CRITERIA FOR MEASURING THE QUALITY OF DATA RELATING TO THE MODULE ON NET SOCIAL PROTECTION BENEFITS

In line with Article 12 of Regulation (EC) No 223/2009 of the European Parliament and of the Council [1], the annual quality assessment of the net social protection benefits collection shall apply the following quality criteria: relevance, accuracy, timeliness, punctuality, accessibility and clarity, comparability and coherence.

B. INFORMATION TO TRANSMIT

Member States shall provide information concerning:

1. **Contact**

1.1. Details of the data compiler.

2. **Accuracy**

2.1. Coverage of data sources: the types of sources used (registers or other administrative sources, surveys, estimates); details of the schemes/functions covered by the different types of sources; reports on problems of coverage of data sources which lead to estimation of data.

2.2. Methodologies and assumptions used in the estimates and in the event of incomplete coverage of data sources:

— administrative data,

— survey,

— modelling,

— other (specify).

2.3. Revision of statistics:

— changes in the data sources used,

— changes in the methods and assumptions used for estimating data,

— revisions of data due to conceptual adjustments (for example, adjustments of national accounts),

— revisions of data due to availability of final statistics,

— revisions of data due to quality review actions,

— description of the data revision policy adopted.

3. **Comparability**

3.1. Geographical comparability:

— deviations from complete coverage of the final data,

— deviations from the ESSPROS methodology,

— details on the reasons for deviation and the methods used,

— estimation of the impact of these deviations on comparability.

3.2. Comparability over time:

— description of the correspondence between the coverage of the historical data and the coverage of the current data,

— description of the comparability of the historical data and the current data.

[1] OJ L 87, 31.3.2009, p. 164.

4. **Accessibility and clarity**

4.1. Description of the data dissemination policy adopted by the country.

4.2. Description of the metadata/methodology supplied to the users.

5. **Relevance**

5.1. Description of how the statistical information meets users' current and potential needs.

C. TIMETABLE FOR THE PRODUCTION OF THE QUALITY REPORTS

The quality reports on the net social protection benefits module are annual.

The report on year N shall be transmitted to the Commission (Eurostat) by 31 January of year N + 3.

D. FORMAT FOR THE TRANSMISSION OF QUALITY REPORTS

Information concerning the quality of the data shall be transmitted according to the format provided by the Commission (Eurostat).

COMMISSION REGULATION (EU) No 111/2011

of 7 February 2011

concerning the classification of certain goods in the Combined Nomenclature

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [1], and in particular Article 9(1)(a) thereof,

Whereas:

(1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.

(2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific provisions of the Union, with a view to the application of tariff and other measures relating to trade in goods.

(3) Pursuant to those general rules, the goods described in column (1) of the table set out in the Annex should be classified under the CN code indicated in column (2), by virtue of the reasons set out in column (3) of that table.

(4) It is appropriate to provide that binding tariff information which has been issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature but which is not in accordance with this Regulation can, for a period of three months, continue to be invoked by the holder, under Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [2].

(5) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column (1) of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN code indicated in column (2) of that table.

Article 2

Binding tariff information issued by the customs authorities of Member States, which is not in accordance with this Regulation, can continue to be invoked for a period of three months under Article 12(6) of Regulation (EEC) No 2913/92.

Article 3

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

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

Done at Brussels, 7 February 2011.

For the Commission,
On behalf of the President,
Algirdas ŠEMETA
Member of the Commission

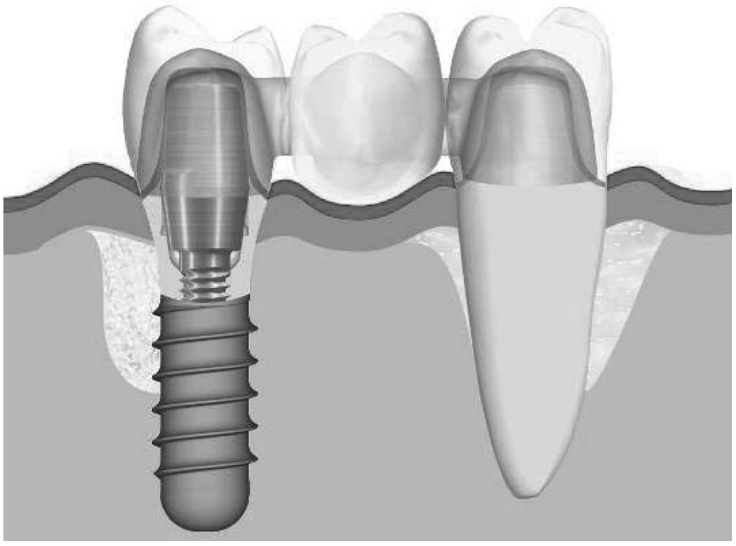
[1] OJ L 256, 7.9.1987, p. 1.

[2] OJ L 302, 19.10.1992, p. 1.

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
An article in the form of a conical piece of titanium having, at its lower end, a shank with an external thread (so-called 'artificial tooth stump'). It is for use in dentistry. It is intended to be screwed into an artificial tooth root implanted in the jaw and connect the root with the artificial crown. At importation, it is in a sterilised packing. (*) See images.	9021 29 00	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Note 2 b) to Chapter 90 and by the wording of CN codes 9021 and 9021 29 00. Due to its design, the product is for specific use in dentistry and cannot be considered to be a 'part of general use' as referred to in Note 2 to Section XV. Therefore, classification under Section XV is excluded. The article, being a part of a dental fitting, is to be classified under heading 9021 which includes various dentists' accessories for making dental crowns or dentures (see also the Harmonised System Explanatory Notes to heading 9021 (III) (B) (4)). The product is therefore to be classified under CN code 9021 29 00 as a part of a dental fitting.

(*) The images are purely for information.



COMMISSION REGULATION (EU) No 112/2011

of 7 February 2011

concerning the classification of certain goods in the Combined Nomenclature

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [1], and in particular Article 9(1)(a) thereof,

Whereas:

(1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.

(2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific provisions of the Union, with a view to the application of tariff and other measures relating to trade in goods.

(3) Pursuant to those general rules, the goods described in column (1) of the table set out in the Annex should be classified under the CN code indicated in column (2), by virtue of the reasons set out in column (3) of that table.

(4) It is appropriate to provide that binding tariff information which has been issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature but which is not in accordance with this Regulation can, for a period of three months, continue to be invoked by the holder, under Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [2].

(5) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column (1) of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN code indicated in column (2) of that table.

Article 2

Binding tariff information issued by the customs authorities of Member States, which is not in accordance with this Regulation, can continue to be invoked for a period of three months under Article 12(6) of Regulation (EEC) No 2913/92.

Article 3

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

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

Done at Brussels, 7 February 2011.

For the Commission,
On behalf of the President,
Algirdas ŠEMETA
Member of the Commission

[1] OJ L 256, 7.9.1987, p. 1.

[2] OJ L 302, 19.10.1992, p. 1.

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
A module with dimensions of approximately 8,5 × 30 × 23 cm, designed for monitoring the respiratory and anaesthetic gases of a patient under medical treatment (so-called 'Gas Analyser Module'). It works solely in conjunction with and is controlled by a patient monitoring system. The module analyses a patient's respiratory gas by spectroscopy for its content of, for example, carbon dioxide, nitrous oxide, halothane or isoflurane. The patient monitoring system processes the data received from the module and verifies it against prefixed parameters. The results are displayed on the monitor. When those parameters are not met, an alarm is triggered.	9018 19 10	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Note 2(b) to Chapter 90 and by the wording of CN codes 9018, 9018 19 and 9018 19 10. The module is not considered to be a complete instrument or apparatus for physical or chemical analysis of heading 9027, as its controlling functions and the display of the consequent results are performed by the patient monitoring system. Consequently, classification under heading 9027 is excluded. The module is not recognisable as an ultra-violet or infra-red ray apparatus of CN code 9018 20 00. Consequently, classification under CN code 9018 20 00 is excluded. As the module is not used for providing anaesthesia, it cannot be considered to be an anaesthetic apparatus and instrument of CN code 9018 90 60. Consequently, classification under CN code 9018 90 60 is excluded. As the module is suitable for use solely with an electrodiagnostic apparatus for simultaneous monitoring of two or more parameters, it is therefore, by application of Note 2(b) to Chapter 90, to be classified under CN code 9018 19 10.

COMMISSION REGULATION (EU) No 113/2011

of 7 February 2011

concerning the classification of certain goods in the Combined Nomenclature

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [1], and in particular Article 9(1)(a) thereof,

Whereas:

(1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.

(2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific provisions of the Union, with a view to the application of tariff and other measures relating to trade in goods.

(3) Pursuant to those general rules, the goods described in column (1) of the table set out in the Annex should be classified under the CN code indicated in column (2), by virtue of the reasons set out in column (3) of that table.

(4) It is appropriate to provide that binding tariff information which has been issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature but which is not in accordance with this Regulation can, for a period of three months, continue to be invoked by the holder, under Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [2].

(5) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column (1) of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN code indicated in column (2) of that table.

Article 2

Binding tariff information issued by the customs authorities of Member States, which is not in accordance with this Regulation, can continue to be invoked for a period of three months under Article 12(6) of Regulation (EEC) No 2913/92.

Article 3

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

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

Done at Brussels, 7 February 2011.

For the Commission,
On behalf of the President,
Algirdas ŠEMETA
Member of the Commission

[1] OJ L 256, 7.9.1987, p. 1.

[2] OJ L 302, 19.10.1992, p. 1.

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
A product (so-called 'video surveillance system for babies') presented in a set put up for retail sale consisting of: — a wireless television camera incorporating a microphone, a video signal transmitter and an antenna; the camera is equipped with an output interface for audio/video; — a wireless colour monitor of the liquid crystal display (LCD) type with a diagonal measurement of the screen of approximately 14 cm (5,6 inches) and an aspect ratio of 4:3, incorporating a loud-speaker, a video signal receiver and an antenna; the monitor is equipped with an input interface for audio/video; — two adaptors; and — an audio/video cable. Signals are transmitted from the camera to the monitor at a frequency of 2,4 GHz within a range of 150 meters. The set is used for monitoring babies from a distance.	8528 72 40	Classification is determined by General Rules 1, 3(b), 3(c) and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 8528, 8528 72 and 8528 72 40. The product is a set within the meaning of GIR 3(b), consisting of a camera of heading 8525 and a television reception apparatus of heading 8528, in which the component giving the set its essential character cannot be determined. By application of GIR 3(c), the product is therefore to be classified as a television reception apparatus of CN code 8528 72 40.

COMMISSION REGULATION (EU) No 114/2011

of 8 February 2011

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

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 9 February 2011.

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

Done at Brussels, 8 February 2011.

For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and Rural Development

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

ANNEX

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

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	IL	107,9
	JO	87,5
	MA	53,6
	TN	111,3
	TR	110,2
	ZZ	94,1
0707 00 05	EG	182,1
	JO	96,7
	MA	100,1
	TR	177,5
	ZZ	139,1
0709 90 70	MA	50,7
	TR	147,8
	ZA	57,4
	ZZ	85,3
0709 90 80	EG	100,8
	ZZ	100,8
0805 10 20	AR	41,5
	BR	41,5
	EG	54,2
	IL	71,4
	MA	53,2
	TN	62,3
	TR	69,4
	ZA	41,5
	ZZ	54,4
0805 20 10	IL	156,9
	MA	64,2
	TR	79,6
	ZZ	100,2
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	58,2
	EG	57,7
	IL	129,1
	JM	82,9
	MA	107,3
	PK	49,7
	TR	69,0
	ZZ	79,1
0805 50 10	AR	45,3
	EG	67,9
	MA	49,9
	TR	53,1
	ZZ	54,1
0808 10 80	CA	87,9
	CL	90,0
	CN	86,6
	MK	42,6
	US	107,2
	ZZ	82,9
0808 20 50	AR	130,7
	CL	166,4
	CN	52,8
	US	130,9
	ZA	101,5
	ZZ	116,5

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

DIRECTIVES

COMMISSION DIRECTIVE 2011/10/EU

of 8 February 2011

amending Directive 98/8/EC of the European Parliament and of the Council to include bifenthrin as an active substance in Annex I thereto

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market [1], and in particular the second subparagraph of Article 16(2) thereof,

Whereas:

(1) Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market [2] establishes a list of active substances to be assessed, with a view to their possible inclusion in Annex I, IA or IB to Directive 98/8/EC. That list includes bifenthrin.

(2) Pursuant to Regulation (EC) No 1451/2007, bifenthrin has been evaluated in accordance with Article 11(2) of Directive 98/8/EC for use in product type 8, wood preservatives, as defined in Annex V to that Directive.

(3) France was designated as Rapporteur Member State and submitted the competent authority report, together with a recommendation, to the Commission on 3 January 2008 in accordance with Article 14(4) and (6) of Regulation (EC) No 1451/2007.

(4) The competent authority report was reviewed by the Member States and the Commission. In accordance with Article 15(4) of Regulation (EC) No 1451/2007, the findings of the review were incorporated, within the Standing Committee on Biocidal Products on 24 September 2010, in an assessment report.

(5) It appears from the evaluations that biocidal products used as wood preservatives and containing bifenthrin may be expected to satisfy the requirements laid down in Article 5 of Directive 98/8/EC. It is therefore appropriate to include bifenthrin in Annex I to that Directive.

(6) Not all potential uses have been evaluated at the Union level. It is therefore appropriate that Member States assess those uses or exposure scenarios and those risks to environmental compartments and populations that have not been representatively addressed in the Union level risk assessment and, when granting product authorisations, ensure that appropriate measures are taken or specific conditions imposed in order to reduce the identified risks to acceptable levels.

(7) Unacceptable risks were identified for non-professional users. It is therefore appropriate to require that product authorisations are limited to industrial or professional use, unless it is demonstrated in the application for product authorisation that risks to non-professional users can be reduced to acceptable levels in accordance with Article 5 of, and Annex VI to, Directive 98/8/EC.

(8) In view of the assumptions made during the risk assessment, it is appropriate to require that products authorised for industrial or professional use are used with appropriate personal protective equipment, unless it can be demonstrated in the application for product authorisation that risks to industrial or professional users can be reduced to an acceptable level by other means.

[1] OJ L 123, 24.4.1998, p. 1.
[2] OJ L 325, 11.12.2007, p. 3.

(9) In view of the risks identified for the soil and aquatic compartments, appropriate measures should be taken to protect those compartments. It is therefore appropriate to require that instructions are provided to indicate that freshly treated timber is stored after treatment under shelter or on impermeable hardstanding, or both, and that any losses from the application of products used as wood preservatives and containing bifenthrin are collected for reuse or disposal. Furthermore, it is appropriate to require that products are not authorised for the *in situ* treatment of wood outdoors, or for treatment of wood that will be either continually exposed to the weather or protected from the weather but subject to frequent wetting (use class 3 as defined by OECD [1]), unless data is submitted demonstrating that the product will meet the requirements of Article 5 of, and Annex VI to, Directive 98/8/EC, if necessary by the application of appropriate risk mitigation measures.

(10) It is important that the provisions of this Directive be applied simultaneously in all Member States in order to ensure equal treatment of biocidal products on the market containing the active substance bifenthrin and also to facilitate the proper operation of the biocidal products market in general.

(11) A reasonable period should be allowed to elapse before an active substance is included in Annex I to Directive 98/8/EC in order to permit Member States and interested parties to prepare themselves to meet the new requirements entailed and to ensure that applicants who have prepared dossiers can benefit fully from the 10-year period of data protection, which, in accordance with Article 12(1)(c)(ii) of Directive 98/8/EC, starts from the date of inclusion.

(12) After inclusion, Member States should be allowed a reasonable period to implement Article 16(3) of Directive 98/8/EC.

(13) Directive 98/8/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 98/8/EC is amended in accordance with the Annex to this Directive.

Article 2

Transposition

1. Member States shall adopt and publish, by 31 January 2012 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive.

They shall apply those provisions from 1 February 2013.

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

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 8 February 2011.

For the Commission
The President
José Manuel BARROSO

[1] OECD series on emission scenario documents, Number 2, Emission Scenario Document for Wood Preservatives, part 2, p. 64.

ANNEX

In Annex I to Directive 98/8/EC, the following entry is added:

No	Common name	IUPAC name, identification numbers	Minimum purity of the active substance in the biocidal product as placed on the market	Date of inclusion	Deadline for compliance with Article 16(3) (except for products containing more than one active substance, for which the deadline to comply with Article 16(3) shall be the one set out in the last of the inclusion decisions relating to its active substances)	Expiry date of inclusion	Product type	Specific provisions (*)
'38	Bifenthrin	IUPAC name: 2-methylbiphenyl-3-ylmethyl (1RS)-cis-3-[(Z)-2-chloro-3,3,3-trifluoroprop-1-enyl]-2,2-dimethylcyclopropanecarboxylate EC No: n.a. CAS No: 82657-04-3	911 g/kg	1 February 2013	31 January 2015	31 January 2023	8	When assessing the application for authorisation of a product in accordance with Article 5 and Annex VI, Member States shall assess, when relevant for the particular product, those uses or exposure scenarios and those risks to environmental compartments and populations that have not been representatively addressed in the Union level risk assessment. Member States shall ensure that authorisations are subject to the following conditions: — Products shall be authorised only for industrial or professional use, unless it is demonstrated in the application for product authorisation that risks to non-professional users can be reduced to acceptable levels in accordance with Article 5 and Annex VI. — Products authorised for industrial or professional use must be used with appropriate personal protective equipment, unless it can be demonstrated in the application for product authorisation that risks to industrial or professional users can be reduced to an acceptable level by other means. — Appropriate risk mitigation measures shall be taken to protect the soil and aquatic compartments. In particular, labels and, where provided, safety data sheets of products authorised shall indicate that freshly treated timber shall be stored after treatment under shelter or on impermeable hardstanding, or both, to prevent direct losses to soil or water, and that any losses from the application of the product shall be collected for reuse or disposal.

No	Common name	IUPAC name, identification numbers	Minimum purity of the active substance in the biocidal product as placed on the market	Date of inclusion	Deadline for compliance with Article 16(3) (except for products containing more than one active substance, for which the deadline to comply with Article 16(3) shall be the one set out in the last of the inclusion decisions relating to its active substances)	Expiry date of inclusion	Product type	Specific provisions (*)
								— Products shall not be authorised for the *in situ* treatment of wood outdoors, or for treatment of wood that will be either continually exposed to the weather or protected from the weather but subject to frequent wetting, unless data have been submitted demonstrating that the product will meet the requirements of Article 5 and Annex VI, if necessary by the application of appropriate risk mitigation measures.'

(*) For the implementation of the common principles of Annex VI, the content and conclusions of assessment reports are available on the Commission website: http://ec.europa.eu/comm/environment/biocides/index.htm

COMMISSION DIRECTIVE 2011/11/EU

of 8 February 2011

amending Directive 98/8/EC of the European Parliament and of the Council to include (Z,E)-tetradeca-9,12-dienyl acetate as an active substance in Annexes I and IA thereto

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market [1], and in particular the second subparagraph of Article 16(2) thereof,

Whereas:

(1) Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market [2] establishes a list of active substances to be assessed, with a view to their possible inclusion in Annex I, IA or IB to Directive 98/8/EC. That list includes (Z,E)-tetradeca-9,12-dienyl acetate.

(2) Pursuant to Regulation (EC) No 1451/2007, (Z,E)-tetradeca-9,12-dienyl acetate has been evaluated in accordance with Article 11(2) of Directive 98/8/EC for use in product-type 19, repellents and attractants, as defined in Annex V to that Directive.

(3) Austria was designated as Rapporteur Member State and submitted the competent authority report, together with a recommendation, to the Commission on 23 February 2009 in accordance with Article 14(4) and (6) of Regulation (EC) No 1451/2007.

(4) The competent authority report was reviewed by the Member States and the Commission. In accordance with Article 15(4) of Regulation (EC) No 1451/2007, the findings of the review were incorporated, within the Standing Committee on Biocidal Products on 24 September 2010, in an assessment report.

(5) It appears from the evaluations that biocidal products used as attractants and containing (Z,E)-tetradeca-9,12-dienyl acetate may be expected to satisfy the requirements laid down in Article 5 of Directive 98/8/EC. It is therefore appropriate to include (Z,E)-tetradeca-9,12-dienyl acetate in Annex I to that Directive.

(6) It also appears from the evaluations that biocidal products used as attractants and containing (Z,E)-tetradeca-9,12-dienyl acetate may be expected to present only low risk to humans, animals and the environment and to satisfy the requirements laid down in Article 5 of Directive 98/8/EC, in particular with regard to the use which was examined and detailed in the assessment report, i.e. in traps for indoor use containing a maximum of 2 mg of the active substance. It is therefore appropriate to include (Z,E)-tetradeca-9,12-dienyl acetate in Annex IA to Directive 98/8/EC.

(7) Not all potential uses have been evaluated at Union level. It is therefore appropriate that Member States, when granting product authorisations, assess those uses or exposure scenarios and those risks to the environmental compartments and populations that have not been representatively addressed in the Union level risk assessment and ensure that appropriate measures are taken or specific conditions imposed in order to reduce the identified risks to acceptable levels.

(8) In the light of the assumptions made during the evaluation, it is appropriate to require that (Z,E)-tetradeca-9,12-dienyl acetate is not applied where food or feed is stored unless the food or feed packaging is closed or re-closed. Labels should therefore indicate that biocidal products containing (Z,E)-tetradeca-9,12-dienyl acetate are not to be used in spaces where un-packaged food or feed is kept.

(9) It is important that the provisions of this Directive be applied simultaneously in all Member States in order to ensure equal treatment of biocidal products on the market containing the active substance (Z,E)-tetradeca-9,12-dienyl acetate and also to facilitate the proper operation of the biocidal products market in general.

(10) A reasonable period should be allowed to elapse before an active substance is included in Annex I to Directive 98/8/EC in order to permit Member States and the interested parties to prepare themselves to meet the new requirements entailed and to ensure that applicants who have prepared dossiers can benefit fully from the 10-year period of data protection, which, in accordance with Article 12(1)(c)(ii) of Directive 98/8/EC, starts from the date of inclusion.

(11) After inclusion, Member States should be allowed a reasonable period to implement Article 16(3) of Directive 98/8/EC.

(12) Directive 98/8/EC should therefore be amended accordingly.

[1] OJ L 123, 24.4.1998, p. 1.
[2] OJ L 325, 11.12.2007, p. 3.

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annexes I and IA to Directive 98/8/EC are amended in accordance with the Annex to this Directive.

Article 2

Transposition

1. Member States shall adopt and publish, by 31 January 2012 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive.

They shall apply those provisions from 1 February 2013.

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

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 8 February 2011.

For the Commission
The President
José Manuel BARROSO

ANNEX

(1) In Annex I to Directive 98/8/EC, the following entry is added:

No	Common Name	IUPAC Name Identification Numbers	Minimum purity of the active substance in the biocidal product as placed on the market	Date of inclusion	Deadline for compliance with Article 16(3) (except for products containing more than one active substance, for which the deadline to comply with Article 16(3) shall be the one set out in the last of the inclusion decisions relating to its active substances)	Expiry date of inclusion	Product type	Specific provisions (*)
'39	(Z,E)-tetradeca-9, 12-dienyl acetate	(9Z,12E)-Tetradeca-9, 12-dien-1-yl acetate EC No: n.a. CAS No: 30507-70-1	977 g/kg	1 February 2013	31 January 2015	31 January 2023	19	When assessing the application for authorisation of a product in accordance with Article 5 and Annex VI, Member States shall assess, when relevant for the particular product, those uses or exposure scenarios and those risks to environmental compartments and populations that have not been representatively addressed in Union level risk assessment. Member States shall ensure that authorisations are subject to the following condition: — Labels for biocidal products containing (Z,E)-tetradeca-9,12-dienyl acetate shall indicate that those products shall not be used in spaces where un-packaged food or feed is kept.',

(*) For the implementation of the common principles of Annex VI, the content and conclusions of assessment reports are available on the Commission website: http://ec.europa.eu/comm/environment/biocides/index.htm

(2) In Annex IA to Directive 98/8/EC, the following entry is added:

No	Common Name	IUPAC Name Identification Numbers	Minimum purity of the active substance in the biocidal product as placed on the market	Date of inclusion	Deadline for compliance with Article 16(3) (except for products containing more than one active substance, for which the deadline to comply with Article 16(3) shall be the one set out in the last of the inclusion decisions relating to its active substances)	Expiry date of inclusion	Product type	Specific provisions (*)
'2	(Z,E)-tetradeca-9, 12-dienyl acetate	(9Z,12E)-tetradeca-9, 12-dien-1-yl acetate EC No: n.a. CAS No: 30507-70-1	977 g/kg	1 February 2013	31 January 2015	31 January 2023	19	Member States shall ensure that registrations are subject to the following conditions: — Only for traps containing a maximum of 2 mg of (Z,E)-Tetradeca-9,12-dienyl acetate for indoor use, — Labels for biocidal products containing (Z,E)-tetradeca-9,12-dienyl acetate shall indicate that those products shall only be used indoors, and shall not be used in spaces where un-packaged food or feed is kept.',

(*) For the implementation of the common principles of Annex VI, the content and conclusions of assessment reports are available on the Commission website: http://ec.europa.eu/comm/environment/biocides/index.htm

COMMISSION DIRECTIVE 2011/12/EU

of 8 February 2011

amending Directive 98/8/EC of the European Parliament and of the Council to include fenoxycarb as an active substance in Annex I thereto

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market [1], and in particular the second subparagraph of Article 16(2) thereof,

Whereas:

(1) Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market [2] establishes a list of active substances to be assessed, with a view to their possible inclusion in Annex I, IA or IB to Directive 98/8/EC. That list includes fenoxycarb.

(2) Pursuant to Regulation (EC) No 1451/2007, fenoxycarb has been evaluated in accordance with Article 11(2) of Directive 98/8/EC for use in product type 8, wood preservatives, as defined in Annex V to that Directive.

(3) Germany was designated as Rapporteur Member State and submitted the competent authority report, together with a recommendation, to the Commission on 12 September 2008 in accordance with Article 14(4) and (6) of Regulation (EC) No 1451/2007.

(4) The competent authority report was reviewed by the Member States and the Commission. In accordance with Article 15(4) of Regulation (EC) No 1451/2007, the findings of the review were incorporated, within the Standing Committee on Biocidal Products on 24 September 2010, in an assessment report.

(5) It appears from the evaluations that biocidal products used as wood preservatives and containing fenoxycarb may be expected to satisfy the requirements laid down in Article 5 of Directive 98/8/EC. It is therefore appropriate to include fenoxycarb in Annex I to that Directive.

(6) Not all potential uses have been evaluated at Union level. It is therefore appropriate that Member States assess those uses or exposure scenarios and those risks to the environmental compartments and populations that have not been representatively addressed in the Union level risk assessment and, when granting product authorisations, ensure that appropriate measures are taken or specific conditions imposed in order to reduce the identified risks to acceptable levels.

(7) In view of the assumptions made during the risk assessment, it is appropriate to require that freshly treated timber is stored after treatment under shelter or on impermeable hardstanding, or both, and that any losses from the application of products used as wood preservatives and containing fenoxycarb are collected for reuse or disposal.

(8) In view of the risks identified for the aquatic compartment, appropriate measures should be taken to protect those compartments. Unacceptable risks were identified during the in-service use of treated wood not covered and not in contact with the ground, which is either continually exposed to the weather or protected from the weather but subject to frequent wetting (use class 3 as defined by OECD [3]) in the specific scenario bridge over pond. It is therefore appropriate to require that products are not authorised for the treatment of wood intended for outdoor constructions near or above water, unless data is submitted demonstrating that the product will meet the requirements of Article 5 of, and Annex VI to Directive 98/8/EC, if necessary by the application of appropriate risk mitigation measures.

(9) It is important that the provisions of this Directive be applied simultaneously in all Member States in order to ensure equal treatment of biocidal products on the market containing the active substance fenoxycarb and also to facilitate the proper operation of the biocidal products market in general.

(10) A reasonable period should be allowed to elapse before an active substance is included in Annex I to Directive 98/8/EC in order to permit Member States and the interested parties to prepare themselves to meet the new requirements entailed and to ensure that applicants who have prepared dossiers can benefit fully from the 10-year period of data protection, which, in accordance with Article 12(1)(c)(ii) of Directive 98/8/EC, starts from the date of inclusion.

(11) After inclusion, Member States should be allowed a reasonable period to implement Article 16(3) of Directive 98/8/EC.

[1] OJ L 123, 24.4.1998, p. 1.
[2] OJ L 325, 11.12.2007, p. 3.
[3] OECD series on emission scenario documents, Number 2, Emission Scenario Document for Wood Preservatives, part 2, p. 64.

(12) Directive 98/8/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 98/8/EC is amended in accordance with the Annex to this Directive.

Article 2

Transposition

1. Member States shall adopt and publish, by 31 January 2012 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive.

They shall apply those provisions from 1 February 2013.

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

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 8 February 2011.

For the Commission

The President

José Manuel BARROSO

ANNEX

In Annex I to Directive 98/8/EC, the following entry is added:

No	Common name	IUPAC name Identification numbers	Minimum purity of the active substance in the biocidal product as placed on the market	Date of inclusion	Deadline for compliance with Article 16(3) (except for products containing more than one active substance, for which the deadline to comply with Article 16(3) shall be the one set out in the last of the inclusion decisions relating to its active substances)	Expiry date of inclusion	Product type	Specific provisions (*)
'40	Fenoxycarb	IUPAC name: Ethyl [2-(4-phenoxyphenoxy) ethyl]carbamate EC No: 276-696-7 CAS No: 72490-01-8	960 g/kg	1 February 2013	31 January 2015	31 January 2023	8	When assessing the application for authorisation of a product in accordance with Article 5 and Annex VI, Member States shall assess, when relevant for the particular product, those uses or exposure scenarios and those risks to environmental compartments and populations that have not been representatively addressed in the Union level risk assessment. Member States shall ensure that authorisations are subject to the following conditions: — Appropriate risk mitigation measures shall be taken to protect the soil and aquatic compartments. In particular, labels and, where provided, safety data sheets of products authorised shall indicate that freshly treated timber shall be stored after treatment under shelter or on impermeable hardstanding under roof, or both, to prevent direct losses to soil or water, and that any losses from the application of the product shall be collected for reuse or disposal. — Products shall not be authorised for treatment of wood that will be used in outdoor constructions near or above water, unless data is submitted demonstrating that the product will meet the requirements of Article 5 and Annex VI, if necessary by the application of appropriate risk mitigation measures.'

(*) For the implementation of the common principles of Annex VI, the content and conclusions of assessment reports are available on the Commission website: http://ec.europa.eu/comm/environment/biocides/index.htm

COMMISSION DIRECTIVE 2011/13/EU

of 8 February 2011

amending Directive 98/8/EC of the European Parliament and of the Council to include nonanoic acid as an active substance in Annex I thereto

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market [1], and in particular the second subparagraph of Article 16(2) thereof,

Whereas:

(1) Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market [2] establishes a list of active substances to be assessed, with a view to their possible inclusion in Annex I, IA or IB to Directive 98/8/EC. That list includes nonanoic acid.

(2) Pursuant to Regulation (EC) No 1451/2007, nonanoic acid has been evaluated in accordance with Article 11(2) of Directive 98/8/EC for use in product-type 19, repellents and attractants, as defined in Annex V to that Directive.

(3) Austria was designated as Rapporteur Member State and submitted the competent authority report, together with a recommendation, to the Commission on 10 October 2008 in accordance with Article 14(4) and (6) of Regulation (EC) No 1451/2007.

(4) The competent authority report was reviewed by the Member States and the Commission. In accordance with Article 15(4) of Regulation (EC) No 1451/2007, the findings of the review were incorporated, within the Standing Committee on Biocidal Products on 24 September 2010, in an assessment report.

(5) It appears from the evaluations that biocidal products used as repellents and containing nonanoic acid may be expected to satisfy the requirements laid down in Article 5 of Directive 98/8/EC. It is therefore appropriate to include nonanoic acid in Annex I to that Directive.

(6) Not all potential uses have been evaluated at Union level. It is therefore appropriate that Member States assess those uses or exposure scenarios and those risks to the environmental compartments and populations that have not been representatively addressed in the Union level risk assessment and, when granting product authorisations, ensure that appropriate measures are taken or specific conditions imposed in order to reduce the identified risks to acceptable levels.

(7) It is important that the provisions of this Directive be applied simultaneously in all Member States in order to ensure equal treatment of biocidal products on the market containing the active substance nonanoic acid and also to facilitate the proper operation of the biocidal products market in general.

(8) A reasonable period should be allowed to elapse before an active substance is included in Annex I to Directive 98/8/EC in order to permit Member States and the interested parties to prepare themselves to meet the new requirements entailed and to ensure that applicants who have prepared dossiers can benefit fully from the 10-year period of data protection, which, in accordance with Article 12(1)(c)(ii) of Directive 98/8/EC, starts from the date of inclusion.

(9) After inclusion, Member States should be allowed a reasonable period to implement Article 16(3) of Directive 98/8/EC.

(10) Directive 98/8/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 98/8/EC is amended in accordance with the Annex to this Directive.

Article 2

Transposition

1. Member States shall adopt and publish, by 31 January 2012 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive.

They shall apply those provisions from 1 February 2013.

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

[1] OJ L 123, 24.4.1998, p. 1.
[2] OJ L 325, 11.12.2007, p. 3.

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 8 February 2011.

For the Commission
The President
José Manuel BARROSO

ANNEX

In Annex I to Directive 98/8/EC, the following entry is added:

No	Common Name	IUPAC Name Identification Numbers	Minimum purity of the active substance in the biocidal product as placed on the market	Date of inclusion	Deadline for compliance with Article 16(3) (except for products containing more than one active substance, for which the deadline to comply with Article 16(3) shall be the one set out in the last of the inclusion decisions relating to its active substances)	Expiry date of inclusion	Product type	Specific provisions (*)
'41	Nonanoic acid, Pelargonic acid	IUPAC name: Nonanoic acid EC No: 203-931-2 CAS No: 112-05-0	896 g/kg	1 February 2013	31 January 2015	31 January 2023	19	When assessing the application for authorisation of a product in accordance with Article 5 and Annex VI, Member States shall assess, when relevant for the particular product, those uses or exposure scenarios and those risks to environmental compartments and populations that have not been representatively addressed in Union level risk assessment.'

(*) For the implementation of the common principles of Annex VI, the content and conclusions of assessment reports are available on the Commission website: http://ec.europa.eu/comm/environment/biocides/index.htm

DECISIONS

COMMISSION DECISION

of 9 June 2010

on state aid C 1/09 (ex NN 69/08) granted by Hungary to MOL Nyrt.

(notified under document C(2010) 3553)

(Only the Hungarian text is authentic)

(Text with EEA relevance)

(2011/88/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, 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 regard to the Commission Decision initiating the procedure laid down in Article 108(2) of the Treaty [1] in respect of aid No C 1/09 (ex NN 69/08) [2],

Having called on interested parties to submit their comments pursuant to the provisions cited above, and having regard to their comments,

Whereas:

I. PROCEDURE

(1) On 13 January 2009, following a complaint received on 14 November 2007, the Commission opened a formal investigation procedure into measures put in place by Hungary allegedly constituting state aid in favour of a company called Hungarian Oil & Gas Plc (*Magyar Olaj- és Gázipari Nyrt.*; hereinafter 'MOL').

(2) Hungary submitted its comments on the Commission's opening decision on 8 April 2009.

(3) The opening decision was published in the *Official Journal of the European Union* on 28 March 2009 [3]. Comments were received from two interested parties: MOL and the Hungarian Mining Association (*Magyar Bányászati Szövetség*), both on 27 April 2009.

(4) The Commission transmitted the comments to Hungary by letter of 2 June 2009. By letter of 3 July 2009 Hungary reported that it had no comments to make on the observations of the interested parties.

(5) The Commission requested further information from the Hungarian authorities on 21 September 2009 and 12 January 2010, and Hungary replied by letters of 19 October 2009 and 9 February 2010.

II. THE BENEFICIARY

(6) MOL is an integrated oil and gas company based in Budapest, Hungary. MOL's core activities in the Hungarian market include: exploration for and extraction of crude oil and natural gas; manufacturing of gas products; the refining, transportation, storage and distribution of crude oil products at both retail and wholesale; transmission of natural gas; and the production and sale of olefins and polyolefins. In addition, the MOL Group (to which MOL belongs) also includes several other Hungarian and foreign subsidiaries [4].

(7) In Hungary and Slovakia the MOL Group is market leader in each of its core activities. In 2008 the net sales of MOL and the MOL Group were around EUR 6,8 billion and EUR 13 billion respectively [5]. In the same year their respective operating profits were around EUR 400 million and EUR 732 million.

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[1] With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty became Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union; 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 as appropriate.

[2] Commission Decision 2009/C 74/05 (OJ C 74, 28.3.2009, p. 63).

[3] See footnote 2.

[4] For example, TVK (one of Hungary's leading chemical companies), Slovnaft (a Slovak oil company) and Roth (an Austrian retail and wholesale company). The Group also has a strategic partnership with the Croatian company INA.

[5] http://www.molgroup.hu/en/investors/financial_reports/

III. **DESCRIPTION OF THE MEASURE**

The Mining Act

(8) The general rules governing mining activities in Hungary are laid down in the 1993 Act on Mining (hereinafter 'Mining Act') ([6]), which also governs mining activities (prospecting, exploration and extraction) involving hydrocarbons (i.e. crude oil and natural gas).

(9) The Mining Act distinguishes mining activities exercised on the basis of two different legal instruments: (i) concession ([7]) and (ii) authorisation ([8]).

— In the case of a *concession*, the minister responsible for mining (hereinafter 'competent minister') concludes a contract ([9]) with the successful bidder following an open tender ([10]) for the exploitation of a 'closed area'.

— This is different from 'open areas' ([11]), where *authorisation* of mining rights cannot be refused by the Mining Authority if the applicant fulfils the conditions laid down by law ([12]).

(10) According to the definition in the Mining Act ([13]), closed areas are reserved for mining activities on the basis of a concession. Consequently any area other than a closed area qualifies as an open area. According to the explanation provided by Hungary, the original intention was to classify all fields as closed areas designated for concession. Open areas presumed to be less rich in minerals would have been the exception. In such cases, the fields were thought to be less valuable and no bids were expected to be received in an open tender.

(11) The Mining Act also stipulates that the extraction of mineral resources is subject to a mining fee payable to the State, the amount being a percentage of the value of the minerals extracted ([14]). The mining fee differs depending on the regime applicable:

— In the case of concessions, the amount of the mining fee is laid down in the concession agreement ([15]),

— For mineral resources extracted under authorisation, the fee is governed by the Mining Act ([16]). Until January 2008, the mining fee related to the extraction of hydrocarbons under authorisation amounted to 12 % for fields put into operation as from 1 January 1998 and J % for fields put into production before 1 January 1998 ([17]). The factor 'J' was to be calculated according to a formula based on historical gas prices, extracted quantity and value; its minimum value was set at 12 %.

Section 26/A(5) of the Mining Act

(12) Section 26/A(5) of the Mining Act stipulates that where a mining company under the authorisation regime does not start extraction within 5 years from the date of the Mining Authority's authorisation, the mining right is withdrawn ([18]).

(13) This Section also provides for the possibility of an extension of this deadline by agreement between the competent minister and the mining company ([19]). The Section provides for three different fees to be paid where extension of the mining right is granted:

(a) firstly, an extension fee has to be paid for the idle fields until operation is actually started; this fee is maximum 1,2 times the original mining fee, calculated on the basis of a stipulated hypothetical amount of minerals, since this charge has to be paid at a time when there has still not been any actual production on the field;

([6]) *1993. évi XLVIII. Törvény a bányászatról* (Act No XLVIII of 1993 on Mining).
([7]) Section 8 of the Mining Act.
([8]) Section 5 of the Mining Act.
([9]) Section 12 of the Mining Act.
([10]) Section 10 of the Mining Act.
([11]) Section 5(1)(a) of the Mining Act.
([12]) Section 5(4) of the Mining Act.
([13]) Section 9 of the Mining Act.
([14]) Section 20(1) of the Mining Act.
([15]) Section 20(11) of the Mining Act.
([16]) Section 20(2)-(7) of the Mining Act.
([17]) Other fees were stipulated for other types of minerals, such as solid minerals.
([18]) Section 26/A(5) of the Mining Act reads as follows: 'the mining company shall start production […] within 5 years of the mining field being established. The mining company may ask the Mining Authority to extend this deadline by up to 5 years once only. The mining company shall pay a charge if an extension is granted. The amount of mineral raw material corresponding to the charge and the percentage of mining fee to be paid in accordance with the value shall be laid down in an agreement concluded between the minister and the mining company at a higher rate than the percentage applied at the time of the application but at no more than 1,2 times the original level. The Mining Authority shall decide on the extension of the deadline. The decision shall state the value of the payment obligation laid down in the agreement. The mining company may be granted a deadline extension for more than two mining fields at the same time if the application of the increased mining fee for the mining fields in respect of which the deadline has been extended covers all the mining sites of the mining company in an agreement with a duration of at least 5 years. If a request is made to extend the deadline for more than five mining fields, in addition to the mining fee increased in accordance with the agreement concluded between the minister and the mining company, a further single payment may also be established corresponding to 20 % of the amount payable in accordance with the increased mining fee'.
([19]) See footnote 18.

(b) secondly, if the extension application concerns more than two fields, the level of the extension fee (the increased mining fee) has to be applied to all mining fields of the company;

(c) thirdly, if the extension concerns more than five fields a one-off payment may be charged in addition ([20]).

The extension agreement between MOL and the Hungarian State

(14) On 19 September 2005, MOL applied for the extension of the mining right for twelve of its hydrocarbon fields, which it had previously obtained on the basis of an authorisation and on which it had not started extraction within the deadline. On 22 December 2005 MOL and the minister concluded an extension agreement on the basis of Section 26/A(5) of the Mining Act, on the following terms:

(a) Extension fee: The twelve mining authorisations subject to the request were extended by 5 years (i.e. MOL would have 5 more years to begin extraction on these fields). The extension fee was stipulated for each of the 5 years of the extension period by using the mining fee of 12 %, which was in force at the time, and a multiplier ('c') ranging between 1,020 and 1,050, resulting in the extension fees listed below in Table 1 ([21]). The extension fee was stipulated for the 5 years of the extension period. Where the fields were actually put into operation, the stipulated fee had to be applied to the remainder of the 15-year period as the mining fee for the fields covered by the extension ([22]).

Table 1

Fees stipulated by the extension agreement

Year	Original fee × c	Extension fee for idle fields/Increased fee extended to all fields
1	12 % × 1,050	12,6 %
2	12 % × 1,038	12,456 %
3	12 % × 1,025	12,3 %
4	12 % × 1,020	12,24 %
5	12 % × 1,020	12,24 %
6-15	12 % × 1,020	12,24 %

(b) Extension of increased fee to all mining fields: Since the extension of the mining right had been requested for more than two fields, the increased fee (which is equal to the extension fee, as shown in Table 1) had to be applied for the following 15 years, i.e. until 2020, for all MOL fields under authorisation that were put into operation after 1 January 1998. As regards fields put into operation before 1 January 1998, the factor 'J' multiplied by 'c' is applicable ([23]).

(c) Fixed mining fee: The parties also explicitly agreed that the stipulated mining fee would remain applicable for the entire duration of the contract (i.e. until 2020), regardless of any amendments to the Mining Act ([24]).

(d) One-off payment: Since the extension of the mining right had been requested for more than five fields, a one-off payment of HUF 20 billion ([25]) was also laid down in the agreement ([26]).

(e) Termination clause: The agreement stipulated that it could not be modified unilaterally (but only with the agreement of both parties). It could be terminated by one of the parties only in the event of a change of ownership in MOL (at least 25 % of shares).

(15) By decision of 23 December 2005, the Mining Authority extended MOL's mining rights for the requested twelve fields and extended the increased fee to apply to all fields of the company.

Amendments of the Mining Act as regards the mining fee for mining rights granted by authorisation

(16) An amendment ([27]) to the Mining Act that took effect on 8 January 2008 ([28]) (hereinafter 'the 2008 amendment') raised the mining fee considerably for certain categories of hydrocarbons. The mining fee for other types of minerals was not affected by this amendment. Section 5 of the amending Act provided for a differentiated

([20]) Maximum 20 % of the amount based on the increased mining fee.
([21]) Point 1 of the extension agreement.
([22]) Point 3 of the extension agreement.
([23]) Point 4 of the extension agreement.
([24]) Point 9 of the extension agreement stipulates that all factors determining the level of the mining fee remain unchanged for the entire duration of the contract.
([25]) Approximately EUR 76 million at the ECB exchange rate of EUR/HUF 263 on 16 April 2010. In this Decision all EUR/HUF conversions have been done at this rate.
([26]) Point 6 of the extension agreement.
([27]) This amendment was referred to in the opening decision as the '2008 amendment'. The Hungarian authorities pointed out in their submission that this amendment was approved by the Parliament in 2007. For the sake of consistency with the opening decision, the amendment of the Mining Act which entered into force on 8 January 2008 will continue to be referred to as the '2008 amendment'. In the same vein, the amendment that entered into force on 23 January 2009 will be referred to as the '2009 amendment'.
([28]) Act No CXXIII of 2007.

mining fee depending on: (i) the date on which the mining field was put into operation; (ii) the quantity of hydrocarbons extracted, and (iii) the crude oil price at the time.

— A 30 % mining fee was stipulated for fields put into production between 1 January 1998 and 1 January 2008,

— For fields put into operation after 1 January 2008, differentiated rates apply (12 %, 20 % or 30 %) depending on the quantity of hydrocarbons extracted,

— For mines put into production before 1 January 1998, the factor 'J' is used, its minimum value being set at 30 %.

Moreover, all these rates are subject to a surcharge depending on the crude oil price: + 3 % if the crude oil price is over 80 USD/bbl or + 6 % if it is over 90 USD/bbl (hereinafter 'Brent Clause'). There are special rates applicable to, for example, difficult extracting conditions (12 %) and high inert gas (8 %).

(17) These mining rates were in force between 8 January 2008 and 23 January 2009 and applied to all mining companies working on mining sites under authorisation, including those which received authorisation before January 2008, from the entry into force of the amendments to the Mining Act. A new amendment to the Mining Act entered into force on 23 January 2009 (after the Commission's decision to open the formal investigation procedure), reducing the mining fee for fields put into production between 1 January 1998 and 1 January 2008 back to 12 % (while maintaining the 'Brent Clause') ([29]). The applicable mining fee for other types of fields remained the same as in the Mining Act applicable in 2008.

(18) Table 2 summarises the applicable mining fees under the authorisation regime according to the different versions of the Mining Act.

Table 2

Summary of the applicable mining fees in the authorisation regime under the Mining Act

<table>
<tr><th colspan="2"></th><th>Fee applicable up until 2008</th><th>Fee applicable in 2008</th><th>Fee applicable from 23 January 2009</th></tr>
<tr><td colspan="2">Production started before 1 January 1998</td><td>J %
(at least 12 %)</td><td>J %
(at least 30 %, + 3 % or 6 % Brent Clause)</td><td>J %
(at least 30 %, + 3 % or 6 % Brent Clause)</td></tr>
<tr><td colspan="2">Production started between 1 January 1998 and 1 January 2008</td><td>12 %</td><td>30 %
(+ 3 % or 6 % Brent Clause)</td><td>12 %
(+ 3 % or 6 % Brent Clause)</td></tr>
<tr><td rowspan="3">Production started after 1 January 2008</td><td>Gas fields with an annual production of less than 300m m^3
Oil fields with an annual production of less than 50 kt</td><td rowspan="5">NA</td><td>12 %
(+ 3 % or 6 % Brent Clause)</td><td>12 %
(+ 3 % or 6 % Brent Clause)</td></tr>
<tr><td>Gas fields with annual production between 300-500m m^3
Oil fields with an annual production between 50-200 kt</td><td>20 %
(+ 3 % or 6 % Brent Clause)</td><td>20 %
(+ 3 % or 6 % Brent Clause)</td></tr>
<tr><td>Gas fields with an annual production above 500m m^3
Oil fields with an annual production above 200 kt</td><td>30 %
(+ 3 % or 6 % Brent Clause)</td><td>30 %
(+ 3 % or 6 % Brent Clause)</td></tr>
<tr><td colspan="2">Hydrocarbons with special mining conditions</td><td>12 %</td><td>12 %</td></tr>
<tr><td colspan="2">High inert gas</td><td>8 %</td><td>8 %</td></tr>
</table>

'J' is to be calculated according to a formula based on historical gas prices, extracted quantity and value; see recital 11.

([29]) Section 235 of Act No LXXXI of 2008.

IV. GROUNDS FOR INITIATING THE PROCEDURE

(19) The alleged state aid measure under scrutiny is the 22 December 2005 extension agreement between MOL and the Hungarian State, which allowed the company a certain degree of exemption from the increased mining fee on hydrocarbon extraction stipulated in a subsequent amendment to the Hungarian Mining Act. Given the way the agreement and the subsequent amendment were designed, the Commission regards them as part of the same measure (the measure) and the opening decision assessed their joint impact.

(20) In its opening decision the Commission reached the preliminary conclusion that as a result of the extension agreement MOL was shielded from future changes in the mining fee and, in particular, from the changes laid down in the subsequent 2008 amendment to the Mining Act. Thus the company has been treated more favourably than its competitors, who are operating under the current authorisation regime and, not having concluded a similar extension agreement previously, have had to pay the new increased mining fees. In its preliminary assessment the Commission took the view that the measure constituted state aid within the meaning of Article 107(1) TFEU and could not see any grounds on which it could be compatible with the internal market, since no derogation seemed to be applicable.

(21) Further details can be found in the opening decision, which is to be taken as an integral part of this Decision.

V. COMMENTS FROM HUNGARY

(22) Hungary's main arguments with regard to the cumulative criteria defining state aid include: (i) the absence of selectivity and (ii) the absence of any advantage to the alleged beneficiary.

(23) As regards selectivity, the Hungarian authorities basically argue that the measure is not selective, because by concluding the extension agreement MOL became subject to another regime different from the authorisation regime.

(24) In the first place, Hungary confirms that there is a difference between the concession and the authorisation regimes, emphasising that in the case of a concession the mining company can, in its concession bid, offer a higher fee than stated in the tender notice, whereas under the authorisation regime the fee is stipulated by the Mining Act. Hungary further argues that alongside these two regimes there was a need for a new 'quasi-concessionary' solution, laying down the mining fee in an individual contract outside the concession system. In Hungary's view the extension agreement under Section 26/A(5) of the Mining Act can be seen as an appropriate legal basis for such a 'quasi-concessionary' solution, effectively taking the mining right out of the authorisation regime and placing it on a contractual basis.

(25) Hungary adds that the extension agreement stems directly from the logic of the Mining Act. According to Hungary, fixing the mining fee for the duration of the extension agreement is a natural element of the agreement referred to in Section 26/A(5) of the Mining Act and the extension could not have been concluded on different terms. Moreover, all other mining companies could expect the same, so there was no preferential treatment for MOL.

(26) Specifically, Section 20(11) of the Mining Act stipulates that the mining fee is the fee as laid down in: (i) the concession agreement; (ii) the Mining Act, or (iii) the extension agreement. Thus, the Hungarian authorities argue that the Mining Act explicitly allows for the fee under an extension agreement to stay unchanged, even in the event of changes in the legislation. In the view of the Hungarian authorities this is clearly stated in the Mining Act, i.e. in Section 26/A(5), which stipulates that the increased fee is maximum 1,2 times the original mining fee ([30]). Therefore, Hungary argues, the Hungarian Act precludes application of any higher fee.

(27) As regards the claimed lack of advantage, Hungary explains that mineral resources are the property of the State and they pass into private ownership through mining by companies holding a mining right acquired against payment. Hungary cites the *Ryanair* judgment as an analogy and insists that this particular activity of the State is comparable to that of a market operator, even if the State acts in the role of a public authority ([31]).

(28) Hungary denies that the mining fee is a kind of tax, defining it as the price paid for the extraction of the minerals, or the State's share. Hungary stresses that the fact that the fee is set by law is not decisive grounds for concluding that it is a type of tax.

([30]) Section 26/A(5) of the Mining Act: '[…] at a higher rate than the percentage applied at the time of the application but at no more than 1,2 times the original level.'.

([31]) Case T-196/04 *Ryanair Ltd* v *Commission* [2008] ECR II-3643.

(29) Moreover, Hungary also explains that the three different payment obligations under the extension agreement (i.e. the extension fee, the increased mining fee extended to all fields and the one-off payment) which stem from the relevant provisions of the Mining Act should not be viewed as compensation for the State's renouncing income to which it is entitled in any event. According to Hungary, from the point of view of the State these payments may be regarded as additional income, in exchange for which the State renounces its right to put the fields up for tender under the concessionary regime, bearing in mind the associated risks and potential revenue.

(30) Hungary emphasises that following the disputed amendment of the Mining Act no other market participant has actually had to pay a higher mining fee than MOL, since there were no competitors falling into the categories with higher mining fees in the relevant period.

Table 3

MOL's yearly mining fee payments (actual and hypothetical)

(in HUF millions)

Payment item	Actual: under the extension agreement	Hypothetical: under the Mining Act in force	Difference	Net present value of the difference in 2009
2005				
One-off payment (1)	[…] (*)	[…]	20 000,0	28 064,5
2006				
Extension fee (2)	[…]	[…]	835,8	1 092,1
Mining fee (3)	[…]	[…]	5 755,7	7 520,0
Total	[…]	[…]	*6 591,6*	*8 612,1*
2007				
Extension fee	[…]	[…]	769,7	926,5
Mining fee	[…]	[…]	3 428,0	4 126,4
Total	[…]	[…]	*4 197,7*	*5 052,9*
2008				
Extension fee	[…]	[…]	345,8	382,9
Mining fee	[…]	[…]	– 28 444,7	– 31 498,5
Total	[…]	[…]	*– 28 099,0*	*– 31 115,6*
2009				
Extension fee	[…]	[…]	211,2	211,2
Mining fee	[…]	[…]	– 1 942,1	– 1 942,1
Total	[…]	[…]	*– 1 730,9*	*– 1 730,9*
GRAND TOTAL	[…]	[…]	959,5	8 883,0

The figures are based on data provided by the Hungarian authorities.
(1) One-off payment: see recital 14(d).
(2) Extension fee: see recital 14(a).
(3) Increased mining fee for all fields: see recital 14(b).
(*) Data covered by professional secrecy have been replaced in the text of the Decision by […].

(31) Furthermore, Hungary argues that as a result of the extension agreement, over the years and taking into account all the components in the agreement, including the extension fee and the one-off payment, MOL actually paid more in absolute terms to the State than it would have paid without the extension agreement, i.e. under the Mining Act. The actual payments made by MOL compared to the hypothetical ones are shown in Table 3 above. The figures were provided by the Hungarian authorities.

(32) In Hungary's view, mining companies have a legitimate expectation as regards the predictability of the mining fee, which therefore should be stable over time. This was the thinking behind the amendment to the Mining Act, since, although the mining fee changed, there was not actually any mining company whose mining fee changed as a result of the amendment. According to Hungary, the amendments to the Mining Act might suggest that the State could change the mining fee in respect of fields already in operation. The 2008 amendment, however, was the result of a compromise in the course of the negotiations preceding the adoption of the Mining Act. Thus, it was implicitly accepted that there were legitimate expectations. Consequently, a mining company can legitimately expect that the State will not increase any of these fees unilaterally. Hungary concludes that the system of the Mining Act and its specific provisions entail that mining fees remain unchanged during the whole duration of the contract.

(33) Finally, the Hungarian authorities explain that the 'termination clause' is based on reasons of national security.

VI. **COMMENTS FROM INTERESTED PARTIES**

(34) The Commission received comments from the following interested parties: MOL (the beneficiary of the alleged aid measure) and the Hungarian Mining Association, of which MOL is a member. Both interested parties commented along the same lines as Hungary and their observations overlapped to a large extent with those of Hungary.

MOL

(35) MOL, the alleged beneficiary of the measure in question, states that, contrary to what the Commission maintains in the opening decision, it did not enjoy any preferential treatment on the Hungarian hydrocarbon extraction market. A major share of MOL's mining fees paid to the Hungarian State comes from the mining fields subject to J % (i.e. put into operation before 1 January 1998), which in practice means that MOL pays 64-75 %, whereas its competitors (who started production at a later stage and operate small fields) are subject merely to the 12 % fee.

(36) Furthermore, the conclusion of the extension agreement meant that MOL paid more to the State (taking into account all components in the extension agreement) than it would have paid without the agreement, merely on the basis of the original Mining Act.

(37) As regards the Commission's argument that the extension agreement cannot be considered analogous to a concession, because it was subject to the authorisation regime, MOL notes that the extension of the mining right is not a right subject to authorisation on the basis of a unilateral decision by the State, but only following an agreement with the mining company. If the purpose of the legislation had been to make this a matter for the State's discretion, the relevant provision would have been drafted differently. The wording of the Mining Act suggests that the legislative intention was to treat the extension agreement in a way analogous to concessions.

(38) In the opening decision the Commission argues that there is a contradiction between the Hungarian authorities' claim that the amendment of the Mining Act was necessary to raise more revenue and the fact that MOL was in practice exempted from the increased fees.

(39) In the view of MOL, this statement is not contradictory. For one thing, the company paid more to the State under the extension agreement, than it would have paid under the Mining Act. MOL also pays very high mining fees on the fields subject to J. In addition, the amendment to the Mining Act could have an effect on fields put into operation in the future.

(40) MOL maintains that the extension payment components are not in any way a fine, as the Commission suggests. The Mining Act also lays down penalties/fines for where mining activity is carried out in breach of the Mining Act. The fees under the extension agreement are a result of the negotiation process between the mining company and the State. It was not compulsory to conclude the contract: the mining company could also have chosen not to conclude one, lose its mining right and then bid under the open tender procedure, whereby it might have ultimately obtained the mining right more cheaply.

(41) It is misleading to compare MOL, who concluded such an extension agreement, with competitors operating under the authorisation regime. Moreover, MOL emphasises that it fulfilled all its obligations and the provisions of the legislation.

(42) MOL also takes issue with the Commission's view that the multiplier 'c' is too low (as it is less than the legal ceiling of 1,2 times). What also has to be taken into account is that the application of the increased mining fee concerned almost 150 fields, so the increased fee yielded a substantial increase in mining revenue for the State.

(43) Finally, as regards the Commission's argument that MOL is being treated preferentially by not being subject to the Brent Clause, the company notes that J is also price-sensitive.

The Hungarian Mining Association

(44) The Hungarian Mining Association (hereinafter 'Mining Association') represents companies engaged in mining activities or activities related to mining. Its main objective is to improve the overall operational framework for carrying out mining activities in Hungary, monitor legislative procedures and act in its members' interests. Currently, it has 66 members, including MOL. The Chairman of the Mining Association's board is a senior manager of MOL ([32]).

(45) According to the Mining Association, mining companies have a legitimate expectation that the mining fee will remain unchanged for mining fields already in operation. Thus the State cannot unilaterally raise fees 'retroactively' (i.e. for fields which are already operating). The Mining Association expressed this opinion in connection with the bill preceding the amendment to the Mining Act and, according to the Mining Association, this principle was taken into account when the Mining Act was amended. The final wording was not opposed, because, in terms of effect, it does not raise the mining fee for operations already commenced.

(46) As regards the general characteristics and economic conditions of the mining market, the Mining Association explains that the time span of mining projects is relatively long. The time between the start of exploration and actual extraction can be as long as 10-15 years. During this phase the mining company has only costs; income is not made until extraction starts. In addition, there is an inherent geological risk, since it is not certain that the exploration will be successful. Therefore, projects must be planned with the utmost care. The profitability of a project depends on multiple factors. Given the manifold risks, the industry expects that at least those which can be influenced by the State will remain stable during the lifespan of the project, i.e. the legislative framework or the mining fee. Given the specific characteristics of the industry, the financing structures play an important role in the projects. Creditors scrutinise the projects constantly and can even withdraw financing if the conditions change substantially.

(47) Therefore, in countries involving a high political risk, the mining company and the State conclude a contract based on private law. In stable regions, such as Western Europe, such agreements are unnecessary, because it can be assumed that the legal framework will not be changed every now and then by the State. Stability as regards the State's share is expected by both the mining company and the creditors. Without this stability the risk of the project would be increased; a country with a stable economic policy cannot allow itself frequent policy changes, since this would scare off the mining undertakings.

(48) The Mining Association also points out that the principles of legal certainty and protection of acquired rights are enshrined in the case-law of the European courts and the Hungarian Constitution. Thus, the Hungarian legislature is not entitled to raise mining fees for fields already in operation, as legislation must be predictable. Moreover, the Mining Association also considers that the 'stability' of the mining fee is an acquired right.

(49) A further argument adduced by the Mining Association is the prohibition of discrimination. In particular, there must not be discrimination between market players operating on a concession basis and market players under the authorisation system. Accordingly, the Hungarian legislature is not entitled to raise mining fees 'retroactively' for fields already in operation. The ECJ has clarified in numerous judgments that legal certainty is a fundamental element of EU law. Legislation is meant to be unambiguous, precise and predictable, especially if it has a negative impact on individuals or companies (see the case-law cited). The Mining Association goes on to argue that the principle of legal certainty and acquired rights are also enshrined in the Hungarian Constitution and it concludes that on the basis of EU law and constitutional principles legislation must be predictable.

(50) The Mining Association finally adds that the principle of the protection of acquired rights derives from the principle of legal certainty. This principle of the protection of acquired rights has been respected in the course of national and international legislative procedures governing mining rights. Other EU Member States also have stable mining legislation which does not change frequently.

VII. EXISTENCE OF AID WITHIN THE MEANING OF ARTICLE 107(1) OF THE TFEU

(51) In order to ascertain whether a measure constitutes state aid, the Commission has to assess whether the contested measure fulfils the conditions of Article 107(1) TFEU. This Article states that: 'Save as otherwise provided in the Treaties, any aid granted by 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 common market'. Below, in the light of this provision, the Commission assesses whether the contested measure constitutes state aid.

([32]) http://www.mabsz.hu/webset32.cgi?Magyar_Baanyaaszati_Szoevetseeg@@HU@@4@@364124456

General comments

(52) To begin with, it must be recalled that a measure can constitute state aid within the meaning of 107(1) TFEU regardless of its legal form. Even if the extension agreement was concluded in accordance with the relevant provisions of the Mining Act and even if it is up to Hungary to set the mining fee by law, this does not in itself mean that these actions, or their effects, are compatible with EU state aid rules. The fact that a measure is compatible with national law does not have a bearing on its compatibility with the state aid rules of the TFEU.

(53) Moreover, as already set out in the opening decision, the Commission does not consider that any of the elements of the case in isolation, i.e. the relevant provisions of the Mining Act, the extension agreement and the amendment of the Mining Act, are contrary to state aid rules. Instead, in the present case the Commission regards the entire sequence of the State's actions as 'the measure' and assesses the effect of the extension agreement in combination with the subsequent amendments to the Mining Act.

(54) As regards Hungary's arguments that the mining fee is not a tax, but the State's share, the Commission notes that this argument is irrelevant from the point of view of state aid assessment. State aid rules are applicable to all kinds of costs which have to be borne by undertakings and from which they are exempted through a state measure. In any event, it has to be noted that administrative authorisation of exploitation of mineral and hydrocarbon resources appears to be a typical role of a public authority; payments for such authorisation are comparable to a tax or administrative fee.

(55) Finally, with regard to the termination clause, the Commission considers that this is not a state aid issue. The fact that the agreement states that the contract ends if a third party acquires more than 25 % of MOL is a measure which does not involve state resources.

Selectivity

(56) To be considered state aid, a measure must be specific or selective in that it favours only certain undertakings or the production of certain goods.

(57) According to the case-law of the Court of Justice ([33]), as regards the assessment of the condition of selectivity, which is a constituent factor in the concept of state aid, Article 107(1) TFEU requires assessment of whether, under a particular statutory scheme, a state measure is such as to 'favour certain undertakings or the production of certain goods' in comparison with other undertakings which are in a legal and factual situation that is comparable in the light of the objective pursued by the measure in question.

(58) The Court has also held on numerous occasions that Article 107(1) TFEU does not distinguish between the causes or the objectives of state aid, but defines them in relation to their effects ([34]).

(59) The concept of state aid does not apply, however, to state measures which differentiate between undertakings where that differentiation arises from the nature or the overall structure of the system of which they form part.

(60) The Commission disagrees with the Hungarian authorities' and interested parties' argumentation on the absence of selectivity.

(61) In order to determine whether a measure is selective, the applicable system of reference must be defined ([35]).

(62) In the case at issue the Commission considers that the applicable system of reference for the assessment is the authorisation regime. MOL did not have to enter into competitive bidding for the right to obtain a concession in a closed area. Instead, it obtained the mining right for its fields under the authorisation regime and competes with market participants under this regime. The extension agreement forms part of the authorisation regime. The mere fact that MOL was not able to commence extraction within the stipulated deadline and needed to request an extension agreement cannot result in a change of the system of reference. Accepting such an argument would lead to a situation where individual treatment is given to one company, as is the case under the concession regime, but without a competitive public tender.

([33]) Judgment of the Court of Justice in Case C-88/03, *Portugal* v *Commission* [2006] ECR I-7115, paragraph 54.

([34]) See, for instance, judgments of the Court of Justice in Case C-56/93, *Belgium* v *Commission* [1996] ECR I-723, paragraph 79; Case C-241/94, *France* v *Commission*, [1996] ECR I-4551, paragraph 20; Case C- 75/97, *Belgium* v *Commission*, [1999] ECR I-3671, paragraph 25; and Case C-409/00, *Spain* v *Commission*, [2003] ECR I-10901, paragraph 46.

([35]) See Cases T-211/04 and T-215/04 *Government of Gibraltar* v *Commission* [2008] ECR II-3745 stating that 'in order to determine whether the measure at issue is selective it is appropriate to examine whether, within the context of a particular legal regime, that measure constitutes an advantage for certain undertakings in comparison with others which are in a comparable legal and factual situation. The determination of the reference framework has a particular importance in the case of tax measures, since the very existence of an advantage may be established only when compared with "normal" taxation'.

(63) In fact, it is a discretionary decision by the Hungarian authorities to determine whether the field is under concession or authorisation. Thus, if the Hungarian authorities wish to award mining rights on a contractual basis they can opt for a transparent concession procedure which includes an open tendering process. The Commission cannot accept that an opaque so-called 'quasi-concession', which currently applies only to one company (MOL), could be regarded as a separate system of reference.

(64) Moreover, Hungary had a wide margin of discretion for extending the authorisation, as well as for subsequently amending the relevant provisions of the Mining Act (despite knowing the advantageous effects this would have on MOL, this company being the sole market player for hydrocarbons to have concluded an extension agreement). Hungary was free to determine the mining fee at any time, i.e. it could have decided not to amend the Mining Act at all. From the point of view of its effects, the sequence of acts unequivocally favoured one particular undertaking.

(65) In view of the above, the Commission concludes that the system of reference is the authorisation regime.

(66) In the framework of the authorisation regime, the extension agreement is clearly selective. Indeed, as the Hungarian authorities themselves confirm, the parties, when negotiating the terms of this agreement, have a certain margin of manoeuvre to stipulate the different payment components and, more importantly, may even decide not to conclude the agreement at all. Thus, the Hungarian authorities had the discretion to conclude such an agreement with MOL (or with any other market participant) ([36]).

(67) Such treatment cannot be explained through the logic and nature of the system. On the one hand, mining fees are imposed to ensure revenue for the State on the extracted value. On the other hand, the payment components under the extension agreement are paid in exchange for the extension as an extra charge. In the present case, however, the conclusion of the extension agreement and the subsequent increase in the fees for MOL led to the paradoxical situation that MOL, having failed to commence production on time, benefits from lower mining fees until 2020 for practically all of its fields under authorisation; whereas its competitors, who are equally subject to the authorisation regime and who started production on time and therefore have not concluded an extension agreement, have to pay higher statutory fees.

([36]) Cases T-92/00 and T-103/00 *Ramondín* [2002] ECR II-1385, points 32-35.

(68) This was the only extension agreement concluded for hydrocarbons. MOL noted that there are other extension agreements in force for solid minerals. The Commission observes, however that this concerns other types of minerals which are subject to a different mining fee under the Mining Act than hydrocarbons. It also has to be noted that for solid minerals there was no change in the mining fee introduced by the amendment to the Mining Act, (i.e. the market players having concluded such an agreement have not been affected by the same 'sequence of measures' and therefore no advantage has accrued to them).

(69) On the basis of the foregoing, despite the arguments put forward by Hungary, the Commission considers that the sequence of actions, i.e. the way Section 26/A(5) of the Mining Act is worded, the extension agreement concluded on its basis, and the subsequent amendment to the Mining Act, was selective in favour of MOL.

(70) The combined effects of the sequence of measures is that, among holders of mining authorisations granted under Section 5 of the Mining Act, only MOL was subject to a specific regime which shielded it against any increase in the mining fee normally due for hydrocarbons extraction.

(71) In conclusion, due to the wide discretion in the granting of an extension agreement and in view of the fact that, actually, the exemption is directed to one individual company, the selectivity criterion is met.

Advantage

(72) Contrary to the Hungarian authorities' arguments, the Commission takes the view that the State does not exercise an economic activity by authorising mining activities. Rather, the granting of administrative concessions or mining authorisations is connected with the exercise of powers which are typically those of a public authority because this activity cannot be originally exercised by a private actor ([37]). In Hungary – as in other

([37]) Hungary compares the authorisation of mining activities with rental fees requested for communal housing, in a case in which the State can also act as a private operator. This comparison, however, is not accurate, because authorisation of mining activity, contrary to the leasing of housing, cannot be originally exercised by a private actor. In this respect, the activity of granting administrative mining authorisations is more akin to other administrative authorisations typically granted by public authorities, such as for example authorisations for use of public domain.

Member States of the EU – no private actor is the original owner of mineral resources. Member States' legal systems generally attribute control over mineral resources to the public authorities ([38]). Therefore, the decision to allow a company to exploit mineral resources, in the form the Member State chooses and against payment of certain fees, is, by reason of its nature and rules, a matter for the public authorities and can be categorised as the exercise of public authority powers. Hungary's intervention in making mining activity subject to administrative supervision serves the general interest and not commercial ones. This behaviour must therefore be considered a form of state intervention by a public authority not akin to the behaviour of a private investor in a market economy ([39]).

(73) Even if in the present case authorisation for mining exploitation were deemed to be an economic activity whereby the State pursues commercial purposes (which it is not), the Commission notes that there is no clear and direct link in monetary terms between the level of the mining fees set by Hungary for MOL and the value of the mining authorisation. Hungary's reasoning, namely that it acted as a market operator when it concluded the extension agreement, is not borne out. In particular, there is no indication that tendering the concession for the twelve fields (which would have not been extended) would not have resulted in a higher bid from a competitor. Hungary also failed to demonstrate that it took into account all relevant factors and risks from a commercial point of view when concluding the extension agreement, i.e. all payment components in the extension agreement, the possible higher fees set by the Mining Act until 2020, the duration of the agreement and possible competitors.

(74) A further argument by Hungary is that after the disputed amendment of the Mining Act, no other market participant actually had to pay a higher fee than MOL, because in fact there were no competitors falling into the categories with higher mining fees in the relevant period.

Table 4

Summary of the applicable mining fees before and after the amendments to the Mining Act

	Fee applicable up until 2008	Fee applicable in 2008	Fee applicable from 23 January 2009	Fee for the fields under MOL's contract Applicable until 2020
Production started before 1 January 1998	J % ([3]) (at least 12 %)	J % (at least 30 %, + 3 % or 6 % Brent Clause)	J % (at least 30 %, + 3 % or 6 % Brent Clause)	J % × c ([4]) (at least 12 %)
Production started between 1 January 1998 and 1 January 2008	12 %	30 % (+ 3 % or 6 % Brent Clause)	12 % (+ 3 % or 6 % Brent Clause)	12 % × c (~ 12,24 % ([2]))

([38]) This reality is recognised in Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons (OJ L 164, 30.6.1994, p. 3) which, for instance, considers that 'Member States have sovereignty and sovereign rights over hydrocarbon resources on their territories'. In Hungary, Section 3 of the Mining Act states that 'Mineral raw materials and geothermal energy in the locations in which they naturally occur are state-owned. By the act of production the mining undertaking shall become the owner of the mineral raw materials extracted and the geothermal energy obtained for energy purposes'.

([39]) Case T-156/2004 *EDF* v *Commission*, not published yet in the ECR, paragraph 233.

		Fee applicable up until 2008	Fee applicable in 2008	Fee applicable from 23 January 2009	Fee for the fields under MOL's contract Applicable until 2020
Production started after 1 January 2008 ([1])	Gas fields with an annual production of less than 300m m^3 Oil fields with an annual production of less than 50 kt	NA	12 % (+ 3 % or 6 % Brent Clause)	12 % (+ 3 % or 6 % Brent Clause)	12 % × c (~ 12,24 % ([2]))
	Gas fields with annual production between 300-500m m^3 Oil fields with an annual production between 50-200 kt		20 % (+ 3 % or 6 % Brent Clause)	20 % (+ 3 % or 6 % Brent Clause)	
	Gas fields with an annual production above 500m m^3 Oil fields with an annual production above 200 kt		30 % (+ 3 % or 6 % Brent Clause)	30 % (+ 3 % or 6 % Brent Clause)	
Hydrocarbons with special mining conditions			12 %	12 %	
High inert gas			8 %	8 %	

([1]) Five out of the twelve mining fields granted exemption put into operation after 1 January 2008.
([2]) For reasons of simplification the mining fee applicable from the 5th year is indicated.
Note: In the columns referring to the 2008 and 2009 amendments, the white fields refer to the categories of mining fields where in effect MOL paid more under the extension agreement than under the Mining Act. The fields shaded in dark grey represent the types of fields where MOL pays less under the agreement in any case, regardless of the crude oil price. The fields shaded in light grey represent the types of fields where MOL may pay less under the agreement, depending on the crude oil price.
([3]) The factor 'J' is to be calculated according to a formula based on historical gas prices, extracted quantity and value.
([4]) 'c' is the multiplier stipulated in the extension agreement, ranging between 1,020 and 1,050; see Table 1.

(75) This argument has to be dismissed.

(76) Table 4 above summarises the extent to which the extension agreement and the subsequent amendment of the Mining Act resulted in fees for MOL lower than stipulated by the Mining Act.

(77) Firstly, the data submitted by the Hungarian authorities show that in fact there were some market players operating fields under the authorisation regime who have been subject to a higher mining fee obligation than paid by MOL, between 8 January 2008 and 23 January 2009 owing to the first amendment to the Mining Act and also from 23 January 2009 to date owing to the second amendment to the Mining Act. The submissions from the Hungarian authorities show that in 2008 there were mining fields operated under authorisation by companies other than MOL who paid more than 12 % (between 14,24 % and 18 %) owing to the application of the Brent Clause ([40]).

(78) Secondly, although the Hungarian authorities claim that there are only competitors who operate or are expected to put into operation smaller fields (i.e. producing less than 500 m^3 or 200 kt), the Commission observes that even if such smaller fields were subject to the 12 % category, they will still have to pay the Brent mark-up, whenever applicable. This could lead to a mining fee of up to 18 %. The Commission recalls once again that the effect of the measures is that MOL is not subject to the Brent Clause laid down in the Mining Act for all other operators.

(79) Thirdly, as regards the current general market environment in Hungary, there are several mining

([40]) In 2008 the Nyírség-Dél gas field (operated by the company GEOMEGA until September 2008 and subsequently by the company PetroHungaria) was subject to an average annual mining fee of 14,24 %-18 %. The Hernád gas field (operated by the company HHE North) was subject to an average annual mining fee of 14,95 % in 2008.

companies engaged in hydrocarbon extraction activities. In addition, there are several companies carrying out exploration who might put fields into operation and become MOL's competitors. Any new entrants under the authorisation regime will be subject to the statutory mining fee and face competition with MOL, the only company whose mining fields escape the fee applicable under the general authorisation regime and are subject to a lower level of fees.

(80) Fourthly, the Commission notes that it is a matter of fact that MOL has been subject to a fee of around 12,24 % not only for the twelve fields granted extension but for all of its mining fields put into operation after 1 January 1998 operated under authorisation at the time of the 2005 agreement, and a fee of J % for all fields put into operation before 1 January 1998. Moreover, MOL's fee is set by the extension agreement at 12,24 % until 2020. Thus, there is an advantage for MOL for the majority of its fields under authorisation for a considerable length of time.

(81) Fifthly, if hypothetically the Mining Authority had not agreed to the extension for the twelve fields, all other MOL fields under authorisation would have become subject to the considerably higher mining fee as well, which might have meant higher revenues for the State ([41]). Moreover, as mentioned in recital 73, the State could have put out a tender for the concession for the twelve fields not granted extension, and could thereby potentially have obtained a higher bid from a competitor.

(82) Regarding Hungary's argument that MOL paid a higher mining fee, namely 12,24 %, in 2006 and 2007, the Commission notes that this is irrelevant.

(83) First of all, this was due to the fact that MOL had to pay the stipulated increase in the mining fee (from 12 % to 12,24 %) just as any other company wishing to extend its mining authorisation would have had to. In this respect, MOL received the standard treatment and was not put at a disadvantage. Neither had the advantage to MOL materialised yet: this ultimately occurred at the time of the first amendment to the Mining Act, i.e. as of 8 January 2008.

(84) Furthermore, in 2008 MOL paid HUF 28,4 billion and in 2009 HUF 1,9 billion less in mining fees for its producing fields than it would have paid if it had been subject to the Mining Act in force at that time.

(85) As regards the other payment components under Section 26/A(5) of the Mining Act (i.e. the extension fee and the one-off payment), these were paid in exchange for the extension and not for the right to have fees lower than those applicable to its competitors. Nor can these payment components be regarded as 'advance payment' of mining fees due in later periods. The wording of Section 26/A(5) of the Mining Act is clear in this regard. In particular, it states that 'the company shall pay a charge if an extension is granted'. The two other elements are linked to the number of fields granted extension. Thus Section 26/A(5) of the Mining Act clearly establishes a link between the extension and the payment obligation.

(86) According to the case-law, aid given to a company cannot be offset by a charge imposed on the same company which represents a specific and distinct charge without a link with the measure constituting aid ([42]). In the case at issue, as described in recital 85, the other payment components under Section 26/A(5) of the Mining Act represent a charge for the extension which can be regarded as a specific and distinct charge without a link to the subsequent amendment of the statutory fees under the authorisation regime.

(87) Finally, the Commission points out that the conclusion of the extension agreement and the subsequent increase in the fees for MOL led to the paradoxical situation that MOL, having failed to start production on time, will be paying lower mining fees for almost all of its fields under authorisation until 2020, whereas its competitors, who have not concluded an extension agreement because they started production on time and are equally subject to the authorisation regime, have to pay higher statutory fees.

(88) On the basis of the foregoing, the Commission concludes that the measure conferred an advantage on MOL. It shields MOL from bearing costs which it otherwise would have to bear. The combined effect of the extension agreement and the subsequent modification of the Mining Act result in an advantage being conferred on the company.

State resources

(89) The measure involves forgone revenues to which the State would be entitled and is therefore granted from state resources.

Distortion of competition and affect on trade

(90) MOL is an integrated oil and gas company and qualifies as an undertaking. It competes with other undertakings which do not benefit from the same advantage. Hence, the measure distorts competition. Furthermore, MOL is active in a sector in which trade exists between Member States; the criterion of affecting trade within the Union is also fulfilled.

([41]) In terms of volume (i.e. m^3 of output), 99,8 % of MOL oil fields and 97,6 % of MOL gas fields were subject to the extension agreement in 2008.

([42]) Joined Cases T-427/04 and T-17/05 *France* v *Commission* and France Telecom v Commission, not yet published, point 207.

Conclusions on the presence of aid

(91) On the basis of the arguments set out above, the Commission takes the view that the measure fulfils the criteria laid down in Article 107(1) TFEU. Under those circumstances, the measure at stake has to be considered state aid in the meaning of Article 107(1) TFEU.

VIII. COMPATIBILITY OF THE AID WITH THE INTERNAL MARKET

(92) Articles 107(2) and 107(3) TFEU provide for exemptions to the general rule that state aid is incompatible with the internal market as stated in Article 107(1).

(93) Below the Commission assesses the compatibility of the measure under those exceptions. It should be noted that Hungary did not put forward any arguments as regards compatibility with the internal market.

(94) Moreover, it should also be noted that the measure results in a reduction of costs which should normally be borne by MOL and must therefore be considered to be operating aid.

(95) The exemptions in Article 107(2) TFEU do not apply in the present case because this measure does not have a social character, has not been awarded to individual consumers, is not designed to make good damage caused by natural disasters or exceptional occurrences and has not been awarded to the economy of certain areas of the Federal Republic of Germany affected by the division of that country.

(96) Further exemptions are laid down in Article 107(3) TFEU.

(97) Article 107(3)(a) states that 'aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious under-employment' may be declared compatible with the internal market. Hungary's entire territory was regarded as such an area at the time of accession and most of its regions are still eligible for such aid ([43]).

(98) Compatibility of state aid to assisted areas is governed by the Commission guidelines on national regional aid for 2007-2013 ([44]). (hereinafter 'Regional Aid Guidelines') Under the Regional Aid Guidelines, state aid can in principle be authorised only for investment costs ([45]). As already mentioned above, the aid at issue cannot be regarded as investment aid. As far as operating aid is concerned, the measure does not facilitate the development of any activities or economic areas and it is not limited in time, degressive or proportionate to what is necessary to remedy specific economic handicaps ([46]).

(99) In view of the above, the Commission concludes that the aid is not eligible for the derogation provided for in Article 107(3)(a) TFEU.

(100) Article 107(3)(b) TFEU states that 'aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State' may be declared compatible with the internal market.

(101) The Commission notes that the aid in question is not designed to promote the execution of an important project of common European interest nor has the Commission found any evidence that it is designed to remedy a serious disturbance in the Hungarian economy.

(102) In view of the above, the Commission concludes that the aid does not qualify for the derogation laid down in Article 107(3)(b) TFEU.

(103) Article 107(3)(d) TFEU states that aid to promote culture and heritage conservation may be declared compatible with the TFEU where such aid does not affect trading conditions and competition in the EU to an extent that is contrary to the common interest. This obviously does not apply to the current case.

(104) Article 107(3)(c) TFEU provides for the authorisation of state aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. The Commission has produced a number of guidelines and communications that explain how it will apply the derogation contained in Article 107(3) TFEU.

(105) However, the Commission considers that because of the nature and characteristics of the aid, the exceptions under

([43]) Regional aid map of Hungary approved by the Commission on 13 September 2006 and published in OJ C 256 of 2006. Almost the entire territory of Hungary is defined as 107(3)(a) regions, with the exception of Budapest and Pest county, which are 107(3)(c) regions.

([44]) OJ C 54, 4.3.2006, p. 13.

([45]) Point 5 of the Regional Aid Guidelines.

([46]) Section 5 of Regional Aid Guidelines allows operating aid under strict conditions. Moreover, the measure is *ad hoc* aid. In this regard, the Guidelines state that 'Where, exceptionally, it is envisaged to grant individual *ad hoc* aid to a single firm, or aid confined to one area of activity, it is the responsibility of the Member State to demonstrate that the project contributes towards a coherent regional development strategy and that, having regard to the nature and size of the project, it will not result in unacceptable distortions of competition'. Hungary did not provide any information to demonstrate this.

these guidelines and communications are not applicable to the present case. Moreover, Hungary has not claimed that the aid could be compatible under those rules.

(106) The aid under assessment thus constitutes incompatible state aid.

IX. **LEGITIMATE EXPECTATIONS, ACQUIRED RIGHTS AND DISCRIMINATION**

(107) Although the Commission does not dispute the argument that predictability is generally an incentive for investments, it must be noted that, in view of the mandatory nature of the supervision of state aid by the Commission under Article 108 TFEU, undertakings to which aid has been granted may not, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the state aid procedure ([47]). In this regard, no beneficiary can cite good faith in order to defend acquired rights and avoid recovery ([48]).

(108) It is true that the Court has repeatedly held that the right to rely on the principle of the protection of legitimate expectations extends to any person in a situation where an authority of the European Union has caused him or her to have justified expectations. However, a person may not plead infringement of the principle unless he or she has been given precise assurances by the administrative body ([49]). In the present case, MOL has not been given any assurance by an authority of the EU which could justify a legitimate expectation.

(109) It is also true that a recipient of unlawfully granted aid is not precluded from citing exceptional circumstances on the basis of which it had legitimately assumed the aid to be lawful and thus declining to refund that aid. However, no exceptional circumstances obtain in the present case. On the contrary, the 2008 amendment to the Mining Act demonstrates that mining companies can in principle not count on there being no changes whatsoever in the law.

(110) The Commission points out that the mining fee for fields already in operation has been amended twice recently, namely as of 8 January 2008 and as of 23 January 2009. Firstly, it has to be stressed that the 2008 amendment to the Mining Act was designed to apply to existing mining authorisations. This is clearly shown by the fact that the wording of the 2008 Mining Act also concerns the terms of the authorisations granted before 2008. For these authorisations, the fees were adapted as from the entry into force of the new Mining Act. This proves that authorisation holders have no legitimate expectation or acquired right that the royalty level imposed would remain unaltered throughout the whole duration of their authorisation.

(111) Contrary to what is stated by Hungary and the other interested parties, EU case-law confirms that individuals may not count on no changes ever being made to the law ([50]). Likewise, changes in the law are not precluded by the principle of legal certainty either.

(112) As regards the discrimination argument, this has to be dismissed as well. Raising the fee is not discriminatory if applied to everyone, especially since there is no differentiation within the regime, i.e. no distinctions are drawn among the undertakings operating under authorisation.

X. **RECOVERY**

(113) According to the TFEU and the Court of Justice's established case-law, when it has found aid to be incompatible with the internal market the Commission is competent to decide that the State concerned must abolish or alter it ([51]). The Court has also consistently held that the obligation on a State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation ([52]). In this context, the Court has established that that objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid has been restored ([53]).

(114) Following that case-law, Article 14 of Council Regulation (EC) No 659/99 ([54]) laid down that 'where negative decisions are taken in respect of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary.'.

([47]) Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437, point 14.
([48]) Case C-24/95 *Alcan Deutschland* [1997] ECR I-1591, point 43.
([49]) Case C-182/03 and C-217/03 *Belgium and Forum 187 ASBL* v *Commission* [2006] ECR I-5479, point 147.
([50]) Case C-17/03 *Vereniging voor Energie, Milieu en Water* [2005] ECR I-4983, point 81.
([51]) Case 70/72, *Commission* v *Germany*, [1973] ECR 813, paragraph 13.
([52]) Joined Cases C-278/92, C-279/92 and C-280/92 *Spain* v *Commission* [1994] ECR I-4103, point 75.
([53]) Case C-75/97 *Belgium* v *Commission* [1999] ECR I-030671 points 64-65.
([54]) OJ L 83, 27.3.1999, p. 1.

(115) Thus, given that the measure at issue is to be considered unlawful and incompatible aid, it must be recovered in order to re-establish the situation that existed on the market before it was granted. The amount to be recovered is, therefore, to be calculated from the date when the advantage accrued to the beneficiary, i.e. when the aid was made available to the beneficiary, and is to bear recovery interest until effective recovery.

(116) In this case, the measure is to be regarded as a sequence of actions by the State. With the extension agreement, MOL was shielded from future increases in the statutory mining fee. The advantage for MOL materialised when the first amendment to the Mining Act took effect, which was 8 January 2008. This is the date from which MOL was de facto relieved of the burden of higher fees and consequently favoured over its competitors.

(117) As explained in recitals 61 — 65, the applicable system of reference is that of other market participants operating under the authorisation regime. Therefore, the advantage is the difference between the actual mining fee MOL paid after the amendment of the Mining Act for its operating fields under authorisation and the fees as stipulated in the Mining Act.

(118) As already described in recital 85 above, the Commission considers that the other payment components in the agreement (the extension fee and the one-off payment) were paid in exchange for the extension and not for the right to have fees lower than those applicable to its competitors. This means that they are not to be taken into account in the calculation of the advantage.

Table 5

Sum of MOL's actual and hypothetical mining fee obligation for the relevant period

Mining fee payments	Actual (*) (according to the extension agreement) HUF million	Hypothetical (according to the Mining Act in force) HUF million	Difference HUF million
2008	106 226,3	134 671,0	– 28 444,7
2009	67 099,7	69 041,8	– 1 942,1

(*) Calculated on the basis of the mining fee percentages stipulated in the extension agreement (i.e. 12,24 % for fields put into operation after 1 January 1998 and J % × c for fields put into operation before that date).
For details please refer to Table 1.
The other components in the extension agreement (the one-off payment made in 2005 and the extension fee; see recital 14) are not included in this amount.

(119) The difference, as shown in Table 5, is therefore HUF 28,4 billion in 2008 and HUF 1,9 billion in 2009, i.e. a total of HUF 30,3 billion. This is the amount Hungary would have to recover from MOL plus recovery interest. Recovery would have to apply to the amounts for 2010 as well, for which there are as yet no figures available.

(120) The difference in magnitude of the forgone mining fee between 2008 and 2009 is due to the fact that, with the second amendment of the Mining Act that entered into force on 23 January 2009 (after the Commission's decision to open the formal investigation procedure), the legal situation before the 2008 amendment was reinstated, at least partially, for certain fields, i.e. for fields put into operation between 1998 and 2008.

XI. **CONCLUSION**

(121) On the basis of the foregoing, the Commission concludes that the measure in favour of MOL, i.e. the combination of the extension agreement and the 2008 amendment to the Mining Act, constitutes state aid that is incompatible with the internal market within the meaning of 107(1) TFEU.

(122) Given that the measure is to be considered unlawful and incompatible aid, the aid must be recovered from MOL in order to re-establish the situation that existed on the market before it was granted.

(123) The amount to be recovered is HUF 28 444,7 million for 2008 and HUF 1 942,1 million for 2009. As regards 2010, in respect of mining fee payments already made, the amount to be recovered needs to be calculated by Hungary, in the same way as for 2008 and 2009, until the measure is abolished,

HAS ADOPTED THIS DECISION:

Article 1

1. The combination of the fixed mining fee defined in the extension agreement concluded between the Hungarian State and MOL Nyrt. on 22 December 2005 and the subsequent amendments to Act XLVIII of 1993 on Mining constitutes state aid to MOL Nyrt. within the meaning of Article 107(1) TFEU.

2. The state aid referred to in Article 1(1), unlawfully granted by Hungary to MOL Nyrt., in breach of Article 108(3) TFEU, is incompatible with the internal market.

3. Hungary shall refrain from granting the state aid referred to in paragraph 1 within 2 months following the date of notification of the present Decision.

Article 2

1. Hungary shall recover the aid referred to in Article 1 from the beneficiary.

2. The state aid totals HUF 28 444,7 million for 2008 and HUF 1 942,1 million for 2009. As regards 2010, the amount of aid has to be calculated by Hungary until the measure is abolished.

3. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiary until the date on which they are actually recovered.

4. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 as amended by Regulation (EC) No 271/2008.

Article 3

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

2. Hungary shall ensure that this Decision is implemented within 4 months of its notification.

Article 4

1. Within 2 months following notification of this Decision, Hungary shall submit the following information to the Commission:

(a) the total amount (principal and recovery interest) to be recovered from the beneficiary, including the calculation of the aid amount for 2010;

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

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

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

Article 5

This Decision is addressed to the Republic of Hungary.

Done at Brussels, 9 June 2010.

For the Commission
Joaquín ALMUNIA
Vice-President

COMMISSION DECISION

of 8 February 2011

concerning a financial contribution by the Union to the Netherlands for studies on Q fever

(notified under document C(2011) 554)

(Only the Dutch text is authentic)

(2011/89/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Decision 2009/470/EC of 25 May 2009 on expenditure in the veterinary field [1], and in particular Article 23 thereof,

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [2] (hereinafter referred to as the 'Financial Regulation'), and in particular Article 75 thereof,

Having regard to Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities [3] (hereinafter referred to as the 'Implementing Rules'), and in particular Article 90 thereof,

Whereas:

(1) In accordance with Article 75 of the Financial Regulation and Article 90(1) of the Implementing Rules, the commitment of expenditure from the budget of the European Union shall be preceded by a financing decision setting out the essential elements of the action involving expenditure and adopted by the institution or the authorities to which powers have been delegated by the institution.

(2) Q fever is a highly contagious zoonotic disease caused by pathogen *Coxiella burnetii* which is commonly present in almost all countries worldwide. Many domesticated and wild animals can be carriers of the disease but cattle, goats and sheep are the main reservoirs.

(3) In the EU, there are no harmonised rules as regards notification or control of Q fever in animals. Disease control measures are normally taken on national, regional or even farm level.

(4) According to the EFSA opinion of 27 April 2010 [4], the overall impact of Q fever on the health of humans and domestic ruminants in EU Member States is limited. However, in certain epidemiological circumstances and for particular risk groups the public health impact and thereby also the impact on society and/or the economy can be significant.

(5) In the years 2008 and 2009, a major increase of human cases of Q fever was observed in the Netherlands, with several human deaths. The epidemiological investigations indicated a link with large dairy goat holdings in the area, where this particular type of milk production has developed rapidly over the past decade. However, the abovementioned EFSA opinion highlighted that the precise reasons for the emergence of clinical problems in the animal population in 2005, and the increase of cases in the human population in 2007 are still unclear.

(6) On 24 March 2010, the Dutch Ministry of Agriculture, Nature and Food Quality submitted a request for co-financing in the framework of Decision 2009/470/EC for technical and scientific studies on disease dynamics and the effectiveness of possible control measures applicable to domestic ruminants, such as vaccination of goats.

(7) The studies for which the Netherlands has requested co financing for will address among other things the following topics: (i) characterisation of the different genotypes of *Coxiella burnetii* that exist in different animal species in the Netherlands and their difference in virulence, if any; (ii) pathogenicity of *Coxiella burnetii* in pregnant and non-pregnant goats; (iii) the survival of *Coxiella burnetii* in manure; and (iv) suitable means of disinfection.

(8) Pursuant to Article 22 of Decision 2009/470/EC, the Union may undertake, or assist the Member States or international organisations in undertaking, the technical and scientific measures necessary for the development of EU veterinary legislation and for the development of veterinary education or training.

[1] OJ L 155, 18.6.2009, p. 30.
[2] OJ L 248, 16.9.2002, p. 1.
[3] OJ L 357, 31.12.2002, p. 1.
[4] EFSA Panel on Animal Health and Welfare (AHAW); Scientific Opinion on Q Fever. EFSA Journal 2010; 8(5):1595. [114 pp.]. doi:10.2903/j.efsa.2010.159.

(9) A financial contribution should be granted to the studies on Q fever in the Netherlands as the outcomes may lead to new insights that may contribute to possible future development of veterinary legislation in the Union, in particular as regards the possible adoption of harmonised rules on monitoring and reporting of this disease.

(10) Under Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy [1], veterinary measures are to be financed under the European Agricultural Guarantee Fund. For financial control purposes, Articles 9, 36 and 37 of that Regulation are to apply.

(11) The payment of the financial contribution must be subject to the condition that the studies planned have actually been carried out and that the authorities supply all the necessary information to the Commission.

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

HAS ADOPTED THIS DECISION:

Article 1

1. The Union shall grant the Netherlands financial assistance for their studies on Q fever, as summarised in the Annex. The present Decision constitutes a financing decision in the meaning of Article 75 of the Financial Regulation.

2. The following conditions must be fulfilled:

(a) the outcomes of the studies must be made available to the Commission and all Member States and presented at the Standing Committee on the Food Chain and Animal Health;

(b) the Netherlands must forward a final technical and financial report to the Commission on 31 March 2012 at the latest, the financial report accompanied by supporting documents justifying evidence as to the costs incurred and the results attained.

Article 2

1. The maximum contribution authorised by this Decision for the costs incurred for the work referred to in Article 1(1) is set at EUR 500 000 to be financed from the following Budgetary Line of the General Budget of the European Union for 2011:

— Budgetary Line No 17 04 02 01: EUR 500 000.

2. The Union's financial assistance shall be paid following presentation of the reports and supporting documents referred to Article 1(2)(b).

Article 3

This Decision is addressed to the Netherlands.

Done at Brussels, 8 February 2011.

For the Commission
John DALLI
Member of the Commission

[1] OJ L 209, 11.8.2005, p. 1.

ANNEX

Description of the technical and scientific studies on the epidemiology of Q fever and the effectiveness of possible control measures applicable to domestic ruminants, referred to in Article 1(1)

Project 1: 'Q fever in goats' involves the cultivation of *C. burnetii* and the characterisation of *C. burnetii* of the different genotypes that exist in the Netherlands. It also involves the survival of *C. burnetii* in manure, the different infection routes, the development of immunity, the shedding of *C. burnetii* in pregnant and non-pregnant goats and general information on the pathogeneses of *C. burnetii*.

Project 2: 'Assessment of the virulence of *C. burnetii* strains in goats' addresses the question if the current Dutch strain in goats is more virulent than other *C. burnetii* strains.

Project 3: 'Pathogeneses of Q fever' studies the pathogenesis of *C. burnetii* infections in goats; the role of pregnancy in the pathogenesis of *C. burnetii* infections; the build up of cellular and humoral immunity; differences in virulence of *C. burnetii* strains in goats and the protective immunity of natural infection. With the knowledge of the pathogenesis and the within herd transmission, the results of diagnostic testing can better be understood.

Project 4: 'Inventory of Q fever strains in cattle, sheep, dogs and cats' studies the relation between Q fever human patients and possible animal sources. The aim is to compare Q fever strains found in different animal species with the strains found in human patients. This is important to be able to exclude animals other than dairy goats as a source of human infections.

Project 5: 'Effectiveness of vaccination' compares field studies previously carried out in particular in France with new field studies in the Netherlands to assess the effectiveness of vaccination of goats against Q fever.

Project 6: 'Search for suitable means of disinfection' aims at identifying suitable products for disinfection and to assess whether materials like wood, straw, ground and manure can be effectively disinfected. The project includes: (i) the definition of criteria for disinfection products; (ii) the inactivation of *C. burnetii* and *C. burnetii* spores in clean fluids; (iii) the inactivation of *C. burnetii* and *C. burnetii* spores on complex materials and in manure; and (iv) the inactivation of *C. burnetii* and *C. burnetii* spores on complex surfaces.

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