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(¹) Text with EEA relevance

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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) No 878/2011

of 2 September 2011

amending Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 thereof,

Having regard to Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria ⁽¹⁾, adopted in accordance with Chapter 2 of Title V of the Treaty on European Union,

Having regard to the joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission,

Whereas:

- (1) On 9 May 2011, the Council adopted Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria ⁽²⁾.
- (2) Council Decision 2011/522/CFSP of 2 September 2011 amending Decision 2011/273/CFSP ⁽³⁾ provides for further measures to be adopted including a prohibition on the purchase, import or transportation from Syria of crude oil and petroleum products, and the freezing of funds and economic resources to further persons and entities who benefit from or support the regime. The additional persons, entities and bodies to whom the freezing of funds and economic resources is to apply are listed in the Annex to that Decision.
- (3) Some of those measures fall within the scope of the Treaty on the Functioning of the European Union and, therefore, in particular with a view to ensuring their uniform application by economic operators in all Member States, regulatory action at the level of the Union is necessary in order to implement them.

- (4) A partial suspension of the Cooperation Agreement Syria ⁽⁴⁾ has been effected by Council Decision 2011/523/EU of 2 September 2011 ⁽⁵⁾.
- (5) In order to ensure that the measures provided for in this Regulation are effective, this Regulation must enter into force immediately.
- (6) It should be clarified that submitting and forwarding the necessary documents to a bank for the purpose of their final transfer to a person, entity or body that is not listed, to trigger payments allowed under Article 9 of this Regulation, does not constitute making funds available within the meaning of Article 4(2) of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 442/2011 is amended as follows:

(1) in Article 1, the following points are inserted:

- (g) "insurance" means an undertaking or commitment whereby one or more natural or legal persons are obliged, in return for payment, to provide one or more other persons, in the event of materialisation of a risk, with an indemnity or a benefit as determined by the undertaking or commitment;
- (h) "reinsurance" means the activity consisting in accepting risks ceded by an insurance undertaking or by another reinsurance undertaking or, in the case of the association of underwriters known as Lloyd's, the activity consisting in accepting risks, ceded by any member of Lloyd's, by an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd's;
- (i) "petroleum products" means the products listed in Annex IV.;

⁽¹⁾ OJ L 121, 10.5.2011, p. 11.⁽²⁾ OJ L 121, 10.5.2011, p. 1.⁽³⁾ See page 16 of this Official Journal.⁽⁴⁾ OJ L 269, 27.9.1978, p. 2.⁽⁵⁾ See page 19 of this Official Journal.

(2) the following Articles are inserted:

Article 3a

It shall be prohibited:

- (a) to import crude oil or petroleum products into the Union if they:
 - (i) originate in Syria; or
 - (ii) have been exported from Syria;
- (b) to purchase crude oil or petroleum products which are located in or which originated in Syria;
- (c) to transport crude oil or petroleum products if they originate in Syria, or are being exported from Syria to any other country;
- (d) to provide, directly or indirectly, financing or financial assistance, including financial derivatives, as well as insurance and re-insurance, related to the prohibitions set out in points (a), (b) and (c); and
- (e) to participate, knowingly and intentionally, in activities whose object or effect is, directly or indirectly, to circumvent the prohibitions in point (a), (b), (c) or (d).

Article 3b

The prohibitions in Article 3a shall not apply to:

- (a) the execution, on or prior to 15 November 2011, of an obligation arising from a contract concluded before 2 September 2011, provided that the natural or legal person, entity or body seeking to perform the obligation concerned has notified, at least 7 working days in advance, the activity or transaction to the competent authority of the Member State in which it is established, as identified on the websites listed in Annex III; or
- (b) the purchase of crude oil or petroleum products which had been exported from Syria prior to 2 September 2011, or, where the export was made pursuant to point (a), on or prior to 15 November 2011.;

(3) Article 5(1) is replaced by the following:

‘1. Annex II shall consist of a list of natural or legal persons, entities and bodies which, in accordance with Article 4(1) of Decision 2011/273/CFSP, have been identified by the Council as being persons responsible for the violent repression against the civilian population in Syria, persons and entities benefiting from or supporting the regime, or persons and entities associated with them.’;

(4) Article 6 is amended as follows:

- (a) in the first paragraph, points (c) and (d) are replaced by the following:
 - ‘(c) intended exclusively for the payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources;
 - (d) necessary for extraordinary expenses, provided that the relevant competent authority has notified to the competent authorities of the other Member States and to the Commission at least 2 weeks before the authorisation the grounds on which it considers that a specific authorisation should be granted.’;
- (b) in the first paragraph, the following points are added:
 - ‘(e) to be paid into or from an account of a diplomatic or consular mission or an international organisation enjoying immunities in accordance with international law, insofar as such payments are intended to be used for official purposes of the diplomatic or consular mission or international organisation; or
 - (f) necessary for humanitarian purposes, such as the delivery and facilitation of delivery of humanitarian aid, the delivery of materials and supplies necessary for essential civilian needs, including food and agricultural materials for its production, medical products, or for evacuations from Syria.’;

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

‘The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this Article, within 4 weeks following the authorisation.’;

(5) the following Article is inserted:

Article 10a

No claims, including for compensation or any other claim of this kind, such as a claim of set-off or a claim under a guarantee, in connection with any contract or transaction the performance of which was affected, directly or indirectly, in whole or in part, by the measures imposed by this Regulation, should be granted to the Government of Syria, or to any person or entity claiming through it or for its benefit.’.

Article 2

Annex II to Regulation (EU) No 442/2011 is hereby amended in accordance with Annex I to this Regulation.

Article 3

Annex II to this Regulation is hereby inserted as Annex IV to Regulation (EU) No 442/2011.

Article 4

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

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

Done at Brussels, 2 September 2011.

For the Council
The President
M. DOWGIELEWICZ

ANNEX I

A. Persons

| | Name | Identifying information (date of birth, place of birth...) | Reasons | Date of listing |
|----|----------------------------------|---------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| 1. | Fares CHEHABI (Fares SHIHABI) | | President of Aleppo Chamber of Industry. Provides economic support for the Syrian regime. | 2.09.2011 |
| 2. | Emad GHRAIWATI | | President of the Damascus Chamber of Industry (Zuhair Ghraiwati Sons). Provides economic support for the Syrian regime. | 2.09.2011 |
| 3. | Tarif AKHRAS | | Founder of the Akhras Group (commodities, trading, processing and logistics), Homs. Provides economic support for the Syrian regime. | 2.09.2011 |
| 4. | Issam ANBOUBA | | President of Issam Anbouba Est. for agro-industry. Supports economically the Syrian regime. | 2.09.2011 |

B. Entities

| | Name | Identifying information | Reasons | Date of listing |
|----|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|-----------------|
| 1. | Mada Transport | Subsidiary of Cham Holding (Sehanya Daraa Highway, PO Box 9525, tel: 00 963 11 99 62) | Economic entity financing the regime. | 2.09.2011 |
| 2. | Cham Investment Group | Subsidiary of Cham Holding (Sehanya Daraa Highway, PO Box 9525, tel: 00 963 11 99 62) | Economic entity financing the regime. | 2.09.2011 |
| 3. | Real Estate Bank | Insurance Bldg- Yousef Al-azmeh sqr. Damascus P.O. Box: 2337 Damascus Syrian Arab Republic Phone: (+963) 11 2456777 and 2218602 Fax: (+963) 11 2237938 and 2211186 Bank's e-mail: Publicrelations@reb.sy, Website: www.reb.sy | State-owned bank providing financial support for the regime. | 2.09.2011 |

ANNEX II

ANNEX IV

List of Petroleum Products and HS Code

| HS Code | Description |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2709 00 | Petroleum oils and oils obtained from bituminous minerals, crude: |
| 2710 | Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 % or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils: |
| 2711 | Petroleum gases and other gaseous hydrocarbons: |
| 2712 | Petroleum jelly; paraffin wax, microcrystalline petroleum wax, slack wax, ozokerite, lignite wax, peat wax, other mineral waxes, and similar products obtained by synthesis or by other processes, whether or not coloured: |
| 2713 | Petroleum coke, petroleum bitumen and other residues of petroleum oils or of oils obtained from bituminous minerals: |
| 2714 | Bitumen and asphalt, natural; bituminous or oil-shale and tar sands; asphaltites and asphaltic rocks: |
| 2715 00 00 | Bituminous mixtures based on natural asphalt, on natural bitumen, on petroleum bitumen, on mineral tar or on mineral tar pitch (for example, bituminous mastics, cut-backs): |

COMMISSION IMPLEMENTING REGULATION (EU) No 879/2011**of 2 September 2011****amending Council Regulation (EU) No 57/2011 as regards catch limits for Norway pout and associated by-catches in ICES zone IIIa and Union waters of ICES zones IIa and IV**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EU) No 57/2011 of 18 January 2011 fixing for 2011 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in certain non-EU waters⁽¹⁾, and in particular Article 5(4) thereof,

Whereas:

- (1) Zero catch limits for the stock of Norway pout and associated species in ICES zone IIIa and in Union waters of ICES zones IIa and IV are laid down in Annex IA to Regulation (EU) No 57/2011.
- (2) On the basis of the scientific information collected during the first half of 2011, the Scientific, Technical and Economic Committee for Fisheries advises that catches in 2011 of up to 6 000 tonnes would correspond to a fishing mortality of 0,02 and are expected to maintain the stock above precautionary limits.
- (3) Norway pout is a North Sea stock which is shared with Norway but which is currently not managed jointly by the two Parties. The measures provided for in this Regulation should be in accordance with consultations held with Norway pursuant to the provisions of the Agreed Record of conclusions of fisheries consultations between the European Union and Norway of 3 December 2010.
- (4) In consequence, the Union share of Norway pout catches in ICES zone IIIa and in Union waters of ICES zones IIa and IV should be fixed at 75 % of 6 000 tonnes.
- (5) Haddock and whiting are caught as a by-catch in the Norway pout fishery. It is therefore appropriate to count these catches against the Member State quotas for Norway pout and associated species, but in order to prevent excessive catches the quantities of these species that can be counted against this quota should be limited to 5 % of the total.
- (6) Annex IA to Regulation (EU) No 57/2011 should therefore be amended accordingly.
- (7) Norway pout is a short-lived species. Consequently the new quantities of the catch limitations should be implemented as soon as possible, in order to ensure the continued operation of the fishery. This regulation should therefore enter into force on the day following its publication.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

Article 1

Annex IA to Regulation (EU) No 57/2011 is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 2 September 2011.

For the Commission
The President

José Manuel BARROSO

⁽¹⁾ OJ L 24, 27.1.2011, p. 1.

ANNEX

In Annex IA to Regulation (EU) No 57/2011, the entry concerning the stock of Norway pout and associated by-catches in ICES zone IIIa and in Union waters of ICES zones IIa and IV is replaced by the following:

| Species: Norway pout and associated by-catches <i>Trisopterus esmarki</i> | Zone: IIIa; EU waters of IIa and IV NOP/2A3A4. | |
|-------------------------------------------------------------------------------------|----------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Denmark | 4 496 ⁽¹⁾ | |
| Germany | 1 ⁽¹⁾ ⁽²⁾ | |
| The Netherlands | 3 ⁽¹⁾ ⁽²⁾ | |
| EU | 4 500 ⁽¹⁾ | |
| Norway | 0 | |
| TAC | Not relevant | <div data-bbox="855 703 1337 857" style="border: 1px solid black; padding: 5px;"> Analytical TAC. Article 3 of Regulation (EC) No 847/96 does not apply. Article 4 of Regulation (EC) No 847/96 does not apply. </div> |

⁽¹⁾ At least 95 % of landings must be of Norway pout. By-catches of haddock and whiting to be counted against the remaining 5 % of the TAC.

⁽²⁾ Quota may be fished in EC waters of ICES zones IIa, IIIa and IV only.

COMMISSION REGULATION (EU) No 880/2011

of 2 September 2011

correcting Regulation (EU) No 208/2011 amending Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council and Commission Regulations (EC) No 180/2008 and (EC) No 737/2008 as regards lists and names of EU reference laboratories

(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 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules⁽¹⁾, and in particular Article 32(5) thereof,

Whereas:

- (1) Regulation (EC) No 882/2004 lays down the general tasks, duties and requirements for EU reference laboratories for food and feed and for animal health and live animals. The EU reference laboratories for animal health and live animals are listed in Part II of Annex VII to that Regulation.
- (2) Commission Regulation (EU) No 87/2011 of 2 February 2011 designating the EU reference laboratory for bee health, laying down additional responsibilities and tasks for that laboratory and amending Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council⁽²⁾ designated the EU reference laboratory in the field of bee health and added it to the list of EU reference laboratories for animal health and live animals.
- (3) Commission Regulation (EU) No 208/2011 of 2 March 2011 amending Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council and Commission Regulations (EC) No 180/2008 and (EC) No 737/2008 as regards lists and names of EU

reference laboratories⁽³⁾ replaced Annex VII to Regulation (EC) No 882/2004. However, the EU reference laboratory in the field of bee health was omitted from the list of EU reference laboratories for animal health and live animals set out in Part II of Annex VII to Regulation (EC) No 882/2004, as amended by Regulation (EU) No 208/2011.

- (4) It is important to keep the list of EU reference laboratories set out in Regulation (EC) No 882/2004 updated. The omission in Regulation (EU) No 208/2011 should therefore be corrected.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

In the Annex to Regulation (EU) No 208/2011, in the list of EU reference laboratories for animal health and live animals in Part II of Annex VII to Regulation (EC) No 882/2004, the following point 18 is added:

'18. EU reference laboratory for bee health

ANSES — Sophia-Antipolis Laboratory
Sophia-Antipolis
France.'

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, 2 September 2011.

For the Commission
The President
José Manuel BARROSO

⁽¹⁾ OJ L 165, 30.4.2004, p. 1.

⁽²⁾ OJ L 29, 3.2.2011, p. 1.

⁽³⁾ OJ L 58, 3.3.2011, p. 29.

COMMISSION IMPLEMENTING REGULATION (EU) No 881/2011

of 2 September 2011

amending Regulation (EC) No 1137/2007 as regards the additive composition of the preparation of *Bacillus subtilis* DSM 17299 (holder of authorisation Chr. Hansen A/S) and its use in feed containing formic acid

(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 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition⁽¹⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) The preparation of *Bacillus subtilis* DSM 17299, belonging to the additive category of 'zootechnical additives', was authorised for 10 years as a feed additive for use on chickens for fattening by Commission Regulation (EC) No 1137/2007⁽²⁾.
- (2) In accordance with Article 13(3) of Regulation (EC) No 1831/2003, the holder of the authorisation has proposed changing the terms of the authorisation of *Bacillus subtilis* DSM 17299 to modify the additive composition by increasing the minimum concentration and to allow its use in feed for chickens for fattening containing formic acid. The application was accompanied by the relevant supporting data. The Commission forwarded that application to the European Food Safety Authority (hereinafter 'the Authority').

- (3) The Authority concluded in its opinion of 15 March 2011 that the increase of the minimum concentration from $1,6 \times 10^9$ to $1,6 \times 10^{10}$ CFU/g is unlikely to introduce new hazards and that the modified composition is compatible with formic acid. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.
- (4) The conditions provided for in Article 5 of Regulation (EC) No 1831/2003 are satisfied.
- (5) Regulation (EC) No 1137/2007 should therefore be amended accordingly.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 1137/2007 is amended in accordance with the Annex to this Regulation.

*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, 2 September 2011.

For the Commission
The President
José Manuel BARROSO

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ OJ L 265, 2.10.2007, p. 5.

ANNEX

The Annex to Regulation (EC) No 1137/2007 is replaced by the following:

'ANNEX

| Identification number of the additive | Name of the holder of authorisation | Additive | Composition, chemical formula, description, analytical method | Species or category of animal | Maximum age | Minimum content | Maximum content | Other provisions | End of period of authorisation |
|-------------------------------------------------------------------------------------|-------------------------------------|---------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|-------------|-----------------------------------------------------------------|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| | | | | | | CFU/kg of complete feedingstuff with a moisture content of 12 % | | | |
| Category of zootechnical additives. Functional group: gut flora stabilisers. | | | | | | | | | |
| 4b1821 | Chr. Hansen A/S | <i>Bacillus subtilis</i> DSM 17299 | <p><i>Additive composition:</i></p> <p>Preparation of <i>Bacillus subtilis</i> DSM 17299 containing a minimum of $1,6 \times 10^{10}$ CFU/g of additive</p> <p><i>Characterisation of the active substance:</i></p> <p><i>Bacillus subtilis</i> DSM 17299 spore concentrate</p> <p><i>Analytical method</i> ⁽¹⁾:</p> <p>Enumeration spread plate method using tryptone soya agar with preheat treatment of feed samples</p> | Chickens for fattening | — | 8×10^8 | $1,6 \times 10^9$ | <ol style="list-style-type: none"> In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting. The use is permitted in feed containing one of the following coccidiostats: diclazuril, halofuginone, robenidine, decoquinate, narasin/nicarbazin, lasalocid sodium, maduramycin ammonium, monensin sodium, narasin, salinomycin sodium, semduramycin sodium. The compatibility of this additive with formic acid has been shown. | 22 October 2017 |

⁽¹⁾ Details of the analytical methods are available at the following address of the Reference Laboratory: http://irmm.jrc.ec.europa.eu/EURLs/EURL_feed_additives/Pages/index.aspx

COMMISSION IMPLEMENTING REGULATION (EU) No 882/2011**of 2 September 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 Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

Implementing Regulation (EU) No 543/2011 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 XVI, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 3 September 2011.

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

Done at Brussels, 2 September 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 157, 15.6.2011, 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 | EC | 32,6 |
| | ZZ | 32,6 |
| 0707 00 05 | TR | 130,3 |
| | ZZ | 130,3 |
| 0709 90 70 | AR | 40,2 |
| | TR | 123,3 |
| | ZZ | 81,8 |
| 0805 50 10 | AR | 70,5 |
| | CL | 75,3 |
| | MX | 39,8 |
| | PY | 33,5 |
| | TR | 65,0 |
| | UY | 50,7 |
| | ZA | 79,1 |
| | ZZ | 59,1 |
| 0806 10 10 | EG | 149,9 |
| | IL | 80,3 |
| | MA | 175,2 |
| | TR | 125,8 |
| | ZA | 59,8 |
| | ZZ | 118,2 |
| 0808 10 80 | AR | 118,9 |
| | CL | 110,0 |
| | CN | 50,3 |
| | NZ | 100,3 |
| | ZA | 90,5 |
| | ZZ | 94,0 |
| 0808 20 50 | CI | 48,9 |
| | CN | 42,6 |
| | TR | 124,7 |
| | ZA | 92,2 |
| | ZZ | 77,1 |
| 0809 03 | TR | 129,5 |
| | ZZ | 129,5 |
| 0809 40 05 | BA | 41,6 |
| | ZZ | 41,6 |

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

REGULATION OF THE EUROPEAN CENTRAL BANK (EU) No 883/2011

of 25 August 2011

amending Regulation (EC) No 25/2009 concerning the balance sheet of the monetary financial institutions sector (ECB/2008/32)

(ECB/2011/12)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to Article 5 of the Statute of the European System of Central Banks and of the European Central Bank,

Having regard to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank ⁽¹⁾, and in particular to Articles 5(1) and 6(4),

Having regard to the opinion of the European Commission ⁽²⁾,

Whereas:

- (1) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC ⁽³⁾ allowed legal persons to issue electronic money without needing to obtain the status of credit institutions.
- (2) As a consequence and in order to continue the collection of statistics in the monetary financial institutions (MFI) sector on electronic money institutions that are principally engaged in financial intermediation in the form of issuing electronic money, it is necessary to adjust the definition of MFIs, and therefore also to update the definitions of 'electronic money institution' and 'electronic money' in this Regulation. Electronic money institutions within the MFI sector should be classified under the category of 'other MFIs'.
- (3) The amendments to the definition of and the requirements placed on electronic money institutions pursuant to Directive 2009/110/EC have made the provisions of Regulation (EC) No 25/2009 of the European Central Bank (ECB/2008/32) ⁽⁴⁾ on the granting of derogations from reporting requirements to electronic money institutions obsolete and therefore the respective provisions of Regulation (EC) No 25/2009 (ECB/2008/32) should be deleted.
- (4) The guidelines on a common definition of European money market funds (MMFs) issued on 19 May 2010 by the Committee of European Securities Regulators (CESR), the predecessor of the European Securities and Markets Authority, aim to improve investor protection by setting out criteria to be applied by any fund that wishes to market itself as an MMF and serve as a recom-

mendation for European national legislators for supervisory purposes. In light of this, it is appropriate to introduce into Regulation (EC) No 25/2009 (ECB/2008/32) corresponding new identification criteria for MMFs for European System of Central Banks statistical purposes so that the population of MMFs is aligned with the identification criteria expected to apply for supervisory purposes following the abovementioned CESR Guidelines. At the same time, this change aims to increase market transparency and facilitate management reporting on funds,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 25/2009 (ECB/2008/32) is amended as follows:

(1) Article 1 is amended as follows:

(a) the first indent is replaced by the following:

— "monetary financial institution" (MFI) means a resident undertaking that belongs to any of the following sectors:

- (i) central banks;
- (ii) credit institutions as defined in Article 4(1) of Directive 2006/48/EC;
- (iii) other MFIs, i.e. (1) other financial institutions whose business is (i) to receive deposits and/or close substitutes for deposits from entities other than MFIs; and (ii) for their own account, at least in economic terms, to grant credits and/or make investments in securities; or (2) such electronic money institutions that are principally engaged in financial intermediation in the form of issuing electronic money;
- (iv) money market funds (MMFs) as defined in Article 1a.

Concerning the criterion under point (iii)(1)(i) above, the degree of substitutability between the instruments issued by other MFIs and the deposits placed with credit institutions shall determine their classification as MFIs, provided they fulfil the criterion under point (iii)(1)(ii);

⁽¹⁾ OJ L 318, 27.11.1998, p. 8.

⁽²⁾ C(2011) 5090 final.

⁽³⁾ OJ L 267, 10.10.2009, p. 7.

⁽⁴⁾ OJ L 15, 20.1.2009, p. 14

(b) the eighth indent is replaced by the following:

— “electronic money institution” and “electronic money” mean electronic money institution and electronic money as defined in Article 2(1) and 2(2) of Directive 2009/110/EC of the European Parliament and of the Council, (*).

(*) OJ L 267, 10.10.2009, p. 7.;

(2) the following Article 1a is inserted:

‘Article 1a

Identification of MMFs

For the purpose of this legal act, collective investment undertakings complying with all the following criteria shall be treated as MMFs, where they:

- (a) pursue the investment objective of maintaining a fund’s principal and providing a return in line with the interest rates of money market instruments;
- (b) invest in money market instruments which comply with the criteria for money market instruments set out in Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (*), or deposits with credit institutions or, alternatively, ensure that the liquidity and valuation of the portfolio in which they invest is assessed on an equivalent basis;
- (c) ensure that the money market instruments they invest in are of high quality, as determined by the management company. The quality of a money market instrument shall be considered, inter alia, on the basis of the following factors:
 - the credit quality of the money market instrument,
 - the nature of the asset class represented by the money market instrument,
 - for structured financial instruments, the operational and counterparty risk inherent within the structured financial transaction,
 - the liquidity profile;
- (d) ensure that their portfolio has a weighted average maturity (WAM) of no more than 6 months and a weighted average life (WAL) of no more than 12 months;
- (e) provide daily net asset value (NAV) and a price calculation of their shares/units, and daily subscription and redemption of shares/units;
- (f) limit investment in securities to those with a residual maturity until the legal redemption date of less than or

equal to 2 years, provided that the time remaining until the next interest rate reset date is less than or equal to 397 days whereby floating rate securities should reset to a money market rate or index;

- (g) limit investment in other collective investment undertakings to those complying with the definition of MMFs;
- (h) do not take direct or indirect exposure to equity or commodities, including via derivatives and only use derivatives in line with the money market investment strategy of the fund. Derivatives which give exposure to foreign exchange may only be used for hedging purposes. Investment in non-base currency securities is allowed provided the currency exposure is fully hedged;
- (i) have either a constant or fluctuating NAV.

(*) OJ L 302, 17.11.2009, p. 32.;

(3) in Article 8, paragraph 4 is deleted;

(4) without prejudice to Article 2 of this Regulation, in Part 1 of Annex I, Section 2 is replaced by the following:

‘Section 2: Specifications for the MMFs’ identification criteria

For the purpose of Article 1a of this Regulation:

- (a) the money market instrument shall be considered to be of a high credit quality, if it has been awarded one of the two highest available short-term credit ratings by each recognised credit rating agency that has rated the instrument or, if the instrument is not rated, it is of an equivalent quality as determined by the management company’s internal rating process. Where a recognised credit rating agency divides its highest short-term rating into two categories, these two ratings shall be considered as a single category and therefore the highest rating available;
- (b) the money market fund may, as an exception to the requirement in paragraph (a), hold sovereign issuance of at least investment grade quality, whereby ‘sovereign issuance’ means money market instruments issued or guaranteed by a central, regional or local authority or central bank of a Member State, the ECB, the European Union or the European Investment Bank;
- (c) when calculating WAL for securities, including structured financial instruments, the maturity calculation is based on the residual maturity until the legal redemption of the instruments. However, when a financial instrument embeds a put option, the exercise date of the put option may be used instead of the legal residual maturity only if the following conditions are fulfilled at all times:
 - the put option may be freely exercised by the management company at its exercise date,

- the strike price of the put option remains close to the expected value of the instrument at the next exercise date,
 - the investment strategy of the MMF implies that there is a high probability that the option will be exercised at the next exercise date;
- (d) when calculating both WAL and WAM, the impact of financial derivative instruments, deposits and efficient portfolio management techniques shall be taken into account;
- (e) ‘weighted average maturity’ (WAM) shall mean a measure of the average length of time to maturity of all of the underlying securities in the fund weighted to reflect the relative holdings in each instrument, assuming that the maturity of a floating rate instrument is the time remaining until the next interest rate reset to the money market rate, rather than the time remaining before the principal value of the security must be repaid. In practice, WAM is used to measure the sensitivity of a MMF to changing money market interest rates;
- (f) ‘weighted average life’ (WAL) shall mean the weighted average of the remaining maturity of each security held in a fund, meaning the time until the principal is repaid in full, disregarding interest and not discounting. Contrary to the calculation of the WAM, the calculation of the WAL for floating rate securities and structured financial instruments does not permit the use of interest rate reset dates and instead only uses a security’s stated final maturity. WAL is used to measure the credit risk, as the longer the reimbursement of principal is postponed, the higher the credit risk. WAL is also used to limit the liquidity risk;

(g) ‘money market instruments’ means instruments normally traded on the money market which are liquid and have a value which can be accurately determined at any time;

(h) ‘management company’ means a company, the regular business of which is the management of the portfolio of an MMF.’

Article 2

Transitional provision

National central banks (NCBs) may continue to collect statistical information under Regulation (EC) No 25/2009 (ECB/2008/32) from the MMFs resident in their Member States identified in accordance with the former Section 2 of Part 1 of Annex I to Regulation (EC) No 25/2009 (ECB/2008/32) until 31 January 2012 at the latest. They shall notify all MMFs concerned of their decision to apply this transitional provision. NCBs shall start collecting statistical information from MMFs identified in accordance with Article 1a of Regulation (EC) No 25/2009 (ECB/2008/32) from 1 February 2012 at the latest.

Article 3

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

Done at Frankfurt am Main, 25 August 2011.

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

DECISIONS

COUNCIL DECISION 2011/522/CFSP

of 2 September 2011

amending Decision 2011/273/CFSP concerning restrictive measures against Syria

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Article 1

Council Decision 2011/273/CFSP is hereby amended as follows:

Whereas:

(1) the following Articles are added:

(1) On 9 May 2011, the Council adopted Decision 2011/273/CFSP concerning restrictive measures against Syria ⁽¹⁾.

'Article 2a

1. The purchase, import or transport from Syria of crude oil and petroleum products shall be prohibited.

(2) On 18 August 2011, the Union condemned in the strongest terms the brutal campaign that Bashar Al-Assad and his regime were waging against their own people which had led to the killing or injury of many Syrian citizens. The Union has repeatedly emphasised that the brutal repression must be stopped, detained protesters released, free access by international humanitarian and human rights organisations and media allowed, and a genuine and inclusive national dialogue launched. The Syrian leadership, however, has remained defiant with regard to calls from the Union as well as from the broad international community.

2. It shall be prohibited to provide, directly or indirectly, financing or financial assistance, including financial derivatives, as well as insurance and reinsurance, related to the prohibitions referred to in paragraph 1.

(3) In this context, the Union has decided to adopt additional restrictive measures against the Syrian regime.

3. It shall be prohibited to participate, knowingly or intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in paragraphs 1 and 2.

(4) The restrictions on admission and the freezing of funds and economic resources should be applied to additional persons and entities benefiting from or supporting the regime, in particular persons and entities financing the regime, or providing logistical support to the regime, in particular the security apparatus, or who undermine the efforts towards a peaceful transition to democracy in Syria.

Article 2b

The prohibitions set out in Article 2a shall be without prejudice to the execution, until 15 November 2011, of obligations provided for in contracts concluded before 2 September 2011.;

(5) In addition, the purchase, import or transport from Syria of crude oil and petroleum products should be prohibited.

'Article 4a

No claims, including for compensation or any other claim of this kind, such as a claim of set-off or a claim under a guarantee, in connection with any contract or transaction the performance of which was affected, directly or indirectly, wholly or in part, by reason of measures covered by this Decision, shall be granted to the designated persons or entities listed in the Annex, or any other person or entity in Syria, including the Government of Syria, or any person or entity claiming through or for the benefit of any such person or entity.;

(6) In this regard, it should be noted that a partial suspension of the Cooperation Agreement between the European Economic Community and the Syrian Arab Republic ⁽²⁾ has been decided by the Council in its Decision 2011/523/EU of 2 September 2011 ⁽³⁾,

(2) Article 3(1) is replaced by the following:

'1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of the persons responsible for the violent repression against the civilian population in Syria, persons benefiting from or supporting the regime, and persons associated with them, as listed in the Annex.;

⁽¹⁾ OJ L 121, 10.5.2011, p. 11.

⁽²⁾ OJ L 269, 27.9.1978, p. 2.

⁽³⁾ See page 19 of this Official Journal.

(3) Article 4(1) is replaced by the following:

'1. All funds and economic resources belonging to, or owned, held or controlled by, persons responsible for the violent repression against the civilian population in Syria, persons and entities benefiting from or supporting the regime, and persons and entities associated with them, as listed in the Annex, shall be frozen.'

(4) the following points are added to Article 4(3):

(e) necessary for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, humanitarian workers and related assistance, or evacuating foreign nationals from Syria;

(f) to be paid into or from an account of a diplomatic or consular mission or an international organisation

enjoying immunities in accordance with international law, in so far as such payments are intended to be used for official purposes of the diplomatic or consular mission or international organisation.'

Article 2

The persons and entities listed in the Annex to this Decision shall be added in the list set out in the Annex to Decision 2011/273/CFSP.

Article 3

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

Done at Brussels, 2 September 2011.

For the Council

The President

M. DOWGIELEWICZ

ANNEX

Persons and entities referred to in Article 2

A. Persons

| | Name | Identifying information (date of birth, place of birth ...) | Reasons | Date of listing |
|----|----------------------------------|-------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| 1. | Fares CHEHABI (Fares SHIHABI) | | President of Aleppo Chamber of Industry. Provides economic support for the Syrian regime. | 2.09.2011 |
| 2. | Emad GHRAIWATI | | President of the Damascus Chamber of Industry (Zuhair Ghraiwati Sons). Provides economic support for the Syrian regime. | 2.09.2011 |
| 3. | Tarif AKHRAS | | Founder of the Akhras Group (commodities, trading, processing and logistics), Homs. Provides economic support for the Syrian regime. | 2.09.2011 |
| 4. | Issam ANBOUBA | | President of Issam Anbouba Est. for agro-industry. Provides economic support for the Syrian regime. | 2.09.2011 |

B. Entities

| | Name | Identifying information | Reasons | Date of listing |
|----|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|-----------------|
| 1. | Mada Transport | Subsidiary of Cham Holding (Sehanya Daraa Highway, PO Box 9525, tel: 00 963 11 99 62) | Economic entity financing the regime. | 2.09.2011 |
| 2. | Cham Investment Group | Subsidiary of Cham Holding (Sehanya daraa Highway, PO Box 9525, tel: 00 963 11 99 62) | Economic entity financing the regime. | 2.09.2011 |
| 3. | Real Estate Bank | Insurance Bldg- Yousef Al-azmeh sqr. Damascus P.O. Box: 2337 Damascus Syrian Arab Republic Phone: (+963) 11 2456777 and 2218602 Fax: (+963) 11 2237938 and 2211186 Bank's e-mail: Publicrelations@reb.sy, Website: www.reb.sy | State-owned bank providing financial support for the regime. | 2.09.2011 |

COUNCIL DECISION

of 2 September 2011

partially suspending the application of the Cooperation Agreement between the European Economic Community and the Syrian Arab Republic

(2011/523/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On the 18 January 1977, the European Economic Community and the Syrian Arab Republic concluded a Cooperation Agreement⁽¹⁾ ('the Cooperation Agreement') to promote overall cooperation with a view to strengthening relations between the Parties.
- (2) The Cooperation Agreement is based on the common desire of the Parties to maintain and strengthen friendly relations in accordance with the principles of the United Nations Charter.
- (3) Pursuant to Article 3(5) of the Treaty on European Union, in its relations with the wider world, the Union is notably to contribute to peace, security and the protection of human rights as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.
- (4) Pursuant to Article 21(1) of the Treaty on European Union, the Union's action on the international scene is to be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principle of equality and solidarity, and respect for the principles of the United Nations Charter and international law.
- (5) Since March 2011, protests grew against specific abuses of power by Syrian officials against the general backdrop of growing economic and political discontent. Cautious protests which began in marginalised regions developed into a countrywide uprising. The Syrian authorities have responded, and continue to respond, in a very violent manner including by the shooting of peaceful protesters.
- (6) On 18 August 2011, the UN High Commissioner for Human Rights issued a statement to the Human Rights Council 17th Special Session on the "Situation of human rights in the Syrian Arab Republic" in which she recalled that, in its report of 18 August, the fact-finding mission to Syria requested by the Human Rights Council had found a pattern of widespread or systematic human rights violations by Syrian security and military forces, including murder, enforced disappearances, torture, deprivation of liberty, and persecution. The High Commissioner considered that the scale and nature of these acts may amount to crimes against humanity and urged the members of the Security Council to consider referring the current situation in Syria to the International Criminal Court.
- (7) On the same day, the Union condemned the brutal campaign being waged by Bashar Al-Assad and his regime against their own people which had led to the killing or injury of many Syrian citizens. The Union has repeatedly emphasised that the brutal repression must be stopped, detained protesters released, free access by international humanitarian and human rights organisations and media allowed, and a genuine and inclusive national dialogue launched. The Syrian leadership, however, has remained defiant in the face of calls from the Union and the broader international community.
- (8) On 23 August 2011, the Human Rights Council adopted a Resolution on grave human rights violations in the Syrian Arab Republic in which it strongly condemned the continued grave human rights violations by the Syrian authorities, reiterated its call upon the Syrian authorities to comply with their obligations under international law, stressed the need for an international, transparent, independent and prompt investigation into alleged violations of international law, including actions that may constitute crimes against humanity and to hold those responsible to account, and decided to dispatch an independent international commission of inquiry to investigate violations of international human rights law in Syria.
- (9) According to the Preamble of the Cooperation Agreement, both Parties wished, by concluding the Agreement, to demonstrate their common desire to maintain and strengthen friendly relations in accordance with the principles of the United Nations Charter. In the current circumstances, the Union considers that the current situation in Syria is in clear violation of the principles of the United Nations Charter which constitute the basis of the cooperation between Syria and the Union.
- (10) Considering the extreme seriousness of the violations perpetrated by Syria in breach of general international law and the principles of the United Nations Charter, the Union has decided to adopt additional restrictive measures against the Syrian regime.

⁽¹⁾ OJ L 269, 27.9.1978, p. 2.

(11) In this regard, the application of the Cooperation Agreement should be partially suspended until the Syrian authorities put an end to the systematic violations of human rights and can again be considered as being in compliance with general international law and the principles which form the basis of the Cooperation Agreement.

(12) Considering that the suspension should aim at targeting the Syrian authorities only and not the people of Syria, the suspension should be limited. Since crude oil and petroleum products are at present the products whose trade most benefits the Syrian regime and which thus supports its repressive policies, the suspension of the Agreement should be limited to crude oil and petroleum products,

HAS ADOPTED THIS DECISION:

Article 1

Articles 12, 14 and 15 of the Cooperation Agreement between the European Economic Community and the

Syrian Arab Republic are suspended in so far as the measures listed in the Annex to this Decision are concerned.

Article 2

This Decision shall be notified to the Syrian Arab Republic.

Article 3

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

Done at Brussels, 2 September 2011.

For the Council

The President

M. DOWGIELEWICZ

ANNEX

List of measures referred to in Article 1

- (1) The importation of crude oil and petroleum products into the Union if they:
 - (a) originate in Syria; or
 - (b) have been exported from Syria;
 - (2) The purchase of crude oil or petroleum products which are located in or which originated in Syria;
 - (3) The transportation of crude oil or petroleum products if they originate in Syria, or are being exported from Syria to any other country;
 - (4) The provision, directly or indirectly, financing or financial assistance, including financial derivatives, as well as insurance and re-insurance, related to points (1), (2) and (3); and
 - (5) The participation, knowing and intentional, in activities whose object or effect is, directly or indirectly, to circumvent the prohibitions set out in point (1), (2), (3) or (4).
-

COMMISSION DECISION

of 23 March 2011

on the State aid C 28/05 (ex NN 18/05, ex N 517/2000) implemented by Germany for Glunz AG and OSB Deutschland GmbH

(notified under document C(2011) 1764)

(Only the German text is authentic)

(Text with EEA relevance)

(2011/524/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) ⁽¹⁾ thereof,

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

Having called on interested parties to submit their comments pursuant to the provision(s) cited above ⁽²⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) By letter dated 4 August 2000, registered on 7 August 2000, the German authorities notified their intention to provide an aid intensity of 35 % for an investment aid in favour of the establishment of an integrated centre for wood processing in Nettgau (Saxony-Anhalt) by Glunz AG and OSB Deutschland GmbH. The proposed aid was registered with the number N 517/2000.
- (2) After the submission of additional information, the Commission adopted, on 25 July 2001, a decision not to raise objections to an aid intensity of 35 % based on the Multisectoral Framework on regional aid for large investment projects ⁽³⁾ (hereinafter referred to as 'MSF 1998').
- (3) By judgement of 1 December 2004, the General Court decided in case T-27/02 ⁽⁴⁾, Kronofrance/Commission, to annul the above mentioned Commission decision.

(4) Therefore, the Commission has to take a new decision on the basis of the notification of the German authorities of 7 August 2000.

(5) By letter dated 17 December 2004, the Commission asked the German authorities whether they wanted to submit further information to the notification of 7 August 2000 due to the annulment the Commission's decision and sent a reminder on 3 March 2005. The German authorities replied by letter of 23 March 2005, but did not submit additional information at that stage.

(6) Moreover, it has to be noted that the German authorities granted in February 2000 the present aid on the condition that it would be approved by the Commission. The German authorities started to pay out the aid after the no objection decision of the Commission of 25 July 2001.

(7) However, following its annulment by the General Court, the decision of 25 July 2001 must be considered as never to have existed and the German authorities thus did not receive an approval from the Commission on the aid intensity proposed ⁽⁵⁾. The Commission has accordingly transferred the case to the register of illegally granted aid under aid NN 18/05.

(8) By letter dated 20 July 2005, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) in respect of the aid.

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

(10) The Commission received comments from interested parties. It forwarded them to Germany, which was given the opportunity to react; its comments were received by letters dated 24 October 2005 and 24 January 2006.

⁽¹⁾ On 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 (TFEU), which entered into force that day. The two sets of provisions are, in substance, identical.

⁽²⁾ OJ C 263, 22.10.2005, p. 7.

⁽³⁾ OJ C 107, 7.4.1998, p. 7.

⁽⁴⁾ ECR 2004, II-4177.

⁽⁵⁾ In line with Court case C-199/06 (CELF), ECR 2008, I-469, paragraphs 60-64.

⁽⁶⁾ Cf. footnote 2.

- (11) By letter dated 28 February 2006, Germany requested, in the meaning of Article 7(6) of Council Regulation (EC) No 659/1999⁽⁷⁾ the suspension of the formal investigation procedure in view of the pending appeals brought by Germany and Glunz AG before the Court of Justice of the European Union (joined cases C-75/05 P and C-80/05 P) against the judgement of the General Court in case T-27/02, Kronofrance/Commission.
- (12) By letter of 9 March 2006, the Commission accepted the suspension of the procedure until after the judgement of the Court of Justice in joined cases C-75/05 P and C-80/05 P Federal Republic of Germany and Others v Kronofrance SA.
- (13) The Court of Justice in its ruling of 11 September 2008⁽⁸⁾ decided to uphold the decision made by the General Court. Following this, the formal investigation procedure in case C 28/05 resumed.
- (14) Germany submitted additional information by letter dated 4 August 2009 and, following a request for information of the Commission, by letter dated 19 July 2010.

II. DETAILED DESCRIPTION OF THE AID

2.1. THE AID MEASURE

- (15) The *Landesförderinstitut Sachsen-Anhalt* decided on 29 February 2000 to grant investment aid for the establishment of a centre for wood processing in Nettgau (Saxony-Anhalt) to Glunz AG and OSB Deutschland GmbH. The total aid amounts to EUR 69 797 988.
- (16) According to the notification of 4 August 2000, the aid is given in the form of a grant for an amount of EUR 46 201 868 under the 28th Framework of common interest 'Improvement of the regional economic structures' (28. *Rahmenplan der Gemeinschaftsaufgabe 'Verbesserung der regionalen Wirtschaftsstruktur'*⁽⁹⁾), approved by the Commission. This grant corresponds to 23,17 % gross of the eligible cost.
- (17) Furthermore, an investment premium is given on the basis of the Investment Premium Law 1999⁽¹⁰⁾ (*Investitionszulage*), approved by the Commission for an amount of EUR 23 596 120. This investment premium amounts to 11,83 % gross of the eligible investment cost.
- (18) According to information submitted by Germany, an amount of EUR [...] (*) was already paid out on the

basis of the 28. *Rahmenplan der Gemeinschaftsaufgabe 'Verbesserung der regionalen Wirtschaftsstruktur'*, while an amount of EUR [...] was already paid out as *Investitionszulage*. Thus, an aid amount of totally EUR [...] was already paid out by the German authorities to the beneficiaries (out of the agreed total amount of EUR 69 797 988).

2.2. THE BENEFICIARY

- (19) There are two aid beneficiaries.
- (20) One of the aid beneficiaries is Glunz AG, Hamm (North-Rhine-Westphalia) which was founded in 1932 and was then operating in the field of timber-based materials. Since the 1960s, the company manufactures and markets exclusively Particle boards, MDF (*Mittel-dichte Faserplatte* – medium density fibre board), OSB (Oriented Strand Board) and plywood. At the time of the notification, TAFISA, which belongs to the Portuguese SONAE-group, held 96,03 % of the shares of Glunz AG.
- (21) The other aid beneficiary is OSB Deutschland GmbH (hereinafter 'OSBD') which belongs at 100 % to TAFISA and thus is an affiliated sister company to Glunz AG as they both have the same mother company TAFIS. OSBD was created on 16 July 1999 and upon full completion of the investment in Nettgau, started with the manufacturing and marketing of OSB products.

2.3. THE PROJECT

- (22) The investment project is located in Nettgau, Saxony-Anhalt (Germany) an assisted area in virtue of article 107(3)(a) of TFEU. In this region the maximum permitted aid intensity for the support of new investments was 35 % gross with regard to large undertakings at the time of notification.
- (23) Glunz AG and OSBD set up, on a land not yet used for industrial purposes, a centre for wood processing which will comprise two combined plants. The first plant, owned by OSB Deutschland GmbH, manufactures OSB. The second plant, owned by Glunz AG, manufactures particle board. The German authorities stated that both plants have their production lines linked to each other by a common technical infrastructure. Moreover, they advanced that both OSB panels and particle board panels are further processed and refined through the same grinding line, the same lamination equipment and the same tongue and groove equipment. In addition, they put forward that particles deriving from the treatment of OSB are used in the neighbouring particle board installation. Furthermore, the German authorities submitted that a central administration will manage both plants including their marketing, supply and distribution activities.

⁽⁷⁾ OJ L 83, 27.3.1999, p. 1.

⁽⁸⁾ ECR 2008, I-6619.

⁽⁹⁾ State aid N 209/99, Commission decision D/105751, 2.8.2000.

⁽¹⁰⁾ State aid N 702/97, Commission decision D/12438, 30.12.1999.

(*) Covered by the obligation of professional secrecy.

- (24) Additionally, the German authorities argue that the concept of the integrated centre for wood processing of Glunz and OSBD offers several advantages thanks to an optimised conception of the installation through a single technical infrastructure in particular as concerned the treatment of the wood panels produced. They advance that it enables an optimal use of the wood assortment including the better utilisation of raw material and internal recycling.
- (25) The notification of 7 August 2000 mentions that part of the aid will be granted in favour and the OSB plant and part of it in favour of the particle board plant. The aid foreseen in favour of the OSB plant amounts to EUR 28,61 million for eligible investment cost of EUR 81,8 million, corresponding to an intensity of 35 % gross. The aid granted in favour of the particle board plant amounts to EUR 41,18 million for eligible investment cost of EUR 117,6 million, corresponding to an intensity of 35 % gross.
- (26) At the time of the notification, the German authorities estimated that the integrated centre for wood processing in Nettgau would create 355 permanent jobs. The jobs were distributed to the respective plant as follows: 234 jobs would be created in relation to the particle board plant production and 121 in relation to the OSB plant production. The German authorities indicated that 520 indirect jobs created in relevant assisted areas. Amongst them 33 are indirect safeguarded jobs. The new investment in Nettgau was to be realised between January 2000 and end of 2002. The production was intended to start in the course of 2001 and full operation was to be reached after 2 years.
- (27) The production capacity of the new OSB-plant was estimated to amount to [...] m³ in 2002. In 1999, the capacity for OSB-products of the TAFISA-group was [...] m³.
- (28) In 1999, the capacity for particle board within the Glunz group amounted to [...] m³. According to the German authorities, the total production capacities will reach [...] m³, thus the new plant in Nettgau will create new capacities of [...] m³.

III. REASONS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (29) The maximum allowable aid intensity under MSF 1998 is determined on the basis of a calculation which involves the application of a number of assessment factors, and, in particular, the factor indicating the state of competition in the sector concerned ('factor T'), for which there are four levels: 0,25, 0,5, 0,75 and 1. It can only be set at 1 if the sector (defined at the lowest NACE level) is not facing overcapacity (overcapacity test)

and/or if the relevant market (defined as the product envisaged and its substitutes) is not in relative decline (declining market test).

- (30) The Commission, in its decision to initiate the procedure laid down in Article 108(2) of the TFEU, had doubts as to definition of the relevant market to which OSB belongs and consequently could not establish whether the market is in decline or not for defining the competition factor 'T'.

IV. COMMENTS FROM INTERESTED PARTIES

- (31) The Commission received on 22 November 2005 a joint submission⁽¹⁾ by competitors belonging to the KronoGroup Switzerland (Kronotex GmbH & Co. KG, Kronoply GmbH & Co. KG and Kronofrance S.A.).
- (32) In their submission, the KronoGroup companies argued in favour of a market definition comprising OSB and softwood plywood. Hardwood plywood is significantly more expensive and is used predominantly in areas (furniture and decorative applications) where OSB and softwood plywood are not or hardly used. They referred to a study made by Jaakko Pöyry⁽¹²⁾ and to a publication of the Finnish Forest Research Institute substantiating this claim.
- (33) KronoGroup raised some further issues which can be summarized as follows.
- (34) KronoGroup claims that the Commission, when calculating whether the market was in decline, should use data for the period until 1999 as such data were already available at the time of the initial approval decision (July 2001) which was later annulled by the General Court. It also alleges that in the period 1995-99, particle board had a negative average growth rate of -4,626 %. The submission however acknowledges that in the period 1994-99, particle board had a positive average growth rate of 0,456 % (even if below the growth of the EEA manufacturing industry as a whole).
- (35) KronoGroup also claims that the Commission, rather than calculating a common aid intensity for the whole project, should assess separately the aid to the OSB plant and the aid to the particle board plant as the two investments, the two production lines and the two product markets can clearly be separated. This would entail a separate calculation of all the assessment factors for the two plants.

⁽¹⁾ The information was formally submitted by the law firm 'Luther Willma Buchholz Baierlein und Nierer' in the name of the KronoGroup companies.

⁽¹²⁾ Structural Panel Supply and Demand in Europe, 10 December 2003.

(36) KronoGroup further alleges that in parallel to its investment in Nettgau, Glunz closed down its particle board plant in Sassenburg (located at a distance of 30 km, although in a different Land, i.e. Lower Saxony⁽¹³⁾). It cites newspaper articles according to which the entire workforce of the plant in Sassenburg was taken over in the new plant in Nettgau. This, according to KronoGroup, is contrary to the aim of the MSF 1998 to create jobs in the region concerned for those living in the region, and these jobs should not be taken into account when determining the capital/labour factor and the regional impact factor defined in the MSF 1998 (both of which build on the number of jobs created by the investment).

(37) Finally, KronoGroup also claims that the Commission should have ordered an injunction to provisionally recover the aid pursuant to Article 11(2) of Regulation (EC) No 659/1999 (recovery injunction for unlawful aid) since Glunz and OSBD obtained substantial competition advantages through the partly disbursed aid.

V. COMMENTS FROM GERMANY

(38) The observations of Germany can be summarised as follows.

5.1. COMMENTS WITH REGARD TO THE DEFINITION OF THE RELEVANT MARKET FOR OSB

(39) Germany considers that the relevant market regarding OSB consists of OSB and plywood in the end-use applications of packaging, hoarding, roofing, flooring and sheathing/walls. This market is not declining.

(40) The end-use applications in which OSB substitutes plywood broadly correspond to the main areas of application for softwood plywood. In key areas of application of hardwood plywood (furniture industry, construction industry and fitting out of transport vehicles), however, OSB cannot be used because of its technical characteristics. Including OSB in the overall market for hardwood and softwood plywood would not therefore be in line with the actual conditions on the markets concerned. This is confirmed in an expert opinion dated 21 October 2005 drawn up by Jaakko Pöyry.

(41) Jaakko Pöyry estimates the following percentages for the substitution potential of OSB in the above areas of appli-

cation: packaging 40-60 %; hoarding 70-80 %; roofing 70-90 %; flooring 50-80 %; sheathing/walls 70-90 %.

(42) In the furniture industry, OSB is not suitable for visible applications owing to its surface characteristics. The surface of OSB is not visually attractive since it is manufactured using oriented strands of wood which makes it rough and uneven. OSB cannot therefore be decoratively coated. OSB is only suitable for non-visible furniture parts (e.g. support structure for upholstered furniture). In the area of non-visible furniture parts, however, OSB cannot compete in terms of price with the far cheaper types of particle board, which are generally used in this context.

(43) In the construction industry (formwork), it is crucial that the sheathing/shuttering/framework materials used with regard to poured-in place concrete have a smooth surface. Owing to the unevenness caused by the manufacturing process, OSB has to be specially coated for fair-faced concrete in order to ensure that the fair-faced concrete has an even surface. This further processing is expensive and raises the price of the end product. In comparison with plywood, OSB is only competitive if it can be re-used on several occasions as a framework. However, for practical reasons, this will not necessarily be the case. Since the boards are heavily used at construction sites, their surface may become damaged. If cracks appear, there is a danger that the OSB will become warped by water or moisture or deformed in some other way. Therefore, repeated use of expensive processed OSB is not necessarily possible. In addition, the edges of OSB may be unstable and susceptible to moisture. Furthermore, materials used as a framework for cement need to be very difficult to split and bend. In this respect, OSB does not satisfy the demands which the construction industry makes of framework materials. Softwood plywood on the other hand is in view of its relatively low cost and even surface very suitable for this use, as can be seen by the volume actually used for formwork.

(44) In the area of transport vehicles, it is also important that the surface should be even as the boards used here often have to be coated. Coating OSB is for various reasons often not easily practicable. Even if OSB is coated, for example with melamine paper, there is a risk that the coating will crack owing to the uneven surface of the OSB. When a lift truck is being loaded, pressure is put on the surface at certain points. There is a danger that in such cases in a damp or wet environment, water may seep into the board causing it to become deformed or warped. Stable surface coating can only be guaranteed by expensive further processing. The surface of OSB is, unlike hardwood plywood, which is relatively resistant to scratches, pressure points etc. given the particular

⁽¹³⁾ This area was not an assisted region under the German regional aid map applicable in the period 2000-06.

hardness of its surface, also otherwise not sufficiently resistant to withstand the effects of pressure in the field of transport.

(45) Assessment of the scope for substituting OSB with softwood plywood on the one hand and hardwood plywood on the other rests largely on the technical properties and possible uses of OSB and on the price difference compared with hardwood plywood. Whereas hardwood plywood is superior to softwood plywood and OSB in all technical respects, the price difference between hardwood plywood on the one hand and OSB and softwood plywood on the other means that hardwood plywood lacks competitiveness in the areas of application dominated by OSB and softwood plywood. It would therefore be wrong to assume that OSB can be substituted by all types of plywood, including hardwood plywoods.

(46) There exists a large overlap between the market for OSB and plywood in the end-use applications of packaging, hoarding, roofing, flooring and sheathing/walls on the one hand and the market for OSB and softwood plywood on the other. There is only a difference between the two market definitions in relation to the construction industry (formwork). OSB is unsuitable for this area, whereas softwood plywood is eminently usable and is indeed employed. The core common message is that hardwood plywood must not be included in the market for OSB.

5.2. COMMENTS ON THE EVOLUTION OF THE MARKET FOR PARTICLE BOARD

(47) Germany considers that the competition factor should also be set at 1 for the particle board market, which should not be regarded as declining, as there is a strong upward trend within the meaning of paragraph 7.8 of the MSF 1998.

(48) To substantiate this, Germany submitted a study by Professor Stefan Collignon (Harvard University, the Minda de Gunzburg Center for European Studies)⁽¹⁴⁾ according to which long-term growth in the market for particle board between 1972 and 2003 was 36 % faster than in manufacturing industry as a whole. Germany is of the opinion that under paragraph 7.8 of the 1998 MSF, this strong, long-term upward trend means that the particle board market cannot be regarded as in decline.

5.3. COMMENTS ON ASSIGNING AID INTENSITY TO DIFFERENT PARTS OF THE PROJECT

(49) In Germany's view, should the Commission nevertheless take the view that the competition factor 'T' is 0,75 for the particle board market while it is 1 for OSB, the

common aid intensity must be determined for overall project in Nettgau on the basis of the contribution margins of the two production lines, i.e. for OSB and particle board production.

(50) The contribution margin is the amount which a product contributes to covering fixed costs and to achieving the company's net profit. It is calculated as the difference between earnings and the variable costs incurred directly for that product.

(51) By using contribution margins as a reference, the aid intensity would be assigned to the individual parts of the investment project in Nettgau in accordance with the actual contribution of OSB and particle board, as products, to the operating result.

5.4. COMMENTS ON OTHER POINTS RAISED BY KRONOGROUP

(52) Germany considers the assessment of the aid should be based on facts that were known on 7 August 2000, i.e. at the time of the notification.

(53) According to Germany, this results from the interpretation of the MSF 1998. Germany refers in this respect to point 3.1 of the MSF 1998, which provides that the maximum allowable aid intensity is identified on the basis of the regional aid ceiling valid at the moment of notification. Moreover, point 3.6 of the MSF 1998 foresees the calculation of market share prior to the aid application. Also, the Annex to the MSF 1998 indicates in the section 'ex-post control' the possibility for the Commission to verify the accuracy of the information provided in the context of the notification.

(54) Germany claims furthermore that apparent consumption data for 1999 were not known at the time of the notification. In any event, in order to obtain the average annual growth rate of apparent consumption over 5 years, as required in point 7.8 of the MSF 1998, apparent consumption data covering 6 years instead of five as proposed by KronoGroup are necessary. This is due to the fact that the growth rate for a given year is calculated by comparing apparent consumption in 2 distinct years.

(55) As regards the alleged relocation of jobs, Germany confirms the closing of the plant in Sassenburg. Germany explained in this respect that the Sassenburg plant was the oldest particle board plant of Glunz and was making significant losses. Therefore, it had no chance to survive and had to be closed, independently of the new investment of Nettgau. [...] employees that had previously been employed in Sassenburg were transferred to Nettgau (making up [...] % of the workforce there).

⁽¹⁴⁾ Professor Collignon is a member of the Supervisory Board of Glunz AG.

- (56) In their comments on the observations of the KronoGroup, the German authorities add that in any event, the MSF 1998 only requires that the new jobs be created in the region concerned, but not that they have to be filled with employees from this region. The main aim is to foster the development of the assisted region in question.
- (57) Germany indicated that some of the machinery were also transferred from Sassenburg to Nettgau; these however were excluded from the eligible costs of the project and thus did not receive aid. In any event, with a book value of some EUR [...], these machines represent a very small part of the overall investment project.

VI. ASSESSMENT OF THE AID

- (58) The following assessment is based on the facts, figures and situations as they were known at the time of the notification on 7 August 2000. Since some time has elapsed between the original notification and the current decision, situations might have changed, markets might have developed and facts concerning the project might have turned differently than was originally planned. However, this cannot be taken into account by the Commission in this assessment. In general, the Commission has to take a decision before the investment is actually carried out, on the basis of estimates of future perspectives and market figures. The aid intensities are nevertheless not adapted afterwards if some years later figures show that the market has, for example, turned out differently. Although in the present case the Commission has to take a decision more than 10 years after the original notification took place, it must nevertheless base its assessment on the facts and situations known at the time of notification and not on information arising thereafter.

6.1. EXISTENCE OF AID UNDER ARTICLE 107(1) TFEU

- (59) The present aid measure was granted by a Member State and through State resources in the sense of Article 107(1) TFEU (see point 2.1 of the present decision). The aid confers an advantage to Glunz and OSBD as they otherwise would have had to bear the whole costs of the investment on their own. As a significant volume of the concerned wood boards is transported across international borders, there exists an international trade in the wood-industry concerned. Therefore, financial advantages favouring the two concerned companies may distort competition in a way that can affect trade between Member States. Consequently, the Commission considers that the notified measure constitutes State aid to Glunz AG and OSBD within the meaning of Article 107(1) TFEU.

6.2. NOTIFICATION REQUIREMENT

- (60) According to Article 108(3) TFEU, Member States have to notify all aid measures before putting them into effect.

The proposed aid is to be granted in the context of two regional schemes which were already approved by the Commission.

- (61) However, under the rules laid down in the MSF 1998, the aid intensity to be granted for large investment projects is excluded from the scope of application of approved schemes if aid to the relevant investment project exceeds certain thresholds.
- (62) The planned aid amounts totally to EUR 69 797 988. If the aid is considered as concerning a single investment project, the notification requirement laid down in point 2.1(ii) of the MSF 1998 is fulfilled as the total aid is at least EUR 50 000 000.
- (63) As mentioned under point 2.3 of the present decision, the German authorities argued extensively in their notification that the present aid measure concerns a single investment project.
- (64) Point 7.2, second paragraph of the MSF 1998 stipulates that an investment project should not be artificially subdivided into sub-projects in order to escape the notification obligation. In the present case this would however not occur. Indeed, even if it was considered that the investment concerns two distinctive investment projects, the notification requirements would still be fulfilled for the investments in the Glunz plant and in OSBD plant.
- (65) The Commission thus concludes that the aid is to be notified and assessed according to the MSF 1998.

6.3. THE THREE ASSESSMENT CRITERIA OF THE MSF 1998

- (66) Under the MSF 1998, the Commission has to identify, in order to determine the maximum allowable aid intensity for a proposal to award aid, the maximum aid intensity (regional aid ceiling) which a company could obtain in the assisted area concerned within the context of the authorised regional aid system valid at the moment of notification.
- (67) As the notification took place on 7 August 2000, the regional aid map 2000-06 is applicable⁽¹⁵⁾. Nettgau in Saxony-Anhalt is a region falling under Article 107(3)(a) TFEU, with a regional aid ceiling of 35 % GGE at the time of notification. The Commission notes that the proposed aid intensity of 35 % gross corresponds with the applicable regional aid ceiling.
- (68) According to the rules laid down in the MSF 1998, the Commission has then to assess three specific adjustment factors that have to be applied to the percentage figure of 35 % in order to calculate a maximum allowable aid intensity for the project in question, namely, the competition factor (T), the capital/labour factor (I), the regional impact factor (M).

⁽¹⁵⁾ OJ C 340, 27.11.1999, p. 8.

- (69) It is recalled here that according to the KronoGroup, rather than calculating a common aid intensity for the whole project, the Commission should assess separately the aid to the OSB plant and the aid to the particle board plant as the two investments and the two product markets can clearly be separated.
- (70) The Commission notes in this respect that point 7.2 of the MSF 1998 defines an 'investment project' as an initial investment in fixed assets in the creation of a new establishment, the extension of an existing establishment or engaging in an activity involving a fundamental change in the product or production process of an existing establishment.
- (71) The German authorities provided detailed arguments concerning the links that exist between the two plants, set up on the same site by two sister companies of the same group. Both plants have their production lines linked to each other by a common technical infrastructure. Both OSB panels and particle board panels are further processed and refined through the same grinding line, the same lamination equipment and the same tongue and groove equipment. In addition, particles deriving from the treatment of OSB are used in the neighbouring particle board installation. Furthermore, a central administration will manage both plants including their marketing, supply and distribution activities.
- (72) In light of the strong technical, functional and administrative links that exist between the two plants set up on the same site, the Commission considers that the investments in the OSB and particle board plant form a single investment project, i.e. an initial investment in the creation of a new establishment. Consequently, the maximum allowable aid intensity will be calculated for this overall investment project.
- 6.3.1. COMPETITION FACTOR (T)
- 6.3.1.1. *Applicable rules*
- (73) According to point 3.2 of the MSF 1998, the authorisation of aid to companies operating in sectors which are in structural overcapacity poses particular risks for the distortion of competition. Indeed, any capacity expansion, which is not compensated by capacity reductions elsewhere, will exacerbate the problem of structural overcapacity. The Commission notes that the notified project will create new capacities on the European market. The competition factor has thus to involve an analysis of whether the proposed project would take place in a sector or sub-sector suffering from structural overcapacity.
- (74) Pursuant to point 3.3 of the MSF 1998, when sufficient data on capacity utilisation is available, the Commission has to limit the determination of the competition factor to the existence or not of structural/serious overcapacity in the sector or sub-sector concerned.
- (75) According to point 3.4 of the MSF 1998, it is only in the absence of sufficient data on capacity utilisation that the Commission will consider whether the investment takes place in a declining market. However, following the Judgement of 1 December 2004 (T-27/02, Kronofrance SA/Commission), the General Court ruled that point 3.4 and 3.10 of the MSF 1998 must be understood as meaning that, where the data on capacity utilisation in the sector concerned does not allow the Commission to reach the positive conclusion that there is structural overcapacity, the Commission must consider whether the market in question is a declining market. The Court of Justice in joined cases C-75/05 P and C-80/05 P Federal Republic of Germany and Others v Kronofrance SA upheld the judgement of the General Court.
- (76) Therefore, the Commission will first analyse if there is sufficient data on capacity utilisation and then it will, if the data on capacity utilisation is not sufficient or if this data shows there is no structural overcapacity, analyse if the market is in decline on the basis of data on apparent consumption. Moreover, following point 3.6 of the MSF 1998, the Commission has still then to analyse if the beneficiary(ies) of the aid, prior to making an application for aid, does already have a market share of 40 %.
- (77) The market data on capacity utilisation has to be established at the lowest available segmentation of the NACE classification. Moreover, in order to establish whether the market is in decline and whether the market share ceiling is exceeded, the Commission also has to define the relevant market of the product(s) concerned by the investment project.
- 6.3.1.2. *The product(s) concerned*
- (78) The investment project concerns the production of OSB (Oriented Strand Board) and particle board.
- (79) Particle board is a wood panel made of the crushing of roundwood-shaving and/or recycled wood-shavings which are agglomerated by an organic binder. It is mainly used in the furniture industry and for internal house finishing.
- (80) OSB is a wood panel made of wood strands composed in three layers. The raw material used to make OSB is pine wood. OSB is mainly used in the prefabricated building industry, the packaging industry and for the restoration of old buildings. OSB was invented in the 1950s in North America. During the 1980s and 1990s it has

gained wide acceptance in the wood panel market and was used as a substitute for the more expensive (softwood) plywood.

6.3.1.3. *Relevant market*

- (81) According to point 7.6 of the MSF 1998, the relevant product market(s) comprises the products envisaged by the investment project and, where appropriate, its substitutes considered by the consumer (by reason of the products' characteristics, their prices and their intended use) or by the producer (through flexibility of the product installations). The relevant geographical market comprises usually the EEA or, alternatively, any significant part of it if the conditions of competition in that area can be sufficiently distinguished from other areas of the EEA.

Relevant product market

- (82) As mentioned above, the project concerns the production of OSB and particle board. According to the German authorities, the production facilities do not allow to produce distinct products but only variations of the same products, i.e. with a different surface quality. The German authorities thus argue that, from the manufacturing point of view, substitution at the production side through flexibility of the production installations should be excluded.
- (83) At the demand side, particle board and OSB are to a certain extent substitutable, namely in the field of prefabricated building industry. However, the substitution between particle board and OSB seems to be very limited as it would be less than 10 % of the market size⁽¹⁶⁾. This limited substitution seems to be due to the differentiation in end-uses and the significant price difference (EUR 285/m³ for OSB to EUR 117/m³ for particle board). The Commission considers that this is too marginal to justify that OSB and particle board would be assigned to the same product market.
- (84) In its decision to initiate the procedure laid down in Article 108(2) of the TFEU, the Commission considered that particle board constituted a separate product market. Since this finding has not been contested, the Commission concludes that for the purposes of this assessment particle board constitutes a relevant product market on its own.

- (85) As regards OSB, the decision to initiate the procedure laid down in Article 108(2) of the TFEU indicated that substitution to a certain extent seems to exist in the EEA between OSB and (certain types/segments of) plywood.

- (86) Plywood is a versatile polymer wood composite. It is basically made up of an uneven number of thin layers of wood called veneer joined together by a synthetic or natural adhesive. There exist softwood plywood and hardwood plywood. As the name suggests, one sort of plywood is made of softwood (which means made of trees [fir, pine, spruce, hemlock] characterized by its needles and being for the most part evergreen; the term does not refer to the hardness of the wood) and the other sort of hardwood (which means made of the botanical group of trees that have broad leaves, produce a fruit or nut, and generally go dormant in the winter).

- (87) Because of the doubts as to the extent of substitutability of OSB and different types/segments of plywood, the Commission invited interested parties to comment on the relevant market to which OSB belongs.

- (88) The comments received from Germany and one of the aid beneficiary's main competitors, i.e. the KronoGroup point to the same relevant market which comprises OSB and plywood in the end-use applications of packaging, hoarding, roofing, flooring and sheathing/walls. It is only in these end use applications that a substitution potential of more than 50 % exists between OSB and plywood. Due to different performance criteria in the transport (strength/weight) and also the appearance markets (furniture), the substitution potential is very limited (less than 20 %). These arguments and the degree of substitutability in the different end uses were supported by several studies prepared by Jaakko Pöyry⁽¹⁷⁾.

- (89) The above end-use applications almost the same as those of softwood plywood (the only difference being that softwood plywood is also widely used in a further application, i.e. formwork where OSB is not suitable). On the other hand, OSB and hardwood plywood do not substitute each other to the extent that they could be considered as belonging to the same relevant market.

- (90) Therefore, the Commission defines the relevant market to which OSB belongs as OSB and plywood in the end-use applications of packaging, hoarding, roofing, flooring and sheathing/walls, which to a very large extent corresponds to the market of OSB and softwood plywood.

⁽¹⁶⁾ Jaakko Pöyry Consulting, The Development of Wood-Based Panel Industry – Capacity Utilisation Rate and Substitution between OSB and Particle board in the European Economic Area 1993-1998, 20.6.2000.

⁽¹⁷⁾ Expert Opinion on OSB Substitution Potential of Plywood and Mill Capacity Calculations. Jaakko Pöyry, 15 September, 2000. Substitution between OSB and Plywood in the European Economic Area. Jaakko Pöyry, 13 February 2001.

The relevant geographical market

- (91) Although a significant volume of wood boards is transported across international borders, boards are a bulky, heavy product. As a result it is generally too expensive to transport it over great distances, the transport radius being restricted to some 800 km. The various supply areas can be seen as a series of overlapping circles with their centres at the production plant. Given the dispersion of the individual production plants and the various degrees of overlap for the natural supply areas, so that effects can be transmitted from one circle to another, it is appropriate to define the EEA as the relevant geographical market for both products concerned⁽¹⁸⁾.

6.3.1.4. Data on capacity utilisation

- (92) Pursuant to point 7.7 of the MSF 1998, structural overcapacity is deemed to exist when, on average over the last 5 years, the capacity utilisation rate of the relevant sector or subsector is more than two percentage points below that of manufacturing as a whole. Serious structural overcapacity is deemed to exist when the difference with respect to the average for manufacturing is more than five percentage points.
- (93) According to footnote 13 of the MSF 1998, the market data on capacity utilisation has to be established at the lowest available segmentation of the NACE classification. The Commission considers that the production of particle board and OSB by, respectively, Glunz and OSBD corresponds well to that of the total NACE 20.20 products (manufacture of veneer sheets; manufacture of plywood, lamin board, particle board, fibre board and other panels and boards) since the production of particle board, plywood and OSB accounts for 81 % of

the total production of wood-panels in Europe⁽¹⁹⁾. Therefore, the Commission esteems that it can base its assessment on capacity utilisation data for the NACE 20.20 segment.

- (94) The German authorities provided figures on the average annual capacity rate from 1994 to 1998 (which are the 5 years for which data was available at the moment of the notification) in the EEA for the NACE code 20.20 corresponding to the manufacturing of wood panels. These data, obtained from a study of an independent expert⁽²⁰⁾, comply with the requirements of point 7.7 of the Multisectoral Framework since they correspond to the sector at the lowest segmentation of the NACE classification.
- (95) The expert has defined the basis of annual capacity calculation as the daily (23 hours) capacity of the line for 300 days in a year. This basis of annual capacity calculation has been calculated on the basis on information obtained from industry and the expert's Wood-Based Panel Mill Databank which includes capacity information by individual mills and press lines. The figure of 23 hours/300 days takes into account the variation in machinery type/age and mill configurations when determining the capacity of a line.
- (96) The study concluded that the average annual capacity utilisation rate from 1994 to 1998 (which are the years for which data was available at the moment of the notification) in the EEA amounts to 88,8 % for particle board, to 80,4 % for OSB, to 88,8 % for the combined particle board and OSB rate and to 85 % for wood-based panels in total (NACE 20.20).

- (97) The capacity utilisation rate of the wood-panels industry (NACE 20.20) in the EEA is detailed in the following table:

| | 1994 | 1995 | 1996 | 1997 | 1998 |
|----------------------------------------|-------------|-------------|-------------|-------------|-------------|
| Total production, 1 000 m ³ | 30,673 | 32,412 | 32,566 | 35,178 | 36,481 |
| Total capacity, 1 000 m ³ | 36,776 | 37,148 | 40,034 | 40,545 | 41,787 |
| Utilisation Rate | 83 % | 87 % | 81 % | 87 % | 87 % |

- (98) The Commission took also into consideration a second study⁽²¹⁾ carried out on its behalf. This second study took as a basis a daily capacity (22 hours) of 345 days a year and came to an average of 81,8 % for the years 1995 to 1997. This study did not however provide any data for the remaining years of the period 1994-98 and seems to be based on the average annual capacity of modern plants only.

⁽¹⁸⁾ See also case No IV/M.599, Noranda Forest/Glunz, OJ C 298, 11.11.1995.

⁽¹⁹⁾ Michel Vernois, Centre Technique du Bois et de l'Ameublement, Paris, Expertise Report, Market Structure and Competition in the European Wood Industry, 2001.

⁽²⁰⁾ Jaako Pöyry Consulting, The Development of Particle board and OSB Consumption and Capacity Utilisation Rate in the EEA 1993-1998, 14.4.2000.

⁽²¹⁾ Cf. footnote 19.

- (99) According to point 3.1 of the MSF 1998, the Commission will, where appropriate, utilise external independent data to assess the likely impact on competition in the relevant market; where this is not easily obtainable, however, the Commission will give full weight to representations made by Member States. In the present case, the Commission considers the study provided by the German authorities to be sufficiently reliable. In any event, the other study, although not providing complete information, would lead to the same result.
- (100) Over the period 1994-98, the average annual utilisation capacity rate for the EU manufacturing industry as a whole amounts to 81,72 %.
- (101) Taking into account the above, the Commission concludes that the investment project will result in a capacity expansion in a sector where no overcapacity exists. However, following the Judgement of the General Court, when the Commission reaches the positive conclusion that there is no structural overcapacity, which is the case at present, the Commission has to analyse if the market is in decline or not.

6.3.1.5. Data on apparent consumption

Applicable rules

- (102) According to point 3.4 of the MSF 1998, the Commission should for the purpose of defining

| Billion EUR | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | Growth/a |
|----------------|------|------|------|------|------|------|----------|
| Particle board | 4,61 | 4,78 | 5,91 | 4,98 | 5,71 | 5,65 | 4,15 % |

- (106) The Commission notes that the difference between 5,78 % and 4,15 % is more than 10 %. The outcome would be the same if data until 1999 (i.e. over the period 1994-99), as argued for by KronoGroup, would be taken into account.
- (107) In its observations, Germany refers to point 7.8 of the MSF 1998 according to which the market is not considered to be in relative decline (despite the fact that its annual growth rate is below that of the EEA manufacturing industry as a whole) if there is a strong upward trend in the relative growth rate of demand for the product. Germany substantiates this by a study which shows that in the period 1973 to 2003 apparent consumption of particle board grew 36 % faster than value added in the manufacturing industry.

whether the relevant market is in decline, compare the evolution of apparent consumption of the product(s) in question (that is, production plus imports minus exports) with the growth rate of EEA manufacturing industry as a whole.

- (103) Following point 7.8 of the MSF 1998, the market for the product(s) in question will be deemed to be in decline if, over the last 5 years, the average annual growth rate of apparent consumption of the product(s) in question is significantly (more than 10 %) below the annual average of EEA manufacturing industry as a whole, unless there is a strong upward trend in the relative growth rate of demand for the product(s). An absolutely declining market is one in which the average annual growth rate of apparent consumption over the last 5 years is negative.

Market to which particle board belongs

- (104) The annual average growth rate of the whole EEA manufacturing industry for the years 1993-98 ⁽²²⁾ is 5,78 %.
- (105) A study from an independent consultant ⁽²³⁾ gives data on value of the apparent consumption of particle board in billion EUR shows the following results for the years 1993-98 (which are the 6 years on which data existed on the moment of the notification). This data can be presented as follows:

- (108) The Commission considers that this argument is not sufficient to prove that there exists a strong upward trend in the relative growth rate of demand for particle board. This condition of the MSF 1998 aims at a situation where, although the average annual growth rate of the relevant market over the last 5 years is low, the latest couple of years show a clearly increasing growth trend which might continue in the years to come, i.e. in the short term, when the aided investment comes on stream. This would ensure that the distortive effects of the aid remain limited.

⁽²²⁾ Data on apparent consumption for 6 years are necessary in order to calculate average annual growth over a period of 5 years.

⁽²³⁾ Jaakko Pöyry 'The development of wood-based panels consumption in the EEA 1993-1999'.

- (109) The study, however, works with very long term data that do not allow predictions for the immediate future which is more relevant for the assessment of the investment's impact. Moreover, it presents data until 2003 that were not available at the time of the initial notification in 2000.
- (110) Therefore, the Commission considers that the market for particle board is in relative decline according to point 7.8 of the MSF 1998 and the competition factor 'T' for this product should be set at 0,75.

Market to which OSB belongs

- (111) As mentioned already above, the annual average growth rate of the whole EEA manufacturing industry for the years 1993-98 is 5,78 %.
- (112) The notification by Germany contains a study from an independent consultant ⁽²⁴⁾ which gives data on value of the apparent consumption in billion EUR in the EEA for the years 1993-98 for OSB and plywood in the end-use applications of packaging, hoarding, roofing, flooring and sheathing. These data are as follows:

| | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | Growth/a |
|------------------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|----------------|
| OSB | 0,05 | 0,06 | 0,08 | 0,10 | 0,13 | 0,18 | 31,321 % |
| Plywood segments | 0,46 | 0,55 | 0,55 | 0,48 | 0,50 | 0,49 | 1,175 % |
| OSB and plywood segments ⁽¹⁾ | 0,51 | 0,61 | 0,63 | 0,58 | 0,63 | 0,67 | 5,765 % |

⁽¹⁾ In the end-use applications of packaging, hoarding, roofing, flooring and sheathing.

- (113) Thus for the relevant market consisting of OSB and segments of plywood in the end-use applications of packaging, hoarding, roofing, flooring and sheathing, the difference in growth between 5,78 % and 5,765 % is not more than 10 %. Consequently, according to point 7.8 of the MSF 1998, this relevant market is not in decline and a competition factor 'T' of 1 applies for the market to which OSB belongs.

SONAE group, the parent company of TAFISA to which Glunz and OSBD belong. These data are as follows:

| Product markets | 1999 (before investment) | 2002 (after investment) |
|-----------------------------------------|--------------------------|-------------------------|
| Particle boards | [...] % | [...] % |
| OSB and plywood segments ⁽¹⁾ | [...] % | [...] % |

⁽¹⁾ In the end-use applications of packaging, hoarding, roofing, flooring and sheathing.

6.3.1.6. Market shares on relevant market

- (114) In assessing the competition factor, the Commission has also, following point 3.6 of the MSF 1998, to check whether the market shares of the group to which Glunz and OSBD belong in the relevant market is at least 40 %, which would imply that the risk exists that the award of maximum levels of aid normally permitted in the region concerned may unduly distort competition.

- (116) The provided data show that the market share of the SONAE group did not exceed 40 % in the relevant markets. Therefore, the established competition factors do not have to be reduced.

6.3.2. CAPITAL/LABOUR FACTOR (I)

- (115) The German authorities submitted market share data at the level of the EEA ⁽²⁵⁾ for the years 1999 (before the investment) and 2002 (after the investment) of the

- (117) It is recalled here that in its comments, KronoGroup considered that the jobs relocated following the closure of Glunz' particle board plant in Sassenburg should not be taken into account when determining the capital/labour factor and the regional impact factor (both of which build on the number of jobs created by the investment). According to KronoGroup, taking into account these jobs would be contrary to the alleged aim of the MSF 1998 to create jobs in the region concerned for those living in the region.

⁽²⁴⁾ Report by Jaakko Pöyry 'The development of OSB and Plywood Consumption in the European Economic Area 1993-1998'.

⁽²⁵⁾ As it existed at the time of the initial notification in 2000.

- (118) The Commission considers that the notion of 'job creation' within the meaning of the MSF 1998 has to be interpreted in the context of the assisted region, as it is through the creation of jobs in this region that the project contributes to regional development. Therefore, it seems justified to accept that 'jobs created' means jobs that are new to the region concerned. Moreover, the creation of jobs in the assisted region, even if the posts are filled with employees commuting from a neighbouring area (which in the present case is a non-assisted region of the same Member State), undoubtedly benefits the region concerned through its spill-over effects and thus fulfils the main aim of regional aid.
- (119) Therefore, the Commission will take these jobs into account when determining the capital/labour factor and the regional impact factor applicable for the investment project.
- (120) The MSF 1998 lays down a capital-labour factor which aims at adjusting the maximum aid intensity with a view to favour those projects which effectively and better contribute to the reduction of unemployment through the creation of a relatively more important number of new direct jobs.
- (121) The different capital-labour factors are listed under point 3.10.2 of the MSF 1998. The total investment amounts to EUR 199 400 000 for the creation of 355 jobs. This corresponds to the ratio EUR 561 700/job. In such a case, the competition factor 'T' for the adjustment of the maximum aid intensity is to be set at 0,8.
- 6.3.3. REGIONAL IMPACT FACTOR (M)
- (122) The regional impact factor takes into account the beneficial effects of a new aided investment on the economy of the assisted region. The Commission considers that job creation can be used as an indicator of a project's contribution to the development of a region. A capital-intensive investment may create a significant number of indirect jobs in the assisted region concerned and any adjacent assisted region. Job creation in this context refers to jobs created directly by the project together with jobs created by first-tier suppliers and customers in response to the aided investment.
- (123) The German authorities estimated at the time of the notification of 7 August 2000, the indirect jobs to be created as a result of the investment upon full completion of the centre for wood processing to be a total amount of 520 and broken down as follows according to the needs of each production:

| | OSB production Indirect jobs | OSB production Contingencies | Particle board production Indirect jobs | Particle board production Contingencies | Total |
|--------------------------------------------------------|------------------------------------|------------------------------------|-----------------------------------------------|-----------------------------------------------|------------|
| Forestry activities | 61 | 11 | 70 | 12 | 154 |
| Wood transport to the plants | 42 | 8 | 77 | 14 | 141 |
| Paste transport to the plants | 5 | | 8 | | 13 |
| Fuel transport to the plants | 2 | | 3 | | 5 |
| Melanin paper transport | | | 1 | | 1 |
| Transport from plants to customers | 50 | 9 | 76 | 14 | 149 |
| Supply of services (maintenance, repair of facilities) | 17 | 3 | 17 | 3 | 40 |
| Cleaning services | 5 | | 5 | | 10 |
| Housing, consumer goods for staff | 2 | | 5 | | 7 |
| Total | 184 | 31 | 262 | 43 | 520 |

(124) The calculation of the estimated job creation is based on the following calculation.

(125) According to the German authorities, the most important source of indirect job creation (309) generated by both productions is the transport sector for supply of materials and for delivery of final products to customers.

- (126) As far as the OSB-production is concerned, the forecasted manufacturing of approx. [...] m³ OSB-products should result in sales of about [...] m³. The production of one m³ final product will need about [...] m³ wood resulting in approx. [...] m³ wood/year. Estimates for paste and chemicals amount to [...] tons and for fuel to [...] tons/year.
- (127) Raw material for the OSB products is 100 % forest wood originating within a radius of approx. 100 km around the plant. The volume needed per day is estimated at [...] m³ transported in trucks with a capacity of [...] m³. On the basis of two trips per day and a capacity of [...] m³, this will result in 39 trucks and 39 drivers, further 8 contingencies and 3 mechanics, and to a total of 50 indirect jobs. However, the Commission considers that contingencies do not comply with the definition of jobs set out in points 3.7 and 7.5 of the MSF 1998 ⁽²⁶⁾. Therefore 42 indirect jobs can be accepted for the transport of materials to the plant.
- (128) The forecasted sales of [...] m³ would result, over 251 working days, in a volume of [...] m³ OSB-products per day transported in trucks with a capacity of [...] m³. 46 trips per day will need 46 drivers, further 9 contingencies and 4 mechanics and will result in a total of 59 new indirect jobs. Taking out the contingencies, the indirect job creation for the transport of final products to the customers is 50.
- (129) The production capacity in the particle board plant is estimated per year at approx. [...] m³ raw particle board and [...] m³ coated board. The sales are forecasted to reach [...] m³ for the first product and [...] m³ for the latter. The difference between capacity and sales forecast results from the fact that a significant part of particle board will enter in the coating process. The total demand for wood is set at [...] m³/year. Estimates for paste and chemicals amount to [...] tons and for fuel to [...] tons/year.
- (130) The forest wood also originates from a periphery of approx. 100 km around the plant. The volume needed per day is estimated at [...] m³ forest wood, further [...] m³ packing wood and [...] m³ wood shavings. The transport capacity is indicated at [...] m³ forest wood or [...] m³ packing wood respectively wood shavings. This, results in 72 daily trips conducted by 72 drivers and, together with 14 contingencies and 5 mechanics, would lead to 91 indirect jobs. Taking out the contingencies, the indirect job creation for the transport of material to the particle board plant is thus 77.
- (131) The forecasted sales of [...] m³ per year would result, over 251 working days, in a volume of [...] particle board per day, which will be transported in trucks of a [...] m³ capacity. The estimates of 71 drivers, 14 contingencies and 5 mechanics are reduced by 14 contingencies and the Commission accepts 76 indirect jobs created for the transport of the final product to the customers.
- (132) The German authorities did not provide explanations with regard to the 19 indirect jobs created for the transport of paste, fuel and melamine paper for both plants. However, the Commission considers this figure as realistic.
- (133) In total, the Commission considers that the indirect job creation in the transport sector can be set at 264.
- (134) The forestry activities, providing the second important source of indirect job creation, are carried out on 251 days/year.
- (135) The production of OSB requires a daily volume of [...] m³ wood of which 95 % are produced mechanically and 5 % manually. The mechanical production of [...] m³ involves 25 gangs comprising 2 machineries and 2 forestry workers, plus one supplementary job attached to six gangs, performing each [...] m³/day. This results in 54 jobs. The manual production of [...] m³ involves 13 forestry workers performing each [...] m³/day. The German authorities estimate that in addition to the 67 indirectly created jobs, 13 jobs will be created for contingencies leading to a figure of 80 indirect jobs. However out of the 67 indirectly created jobs, only 61 are created in the assisted region and adjacent assisted regions and will therefore be taken into account.
- (136) The production of particle board requires a daily volume of [...] m³ wood of which 95 % are produced mechanically and 5 % manually. On the basis of the same calculations as carried out in the case of the pre-forestry activities for the OSB-production, the German authorities estimate the creation of indirect jobs at 41, including 5 jobs for contingencies. However out of the 41 indirectly created jobs, only 32 are created in the assisted region and adjacent assisted regions and will therefore be taken into account.
- (137) With regard to the volume of [...] m³/day of packing wood, the German authorities estimate at 36 the number of indirect jobs for collecting, transporting and sizing, further 7 jobs for contingencies and 7 jobs for the purchase of material, for logistic purposes, etc... Out of the 43 indirectly created jobs, only 38 are created in the assisted region and adjacent assisted regions.

⁽²⁶⁾ Permanent full-time jobs in direct relation with the project.

(138) In total, the Commission considers that the indirect job creation in forestry activities can be set at 131.

(139) The German authorities did not provide explanations for the creation of 51 indirect jobs plus 6 contingencies in the service sector as well as for housing and consumer goods. The Commission, considering that some of these jobs should be shared by both plants, estimates that the figure of only 45 indirect jobs is realistic.

(140) Taking into account the above, the total number of indirect jobs created in the assisted region and adjacent assisted regions amounts to 440. If the indirect safeguarded jobs were not included, the overall number of indirect jobs would be 407. The amount of 440 or even 407 compared to the total direct job creation of 355 would in any event lead to a ratio that is, in both cases, more than 100 % which leads to the regional impact factor 'M' of 1,5.

6.3.4. MAXIMUM ALLOWABLE AID INTENSITY FOR THE INVESTMENT PROJECT

(141) The maximum allowable aid intensity according to the formula $R \times T \times I \times M$ ⁽²⁷⁾ as mentioned under point 3.10 of the MSF 1998.

(142) Since the competition factor 'T' is different for the two products concerned (i.e. 1 for OSB and 0,75 for particle board), it has to be established how to arrive at a single competition factor applicable for the whole project. The MSF 1998 does not provide guidance in this respect.

(143) In a similar case under the MSF 1998 which concerned two distinct products which were assigned different competition factors (C 15/06 Pilkington ⁽²⁸⁾), the Commission noted that since the project in question concerns a completely integrated production site, it would be artificial to weigh the two competition factors by the relative value of the investments concerning each of the two products. In that case, the Commission used therefore the proportion of the capacities created for the two products for the weighing.

(144) The present case, as explained in point 2.3 of this decision, concerns two combined plants (one for OSB and one for particle board production), linked to each other by a common technical infrastructure and a common administration. It is possible to identify the eligible costs associated with each of these plants. Therefore, in contrast to the Pilkington decision, it is also be possible to calculate to common competition

factor with reference to the relative share of the two products in the eligible investment costs.

(145) In their comments on the opening decision, Germany proposed a third way of weighing the different competition factors related to the two products, namely on the basis of the contribution margin ⁽²⁹⁾ (*Deckungsbeitrag*) of the two production lines. According to Germany, this would ensure that account is taken of the contribution of each of the products concerned to the operating income.

(146) Depending on the approach followed, the combined competition factor for the investment project as a whole would be 0,86 (calculation based on relative capacities ⁽³⁰⁾), 0,85 (calculation based on relative investment costs ⁽³¹⁾) or 0,92 (calculation based on the relative contribution margins ⁽³²⁾).

(147) Since the other two assessment factors necessary to calculate the maximum allowable aid intensity for the project are 0,8 (capital/labour factor, 'T') and 1,5 (regional impact factor, 'M'), the final maximum aid intensity according to the formula $R \times T \times I \times M$ as mentioned under point 3.10 of the MSF 1998 would be respectively 36,12 %, 35,70 % and 38,64 %. In all cases the aid intensity of 35 % as notified by the German authorities complies with the MSF 1998.

(148) Therefore, it is not necessary to decide which method to use for the calculation of the combined competition factor. In any event, the method proposed by Germany (which leads to the most favourable result) should be rejected on the grounds that it uses data from 2004, not available at the time of the notification.

6.3.5. NO RECOVERY INJUNCTION

(149) It is recalled here that an aid amount of totally EUR [...] was already paid out by the German authorities to the beneficiaries (out of the agreed total amount of EUR 69 797 988).

⁽²⁷⁾ Where 'R' is the authorised maximum aid intensity for large companies in the assisted area concerned, 'T' is the competition factor, 'I' is the capital-labour factor and 'M' is the regional impact factor.

⁽²⁸⁾ OJ L 49, 20.2.2009, p. 18.

⁽²⁹⁾ The contribution margin is the difference between revenues and variable costs that are linked to a product. Contribution margin can be thought of as the fraction of sales that contributes to offset the fixed costs. Alternatively, unit contribution margin is the amount each unit sale adds to profit.

⁽³⁰⁾ In the notification, the production capacity of the new OSB-plant was estimated to amount to [...] m³ (42 %), whereas the particle board plant creates new capacities of [...] m³ (58 %). The combined competition factor would therefore be equal to $0,42 \times 1 + 0,58 \times 0,75 = 0,86$.

⁽³¹⁾ The OSB plant has eligible investment costs of EUR 81,8 million (41 %), while the particle board plant's eligible costs amount to EUR 117,6 million (59 %). This would result in a combined competition factor of $0,41 \times 1 + 0,59 \times 0,75 = 0,85$.

⁽³²⁾ According to the German authorities, the relative contribution margin of the OSB plant was 68,5 % and that of the particle board plant was 31,5 % in 2004. Therefore, the combined competition factor is calculated as $0,685 \times 1 + 0,315 \times 0,75 = 0,92$.

(150) KronoGroup in its comments argued that the Commission should have ordered an injunction to provisionally recover the aid pursuant to Article 11(2) of Regulation (EC) No 659/1999 (recovery injunction for unlawful aid).

(151) In this respect it should be noted that such an injunction decision has never been taken. A recovery injunction is an unusual step which the Commission may adopt only in very specific conditions laid down in Article 11 of the Procedural Regulation (EC) No 659/1999. KronoGroup has not put forward convincing arguments showing that these conditions are fulfilled; in any event, the Commission takes the view that a recovery injunction would not have been appropriate in the present case.

VII. CONCLUSION

(152) The Commission finds that Germany has unlawfully implemented the aid in question in breach of Article 108(3) of the Treaty on the Functioning of the European Union. However, the aid intensity of 35 %, employed by Germany, is compatible with the provisions of the MSF 1998,

HAS ADOPTED THIS DECISION:

Article 1

The State aid Germany has implemented for Glunz AG and OSB Deutschland GmbH, amounting to EUR 69 797 988, is compatible with the internal market within the meaning of Article 107(3)(a) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 23 March 2011.

For the Commission
Joaquín ALMUNIA
Vice-President

GUIDELINES

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 25 August 2011

amending Guideline ECB/2007/9 on monetary, financial institutions and markets statistics

(ECB/2011/13)

(2011/525/EU)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

glossary of Guideline ECB/2007/9 of 1 August 2007 on monetary, financial institutions and markets statistics ⁽⁴⁾ should be adjusted,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Articles 5.1, 12.1 and 14.3 thereof,

HAS ADOPTED THIS GUIDELINE:

Article 1

Having regard to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank ⁽¹⁾,

Guideline ECB/2007/9 is amended as follows:

1. Article 5 is replaced by the following:

Having regard to Regulation (EC) No 25/2009 of 19 December 2008 concerning the balance sheet of the monetary financial institutions sector (ECB/2008/32) ⁽²⁾,

'Article 5

Statistics on electronic money

(a) **Monthly or quarterly statistical reporting requirements on electronic money issued by MFIs that have not been granted a derogation under Article 8(1) of Regulation (EC) No 25/2009 (ECB/2008/32)**

Whereas:

1. Scope of reporting

(1) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC ⁽³⁾ deprived electronic money institutions of their credit institution status.

The ECB, in cooperation with the NCBs, shall identify and record on a yearly basis the features of electronic money schemes in the EU, the availability of the statistical information concerned and the compilation methods related to it. NCBs shall report statistical information on electronic money issued by all MFIs that have not been granted a derogation under Article 8(1) of Regulation (EC) No 25/2009 (ECB/2008/32), in accordance with the list of items in Table 1 of Part 2 of Annex III to this Guideline.

(2) As a consequence, it is necessary to amend the scope, frequency and deadline of reporting by electronic money institutions to ensure the appropriate collection of statistics on electronic money. In particular, reporting should allow for comprehensive monitoring of all electronic money issuers that are not credit institutions, regardless of whether or not they fulfil the definition 'monetary financial institutions'. In addition, the

2. Reporting frequency and deadline

Monthly or quarterly data shall be reported to the ECB at least twice a year by the last working day of April (up to end March data) and October (up to end September data). According to the NCBs' data availability, more frequent data transmissions may take place at a monthly or quarterly frequency by the last working day of the month following the end of the reference period. In the absence of data, NCBs shall use estimates or provisional data where possible.

⁽¹⁾ OJ L 318, 27.11.1998, p. 8.

⁽²⁾ OJ L 15, 20.1.2009, p. 14.

⁽³⁾ OJ L 267, 10.10.2009, p. 7.

⁽⁴⁾ OJ L 341, 27.12.2007, p. 1.

(b) **Annual statistical reporting requirements on electronic money issued by all electronic money institutions that are not credit institutions or by small MFIs that have been granted a derogation under Article 8(1) of Regulation (EC) No 25/2009 (ECB/2008/32)**

1. Scope of reporting

This reporting shall cover electronic money institutions principally engaged in financial intermediation in the form of issuing electronic money, that thus fulfil the MFI definition, and electronic money institutions not principally engaged in financial intermediation in the form of issuing electronic money, that thus do not fulfil the MFI definition. This reporting shall also include reporting from small MFIs that have been granted a derogation under Article 8(1) of Regulation (EC) No 25/2009 (ECB/2008/32), regardless of whether they are or not credit institutions.

NCBs shall report statistical information in accordance with the list of items in Table 2 of Part 2 of Annex III to this Guideline. Data of issuers of electronic money that do not fulfil the MFI definition and which are hence not subject to regular BSI statistical reporting requirements shall be reported, to the extent that NCBs can obtain them from their respective supervisory authorities or other suitable sources.

2. Reporting frequency and deadline

The series shall be reported annually to the ECB, by the last working day of the month following the end of the reference

period. In the absence of data, NCBs shall use estimates or provisional data where possible.;

2. Annex III is amended in accordance with Annex I to this Guideline;
3. the glossary is amended in accordance with Annex II to this Guideline.

Article 2

Entry into force

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

Article 3

Addressees

This Guideline is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 25 August 2011.

For the Governing Council of the ECB

The President of the ECB

Jean-Claude TRICHET

ANNEX I

Part 2 of Annex III is replaced by the following:

PART 2

Statistics on electronic money

Other MFIs' data (stocks)

Table 1

Monthly or quarterly statistical reporting requirements that have not been granted a derogation under Article 8(1) of Regulation (EC) No 25/2009 (ECB/2008/32)

| BALANCE SHEET ITEMS | A. Domestic | B. Other participating Member States | C. RoW | D. Not allocated |
|-----------------------------------------------|-------------|--------------------------------------|--------|------------------|
| LIABILITIES | | | | |
| 9 Deposits (all currencies) | | | | |
| 9e Deposits — euro | | | | |
| 9.1e Overnight | | | | |
| o/w Electronic money | | | | |
| 9.1.1e Hardware based electronic money | | | | |
| 9.1.2e Software based electronic money | | | | |
| 9x Deposits — foreign currencies | | | | |
| 9.1x Overnight | | | | |
| o/w Electronic money | | | | |
| 9.1.1x Hardware based electronic money | | | | |
| 9.1.2x Software based electronic money | | | | |
| Total electronic money | | | | |

Table 2

Annual statistical reporting requirements on electronic money issued by all electronic money institutions that are not credit institutions

| BALANCE SHEET ITEMS | A. Domestic | B. Other participating Member States | C. RoW | D. Not allocated |
|-------------------------------------------------|-------------|--------------------------------------|--------|------------------|
| Total assets/liabilities | | | | |
| o/w Electronic money deposits (all currencies)' | | | | |

ANNEX II

The glossary is amended as follows:

1. the definition of 'e-money' is replaced by the following:

'Electronic money': means electronically, including magnetically, stored monetary value as represented by a claim on the issuer issued on receipt of funds for the purpose of making payment transactions, and accepted by a natural or legal person other than the electronic money issuer.;

2. the definition of 'E-money institution' is replaced by the following:

'Electronic money institution': is a legal person that has been granted authorisation to issue electronic money.;

3. the definition of 'Funds' is replaced by the following:

'Funds': mean cash, scriptural money and electronic money.;

4. the definition of 'Money Market Funds (MMFs)' is replaced by the following:

'Money Market Funds (MMFs)': are defined in Article 1a of Regulation (EC) No 25/2009 (ECB/2008/32).'

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