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Price: EUR 4

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EN

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 1271/2011

of 5 December 2011

concerning the classification of certain goods in the Combined Nomenclature

THE EUROPEAN COMMISSION,

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

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

Whereas:

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

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

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

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

(5) The Customs Code Committee has not issued an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

Article 3

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

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

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

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

Done at Brussels, 5 December 2011.

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

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
The product is a beige powder consisting of (% by weight): Food/dietary fibre 66,1 (thereof crude fibre 15,2) proteins 18,8 moisture 7,5 ash 2,3 fat 0,2 The product is a solid vegetable residue obtained from soybeans after the extraction of the oil and partial removal of the proteins, followed by drying and grinding. The product has the characteristics of non-textured flour. The product is a by-product of the production of soya protein concentrates and isolates and has as a result a reduced content of proteins. The product is used for the fortification of food preparations and animal feeding products. The product is presented in bags of 25 kg.	2304 00 00	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature and the wording of CN code 2304 00 00. Although the product is used in the food industry, it is not a food preparation complying with the characteristics described under heading 1901 or a food preparation not elsewhere specified or included under heading 2106. Therefore classification under headings 1901 and 2106 is excluded. As the product is composed of various residues and wastes derived from vegetable materials used by food preparing industries, as animal feeding stuffs and for human consumption, it is to be classified in Chapter 23 (see Harmonized System Explanatory Notes to Chapter 23, General, first paragraph). The product is therefore to be classified under CN code 2304 00 00 as other solid residues resulting from the extraction of soya-bean oil.

COMMISSION IMPLEMENTING REGULATION (EU) No 1272/2011

of 5 December 2011

concerning the classification of certain goods in the Combined Nomenclature

THE EUROPEAN COMMISSION,

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

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

Whereas:

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

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

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

(4) It is appropriate to provide that binding tariff information which has been issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature but which is not in accordance with this Regulation can, for a period of 3 months, continue to be invoked by the holder, under Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [2].

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

Binding tariff information issued by the customs authorities of Member States, which is not in accordance with this Regulation, can continue to be invoked for a period of 3 months under Article 12(6) of Regulation (EEC) No 2913/92.

Article 3

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, 5 December 2011.

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

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

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

ANNEX

Description of the goods	Classification CN code	Reasons
(1)	(2)	(3)
1. Flavouring preparation composed of a mixture of odoriferous substances (carvacrol, cinnamaldehyde and capsicum oleoresin) and hydrogenated vegetable fat (micro-encapsulation). The product is used in the animal feeding industry as a feed appetiser in quantities of 75 g to 300 g/1 000 kg of feed for monogastric animals.	3302 90 90	Classification is determined by General Rules 1, 3(a) and 6 for the interpretation of the Combined Nomenclature, Note 1 to Chapter 23, Note 2 to Chapter 33, and the wording of CN codes 3302, 3302 90 and 3302 90 90. The product consists of odoriferous substances within the meaning of Note 2 to Chapter 33. Although the product is intended to be used in animal feed as a premix of appetising substances, it has retained the essential characteristics of the original material (odoriferous substances). Classification under heading 2309 as a preparation used in animal feeding is therefore excluded in accordance with Note 1 to Chapter 23. As the product is to be considered a mixture of one or more odoriferous substances combined with an added carrier, it falls under heading 3302 (see also first paragraph, point (6), of the Harmonized System Explanatory Notes (HSEN) to heading 3302). It is therefore to be classified under CN code 3302 90 90.
2. Flavouring preparation composed of capsicum oleoresin in hydrogenated vegetable fat (micro-encapsulation) with hydroxypropyl methylcellulose as a binder. The product is used in the animal feeding industry as a feed appetiser in quantities of 12,5 g to 50 g/1 000 kg of feed for ruminants.	3302 90 90	Classification is determined by General Rules 1, 3(a) and 6 for the interpretation of the Combined Nomenclature, Note 1 to Chapter 23, Note 2 to Chapter 33, and the wording of CN codes 3302, 3302 90 and 3302 90 90. The product consists of an odoriferous substance within the meaning of Note 2 to Chapter 33. Although the product is intended to be used in animal feed as a premix of appetising substances, it has retained the essential characteristics of the original material (odoriferous substance). Classification under heading 2309 as a preparation used in animal feeding is therefore excluded in accordance with Note 1 to Chapter 23. As the product is to be considered a mixture of one or more odoriferous substances combined with an added carrier, it falls under heading 3302 (see also first paragraph, point (6), of the HSEN to heading 3302). It is therefore to be classified under CN code 3302 90 90.
3. Flavouring preparation composed of a mixture of odoriferous substances (cinnamaldehyde, eugenol) on a silica support, in cellulose and methylcellulose (micro-encapsulation).	3302 90 90	Classification is determined by General Rules 1, 3(a) and 6 for the interpretation of the Combined Nomenclature, Note 1 to Chapter 23, Note 2 to Chapter 33, and the wording of CN codes 3302, 3302 90 and 3302 90 90.

(1)	(2)	(3)
The product is used in the animal feeding industry as a feed appetiser in quantities of 12,5 g to 50 g/1 000 kg of feed for dairy cows.		The products consist of odoriferous substances within the meaning of Note 2 to Chapter 33. Although the product is intended to be used in animal feed as a premix of appetising substances, it has retained the essential characteristics of the original material (odoriferous substances). Classification under heading 2309 as a preparation used in animal feeding is therefore excluded in accordance with Note 1 to Chapter 23. As the product is to be considered a mixture of one or more odoriferous substances combined with an added carrier, it falls under heading 3302 (see also first paragraph, point (6), of the HSEN to heading 3302). It is therefore to be classified under CN code 3302 90 90.

COMMISSION IMPLEMENTING REGULATION (EU) No 1273/2011

of 7 December 2011

opening and providing for the administration of certain tariff quotas for imports of rice and broken rice

(codification)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1095/96 of 18 June 1996 on the implementation of the concessions set out in Schedule CXL drawn up in the wake of the conclusion of the GATT XXIV.6 negotiations [1], and in particular Article 1 thereof,

Having regard to Council Decision 96/317/EC of 13 May 1996 concerning the conclusion of the results of the consultations with Thailand under GATT Article XXIII [2], and in particular Article 3 thereof,

Whereas:

(1) Commission Regulation (EC) No 327/98 of 10 February 1998 opening and providing for the administration of certain tariff quotas for imports of rice and broken rice [3] has been substantially amended several times [4]. In the interests of clarity and rationality the said Regulation should be codified.

(2) Under the negotiations conducted pursuant to GATT Article XXIV(6) in the wake of the accession of Austria, Finland and Sweden to the European Community, it was agreed to open from 1 January 1996 an annual import quota for 63 000 tonnes of semi-milled and wholly milled rice covered by CN code 1006 30 at zero duty. That quota was included in the European Community list provided for in Article II(1)(a) of GATT 1994.

(3) Under the consultations with Thailand pursuant to GATT Article XXIII, it was agreed to open an annual import quota for 80 000 tonnes of broken rice covered by CN code 1006 40 00 at an import duty reduced by EUR 28 per tonne.

(4) Council Decision 2005/953/EC of 20 December 2005 on the conclusion of an agreement in the form of an Exchange of Letters between the European Community and Thailand pursuant to Article XXVIII of GATT 1994 relating to the modification of concessions with respect to rice provided for in EC Schedule CXL annexed to GATT 1994 [5] provides for the opening of a new global annual import quota of 13 500 tonnes of semi-milled or wholly milled rice falling within CN code 1006 30 at zero duty and an increase in the annual import quota for broken rice falling within CN code 1006 40 00 to 100 000 tonnes.

(5) The Agreement in the form of an Exchange of Letters between the European Community and the Kingdom of Thailand pursuant to Article XXIV: 6 and Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions in the schedules of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic in the course of their accession to the European Union [6], approved by Council Decision 2006/324/EC [7], provides for an increase in the annual global tariff quota at zero duty for wholly milled and semi-milled rice covered by CN code 1006 30 of 25 516 tonnes for all origins and of 1 200 tonnes for Thailand. It also provides for the opening of an additional zero duty tariff quota of 31 788 tonnes of broken rice covered by CN code 1006 40 for all origins, and for new quotas at 15 % duty valid for all origins of 7 tonnes of paddy rice covered by CN code 1006 10 and 1 634 tonnes of husked rice covered by CN code 1006 20.

(6) The commitments for the annual import tariff quotas referred to in Article 1(1)(a), (c) and (d) of this Regulation provide that the administration of those quotas is to take account of traditional suppliers.

(7) With a view to preventing imports under those quotas from causing disturbance in the normal marketing of Union-grown rice, such imports should be staggered over the year so they can be absorbed more easily by the Union market.

(8) With a view to the sound administration of the quotas and in particular in order to ensure that the quantities fixed are not exceeded, special detailed rules should be laid down to cover the submission of applications and the issue of licences. Such detailed rules should either supplement or derogate from Commission Regulation (EC) No 376/2008 of 23 April 2008 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products [8].

[1] OJ L 146, 20.6.1996, p. 1.
[2] OJ L 122, 22.5.1996, p. 15.
[3] OJ L 37, 11.2.1998, p. 5.
[4] See Annex X.
[5] OJ L 346, 29.12.2005, p. 24.
[6] OJ L 120, 5.5.2006, p. 19.
[7] OJ L 120, 5.5.2006, p. 17.
[8] OJ L 114, 26.4.2008, p. 3.

(9) It should be stipulated that Commission Regulation (EC) No 1342/2003 of 28 July 2003 laying down special detailed rules for the application of the system of import and export licences for cereals and rice [1] and Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences [2] apply in the framework of this Regulation.

(10) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

1. The following annual global tariff quotas are hereby opened on 1 January each year:

(a) 63 000 tonnes of wholly milled or semi-milled rice covered by CN code 1006 30, at zero duty;

(b) 1 634 tonnes of husked rice covered by CN code 1006 20 at an *ad valorem* duty fixed at 15 %;

(c) 100 000 tonnes of broken rice covered by CN code 1006 40 00, with a reduction of 30,77 % in the duty fixed in Article 140 of Council Regulation (EC) No 1234/2007 [3];

(d) 40 216 tonnes of wholly milled or semi-milled rice covered by CN code 1006 30, at zero duty;

(e) 31 788 tonnes of broken rice covered by CN code 1006 40 00, at zero duty.

Those overall import tariff quotas shall be broken down into import tariff quotas by country of origin and divided among a number of subperiods in accordance with Annex I.

Regulations (EC) No 1342/2003, (EC) No 1301/2006 and (EC) No 376/2008 shall apply to the quotas referred to in the first subparagraph, save as otherwise provided for in this Regulation.

2. An annual quota of 7 tonnes of paddy rice covered by CN code 1006 10, at an *ad valorem* duty fixed at 15 %, shall be opened on 1 January each year under order number 09.0083.

It shall be managed by the Commission in accordance with Articles 308a, 308b and 308c of Commission Regulation (EEC) No 2454/93 [4].

Article 2

For quantities not covered by import licences issued for the quotas referred to in Article 1(1)(a), (b) and (e) in respect of the subperiod of the month of September, import licence applications may be submitted in respect of all origins covered by the overall import tariff quota in the subperiod of the month of October.

Article 3

Where import licence applications are submitted in respect of rice and broken rice originating in Thailand and rice originating in Australia or the United States under the quantities referred to in Article 1(1)(a) and (c), they shall be accompanied by the original of the export licence drawn up in accordance with Annexes II, III and IV and issued by the competent body in the countries indicated therein.

The entries shall be optional for Sections 7, 8 and 9 of Annex II.

Article 4

1. Licence applications shall be lodged in the first 10 working days of the first month of each subperiod.

2. By way of derogation from Article 12 of Regulation (EC) No 1342/2003, the security for the import licences shall be:

— EUR 46 per tonne for the quotas provided for in Article 1(1)(a) and (d),

— EUR 5 per tonne for the quotas provided for in Article 1(1)(c) and (e).

3. The country of origin shall be entered in section 8 of licence applications and of the import licences and the word ‘yes’ shall be marked with a cross.

Licences shall be valid only for products originating in the country indicated in section 8.

4. Section 24 of the licences shall bear one of the following entries:

(a) in the case of the quota referred to in Article 1(1)(a), one of the entries listed in Annex V;

(b) in the case of the quota referred to in Article 1(1)(b), one of the entries listed in Annex VI;

(c) in the case of the quota referred to in Article 1(1)(c), one of the entries listed in Annex VII;

(d) in the case of the quota referred to in Article 1(1)(d), one of the entries listed in Annex VIII;

(e) in the case of the quota referred to in Article 1(1)(e), one of the entries listed in Annex IX.

5. By way of derogation from Article 6(1) of Regulation (EC) No 1301/2006, in the case of the tariff quotas concerned by the import licence applications referred to in the first paragraph of Article 3 of this Regulation, applicants may submit several applications for the same quota order number by import tariff quota subperiod.

[1] OJ L 189, 29.7.2003, p. 12.
[2] OJ L 238, 1.9.2006, p. 13.
[3] OJ L 299, 16.11.2007, p. 1.
[4] OJ L 253, 11.10.1993, p. 1.

Article 5

The allocation coefficient referred to in Article 7(2) of Regulation (EC) No 1301/2006 shall be fixed by the Commission within 10 days of the final day for notification referred to in point (a) of Article 8 of this Regulation. At the same time the Commission shall fix the quantities available in respect of the following subperiod and, where applicable, in respect of the additional subperiod of the month of October.

If the allocation coefficient referred to in the first paragraph results in one or more quantities of less than 20 tonnes per application, Member States shall allocate the total of such quantities by drawing lots among the operators concerned for each quantity of 20 tonnes, with the remainder distributed equally between the 20-tonne quantities. However, where adding together the quantities of less than 20 tonnes does not result in the constitution of a 20-tonne quantity, the remainder shall be distributed by the Member State equally between the operators whose licences are for 20 tonnes or more.

Where, following the application of the second paragraph, the quantity for which a licence is to be issued is less than 20 tonnes, the licence application may be withdrawn by the operator within two working days following the date of entry into force of the Regulation fixing the allocation coefficient.

Article 6

Within three working days of the date of publication of the Commission's Decision fixing the quantities available, as provided for in Article 5, import licences shall be issued for the quantities resulting from the application of Article 5.

Article 7

1. Point (d) of the first subparagraph of Article 4(1) of Regulation (EC) No 376/2008 shall not apply.

2. The benefits in terms of customs duties provided for in Article 1(1) shall not apply to quantities imported under the tolerance specified in Article 7(4) of Regulation (EC) No 376/2008.

3. By way of derogation from Article 6(1) of Regulation (EC) No 1342/2003 and pursuant to Article 22(2) of Regulation (EC) No 376/2008, import licences for husked, semi-milled and wholly milled rice shall be valid from their actual day of issue until the end of the third month following that day.

4. Under the quotas referred to in Article 1(1), the release of the products into free circulation within the Union shall be subject to the presentation of a certificate of origin issued by the competent national authorities of the country concerned in accordance with Article 47 of Regulation (EEC) No 2454/93.

However, in respect of those parts of the quotas relating to countries for which an export licence is required in accordance with Article 3 of this Regulation or in respect of quotas the origin of which is described as 'all countries', a certificate of origin is not required.

Article 8

The Member States shall send the Commission, by electronic means:

(a) no later than the second working day following the final day for the submission of licence applications at 18.00 (Brussels time), the information on the import licence applications referred to in Article 11(1)(a) of Regulation (EC) No 1301/2006, with a breakdown by eight-digit CN code and by country of origin of the quantities covered by those applications, specifying the number of the import licence and the number of the export licence where this is required;

(b) no later than the second working day following the issue of the import licences, information on the licences issued, as referred to in Article 11(1)(b) of Regulation (EC) No 1301/2006, with a breakdown by eight-digit CN code and by country of origin of the quantities for which import licences have been issued, specifying the number of the import licence and the quantities for which licence applications have been withdrawn in accordance with the third paragraph of Article 5 of this Regulation;

(c) no later than the last day of each month, the total quantities actually released for free circulation under the quota concerned during the previous month but one, broken down by eight-digit CN code and by country of origin, giving details of the packaging if that packaging is less than or equal to 5 kg. If no quantities have been released for free circulation during the period, a 'nil' notification shall be sent.

Article 9

1. The Commission shall monitor the quantities of goods imported under this Regulation, with a view in particular to establishing:

(a) the extent to which traditional trade flows, in terms of volume and presentation, to the Union are significantly changed; and

(b) whether there is subsidisation between exports benefiting directly from this Regulation and exports subject to the normal import charge.

2. If either of the criteria set out in points (a) and (b) of paragraph 1 is met, and in particular if the imports of rice in packages of five kilograms or less exceed the figure of 33 428 tonnes, and in any event on an annual basis, the Commission shall submit a report to the European Parliament and to the Council accompanied, if necessary, by appropriate proposals to avoid disruption of the Union rice sector.

3. Quantities imported in packages of the kind referred to in paragraph 2 and released for free circulation shall be indicated in the relevant import licence in accordance with Article 23 of Regulation (EC) No 376/2008.

Article 10

Regulation (EC) No 327/98 is repealed.

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

Article 11

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, 7 December 2011.

For the Commission
The President
José Manuel BARROSO

ANNEX I

Quotas and subperiods with effect from 2007

(a) Quota of 63 000 tonnes of wholly milled or semi-milled rice covered by CN code 1006 30 as provided for in Article 1(1)(a):

Origin	Quantity (tonnes)	Order number	Subperiods (quantities in tonnes)				
			January	April	July	September	October
United States	38 721	09.4127	9 681	19 360	9 680	—	
Thailand	21 455	09.4128	10 727	5 364	5 364	—	
Australia	1 019	09.4129	0	1 019	—	—	
Other origins	1 805	09.4130	0	1 805	—	—	
All countries		09.4138					(1)
Total	63 000	—	20 408	27 548	15 044	—	

(1) Remaining quantity not used in previous subperiods published by Commission Regulation.

(b) Quota of 1 634 tonnes of husked rice covered by CN code 1006 20 as provided for in Article 1(1)(b):

Origin	Quantity (tonnes)	Order number	Subperiods (quantities in tonnes)		
			January	July	October
All countries	1 634	09.4148	1 634	—	(1)
Total	1 634	—	1 634	—	

(1) Remaining quantity not used in previous subperiods published by Commission Regulation.

(c) Quota of 100 000 tonnes of broken rice covered by CN code 1006 40 00 as provided for in Article 1(1)(c):

Origin	Quantity (tonnes)	Order number	Subperiods (quantities in tonnes)	
			January	July
Thailand	52 000	09.4149	36 400	15 600
Australia	16 000	09.4150	8 000	8 000
Guyana	11 000	09.4152	5 500	5 500
United States	9 000	09.4153	4 500	4 500
Other origins	12 000	09.4154	6 000	6 000
Total	100 000	—	60 400	39 600

(d) Quota of 40 216 tonnes of wholly milled or semi-milled rice covered by CN code 1006 30 as provided for in Article 1(1)(d):

Origin	Quantity (tonnes)	Order number	Subperiods (quantities in tonnes)		
			January	July	September
Thailand	5 513	09.4112	5 513	—	—
United States	2 388	09.4116	2 388	—	—

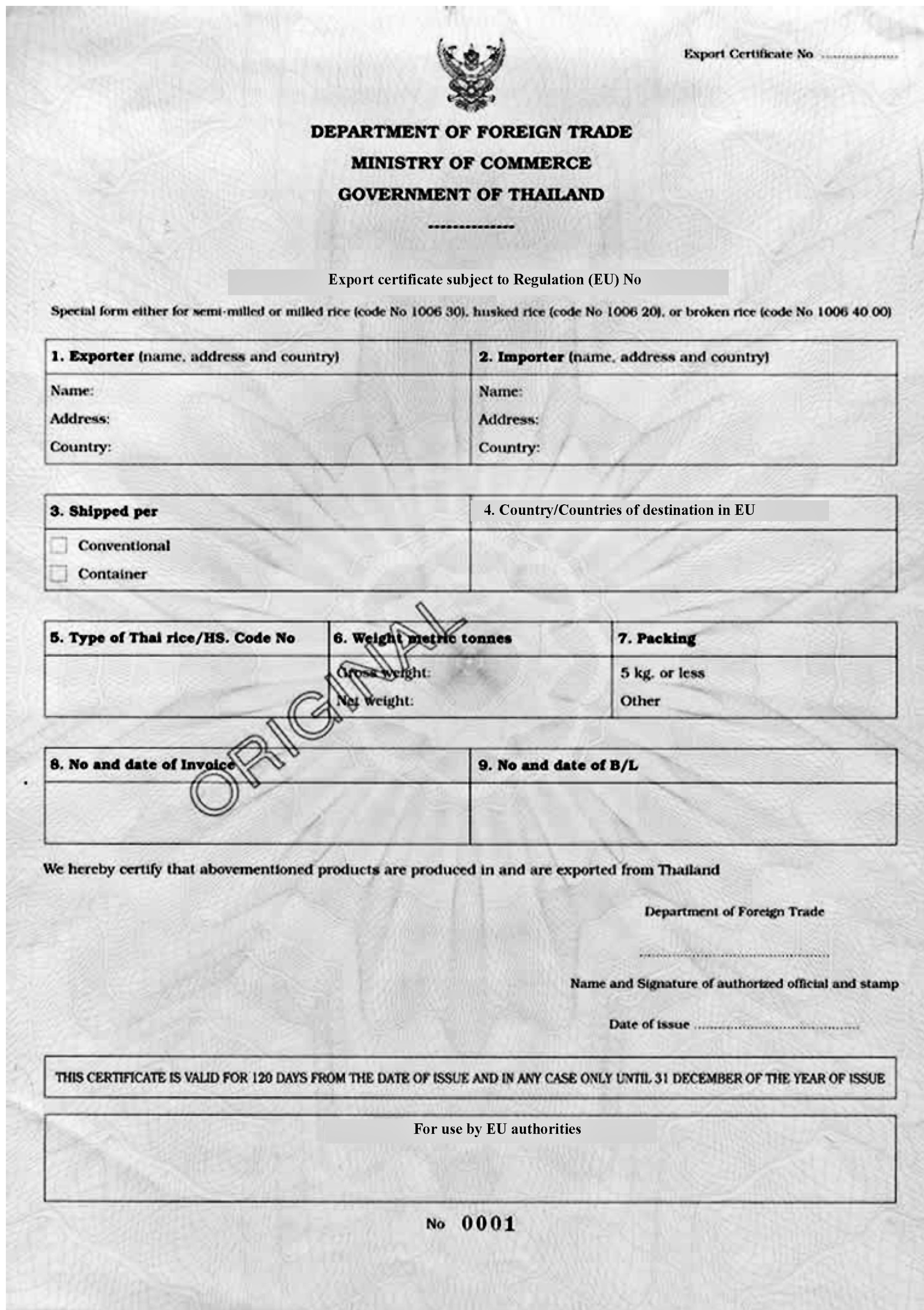
Origin	Quantity (tonnes)	Order number	Subperiods (quantities in tonnes)		
			January	July	September
India	1 769	09.4117	1 769	—	—
Pakistan	1 595	09.4118	1 595	—	—
Other origins	3 435	09.4119	3 435	—	—
All countries	25 516	09.4166	8 505	17 011	—
Total	40 216	—	23 205	17 011	—

(e) Quota of 31 788 tonnes of broken rice covered by CN code 1006 40 00 as provided for in Article 1(1)(e):

Origin	Quantity (tonnes)	Order number	Subperiods (quantities in tonnes)	
			September	October
All countries	31 788	09.4168	31 788	[1]
Total	31 788	—	31 788	

[1] Remaining quantity not used in previous subperiods published by Commission Regulation.

ANNEX II



Export Certificate No ....

DEPARTMENT OF FOREIGN TRADE
MINISTRY OF COMMERCE
GOVERNMENT OF THAILAND

Export certificate subject to Regulation (EU) No

Special form either for semi-milled or milled rice (code No 1006 30), husked rice (code No 1006 20), or broken rice (code No 1006 40 00)

1. Exporter (name, address and country)	**2. Importer** (name, address and country)
Name: Address: Country:	Name: Address: Country:

3. Shipped per	4. Country/Countries of destination in EU
☐ Conventional ☐ Container	

5. Type of Thai rice/HS. Code No	**6. Weight metric tonnes**	**7. Packing**
	Gross weight: Net weight:	5 kg. or less Other

8. No and date of Invoice	**9. No and date of B/L**

ORIGINAL

We hereby certify that abovementioned products are produced in and are exported from Thailand

Department of Foreign Trade

....

Name and Signature of authorized official and stamp

Date of issue ....

THIS CERTIFICATE IS VALID FOR 120 DAYS FROM THE DATE OF ISSUE AND IN ANY CASE ONLY UNTIL 31 DECEMBER OF THE YEAR OF ISSUE

For use by EU authorities

No 0001

ANNEX III

Export certificate No ....

COMMONWEALTH OF AUSTRALIA
REPRESENTED BY THE
DEPARTMENT OF PRIMARY INDUSTRIES AND ENERGY

EXPORT LICENCE

for semi-milled or milled rice (code No 1006 30) and husked rice (code No 1006 20)

1. **Exporter**	2. **Importer**
Name: Address: Country:	Name: Address: Country:

3. **Country/Countries of destination in EU**	4. **Type of rice/specification**	5. **Consignment weight metric tonnes**
	Milled/Semi-milled (code No 1006 30) Husked/Brown (code No 1006 20)	Net weight:

Department of Primary Industries and Energy

by its Delegate ....

....
Signature

Date of issue .... Date of Expiry ....

For use by EU authorities

ANNEX IV

WARNING! ORIGINAL DOCUMENT HAS MULTIPLE SECURITY FEATURES

EXPORT CERTIFICATE NO. 1000

UNITED STATES OF AMERICA

ASSOCIATION FOR THE ADMINISTRATION OF RICE QUOTAS, INC.

CERTIFICATE OF EU QUOTAS ALLOCATION

FOR SEMI-MILLED OR MILLED RICE (CODE NO. 100630) OR HUSKED/BROWN RICE (CODE NO. 100620)

This certificate allocates to the person named below or its transferee the right to export U.S.-produced rice from the United States under European Union tariff-rate quotas, as specified below.

ISSUED TO

NAME:

ADDRESS:

TYPE OF RICE:

☐ MILLED/SEMI-MILLED (CODE 100630)

☐ HUSKED/BROWN (CODE 100620)

CONSIGNMENT NET WEIGHT:

METRIC TONS

IMPORTER:
(To be completed by importer at time of EU customs clearance)

NAME:

ADDRESS:

PACKAGING:
(To be completed by exporter or importer, if applicable)

☐ packages of 5 kg or less

DATE ISSUED:

EXPIRATION DATE:

VOID

AARQ Administrator

FOR USE BY EU AUTHORITIES

WARNING! ORIGINAL DOCUMENT HAS MULTIPLE SECURITY FEATURES

ASSOCIATION FOR THE ADMINISTRATION OF RICE QUOTAS, INC.
CERTIFICATE OF EU QUOTA ALLOCATION — TRANSFER OF OWNERSHIP

---

1. TRANSFEROR

NAME: ____________________
ADDRESS: ____________________
____
____

BY: ____________________
NAME: ____________________
TITLE: ____________________
DATE: ____________________

TRANSFEREE

NAME: ____________________
ADDRESS: ____________________
____
____

BY: ____________________
NAME: ____________________
TITLE: ____________________
DATE: ____________________

---

2. TRANSFEROR

NAME: ____________________
ADDRESS: ____________________
____
____

BY: ____________________
NAME: ____________________
TITLE: ____________________
DATE: ____________________

TRANSFEREE

NAME: ____________________
ADDRESS: ____________________
____
____

BY: ____________________
NAME: ____________________
TITLE: ____________________
DATE: ____________________

---

3. TRANSFEROR

NAME: ____________________
ADDRESS: ____________________
____
____

BY: ____________________
NAME: ____________________
TITLE: ____________________
DATE: ____________________

TRANSFEREE

NAME: ____________________
ADDRESS: ____________________
____
____

BY: ____________________
NAME: ____________________
TITLE: ____________________
DATE: ____________________

ANNEX V

Entries referred to in Article 4(4)(a)

— *in Bulgarian:* Освободено от мито до максимално количество, посочено в графи 17 и 18 от настоящата лицензия (Регламент за изпълнение (ЕС) № 1273/2011)

— *in Spanish:* Exención del derecho de aduana hasta la cantidad indicada en las casillas 17 y 18 del presente certificado [Reglamento de Ejecución (UE) nº 1273/2011]

— *in Czech:* Osvobozeno od cla až do množství uvedeného v kolonkách 17 a 18 této licence (prováděcí nařízení (EU) č. 1273/2011)

— *in Danish:* Toldfri op til den mængde, der er angivet i rubrik 17 og 18 i denne licens (gennemførelsesforordning (EU) nr. 1273/2011)

— *in German:* Zollfrei bis zu der in den Feldern 17 und 18 dieser Lizenz angegebenen Menge (Durchführungsverordnung (EU) Nr. 1273/2011)

— *in Estonian:* Tollimaksuvabastus kuni käesoleva litsentsi lahtrites 17 ja 18 osutatud koguseni (määrus (EL) nr 1273/2011)

— *in Greek:* Δασμολογική ατέλεια μέχρι την ποσότητα που αναγράφεται στις θέσεις 17 και 18 του παρόντος πιστοποιητικού [εκτελεστικός κανονισμός (ΕΕ) αριθ. 1273/2011]

— *in English:* Exemption from customs duty up to the quantity indicated in sections 17 and 18 of this licence (Implementing Regulation (EU) No 1273/2011)

— *in French:* exemption du droit de douane jusqu'à la quantité indiquée dans les cases 17 et 18 du présent certificat [règlement d'exécution (UE) nº 1273/2011]

— *in Italian:* Esenzione dal dazio doganale limitatamente alla quantità indicata nelle caselle 17 e 18 del presente titolo [regolamento di esecuzione (UE) n. 1273/2011]

— *in Latvian:* Atbrīvojums no muitas nodokļa līdz daudzumam, kas norādīts šīs licences 17. un 18. iedaļā (Īstenošanas regula (ES) Nr. 1273/2011)

— *in Lithuanian:* Muitas netaikomas mažesniems kiekiams nei nurodyta šios licencijos 17 ir 18 skiltyse (Reglamentas (ES) Nr. 1273/2011)

— *in Hungarian:* Az ezen engedély 17. és 18. rovatában megjelölt mennyiségig vámmentes (1273/2011/EU végrehajtási rendelet)

— *in Maltese:* Eżenzjoni mid-dwana sal-kwantità murija fit-taqsimiet 17 u 18 ta' din il-liċenzja (Regolament ta' Implimentazzjoni (UE) Nru 1273/2011)

— *in Dutch:* Vrijgesteld van douanerecht voor ten hoogste de in de vakken 17 en 18 van dit certificaat vermelde hoeveelheid (Uitvoeringsverordening (EU) nr. 1273/2011)

— *in Polish:* Zwolnienie z opłaty celnej ilości określonej w polach 17 i 18 niniejszego pozwolenia (rozporządzenie (UE) nr 1273/2011)

— *in Portuguese:* Isenção de direito aduaneiro até à quantidade indicada nas casas 17 e 18 do presente certificado [Regulamento de Execução (UE) n.º 1273/2011]

— *in Romanian:* Scutit de drepturi vamale până la concurența cantității menționate în căsuțele 17 și 18 din prezenta licență (Regulamentul de punere în aplicare (UE) nr. 1273/2011)

— *in Slovak:* Oslobodenie od cla po množstvo uvedené v kolónkach 17 a 18 tejto licencie (vykonávacie nariadenie (EÚ) č. 1273/2011)

— *in Slovenian:* Oprostitev carin do količine, navedene v rubrikah 17 in 18 tega dovoljenja (Uredba (EU) št. 1273/2011)

— *in Finnish:* Tullivapaa tämän todistuksen kohdissa 17 ja 18 esitettyyn määrään asti (täytäntöönpanoasetus (EU) N:o 1273/2011)

— *in Swedish:* Tullfri upp till den mängd som anges i fält 17 och 18 i denna licens (genomförandeförordning (EU) nr 1273/2011).

ANNEX VI

Entries referred to in Article 4(4)(b)

— *in Bulgarian:* Мита, ограничени до 15 % *ad valorem* до максимално количество, посочено в графи 17 и 18 от настоящата лицензия (Регламент за изпълнение (ЕС) № 1273/2011)

— *in Spanish:* Derechos de aduana limitados al 15 % *ad valorem* hasta la cantidad indicada en las casillas 17 y 18 del presente certificado [Reglamento de Ejecución (UE) nº 1273/2011]

— *in Czech:* Cla omezená na valorickou sazbu ve výši 15 % až do množství uvedeného v kolonkách 17 a 18 této licence (prováděcí nařízení (EU) č. 1273/2011)

— *in Danish:* Toldsatsen begrænses til 15 % af værdien op til den mængde, der er angivet i rubrik 17 og 18 i denne licens (gennemførelsesforordning (EU) nr. 1273/2011)

— *in German:* Zollsatz beschränkt auf 15 % des Zollwerts bis zu der in den Feldern 17 und 18 dieser Lizenz angegebenen Menge (Durchführungsverordnung (EU) Nr. 1273/2011)

— *in Estonian:* Väärtuseline tollimaks piiratud 15 protsendini käesoleva sertifikaadi lahtrites 17 ja 18 märgitud kogusteni (määrus (EL) nr 1273/2011)

— *in Greek:* Δασμός με όριο 15 % κατ' αξία μέχρι την ποσότητα που αναγράφεται στις θέσεις 17 και 18 του παρόντος πιστοποιητικού (εκτελεστικός κανονισμός (ΕΕ) αριθ. 1273/2011)

— *in English:* Customs duties limited to 15 % *ad valorem* up to the quantity indicated in boxes 17 and 18 of this licence (Implementing Regulation (EU) No 1273/2011)

— *in French:* droits de douane limités à 15 % ad valorem jusqu'à la quantité indiquée dans les cases 17 et 18 du présent certificat [règlement d'exécution (UE) nº 1273/2011]

— *in Italian:* Dazio limitato al 15 % ad valorem fino a concorrenza del quantitativo indicato nelle caselle 17 e 18 del presente titolo [regolamento di esecuzione (UE) n. 1273/2011]

— *in Latvian:* Muitas nodoklis 15 % *ad valorem* par daudzumu, kas norādīts šīs licences (Īstenošanas regula (ES) Nr. 1273/2011) 17. un 18. ailē

— *in Lithuanian:* Ne didesnis nei 15 % muitas *ad valorem* neviršijant šios licencijos 17 ir 18 skiltyse nurodyto kiekio (Reglamentas (ES) Nr. 1273/2011)

— *in Hungarian:* 15 %-os értékvám az ezen engedély 17. és 18. rovatában feltüntetett mennyiségig (1273/2011/EU végrehajtási rendelet)

— *in Maltese:* Id-dazji doganali huma stipulati għal 15 % *ad valorem* sal-kwantità indikata fil-kaxxi 17 u 18 ta' din il-liċenzja (Regolament ta' Implimentazzjoni (UE) Nru 1273/2011)

— *in Dutch:* Douanerecht beperkt tot 15 % ad valorem voor hoeveelheden die niet groter zijn dan de in de vakken 17 en 18 van dit certificaat vermelde hoeveelheid (Uitvoeringsverordening (EU) nr. 1273/2011)

— *in Polish:* Cło ograniczone do 15 % *ad valorem* do ilości wskazanej w polach 17 i 18 niniejszego pozwolenia (rozporządzenie (UE) nr 1273/2011)

— *in Portuguese:* Direito aduaneiro limitado a 15 % *ad valorem* até à quantidade indicada nas casas 17 e 18 do presente certificado [Regulamento de Execução (UE) n.º 1273/2011]

— *in Romanian:* Drepturi vamale limitate la 15 % *ad valorem* până la concurența cantității menționate în căsuțele 17 și 18 din prezenta licență (Regulamentul de punere în aplicare (UE) nr. 1273/2011)

— *in Slovak:* Clá znížené na 15 % *ad valorem* až po množstvo uvedené v kolónkach 17 a 18 tejto licencie (vykonávacie nariadenie (EÚ) č. 1273/2011)

— *in Slovenian:* Carinska dajatev, omejena na 15 % *ad valorem* do količine, navedene v rubrikah 17 in 18 tega dovoljenja (Uredba (EU) št. 1273/2011)

— *in Finnish:* Arvotulli rajoitettu 15 prosenttiin tämän todistuksen kohdissa 17 ja 18 ilmoitettuun määrään asti (täytäntöönpanoasetus (EU) N:o 1273/2011)

— *in Swedish:* Tull begränsad till 15 % av värdet upp till den kvantitet som anges i fält 17 och 18 i denna licens (genomförandeförordning (EU) nr 1273/2011)

ANNEX VII

Entries referred in Article 4(4)(c)

— *in Bulgarian:* Ставка на мито, намалена с 30,77 % от ставката на митото, определено в член 140 от Регламент (ЕО) № 1234/2007, приложима до максимално количество, посочено в графи 17 и 18 от настоящата лицензия (Регламент за изпълнение (ЕС) № 1273/2011)

— *in Spanish:* Derecho reducido en un 30,77 % del derecho fijado en el artículo 140 del Reglamento (CE) nº 1234/2007, hasta la cantidad indicada en las casillas 17 y 18 del presente certificado [Reglamento de Ejecución (UE) nº 1273/2011]

— *in Czech:* Clo snížené o 30,77 % cla stanoveného v článku 140 nařízení (ES) č. 1234/2007 až na množství uvedené v kolonkách 17 a 18 této licence (prováděcí nařízení (EU) č. 1273/2011)

— *in Danish:* Nedsættelse på 30,77 % af den told, der er fastsat i artikel 140 i forordning (EF) nr. 1234/2007, op til den mængde, der er angivet i rubrik 17 og 18 i denne licens (gennemførelsesforordning (EU) nr. 1273/2011)

— *in German:* Zollsatz ermäßigt um 30,77 % des in Artikel 140 der Verordnung (EG) Nr. 1234/2007 festgesetzten Zollsatzes bis zu der in den Feldern 17 und 18 dieser Lizenz angegebenen Menge (Durchführungsverordnung (EU) Nr. 1273/2011)

— *in Estonian:* Määruse (EÜ) nr 1234/2007 artiklis 140 kindlaks määratud tollimaks, mida on alandatud 30,77 % võrra käesoleva sertifikaadi lahtrites 17 ja 18 märgitud kogusteni (määrus (EL) nr 1273/2011)

— *in Greek:* Δασμός μειωμένος κατά 30,77 % του δασμού που καθορίζεται στο άρθρο 140 του κανονισμού (ΕΚ) αριθ. 1234/2007, μέχρι την ποσότητα που αναγράφεται στις θέσεις 17 και 18 του παρόντος πιστοποιητικού [εκτελεστικός κανονισμός (ΕΕ) αριθ. 1273/2011]

— *in English:* Reduced rate of duty of 30,77 % of the duty set in Article 140 of Regulation (EC) No 1234/2007 up to the quantity indicated in boxes 17 and 18 of this licence (Implementing Regulation (EU) No 1273/2011)

— *in French:* droit réduit de 30,77 % du droit fixé à l'article 140 du règlement (CE) nº 1234/2007 jusqu'à la quantité indiquée dans les cases 17 et 18 du présent certificat [règlement d'exécution (UE) nº 1273/2011]

— *in Italian:* Dazio ridotto in ragione del 30,77 % del dazio fissato all'articolo 140 del regolamento (CE) n. 1234/2007 fino a concorrenza del quantitativo indicato nelle caselle 17 e 18 del presente titolo [regolamento di esecuzione (UE) n. 1273/2011]

— *in Latvian:* Ievedmuitas nodoklis samazināts par 30,77 %, salīdzinot ar nodokli, kas noteikts Regulas (EK) Nr. 1234/2007 140. pantā, līdz šīs licences 17. un 18. ailē norādītajam daudzumam (Īstenošanas regula (ES) Nr. 1273/2011)

— *in Lithuanian:* Reglamento (EB) Nr. 1234/2007 140 straipsnyje nustatyto muito mokesčio sumažinimas 30,77 % mažesniems kiekiams nei nurodyta šios licencijos 17 ir 18 skiltyse (Reglamentas (ES) Nr. 1273/2011)

— *in Hungarian:* Az 1234/2007/EK rendelet 140. cikkében meghatározott vám 30,77 %-os csökkentett vámja az ezen bizonyítvány 17. és 18. rovatában megjelölt mennyiségig (1273/2011/EU végrehajtási rendelet)

— *in Maltese:* Dazju mnaqqas ta' 30,77 % tad-dazju fiss fl-Artikolu 140 tar-Regolament (KE) Nru 1234/2007 sal-kwantità indikata fis-sezzjoni 17 u 18 ta' dan iċ-ċertifikat (Regolament ta' Implimentazzjoni (UE) Nru 1273/2011)

— *in Dutch:* Recht verlaagd met 30,77 % van het in artikel 140 van Verordening (EG) nr. 1234/2007 vastgestelde recht voor hoeveelheden die niet groter zijn dan de in de vakken 17 en 18 van dit certificaat vermelde hoeveelheid (Uitvoeringsverordening (EU) nr. 1273/2011)

— *in Polish:* Obniżona stawka celna odpowiadająca 30,77 % stawki określonej w art. 140 rozporządzenia (WE) nr 1234/2007 do ilości wskazanej w polach 17 i 18 niniejszego pozwolenia (rozporządzenie (UE) nr 1273/2011)

— *in Portuguese:* Direito reduzido de 30,77 % do direito fixado no artigo 140.º do Regulamento (CE) n.º 1234/2007 até à quantidade indicada nas casas 17 e 18 do presente certificado [Regulamento de Execução (UE) n.º 1273/2011]

— *in Romanian:* Drept redus cu 30,77 % din dreptul stabilit de articolul 140 din Regulamentul (CE) nr. 1234/2007 până la concurența cantității menționate în căsuțele 17 și 18 din prezenta licență (Regulamentul de punere în aplicare (UE) nr. 1273/2011)

— *in Slovak:* Clo znížené o 30,77 % cla stanoveného článkom 140 nariadenia (ES) č. 1234/2007 až po množstvo uvedené v kolónkach 17 a 18 tejto licencie (vykonávacie nariadenie (EÚ) č. 1273/2011)

— *in Slovenian:* Dajatev, znižana za 30,77 % od dajatve iz člena 140 Uredbe (ES) št. 1234/2007 do količine, navedene v rubrikah 17 in 18 tega dovoljenja (Uredba (EU) št. 1273/2011)

— *in Finnish:* Tulli, jonka määrää on alennettu 30,77 % asetuksen (EY) N:o 1234/2007 140 artiklassa vahvistetusta tullista tämän todistuksen kohdissa 17 ja 18 ilmoitettuun määrään asti (täytäntöönpanoasetus (EU) N:o 1273/2011)

— *in Swedish:* Tullsatsen nedsatt med 30,77 % av den tullsats som anges i artikel 140 i förordning (EG) nr 1234/2007 upp till den mängd som anges i fält 17 och 18 i denna licens (genomförandeförordning (EU) nr 1273/2011).

ANNEX VIII

Entries referred to in Article 4(4)(d)

— *in Bulgarian:* Освободено от мито до максимално количество, посочено в графи 17 и 18 от настоящата лицензия (член 1, параграф 1, буква г) от Регламент за изпълнение (ЕС) № 1273/2011)

— *in Spanish:* Exención del derecho de aduana hasta la cantidad indicada en las casillas 17 y 18 del presente certificado [Reglamento de Ejecución (UE) nº 1273/2011, artículo 1, apartado 1, letra d)]

— *in Czech:* Osvobození od cla až do množství stanoveného v kolonkách 17 a 18 této licence (čl. 1 odst. 1 písm. d) prováděcího nařízení (EU) č. 1273/2011)

— *in Danish:* Toldfri op til den mængde, der er angivet i rubrik 17 og 18 i denne licens (gennemførelsesforordning (EU) nr. 1273/2011, artikel 1, stk. 1, litra d))

— *in German:* Zollfrei bis zu der in den Feldern 17 und 18 dieser Lizenz angegebenen Menge (Durchführungsverordnung (EU) Nr. 1273/2011, Artikel 1 Absatz 1 Buchstabe d)

— *in Estonian:* Tollimaksuvabastus kuni käesoleva litsentsi lahtrites 17 ja 18 näidatud koguseni (määruse (EL) nr 1273/2011) artikli 1 lõike 1 punkt d)

— *in Greek:* Δασμολογική ατέλεια μέχρι την ποσότητα που αναγράφεται στις θέσεις 17 και 18 του παρόντος πιστοποιητικού [εκτελεστικός κανονισμός (ΕΕ) αριθ. 1273/2011 άρθρο 1 παράγραφος 1 στοιχείο δ)]

— *in English:* Exemption from customs duty up to the quantity indicated in boxes 17 and 18 of this licence (Implementing Regulation (EU) No 1273/2011, Article 1(1)(d)),

— *in French:* exemption du droit de douane jusqu'à la quantité indiquée dans les cases 17 et 18 du présent certificat [règlement d'exécution (UE) nº 1273/2011, article 1er, paragraphe 1, point d)]

— *in Italian:* Esenzione dal dazio doganale fino a concorrenza del quantitativo indicato nelle caselle 17 e 18 del presente titolo [regolamento di esecuzione (UE) n. 1273/2011, articolo 1, paragrafo 1, lettera d)]

— *in Latvian:* Atbrīvojumi no muitas nodokļa līdz šīs licences 17. un 18. ailē norādītajam daudzumam (Īstenošanas regulas (ES) Nr. 1273/2011 1. panta 1. punkta d) apakšpunkts)

— *in Lithuanian:* Atleidimas nuo muito mokesčio neviršijant šios licencijos 17 ir 18 skiltyse nurodyto kiekio (Reglamento (ES) Nr. 1273/2011 1 straipsnio 1 dalies d punktas)

— *in Hungarian:* Vámmentes az ezen engedély 17. és 18. rovatában feltüntetett mennyiségig (1273/2011/EU végrehajtási rendelet 1. cikk (1) bekezdés d) pont)

— *in Maltese:* Eżenzjoni tad-dazju tad-dwana sal-kwantità indikata fil-każi 17 u 18 taċ-ċertifikat preżenti (Artikolu 1, paragrafu 1, punt d) tar-Regolament ta' Implimentazzjoni (UE) Nru 1273/2011)

— *in Dutch:* Vrijstelling van douanerecht voor hoeveelheden die niet groter zijn dan de in de vakken 17 en 18 van dit certificaat vermelde hoeveelheid (artikel 1, lid 1, onder d), van Uitvoeringsverordening (EU) nr. 1273/2011)

— *in Polish:* Zwolnienie z cła ilości do wysokości wskazanej w polach 17 i 18 niniejszego pozwolenia (art. 1 ust. 1 lit. d) rozporządzenia (UE) nr 1273/2011)

— *in Portuguese:* Isenção do direito aduaneiro até à quantidade indicada nas casas 17 e 18 do presente certificado [Regulamento de Execução (UE) n.º 1273/2011, alínea d) do n.º 1 do artigo 1.º]

— *in Romanian:* Scutit de drepturi vamale până la concurența cantității menționate în căsuțele 17 și 18 din prezenta licență [Regulamentul de punere în aplicare (UE) nr. 1273/2011, articolul 1 alineatul (1) litera (d)]

— *in Slovak:* Oslobodenie od cla až po množstvo uvedené v kolónkach 17 a 18 tejto licencie (článok 1 ods. 1 písm. d) vykonávacieho nariadenia (EÚ) č. 1273/2011)

— *in Slovenian:* Izvzetje od carine do količine, navedene v rubrikah 17 in 18 tega dovoljenja (člen 1(1)(d) Uredbe (EU) št. 1273/2011)

— *in Finnish:* Tullivapaa tämän todistuksen kohdissa 17 ja 18 ilmoitettuun määrään asti (täytäntöönpanoasetuksen (EU) N:o 1273/2011 1 artiklan 1 kohdan d alakohta)

— *in Swedish:* Tullfri upp till den mängd som anges i fälten 17 och 18 i denna licens (genomförandeförordning (EU) nr 1273/2011, artikel 1.1 d).

ANNEX IX

Entries referred to in Article 4(4)(e)

— *in Bulgarian:* Освободено от мито до максимално количество, посочено в графи 17 и 18 от настоящата лицензия (член 1, параграф 1, буква д) от Регламент за изпълнение (ЕС) № 1273/2011)

— *in Spanish:* Exención del derecho de aduana hasta la cantidad indicada en las casillas 17 y 18 del presente certificado [Reglamento de Ejecución (UE) nº 1273/2011, artículo 1, apartado 1, letra e)]

— *in Czech:* Osvobození od cla až do množství uvedeného v kolonkách 17 a 18 této licence (čl. 1 odst. 1 písm. e) prováděcího nařízení (EU) č. 1273/2011)

— *in Danish:* Toldfri op til den mængde, der er angivet i rubrik 17 og 18 i denne licens (gennemførelsesforordning (EU) nr. 1273/2011, artikel 1, stk. 1, litra e))

— *in German:* Zollfrei bis zu der in den Feldern 17 und 18 dieser Lizenz angegebenen Menge (Durchführungsverordnung (EU) Nr. 1273/2011, Artikel 1 Absatz 1 Buchstabe e)

— *in Estonian:* Tollimaksuvabastus kuni käesoleva litsentsi lahtrites 17 ja 18 näidatud koguseni (määruse (EL) nr 1273/2011) artikli 1 lõike 1 punkt e)

— *in Greek:* Δασμολογική ατέλεια μέχρι την ποσότητα που αναγράφεται στις θέσεις 17 και 18 του παρόντος πιστοποιητικού [εκτελεστικός κανονισμός (ΕΕ) αριθ. 1273/2011, άρθρο 1 παράγραφος 1 στοιχείο ε)]

— *in English:* Exemption from customs duty up to the quantity indicated in boxes 17 and 18 of this licence (Implementing Regulation (EU) No 1273/2011, Article 1(1)(e))

— *in French:* exemption du droit de douane jusqu'à la quantité indiquée dans les cases 17 et 18 du présent certificat [règlement d'exécution (UE) nº 1273/2011, article 1er, paragraphe 1, point e)]

— *in Italian:* Esenzione dal dazio doganale fino a concorrenza del quantitativo indicato nelle caselle 17 e 18 del presente titolo [regolamento di esecuzione (UE) n. 1273/2011, articolo 1, paragrafo 1, lettera e)]

— *in Latvian:* Atbrīvojumi no muitas nodokļa līdz šīs licences 17. un 18. ailē norādītajam daudzumam (Īstenošanas regulas (ES) Nr. 1273/2011 1. panta 1. punkta e) apakšpunkts)

— *in Lithuanian:* Atleidimas nuo muito mokesčio neviršijant šios licencijos 17 ir 18 skiltyse nurodyto kiekio (Reglamentas (ES) Nr. 1273/2011, 1 straipsnio 1 dalies e punktas)

— *in Hungarian:* Vámmentes az ezen engedély 17. és 18. rovatában feltüntetett mennyiségig ([1273/2011/EU] végrehajtási rendelet 1. cikk (1) bekezdés e) pont)

— *in Maltese:* Eżenzjoni tad-dazju tad-dwana sal-kwantità indikata fil-każi 17 u 18 taċ-ċertifikat preżenti (Artikolu 1, paragrafu 1, punt e) tar-Regolament ta' Implimentazzjoni (UE) Nru 1273/2011)

— *in Dutch:* Vrijstelling van douanerecht voor hoeveelheden die niet groter zijn dan de in de vakken 17 en 18 van dit certificaat vermelde hoeveelheid (artikel 1, lid 1, onder e), van Uitvoeringsverordening (EU) nr. 1273/2011)

— *in Polish:* Zwolnienie z cła ilości do wysokości wskazanej w polach 17 i 18 niniejszego pozwolenia (rozporządzenie (UE) nr 1273/2011, art. 1 ust. 1 lit. e))

— *in Portuguese:* Isenção do direito aduaneiro até à quantidade indicada nas casas 17 e 18 do presente certificado [Regulamento de Execução (UE) n.º 1273/2011, alínea e) do n.º 1 do artigo 1.º]

— *in Romanian:* Scutit de drepturi vamale până la concurența cantității menționate în căsuțele 17 și 18 din prezenta licență [Regulamentul de punere în aplicare (UE) nr. 1273/2011, articolul 1 alineatul (1) litera (e)]

— *in Slovak:* Oslobodenie od cla až po množstvo uvedené v kolónkach 17 a 18 tejto licencie (článok 1 ods. 1 písm. e) vykonávacieho nariadenia (EÚ) č. 1273/2011)

— *in Slovenian:* Izvzetje od carine do količine, navedene v rubrikah 17 in 18 tega dovoljenja (člen 1(1)(e) Uredbe (EU) št. 1273/2011)

— *in Finnish:* Tullivapaa tämän todistuksen kohdissa 17 ja 18 ilmoitettuun määrään asti (täytäntöönpanoasetuksen (EU) N:o 1273/2011 1 artiklan 1 kohdan e alakohta)

— *in Swedish:* Tullfri upp till den mängd som anges i fälten 17 och 18 i denna licens (genomförandeförordning (EU) nr 1273/2011, artikel 1.1 e).

ANNEX X

Repealed Regulation with list of its successive amendments

Commission Regulation (EC) No 327/98 (OJ L 37, 11.2.1998, p. 5)	
Commission Regulation (EC) No 648/98 (OJ L 88, 24.3.1998, p. 3)	
Commission Regulation (EC) No 2458/2001 (OJ L 331, 15.12.2001, p. 10)	
Commission Regulation (EC) No 1950/2005 (OJ L 312, 29.11.2005, p. 18)	Only Article 7
Commission Regulation (EC) No 2152/2005 (OJ L 342, 24.12.2005, p. 30)	Only Article 1
Commission Regulation (EC) No 965/2006 (OJ L 176, 30.6.2006, p. 12)	
Commission Regulation (EC) No 1996/2006 (OJ L 398, 30.12.2006, p. 1)	Only Article 9
Commission Regulation (EC) No 2019/2006 (OJ L 384, 29.12.2006, p. 48).	Only Article 2
Commission Regulation (EC) No 488/2007 (OJ L 114, 1.5.2007, p. 13)	Only for the Danish, Finnish and Swedish versions
Commission Regulation (EC) No 1538/2007 (OJ L 337, 21.12.2007, p. 49)	

ANNEX XI

CORRELATION TABLE

Regulation (EC) No 327/98	This Regulation
Articles 1 – 6	Articles 1 – 6
Article 7(1) and (2)	Article 7(1) and (2)
Article 7(4)	Article 7(3)
Article 7(5)	Article 7(4)
Article 8	Article 8
Article 9(1), introductory wording	Article 9(1), introductory wording
Article 9(1), first and second indents	Article 9(1), points (a) and (b)
Article 9(2) and (3)	Article 9(2) and (3)
Article 10	—
—	Article 10
Article 11	Article 11
Annex I	Annex II
Annex II	Annex III
Annex IV	Annex IV
Annex V	Annex V
Annex VI	Annex VI
Annex VII	Annex VII
Annex VIII	Annex VIII
Annex IX	Annex I
Annex XI	Annex IX
—	Annex X
—	Annex XI

COMMISSION IMPLEMENTING REGULATION (EU) No 1274/2011

of 7 December 2011

concerning a coordinated multiannual control programme of the Union for 2012, 2013 and 2014 to ensure compliance with maximum residue levels of pesticides and to assess the consumer exposure to pesticide residues in and on food of plant and animal origin

(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 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC [1], in particular Articles 28 and 29 thereof,

Whereas:

(1) By Commission Regulation (EC) No 1213/2008 [2] a first coordinated multiannual Community programme, covering the years 2009, 2010 and 2011, was established. That programme continued under consecutive Commission Regulations. The latest one was Commission Regulation (EU) No 915/2010 of 12 October 2010 concerning a coordinated multiannual control programme of the Union for 2011, 2012 and 2013 to ensure compliance with maximum levels of and to assess the consumer exposure to pesticide residues in and on food of plant and animal origin [3].

(2) Thirty to forty foodstuffs constitute the major components of the diet in the Union. Since pesticide uses show significant changes over a period of three years, pesticides should be monitored in those foodstuffs over a series of three-year cycles to allow consumer exposure and the application of Union legislation to be assessed.

(3) On the basis of a binomial probability distribution, it can be calculated that examination of 642 samples allows, with a certainty of more than 99 %, the detection of a sample containing pesticide residues above the limit of determination (LOD), provided that not less than 1 % of the products contain residues above that limit. Collection of these samples should be apportioned among Member States according to population numbers, with a minimum of 12 samples per product and per year.

(4) Analytical results from the 2009 EU official control programme [4] have shown that certain pesticides are more commonly present on agricultural products than previously, indicating changes in the use pattern of those pesticides. Those pesticides should be included in the control programme in addition to those which were covered under Regulation (EU) No 915/2010 in order to make sure that the range of pesticides covered by the control programme is representative of the pesticides used.

(5) The analysis of certain pesticides, in particular those added to the control programme by this Regulation or those with very difficult residue definition, should be optional in 2012 in order to allow time, for official laboratories to validate the methods required for the analysis of those pesticides, in case they have not yet done so.

(6) Where the residue definition of a pesticide includes other active substances, metabolites or breakdown products, those metabolites should be reported separately.

(7) Guidance concerning 'Method Validation and Quality Control Procedures for Pesticide Residue Analysis in food and feed' is published on the Commission website [5]. Member States should be allowed, under certain conditions, to use qualitative screening methods.

(8) Implementing measures, such as the Standard Sample Description (SSD) [6] for submitting results of pesticide residues analysis, relating to the submission of information by Member States have been agreed by Member States, Commission and EFSA

(9) For the sampling procedures Commission Directive 2002/63/EC of 11 July 2002 establishing Community methods of sampling for the official control of pesticide residues in and on products of plant and animal origin and repealing Directive 79/700/EEC [7] which incorporates the sampling methods and procedures recommended by the Codex Alimentarius Commission should apply.

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[1] OJ L 70, 16.3.2005, p. 1.
[2] OJ L 328, 6.12.2008, p. 9.
[3] OJ L 269, 13.10.2010, p. 8.
[4] The 2009 European Union Report on Pesticide Residues in Food. EFSA Journal 2011; 9(11):2430 [529 pp.] at: http://ec.europa.eu/food/plant/protection/pesticides/docs/2009_eu_report_ppesticide_residues_food_en.pdf
[5] Document No. SANCO/10684/2009, Implemented by 1.1.2010. http://ec.europa.eu/food/plant/protection/resources/qualcontrol_en.pdf
[6] General guidance on the SSD for all EFSA data collection available on the EFSA journal 2010; 8(1):1457 [54 pp.] at http://www.efsa.europa.eu/en/efsajournal/pub/1457.htm
[7] OJ L 187, 16.7.2002, p. 30.

(10) It is necessary to assess whether maximum residue levels for baby food provided for in Article 10 of Commission Directive 2006/141/EC of 22 December 2006 on infant formulae and follow-on formulae [1] and Article 7 of Commission Directive 2006/125/EC of 5 December 2006 on processed cereal-based foods and baby foods for infants and young children [2] are respected, taking into account only the residue definitions as they are set out in Regulation (EC) No 396/2005.

(11) It is also necessary to assess possible aggregate, cumulative and synergistic effects of pesticides when methodology becomes available. This assessment should start with some organophosphates, carbamates, triazoles and pyrethroides, as set out in Annex I.

(12) As regards single residue methods Member States may be able to meet their obligations of analysis by having recourse to official laboratories already having the validated methods required.

(13) Member States should submit by 31 August of each year the information concerning the previous calendar year.

(14) In order to avoid any confusion due to an overlap between consecutive multiannual programmes, Regulation (EU) No 915/2010 should be repealed in the interest of legal certainty. It should, however, continue to apply to samples tested in 2011.

(15) 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

Member States shall, during the years 2012, 2013 and 2014 take and analyse samples for the pesticide/product combinations, as set out in Annex I.

The number of samples of each product shall be as set out in Annex II.

Article 2

1. The lot to be sampled shall be chosen randomly.

The sampling procedure, including the number of units, shall comply with Directive 2002/63/EC.

2. Samples shall be analysed in accordance with the residue definitions set out in Regulation (EC) No 396/2005. Where no explicit residue definition is set out in that Regulation for a particular pesticide, the residue definition as set out in Annex I to this Regulation shall apply.

Article 3

1. Member States shall submit the results of the analysis of samples tested in 2012, 2013 and 2014 by 31 August 2013, 2014 and 2015 respectively. Those results shall be submitted in accordance with the Standard Sample Description (SSD), as set out in Annex III.

2. Where the residue definition of a pesticide includes active substances, metabolites and/or breakdown or reaction products, Member States shall report the analysis results in accordance with the legal residue definition. The results of each of the main isomers or metabolites mentioned in the residue definition shall be submitted separately, as far as they are measured individually.

Article 4

Regulation (EU) No 915/2010 is repealed.

However, it shall continue to apply to samples tested in 2011.

Article 5

This Regulation shall enter into force on 1 January 2012.

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

Done at Brussels, 7 December 2011.

For the Commission
The President
José Manuel BARROSO

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[1] OJ L 401, 30.12.2006, p. 1.
[2] OJ L 339, 6.12.2006, p. 16.

ANNEX I

Part A: Pesticide/product combinations to be monitored in/on commodities of plant origin

	2012	2013	2014	Remarks
2,4-D	([b])	([c])	([a])	Note ([h]) Residue definition: sum of 2,4-D and its esters expressed as 2,4-D. 2,4-D free acid shall be analysed in 2012 on aubergines, cauliflower and table grapes; in 2013 on apricots and wine grapes and in 2014 on oranges/mandarins. In the rest of the commodities it is to be analyzed on voluntary basis.
2-Phenylphenol	([b])	([c])	([a])	Note ([g])
Abamectin	([b])	([c])	([a])	Note ([h]) Residue definition: sum of avermectin B1a, avermectinB1b and delta-8,9 isomer of avermectin B1a. The delta-8,9 isomer of avermectin B1a is to be analysed on voluntary basis in 2012.
Acephate	([b])	([c])	([a])	
Acetamiprid	([b])	([c])	([a])	
Acrinathrin	([b])	([c])	([a])	
Aldicarb	([b])	([c])	([a])	
Amitraz	([b])	([c])	([a])	Residue definition: amitraz including the metabolites containing the 2,4 -dimethylaniline moiety expressed as amitraz. Shall be analysed in 2012 on sweet pepper; on 2013 in apples and tomatoes; and in 2014 in pears. In the rest of the commodities it is to be analyzed on voluntary basis. It is accepted if amitraz (parent) and its multiresidue-method-amenable metabolites 2,4 –dimethyl formanilide(DMF) and N-(2,4 –dimethyl-phenyl)-N′-methyl formamide (DMPF) are targeted and reported separately.
Amitrole	([b])	([c])	([a])	Note ([i])
Azinphos-methyl	([b])	([c])	([a])	
Azoxystrobin	([b])	([c])	([a])	
Benfuracarb	([b])	([c])	([a])	Fast and complete degradation to carbofuran and 3-hydroxycarbofuran. Parent compound (benfuracarb) to be analysed on a voluntary basis.
Bifenthrin	([b])	([c])	([a])	
Biphenyl	([b])	([c])	([a])	
Bitertanol	([b])	([c])	([a])	
Boscalid	([b])	([c])	([a])	
Bromide ion	([b])	([c])	([a])	Shall be analysed in 2012 on sweet pepper only, in 2013 on lettuce, tomatoes and in 2014 on rice. In the rest of the commodities it is to be analyzed on voluntary basis.

	2012	2013	2014	Remarks
Bromopropylate	[b]	[c]	[a]	
Bromuconazole	[b]	[c]	[a]	Note [i]
Bupirimate	[b]	[c]	[a]	
Buprofezin	[b]	[c]	[a]	
Captan	[b]	[c]	[a]	The specific residue definition of sum of captan and folpet shall apply for Pome fruit, strawberries, raspberries, currants, tomatoes, and beans, for the rest of commodities the residue definition includes captan only. Captan and folpet are to be reported individually and the sum as agreed in SSD.
Carbaryl	[b]	[c]	[a]	
Carbendazim	[b]	[c]	[a]	
Carbofuran	[b]	[c]	[a]	
Carbosulfan	[b]	[c]	[a]	Fast and considerable degradation to carbofuran and 3-hydroxycarbofuran. Parent compound (carbosulfan) to be analysed on a voluntary basis.
Chlorantraniliprole	[b]	[c]	[a]	Note [g]
Chlorfenapyr	[b]	[c]	[a]	
Chlorfenvinphos	[b]	[c]	[a]	Note [i]
Chlormequat	[b]	[c]	[a]	Shall be analysed in 2012 on aubergines, table grapes and wheat; in 2013 on rye/oats, tomatoes and wine grapes and in 2014 on carrots, pears, rice and wheat flour. In the rest of the commodities it is to be analyzed on voluntary basis.
Chlorothalonil	[b]	[c]	[a]	
Chlorpropham	[b]	[c]	[a]	Note [h] Residue definition: chlorpropham and 3-Chloroaniline expressed as chlorpropham. For potatoes (listed for 2014) the residue definition is parent only.
Chlorpyriphos	[b]	[c]	[a]	
Chlorpyriphos-methyl	[b]	[c]	[a]	
Clofentezine	[b]	[c]	[a]	Not to be analysed on cereals.
Clothianidin	[b]	[c]	[a]	
Cyfluthrin	[b]	[c]	[a]	
Cymoxanil	[b]	[c]	[a]	Note [g]
Cypermethrin	[b]	[c]	[a]	
Cyproconazole	[b]	[c]	[a]	
Cyprodinil	[b]	[c]	[a]	

	2012	2013	2014	Remarks
Cyromazine	([b])	([c])	([a])	Note ([g])
Deltamethrin (cis-deltamethrin)	([b])	([c])	([a])	
Diazinon	([b])	([c])	([a])	
Dichlofluanid	([b])	([c])	([a])	Note ([i]) ([h]) The residue definition to apply includes the parent compound only. The metabolite DMSA (N,N-Dimethyl-N-phenylsulfamide) is to be monitored and reported as far as the method is validated.
Dichlorvos	([b])	([c])	([a])	
Dicloran	([b])	([c])	([a])	
Dicofol	([b])	([c])	([a])	Not to be analysed on cereals.
Dicrotophos	([b])	([c])	([a])	The residue definition to apply includes the parent compound only. It shall be analysed in 2012 on aubergines and cauliflower and in 2014 on beans. In the rest of the commodities it is to be analyzed on voluntary basis.
Diethofencarb	([b])	([c])	([a])	Note ([g])
Difenoconazole	([b])	([c])	([a])	
Diflubenzuron	([b])	([c])	([a])	Note ([g])
Dimethoate	([b])	([c])	([a])	Residue definition: sum of Dimethoate and Omethoate expressed as dimethoate. Dimethoate and Omethoate are to be reported individually and the sum as agreed in SSD.
Dimethomorph	([b])	([c])	([a])	Not to be analysed on cereals
Diniconazole	([b])	([c])	([a])	Note ([g])
Diphenylamine	([b])	([c])	([a])	
Dithianon	([b])	([c])	([a])	Note ([g])
Dithiocarbamates	([b])	([c])	([a])	Residue definition: dithiocarbamates expressed as CS2, including maneb, mancozeb, metiram, propineb, thiram and ziram. It shall be analyzed in all listed commodities except of orange juice and olive oil.
Dodine	([b])	([c])	([a])	Note ([g])
Endosulfan	([b])	([c])	([a])	
EPN	([b])	([c])	([a])	
Epoxiconazole	([b])	([c])	([a])	
Ethephon	([b])	([c])	([a])	It shall be analysed in 2012 on orange juice, sweet peppers, wheat and table grapes; in 2013 on apples, rye/oats, tomatoes and wine grapes and in 2014 on oranges/mandarins, rice and wheat flour. In the rest of the commodities it is to be analyzed on voluntary basis.

	2012	2013	2014	Remarks
Ethion	([b])	([c])	([a])	
Ethirimol	([b])	([c])	([a])	Note ([g]) Not to be analysed on cereals.
Ethofenprox	([b])	([c])	([a])	
Ethoprophos	([b])	([c])	([a])	
Famoxadone	([b])	([c])	([a])	Note ([g])
Fenamiphos	([b])	([c])	([a])	
Fenamidone	([b])	([c])	([a])	
Fenarimol	([b])	([c])	([a])	Not to be analysed on cereals.
Fenazaquin	([b])	([c])	([a])	Not to be analysed on cereals.
Fenbuconazole	([b])	([c])	([a])	
Fenbutatin oxide	([b])	([c])	([a])	Note ([h]) It shall be analysed in 2012 on aubergines, sweet pepper and table grapes; in 2013 on apples and tomatoes and in 2014 on oranges/mandarins and pears. In the rest of the commodities it is to be analyzed on voluntary basis.
Fenhexamid	([b])	([c])	([a])	
Fenitrothion	([b])	([c])	([a])	
Fenoxycarb	([b])	([c])	([a])	
Fenpropathrin	([b])	([c])	([a])	
Fenpropimorph	([b])	([c])	([a])	
Fenpyroximate	([b])	([c])	([a])	Note ([g])
Fenthion	([b])	([c])	([a])	Note ([i])
Fenvalerate/Esfen-valerate (sum)	([b])	([c])	([a])	
Fipronil	([b])	([c])	([a])	Note ([h]) Residue definition: sum Fipronil + sulfone metabolite (MB46136) expressed as Fipronil.
Fluazifop	([b])	([c])	([a])	Note ([h]) Residue definition: Fluazifop-P-butyl (fluazifop acid (free and conjugate)). Fluazifop free acid and the butyl ester shall be analysed in 2012 on cauliflower, peas and sweet peppers; in 2013 on head cabbage and strawberries and in 2014 on beans, carrots and potatoes and spinach. In the rest of the commodities it is to be analyzed on voluntary basis.
Fludioxonil	([b])	([c])	([a])	
Flufenoxuron	([b])	([c])	([a])	

	2012	2013	2014	Remarks
Fluopyram		(c)	(a)	Note (g)
Fluquinconazole	(b)	(c)	(a)	Note (i)
Flusilazole	(b)	(c)	(a)	
Flutriafol	(b)	(c)	(a)	
Folpet	(b)	(c)	(a)	The specific residue definition of sum of captan and folpet shall apply to Pome fruit, strawberries, raspberries, currants tomatoes, and beans, for the rest of commodities the residue definition includes folpet only. Folpet and captan are to be reported individually and the sum as agreed in SSD
Formetanate	(b)	(c)	(a)	Note (i) Residue definition: sum of Formetanate and its salts expressed as Formetanate hydrochloride.
Formothion	(b)	(c)	(a)	Note (g)
Fosthiazate	(b)	(c)	(a)	Note (i)
Glyphosate	(b)	(c)	(a)	It shall be analysed in 2012 on wheat; in 2013 on rye/oats and in 2014 on wheat flour. In the rest of the commodities it is to be analyzed on voluntary basis.
Haloxyfop including haloxyfop-R	(b)	(c)	(a)	Note (h) Residue definition: haloxyfop-R methyl ester, haloxyfop-R and conjugates of haloxyfop-R expressed as haloxyfop-R. Haloxyfop free acid shall be analysed in 2012 on cauliflower and peas; in 2013 on head cabbage and strawberries and in 2014 on beans (with pod), carrots and potatoes and spinach. In the rest of the commodities it is to be analyzed on voluntary basis.
Hexaconazole	(b)	(c)	(a)	
Hexythiazox	(b)	(c)	(a)	Not to be analysed on cereals.
Imazalil	(b)	(c)	(a)	
Imidacloprid	(b)	(c)	(a)	
Indoxacarb	(b)	(c)	(a)	
Iprodione	(b)	(c)	(a)	
Iprovalicarb	(b)	(c)	(a)	
Isocarbophos	(b)	(c)	(a)	Note (g). Residue Definition to apply includes the parent compound only.
Isofenphos-Methyl	(b)	(c)	(a)	Note (g)
Isoprocarb	(b)	(c)	(a)	Note (g)
Kresoxim-methyl	(b)	(c)	(a)	
Lambda-cyhalothrin	(b)	(c)	(a)	

	2012	2013	2014	Remarks
Linuron	([b])	([c])	([a])	Note ([i])
Lufenuron	([b])	([c])	([a])	
Malathion	([b])	([c])	([a])	
Mandipropamid	([b])	([c])	([a])	Note ([g])
Mepanipyrim	([b])	([c])	([a])	Note ([h]) Residue definition: Mepanipyrim and its metabolite 2-anilino-4-(2-hydroxypropyl)-6-methylpyrimidine expressed as mepanipyrim.
Mepiquat	([b])	([c])	([a])	It shall be analysed in 2012 on wheat; in 2013 on rye/oats and tomatoes and in 2014 on pears, rice and wheat flour. In the rest of the commodities it is to be analyzed on voluntary basis.
Meptyldinocap	([b])	([c])	([a])	Note ([g]) Residue definition: sum of 2,4-DNOPC and 2,4-DNOP expressed as meptyldinocap.
Metalaxyl	([b])	([c])	([a])	
Metconazole	([b])	([c])	([a])	
Methamidophos	([b])	([c])	([a])	
Methidathion	([b])	([c])	([a])	
Methiocarb	([b])	([c])	([a])	
Methomyl	([b])	([c])	([a])	Methomyl and Thiodicarb are to be reported individually and the sum as agreed in SSD.
Methoxychlor	([b])	([c])	([a])	Note ([i])
Methoxyfenozide	([b])	([c])	([a])	
Metobromuron	([b])	([c])	([a])	Note ([g]) The residue definition to apply includes the parent compound only.
Monocrotophos	([b])	([c])	([a])	
Myclobutanil	([b])	([c])	([a])	
Nitenpyram	([b])	([c])	([a])	It shall be analysed in 2012 on sweet peppers; in 2013 on peaches and in 2014 on cucumbers and beans (with pod). In the rest of the commodities it is to be analyzed on voluntary basis. The residue definition to apply includes the parent compound only.
Oxadixyl	([b])	([c])	([a])	
Oxamyl	([b])	([c])	([a])	
Oxydemeton-methyl	([b])	([c])	([a])	
Paclobutrazole	([b])	([c])	([a])	
Parathion	([b])	([c])	([a])	

	2012	2013	2014	Remarks
Parathion-Methyl	([b])	([c])	([a])	Note ([i])
Penconazole	([b])	([c])	([a])	
Pencycuron	([b])	([c])	([a])	
Pendimethalin	([b])	([c])	([a])	
Phenthoate	([b])	([c])	([a])	
Phosalone	([b])	([c])	([a])	
Phosmet	([b])	([c])	([a])	
Phoxim	([b])	([c])	([a])	Note ([i])
Pirimicarb	([b])	([c])	([a])	
Pirimiphos-methyl	([b])	([c])	([a])	
Prochloraz	([b])	([c])	([a])	Residue definition: sum of Prochloraz + its metabolites cont. the 2,4,6-Trichlorophenol moiety expressed as Prochloraz.
Procymidone	([b])	([c])	([a])	
Profenofos	([b])	([c])	([a])	
Propamocarb	([b])	([c])	([a])	It shall be analysed in 2012 on aubergines, cauliflower and sweet peppers; in 2013 on apples, head cabbage, lettuce, table grapes and tomatoes; and in 2014 on beans, carrots, cucumbers, oranges/clementines, potatoes and strawberries. In the rest of the commodities it is to be analyzed on voluntary basis.
Propargite	([b])	([c])	([a])	
Propiconazole	([b])	([c])	([a])	
Propoxur	([b])	([c])	([a])	Note ([g])
Propyzamide	([b])	([c])	([a])	
Prothioconazole	([b])	([c])	([a])	Note ([i]) Residue definition: prothioconazole-desthio.
Prothiofos	([b])	([c])	([a])	Note ([g]) The residue definition to apply includes the parent compound only.
Pymetrozine	([b])	([c])	([a])	Note ([g]) In 2012 to be analyzed on voluntary basis (with emphasis on aubergines and sweet peppers). In 2013 it shall be analysed on head cabbage, lettuce, strawberries and tomatoes and in 2014 on cucumbers. In the rest of the commodities it is to be analyzed on voluntary basis.
Pyraclostrobin	([b])	([c])	([a])	
Pyrethrins	([b])	([c])	([a])	Note ([h])
Pyridaben	([b])	([c])	([a])	

	2012	2013	2014	Remarks
Pyrimethanil	([b])	([c])	([a])	
Pyriproxyfen	([b])	([c])	([a])	
Quinoxyfen	([b])	([c])	([a])	
Rotenone	([b])	([c])	([a])	Note ([g])
Spinosad	([b])	([c])	([a])	
Spirodiclofen	([b])	([c])	([a])	Note ([g])
Spiromesifen	([b])	([c])	([a])	Note ([g])
Spiroxamine	([b])	([c])	([a])	
Tau-Fluvalinate	([b])	([c])	([a])	
Tebuconazole	([b])	([c])	([a])	
Tebufenozide	([b])	([c])	([a])	
Tebufenpyrad	([b])	([c])	([a])	Not to be analysed on cereals.
Teflubenzuron	([b])	([c])	([a])	
Tefluthrin	([b])	([c])	([a])	
Terbuthylazine	([b])	([c])	([a])	Note ([g])
Tetraconazole	([b])	([c])	([a])	
Tetradifon	([b])	([c])	([a])	Not to be analysed on cereals.
Tetramethrin	([b])	([c])	([a])	Note ([g]) The residue definition to apply includes the parent compound only.
Thiabendazole	([b])	([c])	([a])	
Thiacloprid	([b])	([c])	([a])	
Thiamethoxam	([b])	([c])	([a])	Residue definition: sum of thiamethoxam and clothianidin expressed as thiamethoxam. Thiamethoxam and clothianidin are to be reported individually and the sum as agreed in SSD.
Thiophanate-methyl	([b])	([c])	([a])	
Tolclofos-methyl	([b])	([c])	([a])	
Tolylfluanid	([b])	([c])	([a])	Not to be analysed on cereals.
Triadimefon and triadimenol	([b])	([c])	([a])	Residue definition: sum of triadimefon and triadimenol. Both are to be reported individually and the sum as agreed in SSD.
Triazophos	([b])	([c])	([a])	

	2012	2013	2014	Remarks
Trichlorfon	([b])	([c])	([a])	Note ([g])
Trifloxystrobin	([b])	([c])	([a])	
Triflumuron	([b])	([c])	([a])	
Trifluralin	([b])	([c])	([a])	
Triticonazole	([b])	([c])	([a])	
Vinclozolin	([b])	([c])	([a])	Note ([h]) Not to be analysed on cereals. Residue definition: sum of Vinclozolin and all metabolites cont. the 3,5-dichloraniline moiety, expressed as Vinclozolin.
Zoxamide	([b])	([c])	([a])	

Part B: Pesticide/product combinations to be monitored in/on commodities of animal origin				
	2012	2013	2014	Remarks
Aldrin and Dieldrin	([d])	([e])	([f])	Residue definition: Aldrin and dieldrin combined expressed as dieldrin.
Azinphos-ethyl	([d])	([e])	([f])	
Bifenthrin	([d])	([e])	([f])	
Bixafen	([d])	([e])	([f])	Note ([g]) To be analyzed on voluntary basis in egg (2012), milk and swine meat (2013).
Boscalid	([d])	([e])	([f])	Note ([g]) Residue definition: Sum of boscalid and M 510F01 including its conjugates expressed as boscalid. Boscalid parent to be analyzed on voluntary basis in butter (2012), milk (2013).
Carbendazim and thiophanate-methyl, expressed as carbendazim		([e])	([f])	Residue definition: Carbendazim and thiophanate-methyl, expressed as carbendazim. Carbendazim to be analyzed on voluntary basis from 2013 onwards.
Chlordane	([d])	([e])	([f])	Residue definition: sum of cis- and trans-isomers and oxychlordane expressed as chlordane.
Chlormequat		([e])	([f])	To be analyzed from 2013 onwardson voluntary basis in cows milk.
Chlorobenzilate	([d])	([e])	([f])	Note ([g])
Chlorpropham	([d])	([e])	([f])	Note ([g]) Residue definition: Chlorpropham and 4′-hydroxychlorpropham-O-sulphonic acid (4-HSA), expressed as chlorpropham. To be analyzed on voluntary basis in butter (2012), milk in 2013.
Chlorpyriphos	([d])	([e])	([f])	
Chlorpyriphos-methyl	([d])	([e])	([f])	

	2012	2013	2014	Remarks
Clopyralid			(f)	Not relevant for commodities 2012/2013.
Cyfluthrin	(d)	(e)	(f)	Residue definition: Cyfluthrin incl. other mixtures of constituent isomers (sum of isomers) (F).
Cypermethrin	(d)	(e)	(f)	Residue definition: cypermethrin incl. other mixtures of constituent isomers (sum of isomers)
Cyproconazole			(f)	Not relevant for commodities 2012/2013. To be analyzed on voluntary basis in 2014.
DDT	(d)	(e)	(f)	Residue definition: sum of p,p′-DDT, o,p′-DDT, p-p′-DDE and p,p′-DDD (TDE) expressed as DDT (F).
Deltamethrin	(d)	(e)	(f)	Residue definition: cis-deltamethrin.
Diazinon	(d)	(e)	(f)	
Dicamba			(f)	Not relevant for commodities 2012/2013. To be analyzed on voluntary basis in 2014.
Dichlorprop (incl. Dichlorprop-P)			(f)	Not relevant for commodities 2012/2013. To be analyzed on voluntary basis in 2014.
Endosulfan	(d)	(e)	(f)	Residue definition: sum of alpha- and beta-isomers and Endosulfan-sulphate expressed as Endosulfan
Endrin	(d)	(e)	(f)	
Epoxiconazole			(f)	Not relevant for commodities 2012/2013. To be analyzed on voluntary basis in 2014.
Ethofenprox	(d)	(e)	(f)	Note (g) To be analyzed on voluntary basis in butter (2012) and milk (2013).
Famoxadone	(d)	(e)	(f)	Note (g) To be analyzed on voluntary basis in butter (2012) and milk (2013).
Fenpropidin			(f)	Not relevant for commodities 2012/2013. Residue definition: sum of fenpropidin and CGA289267 expressed as fenpropidin. To be analyzed on voluntary basis in 2014.
Fenpropimorph		(e)	(f)	Residue definition: fenpropimorph carboxylic acid (BF 421-2) expressed as fenpropimorph. To be analyzed on voluntary basis in swine meat in 2013.
Fenthion	(d)	(e)	(f)	Residue definition: sum of fenthion and its oxygen analogue, their sulfoxides and sulfone expressed as parent (F).
Fenvalerate/Esfenvalerate	(d)	(e)	(f)	
Fluazifop		(e)	(f)	Residue definition: fluazifop-P-butyl (fluazifop acid (free and conjugate)). To be analyzed on voluntary basis in milk in 2013.

	2012	2013	2014	Remarks
Fluquinconazole	(d)	(e)	(f)	Note (g) To be analyzed in butter on voluntary basis in 2012.
fluopyram		(e)	(f)	Note (g)
Fluroxypyr			(f)	
Flusilazole		(e)	(f)	Not relevant for commodities 2012. Residue definition: sum of flusilazole and its metabolite IN-F7321 ([bis-(4-fluorophenyl) methyl]silanol) expressed as flusilazole (F). To be analyzed on voluntary basis in swine meat in 2013.
Glufosinate-ammonium			(f)	Not relevant for commodities 2012/2013. Residue definition: sum of glufosinate, its salts, MPP and NAG expressed as glufosinate equivalents. To be analyzed on voluntary basis in 2014
Glyphosate			(f)	Not relevant for commodities 2012/2013. To be analyzed on voluntary basis in 2014.
Haloxyfop	(d)	(e)	(f)	Note (g) Residue definition: haloxyfop-R and conjugates of haloxyfop-R expressed as haloxyfop-R (F). To be analyzed on voluntary basis in butter (2012) and milk (2013).
Heptachlor	(d)	(e)	(f)	Residue definition: sum of heptachlor and heptachlor epoxide expressed as heptachlor.
Hexachlorobenzene	(d)	(e)	(f)	
Hexachlorcyclohexan (HCH), Alpha-Isomer	(d)	(e)	(f)	
Hexachlorcyclohexan (HCH), Beta-Isomer	(d)	(e)	(f)	
Hexachlorocyclohexane (HCH) (Gamma-isomer) (Lindane) (F)	(d)	(e)	(f)	
Indoxacarb	(d)	(e)	(f)	Note (g) Residue definition: indoxacarb as sum of the isomers S and R. To be analyzed on voluntary basis in butter (2012) and milk (2013).
Ioxynil		(e)	(f)	Residue definition: sum of Ioxynil, its salts and its esters, expressed as ioxynil (F). To be analyzed on voluntary basis in swine meat in 2013.
Maleic hydrazide	(d)	(e)	(f)	Note (g) For milk and milk products the residue definition is: maleic hydrazide and its conjugates expressed as maleic hydrazide. To be analyzed in 2013 on voluntary basis in cows milk. To be analyzed on voluntary basis in eggs in 2012.

	2012	2013	2014	Remarks
Mepiquat			(f)	Not relevant for commodities 2012/2013. To be analyzed in 2014 on voluntary basis.
Metaflumizone	(d)	(e)	(f)	Note (g) Residue definition: sum of E- and Z- isomers. To be analyzed in eggs on voluntary basis in 2012.
Metazachlor			(f)	Not relevant for commodities 2012/2013. Residue definition: metazachlor including degradation and reaction products, which can be determined as 2,6-dimethylaniline, calculated in total as metazachlor.
Methidathion	(d)	(e)	(f)	
Methoxychlor	(d)	(e)	(f)	
Parathion	(d)	(e)	(f)	
Parathion-Methyl	(d)	(e)	(f)	Residue definition: sum of Parathion-Methyl and Paraoxon-Methyl expressed as Parathion-Methyl.
Permethrin	(d)	(e)	(f)	Residue definition: sum of cis- and trans-permethrin.
Pirimiphos-methyl	(d)	(e)	(f)	
Prochloraz		(e)	(f)	Residue definition: sum of Prochloraz + its metabolites cont. the 2,4,6-Trichlorophenol moiety expressed as Prochloraz. To be analyzed on voluntary basis in swine meat in 2013.
Profenofos	(d)	(e)	(f)	
Prothioconazole			(f)	Not relevant for commodities 2012/2013. Residue definition: Prothioconazole-desthio.
Pyrazophos	(d)	(e)	(f)	
Pyridate			(f)	Not relevant for commodities 2012/2013. Residue definition: sum of pyridate, its hydrolysis product CL 9673 (6-chloro-4-hydroxy-3-phenylpyridazin) and hydrolysable conjugates of CL 9673 expressed as pyridate.
Resmethrin	(d)	(e)	(f)	Residue definition: sum of isomers (F)
Spinosad			(f)	Not relevant for commodities 2012/2013. Residue definition: sum of Spinosyn A and Spinosyn D, expressed as Spinosad (F).
Spiroxamine		(e)	(f)	Residue definition: spiroxamine carboxylic acid expressed as spiroxamine. To be analyzed on voluntary basis in milk in 2013.
Tau-Fluvalinate	(d)	(e)	(f)	To be analyzed on voluntary basis in butter (2012) and milk (2013)
Tebuconazole			(f)	Not relevant for commodities 2012/2013. To be analyzed on voluntary basis in 2014.

	2012	2013	2014	Remarks
Tetraconazole	([d])	([e])	([f])	To be analyzed on voluntary basis in butter (2012) and milk (2013).
Thiacloprid			([f])	Not relevant for commodities 2012/2013. To be analyzed on voluntary basis in 2014.
Topramezone			([f])	Note ([g]) Not relevant for commodities 2012/2013. Residue definition: BAS 670H.
Triazophos	([d])	([e])	([f])	

([a]) Beans with pod (fresh or frozen), carrots, cucumbers, oranges or mandarins, pears, potatoes, rice, spinach (fresh or frozen)) and wheat flour.
([b]) Aubergines, bananas, cauliflower or broccoli, table grapes, orange juice, peas without pod (fresh or frozen), peppers (sweet), wheat and virgin olive oil (oil processing factor = 5, taking into account an olive oil production standard yield of 20 % of the olive harvest).
([c]) Apples, head cabbage, leek, lettuce, tomatoes, peaches including nectarines and similar hybrids; rye or oats strawberries and wine grapes (red or white).
([d]) Butter, chicken egg.
([e]) Cows milk, swine meat.
([f]) Poultry meat, liver (bovine and other ruminants, swine and poultry).
([g]) To be analysed on voluntary basis in 2012.
([h]) Substances with difficult residue definition. The official laboratories shall analyse them for the full residue definition in accordance with the capability and capacity and report results as agreed on SSD.
([i]) Substances with no high level of findings according to the 2009 official control programme. Shall be analysed by those official laboratories which have the method required already validated. For laboratories which have no validated method, it is not obligatory to validate a method in 2012 and 2013.

ANNEX II

Number of samples referred to in Article 1

(1) The number of samples to be taken and analysed by each Member State is set out in the table in point (5).

(2) In addition to the samples required in accordance with the table in point (5), in 2012 each Member State shall take and analyse ten samples of processed cereal-based baby food.

In addition to the samples required in accordance with that table, in 2013 each Member State shall take and analyse ten samples in total of food for infants and for young children.

In addition to the samples required in accordance with that table, in 2014 each Member State shall take and analyse ten samples in total of infant formulae and follow-on formulae.

(3) One sample per commodity to be taken and analysed in accordance with the table in point (5) shall be, where available, from products originating from organic farming.

(4) Member States using multi-residue methods may use qualitative screening methods on up to 15 % of the samples to be taken and analysed in accordance with the table in point (5). Where a Member State uses qualitative screening methods, it shall analyse the remaining number of samples by multi-residue methods.

Where the results of qualitative screening are positive, Member States shall use a usual target method to quantify the findings.

(5) Number of samples per Member State

Member State	Samples
BE	12 (*) 15 (**)
BG	12 (*) 15 (**)
CZ	12 (*) 15 (**)
DK	12 (*) 15 (**)
DE	93
EE	12 (*) 15 (**)
EL	12 (*) 15 (**)
ES	45
FR	66
IE	12 (*) 15 (**)
IT	65
CY	12 (*) 15 (**)
LV	12 (*) 15 (**)
LT	12 (*) 15 (**)
LU	12 (*) 15 (**)
HU	12 (*) 15 (**)
MT	12 (*) 15 (**)
NL	17
AT	12 (*) 15 (**)
PL	45
PT	12 (*) 15 (**)
RO	17
SI	12 (*) 15 (**)
SK	12 (*) 15 (**)
FI	12 (*) 15 (**)
SE	12 (*) 15 (**)
UK	66

TOTAL MINIMUM NUMBER OF SAMPLES: 642

(*) Minimum number of samples for each single residue method applied.

(**) Minimum number of samples for each multi-residue method applied.

ANNEX III

(1) The Standard Sample Description (SSD) for food and feed is the format of reporting the results of the pesticide residue analyses.

(2) The SSD includes a list of standardised data elements (items describing characteristics of samples or analytical results such as country of origin, product, analytical method, limit of detection, result, etc …), controlled terminologies and validation rules to enhance data quality.

Table 1

List of the data elements of the Standard Sample Description

Element Code	Element Name	Element Label	Data type [1]	Controlled terminology	Description
S.01	labSampCode	Laboratory sample code	xs:string (20)		Alphanumeric code of the analysed sample.
S.03	lang	Language	xs:string (2)	LANG	Language used to fill in the free text fields (ISO-639-1).
S.04	sampCountry	Country of sampling	xs:string (2)	COUNTRY	Country where the sample was collected. (ISO 3166-1-alpha-2).
S.06	origCountry	Country of origin of the product	xs:string (2)	COUNTRY	Country of origin of the product (ISO 3166-1-alpha-2 country code).
S.13	prodCode	Product code	xs:string (20)	MATRIX	Food product analysed described according to the MATRIX catalogue.
S.14	prodText	Product full text description	xs:string (250)		Free text to describe in detail the product sampled. This element becomes mandatory if ‘product code’ is ‘XXXXXXA’ (Not in list).
S.15	prodProdMeth	Method of production	xs:string (5)	PRODMD	Code providing additional information on the type of production for the food under analysis.
S.17	prodTreat	Product treatment	xs:string(5)	PRODTR	Used to describe the treatments or processes of the food product.
S.21	prodCom	Product comment	xs:string (250)		Additional information on the product, particularly home preparation details if available.

Element Code	Element Name	Element Label	Data type [1]	Controlled terminology	Description
S.28	sampY	Year of sampling	xs:decimal (4,0)		Year of sampling.
S.29	sampM	Month of sampling	xs:decimal (2,0)		Month of sampling. If the measure is the result of a sampling over a period of time, this field should contain the month when the first sample was collected.
S.30	sampD	Day of sampling	xs:decimal (2,0)		Day of sampling. If the measure is the result of a sampling over a period of time, this field should contain the day when the first sample was collected.
S.31	progCode	Programme number	xs:string (20)		Sender's unique identification code of the programme or project for which the sample analysed was taken.
S.32	progLegalRef	Programme legal reference	xs:string (100)		Reference to the legislation for the program identified by programme number.
S.33	progSampStrategy	Sampling strategy	xs:string (5)	SAMPSTR	Sampling strategy (ref. EUROSTAT - Typology of sampling strategy, version of July 2009) performed in the programme or project identified by program code.
S.34	progType	Type of sampling program	xs:string (5)	SRCTYP	Indicate the type of programme for which the samples have been collected.
S.35	sampMethod	Sampling method	xs:string (5)	SAMPMD	Code describing the sampling method
S.39	sampPoint	Sampling point	xs:string (10)	SAMPNT	Point in the food chain where the sample was taken. (Doc. ESTAT/F5/ES/155 'Data dictionary of activities of the establishments').
L.01	labCode	Laboratory	xs:string (100)		Laboratory code (National laboratory code if available). This code should be unique and consistent through the transmissions.

Element Code	Element Name	Element Label	Data type ([1])	Controlled terminology	Description
L.02	labAccred	Laboratory accreditation	xs:string (5)	LABACC	The laboratory accreditation to ISO/IEC 17025.
R.01	resultCode	Result code	xs:string (40)		Unique identification number of an analytical result (a row of the data table) in the transmitted file. The result code must be maintained at organisation level and it will be used in further updated/deletion operation from the senders.
R.02	analysisY	Year of analysis	xs:decimal (4,0)		Year when the analysis was completed.
R.06	paramCode	Parameter code	xs:string (20)	PARAM	Parameter/analyte of the analysis described according to the Substance Code of the PARAM catalogue.
R.07	paramText	Parameter text	xs:string (250)		Free text to describe the parameter. This element becomes mandatory if 'Parameter code' is 'RF-XXXX-XXX-XXX' (Not in list).
R.08	paramType	Type of parameter	xs:string (5)	PARTYP	Define if the parameter reported is an individual residue/analyte, a summed residue definition or part of a sum.
R.12	accredProc	Accreditation procedure for the analytical method	xs:string (5)	MDSTAT	Accreditation procedure for the analytical method used.
R.13	resUnit	Result unit	xs:string (5)	UNIT	All results should be reported as mg/kg.
R.14	resLOD	Result LOD	xs:double		Limit of detection reported in the unit specified by the variable 'Result unit'.
R.15	resLOQ	Result LOQ	xs:double		Limit of quantification reported in the unit specified by the variable 'Result unit'.
R.18	resVal	Result value	xs:double		The result of the analytical measure reported in mg/kg if resType = 'VAL'.
R.19	resValRec	Result value recovery	xs:double		Recovery value associated with the concentration measurement expressed as a percentage (%). i.e. report 100 for 100 %.

Element Code	Element Name	Element Label	Data type [1]	Controlled terminology	Description
R.20	resValRecCorr	Result value corrected for recovery	xs:string (1)	YESNO	Define if the result value has been corrected by calculation for recovery.
R.21	resValUncertSD	Result value uncertainty Standard deviation	xs:double		Standard deviation for the uncertainty measure.
R.22	resValUncert	Result value uncertainty	xs:double		Indicate the expanded uncertainty (usually 95 % confidence interval) value associated with the measurement expressed in the unit reported in the field 'Result unit'.
R.23	moistPerc	Percentage of moisture in the original sample	xs:double		Percentage of moisture in the original sample.
R.24	fatPerc	Percentage of fat in the original sample	xs:double		Percentage of fat in the original sample.
R.25	exprRes	Expression of result	xs:string (5)	EXRES	Code to describe how the result has been expressed: Whole weight, fat weight, dry weight, etc …
R.27	resType	Type of result	xs:string (3)	VALTYP	Indicate the type of result, whether it could be quantified/determined or not.
R.28	resLegalLimit	Legal Limit for the result	xs:double		Report the legal limit for the analyte in the product sampled
R.29	resLegalLimitType	Type of legal limit	xs:string(5)	LMTTYP	Type of legal limit applied for the evaluation of the result. ML, MRPL, MRL, action limit etc.
R.30	resEvaluation	Evaluation of the result	xs:string (5)	RESEVAL	Indicate if the result exceeds a legal limit.
R.31	actTakenCode	Action Taken	xs:string (5)	ACTION	Describe any follow-up actions taken as a result of the exceeding a legal limit.
R.32	resComm	Comment of the result	xs:string (250)		Additional comments for this analytical result.

[1] The double data type corresponds to IEEE double-precision 64-bit floating point type, the decimal represents arbitrary precision decimal numbers, the string data type represents character strings in XML. The data type xs: for double data types and other numeric data types which allow decimal separation, the decimal separator should be a '.' while the decimal separator ',' is not allowed.

COMMISSION IMPLEMENTING REGULATION (EU) No 1275/2011

of 7 December 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 8 December 2011.

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

Done at Brussels, 7 December 2011.

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

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[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	AL	58,7
	MA	51,1
	MK	68,6
	TN	95,6
	TR	87,5
	ZZ	72,3
0707 00 05	TR	159,0
	ZZ	159,0
0709 90 70	MA	41,1
	TR	152,1
	ZZ	96,6
0805 10 20	AR	29,4
	BR	41,5
	MA	56,6
	TR	48,7
	UY	42,5
	ZA	55,6
	ZZ	45,7
0805 20 10	MA	81,2
	ZZ	81,2
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	HR	32,0
	IL	76,9
	JM	129,1
	TR	78,6
	ZZ	79,2
0805 50 10	TR	54,3
	ZZ	54,3
0808 10 80	CA	120,5
	CL	90,0
	CN	71,1
	US	137,2
	ZA	180,1
	ZZ	119,8
0808 20 50	CN	56,5
	TR	133,1
	ZZ	94,8

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

III

(Other acts)

EFTA SURVEILLANCE AUTHORITY DECISION

No 34/10/COL

of 3 February 2010

amending, for the 79th time, the procedural and substantive rules in the field of State aid by introducing a new Chapter on the application of State aid rules in relation to rapid deployment of broadband networks

THE EFTA SURVEILLANCE AUTHORITY [1],

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

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice [3] ,in particular to Article 24 and Article 5(2)(b) thereof,

Whereas:

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

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

The Procedural and Substantive Rules in the Field of State Aid were adopted on 19 January 1994 by the Authority [4].

On 30 September 2009, the European Commission (hereinafter referred to as the Commission) published a Communication from the Commission — Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks [5].

The Commission's Communication is also of relevance for the European Economic Area.

Uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area.

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

The Authority consulted the Commission, and the EFTA States by letters on the subject dated 22 January 2010 (Events No 543740, 543741 and 543742),

HAS ADOPTED THIS DECISION:

Article 1

The State Aid Guidelines shall be amended by introducing a new Chapter on the application of State aid rules in relation to rapid deployment of broadband networks. The new Chapter is contained in the Annex to this Decision.

(1) Hereinafter referred to as 'the Authority'.
(2) Hereinafter referred to as 'the EEA Agreement'.
(3) Hereinafter referred to as 'the Surveillance and Court Agreement'.
(4) Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19 January 1994, published in the *Official Journal of the European Union* L 231, 3.9.1994, p. 1 and EEA Supplement No 32, 3.9.1994, p. 1, as amended (hereinafter referred to as 'the State Aid Guidelines'). The updated version of the State Aid Guidelines is published on the Authority's website: http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines
(5) OJ C 235, 30.9.2009, p. 7.

Article 2

Only the English version is authentic.

Done at Brussels, 3 February 2010.

For the EFTA Surveillance Authority

Per SANDERUD
President

Kurt JÄGER
College Member

ANNEX

APPLICATION OF STATE AID RULES IN RELATION TO RAPID DEPLOYMENT OF BROADBAND NETWORKS ([1])

1. INTRODUCTION

(1) Broadband connectivity is a key component for the development, adoption and use of information and communication technologies (hereinafter referred to as 'ICT') in the economy and in society. Broadband is of strategic importance because of its ability to accelerate the contribution of these technologies to growth and innovation in all sectors of the economy and to social and territorial cohesion. In line with the Lisbon Strategy and subsequent communications ([2]) of the European Commission (hereinafter referred to as 'the Commission'), the Authority also supports the widespread availability of broadband services for all European citizens.

(2) It should be recalled that in the 'State aid Action Plan — Less and better targeted State aid: a roadmap for State aid reform 2005-2009' ([3]), the Commission noted that State aid measures can, under certain conditions, be effective tools for achieving objectives of common interest. In particular State aid can correct market failures, thereby improving the efficient functioning of markets and enhancing competitiveness. Further, where markets provide efficient outcomes but these are deemed unsatisfactory from a cohesion policy point of view, State aid may be used to obtain a more desirable, equitable market outcome. In particular, a well targeted state intervention in the broadband field can contribute to reducing the 'digital divide' ([4]) that sets apart areas or regions within a country where affordable and competitive broadband services are on offer and areas where such services are not.

(3) At the same time, it must be ensured that State aid does not crowd out market initiative in the broadband sector. If State aid for broadband were to be used in areas where market operators would normally choose to invest or have already invested, this could affect investments already made by broadband operators on market terms and might significantly undermine the incentives of market operators to invest in broadband in the first place. In such cases, State aid to broadband might become counterproductive to the objective pursued. The primary objective of State aid control in the field of broadband is to ensure that State aid measures will result in a higher level of broadband coverage and penetration, or at a faster rate, than would occur without the aid, and to ensure that the positive effects of aid outweigh its negative effects in terms of distortion of competition.

(4) It should be recalled that the regulatory framework for electronic communications also deals with issues related to broadband access ([5]). Thus, wholesale broadband markets are subject to *ex ante* regulation in all EFTA States ([6]). In this regard, a number of initiatives that aim to address the new challenges that next generation access (hereinafter referred to as NGA) ([7]) networks raise from a regulatory point of view, in particular regarding access issues, have been undertaken ([8]).

([1]) This Chapter corresponds to the Communication from the Commission — Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks (OJ C 235, 30.9.2009, p. 7).

([2]) See for instance i2010 — A European Information Society for growth and employment (COM(2005) 229 final), 1 June 2005, eEurope 2005: An information society for all (COM(2002) 263 final), Bridging the broadband gap (COM(2006) 129).

([3]) COM(2005) 107 final.

([4]) During the past decade, information and communications technologies have become accessible and affordable for the general public. The term 'digital divide' is most commonly used to define the gap between those individuals and communities that have access to the information technologies and those that do not. Although there are several reasons for this 'digital divide', the most important is the lack of an adequate broadband infrastructure. Looking at the regional dimension, the degree of urbanisation is an important factor for access to and use of ICT. Internet penetration remains thus much lower in thinly populated areas throughout the European Economic Area.

([5]) See Act referred to at point 5cl of Annex XI to the EEA Agreement (Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33)), Act referred to at point 5ck of Annex XI to the EEA Agreement (Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services, (Authorisation Directive) (OJ L 108, 24.4.2002, p. 21)) and Act referred to at point 5cj of Annex XI to the EEA Agreement (Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ L 108, 24.4.2002, p. 7)), as adapted to EEA Agreement by Protocol 1 thereto.

([6]) See decision of the Norwegian Post and Telecommunications Authority of 3 April 2009 on the designation of undertakings with significant market power and imposing specific obligations in the market for wholesale broadband access (market 5); decision of Post and Telecom Administration no 8/2008 dated 18 April 2008 on the designation of undertakings with significant market power and imposition of obligations in the market for wholesale broadband access in Iceland and decision of the Office for Communications of 16 December 2009 concerning sector specific regulation on the wholesale market for broadband access in Liechtenstein.

([7]) For the purpose of this document NGA networks refers to wired access networks which consist wholly or in part of optical elements and which are capable of delivering broadband access services with enhanced characteristics (such as higher throughput) as compared to those provided over existing copper networks (see also below footnote 58).

([8]) See Commission's draft Recommendation on regulated access to Next Generation Access Networks (NGA), at http://ec.europa.eu/information_society/policy/ecomm/doc/library/public_consult/nga/dr_recomm_nga.pdf and European Regulators Group Statement on the development of NGA Access, ERG (08) 68, at http://www.erg.eu.int/doc/publications/erg_08_68_statement_on_nga_devolopment_081211.pdf

(5) The present Chapter outlines the Authority's policy in applying the State aid rules of the EEA Agreement to measures that support the deployment of traditional broadband networks, based on the existing decision-making practice of the Commission (Section 2) and also address a number of issues relating to the assessment of measures aiming to encourage and support the rapid roll-out of NGA networks (Section 3).

(6) The Authority will apply the guidelines set out in this Chapter in the assessment of State aid to broadband, thereby increasing legal certainty and the transparency of its decision-making practice.

2. THE AUTHORITY'S POLICY ON STATE AID FOR BROADBAND PROJECTS

2.1. **The application of the State aid rules**

(7) In its decision-making practice, the Commission has taken an favourable view towards state measures for broadband deployment for rural and underserved areas, whilst being more critical for aid measures in areas where a broadband infrastructure already exists and competition takes place. Where state intervention to support broadband deployment satisfied the conditions of State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union (hereinafter referred to as TFEU), corresponding to Article 61(1) of the EEA Agreement, its compatibility has been assessed so far by the Commission mainly under Article 107(3) of TFEU, corresponding to Article 61(3) of the EEA Agreement. The Commission's State aid policy towards state measures to support broadband network deployments can be summarised in Sections 2.2 and 2.3 below.

2.2. **Article 61(1) of the EEA Agreement: Presence of aid**

(8) According to Article 61(1) of the EEA Agreement, 'any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement'. It follows that in order for a measure to qualify as State aid, the following cumulative conditions have to be met:

(a) the measure has to be granted out of state resources;

(b) it has to confer an economic advantage to undertakings;

(c) the advantage has to be selective and distort or threaten to distort competition;

(d) the measure has to affect intra-EEA trade.

(9) Public support for broadband projects often involves the presence of State aid within the meaning of Article 61(1) of the EEA Agreement [9].

(10) First, the measures typically involve state resources (for instance, where the state supports broadband projects through subsidies, tax rebates or other types of preferential financing conditions) [10].

(11) Second, as regards support granted for an economic activity, state measures supporting broadband deployment projects usually address the exercise of an economic activity (such as building, operating, and enabling access to broadband infrastructure including backhaul facilities and ground equipment, such as fixed, terrestrial wireless, satellite-based, or a combination thereof). However, in exceptional cases where the network thus financed is not used for commercial purposes (e.g. the network only provides broadband access to non-commercial websites, services and information) [11], such state intervention would not involve the granting of an economic advantage on undertakings, and consequently would not constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

(9) For a list of all Commission's decisions taken under the state aid rules in the broadband field, see http://ec.europa.eu/competition/sectors/telecommunications/broadband_decisions.pdf
(10) See also Section 2.2.1 on the application of the market economy investor principle.
(11) See Commission Decision of 30 May 2007 in Case NN 24/07 — Czech Republic, Prague Municipal Wireless Network.

(12) Third, as regards the granting of an advantage, the aid is usually granted directly to investors ([12]) of the network, which in most cases are chosen by means of an open tender ([13]). While the use of a tender ensures that any aid is limited to the minimum amount necessary for the particular project, the financial support might enable the successful bidder to conduct a commercial activity on conditions which would not otherwise be available on the market. Indirect beneficiaries might include third party operators that obtain wholesale access to the infrastructure thus built, and also business users who get broadband connectivity under terms and conditions that would not apply without state intervention ([14]).

(13) Fourth, as regards the selectivity criterion, state measures supporting the deployment of broadband networks are selective in nature in that they target undertakings which are active only in certain regions or in certain segments of the overall electronic communications services market. Moreover, concerning the distortion of competition, the intervention of the state tends to alter existing market conditions, in that a number of firms would now choose to subscribe to the services provided by the selected suppliers instead of existing, possibly more expensive alternative market-based solutions ([15]). Therefore, the fact that a broadband service becomes available, either at all or at a lower price than otherwise would have been the case, has the effect of distorting competition. Moreover, state support to broadband might reduce profitability and crowd out investment by market players that would otherwise be willing to invest in the targeted area or parts of it.

(14) Finally, in so far as the state intervention is liable to affect service providers from other EEA States, it also has an effect on trade since the markets for electronic communications services (including the wholesale and the retail broadband markets) are open to competition between operators and service providers ([16]).

2.2.1. *Absence of aid: the application of the market economy investor principle*

(15) Where the state supports the roll-out of broadband by way of an equity participation or capital injection into a company that is to carry out the project, it becomes necessary to assess whether this investment involves State aid. It follows from the principle of equal treatment that capital placed by the state, directly or indirectly, at the disposal of an undertaking in circumstances which correspond to normal market conditions cannot be regarded as State aid.

(16) When equity participation or capital injections by a public investor do not present sufficient prospects of profitability, even in the long term, such intervention must be regarded as aid within the meaning of Article 61(1) of the EEA Agreement, and its compatibility with the common market must be assessed solely on the basis of the criteria laid down in that provision ([17]).

(17) The Commission has examined the application of the principle of the market economy private investor in the broadband field in its Amsterdam decision ([18]). As underlined in this decision, the conformity of a public investment with market terms has to be demonstrated thoroughly and comprehensively, either by means of a significant participation of private investors or the existence of a sound business plan showing an adequate return on investment. Where private investors take part in the project, it is a *sine qua non* condition that they would have to assume the commercial risk linked to the investment under the same terms and conditions as the public investor.

([12]) The term 'investors' denotes undertakings or electronic communications network operators that invest in the construction and deployment of broadband infrastructure.
([13]) The Commission has only approved one case of a measure that did not involve an open tender but which involved a tax credit scheme to support the roll-out of broadband in underserved areas of Hungary, see Decision N 398/05 — Hungary, Development of Tax Benefit for Broadband.
([14]) See for instance, Commission Decision N 570/07 — Germany, 'Broadband in rural areas of Baden-Württemberg'; Decision N 157/06 — United Kingdom, 'South Yorkshire Digital Region Broadband Project'; Decision N 262/06 — Italy, 'Broadband for rural Tuscany'; Decision N 201/06 — Greece, 'Broadband access development in underserved territories'; and Decision N 131/05 — United Kingdom, 'Fibre Speed Broadband Project Wales'. Residential users, although also beneficiaries of such measures, are not however subject to the state aid rules since they are neither undertakings nor economic operators within the meaning of Article 61(1) of the EEA Agreement.
([15]) See Commission Decision N 266/08 — Germany, 'Broadband in rural areas of Bayern'.
([16]) See Commission Decision N 237/08 — Germany, 'Broadband support in Niedersachsen'.
([17]) Case C-303/88 *Italy* v *Commission* [1991] ECR I-1433, at paragraphs 20-22.
([18]) Commission Decision of 11 December 2007 in Case C 53/2006 *Citynet Amsterdam — investment by the city of Amsterdam in a fibre-to-the-home (FTTH) network*, OJ L 247, 16.9.2008, p. 27. The case concerned the construction of a 'Fibre-to-the-Home' (FTTH) broadband access network connecting 37 000 households in Amsterdam, which were already served by several competing broadband networks. The Amsterdam municipality had decided to invest in the passive layer of the network together with two private investors and five housing corporations. The passive infrastructure was owned and managed by a separate entity of which the Amsterdam municipality owned one third of its shares, two other private investors (ING Real Estate and Reggefiber) another third, while housing corporations owned the remaining third.

2.2.2. *Absence of aid: Public service compensation and the Altmark criteria*

(18) In some instances, EFTA States may consider that the provision of a broadband network should be regarded as a service of a general economic interest (hereinafter referred to as SGEI) within the meaning of Article 59(2) of the EEA Agreement ([19]).

(19) According to the case-law of the Court of Justice, provided that four main conditions (commonly referred to as the Altmark criteria) are met, state funding for the provision of an SGEI may fall outside the scope of Article 61(1) of the EEA Agreement ([20]). The four conditions are: (a) the beneficiary of a state funding mechanism for an SGEI must be formally entrusted with the provision and discharge of an SGEI, the obligations of which must be clearly defined; (b) the parameters for calculating the compensation must be established beforehand in an objective and transparent manner, to avoid it conferring an economic advantage which may favour the recipient undertaking over competing undertakings; (c) the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the SGEI, taking into account the relevant receipts and a reasonable profit for discharging those obligations; and (d) where the beneficiary is not chosen pursuant to a public procurement procedure, the level of compensation granted must be determined on the basis of an analysis of the costs which a typical undertaking, well run, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit.

(20) In two decisions ([21]) concerning measures taken by regional authorities to award a (subsidised) public service concession ([22]) to private operators for the deployment of basic broadband networks in underserved regions, the Commission came to the conclusion that the notified support schemes were in line with the four criteria laid down in Altmark, and did not therefore fall under Article 107(1) of TFEU ([23]). In particular, in both cases, the successful bidder was chosen on the basis of the lowest amount of aid requested and the amount of compensation granted was established on the basis of pre-determined and transparent criteria. Moreover, the Commission found no evidence or risk of overcompensation.

(21) Conversely, the Commission has ruled that the notion of an SGEI and the subsequent reliance on the Altmark case-law could not be accepted where the provider had neither a clear mandate nor was he under any obligation to provide broadband access to and connect all citizens and businesses in underserved areas but was more oriented towards connecting businesses ([24]).

(22) Moreover, according to the case-law, although EFTA States have wide discretion to define what they regard as services of general economic interest, the definition of such services or tasks by an EFTA State can be questioned by the Authority in the event of a manifest error ([25]). In other words, although the determination of the nature and scope of an SGEI mission falls within the competence and discretionary powers of EFTA States, such competence is neither unlimited nor can it be exercised arbitrarily ([26]). In particular, for an activity to be considered as an SGEI, it

([19]) According to the case-law, undertakings entrusted with the operation of services of general economic interest must have been assigned that task by an act of a public authority. In this respect, a service of general economic interest may be entrusted to an operator through the grant of a public service concession; see Joined Cases T-204/97 and T-270/97 *EPAC* v *Commission* [2000] ECR II-2267, paragraph 126 and Case T-17/02 *Fred Olsen* v *Commission* [2005] ECR II-2031, paragraphs 186, 188-189.

([20]) See C-280/00, *Altmark Trans GmbH and Regierungspräsidium Magdeburg* v *Nahverkehrsgesellschaft Altmark GmbH* [2003] ECR I-7747. Hereinafter referred to as 'the Altmark judgment'.

([21]) See Commission Decision N 381/04 — France, *Projet de réseau de télécommunications haut débit des Pyrénées-Atlantiques*, and Commission Decision N 382/04 — France, *Mise en place d'une infrastructure haut débit sur le territoire de la région Limousin (DORSAL)*.

([22]) Although reference is made in this Chapter to a public service 'concession', the form of the contractual instrument chosen for the award of a public service mission or SGEI may vary from one EFTA State to another. However, the instrument should specify at least the precise nature, scope and duration of the public service obligations imposed and the identity of undertakings concerned, and the costs to be borne by the undertaking concerned.

([23]) In particular, given that Member States enjoy a wide discretion in defining the scope of an SGEI, the Commission recognised in the above two decisions that to the extent that the provision of a ubiquitous broadband infrastructure would be open to all other network providers and would remedy a market failure and would provide connectivity to all users in the regions concerned, the Member State concerned had not committed a manifest error in considering that the provision of such a service fell within the notion of an SGEI.

([24]) See Commission Decision N 284/05 — Ireland, 'Regional Broadband Programme: Metropolitan Area Networks ("MANs"), phases II and III', at paragraphs 23, 37-40. In that case the Commission considered that the support given for the roll-out and operation of Metropolitan Area Networks (MANs) in a number of towns in Ireland was not a compensation for an SGEI on the ground that notified measure resembled more a private-public-partnership than an entrustment and implementation of an SGEI. See also Decision N 890/06 — France, *Aide du Sicoval pour un réseau de très haut débit*. In that case, the Commission pointed out that the notified measure concerned support for the provision of broadband connectivity only for business parks and public sector organisations in a part of Toulouse, excluding the residential sector. Moreover, the project was covering only a part of the region. Accordingly, the Commission found that this was not an SGEI on the grounds that the notified measure did not aim to serve the citizens' interests, but those of the business sector.

([25]) See Case T-289/03 *BUPA and Others* v *Commission* [2008] ECR II-741, paragraph 165, and Case T-106/95 *FFSA and Others* v *Commission* [1997] ECR II-229, paragraph 99. See also paragraph 14 of the Commission Communication on services of general interest in Europe (OJ C 17, 19.1.2001, p. 4).

([26]) See Case T-442/03 *SIC* v *Commission* [2008] ECR II-1161, paragraph 195; Case T-289/03 *BUPA and Others v Commission*, op.cit., paragraph 166, and Case T-17/02 *Fred Olsen* v *Commission*, op.cit., paragraph 216. According to paragraph 22 of the Commission Communication on services of general interest in Europe, 'Member States' freedom to define [services of general economic interest] means that Member States are primarily responsible for defining what they regard as [such] services (…) on the basis of the specific features of the activities. This definition can only be subject to control for manifest error'.

should exhibit special characteristics as compared with ordinary economic activities ([27]). In this respect, the Authority will consider that in areas where private investors have already invested in a broadband network infrastructure (or are in the process of expanding further their network infrastructure) and are already providing competitive broadband services with an adequate broadband coverage, setting up a parallel competitive and publicly-funded broadband infrastructure should not be considered as an SGEI within the meaning of Article 59(2) of the EEA Agreement ([28]). Where, however, it can be demonstrated that private investors may not be in a position to provide in the near future ([29]) adequate broadband coverage to all citizens or users leaving thus a significant part of the population unconnected, a public service compensation may be granted to an undertaking entrusted with the operation of an SGEI provided that the conditions set out in paragraphs 23 to 27 are met. As a preliminary point, it should be stressed that the considerations set out in those paragraphs are based on the specificities of the broadband sector and reflect the experience gained so far by the Commission in this area. Thus, the conditions set out in those paragraphs although they are not exhaustive, are however indicative of the Authority's approach in assessing on a case-by-case basis whether the activities in question can be defined as an SGEI, and whether the public financing granted in this regard complies with the State aid rules of the EEA Agreement.

(23) With regard to the definition of the scope of an SGEI mission for the purposes of ensuring widespread deployment of a broadband infrastructure, EFTA States are required to describe the reasons why they consider that the service in question, because of its specific nature, deserves to be characterised as an SGEI and to be distinguished from other economic activities ([30]). They should further ensure that the SGEI mission satisfies certain minimum criteria common to every SGEI mission and demonstrate that those criteria are indeed satisfied in the particular case.

(24) These criteria include, at least, (a) the presence of an act of the public authority entrusting the operators in question with an SGEI mission and (b) the universal and compulsory nature of that mission. Thus, in assessing whether the definition of an SGEI for broadband deployment does not give rise to a manifest error of appreciation, EFTA States should ensure that the broadband infrastructure to be deployed should provide universal connectivity to all users in a given area, residential and business users alike. Moreover, the compulsory nature of the SGEI mission implies that the provider of the network to be deployed will not be able to refuse access to the infrastructure on a discretionary and/or discriminatory basis (because for instance, it may not be commercially profitable to provide access services to a given area).

(25) Given the state of competition that has been achieved since the liberalisation of the electronic communications sector in the EEA, and in particular the competition that exists today on the retail broadband market, a publicly-funded network set up within the context of an SGEI should be available for all interested operators. Accordingly, the recognition of an SGEI mission for broadband deployment should be based on the provision of a passive, neutral ([31]) and open access infrastructure. Such a network should provide access seekers with all possible forms of network access and allow effective competition at the retail level, ensuring the provision of competitive and affordable services to end-users ([32]). Therefore, the SGEI mission should only cover the deployment of a broadband network providing universal connectivity and the provision of the related wholesale access services, without including retail communication services ([33]). Where the provider of the SGEI mission is also a vertically integrated broadband operator, adequate safeguards should be put in place to avoid any conflict of interest, undue discrimination and any other hidden indirect advantages ([34]).

([27]) This implies that the general interest objective pursued by the public authorities cannot simply be that of development of certain economic activities or economic areas as foreseen in Article 61(3)(c). See Commission Decision N 381/04 — France, *Projet de réseau de télécommunications haut débit des Pyrénées-Atlantiques*, paragraph 53, and Commission Decision N 382/04 — France, *Mise en place d'une infrastructure haut débit sur le territoire de la région Limousin (DORSAL)*.

([28]) In this respect, the networks to be taken into consideration for assessing the need for an SGEI should be always of comparable architecture, namely either basic broadband or NGA networks.

([29]) The term in the 'near future' should be understood as referring to a period of 3 years. In this regard, investment efforts planned by private investors should be such as to guarantee that at least significant progress in terms of coverage will be made within the 3-year time period, with completion of the planned investment foreseen within a reasonable time frame thereafter (depending on the specificities of each area and of each project).

([30]) In the absence of such reasons, even a marginal review by the Authority on the basis of both the first Altmark condition and Article 59(2) of the EEA Agreement with respect to the existence of a manifest error by the EFTA State in the context of its discretion would not be possible, Case T-289/03 *BUPA and Others* v *Commission*, op.cit., paragraph 172.

([31]) A network should be technologically neutral and thus enable access seekers to use any of the available technologies to provide services to end users. Although such a requirement may be of limited application in relation to the deployment of an ADSL network infrastructure, this may not be the case in relation to a NGA fibre-based network where operators may use different fibre technologies to provide services to end-users (i.e. point-to-point or G-PON).

([32]) For example, an ADSL network should provide bitstream and full unbundling, whereas a NGA fibre-based network should provide at least access to dark fibre, bitstream, and if a FTTC network is being deployed, access to sub-loop unbundling.

([33]) This limitation is justified by the fact that, once a broadband network providing universal connectivity has been deployed, the market forces are normally sufficient to provide communication services to all users at a competitive price.

([34]) Such safeguards may include, in particular, an obligation of accounting separation, and may also include the setting up of a structurally and legally separate entity from the vertically integrated operator. Such entity should have sole responsibility for complying with and delivering the SGEI mission assigned to it.

(26) Given that the market for electronic communications is fully liberalised, it follows that an SGEI for broadband deployment cannot be based on the award of an exclusive or special right to the provider of the SGEI within the meaning of Article 59(1) of the EEA Agreement.

(27) In complying with its universal coverage mission, a SGEI provider may need to deploy a network infrastructure not only in areas which are unprofitable but also in profitable areas, that is areas in which other operators may have already deployed their own network infrastructure or may plan to do so in the near future. However, given the specificities of the broadband sector, in this case any compensation granted should only cover the costs of rolling out an infrastructure to the non-profitable areas ([35]). Where an SGEI for the deployment of a broadband network is not based on the deployment of a publicly-owned infrastructure adequate review and claw back mechanisms should be put in place in order to avoid that the SGEI provider obtains an undue advantage by retaining ownership of the network that was financed with public funds after the end of the SGEI concession. Finally, the SGEI compensation should in principle be granted through an open, transparent, non-discriminatory tender requiring all candidate operators to define in a transparent manner the profitable and non-profitable areas, estimate the expected revenues and request the corresponding amount of compensation that they consider strictly necessary, avoiding any risk of overcompensation. A tender organised under such conditions should guarantee that the fourth condition set out in Altmark is fulfilled (see paragraph 19).

(28) Where the four criteria set out in Altmark are not met, and if the general criteria for the applicability of Article 61(1) of the EEA Agreement are fulfilled, public service compensation for the deployment of a broadband infrastructure will constitute State aid and will be subject to Articles 49, 59, 61 of the EEA Agreement and Article 1 of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (hereinafter referred to as Protocol 3 to the Surveillance and Court Agreement). In this case, State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (see paragraphs 23-27 above) could be regarded as compatible with the functioning of the EEA Agreement and exempt from the requirement of notification laid down in Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement if the requirements set out in the Act referred to at point 1h of Annex XV to the EEA Agreement (Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest) ([36]), as adapted to EEA Agreement by Protocol 1 thereto, are met ([37]).

2.3. **The compatibility assessment under Article 61(3) of the EEA Agreement**

(29) Where a notified measure in the broadband sector has been found by the Commission to constitute aid within the meaning of Article 107(1) TFEU, the compatibility assessment has so far been based directly on Article 107(3)(c) TFEU ([38]).

(30) The areas covered by a broadband State aid project may also be assisted areas within the meaning of Article 61(3)(a) and (c), and the Chapter on national regional aid for 2007-2013 of the Authority's State Aid Guidelines (hereinafter referred to as the Chapter on national regional aid) ([39]). In this case, aid to broadband may also qualify as aid for initial investment within the meaning of the Chapter on national regional aid. However, in many of the cases examined so far by the Commission there were also other areas targeted by the notified measures which were not 'assisted', and as a result the Commission's assessment could not be carried out under the corresponding Commission's Regional Aid Guidelines ([40]).

(31) Where a measure falls within the scope of the Chapter on national regional aid, and where it is envisaged to grant individual ad hoc aid to a single firm, or aid confined to one area of activity, it is the responsibility of the EFTA

([35]) It is for EFTA States to devise given the particularities of each case the most appropriate methodology to ensure that the compensation granted will only cover the costs of serving the SGEI mission in the non-profitable areas. For instance, the compensation granted could be based on a comparison between revenues accruing from the commercial exploitation of the infrastructure in the profitable areas and the revenues accruing from the commercial exploitation in the non-profitable areas. Any excess profits, that is profits beyond the average industry return on capital for deploying a given broadband infrastructure, could be assigned to the financing of the SGEI in the non-profitable areas with the remainder being the subject of the financial compensation granted.

([36]) OJ L 312, 29.11.2005, p. 67.

([37]) See also Chapter on state aid in the form of public service compensation of the Authority's State Aid Guidelines, OJ L 109, 26.4.2007, p. 44 and EEA Supplement No 20, 26.4.2007, p. 1, also available on the Authority's website http://www.eftasurv.int/fieldsofwork/fieldstateaid/state_aid_guidelines/partvi-stateaidintheformofpublicservicecompensation.pdf

([38]) It should be recalled that according to Article 107(3)(a) TFEU, corresponding to Article 61(3)(a) of the EEA Agreement 'aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment' may also be considered to be compatible with the functioning of the EEA Agreement.

([39]) OJ L 54, 28.2.2008, p. 1 and EEA Supplement No 11, 28.2.2008, p. 1.

([40]) 'Guidelines on national regional aid for 2007-2013' (OJ C 54, 4.3.2006, p. 13). Moreover, although the aid granted was in some cases confined to 'assisted areas' and it could also have been qualified as aid for initial investment within the meaning of the abovementioned Guidelines, often the aid intensity could exceed the ceiling allowed for regional aid in such areas.

State to demonstrate that the conditions of the Chapter on national regional aid are fulfilled. This includes in particular that the project in question contributes towards a coherent regional development strategy and that, having regard to the nature and size of the project, it will not result in unacceptable distortions of competition.

2.3.1. *The balancing test and its application to aid for broadband network deployment*

(32) In assessing whether an aid measure can be deemed compatible with the functioning of the EEA Agreement, the Authority balances the positive impact of the aid measure in reaching an objective of common interest against its potential negative side effects, such as distortions of trade and competition.

(33) In applying this balancing test, the Authority will assess the following questions:

(a) Is the aid measure aimed at a well-defined objective of common interest, i.e. does the proposed aid address a market failure or other objective? ([41])

(b) Is the aid well designed to deliver the objective of common interest? In particular:

(i) Is State aid an appropriate policy instrument, i.e. are there other, better-placed instruments?

(ii) Is there an incentive effect, i.e. does the aid change the behaviour of undertakings?

(iii) Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?

(c) Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

(34) The individual steps of the balancing test in the field of broadband are set out in further detail in Sections 2.3.2 and 2.3.3.

2.3.2. *Objective of the measure*

(35) As indicated in the introduction, widespread and affordable access to broadband is of great importance because of its ability to accelerate the contribution of these technologies to growth and innovation in all sectors of the economy and to social and territorial cohesion.

(36) The economics of broadband provision are such that the market will not always find it profitable to invest in it. Due to economics of density, broadband networks are generally more profitable to roll-out where potential demand is higher and concentrated, i.e. in densely populated areas. Because of high fixed costs of investment, unit costs increase strongly as population densities drop. As a result, broadband networks tend to profitably cover only part of the population. Likewise, in certain areas, it may only be profitable for a single provider to set up a network, not for two or more.

(37) Where the market does not provide sufficient broadband coverage or the access conditions are not adequate, State aid may play a useful role. Specifically, State aid in the broadband sector may remedy a market failure, i.e. situations where individual market investors do not invest, even though this would be efficient from a wider economic perspective, e.g. due to the positive spill-over effects. Alternatively, State aid for broadband may also be viewed as a tool to achieve equity objectives, i.e. as a way to improve access to an essential means of communication and participation in society as well as freedom of expression to all actors in society, thereby improving social and territorial cohesion.

(38) From the outset it is useful to introduce a fundamental distinction between the types of areas that may be targeted, depending on the level of broadband connectivity that is already available. The Commission has consistently made a distinction between areas where no broadband infrastructure exists or is unlikely to be developed in the near term (white areas), areas where only one broadband network operator is present (grey areas) and areas where at least two or more broadband network providers are present (black areas) ([42]).

([41]) See for instance, Commission Decision N 508/08 — United Kingdom, ‘Provision of remote Broadband services in Northern Ireland’, Commission Decision N 201/06 — Greece, ‘Broadband access development in underserved areas’, and Commission Decision N 118/06 — Latvia, ‘Development of broadband communications networks in rural areas’.

([42]) See for instance Commission Decision N 201/06 — Greece, ‘Broadband access development in underserved areas’.

2.3.2.1. White areas: promoting territorial cohesion and economic development objectives

(39) The Authority considers support for broadband network deployment in rural and underserved white areas as promoting territorial social and economic cohesion and addressing market failures. Broadband networks tend to profitably cover only part of the population, so that state support is needed to achieve ubiquitous coverage.

(40) The Authority accepts that by providing financial support for the provision of broadband services in areas where broadband is currently not available and where there are no plans by private investors to roll out such an infrastructure in the near future, EFTA States pursue genuine cohesion and economic development objectives and thus, their intervention is likely to be in line with the common interest [43]. The term in the 'near future' should be understood as referring to a period of 3 years. In this regard, investment efforts planned by private investors should be such as to guarantee that at least significant progress in terms of coverage will be made within the 3-year period, with completion of the planned investment foreseen within a reasonable time frame thereafter (depending on the specificities of each project and of each area). Public authorities may require the submission of a business plan, together with a detailed calendar deployment plan as well as proof of adequate financing or any other type of evidence that would demonstrate the credible and plausible character of the planned investment by private network operators.

2.3.2.2. Black areas: no need for state intervention

(41) When in a given geographical zone at least two broadband network providers are present and broadband services are provided under competitive conditions (facilities-based competition), there is no market failure. Accordingly, there is very little scope for state intervention to bring further benefits. On the contrary, state support for the funding of the construction of an additional broadband network will, in principle, lead to an unacceptable distortion of competition, and the crowding out of private investors. Accordingly, in the absence of a clearly demonstrated market failure, the Authority will view negatively measures funding the roll-out of an additional broadband infrastructure in a black zone [44].

2.3.2.3. Grey areas: need for a more detailed assessment

(42) The existence of a network operator in a given area does not necessarily imply that no market failure or cohesion problem exists. Monopoly provision may affect the quality of service or the price at which services are offered to the citizens. On the other hand, in areas where only one broadband network operator is present, by definition, subsidies for the construction of an alternative network can distort market dynamics. Therefore, state support for the deployment of broadband networks in grey areas calls for a more detailed analysis and careful compatibility assessment.

(43) Although a network operator may be present in the zone targeted by the state intervention, certain categories of users may still not be adequately served in the sense that either some broadband services requested by the users were not available to them or, in the absence of regulated wholesale access tariffs, retail prices were not affordable compared to the same services offered in other more competitive areas or regions of the country [45]. If, in addition, there are only limited prospects that third parties would build an alternative infrastructure, the funding of an alternative infrastructure could be an appropriate measure. This would remedy the absence of infrastructure competition and thus reduce the problems arising from the de facto monopoly position of the incumbent operator [46]. However, the granting of aid under these circumstances is subject to a number of conditions that would have to be met by the EFTA State concerned.

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[43] See for instance Commission Decision N 118/06 — Latvia, 'Development of broadband communication networks in rural areas'.

[44] See Commission Decision of 19 July 2006 on the measure No C 35/05 (ex N 59/05) which the Netherlands are planning to implement concerning a broadband infrastructure in Appingedam (OJ L 86, 27.3.2007, p. 1). The case involved the deployment of a passive network (i.e. ducts and fibre) that would be owned by the municipality, while the active layer (i.e. the management and operation of the network) would be tendered to a private-sector wholesale operator that would have to offer wholesale access services to other service providers. In its Decision, the Commission noted that the Dutch broadband market was a fast-moving market in which providers of electronic communications services, including cable operators and Internet Service Providers, were in the process of introducing very high capacity broadband services without any state support. The situation in Appingedam was no different from the rest of the Dutch broadband market. Both the fixed-line incumbent and a cable operator were already offering 'triple play services' in Appingedam (telephony, broadband and digital/analogue TV) and both operators had the technical capabilities to further increase the bandwidth capacity of their networks.

[45] As mentioned in paragraph 4, it should be recalled that broadband access is to date regulated *ex ante* in all EFTA States.

[46] In its Decision N 131/05 — United Kingdom, 'FibreSpeed Broadband Project Wales', the Commission had to assess whether the financial support given by the Welsh authorities for the construction of an open, carrier-neutral, fibre-optic network linking 14 business parks could still be declared compatible even if the target locations were already served by the incumbent network operator, who provided price regulated leased lines. The Commission found that the leased lines offer by the incumbent operator was very expensive, almost unaffordable for SMEs. The targeted business parks could not either get symmetrical ADSL services beyond 2 Mbps because of their distance from the incumbent's telephone exchanges. Moreover, the incumbent was not making available its ducts and dark fibre to third parties. Therefore, the presence of the incumbent in the targeted areas could not guarantee affordable high speed Internet services to SMEs. There was no prospect that third parties would build an alternative infrastructure to provide high speed services to the business parks in question. See also Commission Decision N 890/06 — France, *Aide du Sicoval pour un réseau de très haut débit* and Commission Decision N 284/05 — Ireland, 'Regional Broadband Programme: Metropolitan Area Networks ("MANs"), phases II and III'.

(44) Accordingly, the Authority may declare compatible, under certain conditions, State aid measures that target areas where the provision of a broadband infrastructure is still a de facto monopoly provided that (i) no affordable or adequate services are offered to satisfy the needs of citizens or business users and that (ii) there are no less distortive measures available (including *ex ante* regulation) to reach the same goals. For the purpose of establishing the above, the Authority will assess in particular whether:

(a) the overall market conditions are not adequate, by looking, inter alia, into the level of current broadband prices, the type of services offered to end-users (residential and business users) and the conditions attached thereto;

(b) in the absence of *ex ante* regulation imposed by a national regulatory authority (hereinafter referred to as the NRA), effective network access is not offered to third parties or access conditions are not conducive to effective competition;

(c) overall entry barriers preclude potential entry of other electronic communication operators; and

(d) any measures taken or remedies imposed by the competent national regulatory or competition authority with regard to the existing network provider have not been able to overcome such problems.

2.3.3. *Design of the measure and the need to limit distortions of competition*

(45) When broadband coverage is considered insufficient, state intervention may be necessary. A first question to be asked is whether State aid is an appropriate policy instrument to address the problem or whether there are other, better-placed instruments.

(46) In this respect, the Authority notes that whilst *ex ante* regulation in many cases facilitates broadband deployment in urban and more densely populated areas, it may not be a sufficient instrument to enable the supply of broadband service, especially in underserved areas where the inherent profitability of investment is low ([47]).

(47) Likewise, demand-side measures in favour of broadband (such as vouchers for end users) although they can contribute positively to broadband penetration and should be encouraged as an alternative or a complement to other public measures, they cannot always solve the lack of broadband provision ([48]). Hence, in such situations there may be no alternative to granting public funding to overcome the lack of broadband connectivity.

(48) Regarding the incentive effect of the measure, it needs to be examined whether the broadband network investment concerned would not have been undertaken within the same timeframe without any State aid.

(49) In assessing the proportional character of the notified measures in white or grey areas, the lack of any of the following conditions in (a) to (h) would require an in-depth assessment ([49]) and most likely it would lead to a negative conclusion on the compatibility of the aid with the functioning of the EEA Agreement:

(a) *Detailed mapping and coverage analysis:* EFTA States should clearly identify which geographic areas will be covered by the support measure in question. By conducting in parallel an analysis of the competitive conditions and structure prevailing in the given area and consulting with all stakeholders affected by the relevant measure, EFTA States minimise distortions of competition with existing providers and with those who already have investment plans for the near future and enable these investors to plan their activities ([50]). A detailed mapping exercise and a thorough consultation exercise ensure accordingly not only a high degree of transparency but serve also as an essential tool for defining the existence of white, grey and black zones ([51]).

([47]) See for instance, Commission Decision N 473/07 — Italy, 'Broadband connection for Alto Adige', Commission Decision N 570/07 — Germany, 'Broadband in rural areas of Baden-Württemberg', Commission Decision N 131/05 — United Kingdom, 'FibreSpeed Broadband Project Wales', Commission Decision N 284/05 — Ireland, 'Regional Broadband Programme: Metropolitan Area Networks ("MANs"), phases II and III', Commission Decision N 118/06 — Latvia, 'Development of broadband communication networks in rural areas', and Commission Decision N 157/06 — United Kingdom, 'South Yorkshire Digital Region Broadband Project'.

([48]) See for instance Commission Decision N 222/06 — Italy, 'Aid to bridge the digital divide in Sardinia', Commission Decision N 398/05 — Hungary, 'Development Tax Benefit for Broadband', and Commission Decision N 264/06 — Italy, 'Broadband for rural Tuscany'.

([49]) Normally within the framework of the procedure provided for in Article 1(2) of Part I of Protocol 3 to the Surveillance and Court Agreement.

([50]) In case where it can be demonstrated that existing operators did not provide any meaningful information to a public authority for the purposes of the required mapping exercise, such authorities would have to rely only on whatever information has been made available to them.

([51]) See for instance, Commission Decision No 201/06 — Greece, 'Broadband access development in underserved areas', Commission Decision No 264/06 — Italy, 'Broadband for rural Tuscany', Commission Decision No 475/07 — Ireland, 'National Broadband Scheme ("NBS")', and Commission Decision No 115/08 — Germany, 'Broadband in rural areas of Germany'.

(b) *Open tender process:* The open tender approach ensures that there is transparency for all investors wishing to bid for the realisation of the subsidised project. Equal and non-discriminatory treatment of all bidders is an indispensable condition for an open tender. An open tender is a method to minimise the potential State aid advantage involved and at the same time reduces the selective nature of the measure in so far as the choice of the beneficiary is not known in advance ([52]).

(c) *Most economically advantageous offer:* Within the context of an open tender procedure, in order to reduce the amount of aid to be granted, at similar if not identical quality conditions, the bidder with the lowest amount of aid requested should in principle receive more priority points within the overall assessment of its bid ([53]). In this way the EFTA State can shift the burden of how much aid is really necessary to the market and reduce thus the information asymmetry that most of the times benefits private investors.

(d) *Technological neutrality:* Given that broadband services can be delivered on a host of network infrastructures based on wireline (xDSL, cable), wireless (Wi-Fi, WiMAX), satellite and mobile technologies, EFTA States should not favour any particular technology or network platform unless they can show that there is an objective justification for this ([54]). Bidders should be entitled to propose the provision of the required broadband services using or combining whatever technology they deem most suitable.

(e) *Use of existing infrastructure:* Where possible, EFTA States should encourage bidders to have recourse to any available existing infrastructure so as to avoid unnecessary and wasteful duplication of resources. In order to try and limit the economic impact on existing network operators, the latter should be given the possibility to contribute their infrastructure to a notified project. At the same time, this condition should not end up favouring existing incumbents especially in case where third parties may not have access to this infrastructure or inputs that are necessary to compete with an incumbent. Likewise, in case of grey areas, where it is shown that dependence on the incumbent operator is part of the problem, it may be necessary to allow for more facilities-based competition.

(f) *Wholesale access:* Mandating third parties effective wholesale access to a subsidised broadband infrastructure is a necessary component of any state measure funding the construction of a new broadband infrastructure. In particular, wholesale access enables third party operators to compete with the selected bidder (when the latter is also present at the retail level), thereby strengthening choice and competition in the areas concerned by the measure while at the same time avoiding the creation of regional service monopolies. Effective wholesale access to the subsidised infrastructure should be offered for at least a period of 7 years. This condition is not contingent on any prior market analysis within the meaning of Article 7 of Directive 2002/21/EC (Framework Directive) ([55]). However, if at the end of the 7 years period the operator of the infrastructure in question is designated by the NRA under the applicable regulatory framework as having significant market power (SMP) in the specific market concerned ([56]), the access obligation should be extended accordingly.

(g) *Benchmarking pricing exercise:* In order to ensure effective wholesale access and to minimise potential distortion of competition, it is crucial to avoid excessive wholesale prices or, by contrast, predatory pricing or price squeezes by the selected bidder. Access wholesale prices should be based on the average published (regulated) wholesale prices that prevail in other comparable, more competitive areas of the country or the EEA or, in the absence of such published prices, on prices already set or approved by the NRA for the markets and services concerned. Thus, where *ex ante* regulation is already in place (i.e. in a grey area) wholesale prices for access to a subsidised infrastructure should not be lower than the access price set by the NRA for the same area. Benchmarking is an important safeguard since it enables EFTA States to avoid having to set in advance detailed retail or wholesale access prices, as well as to ensure that the aid granted will serve to replicate market conditions like those prevailing in other competitive broadband markets. The benchmarking criteria should be clearly indicated in the tender documents.

([52]) See for instance, Commission Decision N 508/08 — United Kingdom, 'Provision of Remote Broadband Services in Northern Ireland', Commission Decision N 475/07 — Ireland, 'National Broadband Scheme (NBS)', Commission Decision N 157/06 — United Kingdom, 'South Yorkshire Digital region Broadband Project'.

([53]) For the purposes of determining the most economically advantageous offer, the awarding authority should specify in advance the relative weighting which it will give to each of the (qualitative) criteria chosen.

([54]) Only in one case has the Commission so far accepted the justified use of a specific technological solution: see Commission Decision N 222/06 — Italy, 'Aid to bridge the digital divide in Sardinia'. In that case, the Commission took the view that given the specific circumstances namely 'the topography of the region, the absence of cable networks and the need to maximise the benefits of the aid, the use of ADSL technology appears to be the appropriate technology delivering the objectives of the project', at paragraph 45.

([55]) Moreover, whenever EFTA States opt for a management model whereby the subsidised broadband infrastructure offers only wholesale access services to third parties, not retail services, the likely distortions of competition are further reduced as such a network management model helps to avoid potentially complex issues of predatory pricing and hidden forms of access discrimination.

([56]) In this regard, the NRA should take into consideration the possible persistence of the specific conditions that justified in the first place the granting of an aid to the operator of the infrastructure in question.

(h) *Claw-back mechanism to avoid over-compensation:* To ensure that the selected bidder is not over-compensated if demand for broadband in the target area grows beyond anticipated levels, EFTA States should include a reverse payment mechanism into the contract with the successful bidder ([57]). The provision of such a mechanism can minimise *ex post* and retroactively the amount of aid deemed initially to have been necessary.

3. STATE AID FOR NGA NETWORKS

3.1. **Supporting the rapid deployment of NGA networks**

(50) To date, a number of EEA States are turning their attention towards support for broadband networks that can deliver services at very high speeds and support a multitude of advanced digital converged services. These NGA networks are mainly fibre-based or advanced upgraded cable networks that are intended to replace in whole or to a large extent the existing copper-based broadband networks or current cable networks.

(51) NGA networks are wired access networks which consist wholly or in part of optical elements and which are capable of delivering broadband access services with enhanced characteristics (such as higher throughput) as compared to those provided over existing copper networks ([58]).

(52) In essence, NGA networks will have the speed and capacity to deliver in the future high definition content, support on-demand bandwidth hungry applications as well as bring to business affordable symmetrical broadband connections generally available today only to large businesses. Overall, NGA networks have the potential to facilitate the improvement of all aspects of broadband technology and broadband services.

(53) The Commission has already dealt with some State aid notifications that involved support for the roll-out of fibre-based networks. These cases involved either the construction of a regional 'core' NGA network ([59]) or the provision of fibre connectivity for a limited number of business users only ([60]).

(54) As with the so-called 'first generation' roll-out of basic broadband networks, state, municipal and regional authorities can justify their support for a rapid roll-out of fibre networks on the grounds of a market failure or cohesion objective. If for the roll-out of basic broadband infrastructure, examples of state intervention in the Commission's decision-making practice, have mainly related to rural communities/areas (low density, high capital cost) or areas which are economically underdeveloped (low ability to pay for services), this time the economics of NGA networks model is said to discourage deployment of NGA networks not only in sparsely populated areas, but also in certain urban zones. In particular, the main issue affecting the rapid and wide deployment of NGA networks, appears to be costs and to a lesser extent density of population ([61]).

(55) For public authorities, direct intervention may thus be warranted in order to ensure that areas which are deemed by network operators as being unprofitable will still benefit from the substantial spill-over effects that NGA networks may bring to the economy and will not suffer a new digital 'NGA divide'. Thus, EFTA States may wish to foster NGA network developments in areas where investments by existing broadband network operators in such networks would take several years to arrive because they are financially less attractive than certain major urban zones. In certain cases, EFTA States may decide to invest themselves or provide financial support to private operators in order to obtain NGA network connectivity, or to obtain connectivity earlier than anticipated, in order to ensure that employment and other economic opportunities are leveraged as quickly as possible.

(56) Any public intervention seeking to support the provision or acceleration of NGA network deployment must ensure that it is compatible with the State aid rules.

([57]) In exceptional circumstances duly demonstrated by the notifying EFTA State, setting up such mechanism for very low aid amounts or small scale, 'one-off' projects based on simple procurement principles may impose a disproportionate burden on the granting authorities and will not therefore be required by the Authority.

([58]) At this stage of technological and market development, neither satellite nor mobile network technologies appear to be capable of providing very high speed symmetrical broadband services although in the future the situation may change especially with regard to mobile services (the next major step in mobile radio communications, 'Long Term Evolution' may theoretically reach, if and when adopted, increased peak data rates of 100 Mbps downlink and 50 Mbps uplink).

([59]) See Commission Decision N 157/06 — United Kingdom, 'South Yorkshire Digital region Broadband Project' and Commission Decision N 284/05 — Ireland, 'Regional Broadband Programme: Metropolitan Area Networks ("MANs"), phases II and III'.

([60]) Only in two cases so-far (Appingedam and Amsterdam) was state support granted for the roll-out of an 'access' next generation network that would bring fibre connectivity to the residential segment of the market.

([61]) Broadband network operators have argued that rolling out of a fibre-based network is still a very expensive and risky investment, save in areas of dense population/business where operators have already a substantial base of broadband customers that can be migrated to higher speeds. In certain cases, the cost of deploying NGAs and fibre networks are said to be too high relative to the revenue that can be expected so that either no or too few private sector providers would enter the market.

3.2. **Types of public intervention**

(57) EFTA States may choose different degrees of market intervention in order to foster or accelerate deployment of NGA networks. In this respect, the considerations set out above in Sections 2.2.1 and 2.2.2 (application of the market economy investor principle, public service compensation and the Altmark criteria) apply mutatis mutandis with regard to state interventions in the field of NGA network deployment. Depending on the nature and effects of the intervention chosen a different analytical approach may be warranted under the State aid rules.

(58) In areas where private investors are expected to roll out in the future NGA networks, EFTA States may decide to adopt a set of measures to accelerate the investment cycle and thus encourage investors to bring forward their investment plans. These measures do not necessarily need to involve State aid within the meaning of Article 61(1) of the EEA Agreement. Given that a large part of the cost of deploying fibre networks is in civil work (for instance digging, laying down cables, in-house wirings, etc.), EFTA States may decide in accordance with the EEA regulatory framework for e-communications, for instance, to ease the acquisition process of rights of ways, require that network operators coordinate their civil works and/or share part of their infrastructure ([62]). In the same vein, EFTA States may decree that for any new constructions (including new water, energy, transport or sewage networks) and/or buildings a fibre connection should be in place.

(59) Likewise, public authorities may decide to undertake some civil works (such as digging of the public domain, construction of ducts) in order to enable and accelerate the deployment by the operators concerned of their own network elements. However, such civil works should not be 'industry or sector specific', but should in principle be open to all potential users and not just electronic communications operators (i.e. electricity gas, water utilities, etc.). Provided that such public interventions aim to create the necessary pre-conditions for the deployment by utility operators of own infrastructure without discriminating in favour of a given sector or a company (by lowering in particular the capital costs of the latter), they fall outside the scope of Article 61(1) of the EEA Agreement.

(60) Similar measures may also be adopted by the NRAs in order to provide for equal and non-discriminatory access to poles or sharing of ducts owned by utilities or existing network operators.

(61) As the Commission's decision-making practice in the area of basic broadband illustrates, in most cases, State aid for broadband networks is granted by local or regional authorities that aim to either remedy the region's lack of broadband connectivity or to increase the region's competitiveness by improving further the existing broadband coverage and network connectivity. To achieve these two objectives public authorities have so far either tendered out the construction and management of a publicly-owned broadband infrastructure or have financially supported the construction of a privately-owned broadband network ([63]).

(62) If public interventions constitute State aid pursuant to Article 61(1) of the EEA Agreement, they have to be notified to the Authority, which will assess their compatibility with the common market in line with the principles set out in Sections 3.3 and 3.4 ([64]).

3.3. **The distinction between white, grey and black areas for NGA networks**

(63) As recalled in paragraph 38, the compatibility of State aid for the development of traditional broadband is assessed by reference to the distinction between white, grey and black areas. The Authority considers that this distinction is still relevant for assessing whether State aid for NGA networks is compatible under Article 61(3)(c) of the EEA Agreement, but requires a more refined definition to take account of the specificities of the NGA networks.

([62]) Such measures should not target specifically electronic communications operators but should apply without distinction to all operators across all sectors concerned (including for instance other utility operators such as gas, electricity and/or water undertakings). Measures that would apply to electronic communications operators only could constitute a sectoral aid and thus fall within the prohibition of Article 61(1) of the EEA Agreement.

([63]) See for instance, Commission Decision N 157/06 — United Kingdom, 'South Yorkshire Digital Region Broadband Project', Commission Decision N 201/06 — Greece, 'Broadband access development in underserved territories', and Commission Decision N 131/05 — United Kingdom, 'FibreSpeed Broadband Project Wales', Commission Decision N 284/05 — Ireland, 'Regional Broadband Programme: Metropolitan Area Networks ("MANs"), phases II and III', Commission Decision N 381/04 — France, *Projet de réseau de télécommunications haut débit des Pyrénées-Atlantiques*, Commission Decision N 382/05 — France, *Mise en place d'une infrastructure haut débit sur le territoire de la région Limousin (DORSAL)*, Commission Decision N 57/05 — United Kingdom, 'Regional Innovative Broadband Support in Wales', and Commission Decision N 14/08 — United Kingdom, 'Broadband in Scotland — Extending Broadband Reach'.

([64]) This is without prejudice to the possible application of the Chapter on national regional aid, as referred to above in paragraph 31.

(64) In this respect, one should bear in mind that in the longer term NGA networks are expected to supersede existing basic broadband networks. To the extent that NGA networks imply a different network architecture, offering significantly better quality broadband services than today as well as the provision of services that could not be supported by today's broadband networks, it is likely that in the future there will be marked differences emerging between areas that will be covered and areas that will not be covered by NGA networks ([65]).

(65) At present, some advanced basic broadband networks (for instance ADSL 2+ ([66])) can, up to a certain point, also support some of the types of broadband services that in the near future are likely to be offered over NGA networks (such as basic triple play services). However, and without prejudice to the imposition of ex-ante regulation, it should be noted that novel products or services which are not substitutable from both demand and supply side perspectives may emerge and will require broadband speeds in excess of the upper physical limits of basic broadband infrastructure.

(66) Accordingly, for the purposes of assessing State aid for NGA networks, an area where such networks do not at present exist and where they are not likely to be built and be fully operational in the near future by private investors should be considered to be a 'white NGA' area ([67]). In that regard, the term 'in the near future' should correspond to a period of 3 years ([68]). Public authorities should be entitled to intervene, under certain conditions, in order to address social cohesion issues, regional development or a market failure when it can be demonstrated that private investors have no intention to deploy NGA networks in the coming 3 years. The investments efforts planned by private investors should be such as to guarantee that at least significant progress in terms of coverage will be made within the 3-year period, with completion of the planned investment foreseen within a reasonable time frame thereafter (depending on the specificities of each area and of each project). It would not be appropriate to take a longer time horizon as this may risk damaging the interests of underserved regions relative to other parts of a country that are adequately served by such advanced broadband networks. Public authorities may require the submission of a business plan, together with a detailed calendar deployment plan as well as proof of adequate financing or any other type of evidence that would demonstrate the credible and plausible character of the planned investment by private network operators.

(67) In the same vein, an area should be considered to be 'NGA grey' where only one NGA network is in place or is being deployed in the coming 3 years and there are no plans by any operator to deploy a NGA network in the coming 3 years ([69]). In assessing whether other network investors could deploy additional NGA networks in a given area, account should be taken of any existing regulatory or legislative measures that may have lowered barriers for such network deployments (access to ducts, sharing of infrastructure, etc.).

(68) If more than one NGA network exists in a given area or will be deployed in the coming 3 years, such an area should, in principle, be considered to be 'NGA black' ([70]).

3.4. **The compatibility assessment**

(69) As mentioned in paragraphs 64 and 65, although NGA networks are qualitatively far more advanced than existing traditional copper-based broadband networks, in assessing the compatibility of State aid for the deployment of a NGA network with the State aid rules, the Authority will also look into the effects of such aid on existing broadband networks given the degree of substitution that at present appears to exist with regard to broadband services offered over broadband and NGA networks alike. Moreover, in assessing the compatibility of State aid to

([65]) If today the differences between an area where only narrowband Internet is available (dial-up) and an area where broadband exists means that the former is a white area, likewise an area that lacks a next generation broadband infrastructure, but may still have one basic broadband infrastructure in place should also be considered a white area.

([66]) ADSL 2+ extends the capability of basic ADSL network up to a maximum bandwidth of 24 Mbps.

([67]) A white NGA area may consist in an area where there is no basic broadband infrastructure in place (traditional white areas), as well as in an area where only one basic broadband provider is present (i.e. a traditional grey area) or there are several basic broadband providers (i.e. a traditional black area). As indicated in Section 3.4, different conditions are required for the compatibility of state aid for broadband development in these different circumstances.

([68]) This period appears to correspond to an average period needed for the deployment of a next generation access network covering a town or a city. In this regard, an operator should be able to demonstrate that within a coming period of 3 years it would have carried out the necessary infrastructure investments in order to have covered by then a substantial part of the territory and of the population concerned thereby.

([69]) A grey NGA area may consist in an area where (a) there is no other basic broadband infrastructure beside the NGA; (b) as well as in an area where one or more basic broadband providers are also present (which can be considered as a traditional grey or black area). As indicated in Section 3.4, different conditions are required for the compatibility of state aid for broadband development in these different circumstances.

([70]) A black NGA area may also consist of an area with one broadband provider (traditional grey area) or more (traditional black area) present. As indicated below, different conditions are required for the compatibility of state aid for broadband development in these different circumstances.

NGA networks, the Authority will also apply the balancing test (see paragraph 33). In particular, in assessing the proportional character of a notified measure the Authority will look into whether the conditions set out in paragraph 49 are fulfilled (detailed mapping exercise and coverage analysis, open tender process, best economic offer, technological neutrality, use of existing infrastructure, mandated wholesale open access, benchmarking exercise and claw-back mechanism). The following points, however, are specifically relevant in the context of the assessment of NGA networks.

3.4.1. *White NGA areas: support for NGA network deployment in underserved areas*

(70) As with basic broadband services, subject to a set of conditions that should be met by EFTA States (see paragraphs 49 and 69), the Authority will consider as being compatible with the State aid rules of the EEA Agreement measures that support the deployment of NGA networks in areas where no broadband infrastructure currently exists or for areas where existing broadband operators consider it unprofitable to deploy NGA networks.

(71) In white NGA areas where one basic broadband network already exist (traditional grey area), the grant of aid for NGA networks is subject to the demonstration by the EFTA State concerned (i) that the broadband services provided over the said networks are not sufficient to satisfy the needs of citizens and business users in the area in question (also taking into account a possible future upgrade); and that (ii) there are no less distortive means (including *ex ante* regulation) to reach the stated goals.

3.4.2. *Grey NGA areas: need for a more detailed analysis*

(72) In areas where one private investor has already deployed a NGA network or may be in the process of deploying it in the next 3 years (see also paragraph 66) and there are no plans by any private investor to deploy a second NGA network in the coming 3 years, the Authority will need to carry out a more detailed analysis in order to verify whether state intervention in such areas can be considered compatible with the State aid rules. In fact, state intervention in such areas risks crowding out existing investors and distorting competition.

(73) For the Authority to make a finding of compatibility, EFTA States should be able to demonstrate firstly, that the existing or planned NGA network is not or would not be sufficient to satisfy the needs of citizens and business users in the areas in question and, secondly, that there are no less distortive means (including *ex ante* regulation) to reach the stated goals. In the context of its detailed assessment the Authority will in particular assess whether:

(a) the overall market conditions are not adequate, by looking, inter alia, into the level of current NGA broadband prices, the type of services offered to residential and business users and the conditions attached thereto and whether there exists, or is likely to appear, demand for new services that cannot be met by the existing NGA network;

(b) in the absence of *ex ante* regulation imposed by a NRA, effective network access is not offered to third parties or access conditions are not conducive to effective competition;

(c) overall entry barriers preclude potential entry by other NGA network investors;

(d) the NGA network already in place was built on the basis of a privileged use/access to ducts not accessible by or not shared with other network operators;

(e) any measures taken or remedies imposed by the competent national regulatory or competition authority with regard to the existing network provider have not been able to overcome the problems.

3.4.3. *Black NGA areas: no need for state intervention*

(74) In areas where there already exists more than one NGA network or private investors may be in the process of deploying competing NGA networks, the Authority will consider that state support for an additional publicly-funded, competing NGA network is likely to seriously distort competition and is incompatible with the State aid rules.

3.4.4. *The specific case of existing (basic broadband) black areas: some further safeguards*

(75) The Authority considers that traditional black areas, that is areas where current broadband services are being delivered by competing broadband infrastructures (xDSL and cable networks), are areas in which existing network operators should have the incentives to upgrade their current traditional broadband networks to very fast NGA networks to which they could migrate their existing customers. In such areas no further state intervention should in principle be necessary.

(76) However, an EFTA State can rebut such an argument by showing that existing basic broadband operators do not plan to invest in NGA networks in the coming 3 years by demonstrating for instance that the historical pattern of the investments made by the existing network investors over the last years in upgrading their broadband infrastructures to provide higher speeds in response to users' demands was not satisfactory. In such cases, state support for the deployment of NGA networks would be subject to the detailed analysis at paragraph 73 and to the fulfilment of the set of conditions discussed in more detail in Section 3.4.5.

3.4.5. *Design of the measure and the need to limit distortions of competition*

(77) As with the policy followed with respect to basic broadband deployment, State aid in favour of NGA network deployment may constitute an appropriate and justified instrument, provided that a number of fundamental conditions are complied with. With the exception of white NGA areas which are also white areas with regards to basic broadband (where no additional requirements are needed), the Authority considers that, in addition to the safeguards set out in Section 2.3.3 and in particular in paragraph 49 (detailed mapping exercise and coverage analysis, open tender process, best economic offer, technological neutrality, use of existing infrastructure, mandated wholesale open access, benchmarking exercise and claw-back mechanism), the following conditions need also to be met:

— In exchange for receiving state support, the beneficiary should be required to provide third parties with effective wholesale access for at least 7 years. In particular, the access obligation imposed should also include the right to use ducts or street cabinets in order to allow third parties to have access to passive and not only active infrastructure. This is without prejudice to any similar regulatory obligations that may be imposed by the NRA in the specific market concerned in order to foster effective competition or measures adopted after the expiry of that period ([71]). An 'open access' obligation is all the more crucial in order to deal with the temporary substitution between the services offered by existing ADSL operators and those offered by future NGA network operators. An open access obligation will ensure that ADSL operators can migrate their customers to a NGA network as soon as a subsidised network is in place and thus start planning their own future investments without suffering any real competitive handicap.

— Moreover, in setting the conditions for wholesale network access, EFTA States should consult the relevant NRA. NRAs are expected in the future to continue either to regulate *ex ante* or to monitor very closely the competitive conditions of the overall broadband market and impose where appropriate the necessary remedies provided by the applicable regulatory framework. Thus, by requiring that access conditions should be approved or set by the NRA under the applicable EEA rules, EFTA States will ensure that, if not uniform, at least very similar access conditions will apply throughout all broadband markets identified by the NRA concerned.

— In addition, whatever the type of the NGA network architecture that will benefit from State aid, it should support effective and full unbundling and satisfy all different types of network access that operators may seek (including but not limited to access to ducts, fibre and bitstream). In this respect, it should be noted that 'multiple fibre' architecture allows full independence between access seekers to provide high-speed broadband offers and is therefore conducive to long-term sustainable competition. In addition, the deployment of NGA networks based on multiple fibre lines supports both 'point-to-point' and 'point-to-multipoint' topologies and is therefore technology neutral.

4. FINAL PROVISIONS

(78) This Chapter will be applied from the first day following its adoption.

(79) The Authority will review the present Chapter in line with future revisions of the corresponding 'Communication from the Commission — Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks' by the Commission.

([71]) In this regard, the possible persistence of the specific market conditions that justified in the first place the granting of an aid for the infrastructure in question should be taken into consideration.

CORRIGENDA

Corrigendum to Commission Implementing Regulation (EU) No 1270/2011 of 6 December 2011 fixing an acceptance percentage for the issuing of export licences, rejecting export-licence applications and suspending the lodging of export-licence applications for out-of-quota sugar

(Official Journal of the European Union L 324 of 7 December 2011)

On page 27, recital 3:

for: ‘(3) The quantities of sugar covered by applications for export licences exceed the quantitative limit fixed by Article 1(1)(a) of Implementing Regulation (EU) No 372/2011. An acceptance percentage should therefore be set for quantities applied for on 1 December 2011. All export-licence applications for sugar lodged after 2 December 2011 should accordingly be rejected and the lodging of export-licence applications should be suspended,’,

read: ‘(3) The quantities of sugar covered by applications for export licences exceed the quantitative limit fixed by Article 1(1)(a) of Implementing Regulation (EU) No 372/2011. An acceptance percentage should therefore be set for quantities applied for on 1 December 2011 and 2 December 2011. All export-licence applications for sugar lodged after 2 December 2011 should accordingly be rejected and the lodging of export-licence applications should be suspended,’;

on page 27, Article (1):

for: ‘1. Export licences for out-of-quota sugar for which applications were lodged on 1 December 2011 shall be issued for the quantities applied for, multiplied by an acceptance percentage of 51,679586 %.’,

read: ‘1. Export licences for out-of-quota sugar for which applications were lodged on 1 December 2011 and 2 December 2011 shall be issued for the quantities applied for, multiplied by an acceptance percentage of 51,679586 %.’.

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