Official Journal of the European Union

L 354

English edition

Legislation

Volume 57

11 December 2014

Contents

[1] Text with EEA relevance

EN

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

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

[1] Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) No 1310/2014

of 8 October 2014

on the provisional system of instalments on contributions to cover the administrative expenditures of the Single Resolution Board during the provisional period

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 ([1]), and in particular points (a), (b) and (c) of Article 65(5) thereof,

Whereas:

(1) The Single Resolution Board (the Board) was established pursuant to Regulation (EU) No 806/2014 and entrusted with the application of the uniform provisions laid down by that Regulation and with the administration of the Single Resolution Fund. Article 58 of that Regulation provides that the Board shall have an autonomous budget which is not part of the Union budget.

(2) Article 65(3) of Regulaion (EU) No 806/2014 provides that the Board shall determine and raise the contributions to the administrative expenditures of the Board which are due by each entity referred to in Article 2 of that Regulation. Those entities are credit institutions established in participating Member States within the meaning of Article 2 of Council Regulation (EU) No 1024/2013 ([2]) and parent undertakings, investment firms and financial institutions established in participating Member States, where they are subject to consolidated supervision carried out by the European Central Bank (ECB) in accordance with Article 4(1)(g) of Council Regulation (EU) No 1024/2013. Branches, which are established in participating Member States, of credit institutions established in non-participating Member States should not be covered by this Regulation.

(3) In accordance with Article 59 of Regulation (EU) No 806/2014, the contributions to the administrative expenditures of the Board shall constitute the revenues of Part 1 of the budget of the Board and shall cover the expenditures of Part 1 of the budget, which shall include at least staff remuneration, administrative, infrastructure, professional training and operational expenses.

(4) In 2014 the Board will not have the dedicated infrastructure and operational capacity to collect contributions to cover its administrative expenditures for 2014 and 2015 from all the entities referred to in Article 2 of Regulation (EU) No 806/2014. Nevertheless, in 2014 the Board will need to raise the revenues necessary to finance Part 1 of its budget to cover its administrative expenditures for those two years. The administrative expenditures of the Board for both the years 2014 and 2015 of the provisional period are estimated to EUR 22 million.

([1]) OJ L 225, 30.7.2014, p. 1.
([2]) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

(5) A temporary solution should be foreseen to allow the Board to collect contributions to cover its administrative expenditures for 2014 and 2015 while ensuring that the calculation and collection of the contributions may be carried out with the very limited resources of the Board and within a very short timeframe. This should be possible through establishing that the calculation and raising of the contributions to cover the administrative expenditures of the Board are performed on the basis of a two-step approach: a provisional system during the first stages of existence of the Board and a final system.

(6) Only those entities that have been notified by the ECB, at the highest level of consolidation within the participating Member States, of the ECB's decision to consider them significant within the meaning of Article 6(4) of Regulation (EU) No 1024/2013 and in accordance with Article 147(1) of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) [1] and which are mentioned in the list published on the ECB's website on 4 September 2014, but excluding those significant entities which are subsidiaries of groups already taken into account ('significant entities'), should advance the full amount of instalments to cover the administrative expenditures of the Board during the provisional period. The entities which would be considered significant and notified as such by the ECB between 5 September 2014 and the end of the provisional period should not be subject to the obligation of payment of instalments on contributions. To this end, a provisional system of instalments on contributions ('instalments') should be established that will enable the Board to collect, during the provisional period, instalments from significant entities to cover its expenditures.

(7) That provisional system is proportionate because the entities which will pay instalments represent around 85 % of the total assets of the credit institutions covered by Regulation (EU) No 806/2014 and are easily identifiable. In this preliminary phase, such method for the calculation and collection of instalments should entail as little administrative burden as possible for both the Board and the entities concerned.

(8) Once the Board has the necessary structure and operational capacity, the Commission will adopt a final system of administrative contributions on the basis of which contributions will be calculated and raised.

(9) Under the final system, the contributions of the entities referred to in Article 2 of Regulation (EU) No 806/2014 shall be calculated and collected according to the final rules. The contributions of significant entities covered by the provisional system should be reassessed to take into account the amounts paid by them under that provisional system.

(10) Any difference between the instalments paid on the basis of the provisional system and the contributions calculated in accordance with the final system should be settled in the calculation of the contributions to the administrative expenditures of the Board for the year following the end of the provisional period.

(11) To allow the Board to become operational by 1 January 2015, as required by Article 98(1) of Regulation (EU) No 806/2014, and to start performing the tasks listed in Article 99(3) of that Regulation, it is urgent to establish a simple and effective mechanism that can be rapidly and easily implemented during the initial stage of existence of the Board to allow it to acquire the necessary financial resources to establish its organisational structure and recruit the staff needed for carrying out its tasks under that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down rules concerning:

(a) a provisional system of instalments on contributions to the administrative expenditures of the Board during the provisional period;

(b) the methodology for the calculation of the instalments to be collected in advance from each significant entity to cover the administrative expenditures of the Board during the provisional period;

(c) the procedure and modalities for the collection of the instalments referred to in point (b) by the Board;

[1] Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

(d) the arrangements for deferring the calculation and collection of the contributions due by entities referred to in Article 2 of Regulation (EU) No 806/2014 other than significant entities to cover the administrative expenditures of the Board during the provisional period;

(e) the arrangements for adjusting the contributions due by the significant entities to the administrative expenditures of the Board after the provisional period to take into account any difference between the instalments paid in advance on the basis of that provisional system and the contributions due for the provisional period under the final system.

Article 2

Scope and objective

This Regulation applies to the entities referred to in Article 2 of Regulation (EU) No 806/2014.

The instalments collected by the Board pursuant to this Regulation shall be exclusively used to cover its administrative expenditures during the provisional period.

The Board shall exercise sound financial management and budgetary control over all areas of its expenditures.

Article 3

Definitions

For the purposes of this Regulation, the definitions in Article 3 of Regulation (EU) No 806/2014 shall apply. The following definitions shall also apply:

(a) 'instalments' or 'instalments on contributions' means the instalments on contributions to be collected by the Board in accordance with this Regulation to cover the administrative expenditures of the Board during the provisional period;

(b) 'administrative expenditures of the Board' means the expenditures of Part I of the budget of the Board during the provisional period;

(c) 'total assets' means the total value of assets derived from the line 'total assets' on the consolidated, where relevant, balance sheet of the significant entity as reported in accordance with the relevant Union law for prudential purposes as of 31 December 2013 or as of the applicable reporting date for the financial year 2013, if the financial year ends at a later date than 31 December;

(d) 'significant entities' means the entities that have been notified by the ECB, at the highest level of consolidation within the participating Member States, of the ECB's decision to consider them significant within the meaning of Article 6(4) of Regulation (EU) No 1024/2013 and in accordance with Article 147(1) of Regulation (EU) No 468/2014, and which are mentioned in the list published on the ECB's website on 4 September 2014, but excluding those significant entities, which are subsidiaries of a group already taken into account in this definition, and branches, which are established in participating Member States, of credit institutions established in non-participating Member States;

(e) 'instalment notice' means a notice specifying the amount of the instalment on contribution to be collected in advance, issued to each relevant significant entity in accordance with this Regulation;

(f) 'provisional period' means a period beginning on 19 August 2014 and ending on 31 December 2015, or ending on the day of application of the final system of administrative contributions adopted by the Commission in accordance with Article 65(5)(a) of Regulation (EU) No 806/2014, whichever is later;

(g) 'competent authority' means a competent authority as defined in Article 4(2)(i) of Regulation (EU) No 1093/2010 ([1]).

Article 4

Provisional system of instalments on contributions

1. All of the entities referred to in Article 2 of Regulation (EU) No 806/2014 shall pay contributions to cover the administrative expenditures of the Board during the provisional period.

([1]) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

2. The Board shall calculate and collect in advance instalments on contributions to be paid by significant entities to cover the administrative expenditures of the Board during the provisional period.

3. The calculation and collection of contributions to the administrative expenditures of the Board during the provisional period from entities referred to in Article 2 of Regulation (EU) No 806/2014 other than significant entities shall be deferred until the end of the provisional period referred to in Article 3(f).

Article 5

Calculation of the instalments

1. The administrative expenditures of the Board during the provisional period shall be the basis for determining the instalments on contributions to be paid in advance by significant entities.

2. The instalments to be paid by each significant entity shall be calculated by multiplying the administrative expenditures of the Board for the 2014 and 2015 period, or, where the provisional period goes beyond 31 December 2015, for the relevant period by the ratio of the total assets of that significant entity to the aggregate of the total assets of all significant entities as reported on 31 December 2013 or on the applicable reporting date for the financial year 2013, if the financial year ends at a later date than 31 December.

Article 6

Settlement arrangements

1. The amount of contributions due by each entity referred to in Article 2 of Regulation (EU) No 806/2014 to cover the administrative expenditures of the Board during the provisional period shall be (re)calculated in accordance with the final system of administrative contributions adopted by the Commission in accordance with Article 65(5)(a) of Regulation (EU) No 806/2014 (the 'final system').

2. Any difference between the instalments paid on the basis of the provisional system and the contributions referred to in paragraph 1 calculated in accordance with the final system shall be settled in the calculation of the contributions to cover the administrative expenditures of the Board for the year which follows the provisional period. That adjustment shall be made by decreasing or increasing the contributions to the administrative expenditures of the Board for that year.

3. Where the difference referred to in paragraph 2 is higher than the contributions due for that year, the adjustment shall continue in the subsequent year.

Article 7

Notification and payment

1. An instalment notice shall be issued and notified by the Board to each significant entity by registered mail with a form of acknowledgment of receipt.

2. The instalment notice shall specify the amount of the instalment to be paid in advance by the significant entity to cover the administrative expenditures of the Board during the provisional period.

3. The instalment notice shall specify the means by which the instalment shall be paid. The significant entity shall comply with conditions for payment specified in the instalment notice.

4. The significant entity shall pay the amount due under the instalment notice in one single instalment within 30 days of the date of notification of the instalment notice.

5. Without prejudice to any other remedy available to the Board, for any partial payment, non-payment or non-compliance with the conditions for payment specified in the instalment notice, the significant entity shall incur a daily penalty on the outstanding amount of the instalment.

To calculate the daily penalty interest shall accrue on a daily basis on the amount due at an interest rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the payment deadline falls increased by 8 percentage points from the date on which the instalment was due.

6. The daily penalty payment referred to in paragraph 5 shall be enforceable. Enforcement shall be governed by the applicable procedural rules in the participating Member State. The order for its enforcement shall be appended to the decision without other formality than verification of the authenticity of the decision by the authority which the government of each participating Member State shall designate for that purpose and which it shall make known to the Board and to the Court of Justice.

Article 8

Reporting

10 days after the entry into force of this Regulation, the relevant competent authorities shall provide the Board with the contact details of the significant entities and the value of their total assets as reported as of 31 December 2013 or as of the applicable reporting date for the financial year 2013, if the financial year ends at a later date than 31 December.

Article 9

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

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

Done at Brussels, 8 October 2014.

For the Commission
The President
José Manuel BARROSO

COMMISSION REGULATION (EU) No 1311/2014

of 10 December 2014

amending Regulation (EC) No 976/2009 as regards the definition of an INSPIRE metadata element

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) ([1]), and in particular Article 7(1) thereof,

Whereas:

(1) Commission Regulation (EC) No 976/2009 ([2]) sets out the rules for implementation of all network services except for the services allowing spatial data services to be invoked.

(2) The interoperability of spatial data services is characterised by the capability to communicate, execute or transfer data among them. A pre-requisite for the invocation of the spatial data services is the ability to access the relevant information. The Member States through the discovery services mandated in Directive 2007/2/EC, with rules for implementation in Commission Regulation (EC) No 976/2009, are making available the metadata elements mandated by Commission Regulation (EC) No 1205/2008 ([3]). The implementing rules for spatial data services in Commission Regulation (EU) No 1089/2010 ([4]) introduces new metadata elements for spatial data services, consequently the definition of a metadata element in Commission Regulation (EC) No 976/2009 needs to be updated to allow for the discovery and availability of the new metadata elements with the Member States discovery services.

(3) Regulation (EC) No 976/2009 should therefore be amended accordingly.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 22 of Directive 2007/2/EC,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 2 of Regulation (EC) No 976/2009 point 7 is replaced by the following:

'7. "INSPIRE metadata element" means a metadata element set out in Part B of the Annex to Regulation (EC) No 1205/2008 or in Part B of Annex V, Part B of Annex VI and Part B of Annex VII to Commission Regulation (EU) No 1089/2010 (*).

(*) Commission Regulation (EU) No 1089/2010 of 23 November 2010 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards interoperability of spatial data sets and services (OJ L 323, 8.12.2010, p. 11).'.

([1]) OJ L 108, 25.4.2007, p. 1.
([2]) Commission Regulation (EC) No 976/2009 of 19 October 2009 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards the Network Services (OJ L 274, 20.10.2009, p. 9).
([3]) Commission Regulation (EC) No 1205/2008 of 3 December 2008 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards metadata (OJ L 326, 4.12.2008, p. 12).
([4]) Commission Regulation (EU) No 1089/2010 of 23 November 2010 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards interoperability of spatial data sets and services (OJ L 323, 8.12.2010, p. 11).

Article 2

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

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

Done at Brussels, 10 December 2014.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION REGULATION (EU) No 1312/2014

of 10 December 2014

amending Regulation (EU) No 1089/2010 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards interoperability of spatial data services

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) [1], and in particular Article 7(1) thereof,

Whereas:

(1) Commission Regulation (EU) No 1089/2010 [2] sets out the technical arrangements only for interoperability of spatial data sets.

(2) The interoperability of spatial data services is characterised by the capability to communicate, execute or transfer data among them. Therefore the spatial data services need to be further documented with additional metadata. To a lesser degree, it also concerns the harmonisation of the content of the service contrary to the spatial data sets implementing rules.

(3) For the development of the implementing rules mandated by Directive 2007/2/EC the emphasis was first put on the core services, i.e., the network services, with Commission Regulation (EC) No 976/2009 [3], and on the interoperability of the spatial data sets, in Regulation (EU) No 1089/2010. Regulation (EU) No 1089/2010 should therefore now be amended to contain the implementing rules for the spatial data services.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 22 of Directive 2007/2/EC,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 1089/2010 is amended as follows:

(1) Article 1 is replaced by the following:

'*Article 1*

Subject Matter and Scope

1. This Regulation sets out the requirements for technical arrangements for the interoperability and, where practicable, harmonisation of spatial data sets and spatial data services corresponding to the themes listed in Annexes I, II and III to Directive 2007/2/EC.

2. This Regulation does not apply to the network services falling within the scope of Commission Regulation (EC) No 976/2009 (*).

(*) Commission Regulation (EC) No 976/2009 of 19 October 2009 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards the Network Services (OJ L 274, 20.10.2009, p. 9).'

[1] OJ L 108, 25.4.2007, p. 1.
[2] Commission Regulation (EU) No 1089/2010 of 23 November 2010 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards interoperability of spatial data sets and services (OJ L 323, 8.12.2010, p. 11).
[3] Commission Regulation (EC) No 976/2009 of 19 October 2009 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards the Network Services (OJ L 274, 20.10.2009, p. 9).

(2) in Article 2 the following points 31 to 38 are added:

'31. "end point" means the internet address used to directly call an operation provided by a spatial data service,

32. "access point" means an internet address containing a detailed description of a spatial data service, including a list of end points to allow its execution,

33. "Invocable spatial data service" means all of the following:

(a) a spatial data service with metadata which fulfils the requirements of Commission Regulation (EC) No 1205/2008 (*),

(b) a spatial data service with at least one resource locator that is an access point,

(c) a spatial data service in conformity with a documented and publicly available set of technical specifications providing the information necessary for its execution,

34. "interoperable spatial data service" means an invocable spatial data service which fulfils the requirements of Annex VI,

35. "harmonised spatial data service" means an interoperable spatial data service which fulfils the requirements of Annex VII,

36. "conformant spatial data set" means a spatial data set which fulfils the requirements of this Regulation,

37. "operation" means an action supported by a spatial data service,

38. "interface" means the named set of operations that characterise the behaviour of an entity as defined by ISO 19119:2005.

(*) Commission Regulation (EC) No 1205/2008 of 3 December 2008 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards metadata (OJ L 326, 4.12.2008, p. 12)';

(3) Article 6 is amended as follows:

(a) the title is replaced by the following:

'Code Lists and Enumerations for Spatial Data Sets',

(b) in paragraph 1, the introductory sentence is replaced by the following:

'Code lists shall be one of the following types, as specified in the Annexes I to IV:';

(4) in Article 8, the following paragraph 3 is added:

'3. The updates of data shall be made available to all related spatial data services according to the deadline specified in paragraph 2.';

(5) after Article 14, the following Articles are inserted:

'Article 14a

Requirements for invocable spatial data services

Not later than 10 December 2015, Member States shall provide the invocable spatial data services metadata in conformity with the requirements set out in Annex V.

Article 14b

Interoperability arrangements and harmonisation requirements for invocable spatial data services

The invocable spatial data services relating to the data contained in at least one conformant spatial data set shall fulfil the interoperability requirements set out in Annexes V and VI and, where practicable, the harmonisation requirements set-out in Annex VII.';

(6) Annex V, as set out in the Annex I to this Regulation, is added;

(7) Annex VI, as set out in the Annex II to this Regulation, is added;

(8) Annex VII, as set out in the Annex III to this Regulation, is added.

Article 2

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

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

Done at Brussels, 10 December 2014.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

'ANNEX V

IMPLEMENTING RULES FOR INVOCABLE SPATIAL DATA SERVICES

PART A

Writing Conventions

Similar to the Regulation (EC) No 1205/2008, the following writing conventions are used for the spatial data service metadata.

Where specified in the description of the metadata elements, the value domains shall be used with the multiplicity expressed in the relevant tables. In relation to a particular domain, each value is defined by:

— a numerical identifier,

— a textual name for humans which may be translated in the different Community languages,

— a language neutral name for computers (the value expressed between parenthesis),

— an optional description or definition.

The table present the following information:

— the first column contains the reference to the paragraph in the Annex defining the metadata element or group of metadata elements,

— the second column contains the name of the metadata element or group of metadata elements,

— the third column specifies the multiplicity of a metadata element. The expression of the multiplicity follows the unified modelling language (UML) notation for multiplicity, in which:

  — N means that there shall be only N instances of this metadata element in a result set,

  — 1..* means that there shall be at least one instance of this element in a result set,

  — 0..1 indicates that the presence of the metadata element in a result set is conditional but can occur only once,

  — 0..* indicates that the presence of the metadata element in a result set is conditional but the metadata element may occur once or more,

  — when the multiplicity is 0..1 or 0..*, the condition defines when the metadata elements is mandated.

— the fourth column contains a conditional statement if the multiplicity of the element does not apply to all types of resources. All elements are mandatory in other circumstances.

PART B

Category Metadata Element

1. Category

   This is a citation of the status of the spatial data service versus invocability.

   The value domain of this metadata element is as follows:

1.1. Invocable (invocable)

   The spatial data service is an invocable spatial data service.

1.2. Interoperable (interoperable)

   The invocable spatial data service is an interoperable spatial data service.

1.3. Harmonised (harmonised)

The interoperable spatial data service is a harmonised spatial data service.

PART C

Instructions on Multiplicity and Conditions of the Metadata Elements

The new metadata describing the spatial data service shall comprise the metadata elements or groups of metadata elements listed in Table 1.

Those metadata elements or groups of metadata elements shall be in accordance with the expected multiplicity and the related conditions set out in Table 1.

When no condition is expressed in relation to a particular metadata element, that element shall be mandatory.

Table 1

Metadata for invocable spatial data services

Reference	New metadata elements	Multiplicity	Condition
1	Category	0..1	mandatory for an invocable spatial data service

PART D

Additional Requirements on Metadata Set Out in Regulation (EC) No 1205/2008

1. Resource Locator

The Resource Locator metadata element set out in Regulation (EC) No 1205/2008 shall also contain all access points from the spatial data service provider and these access points shall be unambiguously identified as such.

2. Specification

The Specification metadata element set out in Regulation (EC) No 1205/2008 shall also refer to or contain technical specifications (such as INSPIRE technical guidance but not only), to which the invocable spatial data service fully conforms, providing all the necessary technical elements (human, and wherever relevant, machine readable) to allow its invocation.'

ANNEX II

'ANNEX VI

IMPLEMENTING RULES FOR THE INTEROPERABILITY OF INVOCABLE SPATIAL DATA SERVICES

PART A

Additional Requirements on Metadata Set Out in Regulation (EC) No 1205/2008

1. Conditions applying to access and use

The technical restrictions applying to the access and use of the spatial data service shall be documented in the metadata element "CONSTRAINT RELATED TO ACCESS AND USE" set out in Regulation (EC) No 1205/2008.

2. Responsible party

The responsible party set out in Regulation (EC) No 1205/2008 shall at least describe the custodian responsible organisation, corresponding to the Custodian responsible party role set out in Regulation (EC) No 1205/2008.

PART B

Metadata Elements

3. Coordinate Reference System Identifier

Where appropriate, this is the list of coordinate reference systems supported by the spatial data service.

Each supported coordinate reference system shall be expressed using an identifier.

4. Quality of Service

This is the minimum quality of service estimated by the spatial data service responsible party and expected to be valid over a period of time.

4.1. Criteria

These are the criteria to which the measurements refer.

The value domain of this metadata element is as follows:

4.1.1. Availability (availability)

It describes the percentage of time the service is available.

4.1.2. Performance (performance)

It describes how fast a request to the spatial data service can be completed.

4.1.3. Capacity (capacity)

It describes the maximum number of simultaneous requests that can be completed with the declared performance.

4.2. Measurement

4.2.1. Description

It describes the measurement for each criterion.

The value domain of this metadata element is free text.

4.2.2. Value (value)

It describes the value of the measurement for each criterion.

The value domain of this metadata element is free text.

4.2.3. Unit (unit)

It describes the Unit of the measurement for each criterion.

The value domain of this metadata element is free text.

PART C

Instructions on Multiplicity and Conditions of the Metadata Elements

The metadata describing an interoperable spatial data service shall comprise the metadata elements or groups of metadata elements listed in Table 1.

Those metadata elements or groups of metadata elements shall be in accordance with the expected multiplicity and the related conditions set out in Table 1.

When no condition is expressed in relation to a particular metadata element, that element shall be mandatory.

Table 1

Metadata for interoperable spatial data services

Reference	New metadata elements	Multiplicity	Condition
1	Coordinate reference system identifier	1..*	Mandatory if relevant
2	Quality of service	3..*'	

ANNEX III

'ANNEX VII

IMPLEMENTING RULES FOR THE HARMONISATION OF INTEROPERABLE SPATIAL DATA SERVICES

PART A

Characteristics

1. Quality of Service

   The probability of a harmonised spatial data service to be available shall be 98 % of the time.

2. Output encoding

   A harmonised spatial data service returning spatial objects in the scope of the Directive 2007/2/EC shall encode those spatial objects according to this regulation.

PART B

Metadata Elements

3. invocation metadata

   The invocation metadata element documents the interfaces of the harmonised spatial data service and lists the end points to enable machine-to machine communication.

PART C

Instructions on Multiplicity and Conditions of the Metadata Elements

The harmonised spatial data service metadata shall comprise the metadata element or group of metadata elements listed in Table 1.

This metadata element or group of metadata elements shall be in accordance with the expected multiplicity and the related conditions set out in Table 1.

When no condition is expressed in relation to a particular metadata element, that element shall be mandatory.

Table 1

Metadata for harmonised spatial data services

Reference	New metadata elements	Multiplicity	Condition
1	invocation metadata	1..*	

PART D

Operations

1. List of operations

   A harmonised spatial data service shall provide the operation listed in table 2.

Table 2

Operations for Harmonised Spatial Data Services

Operation	Role
Get Harmonised Spatial Data Service Metadata	Provides all necessary information about the service and describes service capabilities

2. Get Harmonised Spatial Data Service Metadata Operation

2.1. Get Harmonised Spatial Data Service Metadata Request

2.1.1. Get Harmonised Spatial Data Service Metadata Request parameters

The Get Harmonised Spatial Data Service Metadata Request parameter indicates the natural language for the content of the Get Harmonised Spatial Data Service Metadata Response

2.2. Get Harmonised Spatial Data Service Metadata Response

The Get Harmonised Spatial Data Service Metadata Response shall contain the following sets of parameters:

— Harmonised Spatial Data Service Metadata,

— Operations Metadata,

— Languages.

2.2.1. Harmonised Spatial Data Service Metadata parameters

The Harmonised Spatial Data Service Metadata parameters shall at least contain the INSPIRE metadata elements of the Harmonised Spatial Data Service set out in this Regulation, and in Regulation (EC) No 1205/2008.

2.2.2. Operations Metadata parameters

The Operations Metadata parameter provides metadata about the operations of the Harmonised Spatial Data Service. It shall at least describe each operation, including as a minimum a description of the data exchanged and the network address.

2.2.3. Languages parameter

Two language parameters shall be provided:

— the Response Language parameter indicating the natural language used in the Get Harmonised Spatial Data Service Metadata Response parameters,

— the Supported Languages parameter containing the list of the natural languages supported by the Harmonised Spatial Data Service.'

COMMISSION IMPLEMENTING REGULATION (EU) No 1313/2014

of 10 December 2014

imposing a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ([1]) (the basic Regulation), and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) By Regulation (EC) No 1355/2008 ([2]) the Council imposed a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits originating in the People's Republic of China (China). The measures took the form of a specific duty per company ranging from 361,4 EUR/tonne to 531,2 EUR/tonne net product weight.

(2) These measures have been annulled by the Court of Justice of the European Union on 22 March 2012 ([3]) but were re-imposed on 18 February 2013 by Council Implementing Regulation (EU) No 158/2013 ([4]).

1.2. Request for an expiry review

(3) Following the publication of a Notice of impending expiry of the definitive anti-dumping measures in force ([5]), the Commission received on 12 August 2013 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by Federación Nacional de Asociaciones de Transformados Vegetales y Alimentos Procesados (FENAVAL) on behalf of producers representing more than 75 % of the total Union production of certain prepared or preserved citrus fruits.

(4) The request was based on the grounds that the expiry of the definitive anti-dumping measures would be likely to result in continuation of dumping and recurrence of injury to the Union industry.

1.3. Initiation of an expiry review

(5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 25 October 2013, by a notice published in the *Official Journal of the European Union* ([6]) (the Notice of Initiation), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

1.4. Investigation

1.4.1. *Review investigation period and period considered*

(6) The investigation of a continuation of dumping covered the period from 1 October 2012 to 30 September 2013 (the review investigation period). The examination of the trends relevant for the assessment of the likelihood of recurrence of injury covered the period from 1 October 2009 to the end of the review investigation period (the period considered).

([1]) OJ L 343, 22.12.2009, p. 51.

([2]) Council Regulation (EC) No 1355/2008 of 18 December 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China (OJ L 350, 30.12.2008, p. 35).

([3]) Judgment of the Court of Justice of the European Union of 22 March 2012 in Case C-338/10, *Grünwald Logistik Service GmbH (GLS)* v *Hauptzollamt Hamburg-Stadt*.

([4]) Council Implementing Regulation (EU) No 158/2013 of 18 February 2013 reimposing a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China (OJ L 49, 22.2.2013, p. 29).

([5]) OJ C 94, 3.4.2013, p. 9.

([6]) OJ C 310, 25.10.2013, p. 9.

1.4.2. *Parties concerned by the investigation*

(7) The Commission officially advised the following parties of the initiation of the expiry review: the applicant, the producers in the Union and their relevant associations, the known exporting producers in China and in the potential analogue countries, unrelated importers in the Union and their relevant associations, suppliers to producers in the Union and their relevant associations, an association of consumers in the Union known to be concerned and the representatives of the exporting country. These parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of Initiation.

(8) In view of the apparent large number of exporting producers in China and of unrelated importers in the Union, it was considered appropriate to examine whether sampling should be used, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, those parties were requested to make themselves known within 15 days of the initiation of the review and to provide the Commission with the information requested in the Notice of Initiation.

(9) Since only one group of exporting producers in China came forward with the requested information, it was not considered necessary to select a sample of exporting producers.

(10) With regard to unrelated importers, 32 were identified and invited to provide sampling information. Seven of them came forward and provided the information necessary for the sampling selection. Out of them, three were selected to be part of the sample, but only two confirmed within the deadline their willingness to be part of the sample exercise.

(11) On the basis of the above, the Commission sent questionnaires to interested parties and to those who had made themselves known within the deadlines set in the Notice of Initiation. Replies were received from five Union producers, the cooperating exporting producer in China, two unrelated importers, eight suppliers to the Union producers, one association of suppliers to the Union producers and one producer in the analogue country.

(12) Two associations of importers came forward as interested parties. Five unrelated importers also submitted comments.

(13) With regard to the analogue country producers, four companies were identified and invited to provide necessary information. Only one of these companies provided the requested information and agreed with the verification visit.

(14) The Commission verified all the information it deemed necessary for a determination of the likelihood of a continuation of dumping and likelihood of recurrence of injury and of the Union interest. Verification visits were carried out at the premises of the following interested parties:

(a) Union producers:

— Halcon Foods S.A.U., Murcia, Spain

— Conservas y Frutas S.A., Murcia, Spain

— Agricultura y Conservas S.A., Algemesí (Valencia), Spain

— Industrias Videca S.A., Villanueva de Castellón (Valencia), Spain

(b) Exporting producer in China:

— Zhejiang Taizhou Yiguan Food Co., Ltd, China and its related company Zhejiang Merry Life Food Co.,Ltd

(c) Unrelated importers in the Union:

— Wünsche Handelsgesellschaft International mbH & Co KG, Hamburg, Germany

— I. Schroeder KG (GmbH & Co), Hamburg, Germany

(d) Producer in the analogue country:

— Frigo-Pak Gida Maddeleri Sanayi Ve Ticaret A.S., Turkey

1.5. Disclosure of the essential facts and the hearings

(15) On 13 October 2014, the Commission made the disclosure of the essential facts and considerations on the basis of which it intended to impose anti-dumping duties (final disclosure). Subsequent to the final disclosure, several interested parties made written submissions including their views on the definitive findings. The parties who so requested were granted an opportunity to be heard. Three importers requested and were afforded a joint hearing in the presence of the Hearing Officer in trade proceedings. One European association of traders requested and was afforded a hearing with the Commission services.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(16) The product concerned by this review is the same as the one in the original investigation, that is prepared or preserved mandarins (including tangerines and satsumas), clementines, wilkings and other similar citrus hybrids, not containing added spirit, whether or not containing added sugar or other sweetening matter, and as defined under CN heading 2008, originating in the People's Republic of China (the product concerned), currently falling within CN codes 2008 30 55, 2008 30 75 and ex 2008 30 90.

(17) The product concerned is obtained by peeling and segmenting certain varieties of small citrus fruit (mainly satsumas) which are then packaged in a medium of sugar syrup, juice or water in various sizes to meet the specific demands of the different markets.

(18) Satsumas, clementines and other small citrus fruit are commonly known by the collective name 'mandarin'. Most of these different varieties of fruit are suitable to be used as fresh product or for processing. They are similar and their preparations or preservations are, thus, considered to be one single product.

2.2. Like product

(19) The Union's producers argued that the imported product and the Union product are alike on the following grounds:

— both products share the same or very similar physical properties such as taste, shape, size and texture,

— they are sold through the same or similar channels and they mainly compete on price,

— they both have the same or similar end-uses,

— they are easily interchangeable,

— they are classified under the same Combined Nomenclature codes for the tariff purposes.

(20) Certain importers claimed, on the other hand, that the imported product is of higher quality since it contains less broken segments (5 % maximum) as well as better taste, appearance and the structure than the Union product. It was also claimed that the imported product differs in terms of smell from the Union product.

(21) The Commission investigated those claims and in view of the available data concluded that the claims of the Union's industry referred to in recital 19 are correct.

(22) As far as the claims made by the importers are concerned, they had to be rejected on the following grounds:

(a) some quality differences relating to the amount of broken segments, taste, appearance, smell and structure did not affect the basic characteristics of the product. The imported product is still interchangeable and serves the same or similar end-uses as the Union product. In fact, the Union producers sold their product, also with a higher proportion of broken segments, during the period considered both to the importers and to the same categories of users/consumers (for example supermarket chains and bakery industry suppliers), which were also served by the importers. In addition, one supermarket chain in the European Union also confirmed that it was selling the European and the Chinese origin product under the same brand and trademark;

(b) the maximum amount of 5 % broken segments is not an exclusive feature of the imported product only. In fact, the investigation revealed that Union producers offered a wide range of qualities with different percentages of broken segments, including proportions which contained maximum 5 % of broken segments. Some importers purchased the product which contained maximum 5 % of broken segments from the Union producers.

(23) Therefore, similarly to the original investigation, the imported product and the one produced by the Union industry are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OF DUMPING

3.1. Preliminary remarks

(24) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation of dumping.

(25) As mentioned in recital 9, due to the fact that only one group of companies cooperated, it was not necessary to select a sample of exporting producers in China. This company covered around 12 %-20 % (range given for reasons of confidentiality) of the imports of product concerned from China to the Union during the review investigation period.

3.2. Dumping of imports during the review investigation period

3.2.1. *Analogue country*

(26) In accordance with the provisions of Article 2(7)(a) of the basic Regulation, normal value had to be determined on the basis of the prices or constructed value in an appropriate market economy third country (the 'analogue country'), or the price from such a third country to other countries, including the Union, or, where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin.

(27) In the Notice of Initiation, the Commission indicated its intention to use Turkey as an appropriate analogue country for the purpose of establishing normal value for China and invited interested parties to comment on this.

(28) No comments were received concerning Turkey as proposed analogue country. None of the interested parties suggested alternative analogue country producers of the like product.

(29) One of the contacted Turkish exporting producers, Frigo-Pak, submitted the full questionnaire reply in time and it accepted a verification visit at its premises.

3.2.2. *Normal value*

(30) Pursuant to Article 2(7)(a) of the basic Regulation normal value was established on the basis of the verified information received from the producer in Turkey. This company did not sell the like product on the domestic market and therefore the normal value was constructed in accordance with Article 2(3) of the basic Regulation using the costs of production and, in line with Article 2(6)(b), adding a reasonable percentage for selling, general and administrative expenses (SG&A) and, in line with Article 2(6)(c), a reasonable margin of profit. The SG&A rate used is the SG&A rate incurred, by this producer, on their domestic sales of other canned products and amounted to 10 %-20 % (range given for reasons of confidentiality). The profit rate used is the same as the one used in the initial investigation, i.e. 6,8 % which represents the profit achieved by the EU industry before it was injured by the dumped imports from China.

3.2.3. *Export price*

(31) The export sales of the cooperating exporting producer to the Union were made directly to independent customers established in the Union. In accordance with Article 2(8) of the basic Regulation the export price was established on the basis of the prices actually paid or payable for the product when sold for export from China to the Union.

3.2.4. *Comparison*

(32) The comparison between normal value and export price was made on ex-works basis.

(33) For the purpose of ensuring a fair comparison between the normal value and the export price of the cooperating exporting producer, and in accordance with Article 2(10) of the basic Regulation, due allowance in the form of adjustments was made with regard to differences in transport, insurance, commission and bank charges which affected prices and price comparability.

3.2.5. *Dumping margin*

(34) As provided for under Article 2(11) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export price.

(35) For the cooperating exporting producer, that comparison showed the existence of dumping. The dumping margin amounted to more than 60 %.

(36) For China as a whole, a comparison of the weighted average export price for Chinese imports of the product concerned, as reported in Eurostat, and a weighted average normal value established for the analogue country (duly adjusted to reflect the likely product mix of the Chinese imports in view of the product mix of the EU sales of the cooperating exporting producer for comparable product types), also established considerable dumping at even higher levels.

(37) Subsequent to final disclosure, a European trade association claimed that, as opposed to Chinese exporting producers and Spanish producers, it did not have any possibility to verify the exact calculations (dumping and injury) and therefore asked the Commission to provide the dumping calculation details. During the hearing in the presence of the Hearing Officer, three importers also signalled that they would have preferred to receive details on the calculation of dumping.

(38) In this respect, it should be noted that the data on which the Commission based its calculations contains business secrets and confidential information. The cooperating exporting producer which supplied such data has duly received specific disclosure of the detailed dumping and injury calculations and did not make any comments or requests for clarification. The Commission cannot make that data available for inspection by other interested parties without breaching its confidential nature. However, the methodology used by the Commission, as described in recitals 30-36 above, was disclosed to all interested parties. The Hearing Officer, during the mentioned hearing, informed the importers of the possibility of requesting him to verify the Commission's calculation if they had concerns on its accuracy. The three importers however did not request an intervention of the Hearing Officer in this respect.

(39) In any event, the European trade association calculated itself a dumping margin, comparing average Eurostat import prices from China with the average Eurostat import prices from Turkey. According to that trade association, such comparison would suggest a lower level of dumping, circa 30 %. In this respect, it should first be noted that, in an expiry review, the exact level of dumping is of less importance than in an investigation in which the level of the duty is determined. Secondly, as explained in recitals 30-33 above, the Commission's calculation was based on 'real' normal value data from the cooperating and verified Turkish producer and the comparison with the Chinese export prices was made at a detailed level. Therefore, the data on which the Commission based its calculation is considered much more reliable and precise than the estimate suggested by the association in its comments to the disclosure.

(40) During the hearing with the Hearing Officer, three importers further claimed that there was no dumping. They based that claim on the fact that the Commission had found that the average sales prices of the cooperating Chinese exporting producer to several important non-EU markets were below the average sales price to the Union market. This claim has to be rejected as dumping is selling in a given market at prices below normal value, not at prices below those achieved in other third markets.

3.3. **Development of imports should measures be repealed**

3.3.1. *Preliminary remark*

(41) Further to the finding of the existence of dumping during the review investigation period, the likelihood of continuation of dumping should measures be repealed was investigated and the following elements were analysed: production capacity and spare capacity in China; volume and prices of dumped imports from China; the attractiveness of the Union market in relation to imports from China.

(42) During a big part of the RIP there were no measures in force in the EU, since they had been annulled (see recital 2 above). During that period without measures, there was peak in imports in 2011/12 followed by a drop during the rests of the review investigation period. This actually reflects a stock piling effect rather than a genuine increase/decrease in consumption and is attributed to the high level of Chinese imports which took place between March and July 2012, when the measures were not in force.

3.3.2. *Production, domestic consumption and exporting capacity of the Chinese producers*

(43) As concerns the total Chinese production capacity and spare capacity, the Commission did not obtain information from any of the Chinese producers or other interested parties. In accordance with Article 18 of the basic Regulation the Commission made its findings on the basis of facts available.

(44) According to the report published by the Foreign Agricultural Service of the US Department of Agriculture (FSA/USDA) which was included in the review request and which is also publicly available ([7]), the amount of fresh mandarins devoted to processing, that is production of canned mandarins, in China increased by 27 % between 2009/2010 (520 000 tonnes) and the review investigation period (660 000 tonnes). The production of Chinese canned mandarins followed a similar trend. According to this report, China increased the production of canned mandarins from 347 000 tonnes in 2009/2010 to 440 000 tonnes in the review investigation period. The report further estimated that the Chinese domestic consumption of canned mandarins was around 100 000-150 000 tonnes in 2013/2014. As another publicly available source estimated that domestic consumption at 50 000-100 000 tonnes ([8]), an estimate of a domestic consumption of 100 000 tonnes appears to be reasonable. Taking the above information into account, the amount of Chinese canned mandarins available for export can be estimated to be around 340 000 tonnes in the review investigation period.

(45) Other available sources provide slightly different estimates concerning the amount of Chinese canned mandarins available for export between 2009 and 2014 ([9]). However, in spite of those differences, they all indicate that the amount of Chinese canned mandarins available for export was at least 300 000 tonnes per reported annual season between 2009 and 2013. None of the sources indicate that the amount of Chinese canned mandarins available for export could be significantly reduced in the future.

3.3.3. *Attractiveness of the Union market*

(46) Even if imports from China during the review investigation period were 19 253 tonnes, import data from the original investigation, covering the 2002-2007 period, show that Chinese manufacturers can allocate more than 60 000 tonnes per season to the Union market, as confirmed by Eurostat import data concerning the 2011/2012 season. Moreover, the high level of imports in 2011/2012, a period during which measures were not applicable for the majority of the time (namely, as from 22 March 2012), shows that the Union is an attractive market for Chinese manufacturers in terms of prices and that significant volumes of Chinese dumped imports would reach the Union market if the current anti-dumping measures are repealed.

(47) The fact that China exported to the Union in 2002-2007 period (when no anti-dumping measures were imposed) considerably more canned mandarins on average per season (by 36 %) than in 2009-2013 period (when duties were imposed except between 22 March 2012 and 23 February 2013), although the total volumes available for Chinese export worldwide were lower in the first period than in the second one, further corroborates the likelihood that the Chinese producers will increase their export volumes to the Union to the levels witnessed during the original investigation if the measures are repealed.

3.3.4. *Export prices to third countries*

(48) With regard to exports to third countries, the investigation showed that in the review investigation period the average sales prices of the cooperating company's exports to several important markets (such as Japan, Malaysia, Philippines, Thailand) were below the average sales prices to the Union. It can therefore be expected that in the absence of measures, the cooperating exporting producer would shift at least part of those exports to the Union.

(49) Also the Chinese export statistics concerning prepared and/or preserved citrus fruit, in airtight container, demonstrate that there is a likelihood of redirection of Chinese exports to the Union. Indeed, based on these statistics it is estimated that, during the review investigation period, approximately 20 000 tonnes of the product concerned were sold to export destinations with average prices below those obtained in the EU, even though there were no anti-dumping duties applicable to imports from China on those markets. During the review investigation period that volume would equal the Union industry domestic sales and 71 % of the total Union industry production. In other words, on the basis of the current European canned mandarins market size (total EU consumption:

([7]) United States Department of Agriculture Foreign Agricultural Service Citrus: World Markets and Trade, January 2013. Available at: http://usda.mannlib.cornell.edu/usda/fas/citruswm//2010s/2013/citruswm-01-24-2013.pdf

([8]) 'Will plastic cups boost Chinese mandarin consumption', *Foodnews*, 26 July 2013 https://www.agra-net.net/agra/foodnews/canned/canned-fruit/mandarins/will-plastic-cups-boost-chinese-mandarin-consumption–1.htm

([9]) Idem; FSA/USDA Gain Reports on citrus for 2008-2013 (available at: http://gain.fas.usda.gov/Pages/Default.aspx); China customs statistics database provided by Goodwill China Business Information Limited.

44 523 tonnes) and according to the information from the Chinese export statistics, the Chinese volume of current EU exports plus the potential volume for which it makes economic sense to redirect it to the Union would almost cover the complete EU demand of canned mandarins.

3.3.5. *Conclusion of the likelihood of continuation of dumping*

(50) The investigation has confirmed that Chinese imports continued to enter the Union market at dumped prices during the review investigation period. Given the continued dumping, the fact that the Union market is a significant market which was interesting for the Chinese exporters in the past, the production capacities available in China going beyond the total Union consumption as well as the proven willingness and ability of Chinese producers to increase rapidly the exports to the Union should there be an incentive, it is concluded there is a likelihood of continuation of dumping should measures be removed.

4. INJURY

4.1. General remarks

(51) Mandarins are harvested in autumn and winter, with the harvesting and processing season starting early October and finishing around the end of January (for certain varieties, February or March) the following year. Most purchase (for example by unrelated importers) and sales contracts are negotiated in the first months of each season. Practice in the mandarin preserving industry is to use the season (the period from 1 October in one year to 30 September in the following year) as the basis for comparisons. As in the original investigation, the Commission adopted this practice in its analysis.

4.2. Union production and Union industry

(52) During the review investigation period, the like product was manufactured in the union by five Union producers. The total union production of the like product during the review investigation period was established on the basis of questionnaire replies provided by four individual producers which were verified during an on-spot verification. The production of the remaining producer, who did not adequately cooperate and was not subject to an on-site verification visit, was based on the reply to the questionnaire submitted by that producer cross-checked with the complaint. On this basis, the total Union production was estimated to be around 28 500 tonnes during the review investigation period.

(53) It is concluded that the above Union producers accounting for the total Union production constitute the Union industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

4.3. Apparent consumption in the Union market

(54) The Union consumption was established on the basis of import data as reported by Eurostat at TARIC (integrated community tariff) level, thus exactly coinciding with the definition of the product concerned — and on the basis of the EU sales volumes of the Union industry.

(55) It should be noted that, even though the analysis is based on seasons rather than calendar years, the above methodology does not necessarily reflect the consumption at industrial user/consumer level. Indeed, given the seasonality of the main raw material (fresh fruits), it is common practice in the sector for both importers and Union producers to build up stocks when fresh fruits are canned, and sell the processed products to distributors or industrial users throughout the year. The consumption may thus sometimes be affected by stock-piling effects.

(56) On this basis, during the period considered the Union consumption developed as follows:

Table 1

	2009/2010	2010/2011	2011/2012	Review investigation period
Union consumption (tonnes)	66 487	72 618	90 207	44 523
Index (2009/2010 = 100)	*100*	*109*	*136*	*67*

(57) During the period considered, the Union consumption for citrus fruits remained on average slightly below 70 000 tonnes. There was however a peak in imports in 2011/2012, followed by a drop during the review investigation period. This development actually reflects a stock piling effect rather than a genuine increase/decrease in consumption and is attributed to the high level of Chinese imports which took place between March and July 2012, when the measures were temporarily not in force (see recital 2). The peak of imports in 2011/2012 was compensated by a lower import level during the review investigation period, thus a lower Union consumption.

(58) Some of the importers claimed that they had not been practising stockpiling. They also submitted that since 6 October 2011, when the Advocate General delivered its opinion in Case C-338/10, they were already convinced that the Court of Justice would annul the measures. Therefore, they postponed the custom clearance of the product concerned until the final judgment of the Court of Justice was adopted.

(59) In this context, it should be recalled that stockpiling can be defined as accumulating and storing a reserve supply. The data at the disposal of the Commission shows that since the annulment of the measures, on 22 March 2012, there had been a massive import volume of the product concerned until July 2012: on average of almost 9 000 tonnes per month. Thereafter and until the end of the RIP, the average level of imports went down to only around 1 650 tonnes per month, which was about 2 000 tonnes less per month as compared to the average level of imports in the period preceding the annulment of the measures. The Commission concluded that in order to reach such a significant level of monthly imports during a relatively short period of time, importers had been accumulating high volumes of the product concerned. This was in fact also confirmed by some importers, who admitted that they had been delaying customs clearance when they become convinced that the anti-dumping duties would be annulled. Therefore, the claim that the importers were not practising stockpiling had to be rejected.

4.4. **Imports into the Union from China**

(60) Bearing in mind that only one group of Chinese exporters cooperated with the investigation and that this group represented around 12 %-20 % (range given for reasons of confidentiality) of the total imports from China during the review investigation period, it was concluded that the Eurostat data (at TARIC (integrated community tariff) code level where necessary) was the most accurate and the best information source for import volumes and prices. Individual prices of the cooperating Chinese exporter were nevertheless also examined.

4.4.1. *Volume and market share*

(61) The Chinese import volume and the corresponding market shares developed as follows during the period considered:

Table 2

Imports from China	2009/2010	2010/2011	2011/2012	Review investigation period
Volume of imports (tonnes)	47 235	41 915	59 613	19 294
Index (2009/2010 = 100)	*100*	*89*	*126*	*41*
Market share	71 %	57,7 %	66,1 %	43,3 %

(62) Following the imposition of the anti-dumping measures in 2008, the volume of Chinese imports generally followed a downward trend. It is recalled that imports during the original investigation period (2006/2007) amounted to 56 108 tonnes.

(63) As explained above, there was however a peak of imports in 2011/2012. This peak was clearly the result of the annulment of the anti-dumping measures in March 2012. Indeed, when looking at the monthly development of Chinese imports, based on Eurostat data, while the monthly Chinese imports generally fluctuated between 2 000 and 6 000 tonnes, they reached levels between 6 000 and 12 000 tonnes in the period March 2012-July 2012 (on average almost 9 000 tonnes per month). In this respect, it should be noted that measures were annulled in March 2012 and re-imposed in February 2013, but registration was introduced on 29 June 2012 ([10]), which had a chilling effect on imports.

(64) Similarly to the import volume, the Chinese market share followed a downward trend during the period considered, decreasing from 71 % to 43 %. Even considering the impact of the unusual level of Chinese imports in 2011/2012 and the review investigation period, the market shares decreased from around 70 % in 2009/2010 to an average of 55 % in the following years.

4.4.2. *Price and price undercutting*

Table 3

Imports from China	2009/2010	2010/2011	2011/2012	Review investigation period
Average import price (EUR/tonne)	677	744	1 068	925
Index (2009/2010 = 100)	*100*	*110*	*158*	*137*

(65) As reflected in the above table, over the period considered the prices of Chinese imports increased by 37 %. It should however be noted that prices significantly increased until the period 2011/2012 and then decreased during the review investigation period.

(66) Since the import volume of the only cooperating exporter represented only around 12 %-20 % (range given for reasons of confidentiality) of the Chinese imports during the review investigation period, the existence of price undercutting has been examined also for the overall Chinese exports, based on import statistics.

(67) For this purpose, the weighted average sales prices of the cooperating Union producers to unrelated customers on the Union market were compared to the corresponding weighted average CIF (cost, insurance and freight) prices of imports from China as reported by Eurostat. These CIF (cost, insurance and freight) prices were adjusted to cover costs related to customs clearance, namely customs tariff and post-importation costs.

(68) On that basis, the comparison showed that during the review investigation period the imports of the product concerned undercut the Union industry's prices by 4,8 %, when calculations take into account the impact of the anti-dumping duties in force. The undercutting margin however reaches 28 % when import prices are considered without anti-dumping duties.

(69) When considering the import prices reported by the Chinese cooperating exporter, duly adjusted, an undercutting margin of 14 % could be established during the review investigation period, when taking into account anti-dumping duties in force. When discounting the effect of the anti-dumping duties, the undercutting margin reached a level of 20 %. It should be noted that the majority of these exports during the review investigation period took place when the measures were annulled.

4.5. **Imports into the Union from other third countries**

(70) Over the period considered the volume of imports from other third countries never held a market share of more than 11,2 %. Most of these imports (it was at least 89 % during period considered) were from Turkey.

([10]) OJ L 169, 29.6.2012, p. 50.

Table 4

	2009/2010	2010/2011	2011/2012	Review investigation period
Volume of imports from other third countries (tonnes)	4 033	8 078	10 090	4 717
Index (2009/2010 = 100)	*100*	*200*	*250*	*117*
Market share	6,1 %	11,1 %	11,2 %	10,6 %

4.6. **Economic situation of the Union industry**

(71) Pursuant to Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic factors and indices having a bearing on the state of the Union industry during the period considered.

(72) Even though all the five Union producers provided a questionnaire reply it was considered that the questionnaire reply submitted by one of the producers could not be completely used as its reply was not verified during an on-spot verification. The analysis was therefore based on the following methodology.

(73) The macroeconomic indicators (production, production capacity, capacity utilisation, sales volume, market share, employment, productivity, growth, magnitude of dumping margins and recovery from the effects of past dumping) were assessed at the level of the whole Union industry. The assessment was based on the information provided by the four fully cooperating Union producers. In case of the producer whose questionnaire reply was not verified assessment was based on the data provided by this producer which was, to the extent possible, cross-checked with data included in the complaint and its audited financial statements.

(74) The analysis of microeconomic indicators (stocks, sale prices, profitability, cash flow, investments, return on investments, ability to raise capital, wages) was carried out at the level of the fully cooperating four Union producers. The assessment was based on their information which was duly verified during an on-spot verification visit.

4.6.1. *Macroeconomic indicators*

4.6.1.1. Production, production capacity and capacity utilisation

Table 5

	2009/2010	2010/2011	2011/2012	Review investigation period
Production (tonnes)	11 815	33 318	29 672	28 763
Index (2009/2010 = 100)	*100*	*282*	*251*	*243*
Production capacity (tonnes)	77 380	77 380	77 380	77 380
Index (2009/2010 = 100)	*100*	*100*	*100*	*100*
Capacity utilisation	15 %	43 %	38 %	37 %

(75) The production significantly increased during the period considered from around 12 000 tonnes to almost 29 000 tonnes during the review investigation period. In 2009/2010 season the production was small since the Union industry was still affected by the dumped import of Chinese canned mandarins, which were imported in the previous season, as well as by the fact that it maintained a stock from the previous season when the anti-dumping measures had not been in force. The production increased in 2010/2011 season once the new Chinese imports were captured by the anti-dumping measure being in force.

(76) Since the Union production capacity did not change during the period, the capacity utilisation increased accordingly. It however systematically remained below 50 %.

(77) One European association of traders claimed that one Union producer stopped production since 2012/2013 and that this producer and two others were in a difficult financial situation. For these reasons, it is claimed that the production and production capacity/utilisation figures were artificially inflated.

(78) In this respect, it should first be recalled that the information collected in the course of the investigation indicated that all Union producers forming part of the Union industry have been producing in all seasons during the period considered. The first claim that one producer stopped production during the RIP should therefore be rejected.

(79) Concerning the alleged difficult financial situation of Union producers, one of the Union producers was indeed subject to an insolvency proceeding during the period considered. However, the investigation showed that the production level of that producer increased significantly throughout the period considered, while its capacity remained unchanged. Therefore, it was concluded that the insolvency proceeding did not negatively affect that producer's output. As far as the two other Union producers are concerned, they entered into insolvency proceedings but only after the period considered. This in fact confirms the conclusion (see recitals from 96 to 98) that the injury actually resumed and that the Union industry has been still in a fragile financial situation.

4.6.1.2. Sales volume and market share in the Union

Table 6

	2009/2010	2010/2011	2011/2012	Review investigation period
Sales volume (tonnes)	15 219	22 625	20 504	20 512
Index (2009/2010 = 100)	*100*	*149*	*135*	*135*
Market share (of Union consumption)	22,9 %	31,2 %	22,7 %	46,1 %

(80) The sales by the Union industry on the Union market to unrelated customers increased by 35 % during the period considered.

(81) The Union industry market share also followed an increasing trend during the period considered. Even considering the stock piling effect on the level of the union consumption in 2011/2012 and during the review investigation period, the market share increased from around 23 % at the beginning of the period to an average of 35 % in the last 2 years examined.

4.6.1.3. Employment and productivity

Table 7

	2009/2010	2010/2011	2011/2012	Review investigation period
Employment	350	481	484	428
Index (2009/2010 = 100)	*100*	*137*	*138*	*122*

	2009/2010	2010/2011	2011/2012	Review investigation period
Productivity (tonnes per employee)	34	69	61	67
Index (2009/2010 = 100)	*100*	*205*	*182*	*199*

(82) Both employment and productivity improved during the period considered and reflect the overall increase of production and sales volume. The increase of productivity in 2010/2011 season was linked to the higher production volumes which resulted from the fact that the anti-dumping measures took full effect in that period.

(83) The above employment figures are full-time equivalent and therefore they do not show the absolute number of seasonal jobs involved. In order to have a better idea of the magnitude of jobs involved, it should be noted that the figure for the review investigation period is a full-time equivalent expression of around 2 400 seasonal jobs.

4.6.1.4. Growth

(84) The Union industry managed to benefit from growth on the Union market until 2011. However, as soon as the measures against China were lifted (see recital 2) and the Chinese imports flooded the Union market, the Union industry lost a considerable part of its market share. After the duties were re-imposed, the Union industry was able to regain its lost market share, albeit at a cost of deteriorating financial situation.

4.6.1.5. Magnitude of dumping and recovery from past dumping

(85) Dumping continued during the review investigation period at a significant level, as explained under point 3.2.5 (see recitals 34 and 35) above.

(86) As to the impact on the Union industry of the magnitude of the actual dumping margin, given the volume of the dumped imports from China, this impact cannot be considered negligible. It is noted that the Union industry is still on the recovery path from past dumping in particular in terms of capacity utilisation and profitability (as compared to the original investigation).

4.6.2. *Microeconomic indicators*

4.6.2.1. Stocks

Table 8

	2009/2010	2010/2011	2011/2012	Review investigation period
Stocks (tonnes)	2 020	2 942	7 257	9 729
Index (2009/2010 = 100)	*100*	*146*	*359*	*482*

(87) The Union producers increased their stock significantly in the last two seasons. This reflects the fact that production increased more than sales in the period considered.

4.6.2.2. Sales prices in the Union

Table 9

	2009/2010	2010/2011	2011/2012	Review investigation period
Average unit sales price (EUR/tonne)	1 260	1 322	1 577	1 397
Index (2009/2010 = 100)	*100*	*105*	*125*	*111*

(88) Over the review period, the Union industry managed to increase its EU sales price by 11 %. The increase was especially marked until 2011/2012, but prices subsequently decreased during the review investigation period. This is attributed to the high level of Chinese imports which took place between March and July 2012 when the measures were not in force, and the undercutting of Union industry's prices by the prices of the product concerned from China.

4.6.2.3. Profitability and cash flow

Table 10

	2009/2010	2010/2011	2011/2012	Review investigation period
Profitability	– 29,8 %	5,9 %	6,4 %	– 2,9 %

(89) During the period considered the profitability of the Union industry first significantly improved, that is in the period 2010/2011-2011/2012. However, in the review investigation period the Union industry became loss-making again.

(90) The improvement of the profitability was clearly related to the fact that the Union industry managed to increase its sales and production volume as well as sales price in the years following the imposition of the anti-dumping measures. The return to a loss-making situation in the review investigation period is the consequence of lower sales prices due to the sudden influx of Chinese imports after the annulment of the duties by the Court of Justice of the European Union.

(91) In this context, it should be recalled that a significant volume of Chinese products was imported free-of-anti-dumping duty in the period March-July 2012. Moreover, Chinese imports were found to be undercutting the Union prices during the review investigation period at significant levels, in particular when discounting the effect of the anti-dumping duties. This has caused a general price depression, which in turn resulted in a loss-making situation of the Union industry.

Table 11

	2009/2010	2010/2011	2011/2012	Review investigation period
Cash flow (EUR)	1 211 342	3 078 496	– 1 402 390	– 2 023 691
Index (2009/2010 = 100)	*100*	*254*	*– 116*	*– 167*

(92) During the period considered the evolution of the cash flow mainly corresponded to the development of the overall profitability of the Union industry, in conjunction with the effect of increases of stocks, in particular in the last 2 years analysed.

4.6.2.4. Investment, return on investments, ability to raise capital and growth

Table 12

	2009/2010	2010/2011	2011/2012	Review investigation period
Investments (EUR)	318 695	416 714	2 387 341	238 473
Index (2009/2010 = 100)	*100*	*131*	*749*	*75*
Return on investments (net assets)	– 60 %	29 %	19 %	– 1 %

(93) During the period considered part of the Union industry made investments for the maintenance and optimisation of the existing production machinery. The level of investment increased especially in the period 2011/2012, most likely favoured by the level of profit during and immediately before that year. This investment was mainly made by one Union producer with a view to secure source of supply of raw materials, which will complement the existing ones, and to improve the compliance with environmental regulations. The return on investments during the period considered followed closely the profitability trend.

(94) Part of the Union industry encountered difficulties to raise capital during the period considered but was ultimately able to restructure its debt.

4.6.2.5. Wages

Table 13

	2009/2010	2010/2011	2011/2012	Review investigation period
Labour costs per employee (EUR)	23 578	21 864	21 371	23 025
Index (2009/2010 = 100)	*100*	*93*	*91*	*98*

(95) The average wage levels remained rather stable over the period considered, whereas the unit cost of production dropped.

4.7. **Conclusion**

(96) The injury analysis shows that the situation of the Union industry improved in the period considered. The imposition of the anti-dumping measures at the end of 2008 allowed the Union industry to, slowly but steadily, recover from the injurious effects of the dumping, further exploiting its potential onto the Union market. The fact that the Union industry benefited from the measures is mostly illustrated by increased production and sales levels and in particular the level of profit.

(97) The situation, however, changed during the review investigation period. Measures were annulled in March 2012 and imports from China massively increased until June 2012 when imports became subject to registration. Importers used the annulment of the anti-dumping duties to build up stocks in 2011/2012 and put these products on the EU market at cheap prices during the review investigation period. This caused a significant overall price pressure on the EU market and, as a result, the financial situation of the industry deteriorated again. Indeed, the industry had no choice but to decrease its prices in order to maintain its level of sales. This however had serious consequences on its financial situation.

(98) The still injurious situation of the Union industry is best demonstrated by a series of negative financial indicators, namely profitability and cash flow, combined with high stock levels and low capacity utilisation. This context deters new investments and growth.

(99) One European association of traders questioned the findings of injury on the grounds that the sales volumes, employment and sales prices of the Union industry, as well as the level of investments of one Union producer, have developed positively during the period considered.

(100) This claim should however be rejected. Indeed, according to Article 3(5) of the Basic Regulation, the list of the relevant economic indicators that should be examined is not exhaustive, one or more of these factors cannot necessarily give decisive guidance regarding the examination of the impact of the dumped imports on the Union industry. As explained in recital 98, the indicators suggested by the claimant were not decisive for the Commission to reach its conclusions on the injurious situation of the Union industry. The conclusion that injury continued was rather based on the negative financial indicators relating to profitability and cash flow combined with high stock levels and low capacity utilisation.

5. LIKELIHOOD OF CONTINUATION OF INJURY

5.1. Impact of the projected volume of imports and price effects in case of repeal of measures

(101) Should the measures be repealed, the volume of imports is expected to increase and cause further injury to the Union industry. This is based on the following elements.

(102) The analysis above (see recital 44) shows that, although the Chinese export volumes to the Union decreased significantly after the imposition of measures at the end of 2008, Chinese producers still manufacture significant volumes of product concerned most of which is destined for exportation.

(103) In terms of projected volumes and prices, it is clear that the Union market remains very attractive to the Chinese exporting producers. First, in terms of volume, the Union market is the third biggest world market for Chinese canned mandarins. Moreover, the development following the annulment of the measures shows that the Chinese exporters are able to quickly export significant quantities of the product concerned to the Union market without even the need to redirect its sales from other markets. Finally in this respect, based on import data from the original investigation, China can easily export more than 60 000 tonnes per season to the Union market, and this corresponds to almost 90 % of the average Union consumption in the period considered.

(104) If China indeed increased its EU exports as a result of a repeal of the measures, there would more than likely be a general price decrease on the EU market in the medium term. This would put the EU producers in an even more difficult position, as explained below.

(105) Secondly, as far as prices are concerned, the Chinese database ([11]) shows that in the past China exported significant volumes to non-EU countries at prices below the export prices to the EU. During the review investigation period, the volumes exported to these non-EU countries were approximately 20 000 tonnes, which constituted 71 % of the total Union industry production. Because of the attractiveness of the EU market in terms of pricing, it is concluded that if the measures are terminated, Chinese exporters are likely to re-direct those volumes to the more lucrative Union market.

(106) Furthermore, the above analysis (see recitals 68 and 69) has demonstrated that Chinese imports on the Union market significantly undercut the Union producers' prices during the RIP, in particular when discounting the effect of the anti-dumping duties. Even if the Chinese import prices increased in 2011/2012, when the measures were not in force, their level was still well below the level of the EU prices, based on Eurostat data. On that basis the magnitude of the price difference in 2011/2012 was actually comparable to the RIP.

(107) The market for prepared or preserved citrus fruits is very price competitive as the competition mainly takes place on the basis of prices. This is further exacerbated by the fact that sales usually take place for relatively big quantities. If cheap and dumped imports are made available in significant quantities on the Union market, there would be a direct repercussion on the general level of prices on the Union market, which would result in overall price depression.

([11]) See footnote 9.

(108) The annulment of the anti-dumping duties at the end of the period considered is a perfect illustration of what would happen if measures lapsed.

(109) As soon as the measures were annulled by the Court of Justice of the European Union and until imports became subject to registration, the volume of Chinese imports increased rapidly and significantly. The massive presence of these cheap imports on the Union market forced the Union producers to decrease their prices in order to maintain their position in terms of volumes of sales and production, which resulted in a loss making situation.

(110) This was the result of free-of-anti-dumping duty imports during a period of only 5 months. Repercussions on the situation of the Union industry would obviously be even more serious if measures expired. If the high volumes of low-priced imports recurred, injury suffered by the Union industry would in all likelihood be exacerbated. Union producers would suffer a fall in production and sales volumes and prices which would lead to increased losses. An undercutting calculation based on the data presented in point 4.4.2 (see recitals 68 and 69) but with the anti-dumping duties removed points at an undercutting level higher than 20 %.

(111) One European association of traders claimed that the Union industry would not suffer injury if the measures were repealed, because lower volumes of imports of the product concerned would be expected in the future. This claim was based on the following reasons. Firstly, that the domestic consumption of fresh fruits in China would increase in the future, as well as the Chinese exports of fresh fruits to Russia. Secondly, that the domestic Chinese consumption of canned mandarins was also expected to increase. Thirdly, that the Eurostat statistics prove the above as they show lower imports of the products concerned since the 2012/2013 season.

(112) These claims should however be rejected on the following grounds:

(a) firstly, even if the Chinese domestic consumption and export of fresh fruits would be expected to increase, the Chinese production is also estimated to increase to a comparable extent, based on the available data ([12]). It is therefore concluded that the availability of fresh fruits for the Chinese canning industry in the 2013/2014 season will not be significantly affected;

(b) secondly, it was concluded in recital 44 that the Chinese domestic consumption of canned mandarins would be around 100 000 tonnes per season, and there is no indication that this figure is expected to grow in the future. The claimants did also not provide any evidence that consumption would increase;

(c) with relation to the third reason, it should be recalled that the lower imports of the product concerned in the 2012/2013 season (the RIP) could be reasonably explained by the stockpiling effect resulting from a massive imports which took place in 2011/2012 season during the first 5 months after the annulment of the measures (see recital 59).

(113) The same European association of traders also claimed that bigger volumes of fresh fruits available on the Union market, presumably due to Russian embargo, would decrease the prices of those fruits, thus enable the Union industry to further improve its competitiveness.

(114) However, such claim is purely speculative and was not supported by any evidence. Even if raw material prices may decrease in the future, it is not considered to be a sufficient reason not to remedy the negative effects of dumped imports on the situation of the Union Industry. It is indeed considered that, without the maintenance of measures, dumped imports would resume in significant volumes and further cause injury to the Union Industry. This would, as the case may be, deprive the Union Industry to fully benefit from the positive effect of any future decrease of their raw material price. The claim was therefore rejected.

5.2. **Conclusion**

(115) On this basis, it is concluded that the repeal of measures on the imports from China would in all likelihood result in a continuation of injury to the Union industry.

([12]) FSA/USDA Gain Report on citrus dated 12/13/2013 (available at: http://gain.fas.usda.gov/Pages/Default.aspx).

6. UNION INTEREST

6.1. Introduction

(116) In accordance with Article 21 of the basic Regulation, it was examined whether the maintenance of the existing anti-dumping measures would not be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, that is those of the Union industry on the one hand, and those of importers and other parties on the other hand.

(117) It should be recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows for the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.

(118) On this basis it was examined whether, despite the conclusions on the likelihood of a continuation of injurious dumping, it could be concluded that it would not be in the Union interest to maintain measures in this particular case.

6.2. Interest of the Union industry

(119) The Union industry, composed of five producers in rural areas of Spain, gained market share and was able to increase the price of the product concerned to a level that allowed it to turn the business back towards breakeven or profitable in the periods of the period considered when measures were in force. Production volume and employment figures improved in the same way. Should measures be repealed, the Union industry would be in a much worse situation as described above (under likelihood of recurrence of injury) in terms of lower sales prices and further increased losses (see recital 110). New investments aimed at consolidating the companies and improving their competitiveness on the market of the product concerned would be hindered as well. The continuation of measures would be in the interest of the Union industry and should help it further exploiting its potential on a Union market governed by restored competition.

6.3. Interest of importers, traders and retailers

(120) As mentioned in recital 10 above, in view of the apparent high number of unrelated importers sampling was applied. Importers are located mainly in Germany, but also in other countries such as for example, but not only, the United Kingdom, the Netherlands or the Czech Republic.

(121) Two companies which imported the product concerned during the period considered cooperated in the investigation. The aggregated preserved citrus fruit-related business of these parties constituted 3,8 % of their aggregated turnover. Even if the preserved citrus fruit related business is not the most profitable one for these importers, this is inherent to their business option, which consists of offering a very wide range of products to certain customers (for example supermarket chains) in order to secure big contracts where less profitable products are offset by sales of other products and economies of scale.

(122) There appeared to be no indications that a continuation of measures would have any significant negative effect on the activities of the two importers. They are not dependent on this product, whereas the supply chain adapted to the costs linked to the anti-dumping duty. Moreover, as the investigation shows, the measures did not close the Union market for the Chinese exporters as the product concerned was imported in significant quantities throughout the period considered despite the existence of measures.

(123) Another importer claimed that anti-dumping duties negatively affect its preserved citrus fruit-trading business. In light of the absence of verifiable data provided by that importer, it is considered that the negative effect that the continuation of anti-dumping measures can have on these parties would not outweigh the positive effect of measures on the Union industry.

(124) Some parties pointed at a shortage of production capacity by the Union industry. It should be noted that the non-continuation of duties could lead to a situation where the alternative source of supply would have to close down its activities, leaving importers with only one source of supply (imports from China). Yet it is recalled that supermarket chains and retailers value maintaining a security of supply for their business. In fact, one of them supported continuation of the measures in order to have competition and at least two sources of supply. In addition, the Union industry, which is still far from reaching a satisfactory capacity utilisation level, has the capacity

to further serve the Union market in a framework of restored competition. The fact that the Union industry is currently not covering 100 % of the needs in the Union cannot justify either the unfair trade practices by Chinese exporters or the removal of measures in this case.

(125) One European association of traders claimed that the continuation of the measures would unduly restrict the normal conduct of its members' business since a significant part of it was related to trade in the product concerned. In this respect, it should be noted that the purpose of anti-dumping duties is to remedy unfair trade practices, i.e. dumping, and not to restrict business. It is recalled that the Commission came to the conclusion that maintaining the remedy was still necessary in this case.

6.4. **Interest of users**

(126) For the purpose of the analysis, users were divided into two categories: on the one hand, households; and, on the other hand, professional/industrial users active in sectors such as the production of drinks, jams or yogurts, baking or catering.

(127) No party belonging to any of these categories or representing their interests came forward or cooperated in any way in the investigation.

(128) One importer argued that the anti-dumping duties imposed on the product concerned would be anti-competitive and thus not in the interest of the Union consumers. No evidence was submitted in order to support that claim.

(129) Given the limited weight that the product concerned may have in the budget of an average household in the Union, there is no evidence that an increase in consumer price, if any, derived from the maintenance of the measures can outweigh the positive effect of measures on the Union industry.

(130) Even if it cannot be contested that the continuation of duties can in the abstract affect some professional/industrial users negatively in terms of lower margins, there is no evidence that costs stemming from the product concerned (as compared to their total costs) are significant. Any negative impact from a continuation of the measures on this category of users would thus not be disproportionate.

6.5. **Interest of suppliers**

(131) Both individual suppliers of fresh fruit to the Union industry and one association of such suppliers stated that measures are in their interest and would be beneficial also in terms of new investments and jobs. Fruit sold to the Union producers is an important complementary source of revenue for suppliers in the absence of which major disruptions in the agriculture sector in the Spanish regions concerned may occur. It is estimated that the number of cooperative members affected would be more than 2 000 in the region of Valencia only. With relation to seasonal jobs involved, among others, in collection, transport and storage of fruits, it is estimated that at least 2 500 would be affected in the region of Valencia and Murcia together.

(132) From the data submitted by the Association of the Spanish suppliers, it derives that if the Chinese imports exceed 60 000 tonnes, which already happened twice during the original investigation, the suppliers will likely face the situation when they will not be able to sell the whole volume of satsumas destined for the Union canning industry.

(133) One European association of traders claimed that the suppliers could expect subsidies to dispose of the quantities of fruits which could not be exported due to the embargo to Russia. However, the claimant did not present any evidence supporting the subsidy claim. In addition, subsidies, if any, would have been available only for unsold fruits destined for export to Russia but not for those which had not been sold to the Union industry due to the injury caused by the product concerned after the lapse of the measures. The claim was therefore rejected.

6.6. **Conclusion**

(134) The investigation has shown that the existing anti-dumping measures did not close the Union market to Chinese imports and contributed to the recovery of the Union industry. As this recovery process is still ongoing, the continuation of measures is in the interest of the Union industry. If measures were allowed to lapse, this recovery

process would come to a stop, profitable price levels would be out of reach and the Union industry would incur high losses. Moreover, a complementary source of revenue for members of numerous cooperatives and seasonal workers in several rural areas where little job alternatives exist would be in a threat.

(135) From the data available, the existing measures appear not to have had any important negative effects on the economic situation of the importers in the Union which cooperated in the investigation. In light of available data, the impact of measures on other parties that came forward or on importers, traders, users and retailers cannot be deemed substantive either. Any price increase, if at all, resulting from the continuation of anti-dumping measures, does not appear to be disproportionate when compared to the benefit to the Union industry achieved by the removal of the trade distortion caused by the dumped imports.

(136) Taking into account all of the factors outlined in the recitals above, it is concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

7. ANTI-DUMPING MEASURES

(137) All parties were informed of the essential facts and considerations on the basis of which it is considered appropriate that the existing measures be maintained. They were also granted a period to submit comments subsequent to that disclosure. The submissions and comments were, where warranted, duly taken into consideration.

(138) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of certain preserved certain fruit originating in China should be maintained for an additional period of 5 years.

(139) Some parties claimed that measures with a quantitative element (a quota system) are preferable to anti-dumping measures. This claim cannot be retained given that the according to the basic Regulation a form of measures cannot be changed in an expiry review investigation. This claim cannot undermine the findings in the framework of this investigation either, namely that the requirements for maintaining the anti-dumping measures are met.

(140) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ([13]). The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.

(141) The Committee established by Article 15(1) of the basic Regulation did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of prepared or preserved mandarins (including tangerines and satsumas), clementines, wilkings and other similar citrus hybrids, not containing added spirit, whether or not containing added sugar or other sweetening matter, and as defined under CN heading 2008, currently falling within CN codes 2008 30 55, 2008 30 75 and ex 2008 30 90 (TARIC codes 2008 30 90 61, 2008 30 90 63, 2008 30 90 65, 2008 30 90 67 and 2008 30 90 69) and originating in the People's Republic of China.

2. The amount of the definitive anti-dumping duty applicable for the products described in paragraph 1 and manufactured by the companies listed below shall be as follows:

Company	EUR/tonne net product weight	TARIC additional code
Yichang Rosen Foods Co., Ltd, Yichang, Zhejiang	531,2	A886

([13]) European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi/Wetstraat 170, 1040 Bruxelles/Brussel, BELGIQUE/BELGIË.

Company	EUR/tonne net product weight	TARIC additional code
Zhejiang Taizhou Yiguan Food Co. Ltd ([14]), Huangyan, Zhejiang	361,4	A887
Zhejiang Xinshiji Foods Co., Ltd, Sanmen, Zhejiang and its related producer Hubei Xinshiji Foods Co., Ltd, Dangyang City, Hubei Province	490,7	A888
Cooperating exporting producers not included in the sample as set out in the Annex	499,6	A889
All other companies	531,2	A999

Article 2

1. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 ([15]) the amount of anti-dumping duty, calculated on the basis of Article 1 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

Article 3

Article 1(2) may be amended by adding a new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty rate of 499,6 EUR/tonne net product weight where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that it:

(a) did not export to the Union the product described in Article 1(1) during the review investigation period (1 October 2012 to 30 September 2013) and during the original investigation period (1 October 2006 to 30 September 2007);

(b) is not related to any of the exporting producers in the People's Republic of China which are subject to the measures imposed by this Regulation; and

(c) has either actually exported to the Union the product concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the review investigation period.

Article 4

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

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

Done at Brussels, 10 December 2014.

For the Commission
The President
Jean-Claude JUNCKER

([14]) OJ C 264, 13.9.2013, p. 20 (change of name).
([15]) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

ANNEX

Cooperating exporting producers not included in the sample

Hunan Pointer Foods Co., Ltd, Yongzhou, Hunan
Ningbo Pointer Canned Foods Co., Ltd, Xiangshan, Ningbo
Yichang Jiayuan Foodstuffs Co., Ltd, Yichang, Hubei
Ninghai Dongda Foodstuff Co., Ltd, Ningbo, Zhejiang
Huangyan No 2 Canned Food Factory, Huangyan, Zhejiang
Zhejiang Xinchang Best Foods Co., Ltd, Xinchang, Zhejiang
Toyoshima Share Yidu Foods Co., Ltd, Yidu, Hubei
Guangxi Guiguo Food Co., Ltd, Guilin, Guangxi
Zhejiang Juda Industry Co., Ltd, Quzhou, Zhejiang
Zhejiang Iceman Group Co., Ltd, Jinhua, Zhejiang
Ningbo Guosheng Foods Co., Ltd, Ninghai
Yi Chang Yin He Food Co., Ltd, Yidu, Hubei
Yongzhou Quanhui Canned Food Co., Ltd, Yongzhou, Hunan
Ningbo Orient Jiuzhou Food Trade & Industry Co., Ltd, Yinzhou, Ningbo
Guangxi Guilin Huangguan Food Co., Ltd, Guilin, Guangxi
Ningbo Wuzhouxing Group Co., Ltd, Mingzhou, Ningbo

COMMISSION IMPLEMENTING REGULATION (EU) No 1314/2014

of 10 December 2014

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 Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 [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:

(1) 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.

(2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

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 to this Regulation.

Article 2

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

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

Done at Brussels, 10 December 2014.

For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development

[1] OJ L 347, 20.12.2013, p. 671.
[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	72,7
	IL	107,2
	MA	82,2
	TN	139,2
	TR	112,1
	ZZ	102,7
0707 00 05	AL	63,5
	EG	191,6
	JO	258,6
	MA	164,1
	TR	133,8
	ZZ	162,3
0709 93 10	MA	63,5
	TR	121,1
	ZZ	92,3
0805 10 20	AR	35,3
	MA	68,6
	SZ	37,7
	TR	61,9
	UY	32,9
	ZA	46,2
	ZW	33,9
	ZZ	45,2
0805 20 10	MA	57,1
	ZZ	57,1
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	IL	106,3
	TR	79,3
	ZZ	92,8
0805 50 10	TR	72,0
	ZZ	72,0
0808 10 80	BA	32,4
	BR	54,7
	CA	135,6
	CL	79,6
	NZ	156,7
	US	124,5
	ZA	144,5
	ZZ	104,0

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0808 30 90	CN	82,9
	TR	174,9
	US	173,2
	ZZ	143,7

(1) Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

COMMISSION IMPLEMENTING REGULATION (EU) No 1315/2014

of 10 December 2014

fixing the allocation coefficient to be applied to the quantities covered by the applications for import licences lodged from 20 November 2014 to 30 November 2014 and determining the quantities to be added to the quantity fixed for the subperiod from 1 July 2015 to 31 December 2015 under the tariff quotas opened by Regulation (EC) No 2535/2001 in the milk and milk products sector

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ([1]), and in particular Article 188 thereof,

Whereas:

(1) Commission Regulation (EC) No 2535/2001 ([2]) opened annual tariff quotas for imports of products of the milk and milk products sector.

(2) For some quotas, the quantities covered by the applications for import licences lodged from 20 November 2014 to 30 November 2014 for the subperiod from 1 January 2015 to 30 June 2015 exceed those available. The extent to which import licences may be issued should therefore be determined by establishing the allocation coefficient to be applied to the quantities requested, calculated in accordance with Article 7(2) of Commission Regulation (EC) No 1301/2006 ([3]).

(3) The quantities covered by the applications for import licences lodged from 20 November 2014 to 30 November 2014 for the subperiod from 1 January 2015 to 30 June 2015 are, for some quotas, less than those available. The quantities for which applications have not been lodged should therefore be determined and these should be added to the quantity fixed for the following quota subperiod.

(4) In order to ensure the efficient management of the measure, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

1. The quantities covered by the applications for import licences lodged under Regulation (EC) No 2535/2001 for the subperiod from 1 January 2015 to 30 June 2015 shall be multiplied by the allocation coefficient set out in the Annex to this Regulation.

2. The quantities for which import licence applications have not been lodged pursuant to Regulation (EC) No 2535/2001, to be added to the subperiod from 1 July 2015 to 31 December 2015, are set out in the Annex to this Regulation.

([1]) OJ L 347, 20.12.2013, p. 671.
([2]) Commission Regulation (EC) No 2535/2001 of 14 December 2001 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the import arrangements for milk and milk products and opening tariff quotas (OJ L 341, 22.12.2001, p. 29).
([3]) 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 (OJ L 238, 1.9.2006, p. 13).

Article 2

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

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

Done at Brussels, 10 December 2014.

For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development

ANNEX

I.A

Order No	Allocation coefficient — applications lodged for the subperiod from 1.1.2015 to 30.6.2015 (%)	Quantities not applied for, to be added to the quantities available for the subperiod from 1.7.2015 to 31.12.2015 (kg)
09.4590	—	—
09.4599	—	—
09.4591	—	—
09.4592	—	—
09.4593	—	—
09.4594	—	—
09.4595	—	—
09.4596	—	—

I.F

Products originating in Switzerland

Order No	Allocation coefficient — applications lodged for the subperiod from 1.1.2015 to 30.6.2015 (%)	Quantities not applied for, to be added to the quantities available for the subperiod from 1.7.2015 to 31.12.2015 (kg)
09.4155	8,841342	—

I.H

Products originating in Norway

Order No	Allocation coefficient — applications lodged for the subperiod from 1.1.2015 to 30.6.2015 (%)	Quantities not applied for, to be added to the quantities available for the subperiod from 1.7.2015 to 31.12.2015 (kg)
09.4179	—	2 642 100

I.I

Products originating in Iceland

Order No	Allocation coefficient — applications lodged for the subperiod from 1.1.2015 to 30.6.2015 (%)	Quantities not applied for, to be added to the quantities available for the subperiod from 1.7.2015 to 31.12.2015 (kg)
09.4205	—	—
09.4206	100,000000	—

I.J

Products originating in the Republic of Moldova

Order No	Allocation coefficient — applications lodged for the subperiod from 1.1.2015 to 30.6.2015 (%)	Quantities not applied for, to be added to the quantities available for the subperiod from 1.7.2015 to 31.12.2015 (kg)
09.4210	—	750 000

I.K

Products originating in New Zealand

Order No	Allocation coefficient — applications lodged for the subperiod from 1.1.2015 to 30.6.2015 (%)	Quantities not applied for, to be added to the quantities available for the subperiod from 1.7.2015 to 31.12.2015 (kg)
09.4514	—	7 000 000
09.4515	—	4 000 000
09.4182	—	16 806 000
09.4195	—	20 540 500

I.L

Products originating in Ukraine:

Order No	Allocation coefficient — applications lodged for the subperiod from 1.1.2015 to 30.6.2015 (%)	Quantities not applied for, to be added to the quantities available for the subperiod from 1.7.2015 to 31.12.2015 (kg)
09.4600	—	4 000 000
09.4601	—	750 000
09.4602	—	750 000

DECISIONS

COMMISSION IMPLEMENTING DECISION

of 9 December 2014

amending Annex II to Decision 93/52/EEC as regards the recognition of certain regions of France as officially free of brucellosis (*B. melitensis*)

(notified under document C(2014) 9218)

(Text with EEA relevance)

(2014/892/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 91/68/EEC of 28 January 1991 on animal health conditions governing intra-Community trade in ovine and caprine animals ([1]), and in particular Section II of Chapter 1 of Annex A thereto,

Whereas:

(1) Directive 91/68/EEC defines the animal health conditions governing trade in the Union in ovine and caprine animals. It lays down the conditions whereby Member States or regions thereof may be recognised as being officially brucellosis-free.

(2) Annex II to Commission Decision 93/52/EEC ([2]) lists the regions of Member States which are recognised as officially free of brucellosis (*B. melitensis*) in accordance with Directive 91/68/EEC.

(3) France has submitted to the Commission documentation demonstrating compliance with the conditions laid down in Directive 91/68/EEC to be recognised as officially free of brucellosis *(B. melitensis)* for 31 new administrative regions (*départements*) in addition to the 64 administrative regions (*départements*) already recognised as officially free of that disease and currently listed in Annex II to Decision 93/52/EEC.

(4) Following an evaluation of the documentation submitted by France, those 31 administrative regions (*départements*) should be recognised as being officially free of brucellosis (*B. melitensis*).

(5) The entry for France in Annex II to Decision 93/52/EEC should therefore be amended accordingly.

(6) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Annex II to Decision 93/52/EEC is amended in accordance with the Annex to this Decision.

([1]) OJ L 46, 19.2.1991, p. 19.
([2]) Commission Decision 93/52/EEC of 21 December 1992 recording the compliance by certain Member States or regions with the requirements relating to brucellosis (*B. melitensis*) and according them the status of a Member State or region officially free of the disease (OJ L 13, 21.1.1993, p. 14).

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 9 December 2014.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX

In Annex II to Decision 93/52/EEC, the entry for France is replaced by the following:

'In France:

"Départements":

Ain, Aisne, Allier, Alpes de Haute-Provence, Hautes-Alpes, Alpes-Maritimes, Ardèche, Ardennes, Ariège, Aube, Aude, Aveyron, Bouches-du-Rhône, Calvados, Cantal, Charente, Charente-Maritime, Cher, Corrèze, Corse-du-Sud, Haute-Corse, Côte-d'Or, Côtes-d'Armor, Creuse, Dordogne, Doubs, Drôme, Eure, Eure-et-Loir, Finistère, Gard, Haute-Garonne, Gers, Gironde, Hérault, Ille-et-Vilaine, Indre, Indre-et-Loire, Isère, Jura, Landes, Loir-et-Cher, Loire, Haute-Loire, Loire-Atlantique, Loiret, Lot, Lot-et-Garonne, Lozère, Maine-et-Loire, Manche, Marne, Haute-Marne, Mayenne, Meurthe-et-Moselle, Meuse, Morbihan, Moselle, Nièvre, Nord, Oise, Orne, Pas-de-Calais, Puy-de-Dôme, Hautes-Pyrénées, Pyrénées-Orientales, Bas-Rhin, Haut-Rhin, Rhône, Haute-Saône, Saône-et-Loire, Sarthe, Savoie, Haute-Savoie, Ville de Paris, Seine-Maritime, Seine-et-Marne, Yvelines, Deux-Sèvres, Somme, Tarn, Tarn-et-Garonne, Var, Vaucluse, Vendée, Vienne, Haute-Vienne, Vosges, Yonne, Territoire de Belfort, Essonne, Hauts-de-Seine, Seine-Saint-Denis, Val-de-Marne, Val-d'Oise.'

COMMISSION DECISION

of 9 December 2014

establishing the ecological criteria for the award of the EU Ecolabel for rinse-off cosmetic products

(notified under document C(2014) 9302)

(Text with EEA relevance)

(2014/893/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel ([1]), and in particular Article 8(2) thereof,

After consulting the European Union Ecolabelling Board,

Whereas:

(1) Under Regulation (EC) No 66/2010, the EU Ecolabel may be awarded to products which have a reduced environmental impact during their entire life cycle.

(2) Regulation (EC) No 66/2010 provides that specific EU Ecolabel criteria are to be established according to product groups.

(3) Since environmental impacts mainly in terms of eco-toxicity and resource consumption are associated to the chemicals used in rinse-off cosmetic products and to their packaging, it is appropriate to establish the EU Ecolabel criteria for this product group. The criteria should in particular promote products that have reduced impact on aquatic ecosystems, contain limited amount of hazardous substances and minimise waste production by reducing the amount of packaging.

(4) Commission Decision 2007/506/EC ([2]) has established the ecological criteria and related assessment and verification requirement for soaps, shampoos and hair-conditioners. Those criteria have been reviewed in the light of technological developments. It results from the review that it is necessary to modify the name and the definition of the product group so as to include a new sub-product group and to establish new criteria.

(5) Decision 2007/506/EC should be replaced for reasons of clarity.

(6) A transitional period should be allowed for producers whose products have been awarded the Ecolabel for soaps, shampoos and hair conditioners on the basis of the criteria set out in Decision 2007/506/EC, so that they have sufficient time to adapt their products to comply with the revised criteria and requirements. Producers should also be allowed to submit applications based on the criteria set out in Decision 2007/506/EC or on the criteria set out in this Decision until the lapse of vailidity of that Decision.

(7) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 16 of Regulation (EC) No 66/2010,

HAS ADOPTED THIS DECISION:

Article 1

The product group 'Rinse-off cosmetic products' shall comprise any rinse-off substance or mixture falling under the scope of Regulation (EC) No 1223/2009 of the European Parliament and of the Council ([3]) intended to be placed in contact with the epidermis and/or the hair system with a view exclusively or mainly to cleaning them (toilet soaps, shower preparations, shampoos), to improve the condition of the hair (hair conditioning products) or to protect the epidermis and lubricate the hair before shaving (shaving products).

([1]) OJ L 27, 30.1.2010, p. 1.
([2]) Commission Decision 2007/506/EC of 21 June 2007 establishing the ecological criteria for the award of the Community eco-label to soaps, shampoos and hair conditioners (OJ L 186, 18.7.2007, p. 36).
([3]) Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (OJ L 342, 22.12.2009, p. 59).

The product group 'Rinse-off cosmetic products' shall include products for both private and professional use.

The product group shall not cover products that are specifically marketed for disinfecting or anti-bacterial use. Anti-dandruff shampoos are allowed.

Article 2

For the purpose of this Decision, the following definitions shall apply:

(1) 'ingoing substances' means preservatives, fragrances and colorants, regardless of the concentration, and other substances intentionally added, by-products and impurities from raw materials, the concentration of which equals or exceeds 0.010 % by weight of final formulation;

(2) 'active content' (AC) means the sum of organic ingoing substances in the product (expressed in grams), calculated on the basis of the complete formulation of the product, including propellants contained in aerosol products. Rubbing/abrasive agents are not included in the calculation of the active content;

(3) 'primary packaging' means packaging in direct contact with the content conceived so as to constitute the smallest sales unit of distribution to the final user or consumer at the point of purchase;

(4) 'secondary packaging' means packaging which can be removed from the product without affecting its characteristics and is conceived so as to constitute at the point of purchase a grouping of a certain number of sales units whether the latter is sold as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale.

Article 3

The criteria for awarding the EU Ecolabel under Regulation (EC) No 66/2010 for a product falling within the product group 'rinse-off cosmetic products' defined in Article 1 of this Decision as well as the related assessment and verification requirements are set out in the Annex.

Article 4

The criteria and the related assessment and verification requirements set out in the Annex shall be valid for four years from the date of adoption of this Decision.

Article 5

For administrative purposes, the code number assigned to the product group 'rinse-off cosmetic products' shall be '30'.

Article 6

Decision 2007/506/EC is repealed.

Article 7

1. By derogation from Article 6, applications for the EU Ecolabel for products falling within the product group 'soaps, shampoos and hair conditioners' submitted before the date of adoption of this Decision shall be evaluated in accordance with the conditions laid down in Decision 2007/506/EC.

2. Applications for the EU Ecolabel for products falling within the product group 'soaps, shampoos and hair conditioners' submitted within two months from the adoption of this Decision may be based either on the criteria set out in Decision 2007/506/EC or on the criteria set out in this Decision.

Those applications shall be evaluated in accordance with the criteria on which they are based.

3. EU Ecolabel licences awarded in accordance with the criteria set out in Decision 2007/506/EC may be used for 12 months from the date of adoption of this Decision.

Article 8

This Decision is addressed to the Member States.

Done at Brussels, 9 December 2014.

For the Commission
Karmenu VELLA
Member of the Commission

ANNEX

EU ECOLABEL CRITERIA AND ASSESSMENT AND VERIFICATION REQUIREMENTS

FRAMEWORK

CRITERIA

Criteria for awarding the EU Ecolabel to 'rinse-off cosmetic products':

1. Toxicity to aquatic organisms: Critical Dilution Volume (CDV)

2. Biodegradability

3. Excluded or limited substances and mixtures

4. Packaging

5. Sustainable sourcing of palm oil, palm kernel oil and their derivatives

6. Fitness for use

7. Information appearing on the EU Ecolabel

ASSESSMENT AND VERIFICATION

a) Requirements

The specific assessment and verification requirements are indicated for each criterion.

Where the applicant is required to provide declarations, documentation, analyses, test reports, or other evidence to show compliance with the criteria, these may originate from the applicant or his supplier(s) or both.

Where possible, the testing shall be performed by laboratories that meet the general requirements of European Standard EN ISO 17025 or equivalent.

Where appropriate, test methods other than those indicated for each criterion may be used if the competent body assessing the application accepts their equivalence.

Where appropriate, competent bodies may require supporting documentation and may carry out independent verifications.

The Appendix makes reference to the 'Detergent Ingredient Database' list (DID list) which contains the most widely used ingredients in detergents and cosmetics formulations. It shall be used for deriving the data for the calculations of the Critical Dilution Volume (CDV) and for the assessment of the biodegradability of the ingoing substances. For substances not present on the DID list, guidance is given on how to calculate or extrapolate the relevant data. The latest version of the DID list is available from the EU Ecolabel website ([1]) or via the websites of the individual competent bodies.

The following information shall be provided to the competent body:

(i) The full formulation of the product indicating trade name, chemical name, CAS No and INCI designations, DID No ([2]), the ingoing quantity including and excluding water, the function and the form of all ingredients regardless of concentration;

(ii) safety data sheets for each ingoing substance or mixture in accordance with Regulation (EC) No 1907/2006 of the European Parliament and of the Council ([3]).

([1]) http://ec.europa.eu/environment/ecolabel/documents/did_list/didlist_part_a_en.pdf, http://ec.europa.eu/environment/ecolabel/documents/did_list/didlist_part_b_en.pdf

([2]) DID No is the number of the ingoing substance on the DID list.

([3]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

b) Measurement thresholds

Compliance with the ecological criteria is required for all ingoing substances as defined above, with the exception of criterion 3(b) and 3(c), where preservatives, colorants and fragrances are requested to comply when their concentration equals or exceeds 0,010 % by weight in the final formulation.

EU ECOLABEL CRITERIA

Criterion 1 — Toxicity to aquatic organisms: Critical Dilution Volume (CDV)

The total CDV toxicity of the product shall not exceed the limits in Table 1:

Table 1

CDV limits

Product	CDV (l/g AC)
Shampoo, shower preparations and liquid soaps	18 000
Solid soaps	3 300
Hair conditioners	25 000
Shaving foams, shaving gels, shaving creams	20 000
Shaving solid soaps	3 300

The CDV is calculated using the following equation:

$$\text{CDV} = \sum \text{CDV (ingoing substance i)} = \sum \text{weight (i)} \times \text{DF (i)} \times 1000/\text{TF chronic (i)}$$

Where:

weight (i) — is the weight of the ingoing substance (in grams) per 1 gram of AC (i.e. normalised weight contribution of the ingoing substance to the AC)

DF (i) — is the degradation factor of the ingoing substance

TF chronic (i) — is the toxicity factor of the ingoing substance (in milligrams/litre)

Assessment and verification: the applicant shall provide the calculation of the CDV of the product. A spreadsheet for calculation of the CDV value is available on the EU Ecolabel website. The values of DF and TF chronic shall be as given in the DID list-part A. If the ingoing substance is not included in the DID list-part A, the applicant shall determine the values using the guidelines described in the DID list-part B and attaching the associated documentation (for more information see the Appendix).

Criterion 2 — Biodegradability

(a) Biodegradability of surfactants

All surfactants shall be readily biodegradable under aerobic conditions and biodegradable under anaerobic conditions.

(b) Biodegradability of organic ingoing substances

The content of all organic ingoing substances in the product that are aerobically non-biodegradable (not readily biodegradable) (aNBO) and anaerobically non-biodegradable (anNBO) shall not exceed the limits in Table 2:

Table 2

aNBO and anNBO limits

Product	aNBO (mg/g AC)	anNBO (mg/g AC)
Shampoo, shower products and liquid soaps	25	25
Solid soaps	10	10
Hair conditioners	45	45
Shaving foams, shaving gels, shaving creams	70	40
Shaving solid soaps	10	10

Assessment and verification: the applicant shall provide documentation for the degradability of surfactants, as well as the calculation of aNBO and anNBO for the product. A spreadsheet for calculating aNBO and anNBO values is available on the EU Ecolabel website.

For both surfactants and aNBO and anNBO values, reference shall be done to the DID list. For ingoing substances which are not included in the DID list, the relevant information from literature or other sources, or appropriate test results, showing that they are aerobically and anaerobically biodegradable shall be provided as described in the Appendix.

In the absence of documentation in accordance with the above requirements, an ingoing substance other than a surfactant may be exempted from the requirement for anaerobic degradability if one of the following three alternatives is fulfilled:

1. Readily degradable and has low adsorption (A < 25 %);

2. Readily degradable and has high desorption (D > 75 %);

3. Readily degradable and non-bioaccumulating.

Testing for adsorption/desorption may be conducted in accordance with OECD guidelines 106.

Criterion 3 — Excluded or limited substances and mixtures

(a) Specified excluded ingoing substances and mixtures

The following ingoing substances and mixtures shall not be included in the product, neither as part of the formulation nor as part of any mixture included in the formulation:

(i) Alkyl phenol ethoxylates (APEOs) and other alkyl phenol derivatives;

(ii) Nitrilo-tri-acetate (NTA);

(iii) Boric acid, borates and perborates;

(iv) Nitromusks and polycyclic musks;

(v) Octamethylcyclotetrasiloxane (D4);

(vi) Butylated Hydroxi Toluene (BHT);

(vii) Ethylenediaminetetraacetate (EDTA) and its salts and non-readily biodegradable phosphonates;

(viii) The following preservatives: triclosan, parabens, formaldehyde and formaldehyde releasers.

(ix) The following fragrances and ingredients of the fragrance mixtures: Hydroxyisohexyl 3-cyclohexene carboxaldehyde (HICC), Atranol and Chloroatranol;

(x) Micro-plastics;

(xi) Nanosilver.

Assessment and verification: the applicant shall provide a signed declaration of compliance supported by declarations from manufacturers of mixtures, as appropriate, confirming that the listed substances and/or mixtures have not been included in the product.

(b) Hazardous substances and mixtures

According to Article 6(6) of Regulation (EC) No 66/2010, the EU Ecolabel may not be awarded to any product that contains substances meeting criteria for classification with the hazard statements or risk phrases specified in Table 3 in accordance with Regulation (EC) No 1272/2008 of the European Parliament and of the Council [1] or Council Directive 67/548/EC [2] or substances referred to in Article 57 of Regulation (EC) No 1907/2006. In case the threshold for classification of a substance or mixture with a hazard statement differs from the one of a risk phrase than the former prevails. The risk phrases in Table 3 generally refer to substances. However, if information on substances cannot be obtained, the classification rules for mixtures apply.

Substances or mixtures which change their properties through processing and thus become no longer bioavailable, or undergo chemical modification in a way that removes the previously identified hazard are exempted from criterion 3(b).

Table 3

Hazard statements and Risk Phrases

Hazard Statement	Risk Phrase
H300 Fatal if swallowed	R28
H301 Toxic if swallowed	R25
H304 May be fatal if swallowed and enters airways	R65
H310 Fatal in contact with skin	R27
H311 Toxic in contact with skin	R24
H330 Fatal if inhaled	R23/26
H331 Toxic if inhaled	R23
H340 May cause genetic defects	R46
H341 Suspected of causing genetic defects	R68
H350 May cause cancer	R45
H350i May cause cancer by inhalation	R49

[1] Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1).

[2] Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 196, 16.8.1967, p. 1).

Hazard Statement	Risk Phrase
H351 Suspected of causing cancer	R40
H360F May damage fertility	R60
H360D May damage the unborn child	R61
H360FD May damage fertility. May damage the unborn child	R60/61/60-61
H360Fd May damage fertility. Suspected of damaging the unborn child	R60/63
H360Df May damage the unborn child. Suspected of damaging fertility	R61/62
H361f Suspected of damaging fertility	R62
H361d Suspected of damaging the unborn child	R63
H361fd Suspected of damaging fertility. Suspected of damaging the unborn child.	R62-63
H362 May cause harm to breast fed children	R64
H370 Causes damage to organs	R39/23/24/25/26/27/28
H371 May cause damage to organs	R68/20/21/22
H372 Causes damage to organs through prolonged or repeated exposure	R48/25/24/23
H373 May cause damage to organs through prolonged or repeated exposure	R48/20/21/22
H400 Very toxic to aquatic life	R50
H410 Very toxic to aquatic life with long-lasting effects	R50-53
H411 Toxic to aquatic life with long-lasting effects	R51-53
H412 Harmful to aquatic life with long-lasting effects	R52-53
H413 May cause long-lasting harmful effects to aquatic life	R53
EUH059 Hazardous to the ozone layer	R59
EUH029 Contact with water liberates toxic gas	R29
EUH031 Contact with acids liberates toxic gas	R31
EUH032 Contact with acids liberates very toxic gas	R32
EUH070 Toxic by eye contact	R39-41

Sensitising substances

H334: May cause allergy or asthma symptoms or breathing difficulties if inhaled	R42
H317: May cause allergic skin reaction	R43

For rinse-off cosmetic products, the substances in Table 4 are exempted from the obligation in Article 6(6) of Regulation (EC) No 66/2010 following application of Article 6(7) of the same Regulation.

Table 4

Derogated substances

Substances	Hazard statements	Risk phrases
Surfactants (in total concentrations < 20 % in the final product)	H412: Harmful to aquatic life with long-lasting effects H413: May cause long-term adverse effects to aquatic life	R52-53 R53
Fragrances (*)	H412: Harmful to aquatic life with long-lasting effects H413: May cause long-term adverse effects to aquatic life	R52-53 R53
Preservatives (**)	H411: Toxic to aquatic life with long-lasting effects H412: Harmful to aquatic life with long-lasting effects H413: May cause long-term adverse effects to aquatic life	R51-53 R52-53 R53
Zinc pyrithione (ZPT) used in anti-dandruff shampoos	H400 Very toxic to aquatic life	R50

(*) Derogation is only for criterion 3(b). Fragrances shall comply with criterion 3(d).
(**) Derogation is only for criterion 3(b). Preservatives shall comply with criterion 3(e).

Assessment and verification: the applicant shall demonstrate compliance with criterion 3(b) for any ingoing substance or mixture present at concentrations greater than 0,010 % in the product.

A declaration of compliance shall be provided by the applicant supported, where appropriate, by the declarations from producer(s) of the raw materials that none of these ingoing substances and/or mixtures meet the criteria for classification with one or more of hazard statements or risk phrases listed in Table 3 in the form(s) and physical state(s) they are present in the product.

The following technical information related to the form(s) and physical state(s) of the ingoing substances and/or mixtures as present in the product shall be provided to support the declaration of non-classification:

(i) For substances that have not been registered under Regulation (EC) No 1907/2006 and/or which do not yet have a harmonised CLP classification: Information meeting the requirements listed in Annex VII to that Regulation;

(ii) For substances that have been registered under Regulation (EC) No 1907/2006 and which do not meet the requirements for CLP classification: Information based on the REACH registration dossier confirming the non-classified status of the substance;

(iii) For substances that have a harmonised classification or are self-classified: safety data sheets where available. If these are not available or the substance is self-classified then information shall be provided relevant to the substances hazard classification according to Annex II to Regulation (EC) No 1907/2006;

(iv) In the case of mixtures: safety data sheets where available. If these are not available then calculation of the mixture classification shall be provided according to the rules under Regulation (EC) No 1272/2008 together with information relevant to the mixtures hazard classification according to Annex II to Regulation (EC) No 1907/2006.

For substances listed in Annexes IV and V to Regulation (EC) No 1907/2006, which are exempted from registration obligations under point (a) and (b) of Article 2(7) of that Regulation, a declaration to this effect by the applicant shall suffice to comply with criterion 3(b).

A declaration on the presence of ingoing substances that fulfil the derogation conditions shall be provided by the applicant, supported, where appropriate, by declarations from the producer(s) of the raw materials. Where required for the derogation, the applicant shall confirm the concentrations of these ingoing substances in the final product.

(c) Ingoing substances listed in accordance with Article 59(1) of Regulation (EC) No 1907/2006

No derogation from the exclusion in Article 6(6) of Regulation (EC) No 66/2010 shall be given concerning ingoing substances identified as substances of very high concern and included in the list provided for in Article 59(1) of Regulation (EC) No 1907/2006 [1], present in the product in concentrations higher than 0,010 % (weight by weight).

Assessment and verification: reference to the list of substances identified as substances of very high concern shall be made on the date of application. The applicant shall provide the full formulation of the product to the competent body. The applicant shall also provide a declaration of compliance with criterion 3(c), together with related documentation, such as declarations of compliance signed by the material suppliers and copies of relevant safety data sheets for substances or mixtures.

(d) Fragrances

(i) Products marketed as designed and intended for children shall be fragrance-free.

(ii) Any ingoing substance or mixture added to the product as a fragrance shall be manufactured and handled following the code of practice of the International Fragrance Association (IFRA). The code can be found on the IFRA website: http://www.ifraorg.org. The recommendations of the IFRA Standards concerning prohibition, restricted use and specified purity criteria for materials shall be followed by the manufacturer.

Assessment and verification: the applicant shall provide a signed declaration of compliance, supported by a declaration of the fragrance manufacturer, as appropriate.

(e) Preservatives

(i) Preservatives in the product shall not release or degrade to substances that are classified in accordance with the requirements of criterion 3(b).

(ii) The product may contain preservatives provided that they are not bioaccumulating. A preservative is not considered bioaccumulating if BCF < 100 or log K_{ow} < 3,0. If both BCF and log K_{ow} values are available, the highest measured BCF value shall be used.

Assessment and verification: the applicant shall provide a signed declaration of compliance, together with copies of the safety data sheets of any preservative added, and information on its BCF and/or log K_{ow} values.

(f) Colorants

Colorants in the product must not be bioaccumulating. A colorant is considered not bioaccumulating if BCF < 100 or log K_{ow} < 3,0. If both BCF and log K_{ow} values are available, the highest measured BCF value shall be used. In the case of colouring agents approved for use in food, it is not necessary to submit documentation of bioaccumulation potential.

Assessment and verification: the applicant shall provide copies of the safety data sheets of any colorant added together with information on its BCF and/or log K_{ow} value, or documentation to ensure that the colouring agent is approved for use in food.

Criterion 4 — Packaging

(a) Primary packaging

Primary packaging shall be in direct contact with the contents.

No additional packaging for the product as it is sold, e.g. carton over a bottle, is allowed, with the exception of secondary packaging which groups two or more products together (e.g. the product and refill).

Assessment and verification: the applicant shall provide a signed declaration of compliance.

[1] http://echa.europa.eu/chem_data/authorisation_process/candidate_list_table_en.asp

(b) Packaging Impact Ratio (PIR)

The Packaging Impact Ratio (PIR) must be less than 0,28 g of packaging per gram of product for each of the packaging in which the product is sold. Pre-shaving products packed in metal aerosol containers are exempted from this requirement.

PIR shall be calculated (separately for each of the packaging) as follows:

$$PIR = (W + (Wrefill \times F) + N + (Nrefill \times F))/(D + (Drefill \times F))$$

Where:

W — weight of packaging (primary + proportion of secondary ([1]), including labels)(g)

Wrefill — weight of refill packaging (primary + proportion of secondary ([1]), including labels) (g)

N — weight of non-renewable + non-recycled packaging (primary + proportion of secondary ([1]), including labels) (g)

Nrefill — weight of non-renewable and non-recycled refill packaging (primary + proportion of secondary ([1]), including labels) (g)

D — weight of product contained in the 'parent' pack (g)

Drefill — weight of product delivered by the refill (g)

F — number of refills required to meet the total refillable quantity, calculated as follows:

$$F = V \times R/Vrefill$$

Where;

V — volume capacity of the parent pack (ml)

Vrefill — volume capacity of the refill pack (ml)

R — the refillable quantity. This is the number of times that the parent pack can be refilled. Where F is not a whole number it should be rounded up to the next whole number.

In case no refill is offered PIR shall be calculated as follows:

$$PIR = (W + N)/D$$

The manufacturer shall provide the number of foreseen refillings, or use the default values of R = 5 for plastics and R = 2 for cardboard.

Assessment and verification: the applicant shall provide the calculation of the PIR of the product. A spreadsheet for this calculation is available on the EU Ecolabel website. If the product is sold in different packaging (i.e. with different volumes), the calculation shall be submitted for each packaging size for which the EU Ecolabel shall be awarded. The applicant shall provide a signed declaration for the content of post-consumer recycled material or material from renewable origin in the packaging and a description of the refill system offered, if applicable (kinds of refills, volume). For approval of refill packaging, the applicant or retailer shall document that the refills shall be available for purchase on the market.

([1]) Proportional weight of the grouping packaging (e.g. 50 % of the total grouping packaging weight, if two products are sold together).

(c) Design of primary packaging

The primary packaging shall be designed to make correct dosage easy (e.g. by ensuring that the opening at the top is not too wide) and to ensure that at least 90 % of the product can be removed easily from the container. The residual amount of the product in the container (R), which must be below 10 %, shall be calculated as follows:

$$R = ((m2 - m3)/(m1 - m3)) \times 100 \ (\%)$$

Where:

m1 — Primary packaging and product (g)

m2 — Primary packaging and product residue in normal conditions of use (g)

m3 — Primary packaging emptied and cleaned (g)

Assessment and verification: the applicant shall submit a description of the dosage device and test report with results of measuring the residual quantity of a rinse-off cosmetic product in the packaging. The test procedure for measuring the residual quantity is described in the user manual available on the EU Ecolabel website.

(d) Design for recycling of plastic packaging

Plastic packaging shall be designed to facilitate effective recycling by avoiding potential contaminants and incompatible materials that are known to impede separation or reprocessing or to reduce the quality of recyclate. The label or sleeve, closure and, where applicable, barrier coatings shall not comprise, either singularly or in combination the materials and components listed in Table 5.

Table 5

Materials and components excluded from packaging elements

Packaging element	Excluded materials and components [1]
Label or sleeve	— PS label or sleeve in combination with a PET, PP or HDPE bottle — PVC label or sleeve in combination with a PET, PP or HDPE bottle — PETG label or sleeve in combination with a PET bottle — Sleeves made of different polymer than the bottle — Labels or sleeves that are metallised or are welded to a packaging body (in mould labelling)
Closure	— PS closure in combination a with a PET, PP or HDPE bottle — PVC closure in combination with a PET, PP or HDPE bottle — PETG closures and/or closure material with density of above 1 g/cm³ in combination with a PET bottle — Closures made of metal, glass, EVA — Closures made of silicone. Exempted are silicone closures with a density < 1 g/cm³ in combination with a PET bottle and silicone closures with a density > 1g/cm³ in combination with PP or HDPE bottle — Metallic foils or seals which remain fixed to the bottle or its closure after the product has been opened
Barrier coatings	— Polyamide, EVOH, functional polyolefins, metallised and light blocking barriers

[1] EVA — Ethylene Vinyl Acetate, EVOH — Ethylene vinyl alcohol, HDPE — High-density polyethylene, PET — Polyethylene terephtalate, PETG — Polyethylene terephthalate glycol-modified, PP — Polypropylene, PS — Polystyrene, PVC — Polyvinylchloride,

Pumps and aerosol containers are exempted from this requirement.

Assessment and verification: the applicant shall submit a signed declaration of compliance specifying the material composition of the packaging including the container, label or sleeve, adhesives, closure and barrier coating, together with a sample of primary packaging.

Criterion 5 — Sustainable sourcing of palm oil, palm kernel oil and their derivatives

Palm oil and palm kernel oil and their derivatives used in the product must be sourced from plantations that meet criteria for sustainable management that have been developed by multi-stakeholder organisations that have a broad-based membership including NGOs, industry and government.

Assessment and verification: the applicant shall provide third-party certifications that the palm oil and palm kernel oil used in the manufacturing of the product originates from sustainably managed plantations. Certifications accepted shall include RSPO (by identity preserved, segregated or mass balance) or any equivalent scheme based on multi-stakeholder sustainable management criteria. For chemical derivatives of palm oil and palm kernel oil ([1]), it is acceptable to demonstrate sustainability through book and claim systems such as GreenPalm or equivalent.

Criterion 6 — Fitness for use

The product's capacity to fulfil its primary function (e.g. cleaning, conditioning) and any secondary functions claimed (e.g. anti-dandruff, colour protection) shall be demonstrated either through laboratory test(s) or a consumer test. The tests shall be conducted following the 'Guidelines for the Evaluation of the Efficacy of Cosmetic Products' ([2]) and the instructions given in the user manual available on the EU Ecolabel website.

Assessment and verification: the applicant shall document the test protocol that has been followed in order to test the product's efficacy. Applicants shall present results from this protocol that demonstrate that the product fulfils the primary and secondary functions claimed on the product label or packaging.

Criterion 7 — Information appearing on the EU Ecolabel

The optional label with text box shall contain the following text:

— Reduced impact on aquatic ecosystems,

— Fulfils strict biodegradability requirements,

— Limits packaging waste.

The guidelines for the use of the optional label with text box can be found in the 'Guidelines for use of the Ecolabel logo' on the website:

http://ec.europa.eu/environment/ecolabel/documents/logo_guidelines.pdf

Assessment and verification: the applicant shall provide a sample of the product label or an artwork of the packaging where the EU Ecolabel is placed, together with a signed declaration of compliance.

([1]) As defined by the RSPO in the 'RSPO Rules for Home and Personal Care Derivatives', available at: http://www.greenpalm.org/upload/files/45/RSPO_Guiding_Rules_for_HPC_derivativesV9.pdf.

([2]) Available at: https://www.cosmeticseurope.eu/publications-cosmetics-europe-association/guidelines.html?view=item&id=23 and the EU Ecolabel website.

Appendix

Detergents Ingredients Database (DID) list

The DID list (Part A) is a list containing information of the aquatic toxicity and biodegradability of ingredients typically used in detergent formulations. The list includes information on the toxicity and biodegradability of a range of substances used in washing and cleaning products. The list is not comprehensive, but guidance is given in Part B of the DID list concerning the determination of the relevant calculation parameters for substances not present on the DID list (e.g. the Toxicity Factor (TF) and degradation factor (DF), which are used for calculation of the critical dilution volume). The list is a generic source of information and substances present on the DID list are not automatically approved for use in EU Ecolabelled products.

Part A and Part B of the DID list can be found on the EU Ecolabel website at:

http://ec.europa.eu/environment/ecolabel/documents/did_list/didlist_part_a_en.pdf

http://ec.europa.eu/environment/ecolabel/documents/did_list/didlist_part_b_en.pdf

For substances with no data regarding aquatic toxicity and degradability, structure analogies with similar substances may be used to assess the TF and DF. Such structure analogies shall be approved by the competent body granting the EU Ecolabel license. Alternatively, a worst case approach shall be applied, using the parameters below:

Worst case approach:

	Acute toxicity			Chronic toxicity			Degradation		
Ingoing substance	LC50/EC50	$SF_{(acute)}$	$TF_{(acute)}$	NOEC (*)	$SF_{(chronic)}$ (*)	$TF_{(chronic)}$	DF	Aerobic	Anaerobic
'Name'	1 mg/l	10,000	0,0001			0,0001	1	P	N

(*) If no acceptable chronic toxicity data are found, these columns are empty. In this case, $TF_{(chronic)}$ is defined as equal to $TF_{(acute)}$.

Documentation of ready biodegradability

The following test methods for ready biodegradability shall be used:

(1) Until 1 December 2015:

The test methods for ready biodegradability provided for in Directive 67/548/EEC, in particular the methods detailed in Annex V.C4 to that Directive, or their equivalent OECD 301 A-F test methods, or their equivalent ISO tests.

The 10 days window principle shall not apply for surfactants. The pass levels shall be 70 % for the tests referred to in Annex V.C4-A and C4-B to Directive 67/548/EEC (and their equivalent OECD 301 A and E tests and ISO equivalents), and shall be 60 % for tests C4-C, D, E and F (and their equivalent OECD 301 B, C, D and F tests and ISO equivalents).

or

The test methods provided for in Regulation (EC) No 1272/2008

(2) After 1 December 2015:

The test methods provided for in Regulation (EC) No 1272/2008

Documentation of anaerobic biodegradability

The reference test for anaerobic degradability shall be EN ISO 11734, ECETOC No 28 (June 1988), OECD 311 or an equivalent test method, with the requirement of 60 % ultimate degradability under anaerobic conditions. Test methods simulating the conditions in a relevant anaerobic environment may also be used to document that 60 % ultimate degradability has been attained under anaerobic conditions.

Extrapolation for substances not listed in the DID-list

Where the ingoing substances are not listed in the DID-list, the following approach may be used to provide the necessary documentation of anaerobic biodegradability:

(1) Apply reasonable extrapolation. Use test results obtained with one raw material to extrapolate the ultimate anaerobic degradability of structurally related surfactants. Where anaerobic biodegradability has been confirmed for a surfactant (or a group of homologues) according to the DID-list, it can be assumed that a similar type of surfactant is also anaerobically biodegradable (e.g., C12-15 A 1-3 EO sulphate [DID No 8] is anaerobically biodegradable, and a similar anaerobic biodegradability may also be assumed for C12-15 A 6 EO sulphate). Where anaerobic biodegradability has been confirmed for a surfactant by use of an appropriate test method, it can be assumed that a similar type of surfactant is also anaerobically biodegradable (e.g., literature data confirming the anaerobic biodegradability of surfactants belonging to the group alkyl ester ammonium salts may be used as documentation for a similar anaerobic biodegradability of other quaternary ammonium salts containing ester-linkages in the alkyl chain(s)).

(2) Perform screening test for anaerobic degradability. If new testing is necessary, perform a screening test by use of EN ISO 11734, ECETOC No 28 (June 1988), OECD 311 or an equivalent method.

(3) Perform low-dosage degradability test. If new testing is necessary, and in the case of experimental problems in the screening test (e.g. inhibition due to toxicity of test substance), repeat testing by using a low dosage of surfactant and monitor degradation by ^{14}C measurements or chemical analyses. Testing at low dosages may be performed by use of OECD 308 (August 2000) or an equivalent method.

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 117/14/COL

of 12 March 2014

amending for the ninety-fourth time the procedural and substantive rules in the field of State aid by adopting new Guidelines to promote risk finance investments and by prolonging the existing Guidelines on State aid to promote risk capital investments in small and medium-sized enterprises

THE EFTA SURVEILLANCE AUTHORITY ('the Authority'),

HAVING REGARD to the Agreement on the European Economic Area ('the EEA Agreement'), 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 ('Surveillance and Court Agreement'), in particular to Articles 5(2)(b) and 24 thereof and Article 1 in Part I of Protocol 3 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,

On 15 January 2014, the European Commission adopted the Guidelines on State aid to promote risk finance investments ([1]) which are due to enter into force on 1 July 2014. The new rules set out the conditions under which EU Member States can grant aid to facilitate access to finance by small and medium sized companies and companies with a medium capitalization. These new Guidelines are to replace the Community Guidelines on State aid to promote risk capital investments in small and medium-sized enterprises ([2]) as from 1 July 2014.

The European Commission's Guidelines on State aid to promote risk finance investments also provide that the applicability of the Community Guidelines on State aid to promote risk capital investments in small and medium-sized enterprises, is to be prolonged until 30 June 2014,

These Guidelines are of relevance for the European Economic Area,

Uniform application of the EEA state aid rules is to be ensured throughout the European Economic Area in line with the objective of homogeneity established in Article 1 of the EEA Agreement,

([1]) OJ C 19, 22.1.2014, p. 4.
([2]) OJ C 194, 18.8.2006, p. 2.

According to point II under the heading 'GENERAL' of Annex XV to the EEA Agreement, the Authority, after consultation with the European Commission, is to adopt new Guidelines on State aid to promote risk finance investments, corresponding to those adopted by the European Commission.

The new Guidelines will replace the current ones on State aid to promote risk capital investments in small and medium-sized enterprises ([1]). Until the entry into force of such new Guidelines the applicability of the guidelines to promote risk capital investments in small and medium-sized enterprises should be prolonged until 30 June 2014.

HAVING consulted the European Commission,

HAVING consulted the EFTA States by a letter dated 12 January 2014 on the subject,

HAS ADOPTED THIS DECISION:

Article 1

The first sentence of paragraph 80 of the Guidelines on State aid to promote risk capital investment in small and medium-sized enterprises should read as follows:

'(80) These guidelines will cease to be valid on 30 June 2014'.

Article 2

The State Aid Guidelines shall be amended by introducing new Guidelines on State aid to promote risk finance investments. The new Guidelines are enclosed in Annex to this Decision and form an integral part of it.

Article 3

Only the English version is authentic.

Done at Brussels, 12 March 2014.

For the EFTA Surveillance Authority

Oda Helen SLETNES	Frank BÜCHEL
President	*College Member*

([1]) OJ C 126, 7.6.2007, p. 19. EEA Supplement No 27, 7.6.2007, p. 1. Amended on 15.12.2010 by Decision No 484/10/COL.

ANNEX

PART III: HORIZONTAL RULES

State aid to promote risk finance investments [1]

1. INTRODUCTION

(1) On the basis of Article 61(3)(c) of the European Economic Area Agreement ('EEA Agreement'), the EFTA Surveillance Authority ('the Authority') may consider compatible with the EEA Agreement State aid designed to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. For the reasons set out in these Guidelines, the Authority takes the view that the development of the risk finance market and the improvement of access to risk finance for small and medium-sized enterprises (SMEs), small mid-cap and innovative mid-cap is of great importance to the EFTA States' economy at large.

(2) Encouraging the development and expansion of new businesses, especially innovative and high-growth businesses, can have a great potential to create jobs. Therefore, an efficient risk finance market for SMEs is crucial for entrepreneurial companies to be able to access the necessary funding at each stage of their development.

(3) Despite their growth prospects, SMEs may face difficulties in gaining access to finance, particularly in the early stages of their development. At the heart of those difficulties lies a problem of asymmetric information: SMEs, especially when they are young, are often unable to demonstrate their credit-worthiness or the soundness of their business plans to investors. In such circumstances, the type of active screening that is undertaken by investors for providing finance to larger companies may not be worth the investment in the case of transactions involving those SMEs because the screening costs are too high relative to the value of the investment. Therefore, irrespective of the quality of their project and growth potential, those SMEs are likely not to be able to access the necessary finance as long as they lack a proven track record and sufficient collateral. As a result of this asymmetric information, business finance markets may fail to provide the necessary equity or debt finance to newly created and potentially high-growth SMEs resulting in a persistent capital market failure preventing supply from meeting demand at a price acceptable to both sides, which negatively affects SMEs' growth prospects. Small mid-caps and innovative mid-caps may, in certain circumstances, face the same market failure.

(4) The consequences of a company not receiving finance may well go beyond that individual entity, due in particular to *growth externalities*. Many successful sectors witness productivity growth not because companies present in the market gain in productivity, but because the more efficient and technologically advanced companies grow at the expense of the less efficient ones (or ones with obsolete products). To the extent that this process is disturbed by potentially successful companies not being able to obtain finance, the wider consequences for productivity growth are likely to be negative. Allowing a wider base of companies to enter the market may then spur growth.

(5) Therefore, the existence of a financing gap affecting SMEs, small mid-caps and innovative mid-caps may justify public support measures including through the grant of State aid in certain specific circumstances. If properly targeted, State aid to support the provision of risk finance to those companies can be an effective means to alleviate the identified market failures and to leverage private capital.

(6) Access to finance for SMEs is an objective of EEA common interest. At EU and EEA level several initiatives have been adopted to support the development of SMEs. One of the main objectives is to facilitate access to finance for SMEs.

(7) Within this policy context, the Commission 2011 Action plan to improve access to finance for SMEs [2] and the debate launched in 2013 by the Green Paper on Long-term finance for the European economy [3] recognises that the Union's success depends largely on the growth of SMEs, which however often face significant difficulties in obtaining financing. The Authority acknowledges these conclusions. The objective is therefore to make SMEs more visible and to make financial markets more attractive and accessible for SMEs.

---

[1] These Guidelines correspond to the Commission Guidelines on State aid to promote risk finance investments (OJ C 19, 22.1.2014, p. 4).
[2] Communication from the Commission, an action plan to improve access to finance for SMEs, COM(2011) 870 final, 7.12.2011.
[3] COM(2013) 150 final, 25.3.2013.

(8) Most recently, two initiatives relevant to investments funds were taken ([4]): the Regulation on venture capital funds in Europe ([5]) adopted in 2013, which enables venture capital funds to market their funds and raise capital across the internal market, and the proposal for a regulation on European Long-term Investment Funds ([6]), which aims at introducing framework conditions to facilitate the operation of private investment funds that have a long-term commitment from their investors.

(9) Beyond these specific regulations, the regulatory framework for the management and operation of investment funds active in risk finance, such as private equity funds, is provided by the Directive on Alternative Investment Fund Managers (AIFMD) ([7]).

(10) In 2012, the Commission launched a public consultation ([8]) to gather information on the extent of the market failure affecting access to debt and equity financing by SMEs and on the adequacy of the 2006 Risk Capital Guidelines. ([9]) The outcome of the public consultation revealed that the basic principles enshrined in those guidelines have provided a sound basis for channelling public resources to the intended target SMEs while limiting risks of crowding out. However, the public consultation also showed that the Risk Capital Guidelines were often considered to be too restrictive in terms of eligible SMEs, forms of financing, aid instruments and funding structures.

(11) The Authority shares these conclusions that can also be applied *mutatis mutandis* to the Authority's State aid Guidelines to promote risk capital investments in small and medium-sized enterprises. ([10])

(12) In the Communication on State aid modernisation ([11]), the Commission set out an ambitious State aid modernisation programme based on three main objectives:

(a) fostering sustainable, smart and inclusive growth in a competitive internal market;

(b) focusing the Commission's *ex ante* scrutiny on cases with the biggest impact on the internal market while strengthening the cooperation with Member States in State aid enforcement; and

(c) streamlining the rules to ensure faster decision-making.

(13) The Authority has followed the Commission's modernisation initiative. As a consequence, the compatibility conditions set out in these Guidelines are based on those common objectives.

(14) In the light of the foregoing, it has been deemed appropriate to substantially review the State aid regime applicable to risk capital measures, including those covered by the General Block Exemption Regulation ([12]) so as to promote a more efficient and effective provision of various forms of risk finance to a larger category of eligible undertakings. For block-exempted measures, no notification to the Authority is necessary because they are presumed to address a market failure through appropriate and proportionate means, while having an incentive effect and limiting any distortions of competition to the minimum.

([4]) Regulations with EEA relevance.

([5]) Regulation (EU) No 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1). Regulation to be incorporated into the EEA Agreement.

([6]) Proposal for a Regulation of the European Parliament and of the Council on Long-term Investment Funds, COM(2013) 462 final, 2013/0214 (COD).

([7]) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1). Directive to be incorporated into the EEA Agreement.

([8]) The questionnaire was published online: (http://ec.europa.eu/competition/consultations/2012_risk_capital/questionnaire_en.pdf).

([9]) Community Guidelines on State aid to promote risk capital investments in small and medium-sized enterprises (OJ C 194, 18.8.2006, p. 2).

([10]) State aid to promote risk capital investments in small and medium-sized enterprises (OJ C 126, 7.6.2007, p. 19 and EEA Supplement No 27, 7.6.2007, p. 1), as amended by Decision No 484/10/COL of 15.12.2010.

([11]) Communication on EU State Aid Modernisation (SAM), COM(2012) 209 final, 8.5.2012.

([12]) Commission Regulation (EC) No 800/2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (OJ L 214, 9.8.2008, p. 3), currently under review, as amended by the Commission Regulation (EU) No 1224/2013 of 29 November 2013 amending Regulation (EC) No 800/2008 as regards its period of application (OJ L 320, 30.11.2013, p. 22), incorporated as point 1 j into Annex XV of the EEA Agreement by Joint Committee Decision No 29/2014 of 14.2.2014 (not yet published in the OJ or EEA Supplement), e.i.f 15.2.2014.

2. SCOPE OF THE GUIDELINES AND DEFINITIONS

(15) The Authority will apply the principles set out in these Guidelines to risk finance measures which do not satisfy all the conditions laid down in the General Block Exemption Regulation. The EFTA State concerned must notify those measures in accordance with Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement and the Authority will carry out a substantive compatibility assessment as set out in Section 3 of these Guidelines.

(16) However, EFTA States may also choose to design risk finance measures in such a way that the measures do not entail State aid under Article 61(1) of the EEA Agreement, for instance because they comply with the market economy operator test or because they fulfil the conditions of the applicable *de minimis* Regulation ([13]). Such cases do not need to be notified to the Authority.

(17) Nothing in these Guidelines should be taken to call into question the compatibility of State aid measures which meet the criteria laid down in any other guidelines, frameworks or regulations. The Authority will pay particular attention to the need to prevent the use of these Guidelines to pursue policy objectives which are addressed principally by other frameworks, guidelines and regulations.

(18) These Guidelines are without prejudice to other types of financial instruments than those covered herein, such as instruments providing for the securitisation of existing loans, whose assessment shall be carried out under the relevant State aid legal basis.

(19) The Authority will only apply the principles set out in these Guidelines to risk finance schemes. They will not be applied in respect of *ad hoc* measures providing risk finance aid to individual undertakings, except in the case of measures aiming at supporting a specific alternative trading platform.

(20) It is important to recall that risk finance aid measures have to be deployed through financial intermediaries or alternative trade platforms, except for fiscal incentives on direct investments in eligible undertakings. Therefore, a measure whereby the EFTA State or a public entity makes direct investments in companies without the involvement of such intermediary vehicles does not fall under the scope of the risk finance State aid rules of the General Block Exemption Regulation and these Guidelines.

(21) In the light of their more established track record and higher collateralisation, the Authority does not consider that there is a general market failure related to access to finance by large undertakings. Exceptionally, a risk finance measure may be targeted at small mid-caps, in accordance with Section 3.3.1(a), or innovative mid-caps that carry out R & D and innovation projects in accordance with Section 3.3.1(b).

(22) Companies listed on the official list of a stock exchange or a regulated market cannot be supported through risk finance aid, since the fact that they are listed demonstrates their ability to attract private financing.

(23) Risk finance aid measures in the total absence of private investors will not be declared compatible. In such cases, the EFTA State must consider alternative policy options which may be more appropriate to achieve the same objectives and results, such as regional investment aid or start-up aid provided for by the General Block Exemption Regulation.

(24) Risk finance aid measures where no appreciable risk is undertaken by the private investors, and/or where the benefits flow entirely to the private investors, will not be declared compatible. Sharing the risks and rewards is a necessary condition to limit the financial exposure of, and to ensure a fair return to, the State.

(25) Without prejudice to risk finance aid in the form of replacement capital as defined by the General Block Exemption Regulation, risk finance aid may not be used to support buyouts.

([13]) Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1). Regulation to be incorporated into the EEA Agreement.

(26) Risk finance aid will not be considered compatible with the EEA Agreement if awarded to:

(a) undertakings in difficulty, as defined by the Authority Guidelines on State aid for rescuing and restructuring firms in difficulty ([14]), as amended or replaced; however, for the purposes of the present Guidelines, SMEs within 7 years from their first commercial sale that qualify for risk finance investments following due diligence by the selected financial intermediary will not be considered as undertakings in difficulty, unless they are subject to insolvency proceedings or fulfil the criteria under their domestic law for being placed in collective insolvency proceedings at the request of their creditors;

(b) undertakings that have received illegal State aid which has not been fully recovered.

(27) The Authority will not apply these Guidelines to aid to export-related activities towards third countries or EFTA States, namely aid directly linked to the quantities exported, the establishment and operation of a distribution network or to other current costs linked to the export activity, as well as aid contingent upon the use of domestic over imported goods.

(28) The Authority will not apply these Guidelines to measures which entail by themselves, by the conditions attached to them or by their financing method, a non-severable violation of the law in force in the EEA ([15]), in particular:

(a) measures where the aid is subject to the obligation to use nationally produced goods or national services;

(b) measures which violate Article 31 of the EEA Agreement on the freedom of establishment, where the aid is subject to the obligation for financial intermediaries, their managers or final beneficiaries to have or move their headquarters in the territory of the EFTA State concerned: this is without prejudice to the requirement for financial intermediaries or their managers to have the necessary licence to carry out investment and management activities in the EFTA State concerned or for final beneficiaries to have an establishment and carry out economic activities in its territory;

(c) measures which violate Article 40 of the EEA Agreement on the free movement of capital.

2.1. **The market economy operator test**

(29) Risk finance measures often involve complex constructions creating incentives for one set of economic operators (investors) to provide risk finance to another set of operators (eligible undertakings). Depending on the design of the measure, and even if the intention of the public authorities may be only to provide benefits to the latter group, undertakings at either or both levels may benefit from State aid. Moreover, risk finance measures always involve one or more financial intermediaries which may have a status separate from that of the investors and the final beneficiaries in which investments are made. In such cases it is also necessary to consider whether the financial intermediary can be considered to benefit from State aid.

(30) In general, a public intervention may be considered not to constitute State aid for instance because it meets the market economy operator test. According to that test, economic transactions which are carried out by public bodies or undertakings in line with normal market conditions and do not give rise to an advantage to their counterpart do not constitute State aid. Without prejudice to the ultimate prerogative of the EFTA Court of Justice to rule on the existence of aid, this section provides additional guidance on the application of the market economy operator test in the area of risk finance.

2.1.1. *Aid to investors*

(31) In general, the Authority will consider an investment to be in line with the market economy operator test, and thus not to constitute State aid, if it is effected *pari passu* between public and private investors ([16]). An investment is considered *pari passu* when it is made under the same terms and conditions by public and private investors, where both categories of operators intervene simultaneously and where the intervention of the private investor is of real economic significance.

([14]) OJ L 97, 15.4.2005 and EEA Supplement No 18, 14.4.2005, p. 1. Those Guidelines were prolonged by Decision No 438/12/COL of 28.11.2012 (OJ L 190, 11.7.2013, p. 91 and EEA Supplement No 40, 11.7.2013, p. 15).

([15]) See for instance Case C-156/98 *Germany* v *Commission* [2000] ECR I-6857, paragraph 78 and Case C-333/07 *Régie Networks* v *Rhone Alpes Bourgogne* [2008] ECR I-10807, paragraphs 94-116.

([16]) Private investors will typically include the EIF and the EIB investing at own risk and from own resources, banks investing at own risk and from own resources, private endowments and foundations, family offices and business angels, corporate investors, insurance companies, pension funds, private individuals, and academic institutions.

(32) A transaction is presumed to be made under the same terms and conditions if public and private investors share the same risks and rewards and hold the same level of subordination in relation to the same risk class. If the public investor is in a better position than the private investor, for instance because it receives a priority return in time compared to the private investors, the measure may also be considered to be in line with normal market conditions, as long as the private investors do not receive any advantage.

(33) In the area of risk finance, transactions by public and private investors will be considered to be made simultaneously if the private and public investors co-invest into the final beneficiaries via the same investment transaction. In the case of investments through public-private financial intermediaries, investments by the public and private investors will be presumed to be made simultaneously.

(34) An additional condition is that the funding provided by private investors that are independent from the companies in which they invest, is economically significant ([17]) in the light of the overall volume of the investment. The Authority considers that, in the case of risk finance measures, 30 % independent private investment can be considered economically significant.

(35) Where the investment is in line with the market economy operator test, the Authority considers that the investee undertakings are not beneficiaries of State aid, because the investments they receive are considered to be made on market terms.

(36) Where a measure allows private investors to carry out risk finance investments into a company or set of companies on terms more favourable than public investors investing in the same companies, then those private investors may receive an advantage (non *pari passu* investments). Such an advantage may take different forms, such as preferential returns (upside-incentive) or reduced exposure to losses in the event of underperformance of the underlying transaction compared to the public investors (downside protection).

2.1.2. *Aid to a financial intermediary and/or its manager*

(37) In general, the Authority considers that a financial intermediary is a vehicle for the transfer of aid to investors and/or enterprises in which the investment is made, rather than a beneficiary of aid in its own right, irrespective of whether the financial intermediary has legal personality or is merely a bundle of assets managed by an independent management company.

(38) However, measures involving direct transfers to, or co-investment by, a financial intermediary may constitute aid unless such transfers or co-investments are made on terms which would be acceptable to a normal economic operator in a market economy.

(39) Where the risk finance measure is managed by an entrusted entity, without that entity co-investing with the EFTA State, the entrusted entity is considered as a vehicle to channel the financing and not a beneficiary of aid, as long as it is not overcompensated. However, where the entrusted entity provides funding to the measure or co-invests with the EFTA State in a manner similar to financial intermediaries, the Authority will have to assess whether the entrusted entity receives State aid.

(40) Where the manager of the financial intermediary or the management company (hereafter referred to as 'manager') are chosen through an open, transparent, non-discriminatory and objective selection procedure or the manager's remuneration fully reflects the current market levels in comparable situations, it will be presumed that the manager does not receive State aid.

(41) Where the financial intermediary and its manager are public entities and were not chosen through an open, transparent, non-discriminatory and objective selection procedure, they will not be considered recipients of aid if their management fee is capped and their overall remuneration reflects normal market conditions and is linked

([17]) For instance, in the Citynet Amsterdam case, the Commission considered that two private operators taking up one third of the total equity investments in a company (considering also the overall shareholding structure and that their shares are sufficient to form a blocking minority regarding any strategic decision of the company) could be considered economically significant (see Commission Decision in Case C 53/2006 Citynet Amsterdam, the Netherlands (OJ L 247, 16.9.2008, p. 27, paragraphs 96-100)). By contrast, in Case N 429/10 Agricultural Bank of Greece (ATE), (OJ C 317, 29.10.2011, p. 5), the private participation only reached 10 % of the investment, as opposed to 90 % by the State, so that the Commission concluded that *pari passu* conditions were not met, since the capital injected by the State was neither accompanied by a comparable participation of a private shareholder nor was it proportionate to the number of shares held by the State.

to performance. In addition, the public financial intermediaries must be managed commercially and their managers shall take investment decisions in a profit-oriented manner at arm's-length from the State. Furthermore, the private investors must be selected through an open, transparent, non-discriminatory and objective selection process, on a deal-by-deal basis. Appropriate mechanisms must be in place to exclude any possible interference by the State in the day-to-day management of the public fund.

(42) Where the investment by the State through the financial intermediary is in the form of loans or guarantees, including counter-guarantees, and the conditions set out in the Authority's rules on the reference rate ([18]) or State aid granted in the form of guarantees ([19]) are fulfilled, the financial intermediary will not be regarded as a recipient of State aid.

(43) The fact that financial intermediaries may increase their assets and their managers may achieve a larger turnover through their commissions is considered to constitute only a secondary economic effect of the aid measure and not aid to the financial intermediaries and/or their managers. However, if the risk finance measure is designed in such a way as to channel its secondary effects towards individual financial intermediaries identified in advance, those financial intermediaries will be considered to receive indirect aid.

2.1.3. *Aid to the undertakings in which the investment is made*

(44) Where aid is present at the level of the investors, the financial intermediary or its managers, the Authority will generally consider that it is at least partly passed on to the target undertaking. This is the case even where investment decisions are being taken by the managers of the financial intermediary with a purely commercial logic.

(45) Where the loan or guarantee investments provided under a risk finance measure to the target undertakings fulfil the conditions set out in the Authority's rules on the reference rate or State aid granted in the form of guarantees, those undertakings will not be considered to be recipients of State aid.

2.2. **Notifiable risk finance aid**

(46) EFTA States must notify pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement risk finance measures which constitute State aid within the meaning of Article 61(1) of the EEA Agreement (in particular if they do not comply with the market economy operator test), fall outside the scope of the *de minimis* Regulation, and do not satisfy all the conditions for risk finance aid as laid down in the General Block Exemption Regulation. The Authority will assess the compatibility of those measures with the EEA Agreement under Article 61(3)(c) of the said Agreement. These Guidelines focus on those risk finance measures which are most likely to be found compatible with Article 61(3)(c) of the EEA Agreement, subject to a number of conditions which will be explained in greater detail in Section 3 of these Guidelines. Such measures fall into the following three categories.

(47) The first category covers risk finance measures which target undertakings that do not fulfil all the eligibility requirements provided for risk finance aid under the General Block Exemption Regulation. For these measures, the Authority will require the EFTA State to conduct an in-depth *ex ante* assessment, since the market failure affecting the eligible undertakings covered by the General Block Exemption Regulation can no longer be presumed. This category encompasses in particular the measures targeting the following undertakings:

(a) small mid-caps that exceed the thresholds set out in the definition of SME in the General Block Exemption Regulation ([20]);

(b) innovative mid-caps carrying out R & D and innovation activities;

(c) undertakings receiving the initial risk finance investment more than 7 years after their first commercial sale;

(d) undertakings requiring an overall risk finance investment of an amount exceeding the cap fixed in the General Block Exemption Regulation;

(e) alternative trading platforms not fulfilling the conditions of the General Block Exemption Regulation.

([18]) Reference and Discount Rates (OJ L 105, 21.4.2011, p. 32 and EEA Supplement No 23, 21.4.2011, p. 1).
([19]) State aid granted in form of guarantees (OJ L 105, 21.4.2011, p. 32 and EEA Supplement No 23, 21.4.2011, p. 1).
([20]) Annex I to Regulation (EC) No 800/2008, see footnote 12.

(48) The second category consists of those measures whose design parameters differ from those set out in the General Block Exemption Regulation, while targeting the same eligible undertakings as defined therein. For those measures, the existence of a market failure needs to be proven only to the extent necessary to justify the use of parameters going beyond the limits set out in the General Block Exemption Regulation. This category encompasses in particular the following cases:

(a) financial instruments with private investor participation below the ratios provided for in the General Block Exemption Regulation;

(b) financial instruments with design parameters above the ceilings provided for in the General Block Exemption Regulation;

(c) financial instruments other than guarantees where financial intermediaries, investors or fund managers are selected by giving preference to protection against potential losses (downside protection) over prioritised returns from profits (upside incentives);

(d) fiscal incentives to corporate investors, including financial intermediaries or their managers acting as co-investors.

(49) The third category concerns large schemes which fall outside of the General Block Exemption Regulation by virtue of their large budget as defined therein. When carrying out this assessment, the Authority will verify whether the conditions laid down in the provisions for risk finance aid of the General Block Exemption Regulation are satisfied and, should this be the case, it will evaluate whether the design of the measure is appropriate in the light of the *ex ante* assessment underpinning the notification. If a large scheme does not fulfil all the eligibility and compatibility conditions set out in the above mentioned provisions, the Authority will duly consider the evidence provided in the context of the *ex ante* assessment both as regards the existence of a market failure and the appropriateness of the design of the measure. In addition, it will carry out an in-depth assessment of the potential negative effects that such schemes could have on the affected markets.

(50) The different features described in paragraphs 47 to 49 may be combined within one risk finance measure subject to appropriate justifications underpinned by a full market failure analysis.

(51) Apart from the derogations expressly allowed under the present Guidelines, all other compatibility conditions provided for risk finance aid under the General Block Exemption Regulation shall guide the assessment of the above mentioned categories of notifiable measures.

2.3. **Definitions**

(52) For the purposes of these Guidelines:

(i) 'alternative trading platform' means a multilateral trading facility as defined in Article 4(1)(15) of Directive 2004/39/EC ([21]) where the majority of the financial instruments admitted to trading are issued by SMEs;

(ii) 'arm's-length' means that the conditions of the investment transaction between the contracting parties do not differ from those conditions which would be made between independent enterprises and contain no element of influence of the State;

(iii) 'buyout' means the purchase of at least a controlling percentage of a company's equity from the current shareholders to take over its assets and operations;

(iv) 'eligible undertakings' means SMEs, small mid-caps and innovative mid-caps;

(v) 'entrusted entity' means the European Investment Bank, the European Investment Fund, an international financial institution in which a EFTA State is a shareholder, or a financial institution established in a

([21]) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ L 145, 30.4.2004, p. 1). Directive incorporated as point 31ba into Annex IX (Financial Services) of the EEA Agreement by Decision of the EEA Joint Committee No 65/2005 of 29.4.2005 (OJ L 239, 15.9.2005, p. 50 and EEA Supplement No 46, 15.9.2005, p. 31).

EFTA State aiming at the achievement of public interest under the control of a public authority, a public law body, or a private law body with a public service mission: the entrusted entity can be selected or directly appointed in accordance with the provisions of Directive 2004/18/EC of the European Parliament and of the Council ([22]) or any subsequent legislation replacing that Directive in full or in part;

(vi) 'equity investment' means the provision of capital to an undertaking, invested directly or indirectly in return for the ownership of a corresponding share of that undertaking;

(vii) 'exit' means the liquidation of holdings by a financial intermediary or investor, including trade sale, write-offs, repayment of shares/loans, sale to another financial intermediary or another investor, sale to a financial institution and sale by public offering, including an initial public offering;

(viii) 'fair rate of return' means the expected internal rate of return equivalent to a risk-adjusted discount rate reflecting the level of risk of the investment and the nature and volume of the capital to be invested by the private investors;

(ix) 'final beneficiary' means an eligible undertaking that has received investment under a risk finance State aid measure;

(x) 'financial intermediary' means any financial institution, regardless of its form and ownership, including fund of funds, private investment funds, public investment funds, banks, micro- finance institutions and guarantee societies;

(xi) 'first commercial sale' means the first sale by an undertaking on a product or service market, excluding limited sales to test the market;

(xii) 'first loss piece' means the most junior risk tranche that carries the highest risk of losses, comprising the expected losses of the target portfolio;

(xiii) 'follow-on investment' means additional investment in a company subsequent to one or more previous risk finance investment rounds;

(xiv) 'guarantee' means a written commitment to assume responsibility for all or part of a third party's newly originated risk finance loan transactions such as debt or lease instruments, as well as quasi-equity instruments;

(xv) 'guarantee cap' means the maximum exposure of a public investor expressed as a percentage of the total investments made in a guaranteed portfolio;

(xvi) 'guarantee rate' means the percentage of loss coverage by a public investor of each and every transaction eligible under the risk finance State aid measure;

(xvii) 'independent private investor' means a private investor who is not a shareholder of the eligible undertaking in which it invests, including business angels and financial institutions, irrespective of their ownership, to the extent that they bear the full risk in respect of their investment; upon the creation of a new company, all private investors, including the founders, are considered to be independent from that company;

(xviii) 'innovative mid-cap' means a mid-cap whose R & D and innovation costs, as defined by the General Block Exemption Regulation, represent (a) at least 15 % of its total operating costs in at least one of the three years preceding the first investment under the risk finance State aid measure, or (b) at least 10 % per year of its total operating costs in the 3 years preceding the first investment under the risk finance State aid measure;

(xix) 'loan instrument' means an agreement which obliges the lender to make available to the borrower an agreed amount of money for an agreed period of time and under which the borrower is obliged to repay the amount within the agreed period; it may take the form of a loan, or another funding instrument, including a lease, which provides the lender with a predominant component of minimum yield;

([22]) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114), as corrected by Corrigendum to the Directive (OJ L 351, 26.11.2004, p. 44). Directive incorporated as point 2 into Annex XVI (Procurement) to the EEA Agreement by Decision of the EEA Joint Committee No 68/2006 of 2.6.2006 (OJ L 245, 7.9.2006, p. 22 and EEA Supplement No 44, 7.9.2006, p. 18).

(xx) 'mid-cap' for the purposes of these Guidelines means an undertaking whose number of employees does not exceed 1 500, calculated in line with Articles 3, 4 and 5 of Annex I to the General Block Exemption Regulation; for the purpose of the application of these Guidelines, several entities shall be considered as one undertaking if any of the conditions listed in Article 3(3) of Annex I to the General Block Exemption Regulation is fulfilled; this definition is without prejudice to other definitions used for the deployment of financial instruments under EU/EEA programmes involving no State aid;

(xxi) 'natural person' means a person other than a legal entity who is not an undertaking within the meaning of Article 61(1) of the EEA Agreement;

(xxii) 'new loan' means a newly initiated loan instrument designed to finance new investments or working capital, to the exclusion of refinancing of existing loans;

(xxiii) 'replacement capital' means the purchase of existing shares in a company from an earlier investor or shareholder;

(xxiv) 'risk finance investment' means equity and quasi-equity investments, loans including leases, guarantees, or a mix thereof, to eligible undertakings;

(xxv) 'quasi-equity investment' means a type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity and whose return for the holder is predominantly based on the profits or losses of the underlying target undertaking and which is unsecured in the event of default: quasi-equity investments may be structured as debt, unsecured and subordinated, including mezzanine debt, and in some cases convertible into equity, or as preferred equity;

(xxvi) 'small and medium-sized enterprise (SME)' means an undertaking as defined in Annex I to the General Block Exemption Regulation;

(xxvii) 'small mid-cap' means an undertaking whose number of employees does not exceed 499, calculated in accordance with Articles 3 to 5 of Annex I to the General Block Exemption Regulation, the annual turnover of which does not exceed EUR 100 million or the annual balance sheet of which does not exceed EUR 86 million; for the purpose of the application of these Guidelines, several entities shall be considered as one undertaking if any of the conditions listed in Article 3(3) of Annex I to the General Block Exemption Regulation is fulfilled; this definition is without prejudice to other definitions used for the deployment of financial instruments under EU/EEA programmes involving no State aid;

(xxviii) 'total financing' means the maximum overall investment amount made into an eligible undertaking via one or more risk finance investments, including follow-on investments, under any risk finance State aid measure, to the exclusion of entirely private investments provided on market terms and outside the scope of the risk finance State aid measure;

(xxix) 'unlisted undertaking' means an undertaking which is not listed on the official list of a stock exchange, except for alternative trading platforms.

3. COMPATIBILITY ASSESSMENT OF RISK FINANCE AID

3.1. **Common assessment principles**

(53) To assess whether a notified aid measure can be considered compatible with the EEA Agreement, the Authority generally analyses whether the design of the aid measure ensures that the positive impact of the aid towards an objective of common interest exceeds its potential negative effects on trade between the contracting parties to the EEA Agreement ('Contracting parties') and on competition.

(54) The Communication on State aid modernisation of 8 May 2012 called for the identification and definition of common principles applicable to the assessment of compatibility of all the aid measures. For this purpose, the Authority will consider an aid measure compatible with the EEA Agreement only if it satisfies each of the following criteria:

(a) contribution to a well-defined objective of common interest: a State aid measure must aim at an objective of common interest in accordance with Article 61(3) of the EEA Agreement (Section 3.2);

(b) need for State intervention: a State aid measure must be targeted towards a situation where aid can bring about a material improvement that the market cannot deliver itself by remedying a market failure (Section 3.3);

(c) appropriateness of the aid measure: the State aid measure must be an appropriate policy instrument to address the objective of common interest (Section 3.4);

(d) incentive effect: the State aid measure must change the behaviour of the undertaking(s) concerned in such a way that it engages in additional activity which it would not carry out without the aid or would carry out in a restricted or different manner (Section 3.5);

(e) proportionality of aid (aid limited to the minimum): the State aid measure must be limited to the minimum needed to induce the additional investment or activity by the undertaking(s) concerned (Section 3.6);

(f) avoidance of undue negative effects on competition and trade between the Contracting parties: the negative effects of State aid measure must be sufficiently limited, so that the overall balance of the measure is positive (Section 3.7);

(g) transparency of aid: EFTA States, the Authority, economic operators, and the public must have easy access to all relevant acts and to pertinent information about the aid awarded (Section 3.8).

(55) The overall balance of certain categories of schemes may further be made subject to a requirement of *ex post* evaluation as described in Section 4 below. In such cases, the Authority may limit the duration of those schemes, with a possibility to notify their prolongation.

(56) In assessing the compatibility of any aid with the EEA Agreement, the Authority will take account of any proceedings concerning infringement of Articles 53 or 54 of the EEA Agreement which may concern the beneficiary of the aid and which may be relevant for its assessment under Article 61(3) of the EEA Agreement ([23]).

3.2. **Contribution to a common objective**

(57) State aid must contribute to the achievement of one or more of the objectives of common interest within the meaning of Article 61(3) of the EEA Agreement. For risk finance aid, the general policy objective is to improve the provision of finance to viable SMEs from their early-development up to their growth stages and, in certain circumstances, to small mid-caps and innovative mid-caps; so as to develop in the longer run a competitive business finance market in the EEA territory, which should contribute to overall economic growth.

3.2.1. *Specific policy objectives pursued by the measure*

(58) The measure must define specific policy objectives in view of the general policy objectives as set out in paragraph 57 above. To that end, the EFTA State must carry out an *ex ante* assessment in order to identify the policy targets and define the relevant performance indicators. The size and duration of the measure should be adequate for the policy targets. In principle, the performance indicators may include:

(a) the required or envisaged private sector investment;

(b) the expected number of final beneficiaries invested in, including the number of start-up SMEs;

(c) the estimated number of new undertakings created during the implementation of the risk finance measure and as a result of the risk finance investments;

(d) the number of jobs created in the final beneficiary undertakings between the date of the first risk finance investment under the risk finance measure and the exit;

(e) where appropriate, the proportion of investments made in conformity with the market economy operator test;

(f) milestones and deadlines within which certain predefined amounts or percentage of the budget are to be invested;

([23]) See Case C-225/91 *Matra* v *Commission*, [1993] ECR I-3203, paragraph 42.

(g) returns/yield expected to be generated from the investments;

(h) where appropriate, patent applications made by the final beneficiaries, during the implementation of the risk finance measure.

(59) The indicators referred to in paragraph 58 are relevant both for the purpose of evaluating the effectiveness of the measure and for assessing the validity of the investment strategies drawn up by the financial intermediary in the context of the selection process.

3.2.2. *Financial intermediaries delivering the policy objectives*

(60) To ensure that financial intermediaries involved in the risk finance measure deliver the relevant policy objectives, they must comply with the conditions set out in paragraphs 61 and 62 below.

(61) The investment strategy of the financial intermediary must be aligned with the policy objectives of the measure. As part of the selection process, financial intermediaries must demonstrate how their proposed investment strategy may contribute to the achievement of the policy objectives and targets.

(62) The EFTA State must ensure that the investment strategy of the intermediaries remains at all times aligned with the agreed policy targets, for instance via appropriate monitoring and reporting mechanisms and the participation of representatives of the public investors in the representation bodies of the financial intermediary, such as the supervisory board or the advisory board. An appropriate governance structure must ensure that material changes to the investment strategy require the prior consent of the EFTA State. For the avoidance of doubt, the EFTA State may not participate directly in individual investment and divestment decisions.

3.3. **Need for State intervention**

(63) State aid can only be justified if it is targeted at specific market failures affecting the delivery of the common objective. The Authority considers that there is no general market failure as regards access to finance for SMEs, but only a failure related to certain groups of SMEs, depending on the specific economic context of the EFTA State concerned. This particularly but not exclusively applies to SMEs in their early stages which, despite their growth prospects, are unable to demonstrate their credit-worthiness or the soundness of their business plans to investors. The scope of such market failure, both in terms of the affected companies and their capital requirement, may vary depending on the sector in which they operate. Due to information asymmetries, the market finds it difficult to assess the risk/return profile of such SMEs and their ability to generate risk-adjusted returns. The difficulties those SMEs experience in sharing information about the quality of their project, their perceived riskiness and weak creditworthiness lead to high transaction and agency costs and may exacerbate investor risk-aversion. Small mid-caps and innovative mid-caps may be faced by similar difficulties and therefore be affected by the same market failure.

(64) Therefore, the risk finance measure must be established on the basis of an *ex ante* assessment demonstrating the existence of a funding gap affecting eligible undertakings in the targeted development stage, geographic area and, if applicable, economic sector. The risk finance measure must be designed in such a way as to address the market failures proven in the *ex ante* assessment.

(65) Both the structural and cyclical (that is to say, crisis-related) problems leading to suboptimal levels of private funding must be analysed. In particular, the assessment must provide a comprehensive analysis of the sources of financing available to the eligible undertakings, taking into account the number of existing financial intermediaries in the target geographic area, their public or private nature, the investment volumes targeted to the relevant market segment, the number of potentially eligible undertakings and average values of individual transactions. This analysis should be based on data covering the 5 years preceding the notification of the risk finance measure and, on this basis, it should estimate the nature and size of the funding gap, that is to say, the level of unmet demand for finance from eligible undertakings.

(66) The *ex ante* assessment should preferably be conducted by an independent entity based on objective and up-to-date evidence. EFTA States may submit existing assessments, provided they date from less than 3 years preceding the notification of the risk finance measure. When examining the findings of the *ex ante* assessment, the Authority reserves the right to question the validity of the data in view of the evidence available.

(67) To ensure that the financial intermediaries involved in the measure target the identified market failures, a due diligence process shall take place to ensure a commercially sound investment strategy focusing on the identified policy objective and respecting the defined eligibility requirements and funding restrictions. In particular, EFTA States must select financial intermediaries which can demonstrate that their proposed investment strategy is commercially sound and includes an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of the investments.

(68) Moreover, the *ex ante* assessment must take account of the specific market failures faced by eligible target undertakings based on the additional guidance set out in paragraphs 69 to 88.

3.3.1. *Measures targeted at categories of undertakings outside the scope of the General Block Exemption Regulation*

(a) Small mid-caps

(69) The scope of the General Block Exemption Regulation is restricted to eligible SMEs. However, certain undertakings which do not meet the headcount and/or financial thresholds defining the concept of SME may face similar financing constraints.

(70) Extending the scope of eligible undertakings under a risk finance measure to include small mid-caps may be justified in so far as it provides an incentive to private investors to invest in a more diversified portfolio with enhanced entry and exit possibilities. Including small mid-caps in the portfolio is likely to decrease the riskiness at a portfolio level and hence to increase the return on the investments. Therefore, this may be a particularly effective way to attract institutional investors to the riskier early stage companies.

(71) In the light of the above, and provided the *ex ante* assessment contains adequate economic evidence to this effect, it may be justified to support small mid-caps. In its assessment, the Authority will take into account the labour -and capital-intensity of the targeted undertakings, as well as other criteria reflecting specific financing constraints affecting small mid-caps (for example, sufficient collateral for a large loan).

(b) Innovative mid-caps

(72) Mid-caps, in certain circumstances, could also face financing constraints comparable to those affecting SMEs. Such may be the case for mid-caps carrying out R & D and innovation activities alongside initial investment in production facilities, including market replication, and whose track record does not enable potential investors to make relevant assumptions as regards the future market prospects of the results of such activities. In such a case, risk finance State aid may be necessary for innovative mid-caps to increase their production capacities to a sustainable scale where they are able to attract private financing on their own. As observed under point 3.3.1(a), including such innovative mid-caps in its investment portfolio can be an effective way for a financial intermediary to offer a more diversified set of investment opportunities appealing to a wider range of potential investors.

(c) Undertakings receiving the initial risk finance investment more than 7 years after their first commercial sale

(73) The General Block Exemption Regulation covers SMEs which receive the initial investment under the risk finance measure before their first commercial sale on a market or within 7 years following their first commercial sale. Only follow-on investments are covered by the block exemption beyond this 7-year period. However, certain types of undertakings may be regarded as still being in their expansion/early growth stages if, even after this 7-year period, they have not yet sufficiently proven their potential to generate returns and/or do not have a sufficiently robust track record and collaterals. This may be the case in high-risk sectors, such as the biotech, cultural and creative industries, and more in general for innovative SMEs ([24]). Moreover, undertakings that have sufficient internal equity to finance their initial activities may require external financing only at a later stage, for instance to increase their capacities from a small-scale to a larger-scale business. This may require a higher amount of investment than they can meet from their own resources.

([24]) The innovative character of an SME is to be appraised in the light of the definition set out in the General Block Exemption Regulation.

(74) Therefore, it may be possible to allow measures whereby the initial investment is carried out more than 7 years after the first commercial sale of the target undertaking. In such circumstances, the Authority may require that the measure clearly defines the eligible undertakings, in the light of evidence provided in the *ex ante* assessment regarding the existence of a specific market failure affecting such undertakings.

(d) Undertakings requiring a risk finance investment of an amount exceeding the cap fixed in the General Block Exemption Regulation

(75) The General Block Exemption Regulation sets a maximum total amount of risk finance per eligible undertaking, including follow-on investments. However, in certain industries where the upfront research or investment costs are relatively high, for example in life sciences or green technology or energy, this amount may not be sufficient to achieve all the necessary investment rounds and set the company on a sustainable growth path. It may therefore be justified, under certain conditions, to allow for a higher amount of overall investment to eligible undertakings.

(76) Hence, risk finance measures may provide support above such a maximum total amount, provided the envisaged amount of funding reflects the size and nature of the funding gap identified in the *ex ante* assessment with respect to the target sectors and/or territories. In such cases, the Authority will take into account the capital-intensive nature of the targeted sectors and/or the higher costs of investments in certain geographic areas.

(e) Alternative trading platforms not fulfilling the conditions of the General Block Exemption Regulation

(77) The Authority recognises that alternative trading platforms are an important part of the SME financing market because they both attract fresh capital into SMEs and facilitate the exit of earlier investors ([25]). The General Block Exemption Regulation recognises their importance by facilitating their activity either through fiscal incentives targeted at natural persons investing in companies listed on these platforms, or by allowing for start-up aid to the platform operator, subject to the condition that the platform operator qualifies as a small enterprise and up to certain thresholds.

(78) However, operators of alternative trading platforms may not necessarily be small enterprises when they are established. Equally, the maximum amount of aid permissible as start-up aid under the General Block Exemption Regulation may not be sufficient to support the establishment of the platform. Moreover, in order to attract sufficient resources for the establishment and the roll-out of new platforms, it may be necessary to provide fiscal incentives to corporate investors. Finally, the platform may not only list SMEs, but also undertakings which exceed the thresholds in the definition of SME.

(79) Therefore, it may be justified, under certain conditions, to allow fiscal incentives to corporate investors, to support platform operators that are not small enterprises, or to allow investments for the establishment of alternative trading platforms the amount of which exceeds the limits provided for start-up aid under the General Block Exemption Regulation, or to allow aid to alternative trading platforms where the majority of the financial instruments admitted to trading are issued by SMEs. This is in line with the policy objective of supporting access to finance for SMEs through a seamless funding chain. Therefore, the *ex ante* assessment must demonstrate the existence of a specific market failure affecting such platforms in the relevant geographic market.

3.3.2. *Measures with design parameters not complying with the General Block Exemption Regulation*

(a) Financial instruments with private investors' participation below the ratios provided for in the General Block Exemption Regulation

(80) The market failures affecting enterprises in particular regions or EFTA States may be more pronounced due to the relative underdevelopment of the SME finance market within such areas in comparison to other regions in the same EFTA State or other EFTA States. This may particularly be the case in EFTA States without a

([25]) The Authority recognises the growing importance of crowdfunding platforms in attracting funding for start-up companies. Therefore, if there is an established market failure and in cases a crowd funding platform has an operator which is a separate legal entity, the Authority may apply, by analogy, the rules applicable to alternative trading platforms. This applies equally to fiscal incentives to invest via such crowdfunding platforms. In the light of the recent appearance of crowdfunding in the Union/EEA, risk finance measures involving crowdfunding are likely to be subject to an evaluation as mentioned in Section 4 of these Guidelines.

well-established presence of formal venture capital investors or business angels. Therefore, the objective of encouraging the development of an efficient SME finance market in these regions and overcoming the structural barriers which may prevent SMEs from having effective access to risk finance, may justify a more favourable stance of the Authority towards measures allowing for private investor participation below the ratios provided for in the General Block Exemption Regulation.

(81) Moreover, for risk finance measures with private investor participation below the ratios set out in the General Block Exemption Regulation, the Authority may take a positive stand, in particular if they specifically target SMEs before their first commercial sale or at the proof-of-concept stage, that is to say, undertakings affected by a more pronounced market failure provided that part of the risks of the investment are effectively borne by the participating private investors.

(b) Financial instruments with design parameters above the ceiling provided for in the General Block Exemption Regulation

(82) The benefit of the General Block Exemption Regulation is reserved for measures whereby non-*pari passu* loss sharing between public and private investors is so designed as to limit the first loss assumed by the public investor. Similarly, in the case of guarantees, the block exemption sets limits on the guarantee rate and the total losses assumed by the public investor.

(83) However, in certain circumstances, by taking a riskier financing position, public funding may allow private investors or lenders to provide additional financing. In assessing measures with financial design parameters exceeding the ceilings in the General Block Exemption Regulation, the Authority will take into account a number of factors as outlined in Section 3.4.2 of these Guidelines.

(c) Financial instruments other than guarantees where investors, financial intermediaries and their managers are selected by giving preference to down side protection over asymmetric profit-sharing

(84) In accordance with the General Block Exemption Regulation, the selection of financial intermediaries, as well as the investors or the fund managers, must be based on an open, transparent and non-discriminatory call setting out clearly the policy objectives pursued by the measure and the type of financial parameters designed to achieve such objectives. This means that the financial intermediaries or their managers have to be selected via a procedure compliant with Directive 2004/18/EC ([26]) or any subsequent legislation replacing this directive. If this directive is not applicable, the selection procedure must be such as to ensure the widest possible choice amongst qualified financial intermediaries or fund managers. In particular, such a procedure shall enable the EFTA State concerned to compare the terms and conditions negotiated between the financial intermediaries or the fund managers and potential private investors so as to ensure that the risk finance measure attract private investors with the minimum State aid possible, or the minimum divergence from *pari passu* conditions, in the light of a realistic investment strategy.

(85) According to the General Block Exemption Regulation, the applicable criteria for the selection of managers must include a requirement whereby, for instruments other than guarantees, 'profit-sharing shall be given preference over downside protection' in order to limit a bias towards excessive risk-taking by the manager selecting the undertakings in which the investment is made. This is meant to ensure that whatever the form of the financial instrument foreseen by the measure, any preferential treatment granted to private investors or lenders has to be weighed against the public interest which consists in ensuring the revolving nature of the public capital committed and the long-term financial sustainability of the measure.

(86) In certain cases, however, it may prove necessary to give preference to downside protection, namely when the measure targets certain sectors in which the default rate of SMEs is high. This may be the case for measures targeting SMEs before their first commercial sale or at the proof-of-concept stage, sectors faced with important technological barriers, or sectors where the companies have a high dependence on single projects requiring large upfront investment and entailing high risk-exposure, such as the cultural and creative industries. A preference for downside protection mechanisms may also be justified for measures operating via a fund of funds and aiming at attracting private investors at this level.

([26]) See footnote 22.

(d) Fiscal incentives to corporate investors including financial intermediaries or their managers acting as co-investors

(87) While the General Block Exemption Regulation covers fiscal incentives granted to independent private investors who are natural persons providing risk finance directly or indirectly to eligible SMEs, EFTA States may find it appropriate to put in place measures applying similar incentives to corporate investors. The difference lies in the fact that corporate investors are undertakings within the meaning of Article 61 of the EEA Agreement. The measure must therefore be subject to specific restrictions in order to ensure that aid at the level of the corporate investors remains proportionate and has a real incentive effect.

(88) Financial intermediaries and their managers may benefit from a fiscal incentive only insofar as they act as co-investors or co-lenders. No fiscal incentive can be granted in respect of the services rendered by the financial intermediary or its managers for the implementation of the measure.

3.4. **Appropriateness of the aid measure**

3.4.1. *Appropriateness compared to other policy instruments and other aid instruments*

(89) In order to address the identified market failures and to contribute to the achievement of the policy objectives pursued by the measure, the proposed risk finance measure must be an appropriate instrument, while at the same time being the least distortive to competition. The choice of the specific form of the risk finance measure must be duly justified by the *ex ante* assessment.

(90) As a first step, the Authority will consider whether and to what extent the risk finance measure can be considered as an appropriate instrument compared to other policy instruments aimed at encouraging risk finance investments into the eligible undertakings. State aid is not the only policy instrument available to EFTA States to facilitate the provision of risk finance to eligible undertakings. They can use other complementary policy tools both on the supply and demand side, such as regulatory measures to facilitate the functioning of financial markets, measures to improve the business environment, advisory services for investment-readiness or public investments in line with the market economy operator test.

(91) The *ex ante* assessment must analyse the existing and, if possible, the envisaged national and EEA policy actions targeting the same identified market failures, taking into account the effectiveness and efficiency of other policy tools. The findings of the *ex ante* assessment must demonstrate that the identified market failures cannot be adequately addressed by other policy tools that do not entail State aid. Moreover, the proposed risk finance measure must be consistent with the overall policy of the EFTA State concerned regarding SME access to finance and be complementary to other policy instruments addressing the same market needs.

(92) As a second step, the Authority will consider whether the proposed measure is more appropriate than alternative State aid instruments addressing the same market failure. In this respect, there is a general presumption that financial instruments are less distortive than direct grants and therefore constitute a more appropriate instrument. However, State aid to facilitate the provision of risk finance can be granted in various forms, such as selective fiscal instruments or sub-commercial financial instruments, including a range of equity, debt or guarantees instruments with different risk-return characteristics, as well as various delivery modes and funding structures, the appropriateness of which depends on the nature of the targeted undertakings and the funding gap. Therefore, the Authority will assess whether the design of the measure provides for an efficient funding structure, taking into account the investment strategy of the fund, so as to ensure sustainable operations.

(93) In this respect, the Authority will look positively at measures which involve sufficiently large funds in terms of portfolio size, geographic coverage, in particular if they operate across several EFTA States, and diversification of the portfolio, as such funds may be more efficient and therefore more attractive for private investors, compared to smaller funds. Certain fund of funds structures may meet these conditions provided that the overall management costs resulting from the different levels of intermediation are offset by substantial efficiency gains.

3.4.2. *Conditions for financial instruments*

(94) For financial instruments falling outside the scope of the General Block Exemption Regulation, the Authority will consider the elements set out in paragraphs 95 to 119.

(95) Firstly, the measure must mobilise additional funding from market participants. Minimum private investment ratios below those set out in the General Block Exemption Regulation may only be justified in the light of more pronounced market failures established in the *ex ante* assessment. In this regard, the *ex ante* assessment must reasonably estimate the level of private investment sought in the light of the market failure affecting the specific range of eligible undertakings targeted by the measure, that is to say the estimated potential to raise additional private investment on a portfolio or deal-by-deal basis. Furthermore, it must be demonstrated that the measure leverages additional private funding that would not have been provided otherwise or would have been provided in different forms or amounts or on different terms.

(96) In the case of risk finance measures targeting specifically SMEs before their first commercial sale, the Authority may accept that the level of private participation is lower than the required ratios. Alternatively, for such investment targets, the Authority may accept that the private participation is non-independent in nature, that is to say, provided for instance by the owner of the beneficiary undertaking. In duly justified cases, the Authority may accept levels of private participation lower than those established in the General Block Exemption Regulation also in respect of eligible undertakings that have been operating on a market for less than 7 years from their first commercial sale, in the light of the economic evidence provided in the *ex ante* assessment regarding the relevant market failure.

(97) A risk finance measure targeting eligible undertakings that have been operating on a market for more than seven years from their first commercial sale at the time of the first risk finance investment must contain adequate restrictions whether in terms of time limits (e.g. 10 years instead of 7) or other objective criteria of a qualitative nature relating to the development stage of the target undertakings. For such investment targets the Authority would normally require a minimum private participation ratio of 60 %.

(98) Secondly, together with the proposed level of private participation, the Authority will also take into account the balance of risks and rewards between the public and private investors. In this regard, the Authority will consider positively measures whereby the losses are shared *pari passu* between the investors, and private investors only receive upside incentives. In principle, the closer the risk and reward sharing is to actual commercial practices, the more likely that the Authority will accept a lower level of private participation.

(99) Thirdly, the level of the funding structure at which the measure aims to leverage private investment is of importance. At the level of the fund of funds, the ability to attract private funding may depend on a more extensive use of downside protection mechanisms. Conversely, an excessive reliance on such mechanisms may distort the selection of eligible undertakings and lead to inefficient outcomes where private investors intervene at the level of the investment into the undertakings and on a transaction- by-transaction basis.

(100) In assessing the necessity of the specific design of the measure, the Authority may take into account the importance of the residual risk retained by the selected private investors relative to the expected and unexpected losses assumed by the public investor, as well as the balance of expected returns between the public investor and the private investors. Thus a different risk and reward profile could be accepted if this maximises the amount of private investment, without undermining the genuine profit- driven character of the investment decisions.

(101) Fourthly, the exact nature of incentives must be determined through an open and non-discriminatory process of selecting financial intermediaries, as well as fund managers or investors. By the same token, the managers of the fund of funds should be required to legally commit as part of their investment mandate to determine via a competitive process for the selection of eligible financial intermediaries, fund managers or investors, the preferential conditions which could apply at the level of the sub-funds.

(102) To prove the necessity of the specific financial conditions underpinning the design of the measure, EFTA States may be required to produce evidence demonstrating that, in the process of selecting private investors, all participants in the process were seeking conditions that would not be covered by the General Block Exemption Regulation, or that the tender was inconclusive.

(103) Fifthly, the financial intermediary or the fund manager may co-invest alongside the EFTA State, so long as this avoids any potential conflict of interests. The financial intermediary must take at least 10 % of the first loss piece. Such co-investment could contribute to ensure that investment decisions are aligned with the relevant policy targets. The ability of the manager to provide investment from its own resources can be one of the selection criteria.

(104) Finally, risk finance measures making use of debt instruments must provide for a mechanism ensuring that the financial intermediary passes on the advantage it receives from the State to the final beneficiary undertakings, for instance in the form of lower interest rates, reduced collateral requirements or a combination of the two. The financial intermediary may also pass on the advantage by investing in undertakings that although potentially viable, according to the financial intermediary's internal rating criteria, would be in a risk class where the intermediary would not invest in the absence of the risk finance measure. The pass-on mechanism must include adequate monitoring arrangements, as well as a clawback mechanism.

(105) EFTA States can deploy a range of financial instruments as part of the risk finance measure, such as equity and quasi-equity investment instruments, loan instruments or guarantees on a non-*pari passu* basis. In paragraphs 106 to 119 below are set out the elements that the Authority will take into account in its assessment of such specific financial instruments.

(a) Equity investments

(106) Equity investment instruments may take the form of equity or quasi-equity investments into an undertaking, by which the investor buys (part of) the ownership of that undertaking.

(107) Equity instruments can have various asymmetric features, providing a differentiated treatment of investors as some may participate in a larger part of the risks and rewards than others. To mitigate private investors' risks, the measure may offer upside protection (the public investor giving up a part of the return) or protection against a part of the losses (limiting the losses for the private investor), or a combination of the two.

(108) The Authority considers that upside incentives create a better alignment of interests between public and private investors. Conversely, downside protection whereby the public investor may be exposed to the risk of poor performance may lead to misalignment of interests and adverse selection by financial intermediaries or investors.

(109) The Authority considers that equity instruments with capped return ([27]), call option ([28]) and asymmetric income cash split ([29]) offer good incentives, especially in situations characterised by a less severe market failure.

(110) Equity instruments with non-*pari passu* loss-sharing features going beyond the limits set out in the General Block Exemption Regulation may only be justified for measures addressing severe market failures identified in the *ex ante* assessment, such as measures targeting predominantly SMEs before their first commercial sale or at the proof-of-concept stage. To prevent extensive downside risk protection, the first loss piece borne by the public investor must be capped.

(b) Funded debt instruments: loans

(111) A risk finance measure may cover the provision of loans at the level of either the financial intermediaries or the final beneficiaries.

(112) Funded debt instruments may take different forms, including subordinated loans and portfolio risk-sharing loans. Subordinated loans may be granted to financial intermediaries to strengthen their capital structure, with a view to providing additional financing to eligible undertakings. Portfolio risk-sharing loans are designed to provide loans to financial intermediaries who commit to co-finance a portfolio of new loans or leases to eligible undertakings up to a certain co-financing rate in combination with credit risk-sharing of the portfolio on a loan-by-loan (or lease-by-lease) basis. In both cases, the financial intermediary acts as a co-investor in the eligible undertakings but enjoys preferential treatment compared to the public investor/lender as the instrument mitigates its own exposure to credit risks resulting from the underlying loan portfolio.

([27]) Capped return for the public investor: at a certain predefined hurdle rate: if the predefined rate of return is exceeded, all returns above are distributed to the private investors only.

([28]) Call options on public shares: private investors are given the right to exercise a call option to buy out the public investment share at a pre-agreed strike price.

([29]) Asymmetric income cash split: cash is drawn from both public and private investors on a *pari passu* basis, but returns are shared whenever they arise in an asymmetric way. Private investors receive a larger share of the distribution proceeds than they should receive pro rata their respective holdings, up to the predefined hurdle rate.

(113) In general, where the risk mitigation characteristics of the instrument lead the public investor/lender to assume, with respect to the underlying loan portfolio, a first loss position exceeding the cap set out by the General Block Exemption Regulation, the measure may only be justified in the event of a severe market failure which must be clearly identified in the *ex ante* assessment. The Authority will consider positively measures which provide for an explicit cap on the first losses assumed by the public investor, notably where such a cap does not exceed 35 %.

(114) Portfolio risk sharing loan instruments should ensure a substantial co-investment rate by the selected financial intermediary. This is presumed to be the case if such a rate is not lower than 30 % of the value of the underlying loan portfolio.

(115) If funded debt instruments are used to refinance existing loans, they are not considered to generate an incentive effect and any aid element in such instruments cannot be regarded as compatible with the EEA Agreement under Article 61(3)(c) of the EEA Agreement.

(c) Unfunded debt instruments: guarantees

(116) A risk finance measure may cover the provision of guarantees or counter-guarantees to the financial intermediaries and/or guarantees to the final beneficiaries. Eligible transactions covered by the guarantee must be newly originated eligible risk finance loan transactions, including lease instruments, as well as quasi-equity investment instruments, to the exclusion of equity instruments.

(117) Guarantees should be provided on a portfolio basis. Financial intermediaries may select the transactions they wish to include in the portfolio covered by the guarantee, so long as the included transactions meet the eligibility criteria as defined by the risk finance measure. Guarantees should be offered at a rate ensuring an appropriate level of risk and reward sharing with the financial intermediaries. In particular, in duly justified cases and subject to the results of the *ex ante* assessment, the guarantee rate may be higher than the maximum rate provided for in the General Block Exemption Regulation, but must not exceed 90 %. This could be the case of guarantees on loans or quasi-equity investments in SMEs before their first commercial sale.

(118) In the case of capped guarantees, the cap rate should cover in principle only the expected losses. Should it also cover the unexpected losses, the latter should be priced at a level that reflects the additional risk coverage. In general, the cap rate should not exceed 35 %. Uncapped guarantees (guarantees with a guarantee rate, but with no cap rate) may be provided in duly justified cases and be priced to reflect the additional risk coverage provided by the guarantee.

(119) The duration of the guarantee should be limited in time, normally up to a maximum of 10 years, without prejudice to the maturity of individual debt instruments covered by the guarantee, which can be longer. The guarantee shall be reduced if the financial intermediary does not include a minimum amount of investment in the portfolio during a specific period. Commitment fees shall be required for unused amounts. Methods such as commitment fees, trigger events or milestones can be used in order to incentivise the intermediaries to achieve the agreed volumes.

3.4.3. *Conditions for fiscal instruments*

(120) As pointed out in Section 3.3.2(d), the scope of the General Block Exemption Regulation is limited to fiscal incentives targeted at investors who are natural persons. Therefore, measures using tax incentives to encourage corporate investors to provide finance to eligible undertakings, either directly or indirectly through the acquisition of shares in a dedicated fund or other types of investment vehicles that invest into such undertakings, are subject to notification to the Authority.

(121) As a general rule, EFTA States have to base their fiscal measures on the findings of a market failure in the *ex ante* assessment, and therefore target their instrument towards a well-defined category of eligible undertakings.

(122) Tax incentives to corporate investors may take the form of income tax reliefs and/or tax reliefs on capital gains and dividends, including tax credits and deferrals. In the context of its enforcement practice, the Authority has generally considered compatible income tax reliefs that are designed in such a way so as to contain specific limits as to the maximum percentage of the invested amount that the investor can claim for the purposes of the tax relief, as well as a maximum tax break amount which can be deducted from the investor's tax liabilities.

Moreover, capital gains tax liability on disposal of shares can be deferred if reinvested in eligible investments within a certain period, while losses arising upon disposal of such shares may be deducted from profits accruing from other shares subject to the same tax.

(123) In general, the Authority considers that such types of fiscal measures are appropriate and therefore have an incentive effect if the EFTA State can produce evidence demonstrating that the selection of the eligible undertakings is based on a well-structured set of investment requirements, made public through appropriate publicity, and setting out the characteristics of the eligible undertakings which are subject to a demonstrated market failure.

(124) Without prejudice to the possibility of prolonging a measure, fiscal schemes must have a maximum duration of 10 years. If, after 10 years, the scheme is prolonged, the EFTA State must carry out a new *ex ante* assessment together with an evaluation of the effectiveness of the scheme during the period of its implementation.

(125) In its analysis, the Authority will take account of the specific characteristics of the relevant national fiscal system and the fiscal incentives that already exist in the EFTA State, as well as the interplay between those incentives, devoted to fight against tax fraud and evasion. It should also be ensured that the rules on information exchange between tax administrations to prevent tax fraud and evasion duly apply.

(126) The fiscal advantage must be open to all investors fulfilling the required criteria, without discrimination as to their place of establishment and provided that the EFTA State concerned complies with minimum standards on good governance in tax matters. EFTA States should therefore ensure an adequate publicity regarding the scope and the technical parameters of the measure. These should include the necessary ceilings and caps defining the maximum advantage that each individual investor may draw from the measure, as well as the maximum investment amount which can be made in individual eligible undertakings.

3.4.4. *Conditions for measures supporting alternative trading platforms*

(127) As regards aid measures supporting alternative trading platforms beyond the limits set out in the General Block Exemption Regulation, the operator of the platform must provide a business plan demonstrating that the aided platform can become self-sustainable in less than 10 years. Moreover, plausible counterfactual scenarios must be provided in the notification, comparing the situations with which the tradable undertakings would be confronted if the platform did not exist, in terms of access to the necessary finance.

(128) The Authority will look favourably at alternative trading platforms set up by and operating across several EFTA States, because they may be particularly efficient and attractive to private investors, in particular to institutional investors.

(129) For existing platforms, the proposed business strategy of the platform must show that, due to a persistent shortage of listings, and therefore a shortage of liquidity, the platform concerned needs to be supported in the short-term, despite its long-term viability. The Authority will consider positively aid for the setting up of an alternative trading platform in EFTA States where no such platform exists. Where the alternative trading platform to be supported is a sub-platform or subsidiary of an existing stock exchange, the Authority will pay particular attention to the assessment of the lack of finance such a sub-platform would face.

3.5. **Incentive effect of the aid**

(130) State aid can only be found compatible with the EEA Agreement if it has an incentive effect that induces the aid beneficiary to change its behaviour by undertaking activities which it would not carry out without the aid or would carry out in a more restrictive manner due to the existence of a market failure. At the level of the eligible undertakings, an incentive effect is present when the final beneficiary can raise finance that would not be available otherwise in terms of form, amount or timing.

(131) Risk finance measures must incentivise market investors to provide funding to potentially viable eligible undertakings above the current levels and/or to assume extra risk. A risk finance measure is considered to have an incentive effect if it mobilises investments from market sources so that the total financing provided to the eligible undertakings exceeds the budget of the measure. Hence, a key element in selecting the financial intermediaries and fund managers should be their ability to mobilise additional private investment.

(132) The assessment of the incentive effect is closely linked to the assessment of the market failure discussed in Section 3.3. Further, the suitability of the measure to achieve the leverage effect ultimately depends on the design of the measure as regards the balance of risks and rewards between public and private finance-providers, which is also closely related to the question whether the design of the risk finance State aid measure is appropriate (see Section 3.4 above). Therefore, once the market failure has been properly identified and the measure has an appropriate design, it can be assumed that an incentive effect is present.

3.6. **Proportionality of the aid**

(133) State aid must be proportionate in relation to the market failure being addressed in order to achieve the relevant policy objectives. It must be designed in a cost-efficient manner, in line with the principles of sound financial management. For an aid measure to be considered proportionate, aid must be limited to the strict minimum necessary to attract funding from the market to close the identified funding gap, without generating undue advantages.

(134) As a general rule, at the level of the final beneficiaries, risk finance aid is considered to be proportionate if the total amount of syndicated funding (public and private) provided under the risk finance measure is limited to the size of the funding gap identified in the *ex ante* assessment. At the level of the investors, aid must be limited to the minimum necessary to attract private capital in order to achieve the minimum leverage effect and bridge the funding gap.

3.6.1. *Conditions for financial instruments*

(135) The measure must ensure a balance between the preferential conditions offered by a financial instrument in order to maximise the leverage effect while addressing the identified market failure and the need for the instrument to generate sufficient financial returns to remain operationally viable.

(136) The exact nature and value of the incentives must be determined through an open and non-discriminatory selection process in the context of which financial intermediaries, as well as fund managers or investors are called to present competing bids. The Authority considers that where any asymmetric risk-adjusted returns or loss-sharing is established through such a process, the financial instrument is to be regarded as proportionate and to reflect a fair rate of return (FRR). Where the fund managers are selected through an open, transparent, and non-discriminatory call requiring the applicants to present their investor base as part of the selection process, the private investors are considered to be duly selected.

(137) In the case of co-investment by a public fund with private investors participating on a deal-by-deal basis, the latter should be selected through a separate competitive process in respect of each transaction, which is the preferred way of establishing the FRR.

(138) Where private investors are not selected through such a process (for instance because the selection procedure has proven to be ineffective or inconclusive) the FRR must be established by an independent expert on the basis of an analysis of market benchmarks and market risk using the discounted cash flow valuation methodology in order to avoid over-compensation of investors. On that basis, the independent expert must calculate a minimum level of FRR and add to that an appropriate margin to reflect the risks.

(139) In such a case, there must be appropriate rules in place for the appointment of the independent expert. As a minimum, the expert must be licensed to provide such advice, be registered with the relevant professional associations, comply with deontological and professional rules issued by those associations, be independent and be liable for the accuracy of its expertise. In principle, independent experts are to be selected via an open, transparent and non-discriminatory selection procedure. The same independent expert may not be used twice within a period of 3 years.

(140) In the light of the above, the design of the measure may contain various asymmetric profit-sharing or asymmetrically timed public and private investments, as long as the expected risk-adjusted returns for the private investors are limited to the FRR.

(141) As a general principle, the Authority considers that economic alignment of interests between the EFTA State and the financial intermediaries or their managers, as appropriate, can minimise the aid. The interests must be aligned both as regards the achievement of the specific policy targets and the financial performance of the public investment into the instrument.

(142) The financial intermediary or the fund manager may co-invest alongside the EFTA State, as long as the terms and conditions of such a co-investment are such as to exclude any possible conflict of interests. Such co-investment could incentivise the manager to align its investment decisions with the set policy targets. The ability of the manager to provide investment from its own resources can be one of the selection criteria.

(143) The remuneration of the financial intermediaries or the fund managers, depending on the type of risk finance measure, must include an annual management fee, as well as performance-based incentives, such as carried interest.

(144) The performance-based component of the remuneration must be significant and designed to reward the financial performance, as well as the attainment of the specific policy targets set in advance. Policy-related incentives must be balanced with the financial performance incentives which are required to ensure an efficient selection of eligible undertakings in which investments will be made. In addition, the Authority will take into account possible penalties provided for in the funding agreement between the EFTA State and the financial intermediary, which apply if the defined policy targets are not met.

(145) The level of performance-based remuneration should be justified based on the relevant market practice. The managers must be remunerated not only for the successful disbursement and the amount of private capital raised, but also for the successful returns on investments, such as income receipts and capital receipts above a certain minimum rate of return or hurdle rate.

(146) The total management fees must not exceed operational and management costs necessary for the execution of the financial instrument concerned, plus a reasonable profit, in line with market practice. The fees must not include investment costs.

(147) As financial intermediaries or their managers, as appropriate, must be selected through an open, transparent and non-discriminatory call, the overall fee structure can be evaluated as part of the scoring of that selection process and the maximum remuneration can be established as a result of such selection.

(148) In case of direct appointment of an entrusted entity, the Authority considers that the annual management fee should in principle not exceed 3 % of the capital to be contributed to the entity, excluding the performance-based incentives.

3.6.2. *Conditions for fiscal instruments*

(149) Total investment for each beneficiary undertaking may not exceed the maximum amount fixed by the risk finance provision of the General Block Exemption Regulation.

(150) Irrespective of the type of tax relief, eligible shares must be full-risk, ordinary shares, newly issued by an eligible undertaking as defined in the *ex ante* assessment, and they must be held for at least 3 years. The relief cannot be available to investors who are not independent from the company invested in.

(151) In the case of income tax relief, investors providing finance to eligible undertakings may receive relief of up to a reasonable percentage of the amount invested in eligible undertakings, provided the maximum income tax liability of the investor, as established prior to the fiscal measure, is not exceeded. The Authority considers reasonable capping the tax relief at 30 % of the invested amount. Losses arising upon disposal of the shares may be set against income tax.

(152) In the case of tax relief on dividends, any dividend received in respect of qualifying shares may be fully exempt from income tax. Similarly, in the case of capital gain tax relief, any profit on the sale of qualifying shares can be fully exempt from capital gain tax. Moreover, capital gains tax liability on disposal of qualifying shares can be deferred if reinvested in new qualifying shares within 1 year.

3.6.3. *Conditions for alternative trading platforms*

(153) In order to allow a proper analysis of the proportionality of the aid to the operator of the alternative trading platform, State aid can be granted in order to cover up to 50 % of the investment costs incurred for the establishment of such a platform.

(154) In the case of fiscal incentives to corporate investors, the Authority will assess the measure against the conditions set out for fiscal instruments in these Guidelines.

3.7. **Avoidance of undue negative effects on competition and trade**

(155) The State aid measure must be designed in such a way that it limits distortions of competition within the EEA. The negative effects have to be balanced against the overall positive effect of the measure. In the case of risk finance measures, the potential negative effects have to be assessed at each level where aid may be present: the investors, the financial intermediaries and their managers, and the final beneficiaries.

(156) To enable the Authority to assess the likely negative effects, the EFTA State may submit, as part of the *ex ante* assessment, any study at its disposal, as well as *ex post* evaluations carried out for similar schemes, in terms of the eligible undertakings, funding structures, design parameters and geographic area.

(157) Firstly, at the level of the market for the provision of risk finance, State aid may result in crowding out private investors. This might reduce the incentives for private investors to provide funding to eligible undertakings and encourage them to wait until the State provides aid for such investments. This risk becomes more relevant, the higher the amount of the total financing into the final beneficiaries, the larger the size of those beneficiary undertakings and the more advanced their development stage, as private financing becomes progressively available in those circumstances. Moreover, State aid should not replace the normal business risk of investments that the investors would have undertaken even in the absence of State aid. However, to the extent that the market failure has been properly defined, it is less likely that the risk finance measure will result in such crowding out.

(158) Secondly, at the level of financial intermediaries, aid may have distortive effects in terms of increasing or maintaining an intermediary's market power, for example in the market of a particular region. Even where aid does not strengthen the financial intermediary's market power directly, it may do so indirectly, by discouraging the expansion of existing competitors, inducing their exit or discouraging the entry of new competitors.

(159) Risk finance measures must be targeted at growth-oriented undertakings which are unable to attract an adequate level of financing from private resources but may become viable with risk finance State aid. However, a measure which provides for the setting up of a public fund the investment strategy of which does not demonstrate sufficiently the potential viability of the eligible undertakings is unlikely to meet the balancing test, as in such a case the risk finance investment may amount to a grant.

(160) Since the conditions on commercial management and profit-oriented decision-making set out in the risk finance provisions of the General Bock Exemption Regulation are essential to ensure that the selection of the final beneficiary undertakings is based on a commercial logic, those conditions cannot be derogated from under these Guidelines, including where the measure involves public financial intermediaries.

(161) Investment funds of a small scale, with limited regional focus and without adequate governance arrangements will be analysed with a view to avoiding the risk of maintaining inefficient market structures. Regional risk finance schemes may not have sufficient scale and scope due to a lack of diversification linked to the absence of a sufficient number of eligible undertakings as investment targets, which could reduce the efficiency of such funds and result in the granting of aid to less viable companies. Those investments could distort competition and provide undue advantages to certain undertakings. Moreover, such funds may be less attractive to private investors, in particular institutional investors, as they may be seen more as a vehicle to serve regional policy objectives, rather than a viable business opportunity offering acceptable returns on investment.

(162) Thirdly, at the level of the final beneficiaries, the Authority will assess whether the measure has distortive effects on the product markets where those undertakings compete. For instance, the measure may distort competition if it targets companies in underperforming sectors. A substantial capacity expansion induced by State aid in an

underperforming market might, in particular, unduly distort competition, as the creation or maintenance of overcapacity could lead to a squeeze on profit margins, a reduction of competitors' investments or even their exit from the market. It may also prevent companies from entering the market. This results in inefficient market structures which are also harmful to consumers in the long run. Where the market in the targeted sectors is growing, there is normally less reason to fear that the aid will negatively affect dynamic incentives or will unduly impede exit or entry. Therefore, the Authority will analyse the level of production capacities in the given sector, in the light of the potential demand. In order to enable the Authority to carry out such an assessment, the EFTA State must indicate whether the risk finance measure is sector specific, or gives preference to certain sectors over others.

(163) State aid may prevent the market mechanisms from delivering efficient outcomes by rewarding the most efficient producers and putting pressure on the least efficient to improve, restructure or exit the market. Where inefficient undertakings receive aid, this may prevent other undertakings from entering or expanding in the market and weaken incentives for competitors to innovate.

(164) The Authority will also assess any potential negative delocalisation effects. In this regard, the Authority will analyse whether regional funds are likely to incentivise delocalisation within the EEA. Where the financial intermediary's activities are focused on a non-assisted region bordering assisted regions, or a region with higher regional aid intensity than the target region, the risk of such distortion is more pronounced. A regional risk finance measure focussing only on certain sectors might also have negative delocalisation effects.

(165) Where the measure has negative effects, the EFTA State must identify the means to minimise such distortions. For instance, the EFTA State may demonstrate that the negative effects will be limited to the minimum, taking into account, for example, the overall investment amount, the type and number of beneficiaries and the characteristics of the targeted sectors. In balancing positive and negative effects, the Authority will also take into account the magnitude of such effects.

3.8. **Transparency**

(166) EFTA States must publish the following information on a comprehensive State aid website, at national or regional level:

(i) the text of the aid scheme and its implementing provisions;

(ii) the identity of the granting authority;

(iii) the total amount of the EFTA State's participation in the measure;

(iv) the identity of the entrusted entity, if applicable, and the names of the selected financial intermediaries;

(v) the identity of the undertaking supported under the measure, including information about the type of undertaking (SME, small mid-cap, innovative mid-cap); the region (at Statistical regions level 2 ([30])) in which the undertaking is located; the principal economic sector in which the undertaking has its activities at NACE group level; the form and amount of investment. Such a requirement can be waived with respect to SMEs which have not carried out any commercial sale in any market and for investments below EUR 200 000 into a final beneficiary undertaking;

(vi) in the case of fiscal risk finance aid schemes, the identity of the beneficiary corporate investors ([31]) and the amount of the fiscal advantage received, where the latter exceeds EUR 200 000. Such amount can be provided in ranges of EUR 2 million. Such information must be published after the decision to grant the aid has been taken, must be kept for at least 10 years and must be available for the general public without restrictions ([32]).

([30]) The term 'Statistical region' is used instead of the acronym 'NUTS' in the corresponding Commission Guidelines. NUTS is derived from the title 'Nomenclature of Territorial Units for Statistics' according to Regulation (EC) No 1059/2003 of the European parliament and of the Council of 26.5.2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154, 21.6.2003, p. 1). This regulation has not been incorporated into the EEA Agreement. However, in order to achieve common definitions in an ever-increasing demand for statistical information at a regional level, the Statistical Office of the European Union, Eurostat, and the National Institutes of the candidate countries and EFTA have agreed that statistical regions would be established similar to the NUTS classification.

([31]) This does not apply to private investors that are natural persons.

([32]) This information should be regularly updated (e.g. every 6 months) and should be available in non-proprietary formats.

3.9. **Cumulation**

(167) Risk finance aid may be cumulated with any other State aid measure with identifiable eligible costs.

(168) Risk finance aid may be cumulated with other State aid measures without identifiable eligible costs, or with *de minimis* aid, up to the highest relevant total financing ceiling fixed in the specific circumstances of each case by a block exemption regulation or a decision adopted by the Authority.

(169) EFTA funding centrally managed by the institutions, agencies, joint undertakings or other bodies of the EEA that is not directly or indirectly under the control of the EFTA States does not constitute State aid. Where such EEA funding is combined with State aid, only the latter will be considered for determining whether notification thresholds and maximum aid amounts are respected, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the most favourable funding rate laid down in the applicable rules of EEA law.

4. EVALUATION

(170) To further ensure that distortions of competition and trade are limited, the Authority may require that certain schemes be subject to a limited duration and to an evaluation, which must address the following issues:

(a) the effectiveness of the aid measure in the light of its predefined general and specific objectives and indicators; and

(b) the impact of the risk finance measure on markets and competition.

(171) An evaluation may be required for the following aid schemes:

(a) large schemes;

(b) schemes with a regional focus;

(c) schemes with a narrow sectoral focus;

(d) schemes which are modified, where the modification impacts on the eligibility criteria, the amount of investment or the financial design parameters; the evaluation may be submitted as part of the notification;

(e) schemes containing novel characteristics;

(f) schemes where the Authority so requests in the decision approving the measure, in the light of its potential negative effects.

(172) The evaluation must be carried out by an expert independent from the State aid granting authority on the basis of a common methodology ([33]) and must be made public. The evaluation must be submitted to the Authority in sufficient time to allow for the assessment of the possible prolongation of the aid scheme and in any case upon expiry of the scheme. The precise scope and methodology of the evaluation that is to be carried out will be defined in the decision approving the aid scheme. Any subsequent aid measure with a similar objective must take into account the results of that evaluation.

5. FINAL PROVISIONS

5.1. **Prolongation of the Risk Capital Guidelines**

(173) The Authority's Guidelines to promote risk capital investments in small and medium-sized enterprises would be applied until 30 June 2014.

5.2. **Applicability of the rules**

(174) The Authority will apply the principles set out in these Guidelines for the compatibility assessment of all risk finance aid to be awarded from 1 July 2014 until 31 December 2020.

([33]) Such a common methodology may be provided by the Authority.

(175) Risk capital aid unlawfully awarded or to be awarded before 1 July 2014 will be assessed in accordance with the rules in force at the date on which the aid is awarded.

(176) In order to preserve the legitimate expectations of private investors, in the case of risk finance schemes that provide for public funding to private equity investment funds, the date of the commitment of the public funding to the private equity investment funds, which is the date of signature of the funding agreement, determines the applicability of the rules to the risk finance measure.

5.3. **Appropriate measures**

(177) The Authority considers that the implementation of the present Guidelines will lead to substantial changes in the assessment principles for risk capital aid in the EFTA States. Furthermore, in the light of the changed economic and social conditions, it appears necessary to review the continuing justification for and effectiveness of all risk capital aid schemes. For these reasons, the Authority proposes the following appropriate measures to EFTA States pursuant to Article 1(1) in Part I of Protocol 3 to the Surveillance and Court Agreement:

(a) EFTA States should amend, where necessary, their existing risk capital aid schemes, in order to bring them into line with these Guidelines, within 6 months after the date of their publication;

(b) EFTA States are invited to give their explicit unconditional agreement to these proposed appropriate measures within 2 months from the date of publication of these Guidelines: in the absence of any reply, the Authority will assume that the EFTA State in question does not agree with the proposed measures.

(178) In order to preserve the legitimate expectations of private investors, EFTA States do not have to take appropriate measures with respect to risk capital aid schemes in favour of SMEs where the commitment of the public funding to the private equity investment funds, which is the date of signature of the funding agreement, was made before the date of publication of these Guidelines and all the conditions provided for in the funding agreement remain unchanged. These financial intermediaries may continue to operate thereafter and invest in accordance with their original investment strategy until the end of the duration foreseen in the funding agreement.

5.4. **Reporting and monitoring**

(179) In accordance with Article 21 of Part II of Protocol 3 to the Surveillance and Court Agreement, in conjunction with Articles 5 and 6 of Decision No 195/04/COL, EFTA States must submit annual reports to the Authority.

(180) EFTA States must maintain detailed records regarding all aid measures. Such records must contain all information necessary to establish that the conditions regarding eligibility and maximum investment amounts have been fulfilled. These records must be maintained for 10 years from the date of award of the aid and must be provided to the Authority upon request.

5.5. **Revision**

(181) The Authority may decide to review or change these Guidelines at any time if this should be necessary for reasons associated with competition policy or in order to take account of other EEA policies and international commitments, developments in the markets, or for any other justified reason.

CORRIGENDA

Corrigendum to Commission Implementing Decision 2014/844/EU, Euratom of 26 November 2014 authorising Malta to use certain approximate estimates for the calculation of the VAT own resources base

(Official Journal of the European Union L 343 of 28 November 2014)

On page 33, in the preamble:

for: 'Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ([1]), and in particular the second indent of Article 6(3) thereof,

Whereas:';

read: 'Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ([1]), and in particular the second indent of Article 6(3) thereof,

After consulting the Advisory Committee on Own Resources,

Whereas:'.

Corrigendum to Commission Implementing Decision 2014/847/EU, Euratom of 26 November 2014 amending Decision 90/176/Euratom, EEC authorizing France not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base

(Official Journal of the European Union L 343 of 28 November 2014)

On page 39, in the preamble:

for: 'Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ([1]), and in particular the second indent of Article 6(3) thereof,

Whereas:';

read: 'Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ([1]), and in particular the second indent of Article 6(3) thereof,

After consulting the Advisory Committee on Own Resources,

Whereas:'.

ISSN 1977-0677 (electronic edition)
ISSN 1725-2555 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN