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Legislation

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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.

III *Other acts*

EUROPEAN ECONOMIC AREA

[1] Text with EEA relevance.

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Amendments to the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention 1975)

According to the UN Depositary Notification C.N.201.2018.TREATIES – XI.A.16 the following amendments to the TIR Convention enter into force on 1 July 2018 for all Contracting Parties

Annex 6, Explanatory Note 0.8.3

For 'US$ 50 000' read '100 000 Euros'

Annex 6, Explanatory Note 8.1 bis.6

Add a new Explanatory Note 8.1 bis.6 to read

'The Committee may ask the competent United Nations services to perform the additional examination. The Committee may, alternatively, decide to engage an independent external auditor and mandate the TIR Executive Board to prepare the terms of reference of the audit, based on the object and purpose of the audit as determined by the Committee. The terms of reference shall be approved by the Committee. The additional examination by an external independent auditor shall result in a report and a management letter that shall be submitted to the Committee. In such a case, the financial cost of engaging an independent external auditor, including the related procurement procedure, shall be incurred by the budget of the TIR Executive Board.'

Annex 8, Article 1 bis

After the existing text insert new paragraphs 4, 5 and 6 to read

'4. The Committee shall receive and examine the annual audited financial statements and audit report(s) submitted by the international organization pursuant to the obligations under Annex 9, Part III. In the course and within the scope of its examination, the Committee may request that additional information, clarifications or documents be provided by the international organization or the independent external auditor.

5. Without prejudice to the examination mentioned in paragraph 4, the Committee shall, on the basis of a risk assessment, have the right to request additional examinations to be carried out. The Committee shall mandate the TIR Executive Board or request the competent United Nations services to carry out the risk assessment.

The scope of additional examinations shall be determined by the Committee, taking into account the risk assessment of the TIR Executive Board or of the competent United Nations services.

The results of all examinations referred to in this article shall be kept by the TIR Executive Board and provided to all Contracting Parties for due consideration.

6. The procedure for undertaking the additional examinations shall be approved by the Committee.'

Annex 9, Part I, subtitle

Before 'conditions and requirements' add 'Minimum'

Annex 9, Part I, paragraph 1 (first line)

After 'The' add 'minimum'

Annex 9, Part I, paragraph 7

For 'Contracting Parties' read 'that each Contracting Party'

Annex 9, Part II, Procedure, Model Authorization Form, paragraph 1

For 'approved' read 'authorized'

Annex 9, Part III, paragraph 2

After subparagraph (n) insert new subparagraphs (o), (p) and (q) to read

'(o) maintain separate records and accounts containing information and documentation which pertain to the organization and functioning of an international guarantee system and the printing and distribution of TIR Carnets;

(p) provide its full and timely cooperation, including, but not limited to, allowing access to the above records and accounts to the competent United Nations services or to any other duly authorized competent entity and, at all times, facilitating additional inspections and audits performed by them on behalf of Contracting Parties, pursuant to Annex 8, Article 1 bis, paragraphs 5 and 6.

(q) engage an independent external auditor to conduct annual audits of the records and accounts mentioned under subparagraph (o). The external audit shall be performed in accordance with International Standards on Auditing (ISA) and shall result in an annual audit report and a management letter which shall be submitted to the Administrative Committee.'

REGULATIONS

COMMISSION REGULATION (EU) 2018/588

of 18 April 2018

amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards 1-methyl-2-pyrrolidone

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 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 [1], and in particular Article 68(1) thereof,

Whereas:

(1) On 9 August 2013, the Netherlands submitted to the European Chemicals Agency ('the Agency') a dossier pursuant to Article 69(4) of Regulation (EC) No 1907/2006 ('the Annex XV dossier' [2]), proposing to restrict 1-methyl-2-pyrrolidone (NMP). The Annex XV dossier demonstrated that action on a Union-wide basis was necessary to address risks to the health of workers exposed to NMP.

(2) The Netherlands based its hazard assessment of NMP on the effects of the substance on several human health endpoints. Developmental toxicity was considered the most critical of those endpoints and was used to determine a level (the derived no-effect level or 'DNEL') above which workers should not be exposed to NMP by inhalation.

(3) Regulation (EC) No 1272/2008 of the European Parliament and of the Council [3] provides that, where NMP is present in mixtures in a concentration of 0,3 % or higher, they are to be classified as toxic for reproduction, category 1B. The restriction should apply in relation to such mixtures, as well as to the substance on its own.

(4) On 5 June 2014, the Agency's Risk Assessment Committee (RAC) adopted its opinion, confirming that developmental toxicity was the most critical health endpoint. RAC considered, however, that a different assessment factor from that used by The Netherlands should be applied to calculate the DNEL for NMP. This resulted in a level twice as high as that proposed by The Netherlands for exposure of workers to NMP via the inhalation route. RAC also calculated a DNEL for exposure of workers to NMP via the dermal route, which had not been proposed by The Netherlands.

(5) RAC confirmed that overall exposure to NMP above those two DNELs poses a risk to the health of workers and that the proposed restriction, based on those two DNELs, is the most appropriate Union-wide measure to reduce that risk in terms of its effectiveness.

(6) On 25 November 2014, the Agency's Socio-Economic Assessment Committee (SEAC) adopted its opinion, concluding that the proposed restriction, as modified by RAC, is the most appropriate Union-wide measure to reduce the risk to the health of workers arising from NMP in terms of its socioeconomic benefits and socioeconomic costs.

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[1] OJ L 396, 30.12.2006, p. 1.
[2] https://echa.europa.eu/documents/10162/ee4c88a9-d26f-4872-98fd-fb41646cc9e1
[3] 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 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).

(7) SEAC recommended a five year general deferral of application of the restriction, in line with the period proposed in the Annex XV dossier, to allow stakeholders to take the necessary compliance measures. SEAC considered that a longer deferral period might be appropriate for the wire coating sector, which was identified by The Netherlands as the sector on which the proposed restriction could have the greatest impact in relation to costs.

(8) The Agency's Forum for Exchange of Information on Enforcement, referred to in Article 76(1)(f) of Regulation (EC) No 1907/2006, was consulted during the restriction process and its recommendations have been taken into account.

(9) On 9 December 2014, the Agency submitted the opinions of RAC and SEAC ([1]) to the Commission.

(10) On becoming aware of a discrepancy between the DNEL for exposure to NMP via the inhalation route proposed by RAC in its opinion and the indicative occupational exposure limit for NMP established under Council Directive 98/24/EC ([2]) following a scientific opinion of the Scientific Committee on Occupational Exposure Limits for chemical substances (SCOEL), the Commission asked RAC and SCOEL to work together to resolve the issue in accordance with Article 95(3) of Regulation (EC) No 1907/2006. As a result of this, on 30 November 2016 RAC proposed a modified DNEL for exposure of workers to NMP via the inhalation route.

(11) Based on the opinions of RAC and SEAC, the Commission considers that there is an unacceptable risk to the health of workers during the manufacture and use of NMP which needs to be addressed on a Union-wide basis. A restriction establishing DNELs for exposure of workers to NMP via both the inhalation and the dermal routes is the most appropriate Union-wide measure to address that risk. Such a restriction would be more appropriate than the indicative occupational exposure limit for NMP established under Directive 98/24/EC for the following reasons: the overall risk characterisation ratio is based on quantified DNELs for inhalation and dermal exposure to NMP; the harmonisation of the chemical safety report in the registration dossier via harmonised DNELs can only be established under Regulation (EC) No 1907/2006; downstream users will have the same time period as manufacturers and importers to put in place the appropriate risk management measures and operational conditions in order to ensure that exposure of workers to NMP is below the two DNELs; the safety data sheets will include those DNELs in the appropriate specific sections.

(12) Therefore, the proposed restriction is the most appropriate Union-wide measure to address the risk to the health of workers from exposure to NMP.

(13) DNELs are to be applied when conducting the chemical safety assessment of a substance under Regulation (EC) No 1907/2006 in order to help determine the measures that need to be taken to manage the risk presented by the substance in particular exposure scenarios. Where manufacturers, importers or downstream users intend to place NMP as a substance on the market on its own or in mixtures in a certain concentration, that assessment should be made available to users of the substance by means of chemical safety reports and safety data sheets. Manufacturers and downstream users should ensure that the DNELs are complied with when the substance is manufactured or used, on its own or in a mixture.

(14) Stakeholders should be allowed sufficient time to take appropriate measures to comply with the proposed restriction, particularly in the wire coating sector, where the costs of implementing the restriction will be particularly high. Therefore, taking into account the SEAC recommendation, the application of the restriction should be deferred. The deferral period should have regard to the delay in the restriction process due to the collaboration between RAC and SCOEL.

(15) Regulation (EC) No 1907/2006 should therefore be amended accordingly.

(16) The measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 133 of Regulation (EC) No 1907/2006,

([1]) https://echa.europa.eu/documents/10162/aa77c7c4-4026-4ab1-b032-8a73b61ca8bd

([2]) Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ L 131, 5.5.1998, p. 11.)

HAS ADOPTED THIS REGULATION:

Article 1

Annex XVII to Regulation (EC) No 1907/2006 is amended in accordance with the Annex to this Regulation.

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, 18 April 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

In Annex XVII to Regulation (EC) No 1907/2006, the following new entry is added:

'71. 1-methyl-2-pyrrolidone (NMP) CAS No 872-50-4 EC No 212-828-1	1. Shall not be placed on the market as a substance on its own or in mixtures in a concentration equal to or greater than 0,3 % after 9 May 2020 unless manufacturers, importers and downstream users have included in the relevant chemical safety reports and safety data sheets, Derived No-Effect Levels (DNELs) relating to exposure of workers of 14,4 mg/m^3 for exposure by inhalation and 4,8 mg/kg/day for dermal exposure. 2. Shall not be manufactured, or used, as a substance on its own or in mixtures in a concentration equal to or greater than 0,3 % after 9 May 2020 unless manufacturers and downstream users take the appropriate risk management measures and provide the appropriate operational conditions to ensure that exposure of workers is below the DNELs specified in paragraph 1. 3. By way of derogation from paragraphs 1 and 2, the obligations laid down therein shall apply from 9 May 2024 in relation to placing on the market for use, or use, as a solvent or reactant in the process of coating wires.'

COMMISSION REGULATION (EU) 2018/589

of 18 April 2018

amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards methanol

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 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 ([1]), and in particular Article 68(1) thereof,

Whereas:

(1) On 16 January 2015, Poland submitted to the European Chemicals Agency ('the Agency') a dossier ([2]) pursuant to Article 69(4) of Regulation (EC) No 1907/2006 ('the Annex XV dossier'), in order to initiate the restriction procedure set out in Articles 69 to 73 of that Regulation. The Annex XV dossier indicated that exposure to methanol in windscreen washing fluid and denatured alcohol poses a risk to human health and proposed to prohibit their placing on the market. The Annex XV dossier demonstrated that action on a Union-wide basis is necessary.

(2) The restriction proposed in the Annex XV dossier aims to reduce the incidence of severe methanol poisoning following consumption by chronic alcoholics and sporadically by non-alcoholics of windscreen washing fluids or denatured alcohol used as a cheap substitute for consumable alcohol. The restriction is also expected to prevent methanol poisoning following accidental ingestion of windscreen washing fluids and denatured alcohol, including poisonings in children. The Annex XV dossier and the public consultation reported cases of poisoning caused by ingestion of windscreen washing fluids in seven Member States and fatal cases in at least two Member States.

(3) On 4 December 2015, the Agency's Committee for Risk Assessment ('RAC') adopted its opinion concluding that exposure to methanol present in windscreen washing fluids and in denatured alcohol in a concentration above 0,6 % by weight presents a risk of death, severe ocular toxicity or other severe effects of methanol poisoning. RAC further advised that the proposed restriction is the most appropriate Union-wide measure to address the risks identified, both in terms of effectiveness and practicability.

(4) On 11 March 2016, the Agency's Committee for Socio-Economic Analysis ('SEAC') adopted its opinion on the proposed restriction. As regards denatured alcohol, the lack of socioeconomic data in the Annex XV dossier and from the public consultation meant that SEAC could not evaluate the socioeconomic impact of its inclusion in the proposed restriction. Regarding windscreen washing fluids, SEAC considered that the proposed restriction is the most appropriate Union-wide measure to address the risks identified in terms of its socioeconomic benefits and socioeconomic costs. Overall, SEAC considered that divergences in national legislation across Member States could distort the internal market.

(5) The Agency's Forum for Exchange of Information on Enforcement was consulted during the restrictions process and its advice has been taken into account, notably to include in the proposed restriction fluids used to defrost windscreens.

(6) On 28 April 2016, the Agency submitted the opinions of the RAC and the SEAC to the Commission ([3]). Based on those opinions, the Commission concluded that the presence of methanol in windscreen washing fluids and windscreen defrosters poses an unacceptable risk to human health which needs to be addressed on a Union-wide basis.

([1]) OJ L 396, 30.12.2006, p. 1.
([2]) https://echa.europa.eu/documents/10162/78b0f856-3751-434b-b6bc-6d33cd630c85
([3]) https://echa.europa.eu/documents/10162/2b3f6422-ab4d-4b85-9642-ebe225070858

(7) Stakeholders should be allowed sufficient time to take appropriate measures to comply with the proposed restriction, in particular to allow sales of stocks and to ensure adequate communication within the supply chain. The application of the restriction should therefore be deferred.

(8) Regulation (EC) No 1907/2006 should therefore be amended accordingly.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 133 of Regulation (EC) No 1907/2006,

HAS ADOPTED THIS REGULATION:

Article 1

Annex XVII to Regulation (EC) No 1907/2006 is amended in accordance with the Annex to this Regulation.

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, 18 April 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

In Annex XVII to Regulation (EC) No 1907/2006, the following new entry is added:

'69. Methanol CAS No 67-56-1 EC No 200-659-6	Shall not be placed on the market to the general public after 9 May 2018 in windscreen washing or defrosting fluids, in a concentration equal to or greater than 0,6 % by weight.'

DECISIONS

COUNCIL DECISION (EU) 2018/590

of 16 April 2018

appointing a member and an alternate member, proposed by the Federal Republic of Germany, of the Committee of the Regions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to the proposal of the German Government,

Whereas:

(1) On 26 January 2015, 5 February 2015 and 23 June 2015, the Council adopted Decisions (EU) 2015/116 ([1]), (EU) 2015/190 ([2]) and (EU) 2015/994 ([3]) appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020.

(2) A member's seat on the Committee of the Regions has become vacant following the end of the mandate on the basis of which Birgit J. HONÉ *(Staatssekretärin für Europa und Regionale Landesentwicklung, Niedersächsische Staatskanzlei)* was proposed.

(3) An alternate member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Fritz JAECKEL,

HAS ADOPTED THIS DECISION:

Article 1

The following are hereby appointed to the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2020:

(a) as a member:

— Ms Birgit J. HONÉ, *Ministerin für Bundes- und Europaangelegenheiten und Regionale Entwicklung (Niedersachsen) (change of mandate)*,

and

(b) as an alternate member:

— Mr Clemens LAMMERSKITTEN, *Mitglied des Niedersächsischen Landtags*.

Article 2

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

Done at Luxembourg, 16 April 2018.

For the Council
The President
R. PORODZANOV

([1]) Council Decision (EU) 2015/116 of 26 January 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 20, 27.1.2015, p. 42).
([2]) Council Decision (EU) 2015/190 of 5 February 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 31, 7.2.2015, p. 25).
([3]) Council Decision (EU) 2015/994 of 23 June 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 159, 25.6.2015, p. 70).

COUNCIL DECISION (EU) 2018/591

of 16 April 2018

appointing a member, proposed by the Federal Republic of Germany, of the Committee of the Regions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to the proposal of the German Government,

Whereas:

(1) On 26 January 2015, 5 February 2015 and 23 June 2015, the Council adopted Decisions (EU) 2015/116 ([1]), (EU) 2015/190 ([2]) and (EU) 2015/994 ([3]) appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020. On 4 March 2016, by Council Decision (EU) 2016/333 ([4]), Ms Dagmar MÜHLENFIELD was replaced by Mr Joachim WOLBERGS as a member.

(2) A member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Joachim WOLBERGS,

HAS ADOPTED THIS DECISION:

Article 1

The following is hereby appointed as a member of the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2020:

— Dr Peter KURZ, *Oberbürgermeister der Stadt Mannheim.*

Article 2

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

Done at Luxembourg, 16 April 2018.

For the Council

The President

R. PORODZANOV

([1]) Council Decision (EU) 2015/116 of 26 January 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 20, 27.1.2015, p. 42).

([2]) Council Decision (EU) 2015/190 of 5 February 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 31, 7.2.2015, p. 25).

([3]) Council Decision (EU) 2015/994 of 23 June 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 159, 25.6.2015, p. 70).

([4]) Council Decision (EU) 2016/333 of 4 March 2016 appointing a member, proposed by the Federal Republic of Germany, of the Committee of the Regions (OJ L 62, 9.3.2016, p. 16).

COUNCIL DECISION (EU) 2018/592

of 16 April 2018

appointing members and alternate members of the Advisory Committee on Freedom of Movement for Workers for Luxembourg

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union ([1]), and in particular Articles 23 and 24 thereof,

Having regard to the lists of candidates submitted to the Council by the Government of Luxembourg,

Whereas:

(1) By means of its Decision of 20 September 2016 ([2]), the Council appointed the members and alternate members of the Advisory Committee on Freedom of Movement for Workers for the period from 25 September 2016 to 24 September 2018.

(2) The government of Luxembourg has submitted nominations for several posts to be filled,

HAS ADOPTED THIS DECISION:

Article 1

The following are hereby appointed members and alternate members of the Advisory Committee on Freedom of Movement for Workers for the period ending on 24 September 2018:

I. GOVERNMENT REPRESENTATIVES

Country	Members	Alternates
Luxembourg	Mr Tom GOEDERS Mr Laurent PEUSCH	Mr Jonathan PEREIRA NEVES

II. TRADE UNION REPRESENTATIVES

Country	Members	Alternates
Luxembourg	Mr Carlos PEREIRA Mr Paul DE ARAUJO	Mr Eduardo DIAS

III. EMPLOYERS' ASSOCIATIONS REPRESENTATIVES

Country	Members	Alternates
Luxembourg	Ms Patricia HEMMEN Mr François ENGELS	Ms Héloise ANTOINE

([1]) Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ L 141, 27.5.2011, p. 1).

([2]) Council Decision of 20 September 2016 appointing the members and alternate members of the Advisory Committee on Freedom of Movement for Workers (OJ C 348, 23.9.2016, p. 3).

Article 2

The members and alternate members not yet nominated will be appointed by the Council at a later date.

Article 3

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

Done at Luxembourg, 16 April 2018.

For the Council
The President
R. PORODZANOV

COUNCIL IMPLEMENTING DECISION (EU) 2018/593

of 16 April 2018

authorising the Italian Republic to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the common system of value added tax

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]), and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By letter registered with the Commission on 27 September 2017, Italy requested authorisation for a special measure to derogate from Articles 218 and 232 of Directive 2006/112/EC and to introduce mandatory electronic invoicing for all taxable persons established in the territory of Italy, except for taxable persons benefiting from the exemption for small enterprises as referred to in Article 282 of that Directive and to channel the invoices through the system 'Sistema di Interscambio' ('the SdI') managed by the Italian Revenue Agency.

(2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States of the request made by Italy by letters dated 3 November 2017 and 6 November 2017. By letter dated 7 November 2017, the Commission notified Italy that it had all the information necessary to consider the request.

(3) Italy submits that the use of mandatory electronic invoicing whereby invoices are submitted by means of the SdI would allow the tax administration in Italy to acquire in real time the information contained in the invoices issued and received by traders. Tax authorities would thus be able to carry out timely and automatic consistency checks between the amounts of VAT declared and paid.

(4) Italy considers that the introduction of a generalised electronic invoicing obligation would help combat fraud and evasion, boost efforts at digitalisation and simplify tax collection.

(5) Italy submits that the groundwork has already been laid for the introduction of mandatory electronic invoicing on the basis of the optional use of the existing SdI system, ensuring a smooth transition to electronic invoicing and at the same time limit the impact of the special measure on taxable persons.

(6) Given the broad scope and the novelty of the special measure, it is important to evaluate the impact of the special measure on combatting VAT fraud and evasion and on taxable persons. Therefore, where Italy considers that the extension of the special measure is necessary, it should submit to the Commission, together with the request for extension, a report including the assessment of the special measure concerning its effectiveness in fighting VAT fraud and evasion and in simplifying tax collection.

(7) This special measure should not affect the right of the customer to receive paper invoices in case of intra-Community transactions.

(8) The special measure requested should be limited in time to allow an assessment of whether the special measure is appropriate and effective in light of its objectives.

(9) The special measure is therefore proportionate to the objectives pursued since it is limited in time and restricted in application as it does not apply to taxable persons who benefit from the exemption for small enterprises referred to in Article 282 of Directive 2006/112/EC. In addition, the special measure does not give rise to the risk that fraud would shift to other sectors or to other Member States.

(10) The special measure will not negatively affect the overall amount of tax revenue collected at the stage of final consumption and will have no adverse impact on the Union's own resources accruing from VAT,

([1]) OJ L 347, 11.12.2006, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 218 of Directive 2006/112/EC, Italy is authorised only to accept invoices in the form of documents or messages in electronic format if they are issued by taxable persons established in the Italian territory other than those taxable persons who benefit from the exemption for small enterprises referred to in Article 282 of Directive 2006/112/EC.

Article 2

By way of derogation from Article 232 of Directive 2006/112/EC, Italy is authorised to provide that the use of electronic invoices issued by taxable persons established in the Italian territory shall not be subject to an acceptance by the recipient, except where those invoices are issued by taxable persons who benefit from the exemptions for small enterprises referred to in Article 282 of Directive 2006/112/EC.

Article 3

Italy shall notify the national measures implementing the derogations referred to in Articles 1 and 2 to the Commission.

Article 4

This Decision shall apply from 1 July 2018 until 31 December 2021.

Where Italy considers that the extension of the derogations referred to in Articles 1 and 2 is necessary, Italy shall submit a request for extension to the Commission, together with a report assessing the extent to which the national measures referred to in Article 3 have been effective in combatting VAT fraud and evasion and in simplifying tax collection. That report shall also evaluate the impact of those measures on taxable persons and in particular whether those measures increase their administrative burdens and costs.

Article 5

This Decision is addressed to the Italian Republic.

Done at Luxembourg, 16 April 2018.

For the Council
The President
R. PORODZANOV

COMMISSION IMPLEMENTING DECISION (EU) 2018/594

of 13 April 2018

on the identification of benzene-1,2,4-tricarboxylic acid 1,2 anhydride (trimellitic anhydride) (TMA) as a substance of very high concern according to Article 57(f) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council

(notified under document C(2018) 2112)

(Only the English text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 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 [1], and in particular Article 59(9) thereof,

Whereas:

(1) In accordance with Article 59(3) of Regulation (EC) No 1907/2006, on 8 August 2016, the Netherlands submitted to the European Chemicals Agency ('the Agency'), a dossier prepared in accordance with Annex XV to that Regulation ('Annex XV dossier') for the identification of benzene-1,2,4-tricarboxylic acid 1,2 anhydride (trimellitic anhydride) (TMA) (EC No 209-008-0, CAS No 552-30-7) as a substance of very high concern because it fulfils the criterion set out in Article 57(f) of Regulation (EC) No 1907/2006. According to the Annex XV dossier, there is scientific evidence of probable serious effects to human health due to the respiratory sensitising properties of TMA, which give rise to an equivalent level of concern to those of other substances listed in points (a) to (e) of Article 57 of Regulation (EC) No 1907/2006.

(2) On 15 December 2016, the Member State Committee of the Agency (MSC) adopted its opinion [2] on the Annex XV dossier. While a majority of the MSC members considered that TMA meets the conditions for identification as a substance of very high concern in accordance with Article 57(f) of Regulation (EC) No 1907/2006, the MSC did not reach a unanimous agreement. Three members abstained. Three members were of the opinion that there is not sufficient scientific evidence of TMA's probable serious effects to human health which give rise to an equivalent level of concern to those of other substances listed in points (a) to (e) of Article 57 of Regulation (EC) No 1907/2006. Those three members expressed doubts about the type, severity, irreversibility, delay of health effects of TMA, the social concerns linked to its effects and the impossibility to derive a safe level of exposure to TMA.

(3) On 17 January 2017, pursuant to Article 59(9) of Regulation (EC) No 1907/2006, the Agency referred the MSC opinion to the Commission for a decision on the identification of TMA on the basis of Article 57 (f) of that Regulation.

(4) The Commission notes, in line with the majority opinion of the MSC, that the data presented and discussed in the Annex XV dossier show that TMA causes serious and permanent impairment of lung functions, if the exposure is prolonged and no intervention takes place. The cases of adverse effects reported vary from occupational rhinoconjunctivitis and asthma to severe diseases, such as pulmonary disease-anaemia syndrome, allergic laryngitis and allergic alveolitis. Some of the effects have been so severe that subjects were forced to leave their jobs. The most severe effects can require long medical treatment.

(5) The Commission notes that, while certain effects of TMA are reversible upon cessation of exposure, the first stage of sensitisation (induction) is irreversible. In addition, from the available data on humans, it is not possible to derive a concentration level of TMA below which sensitisation does not happen. Furthermore, it seems that

[1] OJ L 396, 30.12.2006, p. 1.
[2] http://echa.europa.eu/role-of-the-member-state-committee-in-the-authorisation-process/svhc-opinions-of-the-member-state-committee

severe effects have some latency time. The possibility of irreversible effects occurring before a health problem is identified has been recognised in the identification of other substances ([1]) of very high concern in accordance with Article 57(f) of Regulation (EC) No 1907/2006 because of their respiratory sensitising properties, and confirmed by European case-law ([2]).

(6) The Commission notes that workers that have been sensitised previously can only be relocated to tasks with zero exposure to TMA, to avoid the recurrence of the severe adverse effects, causing societal concerns and effects on quality of life of sensitised workers.

(7) The Commission therefore considers, in line with the majority opinion of the MSC, that the level of concern posed by TMA is equivalent to that of substances referred to in points (a) to (e) of Article 57 of Regulation (EC) No 1907/2006 and, hence, that TMA should be identified as a substance of very high concern according to Article 57(f) of that Regulation due to its respiratory sensitising properties.

(8) The measures provided for in this Decision are in accordance with the opinion of the Committee established under Article 133 of Regulation (EC) No 1907/2006,

HAS ADOPTED THIS DECISION:

Article 1

1. Benzene-1,2,4-tricarboxylic acid 1,2 anhydride (trimellitic anhydride) (TMA) (EC No 209-008-0, CAS No 552-30-7) is identified as a substance of very high concern according to Article 57(f) of Regulation (EC) No 1907/2006 due to its respiratory sensitising properties.

2. The substance specified in paragraph 1 shall be included in the candidate list referred to in Article 59(1) of Regulation (EC) No 1907/2006 with the following indication under 'Reason for inclusion': 'Respiratory sensitising properties (Article 57(f)) – human health'.

Article 2

This Decision is addressed to the European Chemicals Agency.

Done at Brussels, 13 April 2018.

For the Commission
Elżbieta BIEŃKOWSKA
Member of the Commission

([1]) Agreement of the Member States Committee on the identification of Diazene-1,2-dicarboxamide [C,C-azodi(formamide)] as a substance of very high concern https://echa.europa.eu/documents/10162/5b3971ca-7683-414b-b7df-085744c5b327;
Agreement of the Member States Committee on the identification of Hexahydromethylphthalic anhydride, Hexahydro-4-methylphthalic anhydride, Hexahydro-1-methylphthalic anhydride, Hexahydro-3-methylphthalic anhydride as substances of very high concern https://echa.europa.eu/documents/10162/ab858db8-5467-429c-a94d-2e563f523d01;
Agreement of the Member States Committee on the identification of cyclohexane-1,2-dicarboxylic anhydride, cis-cyclohexane-1,2-dicarboxylic anhydride, transcyclohexane-1,2-dicarboxylic anhydride as substances of very high concern https://echa.europa.eu/documents/10162/8a707077-bf1c-462d-bf25-dd58ffa14cf8.

([2]) Judgment of the General Court of 30 April 2015, *Polynt and Sitre* v *ECHA*, T-134/13, ECLI:EU:T:2015:254, and Judgment of the General Court of 30 April 2015, *Hitachi Chemical Europe and others* v *ECHA*, T-135/13, ECLI:EU:T:2015:253.

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 94/17/COL

of 31 May 2017

closing the formal investigation into the exemption rule for ambulant services under the scheme on differentiated social security contributions 2014-2020 (Norway) [2018/595]

THE EFTA SURVEILLANCE AUTHORITY ('the Authority'),

HAVING REGARD to:

the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Articles 61 and 62,

Protocol 26 to the EEA Agreement,

the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('the Surveillance and Court Agreement'), in particular to Article 24,

Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'), in particular to Article 7(3) of Part II,

Whereas:

I. FACTS

1. Procedure

(1) The Norwegian authorities notified the scheme on differentiated social security contributions 2014-2020 pursuant to Article 1(3) of Part I of Protocol 3 by letter of 13 March 2014 ([1]). On the basis of that notification and information submitted thereafter ([2]), the Authority approved the notified aid scheme by its Decision No 225/14/COL of 18 June 2014.

(2) By its judgment of 23 September 2015 in Case E-23/14 *Kimek Offshore AS* v *EFTA Surveillance Authority* ([3]) the EFTA Court annulled, in part, the Authority's decision.

(3) By letter dated 15 October 2015 ([4]), the Authority requested information from the Norwegian authorities. By letter dated 6 November 2015 ([5]), the Norwegian authorities responded.

(4) By Decision No 489/15/COL of 9 December 2015, the Authority initiated the formal investigation procedure. By letter dated 13 January 2016 ([6]), the Norwegian authorities responded to the Authority's decision.

([1]) Documents No 702438-702440, 702442 and 702443.
([2]) See Decision No 225/14/COL (OJ C 344, 2.10.2014, p. 14 and EEA Supplement No 55, 2.10.2014, p. 4) at paragraph 2.
([3]) Case E-23/14 *Kimek Offshore AS* v *EFTA Surveillance Authority* [2015] EFTA Ct. Rep. 412.
([4]) Document No 776348.
([5]) Documents No 779603 and 779604.
([6]) Document No 787605.

(5) On 30 June 2016, the decision to initiate the formal investigation procedure was published in the *Official Journal of the European Union* and in the EEA Supplement to it ([1]). The Authority received comments from two interested parties, Kimek Offshore AS (letter dated 12 May 2016 ([2])) and NHO Finnmark (letter dated 4 July 2016 ([3])) by 30 July 2016, the expiry of the deadline to submit comments. By letter dated 2 August 2016 ([4]), the Authority forwarded the comments to the Norwegian authorities who were given the opportunity to respond. By letter dated 5 September 2016 ([5]), the Norwegian authorities responded.

2. **The scope of the formal investigation**

(6) By its judgment, the EFTA Court partly annulled the Authority's decision approving the regionally differentiated social security contributions scheme 2014-2020. The aid scheme as a whole has not been subject to the renewed scrutiny of the Authority during the formal investigation. The investigation has been confined to that part of the scheme (an exemption rule for ambulant services) for which the Authority's approval was annulled.

(7) However, as the rule for ambulant services is an exemption to the rules set out in the differentiated social security contribution scheme, for the sake of completeness, the Authority considers it illustrative to give an overview of the objective and the legal basis of the aid scheme as such, before presenting the rules on registration of businesses in Norway and the exemption rule for ambulant services itself.

3. **Overview of the scheme**

3.1. *Objective*

(8) The objective of the scheme on differentiated social security contributions is to reduce or prevent depopulation in the least inhabited regions in Norway by stimulating employment. To achieve this objective, the operating aid scheme reduces employment costs by reducing the social security contribution rates in certain geographical areas. As a main rule, the aid intensities vary according to the geographical area in which the business unit is registered. The rules on registration are explained in greater detail below.

3.2. *National legal basis*

(9) The national legal basis for the scheme is Section 23-2 of the National Insurance Act ([6]). This provision sets out the employer's general obligation to pay social security contributions calculated on the basis of gross salary paid to the employee. According to paragraph 12 of that section, the Norwegian Parliament may adopt regionally differentiated rates, as well as specific provisions for undertakings within certain sectors. Thus, it is the National Insurance Act, in conjunction with the annual decisions of the Norwegian Parliament, that forms the national legal basis for the scheme ([7]).

3.3. *Rules on registration*

(10) Eligibility for aid under the scheme depends on whether a business is registered in the eligible area. The main rule of the scheme is that aid intensities vary according to the geographical area in which the business is registered.

(11) Norwegian law requires undertakings to register subunits for each separate business activity performed ([8]). If an undertaking performs different kinds of business activities, separate subunits must be registered. Moreover, separate units must be registered if the activities are performed in different geographical locations.

(12) According to the Norwegian authorities, the 'separate business activity' criterion is met when at least one employee carries out work for the parent unit in a separate area, and the undertaking may be visited there.

([1]) OJ C 263, 30.6.2016, p. 21 and EEA Supplement No 36, 30.6.2016, p. 3.
([2]) Document No 804442.
([3]) Document No 811491.
([4]) Document No 813803.
([5]) Document No 816653.
([6]) LOV-1997-02-28-19.
([7]) For further details on the aid scheme, see the Authority's Decision No 225/14/COL.
([8]) The Act on the Coordinating Register for Legal Entities (LOV-1994-06-03-15).

Each subunit forms its own basis for the calculation of the differentiated social security contribution, depending on their registered location. In this way, an undertaking registered outside the area eligible for aid under the scheme will be eligible for aid if, and in so far as, its economic activities are performed within a subunit located within the eligible area.

3.4. *Ambulant services — the measure under scrutiny*

(13) By way of exemption from the main rule on registration, the scheme also applies to undertakings registered outside the eligible area which hire out workers to the eligible area or whose employees are engaged in mobile activities within the eligible area. For the purposes of this decision, the work provides in these situations are referred to as 'ambulant services'). This is the exemption rule under scrutiny in the decision at hand. For the purposes of this decision, the rule is referred to as the 'exemption rule'. The national legal basis for the exemption rule is provided for by Section 1(4) of the Norwegian Parliament's Decision No 1482 of 5 December 2013 *on determination of the tax rates etc. under the National Insurance Act for 2014*.

(14) The exemption applies only when the employee spends half or more of their working days in the eligible area. Further, the reduced rate is only applicable for the part of the work carried out there. As a principal rule, the tax registration period is one calendar month. Social security contributions are calculated on the basis of the rate applicable in the zone where the employer is considered to conduct business activity.

(15) This means that if, for example, an employee of an Oslo-registered entity (Oslo is in Zone 1, an ineligible zone, where the rate therefore is the standard 14,1 %) completes 60 % of their work one calendar month in Vardø (which is in Zone 5 where the applicable rate is 0 %) and the rest in Oslo, the undertaking will be eligible for the zero-rate on the salary to be paid for the work carried out in Vardø, but not for the work carried out in Oslo.

4. **Judgment of the EFTA Court**

(16) The EFTA Court annulled the Authority's Decision No 225/14/COL in so far as it closed the preliminary investigation as regards the aid measure in Section 1(4) of the Norwegian Parliament's Decision No 1482 of 5 December 2013 *on determination of the tax rates etc. under the National Insurance Act for 2014*.

(17) The EFTA Court concluded ([1]) that the Authority had not assessed the circumstances and their consequences with regard to the compatibility of the rule set out in Section 1(4) with the functioning of the EEA Agreement within the meaning of Article 61(3) EEA, especially as regards the impact of the exemption rule on competition and trade and its compatibility with paragraph 16 of the Authority's Guidelines on Regional State aid for 2014-2020 ('RAG') ([2]). Such a specific assessment was, according to the Court, essential for the Authority's assessment of the notified scheme.

(18) Section 1(4) is drafted in such a way as to mirror the exemption rule (which is the subject of the present decision), with a corresponding anti-circumvention measure designed to prevent undertakings from claiming aid under the scheme by virtue of simply registering their business within an area with a lower rate of social security contributions, then proceeding to perform ambulant activities or hire out their employees to work in an area with a higher rate. The anti-circumvention measure is not subject to the present procedure ([3]).

5. **Comments by the Norwegian authorities to Decision No 489/15/COL**

(19) In response to the Authority's opening of the formal investigation ([4]), the Norwegian authorities have clarified their view that the applicable rate under the social security contributions system has, since before 2007, been based on where the employer was considered to carry out its business activity. This rule is based on the fundamental premise that only undertakings performing economic activity in the eligible area should receive aid, and only to the extent that they are performing economic services in the area. Registration is not the decisive issue.

([1]) Case E-23/14 *Kimek Offshore AS* v *EFTA Surveillance Authority* [2015] EFTA Ct. Rep. 412, paragraph 116.
([2]) OJ L 166, 5.6.2014, p. 44 and EEA Supplement No 33, 5.6.2014, p. 1.
([3]) See Order of the EFTA Court of 23.11.2015 in Case E-23/14 INT *Kimek Offshore AS* v *EFTA Surveillance Authority* [2015] EFTA Ct. Rep. 666.
([4]) Comments previously submitted by the Norwegian authorities are summarised in the decision to open the formal investigation, Decision No 489/15/COL, at paragraphs 15-21.

(20) The aid granted on the basis of the scheme on differentiated social security contributions amounts to about NOK 6,85 billion annually ([1]). On the basis of data collected from the eight first months of 2015, the Norwegian authorities have presented the estimated effects of the exemption rule for the different zones for 2015 as a whole. For a description of zones 1, 2, 3, 4 and 4a, see Decision No 225/14/COL, at paragraph 25. Zone 1 covers central areas in Norway as well as all territories outside of Norway. Activities carried out in zone 1 are not eligible for aid under the scheme. Activities carried out in zone 1a are also ineligible for aid under the scheme. In zone 1a however, the Norwegian authorities have set up a system where the social security contribution rate is reduced. This reduction is granted as *de minimis* aid. Measures which comply with the conditions of the *de minimis* Regulation ([2]) do not constitute aid within the meaning of Article 61 of the EEA Agreement.

Table

An estimate for the year 2015 of the aid granted to undertakings registered in the zones designated by the aid scheme due to the application of the exemption rule

Zone	NOK million
1	240
1a	38
2	9
3	1
4	1
4a	10
Sum	300

(21) The Norwegian authorities have explained that the figures may vary substantially depending on the nature of the ambulant services. Large construction projects will typically rely on ambulant services and thus increase the use of ambulant activities. Moreover, undertakings carrying out substantial activities in the eligible zones may reorganise their activities by establishing subunits in the relevant zone. This will also affect the estimated effect of the exemption rule. Finally, the Norwegian authorities point to the positive indirect effects from increased activities in the construction sector on employment in other sectors in the eligible zones.

(22) The exemption rule gives undertakings in the eligible zones access to labour at a lower cost. Without it, the undertakings in the eligible area would struggle more to attract specialised labour. Moreover, specialised labour through ambulant services can contribute to increased knowledge and skills for local undertakings. These knowledge and skills may stay with the firms even after the ambulant worker has left the undertaking, thus producing a lasting effect on the local workforce and undertakings.

(23) The exemption rule puts all economic operators active in the eligible area on the same footing. The local undertakings can reap the benefits of the competition in terms of lower prices for ambulant services.

(24) Employees staying temporarily in the eligible areas will contribute to the local economy in purchasing goods and services. When the ambulant services are linked to a temporary project, this manifests itself as a temporary effect. When the use of ambulant services in a region is sustained, the effect is long-term.

([1]) See Decision No 225/14/COL, at paragraph 49.
([2]) Commission Regulation (EU) No 1407/2013 of 18.12.2013 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) incorporated into the EEA Agreement in Annex XV 1ea.

(25) Undertakings registered in central areas and carrying out ambulant services in eligible areas may hire personnel locally. Even if these jobs are temporary in nature, they will contribute to increased wage income in the eligible regions, which in turn stimulates economic activity. The Norwegian authorities argue that the exemption rule lowers labour costs and gives labour an advantage over capital where they can be substituted. This contributes to increased employment.

6. **Comments from interested parties**

6.1. *Kimek Offshore AS*

(26) Kimek Offshore AS ('Kimek') is a service company in the petroleum and gas industry. It is part of the Kimek Group. Kimek is located in Kirkenes in Finnmark County, which is an area with a zero rate for the social security tax.

(27) In addition to commenting on the Authority's decision to open the formal investigation, Kimek has provided its comments to the comments by the Norwegian authorities summarised above.

(28) Kimek takes the view that the Norwegian authorities have largely not documented the following: that the exemption rule contributes to a well-defined objective of common interest, that there is a need for state intervention, that the rule is appropriate, that it has an incentive effect, that it is proportionate, and that undue negative effects on competition and trade between EEA States are avoided.

(29) Kimek's competitors are to a large extent located outside the areas eligible for regional aid. Kimek objects to the exemption rule since it enables undertakings located outside the eligible zones to benefit from the aid scheme when they carry out activities within the eligible areas. Kimek argues that those undertakings do not face the same challenges as the ones located within the eligible zones. It states that the exemption rule is not suitable to combat depopulation and strengthen settlement patterns in the eligible areas. To the contrary, the exemption rule is damaging to the undertakings located in the eligible areas.

(30) Kimek disagrees with the view of the Norwegian authorities that the exemption rule gives local undertakings access, at a lower cost, to specialised labour that would otherwise not be available. Kimek argues that this has not been demonstrated nor documented by the Norwegian authorities.

(31) Kimek argues that there is a risk that the exemption rule will lead to a 'brain drain' from the eligible areas, as individuals will not be able to obtain jobs locally.

(32) Kimek notes that the Norwegian authorities have not documented that undertakings that are not locally registered employ workers who live in the eligible area.

(33) Furthermore, Kimek argues that ambulant offshore workers do not contribute to the local economy in any substantial way. They live on the rig, spend most of their free time on the rig and consume all their meals there.

(34) Concerning the argument by the Norwegian authorities that knowledge and skills from the ambulant workers will stay with local businesses, Kimek does not see how this leads to the reduction or prevention of depopulation.

(35) Kimek argues that the Norwegian authorities have not documented how the exemption rule increases competition. In that regard, Kimek refers to a particularity in Norwegian labour law that enables the companies that send ambulant workers to permit their staff to work 12 hour shifts, whilst locally based undertakings are subject to an 8 hour limitation on working time. This is a substantial disadvantage for locally based undertakings.

6.2. *NHO Finnmark*

(36) NHO Finnmark is the regional office of the Norwegian Confederation of Norwegian Enterprise. It supports Kimek's comments as summarised above.

(37) NHO Finnmark is of the view that regional aid should only be granted to undertakings that are located in areas eligible for regional aid. Undertakings registered outside the eligible areas do not face the same challenges as undertakings established in the eligible area. The exemption rule is not suitable to combat depopulation and strengthen settlement patterns. To the contrary, NHO Finnmark states that the exemption rule is damaging to undertakings located in the eligible areas.

(38) Like Kimek, NHO Finnmark stresses that Norwegian labour law gives a particular advantage to undertakings not registered in the eligible area. NHO Finnmark considers that ambulant workers do not contribute to the local economy in the same way as workers that reside in the area.

7. **Comments by the Norwegian authorities to the comments from the interested parties**

(39) Responding to the comments from the interested parties, the Norwegian authorities note that it is the exemption rule and not the aid scheme as such that is the subject of the formal investigation. The Norwegian authorities explain that the exemption rule is a manifestation of the general principle that the regional aid should be granted to the economic activities actually carried out in the geographical areas covered by the scheme.

(40) The Norwegian authorities stress that neither Article 61(3)(c) of the EEA Agreement nor the RAG require that the regional aid beneficiaries be registered in the area eligible for regional aid. The Norwegian authorities agree with Kimek that the challenges encountered by the undertakings formally registered in the eligible areas may not be exactly the same as those faced by companies formally registered outside, but performing ambulant services within, the eligible area. However, the Norwegian authorities do not agree with Kimek's assertion that undertakings registered outside the eligible area do not face the same challenges when taking on work in the eligible area. The companies face the same climate conditions, the same distance from subcontractors. Furthermore, undertakings sending ambulant workers face extra costs for transport and lodging of personnel. The Norwegian authorities note that Kimek's arguments are taken from the petroleum sector, the part of the economy within which the company operates. They argue that the assessment of the compatibility of the aid must be carried out on a more general level, taking into account the specific or permanent handicaps faced by undertakings within all the relevant sectors.

(41) The Norwegian authorities substantiate their statements about the difficulty for undertakings in recruiting skilled labour in the three northernmost counties by referring to a report by NAV Finnmark ([1]), the Norwegian Labour and Welfare Administration in Finnmark County. In Nordland and Troms counties, 14 percent of the undertakings covered by the report have faced problems recruiting workers due to an absence of qualified workers. In Finnmark County, the corresponding figure was 11 percent.

(42) The Norwegian authorities stress that undertakings registered within the eligible area may use the lower social security contribution rate for all their employment costs (unless they perform ambulant services outside the eligible area), whereas undertakings registered in another zone performing ambulant services may only use the reduced rate if the employee spends half or more of their working days in the eligible zone, and then only with regard to the wages paid for the work actually carried out there.

(43) To substantiate the indirect effects of the regional aid, the Norwegian authorities have provided references to two studies on the effects of petroleum activities in the North of Norway ([2]). According to the first study of the Snøhvit petroleum project in Finnmark, the direct effect on employment was 230 man years, while the indirect effect was a further 170 man years. The Norwegian authorities note that these are the effects of the project as such and not a direct result of any specific measure. The second study shows that the major indirect effect from the petroleum sector occurs in the sector labelled as 'private services' which comprises: professional, scientific and technical activities, provision of personnel, rental of machinery and transport equipment, legal and accounting services, architectural activities, hotel and restaurant services, sewage and waste disposal.

([1]) *NAV Finnmark Bedriftsundersøkelse 2016, Notat 1 2016*, available here: https://www.nav.no/no/Lokalt/Finnmark/Statistikk+og+presse/bedriftsunders%C3%B8kelse–378352

([2]) *Snøhvit og andre eventyr* by NHO, available here: http://www.aksjonsprogrammet.no/vedlegg/Snohvit_12des.pdf and *Ringvirkninger av petroleumsnæringen i norsk økonomi* by Statistics Norway, available here: https://www.ssb.no/nasjonalregnskap-og-konjunkturer/artikler-og-publikasjoner/_attachment/218398?_ts=14b82bba2f0

(44) The Norwegian authorities question the relevance of Norwegian labour law legislation for the assessment of the exemption rule. In any event, they note that the legal basis for the deviation of the 8 hour limitation, referred to by the complainant, is open to any undertaking, regardless of the geographical location of the worker and the employer, but conditional on a tariff agreement.

II. **ASSESSMENT**

1. **The presence of State aid**

(45) Article 61(1) of the EEA Agreement reads as follows: 'Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.'

(46) This implies that a measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: the measure: (i) is granted by the State or through state resources; (ii) confers a selective economic advantage on the beneficiary; (iii) is liable to affect trade between Contracting Parties and to distort competition.

(47) In Decision No 225/14/COL, the Authority concluded that the scheme on differentiated social security contributions 2014-2020 constitutes an aid scheme. The Authority refers to its reasoning in paragraphs 68-74 of that decision. The exemption rule for ambulant services is part of the provisions providing for that aid scheme. It increases the scope of the scheme in the sense that it widens the circle of potential beneficiaries to undertakings that are not registered in the eligible areas. As with the other aid granted under the scheme, extending the scheme to the undertakings registered outside of the eligible areas results in state resources conferring selective advantages on undertakings. These advantages are liable to affect trade and distort competition.

2. **Procedural requirements**

(48) Pursuant to Article 1(3) of Part I of Protocol 3: 'The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. …. The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision.'

(49) The Norwegian authorities implemented the exemption rule from 1 July 2014 after the Authority approved it by Decision No 225/14/COL. With the annulment of the Authority's approval of the rule by the EFTA Court, the aid became unlawful. The Norwegian authorities suspended the exemption rule under scrutiny as of 1 January 2016 pending the final outcome of the formal investigation procedure.

3. **Compatibility of the aid**

(50) The Authority must assess whether the exemption rule is compatible with the functioning of the EEA Agreement on the basis of its Article 61(3)(c) in line with the RAG.

(51) The exemption rule for ambulant services entitles undertakings that are not registered in the eligible area to benefit from reduced social security charges when and to the extent that they carry out economic activities in the registered area. Neither Article 61(3)(c) of the EEA Agreement nor the RAG (nor the regional aid rules in the GBER [1]) require that regional aid beneficiaries are registered in the assisted areas.

[1] The General Block Exemption Regulation ('GBER'). Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1), incorporated into the EEA Agreement in Annex XV 1j. The amendments to the regional aid rules approved in principle by the European Commission on 17.5.2017 does not change this. Article 15(3)(a) of the Amending Regulation allows for regional operating aid where 'the beneficiaries have their economic activity' in very sparsely populated areas. The Amending Regulation is available here: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R1084

(52) Regional aid can be effective in promoting the economic development of disadvantaged areas only if it is awarded to induce additional investment or economic activity in those areas ([1]). The RAG allows for both regional investment aid and regional operating aid. Regional investment aid should lead to investments in the areas covered by the Norwegian regional aid map approved by the Authority ([2]). The lens through which regional operating aid is examined has a slightly different focus. Regional operating aid can only fall under Article 61(3)(c) of the EEA Agreement if it is awarded to tackle specific or permanent handicaps faced by entities carrying out economic activities in disadvantaged regions ([3]). In this context paragraph 16 of the RAG states: 'Operating aid may be considered compatible if it aims (…) to prevent or reduce depopulation in very sparsely populated areas.'

(53) There is no question that the geographical scope of the scheme as such is restricted to disadvantaged regions. The scope of this decision is limited to the exemption rule. The question is whether that rule, which permits undertakings registered outside the regions covered by the scheme to benefit from aid under the scheme to the extent that they carry out economic activities in the disadvantaged regions, is compatible with the State aid rules.

(54) The Authority concurs with the Norwegian authorities that the rule cannot be assessed independently of the scheme on differentiated social security contributions 2014-2020 to which it belongs. In that regard, the Authority refers to its assessment of that scheme in its Decision No 225/14/COL where it found the scheme compatible with the functioning of the EEA Agreement on the basis of its Article 61(3)(c). In that decision, the Authority found that the scheme as such contributes to a well-defined objective of common interest ([4]), that there is a need for state intervention ([5]), that it is appropriate ([6]), that it has incentive effect ([7]), that it is proportionate ([8]), and that undue negative effects on competition and trade between EEA States are avoided ([9]). These general assessment principles apply to aid schemes as such. The Authority does not subject individual rules that form part of a scheme to a separate assessment on the basis of these general assessment principles.

(55) The fact that the EFTA Court concluded that the exemption rule is severable from the remainder of the scheme ([10]), does not mean that the rule itself should be assessed independently of the scheme. The question of severability is the question of whether an element in a scheme is so intrinsically linked to the scheme as such that it cannot logically be separated from the scheme. Although the exemption rule can be logically separated from the scheme on differentiated social security contributions 2014-2020 in the sense that it can be taken out of the scheme without depriving it of a fundamental component necessary for it to exist as a scheme, the Authority must carry out an analysis of the compatibility of the exemption rule taking into account that it forms part of a general aid scheme.

(56) This general aid scheme is a central part of the context in which the exemption rule operates. Indeed, the exemption rule only exists as an exemption to rules under the general scheme ([11]). By extension, therefore, the Authority must also take into account that (but for the exemption rule) this general scheme has been validly declared compatible with the functioning of the EEA Agreement.

(57) The Norwegian authorities have provided an overview of the financial effects of the exemption rule (see paragraph 20 and the Table above).

(58) The exemption rule, like the scheme of which it forms part, has a regional objective. It aims to stimulate job opportunities in the eligible areas. The stimulation of job opportunities, however, is merely a tool to achieve the objective of the aid, which is to reduce or prevent depopulation. It is essential to take the wider economic effects of the measure into account when assessing the compatibility of the aid.

([1]) Paragraph 6 of the RAG.
([2]) See Decision No 91/14/COL (OJ L 172, 12.6.2014, p. 52).
([3]) Paragraph 16 of the RAG.
([4]) See the Authority's Decision No 225/14/COL, at paragraphs 85-91.
([5]) See the Authority's Decision No 225/14/COL, at paragraphs 92-99.
([6]) See the Authority's Decision No 225/14/COL, at paragraphs 100-107.
([7]) See the Authority's Decision No 225/14/COL, at paragraphs 108-112.
([8]) See the Authority's Decision No 225/14/COL, at paragraphs 113-117.
([9]) See the Authority's Decision No 225/14/COL, at paragraphs 118-121.
([10]) Judgment of the EFTA Court in Case E-23/14 *Kimek Offshore AS* v *EFTA Surveillance Authority* [2015] EFTA Ct. Rep. 412, at paragraph 58.
([11]) The Authority in this respect notes that the activities that can potentially benefit from the exemption rule are limited by the Norwegian law on the registration of business activities (see paragraphs 11 and 12 above).

(59) The Authority takes the view that the Norwegian authorities have already shown that there is a need for state intervention to induce economic activities in the eligible areas. This need applies equally to all undertakings carrying out economic activities in the eligible areas, regardless of whether they are registered there or not. Moreover, the submissions of the Norwegian authorities have adequately demonstrated that the subsidisation of ambulant services stimulates economic activity in the eligible areas. This is in line with paragraphs 6 and 71 of the RAG, which refer to aid inducing economic activity. Kimek and NHO Finnmark have taken the view that the aid should be restricted to the companies registered in the eligible zones. The Authority, on the other hand, takes the view that the undertakings providing the ambulant services face the same challenges (climate, distance from subcontractors) as those faced by locally registered undertakings. In this regard, the Authority notes that the interested parties, Kimek and NHO Finnmark, have failed to refer to any specific challenges that make operations harder for the locally registered undertakings, as opposed to the undertakings providing ambulant services when carrying out their activities in the eligible areas.

(60) On the other hand, the Authority takes the view that the Norwegian authorities have not documented that the undertakings providing ambulant services hire workers locally and permanently in the eligible areas. The Norwegian authorities have not provided economic theories or general considerations that would substantiate a claim that workers are hired permanently. In light of this, the Authority finds that the Norwegian authorities have not demonstrated that the exemption rule leads to the creation of permanent jobs in the eligible areas. However, this is not an absolute requirement for the compatibility of regional aid ([1]). As noted above, regional aid should be granted to induce economic activity. This applies regardless of whether the undertaking carrying out the economic activity is registered in the relevant area or not.

(61) On the more indirect effects of the exemption rule, the Norwegian authorities argue that the indirect effects come not only in the form of increased spending on goods and services by the ambulant workers, but also in the form of knowledge and skills transferred to local firms. The scheme is not tailored for one specific sector, but rather covers most Norwegian economic sectors ([2]). Due to the broad nature of the scheme, the Authority concurs with the Norwegian authorities that a broad view must be taken when assessing the indirect effects of a measure. However, studying individual sectors is useful in order to examine the actual effects of the exemption rule. The Norwegian authorities have provided studies in an effort to substantiate that ambulant services give rise to positive indirect effects in the eligible areas. As noted above, the Norwegian authorities have provided references to two studies on the effects of petroleum activities in the North of Norway. According to the first study of the Snøhvit petroleum project in Finnmark, the direct effect on employment was 230 man years, while the indirect effect was a further 170 man years. The second study shows that the large indirect effect from the petroleum sector occurs in the sector labelled as 'private services' which comprises: professional, scientific and technical activities, provision of personnel, rental of machinery and transport equipment, legal and accounting services, architectural activities, hotel and restaurant services, sewage and waste disposal.

(62) It is the view of the Authority that these studies show considerable positive indirect effects. However, as the indirect effects cannot be easily isolated, general considerations about the effects of a measure such as the one at hand must be given considerable weight. The Authority is convinced that the subsidisation of ambulant services contributes to the sale of local goods and services and thereby contributes to the local economy. This applies in particular to employees commuting to the location, especially on short or medium term, as they are likely to stay in hotels, eat in restaurants, etc. In light of this, the Authority is convinced that the exemption rule provides substantial positive indirect effects that contribute to the prevention or reduction of depopulation in very sparsely populated areas.

(63) Kimek argues that the ambulant offshore workers do not contribute to the local economy in any substantial way. They live on the rig, spend most of their free time on the rig and consume all their meals there. The Authority notes that certain workers will contribute less to the indirect effects of the exemption rules due to the nature of their work situation. However, the exemption rule is not limited to a certain sector, but is rather a horizontal rule that applies across all sectors.

([1]) The goal of regional aid is to promote the economic development of certain disadvantaged areas (paragraph 1 of the RAG). This is done by inducing additional economic activity in those areas (paragraph 6 of the RAG). Stimulating permanent employment is one way to achieve this, but it is not the only solution.

([2]) See the Authority's Decision No 225/14/COL, at paragraphs 11-16.

(64) A person providing ambulant services that require a certain level of knowledge and skills is in a position to transfer that knowledge and those skills to local undertakings. The Authority notes that Kimek has commented that it fails to see how knowledge and skills transferred from the employees providing ambulant services to the undertakings located in the eligible areas can prevent or reduce depopulation. It is the view of the Authority that knowledge and skills are necessary for the operation of many economic activities and thus important for maintaining employment in the eligible areas. In particular, local undertakings which participate in common projects with undertakings providing ambulant services (such as large construction projects) are in a position to acquire knowledge, skills and experience in the work required by these types of project. The locally registered undertakings would then retain these benefits. Moreover, locally registered undertakings can benefit from knowledge and skills obtained from engaging or working with undertakings providing ambulant activities (such as consultancy services or other specialist work), in so far as these activities may be classified as 'ambulant' under Norwegian law. The Authority concurs with the Norwegian authorities that the transfer of knowledge and skills to locally registered businesses by the ambulant workers can be an important factor in sustaining employment for skilled workers in the eligible areas and thereby substantially contribute to the prevention or reduction of depopulation in those areas.

(65) In addition to the knowledge and skills transfers, local undertakings can access, at a lower cost, specialised labour that would otherwise not be available. This is beneficial for local undertakings since lower costs for ambulant services make it more attractive and more profitable to run a business in the eligible area. Moreover, the exemption rule puts all economic operators active in the eligible area on the same footing concerning their social security costs for the duration of their activity in that area.

(66) In summary, the Authority takes the view that the Norwegian authorities have adequately justified that the subsidies for the ambulant services contribute to positive indirect effects in the form of increased spending on goods and services in the eligible areas, which in turn is beneficial for the labour markets in the eligible areas. The Authority is furthermore convinced that the subsidies for the ambulant services contribute to the provision of specialised labour at a lower cost and the transfer of knowledge and skills to locally established undertakings, which is vital for the continued operation of many economic activities in the eligible areas. Consequently, the exemption rule contributes to preventing or reducing depopulation in very sparsely populated areas.

(67) In terms of effect on competition and trade of the exemption rule, the Norwegian authorities argue that the exemption rule creates a level playing field for all undertakings active in the disadvantaged areas, as it applies equally to any EEA-based undertaking. Companies registered outside of Norway which send their employees to the eligible areas and are subject to Norwegian social security taxes benefit from the exemption rule if the relevant conditions are met. In the absence of the exemption rule, those companies would be required to have a registered presence in the relevant area in order to be subject to the same taxation rules as their locally registered Norwegian counterparts. This would create a barrier to market entry, which would be contrary to the logic of paragraph 134 of the RAG, which states that: 'If the aid is necessary and proportional to achieve the common objective (…), the negative effects of the aid are likely to be compensated by positive effects. However, in some cases, the aid may result in changes to the structure of the market or to the characteristics of a sector or industry which could significantly distort competition through barriers to market entry or exit, substitution effects, or displacement of trade flows. In those cases, the identified negative effects are unlikely to be compensated by any positive effects.' In light of this, the Authority takes the view that the exemption rule ensures that undue adverse effects on competition and market access are avoided. This is a positive feature in light of paragraph 3 of the RAG, which states that the assessment of regional aid balances the need for subsidies for regional development whilst ensuring a level playing field between EEA States. As noted above, the Authority is not convinced of Kimek's assertion that the undertakings registered within the eligible area face more permanent difficulties than the undertakings that send their employees to work in the area on a non-permanent basis. On the contrary, undertakings registered outside the eligible area may have a competitive disadvantage compared to local firms due to, inter alia, costs of transporting and lodging personnel.

(68) Undertakings performing ambulant services can to some extent register subunits in the eligible area. In the absence of the exemption rule for ambulant services in the eligible area, there would be a difference in treatment depending on whether the service providing undertaking had established a subunit in the eligible area. There is the danger that this could affect foreign registered undertakings more strongly than Norwegian registered undertakings. Undertakings not registered in Norway, especially SMEs, can be presumed to have less detailed knowledge about the particularities of Norwegian rules on the registration of undertakings and their effects on

social security rates. In light of this, it is the view of the Authority that the exemption rule ensures the avoidance of undue negative effects (creation of barriers to market entry and displacement of trade flows) on competition and trade between EEA States, which is in line with paragraph 134 of the RAG.

(69) On the basis of the last round of comments from the Norwegian authorities, it appears that there is no unjustified difference in treatment, under Norwegian labour law, of undertakings providing ambulant services and locally registered undertakings as alleged by the interested parties. The Authority therefore will not consider this argument further.

(70) In light of the above, the Authority concludes that the exemption rule is compatible with the functioning of the EEA Agreement on the basis of its Article 61(3)(c).

4. **Conclusion**

(71) As set out above, the Authority concludes that the exemption rule for ambulant services under the scheme on differentiated social security contributions 2014-2020 is compatible with the functioning of the EEA Agreement. The rule is therefore authorised as a part of that scheme until the expiry of the Authority's approval of that scheme on 31 December 2020,

HAS ADOPTED THIS DECISION:

Article 1

The exemption rule for ambulant services under the scheme on differentiated social security contributions 2014-2020 is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c). The formal investigation is hereby closed.

Article 2

The implementation of the measure is authorised accordingly.

Article 3

This decision is addressed to the Kingdom of Norway.

Article 4

Only the English language version of this decision is authentic.

Done in Brussels, on 31 May 2017.

For the EFTA Surveillance Authority

Sven Erik SVEDMAN	Frank J. BÜCHEL
President	*College Member*

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