

# Official Journal

## of the European Communities

ISSN 0378-6978

L 124

Volume 39

23 May 1996

English edition

## Legislation

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## I

*(Acts whose publication is obligatory)*

## COUNCIL DIRECTIVE 96/26/EC

of 29 April 1996

**on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission<sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(2)</sup>,

Acting in accordance with the procedure referred to in Article 189c of the Treaty<sup>(3)</sup>,

Whereas Council Directive 74/561/EEC of 12 November 1974 on admission to the occupation of road haulage operator in national and international transport operations<sup>(4)</sup>, Council Directive 74/562/EEC of 12 November 1974 on admission to the occupation of road passenger transport operator in national and international transport operations<sup>(5)</sup> and Council Directive 77/796/EEC of 12 December 1977 aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for goods haulage operators and road passenger transport operators,

including measures intended to encourage these operators effectively to exercise their right to freedom of establishment<sup>(6)</sup> have been substantially amended on a number of occasions; whereas, for reasons of rationality and clarity, the said Directives should be consolidated in a single text;

Whereas the organization of the transport market is one of the essential factors in the implementation of the common transport policy provided for in the Treaty;

Whereas the adoption of measures aimed at coordinating the conditions of admission to the occupations of road haulage or road passenger transport operators (hereinafter both referred to as 'road transport operator') is likely to favour effective exercise of the right of establishment of those operators;

Whereas it is necessary to provide for the introduction of common rules for admission to the occupation of road transport operator in national and international transport operations in order to ensure that such operators are better qualified, thus contributing to rationalization of the market, improvement in the quality of the service provided, in the interests of users, operators and the economy as a whole, and to greater road safety;

Whereas, therefore, the rules for admission to the occupation of road transport operator should cover the good repute, financial standing and professional competence of operators;

Whereas, however, it is not necessary to include in these common rules certain kinds of transport which are of limited economic importance;

Whereas, since 1 January 1993, access to the market of transfrontier road haulage transport operations has been

<sup>(1)</sup> OJ No C 286, 14. 11. 1990, p. 4 and amendment forwarded on 16 December 1993.

<sup>(2)</sup> OJ No C 339, 31. 12. 1991, p. 5 and OJ No C 295, 22. 10. 1994, p. 30.

<sup>(3)</sup> Opinion of the European Parliament of 13 December 1991 (OJ No C 13, 20. 1. 1992, p. 443) and of 20 April 1994 (OJ No C 128, 9. 5. 1994, p. 136), common position of the Council of 8 December 1995 (OJ No C 356, 30. 12. 1995) and Decision of the European Parliament of 28 March 1996 (not yet published in the Official Journal).

<sup>(4)</sup> OJ No L 308, 19. 11. 1974, p. 18. Directive as last amended by Regulation (EEC) No 3572/90 (OJ No L 353, 17. 12. 1990, p. 12).

<sup>(5)</sup> OJ No L 308, 19. 11. 1974, p. 23. Directive as last amended by Regulation (EEC) No 3572/90 (OJ No L 353, 17. 12. 1990, p. 12).

<sup>(6)</sup> OJ No L 334, 24. 12. 1977, p. 37. Directive as last amended by Directive 89/438/EEC (OJ No L 212, 22. 7. 1989, p. 101) and corrigendum (OJ No L 298, 17. 10. 1989, p. 31).

governed by a system of Community licences issued on the basis of qualitative criteria;

Whereas, as regards the good-repute requirement, it is necessary, in order effectively to reorganize the market, to make admission to the pursuit of the occupation of road transport operator uniformly conditional on the applicant having no convictions for serious criminal offences, including offences of a commercial nature, not having been declared unfit to pursue the occupation and on compliance with the regulations applicable to the occupation of road transport operator;

Whereas, as regards the requirement of appropriate financial standing, it is necessary, in particular in order to ensure the equal treatment of undertakings in the various Member States, to lay down certain criteria which road transport operators must satisfy;

Whereas, in respect of good repute and financial standing, it would be appropriate to acknowledge relevant documents issued by a competent authority in the road transport operator's country of origin or the country whence he comes as sufficient proof for admission to the activities concerned in a host Member State;

Whereas, as regards the requirement of professional competence, it is advisable to stipulate that the applicant road transport operator demonstrate such competence by passing a written examination but that Member States may exempt the applicant from such an examination if he provides proof of sufficient practical experience;

Whereas, in respect of professional competence, the certificates issued pursuant to the Community provisions on admission to the occupation of road transport operator must be recognized as sufficient proof by the host Member State;

Whereas provisions should be made for a system of mutual assistance between Member States for the purpose of applying this Directive;

Whereas this Directive must not affect the obligations of the Member States concerning the deadlines for implementation or application of the Directives set out in Annex II, part B,

HAS ADOPTED THIS DIRECTIVE:

#### TITLE I

#### Admission to the occupation of road transport operator

##### Article 1

1. Admission to the occupations of road haulage operator or road passenger transport operator shall be

governed by the provisions adopted by the Member States in accordance with the common rules contained in this Directive.

2. For the purposes of this Directive:

- 'the occupation of road haulage operator' shall mean the activity of any undertaking transporting goods for hire or reward by means of either a self-contained motor vehicle or a combination of coupled vehicles,
- 'the occupation of road passenger transport operator' shall mean the activity of any undertaking operating, by means of motor vehicles so constructed and equipped as to be suitable for carrying more than nine persons — including the driver — and intended for that purpose, passenger transport services for the public or for specific categories of users against payment by the person transported or by the transport organizer,
- 'undertaking' shall mean any natural person, any legal person, whether profit-making or not, any association or group of persons without legal personality, whether profit-making or not, or any official body, whether having its own legal personality or being dependent upon an authority having such personality.

##### Article 2

1. This Directive shall not apply to undertakings engaged in the occupation of road haulage operator by means of vehicles the permissible payload of which does not exceed 3,5 tonnes or the permissible total laden weight of which does not exceed 6 tonnes. Member States may, however, lower the said limits for all or some categories of transport operations.

2. Member States may, after consulting the Commission, exempt from the application of all or some of the provisions of this Directive road haulage undertakings engaged exclusively in national transport operations having only a minor impact on the transport market because of:

- the nature of the goods carried, or
- the short distance involved.

In the event of unforeseen circumstances, Member States may grant a temporary exemption pending completion of the consultations with the Commission.

3. Member States may, after consulting the Commission, exempt from the application of all or some of the provisions of this Directive undertakings engaged exclusively in certain road passenger transport services

for non-commercial purposes or having a main occupation other than that of road passenger transport operator, in so far as their transport operations have only a minor impact on the transport market.

### Article 3

1. Undertakings wishing to engage in the occupation of road transport operator shall:

- (a) be of good repute;
- (b) be of appropriate financial standing;
- (c) satisfy the condition as to professional competence.

Where the applicant is a natural person and does not satisfy requirement (c), the competent authorities may nevertheless permit him to engage in the occupation of road transport operator provided that he designates to the said authorities another person, satisfying requirements (a) and (c), who shall continuously and effectively manage the transport operations of the undertaking.

Where the applicant is not a natural person:

- requirement (a) must be satisfied by the person or persons who will continuously and effectively manage the transport operations of the undertaking. Member States may require that other persons in the undertaking also satisfy this requirement,
- requirement (c) must be satisfied by the person or persons referred to in the first indent.

2. Member States shall determine the conditions which must be fulfilled by undertakings established within their territory in order to satisfy the good-repute requirement.

They shall provide that this requirement is not satisfied, or is no longer satisfied, if the natural person or persons who are deemed to satisfy this condition under paragraph 1:

- (a) have been convicted of serious criminal offences, including offences of a commercial nature,
- (b) have been declared unfit to pursue the occupation of road transport operator under any rules in force,
- (c) have been convicted of serious, repeated offences against the rules in force concerning:

- the pay and employment conditions in the profession, or
- road haulage or road passenger transport, as appropriate, in particular the rules relating to drivers' driving and rest periods, the weights and dimensions of commercial vehicles, road safety and vehicle safety.

In the cases referred to under (a), (b) and (c), the good-repute requirement shall remain unsatisfied until rehabilitation or any other measure having an equivalent effect has taken place, pursuant to the existing relevant national provisions.

3. (a) Appropriate financial standing shall consist in having available sufficient resources to ensure proper launching and proper administration of the undertaking.

(b) For the purposes of assessing financial standing, the competent authority shall have regard to: annual accounts of the undertaking, if any; funds available, including cash at bank, overdraft and loan facilities; any assets, including property, which are available to provide security for the undertaking; costs, including purchase cost or initial payment for vehicles, premises, plant and equipment, and working capital.

(c) The undertaking must have available capital and reserves of at least:

- ECU 3 000 per vehicle used or
- ECU 150 per tonne of the maximum authorized weight of the road haulage vehicles used by the undertaking, or
- ECU 150 per seat of the passenger transport vehicles used by the undertaking,

whichever is the lower.

Member States may derogate from the first subparagraph in the case of transport undertakings which pursue their activities exclusively on the national market.

(d) For the purposes of points (a), (b) and (c), the competent authority may accept as evidence of financial standing confirmation or assurance given by a bank or other suitably qualified establishment. Such confirmation or assurance may be given in the form of a bank guarantee or by any other similar means.

- (e) Points (b), (c) and (d) shall apply only to undertakings authorized in a Member State, as from 1 January 1990, under national rules, to engage in the activities of road transport operator.

4. The condition relating to professional competence shall consist in the possession of skills demonstrated by passing a written examination, which may take the form of a multiple-choice examination, organized by the authority or body designated for this purpose by each Member State in the subjects listed in Annex I.

Member States may exempt from examination applicant road transport operators who provide proof of at least five years' practical experience in a transport undertaking at management level.

Member States may exempt the holders of certain advanced diplomas or technical diplomas which provide proof of a sound knowledge of the subjects listed in Annex I to be defined by them from sitting an examination in the subjects covered by the diplomas.

A certificate issued by the authority or body referred to in the first subparagraph must be produced as proof of professional competence.

#### Article 4

Member States shall determine the circumstances in which a road transport undertaking may, notwithstanding Article 3 (1), be operated on a temporary basis for a maximum period of one year, with extension for a maximum period of six months, in duly justified special cases, in the event of the death or physical or legal incapacity of the natural person engaged in the occupation of road transport operator or of the natural person who satisfies the requirements of Article 3 (1) (a) and (c).

The competent authorities in the Member States may, by way of exception and in certain special cases, definitively authorize a person not fulfilling the requirement of professional competence referred to in Article 3 (1) (c) to operate the transport undertaking provided that such person possesses at least three years' practical experience in the day-to-day management of the undertaking.

#### Article 5

1. Undertakings furnishing proof that before:

- 1 January 1978 for Belgium, Denmark, Germany, France, Ireland, Italy, Luxembourg, Netherlands and the United Kingdom,
- 1 January 1984 for Greece,

— 1 January 1986 for Spain and Portugal,

— 3 October 1989 for the territory of the former German Democratic Republic,

they were authorized under national rules in a Member State to engage in the occupation of either road haulage or road passenger transport operator, as appropriate, in national and/or international road transport operations shall be exempt from the requirement to furnish proof that they satisfy the provisions of Article 3.

2. However, those natural persons who:

— after 31 December 1974 and before 1 January 1978 for Belgium, Denmark, Germany, France, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom,

— after 31 December 1980 and before 1 January 1984 for Greece,

— after 31 December 1982 and before 1 January 1986 for Spain and Portugal,

— after 2 October 1989 and before 1 January 1992 for the territory of the former German Democratic Republic,

were:

— authorized to engage in the occupation of either road haulage or road passenger transport operator, as appropriate, without having furnished proof, under national regulations, of their professional competence, or

— designated effectively and continuously to manage the transport operations of the undertaking,

must have satisfied the condition of professional competence referred to in Article 3 (4) before:

— 1 January 1980 for Belgium, Denmark, Germany, France, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom,

— 1 January 1986 for Greece,

— 1 January 1988 for Spain and Portugal,

— 1 July 1992 for the territory of the former German Democratic Republic.

The same requirement shall apply in the case referred to in the third subparagraph of Article 3 (1).

#### Article 6

1. Decisions taken by the competent authorities of the Member States pursuant to the measures adopted on the basis of this Directive and entailing the rejection of an

application for admission to the occupation of road transport operator shall state the grounds on which they are based.

2. Member States shall see to it that the competent authorities withdraw the authorization to pursue the occupation of road transport operator if they establish that the conditions of Article 3 (1) (a), (b) or (c) are no longer satisfied. In this case, however, they shall allow sufficient time for a substitute to be appointed.

3. With regard to the decisions referred to in paragraphs 1 and 2, Member States shall see to it that the undertakings covered by this Directive are able to defend their interests by appropriate means.

#### Article 7

1. Where serious offences or minor, repeated offences against the rules governing either road haulage or road passenger transport, as appropriate, have been committed by non-resident road transport operators and might lead to withdrawal of the authorization to practise as a road transport operator, the Member States shall provide the Member State in which such a road transport operator is established with all the information in their possession concerning those offences and the penalties they have imposed.

2. If a Member State withdraws the authorization to practise as a road transport operator in international transport operations, it shall inform the Commission, which shall pass the necessary information to the Member States concerned.

3. Member States shall afford each other mutual assistance for the purpose of applying this Directive.

#### TITLE II

##### Mutual recognition of diplomas, certificates and other evidence of formal qualifications

#### Article 8

1. Member States shall, in respect of the activities referred to in this Directive, take the measures defined in this Directive concerning the establishment in their territories of the natural persons and undertakings referred to in Title I of the general programme for the abolition of restrictions on freedom of establishment<sup>(1)</sup>.

2. Without prejudice to paragraphs 3 and 4, a host Member State shall, for the purpose of admission to the

occupation of road transport operator, accept as sufficient proof of good repute or of no previous bankruptcy an extract from a judicial record, or failing that, an equivalent document issued by a competent judicial or administrative authority in the road transport operator's country of origin or the country whence he comes, showing that these requirements have been met.

3. Where the host Member State imposes on its own nationals certain requirements as to good repute and proof that such requirements are satisfied cannot be obtained from the document referred to in paragraph 2, that State shall accept as sufficient evidence in respect of nationals of other Member States a certificate issued by a competent judicial or administrative authority in the country of origin or in the country whence the foreign national comes stating that the requirements in question have been met. Such certificates shall relate to the specific facts regarded as relevant by the host country.

4. Where the country of origin or country whence the foreign national comes does not issue the document required in accordance with paragraphs 2 and 3, such document may be replaced by a declaration on oath or by a solemn declaration made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary in that person's country of origin or the country whence he comes; such authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration. The declaration in respect of no previous bankruptcy may also be made before a competent professional body in the same country.

5. Documents issued in accordance with paragraphs 2 and 3 shall not be accepted if produced more than three months after their date of issue. This condition shall apply also to declarations made in accordance with paragraph 4.

#### Article 9

1. Where in a host Member State a certificate is required as proof of financial standing, that State shall regard corresponding certificates issued by banks in the country of origin or in the country whence the foreign national comes or by other financial bodies designated by that country, as equivalent to certificates issued in its own territory.

2. Where a Member State imposes on its own nationals certain requirements as to financial standing and where proof that such requirements are satisfied cannot be obtained from the document referred to in paragraph 1, that State shall accept as sufficient evidence, in respect of nationals of other Member States, a certificate issued by a competent administrative authority in the country of origin or in the country whence the foreign national comes, stating that the requirements in question have been met. Such certificate shall relate to the specific facts regarded as relevant by the host country.

<sup>(1)</sup> OJ No 2, 15. 1. 1962, p. 36/62.

*Article 10*

1. As from 1 January 1990, Member States shall recognize as sufficient proof of professional competence certificates as referred to in the fourth subparagraph of Article 3 (4) which are issued by another Member State.

2. With regard to undertakings authorized in Greece, before 1 January 1981, or, in the other Member States, before 1 January 1975, under national rules, to engage in the occupation of road haulage operator or road passenger transport operator in national and/or international road transport and in so far as the undertakings concerned are companies or firms within the meaning of Article 58 of the Treaty, Member States shall accept as sufficient proof of professional competence certificates stating that the activity concerned has actually been carried on in a Member State for a period of three years. This activity must not have ceased more than five years before the date of submission of the certificate.

In the case of a legal person, the certificate stating that the activity has actually been carried on shall be issued in respect of one of the natural persons actually in charge of the transport activities of the undertaking.

3. The certificates issued to road transport operators before 1 January 1990 as proof of their professional competence pursuant to the provisions in force until that date shall be deemed equivalent to the certificates issued pursuant to the provisions of this Directive.

**TITLE III****Final provisions***Article 11*

Member States shall designate the authorities and bodies competent to issue the documents referred to in Article 8 (2) and in Article 9 and the certificate referred to in Article 10 (2). They shall immediately inform the other Member States and the Commission thereof.

*Article 12*

Articles 8 to 11 shall also apply to nationals of member States who, pursuant to Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community<sup>(1)</sup>, carry on the activities of road haulage or road passenger transport operator in the capacity of employees.

*Article 13*

1. Member States shall take the measures necessary to comply with the provisions of this Directive, no later than the dates listed in Annex II, part B, after consulting the Commission.

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

*Article 14*

The Directives listed in Annex II, part A, are hereby repealed, without prejudice to the obligations of the Member States regarding the time limits for implementation or application set out in Annex II, part B.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex III.

*Article 15*

This Directive is addressed to the Member States.

Done at Luxembourg, 29 April 1996.

*For the Council*  
*The President*  
W. LUCHETTI

<sup>(1)</sup> OJ No L 257, 19. 10. 1968, p. 2. Regulation as last amended by Regulation (EEC) No 2434/92 (OJ No L 245, 26. 8. 1992, p. 1).

## ANNEX I

## LIST OF SUBJECTS REFERRED TO IN ARTICLE 3 (4)

The knowledge to be taken into consideration for the official recognition of professional competence must cover at least the subjects listed below. These must be described in full detail and have been worked out or approved by the competent national authorities. They must be so designed as to be within the grasp of those persons whose education corresponds to the level normally reached at school-leaving age.

A. SUBJECTS OF WHICH KNOWLEDGE IS REQUIRED FOR ROAD TRANSPORT OPERATORS INTENDING TO ENGAGE EXCLUSIVELY IN NATIONAL TRANSPORT OPERATIONS

Law

Elements of civil, commercial, social and fiscal law, as necessary for engaging in the occupation, with particular emphasis on:

- general contracts;
- transport contracts, with particular reference to the responsibility of the haulage operator (nature and limits);
- commercial companies;
- ledgers;
- rules governing labour, social security;
- taxation systems.

1. Road haulage operator

(a) *Business and financial management of an undertaking*

- methods of payment and financing;
- costing;
- pricing and haulage terms;
- business accounts;
- insurance;
- invoicing;
- transport agents;
- management techniques;
- marketing.

(b) *Access to the market*

- provisions relating to the taking up and pursuit of the occupation;
- transport documents.

(c) *Technical standards and aspects of operation*

- weight and dimensions of vehicles;
- vehicle selection;
- type-approval and registration;
- vehicle maintenance standards;
- loading and unloading of vehicles;
- carriage of dangerous goods;
- carriage of foodstuffs;
- the relevant environmental protection concepts with reference to the use and maintenance of motor vehicles.

- (d) *Road safety*
  - laws, regulations and administrative provisions applicable to traffic;
  - traffic safety;
  - accident prevention and procedure in the event of an accident.

**2. Road passenger transport operator**

- (a) *business and financial management of an undertaking*
  - methods of payment and financing;
  - costing;
  - system of fares, prices and conditions of transport;
  - business accounts;
  - insurance;
  - invoices;
  - travel agencies;
  - management techniques;
  - marketing.
- (b) *Regulation of road passenger services*
  - institution of transport services and transport plans;
  - conditions of fulfilment of passenger services;
  - provisions relating to admission to, and pursuit of, the occupation;
  - transport documents.
- (c) *Technical standards and aspects of operation*
  - vehicle selection;
  - type-approval and registration;
  - vehicle maintenance standards;
  - the relevant environmental protection concepts with reference to the use and maintenance of motor vehicles.
- (d) *Road safety*
  - laws, regulations and administrative provisions applicable to traffic;
  - traffic safety;
  - geographical knowledge of routes;
  - accident prevention and procedure in the event of an accident.

**B. SUBJECTS OF WHICH KNOWLEDGE IS REQUIRED FOR ROAD TRANSPORT OPERATORS INTENDING TO ENGAGE IN INTERNATIONAL TRANSPORT**

**Law**

- subjects listed under A as appropriate;
  - provisions applicable either to the transport of goods or of passengers by road, as appropriate, between Member States and between the Community and non-member countries, arising out of national laws, Community standards, international conventions and agreements;
  - customs practices and other formalities related to transport controls;
  - main traffic regulations in the Member States.
-

## ANNEX II

## PART A

## REPEALED DIRECTIVES

(referred to in Article 14)

— Directive 74/561/EEC

— Directive 74/562/EEC

— Directive 77/796/EEC

and their successive amendments:

— Directive 80/1178/EEC

— Directive 80/1179/EEC

— Directive 80/1180/EEC

— Directive 85/578/EEC

— Directive 85/579/EEC

— Directive 89/438/EEC

— Regulation (EEC) No 3572/90: only Articles 1 and 2

## PART B

<i>Directive</i>	<i>Deadline for implementation or application</i>
74/561/EEC (OJ No L 308, 19. 11. 1974, p. 18)	1 January 1977 1 January 1978
80/1178/EEC (OJ No L 350, 23. 12. 1980, p. 41)	1 January 1981
85/578/EEC (OJ No L 372, 31. 12. 1985, p. 34)	1 January 1986
89/438/EEC (OJ No L 212, 22. 7. 1989, p. 101)	1 January 1990
74/562/EEC (OJ No L 308, 19. 11. 1974, p. 23)	1 January 1977 1 January 1978
80/1179/EEC (OJ No L 350, 23. 12. 1980, p. 42)	1 January 1981
85/579/EEC (OJ No L 372, 31. 12. 1985, p. 35)	1 January 1986
89/438/EEC (OJ No L 212, 22. 7. 1989, p. 101)	1 January 1990
77/796/EEC (OJ No L 334, 24. 12. 1977, p. 37)	1 January 1979
80/1180/EEC (OJ No L 350, 23. 12. 1980, p. 43)	1 January 1981
89/438/EEC (OJ No L 212, 22. 7. 1989, p. 101)	1 January 1990

## ANNEX III

## CORRELATION TABLE

Directive 74/561/EEC	Directive 74/562/EEC	Directive 89/438/EEC	Directive 77/796/EEC	This Directive
Article 1 (1)	Article 1 (1)			Article 1 (1)
Article 1 (2) first indent	—			Article 1 (2) first indent
—	Article 1 (2) first indent			Article 1 (2) second indent
Article 1 (2) second indent	Article 1 (2) second indent			Article 1 (2) third indent
Article 2 (1), (2)	—			Article 2 (1), (2)
—	Article 1 (3)			Article 2 (3)
Article 3	Article 2			Article 3
Article 4	Article 3			Article 4
Article 5	Article 4			Article 5
Article 6	Article 5			Article 6
Article 6a	Article 5a			Article 7
Article 7	Article 6			—
			Article 1 (1)	Article 8 (1)
			Article 3	Article 8 (2)
			Article 4	Article 9
			Article 5 (1)	Article 10 (1)
			Article 5 (2)	Article 10 (2)
—	—	Article 4		Article 10 (3)
			Article 6	Article 11
			Article 1 (2)	Article 12
—	—	Article 5		Article 13
—	—			Article 14
Article 8	Article 7			Article 15
Annex point A. 1	Annex point A. 1			Annex I point A (Law)
Annex point A. 2, 3, 4, 5	—			Annex I point A. 1 (a), (b), (c), (d)
—	Annex point A. 2, 3, 4, 5			Annex I point A. 2 (a), (b), (c), (d)
Annex point B	Annex point B			Annex I point B
—	—	—	—	Annex II Part A
—	—	—	—	Annex II Part B
—	—	—	—	Annex III

## II

*(Acts whose publication is not obligatory)*

EUROPEAN ECONOMIC AREA

THE EEA JOINT COMMITTEE

## DECISION OF THE EEA JOINT COMMITTEE

No 10/96

of 1 March 1996

amending Annex II (Technical regulations, standards, testing and certification) to the  
EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Aconomic Area, as adjusted by the  
Protocol Adjusting the Agreement on the European Economic Area, hereinafter referred  
to as the Agreement, and in particular Article 98 thereof,

Whereas Annex II to the Agreement was amended by Decision of the EEA Joint  
Committee No 7/94 of 21 March 1994 amending Protocol 47 and certain Annexes to the  
EEA Agreement<sup>(1)</sup>;

Whereas Commission Directive 95/8/EC of 10 April 1995 amending Directive  
77/535/EEC on the approximation of the laws of Member States relating to methods of  
sampling and analysis for fertilizers (Methods of analysis for trace elements at a  
concentration greater than 10 %)<sup>(2)</sup> is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

*Article 1*

The following indent shall be added in point 2 (Commission Directive 77/535/EEC) in  
Chapter XIV of Annex II to the Agreement:

‘— 395 L 0008: Commission Directive 95/8/EC of 10 April 1995 (OJ No L 86, 20. 4.  
1995, p. 41).’

<sup>(1)</sup> OJ No L 160, 28. 6. 1994, p. 1.

<sup>(2)</sup> OJ No L 86, 20. 4. 1995, p. 41.

*Article 2*

The texts of Directive 95/8/EC in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

*Article 3*

This Decision shall enter into force on 1 April 1996, provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee.

*Article 4*

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Communities*.

Done at Brussels, 1 March 1996.

*For the EEA Joint Committee*

*The President*

P. BENAVIDES

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## DECISION OF THE EEA JOINT COMMITTEE

No 12/96

of 1 March 1996

amending Annex XIV (Competition) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol Adjusting the Agreement, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas Annex XIV to the Agreement was amended by Decision of the EEA Joint Committee No 7/94 of 21 March 1994 amending Protocol 47 and certain Annexes to the EEA Agreement<sup>(1)</sup>;

Whereas Commission Regulation (EC) No 870/95 of 20 April 1995 on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) pursuant to Council Regulation (EEC) No 479/92<sup>(2)</sup> is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

*Article 1*

The following point shall be inserted after point 11.B (Commission Regulation (EEC) No 1617/93) of Annex XIV to the Agreement:

'11.C. 395 R 0870: Commission Regulation (EC) No 870/95 of 20 April 1995 on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) pursuant to Council Regulation (EEC) No 479/92 (OJ No L 89, 21. 4. 1995, p. 7).

The provisions of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

- (a) In Article 2 the words "Community ports" shall read "ports in the territory covered by the EEA Agreement";
- (b) In Article 7 (1) the phrase "on condition that the agreements in questions are notified to the Commission in accordance with the provisions of Commission Regulation (EEC) No 4260/88 and that the Commission does not oppose" shall read "on condition that the agreements in question are notified to the EC Commission or the EFTA Surveillance Authority in accordance with the provisions of Commission Regulation (EEC) No 4260/88, and the corresponding provisions in Protocol 21 to the EEA Agreement, and that the competent surveillance authority does not oppose";
- (c) In Article 7 (2) the term "the Commission" shall read "the EC Commission or the EFTA Surveillance Authority";

<sup>(1)</sup> OJ No L 160, 28. 6. 1994, p. 1.

<sup>(2)</sup> OJ No L 89, 21. 4. 1995, p. 7.

- (d) In Article 7 (5) the second sentence shall be replaced by the following:

“It shall oppose the exemption if it receives a request to do so from a State falling within its competence within three months of the transmission to those States of the notification referred to in paragraph 1”;
- (e) In Article 7 (6) the second sentence shall be replaced by the following:

“However, where the opposition was raised at the request of a State falling within its competence and this request is maintained, it may be withdrawn only after consultation of its Advisory Committee on Restrictive Practices and Dominant Positions in Maritime Transport”;
- (f) The following shall be added at the end of Article 7 (9):

“, or the corresponding provision in Protocol 21 to the EEA Agreement”;
- (g) In Article 12, introductory paragraph, the phrase “in accordance with Article 6 of Regulation (EEC) No 479/92” shall read “either on its own initiative or at the request of the other surveillance authority or a State falling within its competence or of natural or legal persons claiming a legitimate interest”.

#### *Article 2*

The texts of Regulation (EC) No 870/95 in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

#### *Article 3*

This Decision shall enter into force on 1 April 1996, provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee.

#### *Article 4*

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Communities*.

Done at Brussels, 1 March 1996.

*For the EEA Joint Committee*  
*The President*  
P. BENAVIDES

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## DECISION OF THE EEA JOINT COMMITTEE

No 13/96

of 1 March 1996

amending Annex XX (Environment) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as the Agreement, and in particular Article 98 thereof,

Whereas Annex XX to the Agreement was amended by Decision of the EEA Joint Committee No 75/95<sup>(1)</sup>;

Whereas Council Directive 94/66/EC of 15 December 1994 amending Directive 88/609/EEC on the limitation of emissions of certain pollutants into the air from large combustion plants<sup>(2)</sup> is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

*Article 1*

The following indent shall be added in point 19 (Council Directive 88/609/EEC) in Annex XX to the Agreement:

‘as amended by

— 394 L 0066: Council Directive 94/66/EC of 15 December 1994 (OJ No L 337, 24. 12. 1994, p. 83).’

*Article 2*

The texts of Council Directive 94/66/EC in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

*Article 3*

This Decision shall enter into force on 1 April 1996, provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee.

*Article 4*

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Communities*.

Done at Brussels, 1 March 1996.

For the EEA Joint Committee  
The President  
P. BENAVIDES

<sup>(1)</sup> OJ No L 57, 7. 3. 1996, p. 41.

<sup>(2)</sup> OJ No L 337, 24. 12. 1994, p. 83.

## DECISION OF THE EEA JOINT COMMITTEE

No 14/96

of 4 March 1996

amending Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol Adjusting the Agreement on the European Economic Area, hereinafter referred to as the Agreement, and in particular Article 98 thereof,

Whereas Annex II to the Agreement was amended by Decision of the EEA Joint Committee No 13/95<sup>(1)</sup>;

Whereas Commission Directive 95/42/EC of 19 July 1995 amending Directive 93/102/EC amending Directive 79/112/EEC on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer<sup>(2)</sup> is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

*Article 1*

The following indent shall be added in point 18 (Council Directive 79/112/EEC) in Chapter XII of Annex II to the Agreement:

‘— 395 L 0042: Commission Directive 95/42/EC of 19 July 1995 (OJ No L 182, 2. 8. 1995, p. 20).’

*Article 2*

The texts of Directive 95/42/EC in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

*Article 3*

This Decision shall enter into force on 1 April 1996, provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee.

*Article 4*

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Communities*.

Done at Brussels, 4 March 1996.

*For the EEA Joint Committee*

*The President*

P. BENAVIDES

<sup>(1)</sup> OJ No L 83, 13. 4. 1995, p. 45.

<sup>(2)</sup> OJ No L 182, 2. 8. 1995, p. 20.

## DECISION OF THE EEA JOINT COMMITTEE

No 15/96

of 4 March 1996

amending Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol Adjusting the Agreement hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas Annex II to the Agreement was amended by Decision of the EEA Joint Committee No 46/95<sup>(1)</sup>;

Whereas Commission Directive 95/35/EC of 14 July 1995 amending Council Directive 91/414/EEC concerning the placing of plant protection products on the market<sup>(2)</sup> is to be incorporated into the Agreement;

Whereas Commission Directive 95/36/EC of 14 July 1995 amending Council Directive 91/414/EEC concerning the placing of plant protection products on the market<sup>(3)</sup> is to be incorporated into the Agreement;

HAS DECIDED AS FOLLOWS:

*Article 1*

The following indents shall be added in point 12.A (Council Directive 91/414/EEC) in Chapter XV of Annex II to the Agreement:

- 395 L 0035: Commission Directive 95/35/EC of 14 July 1995 (OJ No L 172, 22. 7. 1995, p. 6),
- 395 L 0036: Commission Directive 95/36/EC of 14 July 1995 (OJ No L 172, 22. 7. 1995, p. 8).'

*Article 2*

The texts of Directives 95/35/EC and 95/36/EC in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

*Article 3*

This Decision shall enter into force on 1 April 1996 provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee.

<sup>(1)</sup> Not yet published in the Official Journal.

<sup>(2)</sup> OJ No L 172, 22. 7. 1995, p. 6.

<sup>(3)</sup> OJ No L 172, 22. 7. 1995, p. 8.

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*Article 4*

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Communities*.

Done at Brussels, 4 March 1996.

*For the EEA Joint Committee*

*The President*

P. BENAVIDES

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## DECISION OF THE EEA JOINT COMMITTEE

No 16/96

of 4 March 1996

amending Annex XV (State aid) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol Adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas Annex XV to the Agreement was amended by Decision of the EEA Joint Committee No 21/95<sup>(1)</sup>;

Whereas the Council of the European Union has adopted Council Regulation (EC) No 3094/95 of 22 December 1995<sup>(2)</sup> on aid to shipbuilding incorporating its obligations under the Organization for Economic Cooperation and Development Agreement (OECD) respecting normal competitive conditions in the commercial shipbuilding and repair industry;

Whereas Article 10 of Council Regulation (EC) No 3094/95 states that the relevant Articles of Council Directive 90/684/EEC of 21 December 1990<sup>(3)</sup> on aid to shipbuilding, as last amended by Directive 94/73/EC<sup>(4)</sup> shall, provided that the OECD Agreement respecting normal competitive conditions in the commercial shipbuilding and repair industry does not enter into force on 1 January 1996, remain in force until entry into force of that Agreement, but not longer than until 1 October 1996;

Whereas the relevant Articles of Council Directive 90/684/EEC, as incorporated into the EEA Agreement, should, in order to maintain homogenous rules within the EEA, remain in force within the EEA as long as it remains in force within the European Union;

Whereas point 1.B of Annex XV to the Agreement should therefore be amended,

HAS DECIDED AS FOLLOWS:

*Article 1*

The following adaptation shall be added in point 1.B (Council Directive 90/684/EEC) of Annex XV to the Agreement:

- '(t) Article 13 shall read as follows: The provisions of this Directive shall apply until Articles 1 to 9 of Council Regulation (EC) No 3094/95 on aid to shipbuilding enter into force in the European Community, but not longer than until 1 October 1996.'

*Article 2*

This Decision shall enter into force on 1 April 1996, provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee. It shall apply from 1 January 1996.

<sup>(1)</sup> OJ No L 158, 8. 7. 1995, p. 43.

<sup>(2)</sup> OJ No L 332, 30. 12. 1995, p. 1.

<sup>(3)</sup> OJ No L 380, 31. 12. 1990, p. 27.

<sup>(4)</sup> OJ No L 351, 31. 12. 1994, p. 10.

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*Article 3*

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Communities*.

Done at Brussels, 4 March 1996.

*For the EEA Joint Committee*

*The President*

P. BENAVIDES

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## DECISION OF THE EEA JOINT COMMITTEE

No 11/96

of 12 March 1996

amending Annex VI (Social security) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol Adjusting the Agreement, hereinafter referred to as the Agreement, and in particular Article 98 thereof,

Whereas Annex VI to the Agreement was amended by Decision of the EEA Joint Committee No 1/96<sup>(1)</sup>;

Whereas the application of Decision No 155 of 6 July 1994 on the model forms necessary for the application of Council Regulations (EEC) No 1408/71 and (EEC) No 574/72 (E 401 to 411) was confirmed for the new Member States, Austria, Sweden and Finland, by Decision No 157 of 1 July 1995 of the Administrative Commission of the European Communities on Social Security for Migrant Workers,

Whereas Decision No 155 of 6 July 1994 on the model forms necessary for the application of Council Regulations (EEC) No 1408/71 and (EEC) No 574/72 (E 401 to 411), adopted by the Administrative Commission of the European Communities on Social Security for Migrant Workers<sup>(2)</sup>, is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

*Article 1*

The following indent shall be added in point 29 (Decision No 130) in Annex VI to the Agreement:

‘— 395 D 0353: Decision No 155 of 6 July 1994 (E 401—411) (OJ No L 209, 5. 9. 1995, p. 1).’

*Article 2*

The following indent shall be added in point 42 (Decision No 147) in Annex VI to the Agreement:

‘, as amended by:

— 395 D 0353: Decision No 155 of 6 July 1994 (E 401—411) (OJ No L 209, 5. 9. 1995, p. 1).’

*Article 3*

The texts of Decision No 155 in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

<sup>(1)</sup> OJ No L 90, 11. 4. 1996, p. 38.

<sup>(2)</sup> OJ No L 209, 5. 9. 1995, p. 1.

*Article 4*

This Decision shall enter into force on 1 April 1996, provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee.

*Article 5*

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Communities*.

Done at Brussels, 12 March 1996.

*For the EEA Joint Committee*  
*The President*  
P. BENAVIDES

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## DECISION OF THE EEA JOINT COMMITTEE

No 9/96

of 26 March 1996

amending Annex II (Technical regulations, standards, testing and certification) to the  
EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol Adjusting the Agreement on the European Economic Area, hereinafter referred to as the Agreement, and in particular Article 98 thereof,

Whereas Annex II to the Agreement was amended by Decision of the EEA Joint Committee No 15/96<sup>(1)</sup>;

Whereas European Parliament and Council Directive 95/27/EC of 29 June 1995 amending Council Directive 86/662/EEC on the limitation of noise emitted by hydraulic excavators, rope-operated excavators, dozers, loaders and excavator-loaders<sup>(2)</sup> is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

*Article 1*

The following indent shall be added in point 10 (Council Directive 86/662/EEC) in Chapter VI of Annex II to the Agreement:

‘— 395 L 0027: European Parliament and Council Directive 95/27/EC of 29 June 1995 (OJ No L 168, 18. 7. 1995, p. 14).’

*Article 2*

The texts of Directive 95/27/EC in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

*Article 3*

This Decision shall enter into force on 1 April 1996, provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee.

*Article 4*

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Communities*.

Done at Brussels, 26 March 1996.

*For the EEA Joint Committee*

*The President*

P. BENAVIDES

<sup>(1)</sup> See page 17 of this Official Journal.

<sup>(2)</sup> OJ No L 168, 18. 7. 1995, p. 14.

## DECISION OF THE EEA JOINT COMMITTEE

No 17/96

of 26 March 1996

amending Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol Adjusting the Agreement on the European Economic Area, hereinafter referred to as the Agreement, and in particular Article 98 thereof,

Whereas Annex II to the Agreement was amended by Decision of the EEA Joint Committee No 14/96<sup>(1)</sup>;

Whereas Commission Directive 95/31/EC of 5 July 1995 laying down specific criteria of purity concerning sweeteners for use in foodstuffs<sup>(2)</sup> is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

*Article 1*

1. The following indent shall be added in point 16 (Council Directive 78/663/EEC) in Chapter XII of Annex II to the Agreement:

‘— 395 L 0031: Commission Directive 95/31/EC of 5 July 1995 (OJ No L 178, 28. 7. 1995, p. 1).’

2. The following point shall be inserted after point 46 (Commission Directive 89/107/EEC) of Chapter XII of Annex II to the Agreement:

‘46.A. 395 L 0031: Commission Directive 95/31/EC of 5 July 1995 laying down specific criteria of purity concerning sweeteners for use in foodstuffs (OJ No L 178, 28. 7. 1995, p. 1).’

*Article 2*

The texts of Directive 95/31/EC in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

*Article 3*

This Decision shall enter into force on 1 April 1996, provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee.

<sup>(1)</sup> See page 16 of this Official Journal.

<sup>(2)</sup> OJ No L 178, 28. 7. 1995, p. 1.

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*Article 4*

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Communities*.

Done at Brussels, 26 March 1996.

*For the EEA Joint Committee*

*The President*

P. BENAVIDES

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## DECISION OF THE EEA JOINT COMMITTEE

No 18/96

of 26 March 1996

amending Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol Adjusting the Agreement on the European Economic Area, hereinafter referred to as the Agreement, and in particular Article 98 thereof,

Whereas Annex II to the Agreement was amended by Decision of the EEA Joint Committee No 38/94<sup>(1)</sup>;

Whereas Sixth Commission Directive 95/32/EC of 7 July 1995 relating to methods of analysis necessary for checking the composition of cosmetic products<sup>(2)</sup> is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

*Article 1*

The following point shall be inserted after point 6 (Fifth Commission Directive 93/73/EEC) in Chapter XVI of Annex II to the Agreement:

- '7. 395 L 0032: Sixth Commission Directive 95/32/EC of 7 July relating to methods of analysis necessary for checking the composition of cosmetic products (OJ No L 178, 28. 7. 1995, p. 20).'

*Article 2*

The texts of Directive 95/32/EC in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

*Article 3*

This Decision shall enter into force on 1 April 1996, provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee.

*Article 4*

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Communities*.

Done at Brussels, 26 March 1996.

*For the EEA Joint Committee*

*The President*

P. BENAVIDES

<sup>(1)</sup> OJ No L 372, 31. 12. 1994, p. 11.

<sup>(2)</sup> OJ No L 178, 28. 7. 1995, p. 20.

## DECISION OF THE EEA JOINT COMMITTEE

No 19/96

of 26 March 1996

amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol Adjusting the Agreement on the European Economic Area, hereinafter referred to as the Agreement, and in particular Article 98 thereof,

Whereas Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No 74/95<sup>(1)</sup>;

Whereas Council Directive 95/50/EC of 6 October 1995 on uniform procedures for checks on the transport of dangerous goods by road<sup>(2)</sup> is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

*Article 1*

The following point shall be inserted after point 17.C (Council Decision 93/704/EC) in Annex XIII to the Agreement:

'17.D. 395 L 0050: Council Directive 95/50/EC of 6 October 1995 on uniform procedures for checks on the transport of dangerous goods by road (OJ No L 249, 17. 10. 1995, p. 35).'

*Article 2*

The texts of Directive 95/50/EC in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

*Article 3*

This Decision shall enter into force on 1 April 1996, provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee.

*Article 4*

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Communities*.

Done at Brussels, 26 March 1996.

*For the EEA Joint Committee*  
*The President*  
P. BENAVIDES

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<sup>(1)</sup> OJ No L 57, 7. 3. 1996, p. 36.

<sup>(2)</sup> OJ No L 249, 17. 10. 1995, p. 35.

## DECISION OF THE EEA JOINT COMMITTEE

No 20/96

of 26 March 1996

amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol Adjusting the Agreement on the European Economic Area, hereinafter referred to as the Agreement, and in particular Article 98 thereof,

Whereas Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No 8/96<sup>(1)</sup>;

Whereas Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control)<sup>(2)</sup> is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

*Article 1*

The following point shall be inserted after point 56.A (Commission Regulation (EEC) No 2158/93) in Annex XIII to the Agreement:

'56.B. 395 L 0021: Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) (OJ No L 157, 7. 7. 1995, p. 1).'

*Article 2*

The texts of Directive 95/21/EC in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

*Article 3*

This Decision shall enter into force on 1 April 1996, provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee.

*Article 4*

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Communities*.

Done at Brussels, 26 March 1996.

*For the EEA Joint Committee*

*The President*

P. BENAVIDES

<sup>(1)</sup> OJ No L 102, 25. 4. 1996, p. 51.

<sup>(2)</sup> OJ No L 157, 7. 7. 1995, p. 1.

## DECISION OF THE EEA JOINT COMMITTEE

No 21/96

of 26 March 1996

amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol Adjusting the Agreement on the European Economic Area, hereinafter referred to as the Agreement, and in particular Article 98 thereof,

Whereas Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No 8/96<sup>(1)</sup>;

Whereas Council Resolution 95/C 264/01 of 28 September 1995 on the deployment of telematics in the road transport sector<sup>(2)</sup> is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

*Article 1*

The following point shall be inserted after point 85 (Council Resolution 95/C 169/03) in Annex XIII to the Agreement:

'86. 395 Y 1011(01): Council Resolution 95/C 264/01 of 28 September 1995 on the deployment of telematics in the road transport sector (OJ No C 264, 11. 10. 1995, p. 1).'

*Article 2*

The texts of Resolution 95/C 264/01 in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

*Article 3*

This Decision shall enter into force on 1 April 1996, provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee.

*Article 4*

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Communities*.

Done at Brussels, 26 March 1996.

*For the EEA Joint Committee*

*The President*

P. BENAVIDES

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<sup>(1)</sup> OJ No L 102, 25. 4. 1994, p. 51.

<sup>(2)</sup> OJ No C 264, 11. 10. 1995, p. 1.

# EFTA SURVEILLANCE AUTHORITY

## EFTA SURVEILLANCE AUTHORITY DECISION

No 106/95/COL

of 31 October 1995

**on a tax exemption for glass packaging from a basic tax on non-reusable beverage packaging (Aid No 95-002 (Norway))**

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area<sup>(1)</sup> and in particular Articles 61 to 63 thereof,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice<sup>(2)</sup>, and in particular Article 1 of Protocol 3 thereof,

Having, in accordance with the abovementioned Articles, given notice to the parties concerned to submit their comments to it,

Whereas:

### I. FACTS

#### 1. The notification

By letter dated 20 January 1995, received by the EFTA Surveillance Authority on 24 January 1995 (reference 95-512 A), the Norwegian Government notified, in accordance with Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement, plans to grant a relief for glass packaging from the basic tax<sup>(3)</sup> on non-reusable packaging of beverages ('Grunnavgift på engangsemballasje for drikkevarer', Parliamentary decision St. prp. 1 (1994-95)), i.e. any packaging not being used more than once for the same purpose without being processed. The EFTA Surveillance Authority, by letter of 3 February 1995 (reference 95-573 D), requested additional information from the Norwegian Government. The requested information was submitted to the Authority by fax (reference 95-979 A) dated 15 February 1995 and received on 16 February 1995.

#### 2. The contents and the aim of the aid measure

The Norwegian Government has proposed to exempt glass containers from an indirect tax on non-reusable beverage packaging. The level of taxation is currently Nkr 0,70 per unit of inner packaging. The tax exemption will apply equally to all, both domestically produced and imported, glass containers. The objective of the aid is primarily sectoral, i.e. to ensure continued production at PLM Moss Glassverk A/S. The PLM group had initially decided to close down production in Norway due to non-profitability.

<sup>(1)</sup> Hereinafter referred to as the EEA Agreement.

<sup>(2)</sup> Hereinafter referred to as the Surveillance and Court Agreement.

<sup>(3)</sup> The term basix tax ('grunnavgift') is applied, *inter alia*, in order to distinguish this tax from the differentiated environmental tax according to recycling performance levied on recyclable containers.

The profitability of PLM Moss Glassverk A/S has, according to the Norwegian authorities, been severely affected by the structure of environmental taxes in Norway, notably the taxes imposed on beverage packaging. Norwegian taxes on beverage packaging and energy related taxes are, according to the notification, extraordinarily high compared to other EEA countries. The Norwegian Government has found it necessary to counter these effects by introducing the proposed aid measure.

PLM Moss Glassverk A/S is the main user of glass waste collected and processed for recycling and therefore considered by the Norwegian Government to be a vital part of the Norwegian glass recycling system. The Norwegian authorities consider that the glass recycling system will be seriously threatened if the PLM group effectuates a closing down of its Norwegian subsidiary.

The Norwegian authorities consider that the aid is justified under the exemption provided for in Article 61 (3) (c) of the EEA Agreement with reference to the importance of maintaining glass production in Norway, the related environmental aspects and the effects the eventual closure of the company would have on employment in a region in industrial decline.

### 3. PLM Moss Glassverk A/S and the market for beverage packaging

#### *PLM Moss Glassverk A/S*

PLM Moss Glassverk A/S is the only Norwegian producer of glass packaging. The company's production facilities are located in Moss, the regional administration centre of the county of Østfold, where it is one of the major employers. The company is a subsidiary to the PLM group, which has its headquarters in Sweden<sup>(1)</sup>. The PLM group acquired Moss Glassverk<sup>(2)</sup> A/S after the company's default in 1989. PLM Moss Glassverk A/S has experienced deficits since 1992. In 1993 the deficit was Nkr 10,3 million.

PLM Moss Glassverk A/S employs a work force of about 285 persons. The production facilities consist of two melting furnaces and four sets of production machinery which can procedure simultaneously along five production lines. The melting furnaces have a wear life of eight years, upon which they must be rebuilt. The wear life of one furnace expires in the course of 1995, while the wear life of the other will expire in 1996. The PLM group therefore had to make a decision either to repair one furnace temporarily at the cost of Nkr 20 million or to invest in a new melting furnace at the cost of Nkr 33 million. In both alternatives further investment in the other furnace would be needed.

The first alternative decision was subject to the assumption that production in Norway will be gradually phased out in the period 1995 to 1998 with increased investment and production at the PLM group's factory in Limmared in Sweden. The second alternative will make it possible to continue production in Norway beyond the year 2000. A condition set by PLM for choosing the second alternative is that production in Norway can be deemed profitable.

On 5 December 1994 the PLM group decided, initially, to gradually close down production at PLM Moss Glassverk A/S. However, after consultations between the PLM group and the Norwegian Government, the PLM group agreed to the second alternative referred to above.

The production statistics for PLM Glassverk A/S for the period 1990 to 1994 show significant fluctuations both in the value and the physical volume of the company's production. The unit value of one-way containers for soft drinks, the company's product category which is expected to be most affected by the exemption from the basic tax, has declined throughout the period of observation.

<sup>(1)</sup> PLM is one of the leading packaging producers in Europe. PLM manufacturers and markets a range of consumer packaging in metal, glass and plastic.

<sup>(2)</sup> Established 1898.

*Aid to PLM Moss Glassverk A/S*

The Norwegian authorities have estimated the financial advantage to PLM Moss Glassverk A/S of the tax exemption on glass packaging to be Nkr 13 million per annum by multiplying the number of non-reusable beverage containers made of glass produced by PLM Moss Glassverk A/S with the tax per item, Nkr 0,70.

In 1994 PLM Moss Glassverk A/S benefited from a direct grant of Nkr 11 million awarded by the Norwegian Government<sup>(1)</sup> in 1993 under a temporary grant scheme to secure the collection and recycling of glass in Norway. Norsk Glassgienvinning A/S, the company specializing in collection and processing of glass for reuse as a raw material, benefited from an award of Nkr 1 million under the same scheme in 1994. The temporary grant scheme expired on 31 December 1994.

*Beverage packaging market in Norway*

The market for beverage packaging cannot be separated from the market for beverages. On the demand side the consumer will normally make a simultaneous choice between different beverages and different forms of packaging. On the supply side, depending on the packaging material, the production of the packaging often takes place simultaneously with production and 'bottling' of the beverage. Glass packaging, however, must be produced in a separate process.

The following information, which is derived from a broader material, displays some of the key characteristics of the Norwegian market for beverages and beverage packaging.

Beer is normally either sold in refillable glass bottles (market share 72 % in 1993) or as draught beer (market share 27 % in 1993). As concerns non-reusable packaging, metal cans cover only 1 % of the beer market. Plastic containers are apparently only to a very limited extent used for beer.

As concerns carbonated soft drinks, refillable plastic packaging has taken over this market at the expense of glass bottles. The market share of refillable glass bottles dropped from 88 % in 1990 to 26 % in 1993, while plastic containers increased their share from 1 % in 1990 to 73 % in 1993<sup>(2)</sup>. As for beer, metal cans hold a stable market share of 1 %. The market shares for glass packaging of juices and other non-carbonated soft drinks appear to be relatively stable although the available information indicates a slight decrease for glass containers in this market segment also.

Total consumption in Norway in 1994 was 219 million litres of beer, 526 million litres of carbonated soft drinks and 200 million litres of non-carbonated soft drinks.

Nearly all beer sold in refillable glass is of domestic production, whereas the imported beer is sold mainly in cans and non-refillable glass and to a smaller extent in refillable glass. Half of the brandy, wine and strong beer is sold in refillable bottles, half in non-refillable bottles. Almost all of these beverages sold in refillable glass are domestically produced, whereas those sold in non-refillable glass are all imported. Carbonated soft drinks sold in refillable packaging (glass and PET) are mainly domestically produced, whereas those drinks sold in non-refillable packaging (mainly cans) are exclusively imported.

Table 1 below is derived from statistics<sup>(3)</sup> published by the Norwegian federation of packaging producers<sup>(4)</sup>. The HS classification system does not allow a unique identification of exports and imports of metal or plastic inner packaging for beverages.

<sup>(1)</sup> Budsjettnstilling S II (1993—94), Chapter 1442, post 70.

<sup>(2)</sup> According to the Ministry of Industry and Energy the market share for refillable plastic packaging further increased to approximately 93 % in 1994 at the expense of glass packaging.

<sup>(3)</sup> Source: NOS Utenrikshandel.

<sup>(4)</sup> Den Norske Emballasjeforening — Emballasjeindustriens Landsforening (EIL).

Such containers have therefore not been included in Table 1. The table reveals a general increase in the export of glass bottles for alcoholic and non-alcoholic products which can only have been produced at PLM Moss Glassverk A/S. This observation is consistent with a decision of the PLM group to close down one of its production plants in Sweden (Hammar) and transfer part of the production to Norway after its acquisition of Moss Glassverk A/S. The importation of glass bottles to Norway increased over the same period, although the volumes are smaller.

Table 1

## Imports and exports of beverage packaging

HS code	Description	1990		1991		1993	
		Imports (million Nkr)	Exports (million Nkr)	Imports (million Nkr)	Exports (million Nkr)	Imports (million Nkr)	Exports (million Nkr)
	<i>Glass packaging</i>						
7001.9001	Bottles for beer and mineral water	2,0	23,6	8,1	22,4	7,1	31,5
7001.9002	Bottles for wine, liquor or juice	4,5	0,2	2,9	13,0	2,6	23,7
7001.9005	Other bottles	12,1	9,1	14,4	25,6	17,1	6,7

## 4. Taxes on beverage packaging

The basic tax ('grunnavgift') on non-reusable packaging of beverages was introduced on 1 January 1994<sup>(1)</sup>. The tax rate applying as from 1 January 1995 in Nkr 0,70 per unit. The tax is levied on all non-reusable containers independent of recovery or recycling rates. Non-reusable packaging is defined<sup>(2)</sup> as all packaging that may not be reused for the same purpose. The basic tax is levied on non-reusable packaging<sup>(3)</sup> for all beverages except: (a) milk and milk products, (b) beverages based on cocoa, chocolate and concentrates of such products and (c) products in powder form. An exemption for beverages based on tea and coffee was abolished as of 1 January 1995.

The tax is levied in the same manner for all packaging either at the time of importing or at the time of filling the beverage into the container/finishing the product. The basic tax is not paid directly by PLM Moss Glassverk A/S. The tax is not levied on beverage packaging which is exported from Norway.

This basic tax is currently under scrutiny by the Authority concerning its compatibility with Article 14 of the EEA Agreement.

A differentiated environmental tax<sup>(4)</sup> levied in principle on all beverage containers was introduced in parallel with the basic tax on 1 January 1994. The level of taxation is differentiated according to the recycling performance for each category of container in accordance with the regulations on return systems for beverage packaging. The full tax rate on containers which are not recycled is Nkr 3,00 per unit, while the reduced rate for recycled glass containers is Nkr 1,05. Collection and recycling systems do not exist for other beverage packaging than glass. However, such systems are currently being established<sup>(5)</sup>.

<sup>(1)</sup> St.prp. nr. 1 (1994—95) Skatter og avgifter til statskassen, Grunnavgift på engangsemballasje for drikkevarer.

<sup>(2)</sup> Paragraph 2 point (b) of 'Forskrifter om grunnavgift på engangsemballasje for drikkevarer fastsatt av Finansdepartementet 30. desember 1993'.

<sup>(3)</sup> Volume less than four litres.

<sup>(4)</sup> The environmental tax and the regulations on return systems for beverage packaging are described in more detail in the Authority's decision of 13 April 1995 to open the investigation procedure (OJ No C 212, 17. 8. 1995, p. 6).

<sup>(5)</sup> Norwegian industry on 14 September 1995 concluded four agreements with the Ministry of Environment on recycling of other packaging materials.

## 5. The Norwegian system for collection and recycling of glass waste

The collection and recycling of glass packaging is based on rules laid down in the regulations on the return system for packaging of beverages of 10 December 1993.

Collection of glass waste in Norway started in 1988. In 1992 PLM Moss Glassverk A/S took the initiative to establish Norsk Glassgjenvinning A/S (NGG), the company specializing in collection and processing of glass for reuse as a raw material. NGG became operative in 1993 and is approved as a return system by the State Pollution Control Authority pursuant to the regulation referred to above. The expected return rate for NGG's return system is estimated at 65 % for 1995. The cost of this return system is covered by a recycling fee per unit of glass packaging to NGG paid by the members of NGG and the company's proceeds from the sale of processed glass waste. Members of NGG are therefore, depending on the environmental properties of the glass packages in question, liable to pay the basic tax (= Nkr 0,70 per unit), the environmental tax at the reduced rate (35 % of the environmental tax = Nkr 1,05 per unit) in addition to the recycling fee to NGG.

NGG buys glass waste from municipalities who collect it separately. The glass waste is processed by NGG before it is sold as raw material to PLM Moss Glassverk A/S or other buyers. NGG takes all glass waste including waste from glass produced at PLM Moss Glassverk A/S and imported glass. This means that more glass is collected (38 000 tonnes in 1995) than can be recycled by PLM Moss Glassverk A/S (25 000 tonnes in 1995). New ways of recycling glass waste have therefore been investigated. In 1995 this resulted in glass waste collected by NGG being used for the production of special quality mineral wool ('glava'). Deliveries from NGG for production of 'glava' are expected to amount to approximately 6 000 tonnes in 1995. A project is being launched by the Norwegian research institute Sintef for investigating the use of glass waste as a raw material in the production of special quality concrete ('glass-betong'). However, this project is still at a very early stage. No application has so far been found for the residual 7 000 tonnes, but export possibilities are being explored.

## II. THE PROCEDURE PURSUANT TO ARTICLE 1 (2) OF PROTOCOL 3 OF THE SURVEILLANCE AND COURT AGREEMENT

### 1. Investigation procedure

The EFTA Surveillance Authority decided on 13 April 1995 (Decision No 40/95/COL) to open the formal investigation procedure with regard to the proposed aid. The Norwegian Government was informed of the decision by letter of 18 April 1995 (our reference 95-2478-D) containing a copy of the Authority's decision of 13 April 1995 whereby the Norwegian Government was invited to submit its comments within a period of one month from the receipt of the Authority's decision and to provide the Authority with all the information needed for examining the case. The Norwegian Government was reminded of the obligation not to put its proposed measures into effect until the investigation procedure had resulted in a final decision. The Norwegian Government submitted by letter of 30 May 1995, received on the same date (reference 95-3289 A), its comments to the Authority's decision. The proposed aid was discussed in a meeting with the Norwegian authorities on 12 June 1995.

The European Commission was informed, in accordance with Protocol 27 of the EEA Agreement, by means of a copy of the decision. The gist of the decision was published in the form of a notice in the EEA Section of the *Official Journal of the European Communities* (OJ No C 212, 17. 8. 1995, p. 6) and the EEA Supplement thereto, thereby informing other EFTA States parties to the EEA Agreement, EU Member States, and interested parties, and inviting them to submit comments within one month from the date of publication.

The Authority received comments from the following interested parties: Beverage Can Makers Europe (reference 95-5245 A), Elopak A/S (reference 95-5376 A), Tetrapak A/S (reference 95-5374 A), Prosess- og foredlingsindustriens Landsforening (reference 95-5416 A) and Norges Dagligvarehandels Forbund (reference 95-5618 A). The Authority forwarded by letters of 21 September (reference 95-5504 D) and 4 October 1995 (reference 95-5800 D) copies of the comments from the above interested parties to the Norwegian Government and requested it to submit its observations. The observations from the Norwegian Government were received by fax on 20 October 1995 (reference 95-6092 A).

## 2. Comments from the Norwegian Government

The Norwegian authorities emphasize two factors concerning derogation from the general prohibition against State aid according to Article 61 (1) with reference to Article 61 (3) (c) and the derived rules on State aid for environmental protection. The first is the major role played by PLM Moss Glassverk A/S in the Norwegian system for the recycling of glass waste and the second is the negative financial impact of the tax on the company. In combination with other environmental taxes and difficult and rapidly changing market conditions they consider the company to have been seriously affected by the introduction of new environmental taxation on beverage packages.

The Norwegian authorities acknowledge that the exemption proposed for glass packaging from the basic tax constitutes State aid in the meaning of Article 61 of the EEA Agreement and have therefore notified the proposed aid to the Authority. They also agree that Article 61 EEA Agreement cannot be used to frustrate the rules in the Agreement on the free movement of goods. However, it is held that an exemption for recyclable glass from the basic tax will not have such an effect. The authorities do not find that the tax relief gives rise to any discriminatory effect between domestic and imported products, referring to the fact that all non-reusable glass packages including imports will be exempted from the basic tax.

Further, the Norwegian authorities find that the derogation pursuant to Article 61 (3) (c) allows for the possibility of exemption, in the present case, from the general prohibition on aid pursuant to Article 61 (1). Reference is made to paragraph 15 (4) (3) (1) of the State Aid Guidelines<sup>(1)</sup> which allows for State aid in connection with waste management and temporary relief from new environmental taxes.

With reference to the market situation for processed glass waste in Norway and the recycling system for glass waste<sup>(2)</sup>, the Norwegian authorities conclude that the recycling system for glass, is very much based on PLM Moss Glassverk A/S's capacity to recycle such glass as there is, today, no viable alternative. If the only Norwegian glass factory were to close down, this would threaten the entire system.

Referring to paragraph 15 (4) (3) (3) of the State Aid Guidelines which allows for a temporary relief from new environmental taxes when necessary in off-setting losses in competitiveness resulting from such taxes and the question raised by the Authority of whether a loss in competitiveness has in fact taken place, the Norwegian authorities find that the competitive disadvantage to PLM Moss Glassverk A/S has to be seen in a broader context. In accordance with their initial notification and as later supplemented by statistics, they find it to be sufficiently documented that PLM Moss Glassverk A/S has faced a sharp decline in the demand for their products, *inter alia*, because of the introduction of new products (plastic bottles) into the market. This situation was reinforced by the introduction of various environmental taxes, all of which have affected PLM Moss Glassverk A/S within a short period of time.

The fact that the basic tax is not levied on exported goods does not mean, according to the Norwegian authorities, that the international competitiveness of PLM Moss Glassverk A/S is not affected. The basic tax is seen as a hindrance with reference to the maintenance and establishing of a solid domestic production base, which is regarded as a prerequisite for being able to compete abroad. On the other hand, as glass is very much a domestic good since it is cheap, but voluminous, so that long distance transporting is not very profitable, it is not seen as appropriate in this case to analyse competitiveness in the context of exporting possibilities. It is however evident, according to the Norwegian authorities, that, put in a broader context, the company has suffered a loss in competitiveness, reinforced by the impact of the basic tax.

Finally, the Norwegian authorities emphasize, as in the initial notification, that the difficult employment situation prevailing in the county of Østfold where PLM Moss Glassverk A/S is an important part of the industrial base in Moss, the consequences the decision will have for the only glass producer in Norway and the element of uncertainty this will introduce into the Norwegian glass collection system should be taken into account when reaching a decision in the case.

<sup>(1)</sup> Procedural and Substantive Rules in the Field of State Aid adopted by the Authority on 19 January 1994.

<sup>(2)</sup> See point I.5 of this Decision.

### 3. Comments from interested parties

Beverage Can Makers Europe<sup>(1)</sup> (BCME) expresses that Norway 'already discriminates between reuse and recycling, as the basic tax penalizes those marketing beverages in non-reusable containers, irrespective of whether or not containers are recycled and that this penalty is exacerbated by the imposition of an additional differentiated environmental tax on recyclable containers according to the degree to which they are recycled. The proposed aid would therefore further discriminate against the beverage can as well as making recycling systems for glass more viable without facilitating recycling of other packaging materials by an equivalent exemption. BCME finds the aid proposal to be illogical as it threatens to distort competition and, consequently constitutes a barrier to trade.

Elopak A/S and Tetra Pak A/S<sup>(2)</sup> consider that the proposed tax exemption for one-way glass packaging should not be allowed as it would discriminate against other types of beverage packaging and thereby be against the letter and the intention of the EEA Agreement. The basic tax as such is considered to be in conflict with the EEA Agreement and not defensible on environmental grounds. It is claimed that the basic tax penalises particularly beverage cartons, as more than two-thirds of the packaging on which the tax is imposed today, is of this category. The companies state that several life-cycle analyses document that beverage cartons are environmentally preferable to other forms of beverage packaging — including reusables for drinks like milk and juices. The fillers and producers of beverage cartons in Norway have now also established an industry financed collection and recovery system, Norsk Returkartong A/S, which solves the waste problems related to beverage cartons.

A tax relief for glass bottles could have a substantial negative impact on the sales and use of beverage cartons, as glass bottles are the most likely substitute for beverage cartons for juice packaging. A discrimination of Nkr 0,70 per item in favour of glass bottles could easily lead to a shift in demand for packaging of juice. As one-way glass bottles are substantially heavier (10 to 30 times) than cartons, the waste problems would increase dramatically with such a shift, even with a high rate of return. The consequences would thus be quite the opposite of the Norwegian Government's purpose of the basic tax.

Elopak A/S and Tetra Pak A/S find that the statistics presented by the Norwegian authorities are outdated. If 1994 figures had been presented, they would, according to the companies, have documented an increase in the use of one-way packaging based on the success of new drinks such as Snapple and Fruitopia, which are both sold in disposable glass bottles.

Prosess og foredlingsindustriens Landsforening (PIL)<sup>(3)</sup> holds the principal view that a tax policy which discriminates between different materials for beverage packaging has no environmental justification. PIL has recently<sup>(4)</sup> in cooperation with other industry organizations established agreements<sup>(5)</sup> for increased waste recycling with the Ministry of Environment and industry. The agreements concern return arrangements to be financed by private fees paid by the industry itself. PIL finds the present tax system for beverage packaging to constitute a hindrance for establishing a recycling system for all beverage packaging materials in line with systems for other packaging waste and incompatible in principle with the agreements referred to above.

Norges Dagligvarehandels Forbund (DF)<sup>(6)</sup> refer to the problems the suppliers of commodities for household use have experienced in establishing a return system for glass, metal and PET waste due to the Norwegian tax system for beverage packaging. Reference

<sup>(1)</sup> Beverage Can Makers Europe, founded in 1990, describes itself as a non-profit organization representing the European beverage can making industry.

<sup>(2)</sup> Elopak A/S and Tetra Pak A/S are Norwegian producers of beverage packaging based primarily on carton.

<sup>(3)</sup> Prosess- og foredlingsindustriens Landsforening counts most Norwegian producers of beverage packages, including PLM Moss Glassverk A/S, among its members.

<sup>(4)</sup> The agreements were concluded on 14 September 1995.

<sup>(5)</sup> The agreements lay down targeted collection/recycling levels for plastic, metal, carton and brown paper.

<sup>(6)</sup> Norwegian federation of suppliers of general commodities for household use (groceries).

is made to the so-called 'Resirk-group' <sup>(1)</sup> where DF participates. The group has submitted an application to the Norwegian Pollution Control Authority (SFT <sup>(2)</sup>) for establishing a return system for one-way packaging. This return system for packaging waste may be approved by SFT. However, beverages contained in non-reusable packages, will still be subject to a per unit taxation of Nkr 1,30 plus VAT <sup>(3)</sup>. The tax system for beverage packaging is considered by DF to undermine the economic viability of the 'Resirk'-system, thereby demonstrating that the Norwegian tax system for beverage packaging has the effect of discriminating against competition from imported goods.

The Norwegian Government did not make any specific observations with regard to the above comments.

### III. APPRECIATION

#### The proposed measure constitutes State aid

The Norwegian authorities have by the notification of 20 January 1995 fulfilled their obligation pursuant to Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement to notify plans to grant or alter aid.

Since the aid is to be awarded in the form of a relief from a tax levied by the Norwegian Government it shall be granted by the State through State resources. Although the relief from the basic tax on non-reusable packaging for beverages will apply equally to both domestic and imported products and not favour the only Norwegian producer of glass packaging, PLM Moss Glassverk A/S, *vis-à-vis* other producers of glass packaging within the EEA, it may still be concluded that the measure constitutes State aid. A relief for glass containers from the basic tax will primarily benefit PLM Moss Glassverk A/S as the dominant producer of glass for the Norwegian market. The company's production will benefit from the relief of the basic tax on its production of non-reusable glass containers for beverages. The remaining economic benefits from the tax relief for glass packaging are likely to be distributed on a wide number of glass packaging producers or other operators in the beverage markets. However as the PLM Moss Glassverk A/S is facing actual and potential competition from close substitutes in other packaging material than glass within the EEA, the aid threatens to distort competition and affect trade within the territory covered by the EEA Agreement. It is therefore concluded that the proposed measure constitutes aid in the meaning of Article 61 (1) of the EEA Agreement. This conclusion is confirmed by the comments submitted to the Authority by interested parties and the Norwegian authorities.

#### Derogations from the general prohibition on State aid

The Authority assessed as part of the decision to open the investigation procedure whether any of the derogation clauses pursuant to Article 61 (2) and (3) of the EEA Agreement were applicable in order that the aid may be exempted from the general prohibition of aid pursuant to Article 61 (1). It was concluded that the exemptions referred to pursuant to Article 61 (2) (a) to (c) and Article 61 (3) (a), (b) and (d) are inapplicable in the case at hand.

The notification and the comments from the Norwegian authorities emphasize, as an additional justification for the proposed aid, the difficult industrial and employment situation in the county of Østfold where the company is an important part of the industrial base in Moss. The Authority has found that the derogations pursuant to Article 61 (3) (a) and (c) to allow regional aid are not applicable for the case at hand as the county of Østfold is not covered by the Norwegian map of assisted areas <sup>(4)</sup> eligible for regional aid, and the Norwegian authorities have neither proposed any amendment to the existing map of assisted areas nor is the aid granted under a general system of regional aid.

<sup>(1)</sup> The 'Resirk-group' is formed by representatives of retailers and, *inter alia*, breweries and mineral water producers.

<sup>(2)</sup> Statens forurensningstilsyn.

<sup>(3)</sup> Value added tax.

<sup>(4)</sup> Decision of 16 November 1994 on the map of assisted areas (Norway), 157/94/COL (OJ No C 14, 19. 1. 1995, p. 4).

The notification and the comments submitted to the Authority by Norway during the investigation procedure seek to justify the proposed aid primarily with reference to the need to relieve PLM Moss Glassverk A/S from the negative economic effects of the basic tax on non-reusable beverage packaging in order to secure the Norwegian recycling system for glass waste. Therefore, and in accordance with the decision to open the investigation procedure, Article 61 (3) (c) in so far as it provides for the possibility of authorizing 'aid 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', in particular in connection with the rules on aid for environmental protection as set out in Chapter 15 of the State Aid Guidelines, is considered as the only relevant derogation clause under which to examine the proposed aid.

In order to benefit from any of the exemption clauses, the measure must not conflict with other provisions of the EEA Agreement, such as the provisions relating to the free movement of goods.

The aid would primarily improve the financial performance of PLM Moss Glassverk A/S and/or allow the company to hold a higher market share in the packaging market. The aid would not be linked to initial investment, job creation or any other project limited in time and would, thus, constitute operating aid.

#### **Operating aid on environmental grounds**

According to paragraph 15 (4) (3) (1) of the State Aid Guidelines, the EFTA Surveillance Authority will normally not approve operating aid which relieves firms of costs resulting from the pollution and nuisance they cause. However, the Authority may make an exemption to this principle in certain well-defined circumstances. The European Commission has done so in the fields of waste management and relief from environmental taxes. Such cases are assessed on their merits and in the light of the strict criteria to be applied in the two fields just mentioned. These are that the aid:

1. must only compensate for extra production costs by comparison with traditional costs;
2. should be temporary and degressive, so as to provide an incentive to reduce pollution or introducing more efficient use of resources more quickly;
3. must not conflict with other provisions of the EEA Agreement and in particular those relating to the free movement of goods and services.

As regards the first of the above three criteria, the Authority notes that the extra costs of producing beverages in non-reusable glass packages caused by the basic tax are compensated by the proposed relief. Therefore, the proposed aid seems to meet the first condition.

As to the second condition, the Norwegian Government has made a commitment to 'follow developments in the market for recycled glass closely and if necessary reconsider the need for granting an exemption for recycled glass from the basic tax.' The Authority considers that this commitment is not sufficient to limit the period of availability of the aid. Therefore, the aid would not be temporary because it is to be granted for an indefinite period of time. Furthermore, the aid is not degressive and could even increase over time in the event that the rate of the basic tax, from which the relief is to be granted, is raised. Consequently, the second condition for allowing operating aid is not met.

Regarding the third condition, the Authority finds that the proposal to exempt glass from the basic tax, would lead to a different tax burden, as far as the basic tax is concerned, for recyclable glass containers as compared to other recyclable containers such as containers made of PET or metal. The differentiation seems to be motivated by rendering a recycling system for glass viable while recycling of other packaging material is not facilitated by an equivalent exemption from the basic rate. It must therefore be assumed that waiving of the basic tax on recyclable glass containers amounts to a different taxation of similar or competing domestic products. Furthermore, some of those

containers which would continue to be subject to the basic tax, such as aluminium cans, are widely used for non-domestic products while those products exempt from the basic tax, be it due to their reusability or because of the exemption of glass bottles from the basic tax, would be typically used for domestic products. Thus the proposed exemption seems to lead to imposing a tax burden on certain imported products in excess of that imposed on similar or competing domestic products.

The observations in the preceding paragraph are to a wide extent confirmed by the comments submitted to the Authority by interested parties. The comments from the interested parties indicate also that the basic tax may be a hindrance to establishing recycling systems for packaging materials other than glass. The comments received from the Norwegian authorities do not contest this view. Therefore, the Authority cannot conclude that the proposed exemption of glass from the basic tax would result in a tax system which would be compatible with Article 14 of the EEA Agreement. Consequently the third condition above for allowing operating aid is not met.

#### **Relief from environmental taxes**

According to paragraph 15 (4) (3) (3) of the State Aid Guidelines temporary relief from new environmental taxes may be authorized where it is necessary to off-set losses in competitiveness, particularly at the international level. It should be noted that in the present case, this requirement must be seen as constituting an additional requirement to the conditions discussed above for granting operating aid on environmental grounds.

The present tax from which an exemption is proposed seems to have been intended to reduce the use of non-reusable beverage packages for environmental reasons as the Norwegian authorities in accordance with the concept of a waste hierarchy, give reuse a higher priority than material recycling and energy recovery. An inevitable consequence of this is that the producers and importers of such packages will suffer from the tax. In its decision to open the investigation procedure, the Authority stated that it appeared that PLM Moss Glassverk A/S should be able to at least partly compensate for losses in the non-reusable packages market by increased demand in the reusable packages market and, furthermore, that the tax on non-reusable glass packages applies to all such packages whether produced by PLM Moss Glassverk A/S or imported to Norway. On the other hand, the tax is not levied on the glass packages exported from Norway. Therefore, the international competitiveness of the production by PLM Moss Glassverk A/S appears not to be affected by the tax on non-reusable glass packages.

The Norwegian authorities argue that the question of loss of competitiveness, particularly at the international level, must be seen in a wider perspective, as the company has also been negatively affected by the introduction of other environmental taxes and has experienced a decline in the demand for its products, mainly because of the introduction of new products (plastic bottles). The Norwegian authorities state further that the fact that tax is not levied on exports, does not mean that the international competitiveness of the company is not affected, as it is evident that the company has suffered a loss and the basic tax is a hindrance in the maintaining and establishing of a sufficient domestic production base.

The Authority does not question in principle the argument that a certain domestic production base may be a requirement for competing at international level. However, the Norwegian authorities have not provided any estimates of additional losses the company has experienced due to other environmental taxes than the basic tax. The Authority does not question that the company has suffered a loss by the introduction of the basic tax. This is evident as it follows from the intended incentive effect of the basic tax, i.e. to reduce the demand for all non-reusable beverage packaging independent of the material. However, the demand for non-reusable beverage packaging or by developing new non-reusable beverage packaging, which in itself would be contrary to the Norwegian model of a waste hierarchy. Moreover, the Norwegian authorities have not provided any evidence suggesting that glass packaging has any less damaging effects on the environment compared to other packaging materials. Therefore the Authority concludes that the company's loss in competitiveness is primarily of a structural nature due to the introduction of competing substitutes. Consequently, also, this additional condition for granting a relief from environmental taxes is not met.

### Conclusion

For the reasons above, and independently of what may be the final outcome of the Authority's examination of the compatibility of the basic tax with Article 14 of the EEA Agreement, it must be concluded that the proposed aid does not meet the requirements for an exemption pursuant to Article 61 (3) (c) for 'aid to facilitate the development of certain economic activities... where such aid does not adversely affect the trading conditions to an extent contrary to the common interest.' Norway must therefore not put the proposed measure into effect,

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided not to authorize the notified aid to PLM Moss Glasswerk A/S in the form of an exemption for glass packaging from the basic tax on non-reusable beverage packaging (Aid No 95-002).
2. The Norwegian Government must not put the proposed measure referred to in Article 1 into effect.
3. The European Commission is informed, in accordance with Protocol 27 (d) of the EEA Agreement, by a copy of the Decision.
4. Other EFTA States parties to the EEA Agreement, EC Member States and interested parties are informed by the publication of the decision in the EEA Section of and the EEA Supplement to the *Official Journal of the European Communities*.
5. This Decision, which is authentic in the English language, is addressed to Norway.

Done at Brussels, 31 October 1995.

*For the EFTA Surveillance Authority*

KNUT ALMESTAD

*President*

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## EFTA SURVEILLANCE AUTHORITY DECISION

No 124/95/COL

of 6 December 1995

on the sixth amendment of the procedural and substantive rules in the field of State aid

THE EFTA SURVEILLANCE AUTHORITY,

has amended the procedural and substantive rules in the field of State aid<sup>(1)</sup>, adopted on 19 January 1994<sup>(2)</sup>, as last amended on 9 June 1995<sup>(3)</sup>, as follows:

1. Chapter 6 of the State aid guidelines shall be replaced by the following:

**'6. SPECIFICITIES REGARDING AID UNLAWFUL ON PROCEDURAL GROUNDS**

1. Apart from special features which are indicated below, the procedure with regard to aid unlawful on procedural grounds follows the same pattern as with notifications.

**6.1. *Notion of aid unlawful on procedural grounds***

1. As the term "unnotified aid" would be too narrow to cover all aid put into effect in a way which infringes the last sentence of Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement, the EFTA Surveillance Authority decided to use the notion of "aid unlawful on procedural grounds" (referred to hereinafter as "unlawful aid").

The term covers:

- (a) aid provided without notification;
- (b) aid granted by incorrect application of an approved aid scheme (aid "being misused" in the meaning of Article 1 (2) of Protocol 3 to the Surveillance and Court Agreement);
- (c) aid that is notified late, i.e. notified after being "put into effect"; and
- (d) aid notified beforehand but "put into effect" before the EFTA Surveillance Authority has taken a decision<sup>(1)</sup>.

**6.2. *Request for information***

1. When the EFTA Surveillance Authority becomes aware of a possibly unlawful aid case, it requests the EFTA State concerned to supply full details on the matter normally within 20 working days. This is the same as the usual period allowed for supplying additional information on notified aid cases (see 3.2.4. (2)). A reminder will be sent if necessary.
2. It is recalled that the EFTA Surveillance Authority is empowered to proceed and to take a decision on the basis of the information available (see 5.4.(3)), even in the absence of any submission to it from the EFTA State concerned.

<sup>(1)</sup> Hereinafter referred to as the State aid guidelines.

<sup>(2)</sup> OJ No L 231, 3. 9. 1994, p. 1.

<sup>(3)</sup> OJ No L 175, 27. 7. 1995, p. 59.

#### 6.2.1. Injunction ("interim measures")

1. The EFTA Surveillance Authority may request by an interim decision the EFTA State to suspend payment of the aid pending the outcome of the investigation<sup>(2)</sup>. The procedure is as follows:
2. Once it has concluded that aid has been granted unlawfully, the EFTA Surveillance Authority must give the EFTA State concerned an opportunity to submit its comments before taking a decision requiring it to suspend immediately the payment of the aid pending the outcome of the investigation<sup>(3)</sup>.
- 3.<sup>(4)</sup> The EFTA Surveillance Authority considers that in some cases an order requiring the suspension of aid which has been unlawfully granted will not go far enough: such an order will not always counteract the infringements of the procedural rules which may have been committed, particularly where all or part of the aid has already been paid out. The Authority would therefore inform the EFTA States that in appropriate cases it may — after giving the EFTA State concerned the opportunity to comment and to consider alternatively the granting of rescue aid, as defined in Chapter 16 of these guidelines — adopt a provisional decision ordering the EFTA State to recover any moneys which have been disbursed in infringement of the procedural requirements. The aid would then have to be recovered in accordance with paragraphs 6.2.3 (2) and 6.2.3 (3) of these guidelines.
4. If the EFTA State fails to suspend payment of the aid or to recover the aid, the EFTA Surveillance Authority is entitled, while carrying out the examination on the substance of the matter, to bring the matter directly before the EFTA Court and apply for a declaration that such payment amounts to an infringement of the Agreement<sup>(5)</sup>.

#### 6.2.2. Conduct of proceedings

1. In cases of unlawful aid, the EFTA Surveillance Authority endeavours to take a decision within two months after receiving complete information.
2. If, in unlawful aid cases, the EFTA Surveillance Authority finds that the aid is compatible with the functioning of the EEA Agreement, it must take a positive decision on the merits of the case.

#### 6.2.3. Recovery orders

1. In negative decisions on cases of unlawful aid the EFTA Surveillance Authority orders, as a rule, the EFTA State to reclaim the aid from the recipient<sup>(6)</sup>.
2. The recovery is to be effected in accordance with national law including the provisions concerning interest due for late payment of amounts owing to the government, interest which should normally run from the date of the award of the unlawful aid in question. The relevant provisions of national law must be applied in such a way that recovery is not rendered practically impossible<sup>(7)</sup>.
- 3.<sup>(8)</sup> The EFTA Surveillance Authority takes the view that for the purpose of restoring the *status quo* commercial interest rates provide a relevant measure of the advantage improperly conferred on the aid recipient. The Authority accordingly informs the EFTA States that in any decisions it may adopt ordering the recovery of aid unlawfully granted it will apply the reference rate of interest used in the calculation of the net grant equivalent of regional aid measures<sup>(9)</sup> as the basis for the commercial rate.

<sup>(1)</sup> See 3.3. for the interpretation of "put into effect".

<sup>(2)</sup> ECJ, 14. 2. 1990, Case C-301/87: *France v. Commission* (1990) ECR I-307 (paragraphs 19-20).

<sup>(3)</sup> *Ibid.*, 356 (paragraph 19).

- (<sup>4</sup>) This paragraph corresponds to the Commission's letter to the Member States of 30 April 1995 (OJ No C 156, 22. 6. 1995, p. 5).
- (<sup>5</sup>) Ibid., 357 (paragraph 23).
- (<sup>6</sup>) First stated in ECJ, 12. 7. 1973, Case 70/72, *Commission v. Germany* (1973) ECR 813, 828-829 (paragraphs 10-13); see also ECJ 21. 3. 1990, Case C-142/87, *Belgium v. Commission* (1990) ECR I-959, 1020 (paragraphs 65-66) and ECJ, 24. 2. 1987, Case 310/85, *Deufil v. Commission* (1987) ECR 901, 927 (paragraph 24).
- (<sup>7</sup>) See ECJ, 21. 3. 1990, Case C-142/87, *Belgium v. Commission* (1990) ECR I-959, 1018-1020 (paragraphs 58-63); see also ECJ, 20. 9. 1990, Case 5/89, *Commission v. Germany* (1990) ECR I-3437, 3456 (paragraph 12); ECJ, 21. 2. 1990, Case C-74/89, *Commission v. Belgium* (1990) ECR I-491; and ECJ, 2. 2. 1989, Case 94/87, *Commission v. Germany* (1989) ECR 175, 192 (paragraph 12).
- (<sup>8</sup>) This paragraph corresponds to the Commission's letter to the Member States of 22 February 1995 (SG(95) D/1983).
- (<sup>9</sup>) See paragraph 27 (3) (f) of the present guidelines.'

2. Chapter 18 of the State Aid Guidelines shall be replaced by the following;

'18. AID TO EMPLOYMENT(<sup>1</sup>)

18.1. *Introduction*

1. Continued unemployment at unacceptably high levels is still amongst the chief economic and social problems facing most European countries. In the 1980s the EFTA countries enjoyed very low rates of unemployment compared with the rest of Europe (between approximately 1 % and 3 % of the labour force). However, the latest recession brought about sharp increases in unemployment rates in Norway and Iceland, to levels unprecedented for decades, 6 % in Norway in 1993 and 4,7 % in Iceland in 1994. Liechtenstein on the other hand has maintained a very low rate of unemployment throughout.
2. The EFTA States are now in common with much of Europe experiencing economic recovery, after the recession of recent years, and the overall employment situation has somewhat improved, especially in Norway. The unfavourable employment conditions in recent years have nevertheless been characterized by very significant increases in youth and long-term unemployment as well as employment problems of older people. This structural unemployment, although less severe than in most other European countries, is a persistent problem showing little signs of improvement.
3. Experience in the EFTA States and EC Member States generally shows that, once people become unemployed, they can expect to spend a relatively long period looking for a new job because they will have become less employable. This phenomenon is responsible for an unduly high proportion of the long-term unemployed in Europe (over 40 % of total unemployed), the upshot being increasingly widespread social exclusion.
4. With the upturn in economic activity, it is expected that the coming years will see a positive trend in job creation. However, this trend may not be strong enough to reduce the unemployment rate to socially acceptable levels. It is now accepted that structural reasons lie behind the persistently high rates of unemployment in Europe, and this situation calls for specific policies to improve labour-market adaptability.
5. The EC Member States and the EFTA States have drawn up a package of recommendations covering the following five priority areas(<sup>2</sup>):
  - boosting investment in education and training,

- improving internal and external flexibility mechanisms in order to enhance the employment content of growth,
  - reducing indirect labour costs, in particular by reducing direct taxation of labour,
  - improving the effectiveness of active policies, notably by redirecting public expenditure on passive income support for the unemployed,
  - stepping up measures to promote the employment of underprivileged groups in the labour market, such as the long-term unemployed, young people and older workers.
6. Against this background, tax and financial measures can be expected to play an important role in encouraging firms to hire workers experiencing utmost difficulty in entering the labour market. Although they might be less effective because of substitution or windfall effects, grants per job created for the long-term unemployed, for example, and targeted exemptions from social security contributions reduce labour costs at the bottom end and thus offset the difference associated with lower-than-average productivity.
7. The same type of measures may also give firms an incentive to invest more in vocational training. In such cases, the grant or tax concession must reflect the externalities associated with the worker exploiting the newly acquired knowledge on the labour market.
8. Although the objective of such measures is to improve the situation of workers on the labour market, it must be recognized that firms also benefit in that they are able to reduce their labour costs because of the intermediary role they play in implementing tax and financial measures. That is why steps must be taken to ensure that proliferation of measures to promote employment does not adversely affect the EFTA Surveillance Authority's parallel efforts to reduce artificial distortions of competition under Articles 61 and 62 of the EEA Agreement.
9. These guidelines pursue a number of objectives:
- to clarify the interpretation of Article 61 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement with regard to State aid in the field of employment in order to ensure greater transparency of notification decisions under Article 1 of Protocol 3 to the Surveillance and Court Agreement,
  - to ensure consistency between the rules of competition and the implementation of the policies used to combat unemployment,
  - to make explicit, by defining the different types of aid and their objectives, the approach normally taken by the EFTA Surveillance Authority, namely to give sympathetic consideration to State aid designed to improve the employment situation.

#### 18.2. *Scope of Article 61 (1) of the EEA Agreement*

1. The guidelines presented here cover only those measures falling within the scope of Article 61 (1) of the EEA Agreement, which stipulates that "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 the EEA Agreement". Such State aid measures must be notified in advance to the EFTA Surveillance Authority pursuant to Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement, unless they are within the limits of the *de minimis* rule. The notification obligation applies to aid schemes as well as to all cases of *ad hoc* employment aid outside authorized schemes.

2. A number of employment-policy measures are not caught by Article 61 (1) of the EEA Agreement because:

- they constitute aid to individuals that does not favour certain undertakings or the production of certain goods, or
- they do not affect trade between the Contracting Parties, or
- they are “general” measures.

This is clearly the case, in particular, with measures to provide guidance and counselling, general assistance and training for the unemployed (aid to individuals that does not favour certain undertakings or the production of certain goods) and aid designed to improve labour law or to adapt the education system (general measures).

#### 18.2.1. Aid to individuals that does not favour certain undertakings or the production of certain goods

1. Measures to assist individuals the purpose or effect of which is not to favour certain undertakings or the production of certain goods do not constitute State aid within the meaning of Article 61 (1) of the EEA Agreement.
2. In so far as such measures apply automatically to individuals on the basis of objective criteria and without favouring certain undertakings or the production of certain goods, they do not constitute state aid if they are designed:
  - to improve the personal situation of workers on the labour market or to make it possible for them to find work or become socially integrated, in particular by way of vocational training or apprenticeships,
  - to supplement the income of certain workers,
  - to encourage the employment of women in occupations traditionally carried on by men or the employment of individuals from ethnic minorities,
  - to foster mobility of workers, the creation of self-employed activities or the recruitment of certain categories of workers having to contend with temporary socio-vocational disadvantages,
  - to promote the employment of persons suffering from permanent physical or mental disabilities.

#### 18.2.2. Effect on trade between the Contracting Parties

1. Aid is caught by Article 61 (1) of the EEA Agreement only if it affects trade between the Contracting Parties. Thus, employment aid in respect of activities that do not involve trade between the Contracting Parties (e.g. neighbourhood care services, certain local employment initiatives) does not fall within the scope of Article 61 (1). The EFTA Surveillance Authority considers that this is also the case with “*de minimis*” aid<sup>(3)</sup>, which encompasses most forms of aid for promoting self-employed activities.

#### 18.2.3. General measure or State aid

1. The distinction between general measures and State aid lies outside the scope of these guidelines.
2. It should be noted that a number of general measures may affect competitive conditions and trade between the Contracting Parties as much as State aid but,

since these measures do not constitute State aid within the meaning of Article 61 (1) of the EEA Agreement, the elimination of any distortions of competition that they might cause is not covered by the monitoring of State aid provided for in Articles 61, 62 and 63 of the EEA Agreement.

3. Employment is also promoted by other measures such as those to promote training and the acquisition of new skills. In this respect, it may be useful to point out that in many cases the subsidies for vocational training/retraining do not constitute State aid caught by Article 61 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement and that, where such measures fall within the scope of Article 61 (1) of the Agreement, the EFTA Surveillance Authority usually gives them sympathetic consideration.
4. The same is true of measures to improve working conditions.

### 18.3. *State aid to employment*

1. One point needs to be made clear concerning the scope of these guidelines; aid to employment, as covered by these guidelines, is aid not linked to investment.
2. Even where investment aid is calculated per job created or includes premiums for job creation, it does not constitute employment aid as such since it is not directly intended to create or maintain jobs. Its effects in combating unemployment are indirect, through the realization of productive investment to bring about a structural change in the firm. The reference to jobs created is only one criterion for assessing aid to the investment for which the aid is intended. In view of its purpose and its permanent effects on the industrial structure, such aid should be treated just like any other investment aid and should be subject to the normal assessment criteria.

#### 18.3.1. *General comments*

1. By granting employment aid to certain firms or to the production of certain goods, the authorities are taking over part of those firms' labour costs, which are normal expenditure incurred in their own interest, and conferring a financial advantage that improves their competitive position. In so far as the products or services concerned are in competition with those of firms from other States parties to the EEA Agreement, such aid is likely to distort competition and affect trade between the Contracting Parties; consequently, it is, in principle, incompatible with the functioning of the EEA Agreement. Within the single market, aid granted to reduce labour costs can lead to distortions of intra-EEA competition and deflections in the allocation of resources and mobile investment, to the shifting of unemployment from one country to another, and to relocation.
2. The EFTA Surveillance Authority considers that, without rigorous controls and strict limits, employment aid can have harmful macro-economic effects which cancel out its immediate effects on job creation. If the aid is used to protect firms exposed to intra-EEA competition, it could have the effect of delaying adjustments needed to ensure the competitiveness of European industry. Care must also be taken to ensure that the granting of state aid does not lead to escalating subsidization, making the aid ineffective and wasting public money on all sides. Lastly, the danger is that, if granted in an uncontrolled fashion, this type of aid will simply shift unemployment elsewhere without helping to resolve the employment problem in the territory covered by the EEA Agreement and will therefore distort competition to an extent contrary to the functioning of the EEA Agreement.

3. The EFTA Surveillance Authority has been sympathetic to employment aid, particularly where it is intended to encourage firms to create jobs or to hire individuals who face particular difficulties in finding work. This attitude is justified by the fact that the lower productivity of these workers reduces the financial advantage accruing to the firm and by the fact that the workers also benefit from the measure and are likely to be excluded from the labour market unless employers are offered such incentives. These rules confirm that position.

#### 18.3.2. Forms of aid

1. Employment aid introduced by EC Member States and EFTA States usually takes the form of grants (single or monthly payments) and exemptions for certain firms from employer's social security contributions or from certain taxes. In some cases the different types of aid are combined.

#### 18.3.3. Types of employment aid

1. The concepts of aid to maintain jobs and aid to create jobs need clarification because they are of major relevance to whether the aid is compatible with the functioning of the EEA Agreement.
2. Aid to maintain jobs means support given to a firm to persuade it not to lay off its workers, with the subsidy usually being calculated on the basis of the number of employees at the time the aid is granted.
3. Aid to create jobs, on the other hand, provides employment for workers who have never had a job or who have lost their previous job, and is calculated on the basis of the number of jobs created. It should be made clear that job creation refers to net job creation, i.e. the creation of an additional job in relation to the (average) work force (over a period of time) of the firm concerned. Simply replacing a worker without actually increasing the work force, and hence without creating new jobs, does not constitute genuine job creation.
4. One form of job creation, unusual because there is no increase in the number of hours worked in the firm, is job sharing, i.e. apportionment of the overall amount of available work between a larger number of jobs with a proportionally lower number of hours worked.

#### 18.4. *Application of the derogations in Article 61 (2) and (3) of the EEA Agreement*

1. Where aid to promote employment is caught by the ban laid down in Article 61 (1) of the EEA Agreement, an examination must be made of whether it qualifies for one of the derogations in Article 61 (2) and (3). Here a distinction must be made between aid that creates new jobs and aid that maintains existing jobs.
2. The EFTA Surveillance Authority is generally sympathetic to aid intended to create jobs. Despite the risks involved for intra-EEA competition, such aid improves the employment content of growth. Consequently, taking due account of the application of the specific sets of rules governing certain branches of industry, and in so far as the amount of aid per worker is justified and does not represent too high a proportion of the firm's production costs, it may be concluded that, when a firm makes this type of effort, the aid it receives for the purpose generally qualifies for the derogation in Article 61 (3) (c) in that it is intended to facilitate the development of certain activities, provided that it does not adversely affect trading conditions to an extent contrary to the functioning of the EEA Agreement.

3. In assessing employment aid, the EFTA Surveillance Authority will apply the following criteria:

- it will be favourably disposed towards aid to create new jobs in SMEs<sup>(4)</sup> and in regions eligible for regional aid<sup>(5)</sup>. Outside these two categories, it will also look favourably upon aid to encourage firms to take on certain groups of workers experiencing particular difficulties entering or re-entering the labour market. In the latter case, there is no need for net job creation, provided that the post falls vacant following voluntary departure and not redundancy,
- it will also be sympathetic towards aid to promote job sharing, which allows the overall amount of work available to be distributed among a larger number of posts with shorter working hours, thereby offering the possibility of (part-time) work to a greater number of people,
- for aid in the preceding categories to be viewed favourably, the EFTA Surveillance Authority will also scrutinize the terms of the employment contract, in particular compliance with the obligation to hire workers for an indefinite period and to maintain newly created jobs for a minimum period, conditions which ensure that the job created is a stable one. Any other guarantee of the permanence of new jobs, particularly the arrangements for payment of the aid, will also be taken into account,
- the EFTA Surveillance Authority will make sure that the level of aid does not exceed that which is necessary to provide an incentive to create jobs, taking account, where appropriate, of any difficulties facing SMEs and/or disadvantages affecting the region concerned. The aid must be temporary,
- if the creation of jobs for which aid is granted is combined with the training or retraining of the workers concerned, this will make a particularly positive contribution to a favourable assessment by the EFTA Surveillance Authority.

4. Aid to maintain jobs, which is similar to operating aid, will be authorized only under the following conditions:

- such aid may be authorized where, in accordance with Article 61 (2) (b) of the EEA Agreement, it is intended to make good the damage caused by natural disasters or exceptional occurrences. Under certain conditions, aid to maintain jobs may also be authorized in regions eligible for the derogation under Article 61 (3) (a) the EEA Agreement concerning the economic development of areas where the standard of living is abnormally low or where there is serious underemployment<sup>(6)</sup>,
- where aid to maintain jobs is granted as part of a rescue, restructuring or conversion plan for an ailing firm, it will have to be notified and will be assessed applying the relevant EFTA Surveillance Authority guidelines<sup>(7)</sup>.

Naturally, these considerations concern solely aid to maintain jobs and the EFTA States are free to take any appropriate measures to ensure that employment is maintained by general measures, such as a general reduction in taxes and social security contributions paid by firms.

5. Aid to create jobs that is limited to one or more sensitive sectors experiencing overcapacity or in crisis is also generally viewed less favourably than aid to create new jobs that is available to the economy as a whole.
6. Such sectoral aid constitutes an advantage for the sector(s) concerned which improves their competitive position in relation to firms from other EFTA States and EC Member States. Aid that reduces wage costs throughout one or more productive sectors reduces production costs in those sectors, and this enables them to improve their market share to the detriment of their EEA competitors both

within the EFTA State or EC Member State concerned and for exports inside and outside the territory covered by the EEA Agreement, with all the attendant implications in terms of a worsening of the employment situation in those sectors in other EFTA States or EC Member States. Consequently, the protective effect of such aid for the sector(s) in question, in particular those in crisis, and its adverse effects on employment in competing sectors in other EFTA States or EC Member States generally outweigh the common interest involved in active measures to reduce unemployment; the EFTA Surveillance Authority will usually consider such aid to be incompatible with the functioning of the EEA Agreement. However, where such aid is granted in a region affected by serious underemployment, the EFTA Surveillance Authority will take this fact into account.

7. The EFTA Surveillance Authority will, however, be more favourably disposed towards aid to create new jobs where the jobs are in growth niche markets or sub-sectors that hold out the prospect of considerable job creation.

#### 18.5. *Conclusion*

1. If the EFTA Surveillance Authority concludes, after examining employment aid schemes planned by the EFTA States and subject to notification, that the arrangements and conditions conform to these guidelines, it may regard them as compatible with the functioning of the EEA Agreement by virtue of the derogation in Article 61 (3) (c), which applies to aid to facilitate the development of certain activities without adversely affecting trading conditions to an extent contrary to the common interest.
2. However, where aid to employment concerns certain sectors, firms or categories of aid which are governed by specific rules, it may be regarded as compatible with the functioning of the EEA Agreement only if it complies with the conditions laid down in those rules applicable in the context of the EEA Agreement.
3. A report on the application of these guidelines will be submitted and, if necessary, the guidelines will be reviewed five years after they enter into force.

<sup>(1)</sup> This chapter corresponds to the Guidelines on aid to employment adopted by the Commission on 19 July 1995 (OJ No C 334, 12. 12. 1995).

<sup>(2)</sup> See the guidelines and recommendations relating to the white paper on growth, competitiveness and employment adopted at the European Council meeting in Essen in 1994 as well as the joint communiqué of the presidencies of the joint meeting of EU and EFTA Ministers of Finance and Economy on 18 September 1995.

<sup>(3)</sup> See Chapter 12 of these guidelines, the application and implementation of the "*de minimis*" rule.

<sup>(4)</sup> For definition of SMEs see Chapter 10 of these guidelines on state aid to small and medium-sized enterprises.

<sup>(5)</sup> See Part VI of these guidelines.

<sup>(6)</sup> See Part VI, in particular Chapter 28, of these guidelines.

<sup>(7)</sup> See Chapter 15 of these guidelines.

3. The following text shall be inserted in the State Aid Guidelines as Chapter 30:

#### '30. AID TO THE AVIATION SECTOR

In the autumn of 1994 the EC Commission adopted guidelines concerning application of the State aid provisions of the EC Treaty and the EEA Agreement in the aviation sector<sup>(1)</sup>.

The EFTA Surveillance Authority has not been notified of any aid by the EFTA States to enterprises in the aviation sector. However, should the occasion arise to assess such

aid, the Authority will apply criteria corresponding to those found in the Commission guidelines referred to above.

(<sup>1</sup>) Application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector (OJ No C 350, 10. 12. 1994).'

4. The following text shall be inserted in the State Aid Guidelines as Chapter 31:

**'31. AID TO SHIPBUILDING GRANTED AS DEVELOPMENT ASSISTANCE TO A DEVELOPING COUNTRY(<sup>1</sup>)**

1. Article 4 (7) of the Act referred to in point 1b of Annex XV to the EEA Agreement on aid to shipbuilding(<sup>2</sup>) establishes that aid to shipbuilding and ship conversion granted as development assistance to a developing country shall not be subject to the prevailing maximum production aid ceiling, set by the EFTA Surveillance Authority in accordance with Article 4 (2) of the Directive.
2. Such aid may be deemed compatible with the functioning of the EEA Agreement provided that it complies with the terms laid down for that purpose by OECD Working Party No 6 in its agreement concerning the interpretation of Articles 6 to 8 of the OECD Council resolution of 3 August 1981 (Understanding on export credits for ships).
3. Any such individual proposal is subject to prior notification to the EFTA Surveillance Authority. On the basis of the notification, the Authority shall verify the particular development content of the proposed aid and satisfy itself that it falls within the scope of the Understanding.
4. As regards the latter point, the EFTA Surveillance Authority ensures that the proposed aid complies with the criteria laid down in OECD document C/WP6(84)3 of 18 January 1984 concerning the interpretation of Article 6 of the Understanding on export credits for ships(<sup>3</sup>).
5. Accordingly, the following criteria must be adhered to by the EFTA States granting development aid:
  1. The aid may not be granted for construction of ships which will be operated under a flag of convenience.
  2. In the event that the aid cannot be classified as public development aid in the framework of OECD the donor must confirm that the aid is part of an inter-governmental agreement.
  3. The donor must give appropriate assurances that the real owner is resident in the beneficiary country and that the beneficiary company is not a non-operational subsidiary of a foreign company.
  4. The beneficiary must give undertakings not to sell the ship without prior government approval.

Furthermore the aid granted must contain a grant element of at least 25 % in accordance with the OECD method of calculation, see OECD document C/WP6(85)62 of 21 October 1985.

6. The Understanding does not, on the other hand, provide for any criteria applicable to the classification of countries eligible for development aid. The EFTA Surveillance Authority has decided, taking into account the practice of the EC Commission, to consider compatible with the functioning of the EEA Agreement the granting of development aid to the following countries under the terms of Article 4 (7) of the Directive:

(a) ACP States(<sup>4</sup>)

(b) Overseas countries and territories of EC Member States(<sup>5</sup>)

- (c) All countries not included in (a) or (b) above which are classified on the OECD DAC-list as least-developed countries (LLDC), low-income countries (LIC) or lower middle-income countries (LMIC). These countries are the following:
- Afghanistan (LLDC),
  - Bangladesh (LLDC),
  - Bhutan (LLDC),
  - Bolivia (LIC),
  - Burma (LLDC),
  - China (LIC),
  - Cook Island (LMIC),
  - Costa Rica (LMIC),
  - Cuba (LMIC),
  - Dominican Republic (LMIC),
  - Ecuador (LMIC),
  - Egypt (LIC),
  - El Salvador (LMIC),
  - Guatemala (LMIC),
  - Haiti (LLDC),
  - Honduras (LIC),
  - India (LIC),
  - Indonesia (LIC),
  - Kampuchea, Democratic (LIC),
  - Korea, Democratic People's Republic of (LMIC),
  - Laos (LLDC),
  - Lebanon (LMIC),
  - Maldives (LLDC),
  - Mongolia (LIC),
  - Morocco (LMIC),
  - Nepal (LLDC),
  - Nicaragua (LIC),
  - Pakistan (LIC),
  - Paraguay (LMIC),
  - Peru (LMIC),
  - Philippines (LMIC),
  - Sri Lanka (LIC),
  - Thailand (LMIC),
  - Tunisia (LMIC),
  - Turkey (LMIC),
  - Vietnam (LIC),
  - Yemen (LLDC),
  - Yemen, Democratic (LLDC).
7. Countries appearing in the upper middle-income countries (UMIC) classification will not be considered eligible.
8. In order to safeguard the EFTA States' shipbuilding interests the EFTA Surveillance Authority would, however, allow the EFTA States to grant development aid to countries not falling under the above categories provided it can be substantiated by the EFTA States that a third country participant to the

OECD Understanding is planning to grant development aid for a particular contract. In this event the EFTA Surveillance Authority may deem compatible with the functioning of the EEA Agreement development aid to be granted for this contract up to the same level as that planned by a third country participant to the OECD Understanding in terms of OECD grant element.

9. In order to tighten up the application of Article 4 (7) of the Directive and ensure compliance with the criteria referred to in paragraph (5) above, the EFTA States are required to formally engage in each individual notification of development projects under Article 4 (7) of the Directive that these criteria are adhered to. They will also be expected to give the relevant details of the contract in order to determine how the contract price relates to market prices of comparable vessels.
  10. The EFTA States are advised that as regards the criterion of flag of convenience (point 1 in paragraph 5. above) the EFTA Surveillance Authority will consider the following countries as having a flag of convenience:
    - Antigua,
    - Bahamas,
    - Bermuda,
    - Cayman Isles,
    - Cyprus,
    - Gibraltar,
    - Lebanon,
    - Liberia,
    - Malta,
    - Panama,
    - St Vincent,
    - Vanuatu.
  11. The provisions of this chapter will be valid until the expiry of the Act referred to in point 1b of Annex XV to the EEA Agreement.
- (<sup>1</sup>) This chapter corresponds to the Commission letter to Member States SG(89) D/311 dated 3 January 1989.
- (<sup>2</sup>) Council Directive No 90/684/EEC as amended by Council Directive No 93/115/EC and Directive No 94/73/EC. These Council Directives, as adapted for the purpose of the EEA Agreement by the EEA Joint Committee Decision No 21 of 5 April 1995, will hereinafter be referred to as the Shipbuilding Directive.
- (<sup>3</sup>) Working Party No 6 of the Council: revision of the definitions and administrative procedures concerning the understanding on export credits for ships.
- (<sup>4</sup>) See Decision of the Council and the Commission of 24 March 1986 on the conclusion of the third ACP-EEC Convention (OJ No L 86, 31. 3. 1986).
- (<sup>5</sup>) See Council Decision 86/283/EEC of 30 June 1986 on the association of the overseas countries and territories with the European Economic Community (OJ No L 175, 1. 7. 1986, p. 46).'
5. The present Chapter 30 of the State Aid Guidelines 'Standardized annual reporting', and Chapter 31, 'Other specific provisions', shall accordingly be renumbered as Chapter 32 and 33, respectively.

Done at Brussels, 6 December 1995.

*For the EFTA Surveillance Authority*

Knut ALMESTAD

*The President*