ISSN 1725-2555

Official Journal of the European Union

L 57

English edition

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Volume 54

2 March 2011

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(1) Text with EEA relevance

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION 2011/133/CFSP

of 21 February 2011

on the signing and conclusion of the Agreement between the European Union and Montenegro establishing a framework for the participation of Montenegro in European Union crisis management operations

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, in particular Article 37 thereof, and the Treaty on the Functioning of the European Union, in particular Article 218(5) and (6) thereof,

Having regard to the proposal of the High Representative of the Union for Foreign Affairs and Security Policy ('HR'),

Whereas:

(1) Conditions regarding the participation of third States in European Union crisis management operations should be laid down in an agreement establishing a framework for such possible future participation, rather than defining those conditions on a case-by-case basis for each operation concerned.

(2) Following the adoption of a Decision by the Council on 26 April 2010 authorising the opening of negotiations, the HR negotiated an agreement between the European Union and Montenegro establishing a framework for the participation of Montenegro in European Union crisis management operations ('the Agreement').

(3) The Agreement should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and Montenegro establishing a framework for the participation of Montenegro in European Union crisis management operations ('the Agreement') is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in order to bind the Union.

Article 3

The Agreement shall be applied on a provisional basis as from the date of signature thereof, pending the completion of the procedures for its conclusion [1].

Article 4

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 16(1) of the Agreement.

Article 5

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

Done at Brussels, 21 February 2011.

For the Council

The President

C. ASHTON

[1] The date of signature of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

AGREEMENT

between the European Union and Montenegro establishing a framework for the participation of Montenegro in European Union crisis management operations

THE EUROPEAN UNION,

of the one part, and

MONTENEGRO,

of the other part,

hereinafter referred to as the 'Parties',

Whereas:

The European Union (EU) may decide to take action in the field of crisis management.

The EU will decide whether third States will be invited to participate in EU crisis management operations.

Conditions regarding the participation of Montenegro in EU crisis management operations should be laid down in an agreement establishing a framework for such possible future participation, rather than defining those conditions on a case-by-case basis for each operation concerned.

Such an agreement should be without prejudice to the decision-making autonomy of the EU, and should not prejudge the case-by-case nature of the decisions of Montenegro to participate in EU crisis management operations.

Such an agreement should only address future EU crisis management operations and should be without prejudice to any existing agreements regulating the participation of Montenegro in EU crisis management operations that have already been deployed,

HAVE AGREED AS FOLLOWS:

SECTION I

GENERAL PROVISIONS

Article 1

Decisions relating to the participation

1. Following the decision of the European Union (EU) to invite Montenegro to participate in an EU crisis management operation, and once Montenegro has decided to participate, Montenegro shall provide information on its proposed contribution to the EU.

2. The assessment by the EU of Montenegro's contribution shall be conducted in consultation with Montenegro.

3. The EU shall provide Montenegro with an early indication of the latter's likely contribution to the common costs of the operation as soon as possible with a view to assisting Montenegro in the formulation of its offer.

4. The EU shall communicate the outcome of that assessment to Montenegro by a letter with a view to securing the participation of Montenegro in accordance with the provisions of this Agreement.

Article 2

Framework

1. Montenegro shall associate itself with the Council Decision by which the Council of the European Union decides that the EU will conduct the crisis management operation, and with any other decision by which the Council of the European Union decides to extend the EU crisis management operation, in accordance with the provisions of this Agreement and any required implementing arrangements.

2. The contribution of Montenegro to an EU crisis management operation shall be without prejudice to the decision-making autonomy of the EU.

Article 3

Status of personnel and forces

1. The status of personnel seconded to an EU civilian crisis management operation and/or of the forces contributed to an EU military crisis management operation by Montenegro shall be governed by the agreement on the status of mission/forces, if concluded, between the EU and the State(s) in which the operation is conducted.

2. The status of personnel contributed to headquarters or command elements located outside the State(s) in which the EU crisis management operation is conducted, shall be governed by arrangements between the headquarters and command elements concerned and Montenegro.

3. Without prejudice to the agreement on the status of mission/forces referred to in paragraph 1, Montenegro shall exercise jurisdiction over its personnel participating in the EU crisis management operation.

4. Montenegro shall be responsible for answering any claims linked to the participation in an EU crisis management operation, from or concerning any of its personnel. Montenegro shall be responsible for bringing any action, in particular legal or disciplinary, against any of its personnel in accordance with its laws and regulations. A model for such declaration is annexed to this Agreement.

5. The Parties agree to waive any and all claims, other than contractual claims, against each other for damage to, loss, or destruction of assets owned/operated by either Party, or injury or death to personnel of either Party, arising out of the performance of their official duties in connection with activities under this Agreement, except in the case of gross negligence or wilful misconduct.

6. Montenegro undertakes to make a declaration as regards the waiver of claims against any State participating in an EU crisis management operation in which Montenegro participates, and to do so when signing this Agreement.

7. The EU undertakes to ensure that its Member States make a declaration as regards the waiver of claims, for any future participation of Montenegro in an EU crisis management operation, and to do so when signing this Agreement.

Article 4

Classified information

The Agreement between the Government of Montenegro and the EU on the security of classified information, done at Brussels on 13 September 2010, shall apply in the context of EU crisis management operations.

SECTION II

PROVISIONS ON PARTICIPATION IN CIVILIAN CRISIS MANAGEMENT OPERATIONS

Article 5

Personnel seconded to an EU civilian crisis management operation

1. Montenegro shall ensure that its personnel seconded to the EU civilian crisis management operation undertake their mission in accordance with:

(a) the Council Decision and subsequent amendments as referred to in Article 2(1);

(b) the Operation Plan;

(c) implementing measures.

2. Montenegro shall inform in due time the Head of Mission of the EU civilian crisis management operation (hereinafter 'Head of Mission') and the High Representative of the Union for Foreign Affairs and Security Policy (hereinafter 'HR') of any change to its contribution to the EU civilian crisis management operation.

3. Personnel seconded to the EU civilian crisis management operation shall undergo a medical examination, vaccination and be certified medically fit for duty by a competent authority from Montenegro. Personnel seconded to the EU civilian crisis management operation shall produce a copy of that certification.

Article 6

Chain of command

1. Personnel seconded by Montenegro shall carry out their duties and conduct themselves solely with the interests of the EU civilian crisis management operation in mind.

2. All personnel shall remain under the full command of their national authorities.

3. National authorities shall transfer operational control to the EU.

4. The Head of Mission shall assume responsibility and exercise command and control of the EU civilian crisis management operation at theatre level.

5. The Head of Mission shall lead the EU civilian crisis management operation and assume its day-to-day management.

6. Montenegro shall have the same rights and obligations in terms of day-to-day management of the operation as EU Member States taking part in the operation, in accordance with the legal instruments referred to in Article 2(1).

7. The Head of Mission shall be responsible for disciplinary control over EU civilian crisis management operation personnel. Where required, disciplinary action shall be taken by the national authority concerned.

8. A National Contingent Point of Contact ('NPC') shall be appointed by Montenegro to represent its national contingent in the operation. The NPC shall report to the Head of Mission on national matters and shall be responsible for day-to-day discipline of the contingent.

9. The decision to end the operation shall be taken by the EU, following consultation with Montenegro if it is still contributing to the EU civilian crisis management operation at the date of termination of the operation.

Article 7

Financial aspects

1. Without prejudice to Article 8, Montenegro shall assume all the costs associated with its participation in the operation apart from the running costs, as set out in the operational budget of the operation.

2. In case of death, injury, loss or damage to natural or legal persons from the State(s) in which the operation is conducted, Montenegro shall, when its liability has been established, pay compensation under the conditions foreseen in the applicable agreement on the status of mission referred to in Article 3(1).

Article 8

Contribution to operational budget

1. Montenegro shall contribute to the financing of the operational budget of an EU civilian crisis management operation.

2. The financial contribution of Montenegro to the operational budget shall be calculated on the basis of either of the following formulae, whichever produces the lower amount:

(a) the share of the reference amount which is in proportion to the ratio of Montenegro's GNI to the total GNIs of all States contributing to the operational budget of the operation; or

(b) the share of the reference amount for the operational budget which is in proportion to the ratio of the number of personnel from Montenegro participating in the operation to the total number of personnel of all States participating in the operation.

3. Notwithstanding paragraphs 1 and 2, Montenegro shall not make any contribution towards the financing of per diem allowances paid to personnel of the EU Member States.

4. Notwithstanding paragraph 1, the EU shall, in principle, exempt Montenegro from financial contributions to a particular EU civilian crisis management operation when:

(a) the EU decides that Montenegro provides a significant contribution which is essential for this operation; or

(b) Montenegro has a GNI per capita which does not exceed that of any EU Member State.

5. An arrangement on the payment of the contributions of Montenegro to the operational budget of an EU civilian crisis management operation shall be signed between the Head of Mission and the relevant administrative services of Montenegro. That arrangement shall, inter alia, include the following provisions:

(a) the amount concerned;

(b) the arrangements for payment of the financial contribution;

(c) the auditing procedure.

SECTION III

PROVISIONS OF PARTICIPATION IN MILITARY CRISIS MANAGEMENT OPERATIONS

Article 9

Participation in an EU military crisis management operation

1. Montenegro shall ensure that its forces and personnel participating in an EU military crisis management operation undertake their mission in accordance with:

(a) the Council Decision and subsequent amendments as referred to in Article 2(1);

(b) the Operation Plan;

(c) implementing measures.

2. Personnel seconded by Montenegro shall carry out their duties and conduct themselves solely with the interest of the EU military crisis management operation in mind.

3. Montenegro shall inform the EU Operation Commander in due time of any change to its participation in the operation.

Article 10

Chain of command

1. All forces and personnel participating in the EU military crisis management operation shall remain under the full command of their national authorities.

2. National authorities shall transfer the Operational and Tactical command and/or control of their forces and personnel to the EU Operation Commander, who is entitled to delegate his authority.

3. Montenegro shall have the same rights and obligations in terms of the day-to-day management of the operation as participating EU Member States.

4. The EU Operation Commander may, following consultations with Montenegro, at any time request the withdrawal of Montenegro's contribution.

5. A Senior Military Representative ('SMR') shall be appointed by Montenegro to represent its national contingent in the EU military crisis management operation. The SMR shall consult with the EU Force Commander on all matters affecting the operation and shall be responsible for the day-to-day discipline of the Montenegro contingent.

Article 11

Financial aspects

1. Without prejudice to Article 12, Montenegro shall assume all the costs associated with its participation in the operation unless the costs are subject to common funding as provided for in the legal instruments referred to in Article 2(1), as well as in Council Decision 2008/975/CFSP of 18 December 2008 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena) [1].

2. In case of death, injury, loss or damage to natural or legal persons from the State(s) in which the operation is conducted, Montenegro shall, when its liability has been established, pay compensation under the conditions foreseen in the applicable agreement on the status of forces referred to in Article 3(1).

[1] OJ L 345, 23.12.2008, p. 96.

Article 12

Contribution to the common costs

1. Montenegro shall contribute to the financing of the common costs of an EU military crisis management operation.

2. The financial contribution of Montenegro to the common costs shall be calculated on the basis of either of the following two formulae, whichever produces the lower amount:

(a) the share of the common costs which corresponds proportionally to the ratio of Montenegro's GNI to the total GNIs of all States contributing to the common costs of the operation; or

(b) the share of the common costs which corresponds proportionally to the ratio of the number of personnel from Montenegro participating in the operation to the total number of personnel of all States participating in the operation.

Where the formula under point (b) of the first subparagraph is used and Montenegro contributes personnel only to the Operation or Force Headquarters, the ratio used shall be that of its personnel to that of the total number of the respective headquarters personnel. In other cases, the ratio shall be that of all personnel contributed by Montenegro to that of the total personnel of the operation.

3. Notwithstanding paragraph 1, the EU shall, in principle, exempt Montenegro from financial contributions to the common costs of a particular EU military crisis management operation when:

(a) the EU decides that Montenegro provides a significant contribution to assets and/or capabilities which are essential for the operation; or

(b) Montenegro has a GNI per capita which does not exceed that of any EU Member State.

An arrangement shall be concluded between the Administrator provided for in Decision 2008/975/CFSP and the competent administrative authorities in Montenegro. That arrangement shall include, *inter alia*, provisions on:

(a) the amount concerned;

(b) the arrangements for payment of the financial contribution;

(c) the auditing procedure.

SECTION IV

FINAL PROVISIONS

Article 13

Arrangements to implement the Agreement

Without prejudice to Articles 8(5) and 12(4), any necessary technical and administrative arrangements in pursuance of the implementation of this Agreement shall be concluded between the HR and the appropriate authorities of Montenegro.

Article 14

Non-compliance

Should one of the Parties fail to comply with its obligations under this Agreement, the other Party shall have the right to terminate this Agreement by sending written notice of 1 month.

Article 15

Dispute settlement

Disputes concerning the interpretation or application of this Agreement shall be settled by diplomatic means between the Parties.

Article 16

Entry into force

1. This Agreement shall enter into force on the first day of the first month after the Parties have notified each other of the completion of the internal legal procedures necessary for its entry into force.

2. This Agreement shall be provisionally applied from the date of signature.

3. This Agreement shall be subject to regular review.

4. This Agreement may be amended on the basis of a mutual written agreement between the Parties.

5. This Agreement may be denounced by either Party by written notice of denunciation given to the other Party. Such denunciation shall take effect 6 months after receipt of notification by the other Party.

Done at Brussels on the twenty-second day of February in the year two thousand and eleven in two copies, each in the English language.

For the European Union *For Montenegro*

TEXT FOR DECLARATIONS

TEXT FOR THE EU MEMBER STATES:

'The EU Member States applying an EU Council Decision on an EU crisis management operation in which Montenegro participates will endeavour, in so far as their internal legal systems so permit, to waive as far as possible claims against Montenegro for injury, death of their personnel, or damage to, or loss of, any assets owned by themselves and used by the EU crisis management operation if such injury, death, damage or loss:

— was caused by personnel from Montenegro in the execution of their duties in connection with an EU crisis management operation, except in case of gross negligence or wilful misconduct, or

— arose from the use of any assets owned by Montenegro, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of EU crisis management operation personnel from Montenegro using those assets.'

TEXT FOR MONTENEGRO:

'Montenegro applying an EU Council Decision on an EU crisis management operation will endeavour, in so far as its internal legal system so permit, to waive as far as possible claims against any other State participating in the EU crisis management operation for injury, death of its personnel, or damage to, or loss of, any assets owned by itself and used by the EU crisis management operation if such injury, death, damage or loss:

— was caused by personnel in the execution of their duties in connection with an EU crisis management operation, except in case of gross negligence or wilful misconduct, or

— arose from the use of any assets owned by States participating in the EU crisis management operation, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of EU crisis management operation personnel using those assets.'

REGULATIONS

COMMISSION REGULATION (EU) No 201/2011

of 1 March 2011

on the model of declaration of conformity to an authorised type of railway vehicle

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community [1], and in particular Article 26(4) thereof,

Whereas:

(1) The Commission should adopt the model of declaration of conformity to an authorised type of vehicle as provided for with the Directive.

(2) The European Railway Agency issued the recommendation of 30 June 2010 on the model of declaration of conformity to an authorised type of vehicle.

(3) The annexes to the declaration of conformity to type should provide evidence on the completion of the relevant procedures for verification in accordance with the applicable Union legislation and notified national rules, and indicate the references of the directives, technical specifications for interoperability, national rules and other provisions. The type authorisation, which is identified by the European identification number, should provide information on all the legal requirements on the basis of which the type authorisation has been granted in a Member State.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Committee established in accordance with Article 29(1) of Directive 2008/57/EC,

HAS ADOPTED THIS REGULATION:

Article 1

The model of declaration of conformity to type referred to in Article 26(4) of Directive 2008/57/EC is set out in the Annex to this Regulation.

Article 2

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

It shall apply from 2 June 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States, except Cyprus and Malta as long as no railway system is established within their territory.

Done at Brussels, 1 March 2011.

For the Commission
The President
José Manuel BARROSO

[1] OJ L 191, 18.7.2008, p. 1.

ANNEX

MODEL OF DECLARATION OF CONFORMITY TO AN AUTHORISED TYPE OF VEHICLE

We,

Applicant (1)
[Business name]
[Full address]

Authorised Representative:
[Business name]
[Full address]

of the applicant
[Business name]
[Full address]

Declare under our sole responsibility that vehicle *[European Vehicle Number]* (2) to which this declaration refers

— conforms to vehicle type [ERATV identification of the type of vehicle] authorised in the following Member States:

[Member State 1] under authorisation No [EIN of the type authorisation in MS 1]

[Member State 2] under authorisation No [EIN of the type authorisation in MS 2]

… (indicate all MS where the vehicle type is authorised)

— complies with the relevant Union legislation, relevant technical specifications for interoperability and applicable national rules, as indicated in the annexes to this declaration,

— has undergone all verification procedures necessary for establishing this declaration.

List of annexes (3)

[titles of the annexes]

Signed for and on behalf of *[name of the applicant]*

Done at *[place], [date DD/MM/YYYY]*

[name, function] [signature]

Field reserved for NSA: EVN allocated to the vehicle: *[EVN]*

(1) Applicant may be the contracting entity or the manufacturer or their authorised representative in the Union.
(2) If at the moment of establishing this declaration the vehicle has not yet been assigned a European vehicle number (EVN), the vehicle shall be identified by another identification system agreed by the applicant and the competent NSA. In this case, when an EVN has been assigned to the vehicle, the NSA shall fill in the field reserved for this purpose.
(3) Annexes shall include copies of the documents providing evidence on the completion of the relevant verification procedures in accordance with the applicable Union legislation (EC declarations of verification) and national rules.

COMMISSION REGULATION (EU) No 202/2011

of 1 March 2011

amending Annex I to Council Regulation (EC) No 1005/2008 as regards the definition of fishery products and amending Regulation (EC) No 1010/2009 as regards prior notification templates, benchmarks for port inspections and recognised catch documentation schemes adopted by regional fisheries management organisations

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing [1], and in particular Articles 9(1), 12(5), 13(1) and 52 thereof,

Whereas:

(1) Regulation (EC) No 1005/2008 applies to fishery products as defined in Article 2 thereof. Annex I to that Regulation lists the products excluded from the definition of fishery products. The list of excluded products may be reviewed each year and should be amended on the basis of new information gathered under the administrative cooperation with third countries provided for in Article 20(4) of Regulation (EC) No 1005/2008.

(2) Products excluded from the definition of fisheries products are equally listed in Annex XIII to Commission Regulation (EC) No 1010/2009 [2] laying down detailed rules for the implementation of Regulation (EC) No 1005/2008. In order to avoid unnecessary duplications, excluded products should be listed only in Annex I to Regulation (EC) No 1005/2008 and Annex XIII to Regulation (EC) No 1010/2009 should thus be deleted.

(3) Title I of Regulation (EC) No 1010/2009 lays down provisions on the inspection of third country fishing vessels to be carried out in Member States ports. It is necessary to align those provisions with the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, concluded in the framework of the Food and Agriculture Organisation of the United Nations (FAO). Such alignment implies the inclusion of specific information in the template to be used for prior notification of port arrivals and the addition of specific criteria to the benchmarks set out for port inspections.

(4) Annex V to Regulation (EC) No 1010/2009 lays down a list of catch documentation schemes adopted by regional fisheries management organisations which are recognised as complying with the requirements of Regulation (EC) No 1005/2008. That Annex should refer to the ICCAT catch documentation programme for bluefin tuna as set out in Regulation (EU) No 640/2010 of the European Parliament and of the Council [3].

(5) Regulations (EC) No 1005/2008 and (EC) No 1010/2009 should be amended accordingly.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 1005/2008

In Regulation (EC) No 1005/2008, Annex I is replaced by the text in Annex I to this Regulation.

Article 2

Amendments to Regulation (EC) No 1010/2009

Regulation (EC) No 1010/2009 is amended as follows:

1. in Article 4, first paragraph, the following point (u) is added:

'(u) the fishing vessel has been denied entry or use of port in accordance with the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, concluded in the framework of the Food and Agriculture Organisation of the United Nations (FAO)';

2. Annexes IIA and IIB are replaced by the text in Annex II to this Regulation;

[1] OJ L 286, 29.10.2008, p. 1.
[2] OJ L 280, 27.10.2009, p. 5.
[3] OJ L 194, 24.7.2010, p. 1.

3. in Annex V, Part I, the second indent is replaced by the following:

'— ICCAT Bluefin tuna Catch Documentation Programme as set out in Regulation (EU) No 640/2010 of the European Parliament and of the Council (*)

(*) OJ L 194, 24.7.2010, p. 1.';

4. Annex XIII is deleted.

Article 3

Entry into force

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

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

Done at Brussels, 1 March 2011.

For the Commission
The President
José Manuel BARROSO

ANNEX I

'ANNEX I

List of products excluded from the definition of "fishery products" set out in point 8 of Article 2

ex Chapter 3 ex 1604 ex 1605	Aquaculture products obtained from fry or larvae
ex Chapter 3 ex 1604	Livers, roes, tongues, cheeks, heads and wings
0301 10 ([1])	Ornamental fish, live
ex 0301 91	Trout (*Salmo trutta, Oncorhynchus mykiss, Oncorhynchus clarki, Oncorhynchus aguabonita, Oncorhynchus gilae, Oncorhynchus apache* and *Oncorhynchus chrysogaster*), live, **caught in freshwater**
ex 0301 92 00	Eels (*Anguilla* spp.), live, **caught in freshwater**
0301 93 00	Carp, live
ex 0301 99 11	Pacific salmon (*Oncorhynchus nerka, Oncorhynchus gorbuscha, Oncorhynchus keta, Oncorhynchus tschawytscha, Oncorhynchus kisutch, Oncorhynchus masou* and *Oncorhynchus rhodurus*), Atlantic salmon (*Salmo salar*) and Danube salmon (*Hucho hucho*), live, **caught in freshwater**
0301 99 19	Other freshwater fish, live
ex 0302 11	Trout (*Salmo trutta, Oncorhynchus mykiss, Oncorhynchus clarki, Oncorhynchus aguabonita, Oncorhynchus gilae, Oncorhynchus apache* and *Oncorhynchus chrysogaster*), fresh or chilled, excluding fish fillets and other fish meat of heading 0304, **caught in freshwater**
ex 0302 12 00	Pacific salmon (*Oncorhynchus nerka, Oncorhynchus gorbuscha, Oncorhynchus keta, Oncorhynchus tschawytscha, Oncorhynchus kisutch, Oncorhynchus masou* and *Oncorhynchus rhodurus*), Atlantic salmon (*Salmo salar*) and Danube salmon (*Hucho hucho*), fresh or chilled, excluding fish fillets and other fish meat of heading 0304, **caught in freshwater**
ex 0302 19 00	Other *Salmonidae*, fresh or chilled, excluding fish fillets and other fish meat of heading 0304, **caught in freshwater**
ex 0302 66 00	Eels (*Anguilla* spp.), fresh or chilled, excluding fish fillets and other fish meat of heading 0304, **caught in freshwater**
0302 69 11	Carp, fresh or chilled, excluding fish fillets and other fish meat of heading 0304
0302 69 15	Tilapia (*Oreochromis* spp.), fresh or chilled, excluding fish fillets and other fish meat of heading 0304
0302 69 18	Other freshwater fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0304
ex 0303 11 00	Sockeye salmon (red salmon) (*Oncorhynchus nerka*), excluding livers and roes, frozen, excluding fish fillets and other fish meat of heading 0304, **caught in freshwater**
ex 0303 19 00	Other Pacific salmon (*Oncorhynchus gorbuscha, Oncorhynchus keta, Oncorhynchus tschawytscha, Oncorhynchus kisutch, Oncorhynchus masou* and *Oncorhynchus rhodurus*), excluding livers and roes, frozen, excluding fish fillets and other fish meat of heading 0304, **caught in freshwater**
ex 0303 21	Trout (*Salmo trutta, Oncorhynchus mykiss, Oncorhynchus clarki, Oncorhynchus aguabonita, Oncorhynchus gilae, Oncorhynchus apache* and *Oncorhynchus chrysogaster*), excluding livers and roes, frozen, excluding fish fillets and other fish meat of heading 0304, **caught in freshwater**
ex 0303 22 00	Atlantic salmon (*Salmo salar*) and Danube salmon (*Hucho hucho*), excluding livers and roes, frozen, excluding fish fillets and other fish meat of heading 0304, **caught in freshwater**

ex 0303 29 00	Other salmonidae, excluding livers and roes, frozen, excluding fish fillets and other fish meat of heading 0304, **caught in freshwater**
ex 0303 76 00	Eels (*Anguilla* spp.), frozen, excluding fish fillets and other fish meat of heading 0304, **caught in freshwater**
0303 79 11	Carp, frozen, excluding fish fillets and other fish meat of heading 0304
0303 79 19	Other freshwater fish, frozen, excluding fish fillets and other fish meat of heading 0304
0304 19 01	Fish fillets, fresh or chilled, of Nile perch (*Lates niloticus*)
0304 19 03	Fish fillets, fresh or chilled, of pangasius (*Pangasius* spp.)
ex 0304 19 13	Fish fillets, fresh or chilled, of Pacific salmon (*Oncorhynchus nerka, Oncorhynchus gorbuscha, Oncorhynchus keta, Oncorhynchus tschawytscha, Oncorhynchus kisutch, Oncorhynchus masou* and *Oncorhynchus rhodurus*), Atlantic salmon (*Salmo salar*) and Danube salmon (*Hucho hucho*), **caught in freshwater**
ex 0304 19 15	Fish fillets, fresh or chilled, of the species *Oncorhynchus mykiss* weighing more than 400 g each, **caught in freshwater**
ex 0304 19 17	Fish fillets, fresh or chilled, of trout of the species *Salmo trutta, Oncorhynchus mykiss* (weighing 400 g or less), *Oncorhynchus clarki, Oncorhynchus aguabonita* and *Oncorhynchus gilae*, **caught in freshwater**
0304 19 18	Fish fillets, fresh or chilled, of other freshwater fish
0304 19 91	Other fish meat (whether or not minced), fresh or chilled, of freshwater fish
0304 29 01	Frozen fillets of Nile perch (*Lates niloticus*)
0304 29 03	Frozen fillets of pangasius (*Pangasius* spp.)
0304 29 05	Frozen fillets of Tilapia (*Oreochromis* spp.)
ex 0304 29 13	Frozen fillets of Pacific salmon (*Oncorhynchus nerka, Oncorhynchus gorbuscha, Oncorhynchus keta, Oncorhynchus tschawytscha, Oncorhynchus kisutch, Oncorhynchus masou* and *Oncorhynchus rhodurus*), Atlantic salmon (*Salmo salar*) and Danube salmon (*Hucho hucho*), **caught in freshwater**
ex 0304 29 15	Frozen fillets of *Oncorhynchus mykiss* weighing more than 400 g each, **caught in freshwater**
ex 0304 29 17	Frozen fillets of trout of the species *Salmo trutta, Oncorhynchus mykiss* (weighing 400 g or less), *Oncorhynchus clarki, Oncorhynchus aguabonita* and *Oncorhynchus gilae*, **caught in freshwater**
0304 29 18	Frozen fillets of other freshwater fish
0304 99 21	Other fish meat (whether or not minced), frozen, of freshwater fish
0305 10 00	Flours, meals and pellets of fish, fit for human consumption
ex 0305 30 30	Fish fillets, salted or in brine, of Pacific salmon (*Oncorhynchus nerka, Oncorhynchus gorbuscha, Oncorhynchus keta, Oncorhynchus tschawytscha, Oncorhynchus kisutch, Oncorhynchus masou* and *Oncorhynchus rhodurus*), Atlantic salmon (*Salmo salar*) and Danube salmon (*Hucho hucho*), **caught in freshwater**
ex 0305 30 90	Fish fillets, dried, salted or in brine, but not smoked, of other freshwater fish

ex 0305 41 00	Pacific salmon (*Oncorhynchus nerka, Oncorhynchus gorbuscha, Oncorhynchus keta, Oncorhynchus tschawytscha, Oncorhynchus kisutch, Oncorhynchus masou* and *Oncorhynchus rhodurus*), Atlantic salmon (*Salmo salar*) and Danube salmon (*Hucho hucho*), smoked, including fillets, **caught in freshwater**
ex 0305 49 45	Trout (*Salmo trutta, Oncorhynchus mykiss, Oncorhynchus clarki, Oncorhynchus aguabonita, Oncorhynchus gilae, Oncorhynchus apache* and *Oncorhynchus chrysogaster*), smoked, including fillets, **caught in freshwater**
ex 0305 49 50	Eels (*Anguilla* spp.), smoked, including fillets, **caught in freshwater**
ex 0305 49 80	Other freshwater fish, smoked, including fillets
ex 0305 59 80	Other freshwater fish, dried, whether or not salted, but not smoked
ex 0305 69 50	Pacific salmon (*Oncorhynchus nerka, Oncorhynchus gorbuscha, Oncorhynchus keta, Oncorhynchus tschawytscha, Oncorhynchus kisutch, Oncorhynchus masou* and *Oncorhynchus rhodurus*), Atlantic salmon (*Salmo salar*) and Danube salmon (*Hucho hucho*), in brine or salted but not dried or smoked, **caught in freshwater**
ex 0305 69 80	Other freshwater fish, in brine or salted but not dried or smoked
0306 19 10	Freshwater crayfish, frozen
ex 0306 19 90	Flours, meals and pellets of crustaceans, frozen, fit for human consumption
ex 0306 21 00	Rock lobster and other sea crawfish (*Palinurus* spp., *Panulirus* spp., *Jasus* spp.), ornamental
ex 0306 22 10	Lobsters (*Homarus* spp.), ornamental, live
ex 0306 23 10	Shrimps and prawns of the family Pandalidae, ornamental, live
ex 0306 23 31	Shrimps of the genus Crangon, ornamental, live
ex 0306 23 90	Other shrimps and prawns, ornamental, live
ex 0306 24	Crabs, ornamental, live
0306 29 10	Freshwater crayfish, live, fresh, chilled, dried, salted or in brine, in shell, cooked by steaming or by boiling in water, whether or not chilled, dried salted or in brine
ex 0306 29 30	Norway lobsters (*Nephrops norvegicus*), ornamental, live
ex 0306 29 90	Other ornamental crustaceans, live
ex 0306 29 90	Flours, meals and pellets of crustaceans, not frozen, fit for human consumption
0307 10	Oysters, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine
0307 21 00	Scallops, including queen scallops, of the genera *Pecten, Chlamys* or *Placopecten*, live, fresh or chilled
0307 29	Scallops, including queen scallops, of the genera *Pecten, Chlamys* or *Placopecten*, other than live, fresh or chilled
0307 31	Mussels (*Mytilus* spp., *Perna* spp.), live, fresh or chilled
0307 39	Mussels (*Mytilus* spp., *Perna* spp.), other than live, fresh or chilled

ex 0307 41	Cuttle fish (*Sepia officinalis, Rossia macrosoma, Sepiola* spp.) and squid (*Ommastrephes* spp., *Loligo* spp., *Nototodarus* spp., *Sepioteuthis* spp.), ornamental
ex 0307 51	Octopus (*Octopus* spp.), ornamental
0307 60 00	Snails, other than sea snails, live, fresh, chilled, frozen, dried, salted or in brine
ex 0307 91 00	Other aquatic invertebrates other than crustaceans and those molluscs specified or included in subheadings 0307 10 10 to 0307 60 00, except *Illex* spp., cuttlefish of the species *Sepia pharaonis* and sea snails of the species *Strombus*, live (other than ornamental), fresh or chilled
0307 99 13	Striped venus and other species of the family Veneridae, frozen
0307 99 15	Jellyfish (*Rhopilema* spp.), frozen
ex 0307 99 18	Other aquatic invertebrates other than crustaceans and those molluscs specified or included in subheadings 0307 10 10 to 0307 60 00 and 0307 99 11 to 0307 99 15, except cuttlefish of the species *Sepia pharaonis* and sea snails of the species *Strombus*, including flours, meal and pellets of aquatic invertebrates other than crustaceans, fit for human consumption, frozen
ex 0307 99 90	Other aquatic invertebrates other than crustaceans and those molluscs specified or included in subheadings 0307 10 10 to 0307 60 00, except *Illex* spp., cuttlefish of the species *Sepia pharaonis* and sea snails of the species *Strombus*, including flours, meal and pellets of aquatic invertebrates other than crustaceans, fit for human consumption, dried, salted or in brine
ex 1604 11 00	Salmon, **caught in freshwater**, prepared or preserved, whole or in pieces, but not minced
ex 1604 19 10	Salmonidae, other than salmon, **caught in freshwater**, prepared or preserved, whole or in pieces, but not minced
ex 1604 20 10	Salmon, **caught in freshwater**, otherwise prepared or preserved (other than whole or in pieces, but not minced)
ex 1604 20 30	Salmonidae, other than salmon, **caught in freshwater**, otherwise prepared or preserved (other than whole or in pieces, but not minced)
ex 1604 19 91	Fillets of freshwater fish, raw, merely coated with batter or breadcrumbs, whether or not pre-fried in oil, frozen
1604 30 90	Caviar substitutes
ex 1605 40 00	Freshwater crayfish, prepared or preserved
1605 90	Other molluscs and other aquatic invertebrates, prepared or preserved

([1]) (CN codes correspond to Commission Regulation (EC) No 948/2009 (OJ L 287, 31.10.2009).'

ANNEX II

'ANNEX IIA

Form for prior notification for third country fishing vessels referred to in Article 2(1)

Please complete all relevant fields before sending the prior notice:

Vessel identification

1. Vessel name:
2. Type of vessel (catching, carrier or support):
3. Flag (country of registration):
4. Home port (ISO alpha-2 country code + name of port/3-letter port code (*)):
5. Registration number (external identification):
6. International radio call sign:
7. Vessel contact information:
8. Certificate of registry ID:
9. IMO/Lloyd's number (if issued):
10. VMS (no, yes (national), yes (RFMO)); if yes, type:
11. Vessel dimensions — length: ..... beam: ..... draft:

Intended port of call

12. Name of the port (ISO alpha-2 country code + 3 letter port code (*)):
13. Purpose of the call (landing, transhipment or access to services):
14. Port and date of last port call (ISO alpha-2 country code + name of port/3-letter port code (*))

Dates

19. Dates of the fishing trip:
20. Date and estimated time of arrival at port:

Fishing authorisation

15. Fishing authorisation number and expiration date (also specify fishing area, species and gear):
16. Authorisation to support fishing operations/transhipping fishery products and expiration date:
17. Issuing authority:
18. RFMO ID, if applicable:

Quantities of species retained on board (or negative report if no catches)

21. Name of catching vessel(s) and catch certificate number(s) for this/these (if available)	22. Date of transhipment (if transhipment has taken place elsewhere than the port of landing)	23. Area or port of transhipment (FAO (ICES) area, FAO (ICES) division, FAO (ICES) subdivision and if relevant ICES statistical rectangle and fishing effort zone)	24. Name of the species (FAO alpha-3 code)	25. Catch area (FAO (ICES) area, FAO (ICES) division, FAO (ICES) subdivision and if relevant ICES statistical rectangle and fishing effort zone)	26. Estimated total live weight on board (in kg) or number of fish if required	27. Estimated total live weight of fish to be landed/transhipped (in kg) or number of fish if required	28. Presentation of fish and state of preservation (use letter codes (*))

29. Name and address of vessel owner:

30. Name of master of vessel/representative and nationality:

31. Signature:

32. Date:

If catching vessel fill in points 1-15, 17-20 plus 24-28

If carrier vessel fill in points 1-14, 16-18 plus 20-28

If support vessel fill in points 1-14, 16-18 and 20

All must fill in points 29-32

(*) Letter codes for ports, the state of the fish and the presentation: http://ec.europa.eu/fisheries/cfp/control/technologies/ers/index_en.htm

ANNEX IIB

Form for prior notification for third country fishing vessels referred to in Article 2(2)

Please complete all relevant fields before sending the prior notice:

Intended port of call and additional vessel details

1. Name of the port (ISO alpha-2 country code + 3 letter port code (*)):
2. Purpose of the call (landing, transhipment or access to services):
3. Date and estimated time of arrival at port:
4. VMS (no, yes (national), yes (RFMO)); if yes, type:
5. Vessel dimensions — length: ..... beam: ..... draft:
6. Certificate of registry ID:
7. RFMO ID, if applicable:
8. Port and date of last port call (ISO alpha-2 country code + name of port/3-letter port code):

Quantities of species retained on board

9. Name of catching vessel(s) and catch certificate number(s) for this/these	10. Date of transhipment (if transhipment has taken place elsewhere than the port of landing)	11. Area or port of transhipment (FAO (ICES) area, FAO (ICES) division, FAO (ICES) subdivision and if relevant ICES statistical rectangle and fishing effort zone)	12. Name of the species (FAO alpha-3 code)	13. Estimated total live weight on board (in kg) or number of fish if required	14. Estimated total live weight of fish to be landed/ transhipped (in kg) or number of fish if required	15. Presentation of fish and state of preservation (use letter codes (*))

16. Name and address of vessel owner:
17. Name of master of vessel/representative and nationality:
18. Signature:
19. Date:

If catching vessel fill in points 1-8, 12 plus 14 and 15

If carrier vessel fill in points 1-15

If support vessel fill in points 1-8

All must fill in points 16-19

(*) Letter codes for ports, the state of the fish and the presentation: http://ec.europa.eu/fisheries/cfp/control/technologies/ers/index_en.htm'

COMMISSION IMPLEMENTING REGULATION (EU) No 203/2011

of 1 March 2011

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1],

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector [2], and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 2 March 2011.

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

Done at Brussels, 1 March 2011.

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

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 350, 31.12.2007, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	IL	122,2
	MA	46,8
	TN	113,1
	TR	95,7
	ZZ	94,5
0707 00 05	TR	159,9
	ZZ	159,9
0709 90 70	MA	31,5
	TR	100,8
	ZZ	66,2
0805 10 20	EG	56,9
	IL	78,2
	MA	55,1
	TN	41,5
	TR	67,9
	ZA	37,9
	ZZ	56,3
0805 50 10	MA	45,9
	TR	51,2
	ZZ	48,6
0808 10 80	BR	55,2
	CA	126,3
	CN	90,2
	MK	54,8
	US	148,5
	ZZ	95,0
0808 20 50	AR	91,1
	CL	188,1
	CN	52,4
	US	96,8
	ZA	109,6
	ZZ	107,6

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

DIRECTIVES

COMMISSION DIRECTIVE 2011/18/EU

of 1 March 2011

amending Annexes II, V and VI to Directive 2008/57/EC of the European Parliament and of the Council on the interoperability of the rail system within the Community

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community [1], and in particular Article 30.3 thereof,

Whereas:

(1) Measures designed to amend non-essential elements of Directive 2008/57/EC and relating to the adaptation of Annexes II to IX to that Directive are to be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 29(4) of Directive 2008/57/EC.

(2) The control-command and signalling subsystem consist of trackside and on-board equipment, which should be considered as two separate subsystems. Annex II to Directive 2008/57/EC should therefore be amended accordingly.

(3) The electricity consumption measuring equipment is physically integrated in the rolling stock. Annex II to Directive 2008/57/EC should therefore be amended accordingly.

(4) In accordance with Article 17(3) of Directive 2008/57/EC, Member States should designate the bodies responsible for carrying out the verification procedures in the case of national rules. Annexes V and VI to Directive 2008/57/EC should therefore be amended to specify these procedures applied by these bodies.

(5) With regard to Section 2 of Annex VI to Directive 2008/57/EC and recourse to intermediate statements of verification (hereinafter 'ISV'), the notified body should first draw up an 'EC' certificate of intermediate statement of verification and then the applicant should draw up the related 'EC' declaration. Annexes V and VI to Directive 2008/57/EC should therefore be amended accordingly.

(6) The measures provided for in this Directive are in accordance with the opinion of the Committee established pursuant to Article 29(1) of the Directive 2008/57/EC,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annexes II, V and VI to Directive 2008/57/EC are replaced by the text set out in Annexes I, II and III to this Directive respectively.

Article 2

1. The Member States shall bring into force the laws, regulation and administrative provisions necessary to comply with this Directive by 31 December 2011 at the latest. They shall forthwith communicate the text of those provisions to the Commission.

2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

3. The obligations for transposition and implementation of this Directive shall not apply to the Republic of Cyprus and the Republic of Malta for as long as no railway system is established within their territories.

[1] OJ L 191, 18.7.2008, p. 1.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 1 March 2011.

For the Commission
The President
José Manuel BARROSO

ANNEX I

'ANNEX II

SUBSYSTEMS

1. **List of subsystems**

For the purposes of this Directive, the system constituting the rail system may be broken down into the following subsystems, either:

(a) structural areas:

— infrastructure,

— energy,

— trackside control-command and signalling,

— on-board control-command and signalling,

— rolling stock,

(b) functional areas:

— operation and traffic management,

— maintenance,

— telematics applications for passenger and freight services.

2. **Description of the subsystems**

For each subsystem or part of a subsystem, the list of constituents and aspects relating to interoperability is proposed by the Agency at the time of drawing up the relevant draft TSI. Without prejudging the choice of aspects and constituents relating to interoperability or the order in which they will be made subject to TSIs, the subsystems include the following:

2.1. *Infrastructure*

The track, points, engineering structures (bridges, tunnels, etc.), associated station infrastructure (platforms, zones of access, including the needs of persons with reduced mobility, etc.), safety and protective equipment.

2.2. *Energy*

The electrification system, including overhead lines and the trackside of the electricity consumption measuring system.

2.3. *Trackside control-command and signalling*

All the trackside equipment required to ensure safety and to command and control movements of trains authorised to travel on the network.

2.4. *On-board control-command and signalling*

All the on-board equipment required to ensure safety and to command and control movements of trains authorised to travel on the network.

2.5. *Operation and traffic management*

The procedures and related equipment enabling coherent operation of the various structural subsystems, during both normal and degraded operation, including in particular train composition and train driving, traffic planning and management.

The professional qualifications which may be required for carrying out cross-border services.

2.6. *Telematics applications*

In accordance with Annex I, this subsystem comprises two elements:

(a) applications for passenger services, including systems which provide passengers with information before and during the journey, reservation and payment systems, luggage management and management of connections between trains and with other modes of transport;

(b) applications for freight services, including information systems (realtime monitoring of freight and trains), marshalling and allocation systems, reservation, payment and invoicing systems, management of connections with other modes of transport and production of electronic accompanying documents.

2.7. *Rolling stock*

Structure, command and control system for all train equipment, electric current collection devices, traction and energy conversion units, on-board equipment for electricity consumption measuring, braking, coupling and running gear (bogies, axles, etc.) and suspension, doors, man/machine interfaces (driver, on-board staff and passengers, including the needs of persons with reduced mobility), passive or active safety devices and requisites for the health of passengers and on-board staff.

2.8. *Maintenance*

The procedures, associated equipment, logistics centres for maintenance work and reserves providing the mandatory corrective and preventive maintenance to ensure the interoperability of the rail system and guarantee the performance required.'

ANNEX II

'ANNEX V

DECLARATION OF VERIFICATION OF SUBSYSTEMS

1. **"EC" declaration of verification of subsystems**

The "EC" declaration of verification and the accompanying documents must be dated and signed.

The said declaration must be based on the information resulting from the "EC" verification procedure for subsystems as defined in Section 2 of Annex VI. It must be written in the same language as the technical file and must contain at least the following:

— the Directive references,

— name and address of the contracting entity or the manufacturer, or its authorised representative established within the European Union (specify the trade name and full address; in the case of the authorised representative, specify also the trade name of the contracting entity or the manufacturer),

— a brief description of the subsystem,

— name and address of the notified body which conducted the "EC" verification referred to in Article 18,

— the references of the documents contained in the technical file,

— all the relevant temporary or final provisions to be complied with by the subsystems and in particular, where appropriate, any operating restrictions or conditions,

— if temporary: duration of validity of the "EC" declaration,

— identity of the signatory.

Where reference is made in Annex VI to the "EC" ISV declaration, the provisions of this Section shall apply to this declaration.

2. **Declaration of verification of subsystems in the case of national rules**

Where reference is made in Annex VI to the declaration of verification of subsystems in the case of national rules, the provisions of Section 1 shall apply *mutatis mutandi* to that declaration.'

ANNEX III

'ANNEX VI

VERIFICATION PROCEDURE FOR SUBSYSTEMS

1. GENERAL PRINCIPLES

The verification procedure for a subsystem involves checking and certifying that a subsystem:

— is designed, constructed and installed in such a way as to meet the essential requirements concerning it, and

— may be authorised to be placed in service.

2. "EC" VERIFICATION PROCEDURE

2.1. **Introduction**

"EC" verification is the procedure whereby a notified body checks and certifies that the subsystem:

— complies with the relevant TSI(s),

— complies with the other regulations deriving from the Treaty.

2.2. **Parts of the subsystem and stages**

2.2.1 *Intermediate statement of verification (ISV)*

If specified in the TSIs or, where appropriate, at the applicant's request, the subsystem could be divided into certain parts or checked at certain stages of the verification procedure.

The intermediate statement of verification (ISV) is the procedure whereby a notified body checks and certifies certain parts of the subsystem or certain stages of the verification procedure.

Each ISV leads to the issuing of an "EC" ISV certificate by the notified body chosen by the applicant, which in turn, where applicable, draws up an "EC" ISV declaration. The ISV certificate and ISV declaration must provide reference to the TSIs with which the conformity has been assessed.

2.2.2 *Parts of the subsystem*

The applicant may apply for an ISV for each part. And each part shall be checked at each stage as described in Section 2.2.3.

2.2.3 *Stages of the verification procedure*

The subsystem, or certain parts of the subsystem, shall be checked at each of the following stages:

— overall design,

— production: construction, including, in particular, civil-engineering activities, manufacturing, constituent assembly and overall adjustment,

— final testing.

The applicant may apply for an ISV for the design stage (including the type tests) and for the production stage.

2.3. **Certificate of verification**

2.3.1. The notified body responsible for "EC" verification assesses the design, production and final testing of the subsystem and draws up the "EC" certificate of verification intended for the applicant, who in turn draws up the "EC" declaration of verification. The "EC" verification certificate must provide reference to the TSIs with which the conformity has been assessed.

Where a subsystem has not been assessed for its conformity with all relevant TSI(s) (e.g. in the case of a derogation, partial application of TSIs for upgrade or renewal, transitional period in a TSI or specific case), the "EC" certificate shall give the precise reference to the TSI(s) or their parts whose conformity has not been examined by the notified body during the "EC" verification procedure.

2.3.2. Where "EC" ISV certificates have been issued the notified body responsible for the "EC" verification of the subsystem takes these "EC" ISV certificates into account, and, before issuing the "EC" certificate of verification, it:

— verifies that the "EC" ISV certificates cover correctly the relevant requirements of the TSI(s),

— checks all aspects that are not covered by the "EC" ISV certificate(s), and

— checks the final testing of the subsystem as a whole.

2.4. **Technical file**

The technical file accompanying the "EC" declaration of verification must contain the following:

— technical characteristics linked to the design including general and detailed drawings with respect to execution, electrical and hydraulic diagrams, control-circuit diagrams, description of data-processing and automatic systems, documentation on operation and maintenance, etc., relevant for the subsystem concerned,

— list of interoperability constituents, as referred to in Article 5(3)(d), incorporated into the subsystem,

— copies of the "EC" declarations of conformity or suitability for use with which the abovementioned constituents must be provided in accordance with Article 13 of the Directive, accompanied, where appropriate, by the corresponding calculation notes and a copy of the records of the tests and examinations carried out by the notified bodies on the basis of the common technical specifications,

— where available, the "EC" ISV certificate(s) and, in such a case, where relevant, the "EC" ISV declaration(s), that accompany the "EC" certificate of verification, including the result of verification by the notified body of the certificates validity,

— "EC" certificate of verification, accompanied by corresponding calculation notes and signed by the notified body responsible for the "EC" verification, stating that the subsystem complies with the requirements of the relevant TSI(s) and mentioning any reservations recorded during performance of the activities and not withdrawn; the "EC" certificate of verification should also be accompanied by the inspection and audit reports drawn up by the same body in connection with its task, as specified in Sections 2.5.3 and 2.5.4,

— "EC" certificates issued in accordance with other legislation deriving from the Treaty,

— when safe integration is required pursuant Commission Regulation (EC) No 352/2009 [1], the applicant shall include in the technical file the assessor's report on the Common Safety Methods (CSM) on risk assessment referred to in Article 6(3) of Directive 2004/49/EC.

2.5. **Monitoring**

2.5.1. The aim of "EC" monitoring is to ensure that the obligations deriving from the technical file have been met during the production of the subsystem.

2.5.2. The notified body responsible for checking production must have permanent access to building sites, production workshops, storage areas and, where appropriate, prefabrication or testing facilities and, more generally, to all premises which it considers necessary for its task. The notified body must receive from the applicant all the documents needed for that purpose and, in particular, the implementation plans and technical documentation concerning the subsystem.

2.5.3. The notified body responsible for checking implementation must periodically carry out audits in order to confirm compliance with the relevant TSI(s). It must provide those responsible for implementation with an audit report. Its presence may be required at certain stages of the building operations.

2.5.4. In addition, the notified body may pay unexpected visits to the worksite or to the production workshops. At the time of such visits the notified body may conduct complete or partial audits. It must provide those responsible for implementation with an inspection report and, if appropriate, an audit report.

[1] OJ L 108, 22.4.2009, p 4.

2.5.5. With a view to delivering the "EC" declaration of suitability for use referred to in Section 2 of Annex IV, the notified body shall be able to monitor a subsystem on which an interoperability constituent is mounted in order to assess, where required by the corresponding TSI so requires, its suitability for use in its intended railway environment.

2.6. **Submission**

The complete file referred to in paragraph 2.4 must be lodged with the applicant in support of the "EC" ISV certificate(s), if available, issued by the notified body responsible for this or in support of the certificate of verification issued by the notified body responsible for "EC" verification of the subsystem. The file must be attached to the "EC" declaration of verification which the applicant sends to the competent authority with which he lodges the application for authorisation for placing in service.

A copy of the file must be kept by the applicant throughout the service life of the subsystem. It must be sent to any other Member States which so request.

2.7. **Publication**

Each notified body must periodically publish relevant information concerning:

— requests for "EC" verification and ISV received,

— request for assessment of conformity and/or suitability for use of ICs,

— "EC" ISV certificates issued or refused,

— "EC" certificates of conformity and/or suitability for use issued or refused,

— "EC" certificates of verification issued or refused.

2.8. **Language**

The files and correspondence relating to the "EC" verification procedures must be written in an EU official language of the Member State in which the applicant is established or in an EU official language accepted by the applicant.

3. VERIFICATION PROCEDURE IN THE CASE OF NATIONAL RULES

3.1. **Introduction**

The verification procedure in the case of national rules is the procedure whereby the body designated pursuant to Article 17(3) (the designated body) checks and certifies that the subsystem complies with the national rules notified in accordance with Article 17(3).

3.2. **Certificate of verification**

The designated body responsible for the verification procedure in the case of national rules draws up the certificate of verification intended for the applicant.

The certificate shall contain a precise reference to the national rule(s) whose conformity has been examined by the designated body in the verification process, including those related to parts subject to derogation from a TSI, upgrade or renewal.

In the case of national rules related to the subsystems composing a vehicle, the designated body shall divide the certificate into two parts, one part including the references to those national rules strictly related to the technical compatibility between the vehicle and the network concerned, and the other part for all other national rules.

3.3. **Technical file**

The technical file accompanying the certificate of verification in the case of national rules must be included in the technical file referred to in point 2.4 and shall contain the technical data relevant for the assessment of the conformity of the sub-system with the national rules.'

DECISIONS

COMMISSION DECISION

of 24 March 2010

on the State aid C 4/03 (ex NN 102/02) implemented by Italy for WAM SpA

(notified under document C(2010) 1711 cor.)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2011/134/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof [1],

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

Having regard to the decision by which the Commission decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, in respect of the aid C 4/03 (ex NN 102/02) [2],

Having called on interested parties to submit their comments pursuant to the provisions cited above, and having regard to their comments,

Whereas:

I. PROCEDURE

Procedure before the Commission

(1) By letter dated 26 July 1999, the Commission received a complaint against WAM Engineering Ltd. It was alleged in the complaint that WAM SpA had been granted illegal public subsidies by Italy.

(2) Requests for information were addressed to the Italian authorities by letters of 5 August 1999 and 10 September 1999. The complainant submitted additional information by letter of 2 September 1999. By letter dated 13 December 1999, the Commission communicated to the complainant the reply of the Italian authorities submitted by letter of 11 October 1999, and announced that it intended to carry out a formal investigation.

(3) At the same time, a survey on national support schemes for foreign direct investment outside the EU (FDI) was being carried out which was expected to result in a Commission communication on the matter.

(4) By letter dated 18 December 2001, the Commission asked Italy for further information, following renewed action by the complainant (two reminders were addressed to the Commission by letters of 31 March 2000 and of 11 October 2000), given that the FDI survey had been postponed by the Commission.

(5) In the light of the information provided by the letters of 20 February 2002 and of 27 March 2002, further questions were put to the Italian authorities by letter of 12 April 2002.

(6) The Italian authorities replied by letter of 21 May 2002. By letter dated 5 June 2002, the Commission informed the Italian authorities that it considered the information submitted to be incomplete and asked for the missing information and further clarifications to be provided within 20 working days from receipt of the letter.

(7) As no reply was received, and in spite of a request from the Italian authorities by letter of 25 June 2002 for an extension of the deadline until 31 July 2002, an information order within the meaning of Article 10(3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [3] (hereinafter: 'Regulation (EC) No 659/1999') was adopted by the Commission on 26 September 2002. Meanwhile, the case was transferred into the non-notified aid register and was given the number NN 102/2002.

(8) By letters of 26 June 2002 and 4 October 2002, the complainant was kept informed of the progress of the dossier. By letter of 31 October 2002, it asked to know the outcome of the order.

[1] With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU; the two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate and the reference to the Court of First Instance as a reference to the General Court.

[2] C(2003) 35 final (OJ C 142, 18.6.2003, p. 2).

[3] OJ L 83, 27.3.1999, p. 1.

(9) The Italian authorities submitted the requested information by letter of 16 October 2002 and supplied additional elements by letter of 24 October 2002.

(10) The Commission informed Italy by letter of 24 January 2003 that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty, now Article 108(2) of the TFEU, in respect of the aid in question ([4]).

(11) By letter of 29 January 2003, the complainant was informed accordingly.

(12) Having not yet received the above-mentioned letter, the complainant sent the Commission a reminder by letter of 10 February 2003.

(13) Further to the communication to the Italian authorities, concerning the opening of the procedure, WAM SpA immediately sent a letter to the Commission (letter of 10 February 2003).

(14) By letter of 27 February 2003, Italy asked for an extension, until 7 March 2003, of the 15-day deadline for presentation of observations on confidentiality, as laid down in the Commission's decision.

(15) By letter of 10 March 2003, Italy asked the Commission not to publish the decision, given the willingness of the beneficiary to repay the aid, as also stated by WAM SpA itself in a letter of 13 March 2003 sent directly to the Commission.

(16) By letter of 18 March 2003, the Commission pointed out that, in order to avoid publication, a final decision closing the case was necessary, which was conditional on proof being submitted that the two tranches of aid, plus interest calculated in a way acceptable to the Commission, had actually been recovered.

(17) As the amount proposed by the Italian Government, by letter of 13 May 2003, was significantly lower than the first estimate of the grant equivalent of the aid calculated by the Commission on the basis of the elements available at the time of the opening of the procedure, the Commission informed Italy, by letter of 22 May 2003 that, since the proposed amount to be repaid was considered not to satisfy its criteria, publication would go ahead shortly.

(18) By letter of 13 June 2003, the complainant asked for information about the publication of the decision. The Commission replied by letter of 18 June 2003. A further communication was sent that same day, via e-mail to the complainant informing it promptly that publication had just taken place.

(19) By letter of 1 July 2003, preceded by a fax of the same date, a request for access to the whole file was submitted by WAM SpA. The request was rejected by the Commission by letter of 14 July 2003.

([4]) See footnote 2.

(20) By letter of 20 June 2003, WAM SpA replied directly to the Commission's communication to Italy to the effect that it had published the decision. The Commission replied by letter of 11 July 2003.

(21) By letter of 27 June 2003, the complainant expressed the intention to claim compensation from WAM SpA in view of the losses it had incurred, if the Commission's final decision was negative. It asked to be informed of the procedure to be followed.

(22) By letter of 4 July 2003, Morton Machine Company Limited announced that it had been summoned to appear in an Italian court by WAM SpA, which in turn was claiming compensation, and asked the Commission whether it could arrange for the summons to be withdrawn.

(23) By letter of 10 July 2003, the Commission replied to the two above-mentioned letters from Morton Machine Company.

(24) By letter of 16 July 2003, interested third parties submitted comments and requested that they be kept confidential.

(25) On 23 July 2003 a meeting took place between the Commission departments and the Italian authorities. Ahead of the meeting, the Italian authorities had provided some information by letter of 22 July 2003, registered as received on 25 July 2003. Additional information was sent directly to the Commission by letter of 8 August 2003 from the Prime Minister's Office (Department for Coordination of Community Policies).

(26) By letter of 21 August 2003, Morton Machine Company Limited asked whether a final decision had already been taken and asked to be kept informed of the situation. The Commission replied by letter of 28 August 2003.

(27) By letter of 19 September 2003, Italy submitted to the Commission its observations on the decision to open the formal investigation procedure.

(28) By letter of 3 November 2003, Italy submitted its observations on third-party comments.

(29) Further to the request for compensation submitted by WAM SpA of 30 July 2003, the refusal of access to the documents was confirmed by the Secretariat-General by letter of 16 September 2003.

(30) The information missing from the reply of 19 September 2003 was provided by Italy by letter of 14 January 2004.

(31) On 19 May 2004 the Commission adopted a decision under Article 7(3) and 7(5) of Regulation (EC) No 659/1999 ([5]).

Procedure before the Court of First Instance and the Court of Justice

(32) Both WAM SpA and Italy appealed against the Commission Decision of 19 May 2004 before the Court of First Instance. The Court of First Instance, having decided to join the cases, handed down its judgment on 6 September 2006 and overturned the Commission Decision on the grounds that it had failed to provide sufficient evidence that the aid was likely to affect trade and competition in the EU market, given the circumstances of the case ([6]).

(33) The Court of First Instance's judgment was appealed against by the Commission. On 30 April 2009 the Court of Justice dismissed the Commission's appeal ([7]).

II. DESCRIPTION OF THE AID

(34) WAM SpA is a company under Italian law with its registered office in Cavezzo, Italy. During the relevant period between 1995 and 2000 it was active in the market for the production and marketing of screw conveyors and feeders, dust collectors and valves for industrial plants. There are numerous EU producers in this market. In the dust collectors market in particular, WAM SpA had a number of larger EU competitors with advanced technology and a well-developed commercial structure ([8]).

(35) As regards WAM SpA's presence in the Italian market, the company's market share in the cement screw conveyor market was 60 % in 1991, 50 % in 2000 and 55 % in 2003. In the dust collector market, the company's market share was 40 % in 1991 and increased to 50 % in 2000 and to 60 % in 2003 ([9]).

(36) From 1997 onward, WAM SpA expanded into other EU markets, in particular West Germany and France. In 2000, it had a market share for cement screw conveyors of 70 % in France and Germany and 60 % in the UK, whilst the corresponding figures for round dust collectors were 50 % in France, 20 % in Germany and 10 % in the UK ([10]).

(37) In 1994 a Japanese subsidiary, WAM Japan, was established. It focused on the marketing of two products which were manufactured in Italy and whose transport costs were relatively low: dust collectors and valves. In 1995 a Chinese subsidiary was established which was run first as a joint venture with a local partner and, from 1998 as a wholly owned subsidiary of WAM SpA ([11]).

(38) In the period in question, WAM SpA also held 84 % of the shares in 'WAM Engineering Ltd', a company under English law with its registered office in Tewkesbury, United Kingdom. The market segment in which WAM Engineering Ltd was active was the design, manufacture and sale of industrial mixing machinery used mainly in the food, chemical, pharmaceutical and environmental industries.

(39) With reference to the pricing policy of WAM Engineering Ltd in the United Kingdom, the complainant argued that WAM was able to offer the same products (industrial mixing machinery) that the complainant's company manufactured and marketed for about one third of the price – a figure which the complainant claimed would barely cover the raw materials needed to manufacture the machines, thanks – in its view – to Italian Government funding, in particular funding under Law No 394/81.

(40) According to the complainant, WAM Engineering Ltd was granted financial support for market penetration programmes in non-EU countries under Law No 394/81. In particular, Law No 394/81 allegedly provided support to Italian companies wishing to establish a subsidiary abroad, in the form of representative offices, sales branches and warehouses.

(41) The Italian authorities confirmed the granting of aid in the form of subsidised loans amounting to LIT 2 281 450 000 (approx. EUR 1,18 million) to WAM SpA in 1995 for projects in Japan, South Korea and Taiwan. According to the Italian authorities, the beneficiary was actually granted a subsidised loan of LIT 1 358 505 421 (approx. EUR 0,7 million) as the planned projects in Korea and Taiwan were not implemented due to the economic crisis in those countries.

(42) The subsidised loan covered 85 % of the eligible expenditure. The interest-rate subsidy could amount to up to 60 % of the reference rate. The loan was to be repaid in 5 years, on a straight-line basis and in equal half yearly amounts, with interest payable on the outstanding balance. A grace period of 2 years was envisaged.

([5]) OJ L 63, 4.3.2006, p. 11.
([6]) Joined Cases T-304/04 and T-316/04 *Italian Republic and Wam SpA* v *Commission* [2006] ECR II-64.
([7]) Judgment of the Court of Justice of 30 April 2009 in Case C-494/06 P *Commission* v *Italian Republic and Wam SpA*, not yet reported.
([8]) Such as Dce and R-Master (UK), Infa-Stauband Ats (Germany) and Fda (France). See Recent, Centre for economic research (Department of political economy of the University of Modena and Reggio Emilia), 'The Rise of a District Lead Firm: The case of WAM (1968 – 2003)', February 2009.
([9]) Recent, Centre for economic research (Department of political economy of the University of Modena and Reggio Emilia), 'The Rise of a District Lead Firm: The case of WAM (1968 – 2003)', February 2009.
([10]) See footnote 9.
([11]) See footnote 9.

(43) The subsidised interest rate of the specific loan (equal to 4,4 %) was calculated with reference to a market rate of 11 %. In the light of the above and on the basis of the information available at the time of the opening of the procedure, the aid intensity seemed to be equivalent to 16,38 % gross grant equivalent (gge) which would have resulted in aid of LIT 222,523 million (approx. EUR 115 000).

(44) The eligible costs of this aid have been divided into two categories: costs related to permanent structures abroad and trade promotion costs. The following costs, expressed in LIT million, were taken into account:

(in LIT million)

ELIGIBLE COSTS	LOANS GRANTED
PERMANENT STRUCTURES	
Rent, insurance, miscellaneous facilities	122,56
Operating costs (in particular personnel, fittings, equipment for permanent structures)	556,94
Display models	38,23
Consultancy services	29,43
Subtotal 1	747,18
TRADE PROMOTION	
Storage of goods	456,28
Market surveys	40,95
Fairs and exhibitions	12,19
Advertising	94,39
Business trips	7,52
Subtotal 2	611,33
Grand total	1 358,51

(45) Moreover, by letter of 21 May 2002, the Italian authorities, in response to a request for information from the Commission, stated that WAM SpA was granted another subsidised loan of LIT 1 940 579 808 (approx. EUR 1 million) under the same scheme on 9 November 2000.

(46) The Commission was not aware, at the time of the opening of the procedure, of any other details concerning this additional aid.

III. GROUNDS FOR INITIATING THE PROCEDURE

Aid granted to WAM SpA in 1995

(47) The Italian authorities maintained in their letter of 21 May 2002 that the aid granted to WAM SpA in 1995 under Law No 394/81 was significantly below the *de minimis* threshold and that no other *de minimis* aid had been granted to the same beneficiary over the same 3-year period. Furthermore, they stressed that the aid could not in any way be considered as being directly linked to the quantities exported.

(48) The Commission pointed out that most of the eligible costs taken into account for the specific aid granted to WAM SpA in 1995, such as rent, insurance, miscellaneous facilities and operating costs (in particular for staff, fittings and equipment) in connection with a permanent place of business abroad, could have been considered aid for the establishment and operation of a distribution network.

(49) Likewise, in the Commission's opinion, costs for consultancy services related to permanent structures abroad, advertising and business trips should have been classified as current expenditure relating to export activities.

(50) In the decision to open the formal investigation procedure, the Commission stated that, pursuant to the last paragraph of the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid [12], where, at the time of a decision, guidelines have been replaced by a regulation, the Commission considers that the rules set out in the regulation have to be applied to the extent that they are more favourable than those set out in the guidelines. Accordingly, the Commission noted in the decision to open the formal investigation procedure that as regards *de minimis* aid, the rules of Commission Regulation (EC) No 69/2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid [13] (hereinafter: 'Regulation (EC) No 69/2001') in principle had to be applied.

(51) However, Regulation (EC) No 69/2001 did not apply to aid for export-related activities, that is, aid directly linked to the quantities exported as well as to the establishment and operation of a distribution network or to other current expenditure linked to export activities, as provided in Article 1(a).

(52) As regards the compliance of the aid in question with the relevant *de minimis* rules, it must be noted that the Commission stated in the decision to open the formal investigation procedure that the 1992 Community guidelines on State aid for SMEs [14] (hereinafter: the 1992 SME guidelines) did not explicitly exclude export aid but set a lower threshold for *de minimis* aid of ECU 50 000.

[12] OJ C 119, 22.5.2002, p. 22.
[13] OJ L 10, 13.1.2001, p. 30.
[14] OJ C 213, 19.8.1992, p. 2.

(53) In the light of the above, the Commission expressed doubts in the decision to open the formal investigation procedure as to whether the aid granted to WAM SpA in 1995 under Law No 394/81 could be considered to comply with any relevant *de minimis* rule.

(54) Furthermore, in the light of a preliminary examination, the Commission had serious doubts whether the aid to WAM SpA could be declared compatible with the EC Treaty (now the TFEU) on the basis of any provision.

Aid granted to WAM SpA in 2000

(55) At the time the formal investigation procedure was initiated, the Commission was not aware of any specific feature, such as aid intensity or eligible expenditure, of the 'WAM group' aid (as the Italian authorities term it) granted in 2000, again in the form of a subsidised loan, under Law No 394/81. No information concerning it had been submitted by the Italian authorities.

(56) Accordingly, the Commission was not able at that stage of the procedure to assess the specific aid in depth. However, given that it served the same purpose and was granted on the same legal basis as the aid granted in 1995, it doubted whether the aid could be deemed to be in compliance with any of the relevant provisions of the EC Treaty (now the TFEU).

(57) The Italian authorities also pointed out, in their letter of 24 October 2002, that no aid had ever been granted directly to 'WAM Engineering' and that there was no undertaking registered as such in the Italian business register. The Commission however noted, firstly, that 'WAM SpA' held 84 % of 'WAM Engineering Ltd' shares and, secondly, that since their letter of 11 October 1999, the Italian authorities had announced that 'WAM SpA' had been granted a subsidised loan in 1995 under Law No 394/81 and had added, by letter of 21 May 2002, that 'WAM group' had been granted another subsidised loan under the same scheme on 9 November 2000.

IV. COMMENTS FROM INTERESTED PARTIES

(58) Comments on the decision to open the formal investigation procedure were received from an interested third party who asked not to be named.

(59) The third party comments supported the Commission's efforts to restore a level playing field for competitors in the sector concerned and complained about the technical skills and jobs being lost on account of WAM SpA's position in the market.

(60) By letter of 3 November 2003, the Italian authorities, who were made aware of the third party's comments by letter of 25 September 2003 from the Commission, stated that in their view these comments added nothing new as they simply confirmed some of the assertions already made in the case, by the complainant among others. In particular, the Italian authorities considered that sufficient proof had been provided to demonstrate that there was no link between the claims made in the above-mentioned comments and the funding of WAM SpA under Law No 394/81.

V. COMMENTS FROM THE ITALIAN AUTHORITIES

(61) With regard to the 1995 loan, the Italian authorities provided evidence that, at the point at which the application was made for the first aid measure and the loan granted, WAM SpA complied with the definition of a medium-sized enterprise given at point 2.2 of the 1992 SMEs guidelines, as illustrated by the company's 1994 annual accounts, on the grounds that it had 163 employees, an annual turnover of EUR 16,8 million and a balance-sheet total of EUR 20,1 million and was owned by two undertakings, both fulfilling the definition of an SME. But the Italian authorities themselves agreed that WAM SpA was no longer an SME after 1998, or when the second aid was granted (2000).

(62) No other new substantive element concerning the first aid measure was added to the information that the Commission already possessed when the procedure was initiated, except for the fact that the loan was made available to the beneficiary in several instalments for which the grace period could vary from 2 years to zero. Apparently, there was no provision in the original contract for reviewing the interest rate. This loan was scheduled to be repaid in full in April 2004.

(63) As far as the 2000 loan is concerned, the Italian authorities provided clarification, by letter of 25 July 2003, that the actual total amount of the loan was LIT 3 603 574 689 (corresponding to EUR 1 861 091,01), rather than LIT 1 940 579 808 (about 1 million EUR), as previously stated in the letter of 21 May 2002, and indicated in the decision to initiate the formal investigation procedure, since the latter figure referred only to the part of the loan which had already been paid at the point at which the letter was written, not the overall amount of aid granted.

(64) Two more instalments were in fact paid. The last one, amounting to EUR 248 091,01, was paid on 22 January 2003. The conditions under which this loan was granted are the same as those for the 1995 loan since both were granted under Law No 394/81. The granting of the entire amount of the 2000 loan in question was decided on 9 November 2000 and the contract was signed on 20 December 2000.

(65) Below is a schedule of the eligible costs taken into consideration as regards this aid, forwarded by the Italian Government in an annex to the letter of 22 July 2003.

(in EUR thousand)

ELIGIBLE COSTS	LOANS GRANTED
PERMANENT STRUCTURES	
Rent and fitting-out of premises, vehicles	331,27
Operating costs (management, goods and personnel)	973,50
Display models	0,87
Training	25,24
Consultancy	30,29
Subtotal 1	1 361,17
TRADE PROMOTION	
Storage of goods	353,39
Fairs and promotions	6,37
Advertising	42,74
Business trips	94,84
Trips by customers to Italy	2,59
Subtotal 2	499,92
Grand total	1 861,09

(66) Furthermore, it is evident from the documents annexed to the letter of 14 January 2004 that the programme in question should have been carried out in China jointly by WAM SpA and 'WAM Bulk Handling Machinery Shangai Co Ltd', a local firm wholly owned by WAM SpA.

(67) Eligible costs were considered to include the rent of premises for offices, storage, showrooms and technical assistance (total surface area of 7 500 m^2), the purchase, renting or leasing of 3 vehicles and staff costs at the parent firm and abroad (specifically: 1 sales manager and 6 technicians).

(68) The interest rate applied to the specific loan was 2,32 %, i.e. 40 % of the reference rate of 5,8 %, in force when the aid was granted. Once again, it seems that no change in the interest rate during the period of the loan was provided for in the contract. The loan was paid to the beneficiary in several instalments, so the grace period varied from 2 years to zero.

(69) As regards repayment, the data supplied by the Italian authorities shows that the grace period of 2 years, during which only the interest on the loan instalments already disbursed to the beneficiary was paid, elapsed on 20 February 2003. On 20 August 2003, the 5-year repayment period started. Repayment was on a straight-line basis and in equal half-yearly instalments, with interest due on the outstanding balance. According to the schedule, repayment should therefore have been completed by 20 February 2008.

(70) Furthermore, as regards the modification of the interest rate during the repayment period, the Italian authorities argued that general rules allowing such reductions did exist within the Italian legal framework.

(71) In addition, with regard to both loans, the Italian authorities claimed that the cost of the compulsory bank guarantee, which was requested prior to the granting of the loans, had to be deducted from the amount of the aid.

(72) As regards WAM SpA's exports inside and outside the EU, the following data were provided:

YEAR	EXPORTS INSIDE EU	EXPORTS OUTSIDE EU	TOTAL EXPORTS
1995	10 237 196	4 477 951	14 715 147
1996	9 338 640	5 592 122	14 930 762
1997	9 974 814	5 813 442	15 788 256
1998	10 780 161	5 346 514	16 126 675
1999	11 885 473	5 276 525	17 161 998

(73) The Italian authorities informed the Commission that the total export figures indicated above represented 52 % to 57,5 % of WAM SpA's total annual turnover in 1995 and 1999 respectively.

(74) Finally, while the Italian authorities acknowledge that the two loans under examination are covered neither by Regulation (EC) No 69/2001 nor by Commission Regulation (EC) No 70/2001 ([15]), they take the view that the incentives for enterprises from the EU designed to support programmes to be implemented outside the EU do not fall under the scope of Article 87(3) of the EC Treaty, now Article 107(3) of the TFEU.

VI. **ASSESSMENT OF THE AID**

Existence of aid within the meaning of Article 107(1) of the TFEU

(75) Article 107(1) of the TFEU states that 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort

([15]) OJ L 10, 13.1.2001, p. 33.

competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.'

(76) It follows from Article 107(1) of the TFEU that, in order for a measure to qualify as State aid, four conditions must be met. First, there must be an intervention of the state through state resources. Secondly, that intervention must confer a selective advantage on its recipient. Thirdly, it must be liable to affect trade between Member States and, fourthly, it must distort or threaten to distort competition.

State resources and imputability to the State

(77) The concept of State aid applies to any advantage, granted directly or indirectly, financed out of state resources, granted by the State itself or by any intermediary body acting by virtue of powers conferred on it. Court of Justice case law establishes very clearly that there is no difference between aid transferred directly by the State and aid transferred by public or private entities instituted by the State to do so ([16]).

(78) The aid measures under scrutiny were granted by the committee set up under Article 2 of Law No 394/81 ([17]) for the 1995 loan and by the '*Comitato Agevolazioni*' ([18]) for the 2000 loan.

(79) Mediocredito Centrale SpA ([19]) entered into the 1995 financing contract with WAM SpA in order to implement the decision of the committee set up under Article 2 of Law No 394/81. SIMESIT SpA ([20]) entered into the 2000 financing contract with WAM SpA in order to implement the decision of the '*Comitato Agevolazioni*'.

(80) In this case the aid was granted from state resources by entities which acted on behalf of the State, with the objective of promoting economic activities according to the guidelines laid down by the State, and is therefore – in accordance with Court of Justice case law – imputable to the State ([21]).

Selective advantage granted to an undertaking

(81) Loans on advantageous terms improve the financial situation of the recipient of the aid, releasing it from costs that it would otherwise have to bear if it were to set up a market penetration programme without state intervention. Therefore the State aid measures under scrutiny confer a selective advantage on WAM SpA over its competitors from the EU.

(82) As it is active in the market for the production and distribution of screw conveyors and feeders, dust collectors and valves for industrial plants, there is no doubt that WAM SpA carries out an economic activity in that market, which fulfils the definition of an undertaking under EU law ([22]).

(83) In conclusion, the aid granted to WAM SpA can be regarded as having conferred a selective advantage on an undertaking.

Effect on trade between Member States and distortion of competition

(84) In its judgment of 30 April 2009 the Court of Justice emphasises ([23]) that 'even in cases where it is apparent from the circumstances under which it was granted that the aid is liable to affect trade between Member States

([16]) See Case 78/76 *Steinike & Weinlig* [1977] ECR 595, paragraph 21; Case 290/83 *Commission* v *France* [1985] ECR 439, paragraph 14; Joined Cases 67/85 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraph 35; and Case C-305/89 *Italy* v *Commission* [1991] ECR I-1603, paragraph 13.

([17]) According to Article 2 of Law No 394/81 a fund was created at Mediocredito Centrale for granting subsidised loans to companies for market penetration abroad. This fund is administered by a committee which ensures that the support is granted in compliance with the law. The committee is appointed by decree of the Minister of Trade in cooperation with the Minister for the Treasury and the Minister for Industry, Trade and Crafts. The committee, established at the Ministry of Foreign Trade, is made up of: a) the Minister for Trade, or, by delegation, the Secretary of State, who chairs it; b) a manager from each of the following departments: Treasury, Ministry of Industry, Commerce and Crafts, Ministry of Trade, or similarly qualified replacements appointed by the respective Ministers; c) the Director-General of Mediocredito Centrale, or in his absence, a replacement designated by him; d) the Director-General of the National Institute for Foreign Trade (Istituto nazionale per il commercio estero), or in his absence, a replacement designated by him.

([18]) Article 1 of the Ministerial Decree of 19 January 1999 stipulates the composition of the committee within the meaning of the Legislative Decree of 31 March 1998, No 143, and in particular, Article 25 paragraph 1, as including two representatives of the Ministry of Trade, one representative of the Treasury, Budget and Economic Planning, one representative of the Ministry of Foreign Affairs, Minister for Industry, Trade and Crafts, one representative appointed by the Conference of presidents of Regions and Autonomous provinces and one representative of the Italian Banking Association.

([19]) At the time in question, a fund within the meaning of Article 2 of Law 394/81 holding state resources was set up at Mediocredito Centrale and administered by the committee set up under Article 2 of Law No 394/81. By letter of 27 December 1995, the Ministry of Foreign Trade asked Mediocredito Centrale to enter into a contract with WAM SpA (within 3 months) in order to implement the decision of the committee set up under Article 2 of Law No 394/81 at its session of 24 November 1995.

([20]) According to Legislative decree No 143 of 31 March 1998, and in particular Article 25(1) thereof, as from 1 January 1999 SIMESIT SpA was appointed to manage financial support for promoting trade abroad under Law No 394/81. SIMESIT SpA is a public entity which was established in 1990 (Law No 100 of 24 April 1990) by the Italian Government to promote Italian companies in third countries. The company is controlled by the Italian Government, which holds 76 % of its shares and sets the guidelines for selecting the investments that SIMESIT SpA supports. Furthermore, the management board of SIMESIT ('consiglio d'amministrazione') consists of nine members, five of whom are appointed by the Italian Government.

([21]) See Case C-482/99 *French Republic* v *Commission (Stardust)* [2002] ECR I-4397, paragraphs 55 and 56.

([22]) See Case C-41/90 *Höfner and Elser* [1991] ECR I-01979, paragraph 21.

([23]) Case C-494/06 P *Commission* v *Italian Republic and Wam SpA*, not yet reported, paragraphs 49 *et seq.*

and to distort or threaten to distort competition, the Commission must at least set out those circumstances in the statement of reasons for its decision'. However, the Court also considers that the Commission does not have to demonstrate that the aid has a real effect on trade between Member States but only 'to examine whether that aid is liable to affect such trade and distort competition' ([24]). Furthermore, the Court of Justice has also ruled that 'the Commission was not obliged to carry out an economic analysis of the actual situation of the relevant market or the patterns of the trade in question between Member States or to show the real effect of the aid at issue' in order to demonstrate that the conditions concerning the effects on trade and competition were fulfilled.

(85) WAM SpA is a company operating in the EU and international markets. It has subsidiaries in many Member States and sells its products throughout the EU as well as outside of it. Between 1995 and 1999, two thirds of its turnover, EUR 10 million in absolute figures, came from sales in the EU market and one third from sales outside the EU. In these markets, WAM SpA actually or potentially competes with other EU companies, which are also present internationally. As mentioned above (see recital 34), there were at least three other large EU producers of dust filters from various Member States which were present internationally and which could have been potential competitors of WAM SpA in the export of dust filters to Japan or China ([25]). These companies were, at least potentially, in competition with WAM SpA, because if they decided to export their products to Japan or China, they would be in a worse starting position than WAM SpA, which had received aid in order to penetrate those markets.

(86) Moreover, as explained in recitals 34 and 35, during the relevant period WAM SpA had a large share of both the national and the European markets. As indicated in recital 38, it also had a commercial presence through a subsidiary in another Member State.

(87) As a result of the aid, WAM SpA's overall position in the market strengthened, or could potentially have strengthened, by comparison with undertakings from other Member States which are not only WAM SpA's actual but also potential competitors. According to settled case law 'aid which is intended to relieve un undertaking of the expenses which it would normally have to bear in its day-to-day management or its usual activities … in principle distorts competition.' ([26])

(88) In the present case three further arguments support this finding:

(89) Firstly, the export loans granted to WAM SpA were likely to alter the normal competitive market structure, making it easier for WAM SpA than for its actual or potential competitors from the EU to export their products to foreign markets, as the latter would have to finance the export penetration programme from their own funds.

(90) Secondly, WAM SpA received aid for setting up the market penetration programme and therefore made certain savings. As WAM SpA invested in the penetration of foreign markets with the aim of exporting its products, these savings could have consequently enabled it to export products manufactured in the EU outside the EU for a lower price or with a higher margin.

(91) Thirdly, as money is fungible, any profits from this activity could have been reinvested within the EU. Another possibility is that, having received aid, WAM SpA was freed from the expense of foreign market penetration and was able use the money saved to strengthen its position in the EU market for other purposes ([27]). Moreover, after the exports have been carried out, any profits from this activity could be reinvested within the EU.

(92) In all these cases, the aid would have a direct impact on the EU market and a distorting effect vis-à-vis WAM's competitors in the EU.

(93) Likewise, it is established case law that 'when aid granted by Member States strengthens the position of an undertaking compared with other undertakings competing in the trade within the EU, the latter must be regarded as affected by that aid.' ([28]) As the aid granted to WAM SpA by Italy strengthened its position vis-à-vis its actual or potential EU competitors, as explained above, such aid also affected trade within the EU.

([24]) See also Case C-372/97 *Italy* v *Commission* [2004] ECR I-3679, paragraph 52 and Case C-66/02 *Italy* v *Commission* [2005] ECR I-10901.

([25]) Recent, Centre for economic research (Department of political economy of the University of Modena), 'The Rise of a District Lead Firm: The case of WAM (1968 – 2003)', February 2009.

([26]) See Case T-459/93 *Siemens v Commission* [1995] ECR II-1675, paragraphs 48 and 77, Case T-214/95 *Vlaams Gewest* v *Commission* [1998] ECR II-717, paragraph 43 and Case T-217/02 *TerLembeek v Commission* [2006] ECR II-4483, paragraph 177.

([27]) In Case T-369/06 *Holland Malt* v *Commission*, not yet reported, the Court of First Instance held in paragraph 55 that 'it is therefore clear from the case-law that it is not only the reduction, by virtue of state resources, of the expenses of the day-to-day management or the usual activities of an undertaking which is, in itself, liable to distort competition, but also a subsidy which relieves the recipient of all or part of the costs of an investment'.

([28]) See Case 730/79 *Philip Morris Holland* v *Commission* [1980] ECR 2671, paragraph 11, Case C-53/00 *Ferring* [2001] ECR I-9067, paragraph 21 and Case C-372/97 *Italy* v *Commission* [2004] ECR I-3679, paragraph 52.

(94) As regards the amount of aid, the Court of Justice held in *Philip Morris v Commission* ([29]) and *France v Commission* ([30]) that, even if the amount of aid received is relatively low or the undertaking is small, there is still a possibility that trade within the EU may be affected. In the same vein, in *Vlaams Gewest* v. *Commission* ([31]) the Court of First Instance stated that 'even a relatively small amount is liable to affect trade between Member States where there is strong competition in the sectors in which undertakings operate'. Moreover, the Court of Justice stated in *Heiser* ([32]) that there is no threshold or percentage below which it might be considered that trade between Member States is not affected.

(95) In the case at hand, therefore, the relatively small amount of the aid does not contradict the finding that there may be an effect on trade within the EU and on competition. Although the amount of aid is quite low, because of the intense nature of existing as well as potential competition in the sector in which WAM SpA operates, there is a great risk that competition would be distorted and that trade within the EU would be affected.

(96) On the basis of the above, it can be concluded that the aid granted to WAM SpA by Italy is very likely to affect trade and distort competition in the internal market.

(97) In conclusion, the public support given to WAM SpA constitutes State aid within in the meaning of Article 107(1) of the TFEU.

Applicable rules

(98) In accordance with the *tempus regis actum* principle, the procedural rules in force when the decision is to be adopted have to be applied to non-notified aid unless explicitly provided otherwise ([33]).

(99) Given that the exemption rules (including the *de minimis* rules) exempt certain aid measures from the notification obligation and replace the centralised system of State aid control with a decentralised system of State aid control, they are considered as being of a procedural nature.

(100) In the case at hand, even if in its decision to open the formal investigation procedure the Commission expressed doubts about the possibility of exempting aid under Commission Regulations (EC) No 69/2001 and (EC) No 70/2001, the corresponding rules in force at the time of the decision must be applied, i.e. Regulation (EC) No 1998/2006 ([34]). Likewise, Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty ([35]) (hereinafter: the 2008 Block Exemption Regulation) applies to individual aid granted before its entry into force, if the aid fulfils all the conditions laid down in this Regulation, with the exception of Article 9.

Lawfulness of the aid

(101) The Italian authorities declared, in their letter of 11 October 1999, that the legal basis of the aid granted to WAM SpA, namely Law 394 of 29 June 1981, had been notified to the Commission and to the World Trade Organisation (WTO) under Article 25 of the Agreement on Subsidies and Countervailing measures (WTO-GATT 1994) ([36]).

(102) The Commission notes that the Italian authorities are trying by this means to qualify as a notification the communication of some very concise data relating to the scheme in a table which has been sent to the Commission either for the purpose of transmission to the WTO Subsidies Committee or for the purpose of the annual report on State aid in the European Union since at least the sixth report (1996). The Commission has also been informed of the existence of the scheme as part of its survey on national support schemes for foreign direct investment (FDI) outside the European Union that exist in the Member States.

(103) These kinds of communications, however, cannot be deemed to be in compliance with Article 88(3) of the EC Treaty, now Article 108(3) of the TFEU, which states that 'the Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid.'

(104) Since it has not been previously notified to the Commission as regards its compatibility with the State aid rules, the aforementioned aid scheme has been implemented in contravention of Article 88(3) of the EC Treaty, now Article 108(3) of the TFEU, and is therefore unlawful. As the aid to WAM SpA was granted under that scheme, apart from any block exempted aid, it must also be considered unlawful.

([29]) See Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671.
([30]) See Case 259/85 *France* v *Commission* [1978] ECR 4393.
([31]) See Case T-214/95 *Vlaams Gewest* v *Commission* [1998] ECR II-717, paragraph 49.
([32]) See Case C-172/03 *Heiser* [1998] ECR I-1627, paragraph 32.
([33]) See Joined Cases 212/80 and 217/80 *Meridionale Industria Salumi and Others* [1981] ECR 2735; Joined Cases *CT Control Rotterdam and JCT Benelux* v *Commission* [1981] ECR I-3873 and Case C-61/98 *De Haan Beheer* [2000] ECR I-5003.
([34]) OJ L 379, 28.12.2006, p. 11.
([35]) OJ L 214, 9.8.2008, p. 3.
([36]) Uruguay Round of Multilateral Trade Negotiations (1986-94) — Annex 1 — Annex 1A — Agreement on Subsidies and Countervailing Measures (WTO-GATT 1994) (OJ L 336, 23.12.1994, pp. 156-183).

Aid exempted under the *de minimis* rules and compatibility of the aid with Article 107 of the TFEU

(105) The Commission has to verify whether any of the aid granted to WAM SpA can be exempted on the basis of the *de minimis* rules.

(106) In the same vein, having concluded that the measures under scrutiny constitute State aid within the scope of Article 107(1) of the TFEU, this aid has to be assessed for its compatibility under the relevant State aid rules.

First loan granted to WAM SpA

(107) Evidence has been provided by the Italian Government that at the time the first loan was granted (1995), WAM SpA fulfilled the requirements for it to be considered an SME within the meaning of Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises ([37]). To be more precise, WAM SpA was a medium-sized enterprise as it had 163 employees, an annual turnover of EUR 16,8 million and a balance sheet total of EUR 20,1 million. It was controlled by two finance companies which were themselves SMEs within the meaning of the above-mentioned recommendation.

(108) In the case at hand, the Commission is basing its analysis on the actual expenditure taken into consideration in granting the loan (see table in recital 44).

(109) Bearing in mind that the objective of the loan contract was to subsidise a market penetration programme and, in particular, to subsidise export undertakings carrying out market penetration programmes outside the European Union, the aid in question must be classified as export aid, i.e. aid for export-related activities, in the sense that it is directly linked to the establishment and operation of a distribution network or to other current expenditure related to the export activity. Similarly, the ultimate goal of the market penetration programme was to sell WAM SpA's products in Japan. This is another reason why it cannot be regarded as being linked to foreign direct investment (FDI).

(110) Regulation (EC) No 1998/2006 excludes export aid from its scope. Article 1(d) stipulates in fact that this Regulation does not apply to 'aid towards export-related activities towards third countries or Member States, namely directly linked to the quantities exported, to the establishment and operation of the distribution network or to other current expenditure linked to export activity.'

([37]) OJ L 107, 30.4.1996, p. 4.

(111) However, Article 5 of Regulation (EC) No 1998/2006 stipulates that aid not meeting the conditions of Article 1 shall be assessed in accordance with the relevant frameworks, guidelines, communications and notices.

(112) As the aid was granted in 1995 when the 1992 SMEs guidelines were in force, the 1992 SMEs guidelines must be applied ([38]). These guidelines did not explicitly exclude export aid from their scope. However, as in the present case a portion of the aid exceeds the permissible *de minimis* threshold (EUR 50 000), the whole of the aid has to be regarded as not falling under the *de minimis* exemption and for this reason must be considered to constitute State aid ([39]).

(113) Having established that the measure constitutes State aid, it must be decided whether this can be considered compatible with the internal market under the rules on State aid.

(114) Article 44(2) of the 2008 Block Exemption Regulation stipulates that any aid granted before the entry into force of the Regulation which fulfils neither the conditions laid down in it nor the conditions laid down in Commission Regulations (EC) No 68/2001 ([40]), (EC) No 70/2001, (EC) No 2204/2002 ([41]) or (EC) No 1628/2006 ([42]) must be assessed according to the frameworks, guidelines, communications and notices in force at the time it was granted.

(115) In the present case, the 2008 General Block Exemption Regulation is not applicable since it introduces an additional step – verifying the incentive effect of a project or activity before it begins – which was not carried out by Italy. Therefore, by virtue of Article 8(6) of the 2008 General Block Exemption Regulation, the entire aid measure cannot be exempted under that Regulation. Moreover, the expenses mentioned in the table in recital 44 and listed at recital 118 cannot be block-exempted on the basis of Regulations (EC) No 68/2001, (EC) No 70/2001, (EC) No 2204/2002 nor (EC) No 1628/2006 either as the conditions laid down in those Regulations are not fulfilled.

(116) As none of these instruments justifies the compatibility of the aid, it must be assessed on the basis of the 1992 SME guidelines since they contain the substantive rules in force when the aid was granted in 1995 ([43]).

([38]) See footnote 12.
([39]) In line with Commission established practice. See for example: Commission Decision 2003/643/EC of 13 May 2003 on the State aid implemented by Germany for Kahla Porzellan GmbH and Kahla/Thüringen Porzellan GmbH (OJ L 227, 11.9.2003, p. 12).
([40]) OJ L 10, 13.1.2001, p. 20.
([41]) OJ L 337, 13.12.2002, p. 3.
([42]) OJ L 302, 1.11.2006, p. 29.
([43]) See footnote 12.

(117) A portion of the aid can be considered compatible with the internal market on the basis of the 1992 SME guidelines. In particular the aid for consultancy services (LIT 29,43 million) and market surveys (LIT 40,95 million) can be considered compatible as it complies with point 4.3 'Aid for consultancy help, training and dissemination of knowledge'. As regards the aid for participation in fairs and exhibitions (LIT 12,19 million), it can be considered compatible with the 1992 SME guidelines on the basis of point 4.5 'Aid for other purposes', as it can be regarded as aid for other means of SME promotion, such as encouraging cooperation. The remainder of the aid (see the table in recital 44) cannot be considered compatible as it is not intended to support any productive investments nor any other admissible aim laid down in the 1992 SME guidelines, i.e. aid for general investments outside or inside national assisted areas, aid for environmental protection investment and aid for research and development.

(118) Accordingly, the Commission is of the opinion that the bulk of the eligible costs for the establishment of permanent structures abroad which were taken into consideration by the Italian Government in granting the first subsidised loan to WAM SpA in 1995 can in no way be regarded as productive investment; on the contrary, aid towards them must be classified as operating aid. The costs considered eligible: rent of premises, insurance and miscellaneous facilities (LIT 122,56 million) and operating costs such as personnel, fittings and equipments for premises (LIT 556,94 million) are costs which the firm should itself have borne; the same applies to display models and spare parts for after-sale service (LIT 38,23 million). Similarly, with respect to the eligible costs in support of trade promotion, the cost of storage of goods (LIT 456,28 million) does not comply with the 1992 SME guidelines, in the Commission's opinion, as it cannot be considered an initial investment; the advertising costs (LIT 94,39 million) and business trips (LIT 7,52 million) do not comply with the guidelines either.

(119) On the basis of the above assessment, the Commission therefore concludes that

(a) the portion of aid relating to the aid for consultancy services (LIT 29,43 million) and market surveys (LIT 40,95 million) as well the aid for participation in fairs and exhibitions (LIT 12,19 million) constitutes State aid compatible with the internal market on the basis of the 1992 SME guidelines;

(b) the portion of the aid not mentioned under (a) (see recital 118) constitutes State aid incompatible with the internal market.

Second loan granted to WAM SpA

(120) At the time the second amount of aid was granted in 2000, WAM SpA was, as the Italian authorities themselves admitted, a large undertaking. Furthermore, it was located in a non-assisted area.

(121) The 2000 loan can also be regarded as an export aid to WAM SpA as it had the same objective as the 1995 loan and was also intended for the purpose of penetrating and exporting to foreign markets (specifically the Chinese market). It is obvious that aid for technical assistance, workshop premises and staff abroad (1 sales manager, 1 general manager, 4 employees and 6 technicians) was unlikely to have been intended for anything other than commercial activities. As a consequence, the reasoning used for the 1995 loan is also applicable to the 2000 loan.

(122) Moreover, the same wording used to classify the first loan to WAM SpA as an incentive to undertake market penetration programmes was also used in the contract for granting the aid in 2000. It should also be noted that the specific programme was to have been carried out jointly by WAM SpA and the local firm, WAM Bulk Handling Machinery Shangai Co Ltd, a wholly owned subsidiary of WAM SpA. This constitutes evidence of the established presence of WAM SpA in the specific market in question.

(123) As the aid in question is an export aid, Regulation (EC) No 1998/2006, as has been stated above, does not apply.

(124) The compatibility of the aid with the internal market must therefore be assessed. The Commission takes the view that the procedural rule in force at the time the decision was taken, the 2008 General Block Exemption Regulation, does not apply to the case in question. This Regulation introduces an additional step – verifying the incentive effect of a project or activity before it begins – which was not carried out by Italy. Therefore, by virtue of Article 8(6) of that Regulation, the entire aid measure cannot be exempted under the 2008 General Block Exemption Regulation. Thus, in accordance with Article 44(2) of the 2008 general block exemption Regulation, the compatibility of the aid with Regulations (EC) No 68/2001, (EC) No 70/2001, (EC) No 2204/2002 and (EC) No 1628/2006 must be assessed.

(125) The Commission takes the view that the training expenses detailed in the letter of 22 July 2003 (EUR 25 240 out of total loan of EUR 1,8 million in 2000) (as shown in the table in recital 65), may be exempted on the basis of Article 4 of Regulation (EC) No 68/2001 and are therefore compatible with the internal market according to Article 87(3) of the EC Treaty, now Article 107(3) of the TFEU, whether the assessment is based on Article 4(2) (specific training) or Article 4(3) (general training).

(126) However, the remainder of the aid in question cannot be considered compatible on the basis of Regulations (EC) No 70/2001, (EC) No 2204/2002 or (EC) No 1628/2006 or any other any legal basis, as it does not promote any other horizontal objective of the European Union within the meaning of Article 107(3)(c) of the TFEU, such as research and development, employment, the environment or rescue and restructuring within the meaning of the relevant guidelines, frameworks and regulations.

(127) Therefore, it must be concluded that since export-related activities are excluded from the application of Regulation (EC) No 1998/2006 and they cannot be considered compatible with Article 107(3)(c) of the TFEU on any legal basis, the aid provided by means of the second loan is incompatible with the internal market, with the exception of the compatible portion of training aid as described above.

General observations

(128) As regards the modification of the interest rate during the loan repayment period, the Italian authorities argued that general rules allowing such reductions did exist within the Italian legal framework. However, the Ministerial Decree of 31 March 2000, which is the only legal basis provided for this purpose, applies only to the initiatives funded by Laws Nos 394/81 and 304/1990, and is therefore very restrictive. Moreover, it must be emphasised that no further evidence has been provided that the interest rate in respect of the aid in question was modified ([44]).

(129) With regard to both loans, the Italian authorities argue that the cost of the compulsory bank guarantee which was requested prior to the granting of the loans has to be deducted from the amount of the aid. The Commission observes, first of all, that such a guarantee, or its equivalent, would usually have been requested even by a private credit institution granting loans according to the market economy investor principle. Secondly, the specifications annexed to the contract stipulate that the overlapping of aid for the same programme is not allowed, except for aid related to the guarantee, which consequently is deemed to be itself eligible for aid.

VII. **CLOSING REMARKS**

(130) The Commission notes that the exemptions provided for in Article 107(2)(a) to (c) ([45]) of the TFEU do not apply to the loans in question since they do not pursue any of the objectives listed in that article, nor has the Italian Government argued that this was the case.

(131) The loans were not intended to promote the economic development of certain areas or promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State, nor were they intended to promote culture or heritage conservation. The Commission therefore considers that Article 107(3)(a) of the TFEU ([46]), Article 107(3)(b) of the TFEU ([47]) and Article 107(3)(d) of the TFEU ([48]) do not apply to the loans under consideration.

VIII. **CONCLUSION**

(132) Both loans to WAM SpA were granted without being previously notified to the Commission. Indeed, the 1995 loan was granted on 24 November 1995 and the 2000 loan was granted on 9 November 2000. Accordingly, the Commission finds that, with the exception of the block-exempted compatible portion of the aid, in so far as these loans have been implemented in breach of Article 88(3) of the EC Treaty, now Article 108(3) of the TFEU, they were granted unlawfully to the beneficiary.

First loan granted to WAM SpA

(133) The aid Italy granted to WAM SpA on 24 November 1995 in the form of an interest-rate subsidy constitutes State aid. The portion corresponding to eligible costs for consultancy services, participation in fairs and exhibitions and market surveys constitutes State aid compatible with the internal market.

(134) As regards the overall grant equivalent of the specific aid, consideration has been given to the fact that the loan was made available to the beneficiary in three instalments (on 24 April 1996, 23 July 1997 and 24 April 1998) and that the grace period therefore varied from 2 years to zero. The interest rate stipulated by the loan contract (4,4 %), relative to the reference rate periodically fixed by the Commission ([49]) and in force at the time the loan was granted (11,35 %), has also been taken into consideration. The aid element is calculated as the difference between the interest rate stipulated in the contract and the reference rate at the moment the loan was granted. On the basis of this calculation, the grant equivalent, discounted as of 24 April 1996 (date on which the first instalment of the loan was paid to WAM SpA) is equivalent to EUR 108 165,10.

([44]) Such a modification could, in any event, only have been made to the first subsidised loan granted to WAM SpA as it applied to funding which already existed when it came into force, whereas the second loan had not yet been granted to WAM SpA.

([45]) Article 107(2) TFEU stipulates that the following aid is compatible with the common market: (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned; (b) aid to make good the damage caused by natural disasters or exceptional occurrences; (c) aid granted to the economy of certain areas of the Federal Republic of Germany ….

([46]) Namely, 'aid to promote economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation.'

([47]) Namely, 'aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State.'

([48]) Namely, 'aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest.'

([49]) Published regularly in the Official Journal.

(135) However, this aid amount must be adjusted by the compatible portion of the State aid.

(136) As a part of the loan in question has been considered compatible, this amount must be deducted from the State aid component of the 1995 loan (EUR 108 165,10). Given the impossibility of establishing a direct link between a given instalment of the loan and certain specific expenses, the percentage represented by the compatible items in the overall loan (LIT 82,57 million out of LIT 1 358,51 million, i.e. 6 %) has been applied to the overall grant equivalent. As 6 % of EUR 108 165,10 is EUR 6 489,906, this amount is considered to constitute the compatible portion of the aid.

(137) Thus, the grant equivalent of the portion of the State aid incompatible with the internal market is quantified at EUR 101 675,194.

Second loan granted to WAM SpA

(138) The aid granted to WAM SpA in 2000, except for the compatible portion in support of training activities amounting to EUR 25 240 in eligible expenses, is incompatible with the internal market.

(139) In this case the loan was made available to WAM SpA in five instalments (on 12 February 2001, 28 September 2001, 26 April 2002, 27 September 2002 and 22 January 2003); consequently, as with the first loan, the grace period also varied from 2 years to zero. Likewise, the interest rate stipulated in the loan contract (2,32 %) relative to the reference rate, periodically fixed by the Commission and in force at the time the loan in question was granted (5,70 %) has been taken into consideration by the Commission in calculating the grant equivalent. The overall repayment, including principal and interest, was to have been made by 20 February 2008. Accordingly, the grant equivalent of the aid component of the full loan as at 12 February 2001 (date on which the first instalment of the specific loan was made available to WAM SpA) is EUR 176 329, providing that the repayments were made according to the repayment schedule.

(140) As regards the compatible portion of the loan, the percentage of the compatible portion of the loan with respect to the full loan (1,35 %) must be deducted from the grant equivalent of the aid. Accordingly, providing that the repayments have been made according to the repayment schedule, the grant equivalent of the second loan has been calculated as EUR 173 948,56 (EUR 176 329 – EUR 2 380,44).

(141) It is the Commission's standard practice, in accordance with Article 107 of the TFEU, to recover from the beneficiary aid that has been unlawfully granted under that article and is incompatible with the internal market, provided that such aid is not covered by the *de minimis* rules. This practice has been confirmed by Article 14 of Regulation (EC) No 659/1999.

(142) In accordance with Article 14(2) of Regulation (EC) No 659/1999, the aid to be recovered pursuant to a recovery decision shall include interest at an appropriate rate fixed by the Commission. Interest is payable from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its recovery, for the period for which it was at the company's disposal.

(143) The method of application of the interest rate is set out in Chapter V of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([50]) (hereinafter 'Regulation (EC) No 794/2004') and in Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([51]) (hereinafter 'Regulation (EC) No 271/2008').

(144) The Commission wishes to point out that this Decision is without prejudice to the compatibility of the national framework represented by Law No 394/81, which is the legal basis of the State aid granted to WAM SpA, with respect to which the Commission, in line with the case law of the Court of First Instance ([52]), did not find it necessary, in the current case, to initiate proceedings. It nevertheless does not rule out the possibility of doing so at a later stage,

HAS ADOPTED THIS DECISION:

Article 1

The aid granted to WAM SpA pursuant to Law No 394/81 falls within the scope of Article 107(1) of the TFEU.

Since this aid was not previously notified to the Commission in breach of Article 88(3) of the EC Treaty, now Article 108(3) of the TFEU, it constitutes unlawful aid, with the exception of the block-exempted portion of the aid.

Article 2

1. The aid of EUR 108 165,10 which Italy granted to WAM SpA on 24 November 1995 in the form of an interest-rate subsidy, constitutes State aid. The aid portion corresponding to eligible costs for consultancy services, participation in fairs and exhibitions and market surveys and amounting to EUR 6 489,906, constitutes State aid compatible with the internal market.

Italy shall take all necessary measures to recover the incompatible aid amount of EUR 101 675,194 from the beneficiary, WAM SpA.

([50]) OJ L 140, 30.4.2004, p. 1.
([51]) OJ L 82, 25.3.2008, p. 1.
([52]) See Cases T-92/00 and T-103/00 *Diputación Foral de Álava* v *Commission* (*Ramondín*) [2002] ECR II-1385.

2. The aid amounting to EUR 176 329 which Italy granted to WAM SpA on 9 November 2000 in the form of an interest-rate subsidy, constitutes State aid. The aid portion corresponding to eligible costs for training measures and amounting to EUR 2 380,44, constitutes State aid compatible with the internal market.

Italy shall take all necessary measures to recover the incompatible aid amount of EUR 173 948,56 from the beneficiary, WAM SpA.

3. Interest on the amounts to be recovered under this Decision shall be calculated from the date on which the incompatible State aid was put at the disposal of the beneficiary, WAM SpA, until the date of recovery.

4. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and Regulation (EC) No 271/2008 amending Regulation (EC) No 794/2004.

Article 3

1. Recovery of the aid referred to Article 2 shall be immediate and effective.

2. Italy shall ensure that this Decision is implemented within 4 months following the date of notification to Italy of this Decision.

Article 4

1. Within 2 months following the notification of this Decision, Italy shall submit the following information to the Commission:

(a) the total amount (principal and interest) to be recovered from the beneficiary, WAM SpA;

(b) a detailed description of the measures already taken or envisaged to comply with this Decision;

(c) documents demonstrating that the beneficiary, WAM SpA, has been ordered to repay the aid.

2. Italy shall keep the Commission informed of the progress of the national measures taken to implement this Decision until the aid referred to in Article 2 has been recovered. It shall submit without delay, at the request of the Commission, information on the measures envisaged and already taken to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and interest already recovered from the beneficiary.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 24 March 2010.

For the Commission
Joaquín ALMUNIA
Vice-President

COMMISSION DECISION

of 1 March 2011

extending the validity of Decision 2009/251/EC requiring Member States to ensure that products containing the biocide dimethylfumarate are not placed or made available on the market

(notified under document C(2011) 1174)

(Text with EEA relevance)

(2011/135/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety [1], and in particular Article 13 thereof,

Whereas:

(1) Commission Decision 2009/251/EC [2] requires Member States to ensure that products containing the biocide dimethylfumarate (DMF) are not placed or made available on the market.

(2) Decision 2009/251/EC was adopted in accordance with the provisions of Article 13 of Directive 2001/95/EC, which restricts the validity of the Decision to a period not exceeding 1 year, but allows it to be confirmed for additional periods none of which shall exceed 1 year.

(3) The validity of Decision 2009/251/EC was extended by Commission Decision 2010/153/EU [3] for an additional period of 1 year. In the light of the experience acquired so far and the absence of a permanent measure addressing consumer products containing DMF, it is necessary to extend the validity of Decision 2009/251/EC for a further 12 months.

(4) Decision 2009/251/EC should be amended accordingly.

(5) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 15 of Directive 2001/95/EC,

HAS ADOPTED THIS DECISION:

Article 1

Article 4 of Decision 2009/251/EC is replaced by the following:

'*Article 4*

Period of application

This Decision shall apply until 15 March 2012.'

Article 2

Member States shall take the necessary measures to comply with this Decision by 15 March 2011 at the latest and shall publish those measures. They shall forthwith inform the Commission thereof.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 1 March 2011.

For the Commission

John DALLI

Member of the Commission

[1] OJ L 11, 15.1.2002, p. 4.
[2] OJ L 74, 20.3.2009, p. 32.
[3] OJ L 63, 12.3.2010, p. 21.

RECOMMENDATIONS

COMMISSION RECOMMENDATION

of 1 March 2011

guidelines for the implementation of data protection rules in the Consumer Protection Cooperation System (CPCS)

(2011/136/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

(1) Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) ([1]) (hereinafter referred to as 'the CPC Regulation') aims at enhancing the enforcement cooperation of consumer protection laws within the single market, establishes an EU-wide Network of national public enforcement authorities (hereinafter referred to as the 'CPC Network') and lays down the framework and general conditions under which Member States enforcement authorities are to cooperate to protect the collective economic interest of consumers.

(2) Cooperation between national enforcement authorities is vital for the single market to function effectively and under the CPC Network each authority is able to call on other authorities for assistance in investigating possible breaches of EU consumer protection laws.

(3) The aim of the Consumer Protection Cooperation System (hereinafter referred to as the 'CPCS') is to enable public enforcement authorities to exchange information concerning possible breaches of consumer protection laws within a safe and secure environment.

(4) The exchange of information by electronic means between Member States needs to comply with the rules on the protection of personal data laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([2]) (hereinafter referred to as the 'Data Protection Directive') and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ([3]) (hereinafter referred to as the 'Data Protection Regulation').

(5) Article 8 of the Charter of Fundamental Rights of the European Union recognises the right to data protection. The CPCS should ensure that the different obligations and responsibilities shared between the Commission and Member States as regards data protection rules are clear and data subjects are provided with information and easily available mechanisms to assert their rights.

(6) It is appropriate to establish guidelines for the implementation of data protection rules in the CPCS (hereinafter referred to as the 'guidelines') in order to ensure that data protection rules are respected when data is processed through the CPCS.

(7) Enforcement officials should be encouraged to contact their national Data Protection Supervisory Authorities for guidance and assistance on the best way to implement the guidelines in accordance with national law and if necessary to ensure that notification and prior checking procedures relating to the processing operations under the CPCS are carried out at national level.

(8) Participation in the training sessions organised by the Commission to assist with the implementation of the guidelines should be strongly encouraged.

(9) Feedback to the Commission on the implementation of the guidelines should be provided no later than 2 years following the adoption of this Recommendation. The Commission should then make a further assessment of the level of data protection in the CPCS and should evaluate whether additional instruments, including regulatory measures, are required.

([1]) OJ L 364, 9.12.2004, p. 1.
([2]) OJ L 281, 23.11.1995, p. 31.
([3]) OJ L 8, 12.1.2001, p. 1.

(10) Necessary steps should be taken to facilitate the implementation of the guidelines by actors and users of the CPCS. National data protection authorities and the European Data Protection Supervisor should closely monitor developments and the implementation of data protection safeguards with respect to the CPCS.

(11) The guidelines complement Commission Decision 2007/76/EC [1] and take into account the opinion of the Working Party on the Protection of Individuals with regard to the Processing of Personal Data set up by Article 29 [2] of the Data Protection Directive and the opinion of the European Data Protection Supervisor [3] established by Article 41 of the Data Protection Regulation (hereinafter referred to as the 'EDPS').

HAS ADOPTED THIS RECOMMENDATION:

Member States should follow the guidelines laid down in the Annex.

Done at Brussels, 1 March 2011.

For the Commission
John DALLI
Member of the Commission

[1] OJ L 32, 6.2.2007, p. 192.
[2] Opinion 6/2007/EC on data protection issues related to the Consumer Protection Cooperation System (CPCS) 01910/2007/EN — WP 130 — adopted on 21 September 2007.
[3] EDPS Opinion Ref. 2010-0692.

ANNEX

Guidelines for the implementation of data protection rules in the Consumer Protection Cooperation System (CPCS)

1. INTRODUCTION

Cooperation between national consumer protection authorities is vital for the proper functioning of the internal market since a lack of effective enforcement in cross-border cases undermines the confidence of consumers in taking up cross-border offers and hence their faith in the internal market and also gives rise to a distortion of competition.

The CPCS is an IT-tool established by the CPC Regulation and provides a structured mechanism for the exchange of information between national consumer protection authorities that form part of the CPC Network. It allows a public authority to call on other public authorities of the CPC Network for assistance in investigating and tackling possible infringements of EU consumer protection legislation and in taking enforcement action to stop illegal commercial practices of sellers and suppliers targeting consumers living in other EU countries. Requests for information and all communication between competent public authorities concerning the application of the CPC Regulation are carried out through the CPCS.

The objective of the CPC Regulation is to enhance the enforcement of consumer protection laws across the internal market by setting up an EU-wide Network of national enforcement authorities and to establish the conditions under which Member States are to cooperate with each other. The CPC Regulation established that such exchanges of information and mutual assistance requests between national enforcement authorities was to be carried out through a designated database. The CPCS was therefore designed to facilitate this administrative cooperation and exchange of information with a view to enforcing EU consumer protection laws.

The scope of cooperation is limited to intra-Community infringements of the legal acts listed in the Annex to the CPC Regulation that protects the collective economic interests of consumers.

2. SCOPE AND OBJECTIVE OF THESE GUIDELINES

These guidelines aim at addressing the central concern of ensuring a balance between efficient and effective enforcement cooperation amongst Member States competent authorities whilst respecting fundamental rights to privacy and the protection of personal data.

Personal data is defined in the Data Protection Directive [1] as any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.

Since national enforcement officials (case handlers) who are the CPCS users may not always be data protection experts and may not always be sufficiently aware of the data protection requirements imposed by their own national data protection legislation, it is advisable to provide CPCS users with guidelines in which the functioning of the CPCS is explained from a practical data protection perspective as well as detailing the safeguards that are built into the system and the possible risks associated with its use.

The objective of the guidelines is to cover the most significant data protection issues in connection with the CPCS and provide a user-friendly explanation that all CPCS users can refer to. It does not, however, provide an exhaustive analysis of the data protection implications of the CPCS.

It is strongly recommended that data protection authorities in the Member States be consulted to ensure that the guidelines are complemented with specific obligations laid down in national data protection laws. CPCS users can also obtain further assistance and guidance from these national data protection authorities to ensure that data protection requirements are met. A list of these authorities with the contact details and websites can be found at:

http://ec.europa.eu/justice_home/fsj/privacy/nationalcomm/#eu

It should be clear that the processing of personal data should be carried out in accordance with the specific principles and conditions laid down in the Data Protection Directive. Case handlers are entitled in the context of Regulation to exchange data, including personal data, through the CPCS, if the purpose of the processing is to stop the infringement of EU consumer laws as listed in the CPC Regulation Annex. Before processing such data however, a careful assessment is necessary to ensure that data protection principles are safeguarded and processing is strictly necessary to achieve the aims of the CPC Regulation.

[1] Article 2(a).

With this in mind, case handlers having access to the CPCS will need to carry out a case by case assessment before any processing of personal data can be carried out [1]. The purpose of these guidelines is to assist case handlers with this assessment by providing some guiding data protection principles that need to be considered.

The aim is also to clarify some of the complexities of the CPCS architecture with regard to joint processing operations and joint controllership by setting out what is the role of the Commission and the role of Member States competent authorities as 'joint-controllers' of the CPCS data exchanges.

3. THE CPCS — AN IT-TOOL FOR ENFORCEMENT COOPERATION

The CPCS is an IT-tool designed and maintained by the Commission in cooperation with the Member States. The purpose of the CPCS is to assist Member States with the practical implementation of EU consumer protection legislation. It is used by the CPC Network which consists of public authorities designated by the Member States and EEA countries to cooperate and exchange information with each other in the enforcement of consumer protection laws as provided in the CPC Regulation.

Article 10 of the CPC Regulation states that:

'The Commission shall maintain an electronic database in which it shall store and process the information it receives under Articles 7, 8 and 9. The database shall be made available for consultation only by the competent authorities…'

Article 12(3) of the CPC Regulation adds:

'Requests for assistance and all communication of information shall be made in writing using a standard form and communicated electronically via the database established in Article 10.'

The CPCS facilitates cooperation and exchanges of information limited to intra-Community infringements of the Directives and Regulations listed in the CPC Regulation Annex which deals with a variety of topics including unfair commercial practices, distance selling, consumer credit, package travel, unfair contract terms, time-share, e-commerce and others. The CPCS cannot be used for information exchanges in legislative areas not specifically listed in this Annex.

Examples:

I. A trader established in Belgium is using unfair terms in his dealings with consumers resident in France in breach of the Unfair Contract Terms Directive. The consumer authority in France may use the CPCS to make a request to the consumer authority in Belgium to take all necessary enforcement measures available in Belgium against the trader to bring about the cessation of the intra-Community infringement without delay.

II. The consumer authority in Denmark receives complaints that a particular website is using fraudulent and deceptive commercial practices to the detriment of consumers. The website is hosted in Sweden. The Danish consumer authority needs information in connection with the website. It may therefore use the CPCS to make a request for information to the Swedish consumer authority which has an obligation to supply the information.

Information is uploaded by Member States, stored in the CPCS, accessed by the Member States to whom the information was addressed and deleted by the Commission [2]. The CPCS is used as a repository for information and as a means to exchange information through an efficient and secure communication system.

From a data protection perspective, the establishment of such a database always creates certain risks to the fundamental right of personal data protection: sharing more data than is strictly necessary for the purposes of efficient cooperation; retaining data that should have been deleted and holding data that is no longer accurate or is incorrect; and failing to ensure that the rights of data subjects and obligations of data controllers are respected. It is therefore necessary to address such risks by ensuring that the users of the CPCS are well informed and trained in data protection rules and capable of ensuring compliance with applicable data protection legislation.

4. DATA PROTECTION LEGAL AND SUPERVISORY FRAMEWORK

The European Union has an established legal framework on data protection since 1995: the Data Protection Directive [3] which governs the processing of personal data by Member States and by the Data Protection Regulation [4] which governs the processing of personal data by the European Union institutions and bodies. The application of the data protection law currently depends on who the CPCS actor or user is.

[1] It should be noted that data protection principles apply to both data stored electronically and data stored in hardcopy.
[2] For specific rules on deletion see: Decision 2007/76/EC and 'The Consumer Protection Cooperation Network: Operating Guidelines'.
[3] Directive 95/46/EC.
[4] Regulation (EC) No 45/2001.

Processing acts undertaken by the Commission are governed by Data Protection Regulation and processing acts undertaken by case handlers in the competent national enforcement authorities are governed by the national laws transposing the Data Protection Directive.

Being the two main actors with specific roles to play in the CPCS, both the Commission and the designated competent authorities, as co-controllers, have an obligation to notify and submit their respective processing operations for prior checking by the relevant supervisory authorities and ensure compliance with data protection rules. That said national laws transposing the Data Protection Directive may provide exemptions from both the notification and prior checking requirements.

The harmonisation of data protection laws was intended to ensure both a high level of data protection and safeguard the fundamental rights of individuals whilst allowing the free flow of personal data between Member States. Given that national implementation measures may give rise to differing rules, in order to ensure compliance with data protection rules, CPCS users are strongly advised to discuss these guidelines with their national data protection authorities since rules may vary, for example, on the information to be provided to individuals or the duty to notify certain data processing operations to data protection authorities.

A significant feature of the EU data protection legal framework is its supervision by independent data protection authorities. Citizens have the right to lodge complaints before these authorities and promptly resolve their data protection concerns outside the courts. The processing of personal data at national level is supervised by the national data protection authorities and the processing of personal data by the European institutions is supervised by the European Data Protection Supervisor (EDPS) ([1]). Consequently, the Commission is subject to the supervision of the EDPS and other users of the CPCS to the supervision of national data protection authorities.

5. WHO IS WHO IN THE CPCS? — THE ISSUE OF JOINT CONTROLLERSHIP

The CPCS is a clear example of joint processing operations and joint controllership. Whilst only the competent authorities in the Member States collect, record, disclose and exchange personal data, the storage and deletion of these data on its servers is the responsibility of the Commission. The Commission does not have access to these personal data but is considered as the system manager and operator of the system.

Consequently, the allocation of different tasks and responsibilities between the Commission and the Member States can be summarised as follows:

— Each competent authority is a data controller with respect to its own data processing activities.

— The Commission is not a user but the operator of the system, responsible primarily for the maintenance and security of the system architecture. However, the Commission also has access to the alerts, feedback information and other case related information ([2]). The purpose of the Commission's access is to monitor the application of the CPC Regulation as well as the consumer protection legislation listed in the Annex to the CPC Regulation and to compile statistical information in connection with carrying out these duties. The Commission does not however have access to the information contained in mutual assistance and enforcement requests as these are only addressed to the Member States competent authorities dealing with the specific case in question. That said the CPC Regulation does provide the possibility for the Commission to assist competent authorities in case of certain disputes ([3]) and to be invited to participate in a coordinated investigation involving more than two Member States ([4]).

— The CPCS actors share responsibility with respect to the legitimacy of the processing, information provision and rights of access, objection and rectification.

— Both the Commission and the competent authorities in their roles as controllers are individually responsible for ensuring that the rules relating to their data processing operations are compatible with data protection rules.

6. ACTORS AND USERS IN THE CPCS

Different access profiles exist within the CPCS: access to the database is restricted and allocated to a named competent authority official only (authenticated user) which is not transferable. Requests for access to the CPCS can only be granted to the officials notified to the Commission by Member States competent authorities. A login/password is requested to enter the system which can be obtained by the single liaison office.

Only users in the requested and applicant competent authorities have full access to the complete information exchanged for a given case which includes all attachments in the CPCS case file. Single liaison offices can only read key information on a case to allow them to identify the competent authority to which a request needs to be transferred. They cannot read confidential documents attached to a request or an alert.

([1]) http://www.edps.europa.eu/EDPSWEB/edps/EDPS
([2]) Articles 8, 9, and 15 of CPC Regulation (EC) No 2006/2004.
([3]) Article 8(5) of CPC Regulation (EC) No 2006/2004.
([4]) Article 9 of CPC Regulation (EC) No 2006/2004.

In enforcement cases, general information is shared between users in all the competent authorities notified as being responsible for the legal acts infringed. This is done through the notifications. These notifications should give a broad description of a case and should avoid including personal data. Exceptions may exist such as the name of seller or supplier (if a natural person).

The Commission has no access to information and enforcement requests or confidential documents but does receive notifications and alerts.

7. DATA PROTECTION PRINCIPLES APPLICABLE TO EXCHANGES OF INFORMATION

Processing of personal data by the CPCS users in the Member States may only take place under conditions and in accordance with the principles that the Data Protection Directive establishes. The data controller is responsible for ensuring that the data protection principles are complied with when processing personal data in the CPCS.

It should also be noted that both confidentiality and data protection rules apply to the CPCS. Confidentiality rules and professional secrecy rules can apply to data in general whereas data protection rules are limited to personal data.

It is important to bear in mind that CPCS users in the Member States are responsible for many other processing operations and may not be data protection experts. Data protection compliance in the CPCS does not need to be unduly complicated or pose an excessive administrative burden. Neither does it have to be a one-size fits all system. These guidelines are recommendations for the treatment of personal data and it should be recalled that not all the data exchanged within the CPCS is personal data.

Before each upload of information into the CPCS, enforcement officials need to consider whether the personal data to be sent is strictly necessary to achieve the purposes of efficient cooperation and give consideration to whom they are sending the personal data. The enforcement official needs to ask himself whether the recipient strictly needs to receive this information for the purposes of the alert or mutual assistance request.

The following list of fundamental data protection principles aims at assisting enforcement officials having access to the CPCS to make a case by case assessment of whether data protection rules related to the processing of personal data are being complied with each time they process personal data within the system. Enforcement officials should also bear in mind that exemptions and restrictions on the application of the data protection principles, listed below, may exist at national level and are advised to consult their national data protection authorities [1].

What are the data protection principles to be observed?

The general principles on data protection to be borne in mind before undertaking the processing of any personal data have been taken from the data protection Directive. Since this Directive has been transposed into national law, case-handlers are reminded to consult their national data protection supervisory authorities regarding the application of the principles listed below and are advised to see whether any exemptions or restrictions exist to the application of these principles.

Principle of Transparency

According to the Data Protection Directive, the data subject has the right to be informed when his personal data is being processed. The controller is required to provide his name and address, the purpose of processing, the recipients of the data and all other information required to ensure the processing is fair [2].

Data may be processed only under the following circumstances [3]:

— when the data subject has given his consent,

— when the processing is necessary for the performance of or the entering into a contract,

— when processing is necessary for compliance with a legal obligation,

— when processing is necessary in order to protect the vital interests of the data subject,

[1] Article 11(2) and 13 of Directive 95/46/EC.
[2] Article 10 and 11 of Directive 95/46/EC.
[3] Article 7 of Directive 95/46/EC.

— processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed,

— processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed.

Principle of lawfulness and fairness

Personal data cannot be collected or processed in unfair or unlawful ways, nor should it be used for ends not compatible with the purposes laid down in the CPC Regulation. For processing to be lawful, case handlers need to ensure that they have clear reasons justifying the processing need. The processing needs to be conducted for specified, explicit and legitimate purposes and may not be processed further in a way incompatible with those purposes ([1]). This can only be provided for in the CPC Regulation.

For the processing to be fair, the data subjects need to be informed of the purposes for which his/her data is to be processed and of the existence of the right of access, rectification and objection.

Principle of proportionality, accuracy and retention periods

The information needs to be proportionate, adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed. The data must be accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified; personal data needs to be kept in a form which permits the identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they were processed. Appropriate safeguards need to be built in for personal data stored for longer periods for historical, statistical or scientific use.

Case handlers need to consider whether the information that they are processing is strictly necessary to the purposes to be achieved.

Principle of purpose limitation

Personal data needs to be collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes and brought to the attention of the data subject. Case handlers should only process personal data only when there is a clear purpose for doing so i.e. that legal grounds exist within the CPC Regulation that justifies the transfer.

Rights of access

Data subjects have the right according to the Data Protection Directive ([2]) to be informed that their personal data are being processed; the purposes for the processing; the recipients of the data and that they have specific rights i.e. the right to information and rectification. The data subject has the right to access all data processed on him. The data subject also has the right to request the rectification, deletion or blocking of data that is incomplete, inaccurate or is not being processed in compliance with the data protection rules ([3]).

Sensitive data

Processing of data revealing racial or ethnical origin, political opinions, religious or philosophical beliefs, trade-union membership, health, sex life, offences and criminal convictions is prohibited. However, the Data Protection Directive ([4]) does provide for certain exemptions to this rule where sensitive data may be processed under given conditions ([5]). Since CPCS users may find themselves in a position where they are handling sensitive data ([6]), it is advised to approach sensitive data with caution. CPCS users are recommended to consult their national data protection authority on whether derogations apply to the processing sensitive data.

Exemptions

In the context of the prevention, investigation, detection and prosecution of criminal offences some exemptions are allowed by the Data Protection Directive. Case handlers are advised to consult national law to assess whether such exemptions are possible and to what extent ([7]). Should such exemptions be used, it is recommended that they are clearly indicated in the privacy statements of each competent authority.

([1]) Article 6(1)(b) of Directive 95/46/EC.
([2]) Article 10, 11, 12 of Directive 95/46/EC.
([3]) Article 12 of Directive 95/46/EC.
([4]) Article 8(2) of Directive 95/46/EC.
([5]) Article 8 of Directive 95/46/EC.
([6]) Chapter 4 of the Annex to Decision 2007/76/EC.
([7]) Opinion 6/2007/EC on data protection issues related to the Consumer Protection Cooperation System (CPCS) 01910/2007/EN — WP 130 — adopted on 21 September 2007, p. 24-26.

Applying the data protection principles

Applying these data protection principles to the functioning of the CPCS leads to the following recommendations:

(1) The use of the CPCS should be strictly limited to the purposes set out in the CPC Regulation. Article 13(1) of the CPC Regulation states that information communicated may only be used for the purpose of ensuring compliance with the laws that protect consumers' interests. These laws are listed in the Annex to the CPC Regulation.

(2) It is recommended that enforcement officials use the information obtained from a mutual assistance request or alert only for the purposes relating to that specific case, in strict compliance with data protection legal requirements, assessing ex ante the necessity of the processing in the context of investigations carried out in the wider public interest.

(3) When transferring data, enforcement officials make an assessment on a case by case basis of who should be the recipients of the information to be processed.

(4) The CPCS users should carefully select the questions they ask in the mutual assistance request and not ask for more data than in necessary. This is not only an issue of respecting data quality principles but also a matter of reducing the administrative burden.

(5) The Data Protection Directive [1] requires that personal data needs to be accurate and kept up to date. It is recommended that it should be for the competent authority which supplied the information to contribute towards the ensuring the accuracy of the data stored in the CPCS. Pop up messages have been added as a feature in the CPCS to periodically remind case handlers to check whether personal data is accurate and kept up to date.

(6) A practical way to inform data subjects' of their rights is through a comprehensive webpage privacy notice. It is recommended that each competent authority should provide a webpage privacy notice on their websites. Each privacy notice should conform with all the information obligations as established by the Data Protection Directive, include a link to the Commission's privacy notice webpage and should give further details including contact details on the competent authority in question as well as any national restrictions on the right of access or information. All data controllers involved are responsible for ensuring that privacy notices are published.

(7) The data subject may request access, rectification and deletion of their personal data from more than one source. Although each competent authority is responsible, as the data controller, for its own data processing operations, a coordinated response to requests relating to cross-border cases should be pursued. It is recommended that in such cases, competent authorities inform other concerned competent authorities of the receipt of the request.

When a competent authority considers that granting a request may affect the investigation or enforcement procedure being carried out by other competent authorities, the former should request the opinion of the latter before granting the request.

The data subject may also turn to the Commission with its request. The Commission may only grant a request for data to which it has access. On receipt of a request, the Commission should consult the competent authority which supplied the information. If no objections are raised or the competent authority fails to respond within a reasonable period, the Commission may decide whether or not to grant the request on the basis of the Data Protection Regulation. The Commission should also request the opinion of competent authorities whose investigative or enforcement activities may be compromised as a result of granting the request. The Commission should examine whether incorporating additional technical features into the CPCS would facilitate such exchanges.

(8) The CPC Implementing Decision 2007/76/EC provides the establishment of data fields within the CPCS for the names of company directors. Enforcement officials need to make an assessment on whether the inclusion of this type of personal data is necessary to solve the case. A case by case assessment of whether it is necessary to include the name of a company director in the designated data field needs to be made before each upload of information in the CPCS and prior to sending an alert or mutual assistance request to another competent authority.

(9) The CPC Implementing Decision 2007/76/EC requires that the competent authority uploading information or enforcement requests or alerts needs to indicate whether the information is to be treated confidentially. This is to be done on a case by case basis. Similarly, the requested authority, when supplying information, needs to indicate whether the information is to be treated confidentially. The CPCS includes a default value feature where CPCS users need to explicitly grant access to documents by unclicking the confidential flag.

[1] Article 6(1)(d) of Directive 95/46/EC.

8. CPCS AND DATA PROTECTION

Data protection friendly environment

The CPCS has been designed with data protection legislation requirements in mind:

— The CPCS uses s-TESTA which stands for secured Trans European Services for Telematics between Administrations. It offers a managed, reliable and secure pan-European communication platform for European and National administrations. The s-TESTA network is based on a dedicated private infrastructure completely separated from the Internet. Appropriate security measures are included in the system's design to ensure the best possible protection for the Network. The Network is subject of a security accreditation to make it suitable for transmitting information classified at the level 'EU Restricted'.

— A number of technical features have been introduced: secure and personalised passwords to notified competent officials in designated authorities, use of a secure network s-TESTA), pop-up messages that remind case handlers that they need to consider data protection rules when processing personal data, creation of different user profiles that modulate the access to the information depending on the user role (the competent authority, the single liaison office or the Commission), the possibility to limit access to documents by defining them as confidential and the message on the CPCS homepage pointing to the data protection rules.

— Implementing rules ([1]) that cover key aspects to ensure data protection compliance: clear deletion rules (what information; how and when to delete data); principles that specify the types of access to the information (only directly concerned competent authorities have full access and the others only have general information).

— Operational guidelines ([2]) that further clarify what to consider when completing the different data fields and integration of these guidelines ([3]).

— Annual reviews to ensure that competent authorities verify the accuracy of personal data (tagging is planned but has not yet been implemented) and also that cases are closed and/or deleted as foreseen by the rules to ensure that cases are not forgotten. The Commission organises on a regular basis with Member States a systematic review of cases that have been opened for a period substantially longer than the average case-handling period.

— Automatic deletion of mutual assistance cases 5 years after the closing of the case as required by the CPC Regulation.

— The CPCS is an evolving IT-tool which aims to be data protection friendly. Many safeguard features have already been built into the system architecture which has been described above. The Commission intends to continue developing further improvements as required.

Some additional guidance

How long should a case be stored and when should it be closed and deleted?

Only the Commission can delete information from the CPCS ([4]) and it does so normally at the request of a competent authority. When making such a request, the competent authority needs to specify the grounds for the deletion request. The only exception is enforcement requests. These are automatically deleted by the Commission 5 years from the closure of the case by the applicant authority.

Rules with given time limits have been established to ensure the deletion of data that is no longer required; inaccurate; proves to be unfounded and/or has been retained for maximum storage periods.

Why is the data retention period set at 5 years?

The purpose of the retention period is to facilitate cooperation between public authorities responsible for the enforcement of the laws that protect consumers' interests in dealing with intra-Community infringements, to contribute to the smooth functioning of the internal market, the quality and consistency of enforcement of the laws that protect the consumers' interest, the monitoring of the protection of consumers economic interests and to contribute to raising the standard and consistency of enforcement. During the retention period authorised enforcement officials working for a competent authority that originally dealt with a case may consult the file in order to establish links with possibly repeated infringements which contributes to a better and more efficient enforcement.

([1]) Decision 2007/76/EC.
([2]) The Consumer Protection Cooperation Network: Operating Guidelines — endorsed by the CPC Committee on 8 June 2010.
([3]) The content of these guidelines will be integrated into future trainings on the CPCS.
([4]) Article 10 of the CPC Regulation (EC) No 2006/2004 and Chapter 2 of the Annex to the CPC Implementing Decision 2007/76/EC.

What information can be included in the discussion forum?

The discussion forum is annexed to the CPCS and is a tool intended for the exchange of information with respect to issues such as new enforcement powers and best practice. Generally, the discussion forum although not frequently used by enforcement officials should not serve to exchange case-related data and should not refer to personal data.

What type of data can be included in the short summaries and attached documents?

The CPC Implementing Decision 2007/76/EC foresees the data field 'attached documents' in the case of alerts and information and enforcement requests. The short summaries are fields where a description of the infringement should be made. It is recommended that personal data should not be included in the short summaries as the purpose of this data field is to have a general description of the infringement. Personal data in attached documents that is not strictly necessary should be blacked out or removed.

What is meant by 'reasonable suspicion' that an infringement has occurred?

Reasonable suspicion needs to be interpreted in accordance with national law. However, it is recommended that suspected infringements should only be included in the CPCS if there is some evidence to support the case that an infringement has or is likely to have occurred.

What about transfers to third countries?

The CPC Regulation [1] provides that information communicated under the CPC Regulation may also be communicated to an authority of a third country by a Member State having a bilateral assistance agreement provided the consent of the competent authority that originally communicated the information has been obtained and that data protection provisions are met.

It is recommended that in the absence of an international agreement by the European Union for mutual assistance cooperation arrangements [2] with a third country, any bilateral assistance agreement with a given third country should provide for adequate data protection safeguards and be notified to the relevant data protection supervisory authorities so that prior checking may be carried out, unless the Commission has found that the third country ensures an adequate level of protection for personal data transferred from the Union in accordance with Article 25 of the Data Protection Directive.

[1] Article 14(2) of CPC Regulation (EC) No 2006/2004.
[2] Article 18 of CPC Regulation (EC) No 2006/2004.

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

Regulation No 100 of the Economic Commission for Europe of the United Nations (UN/ECE) — Uniform provisions concerning the approval of vehicles with regard to specific requirements for the electric power train

Incorporating all valid text up to:

01 series of amendments — Date of entry into force: 4 December 2010

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ANNEXES

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1. SCOPE

The following prescriptions apply to safety requirements with respect to the electric power train of road vehicles of categories M and N, with a maximum design speed exceeding 25 km/h, equipped with one or more traction motor(s) operated by electric power and not permanently connected to the grid, as well as their high voltage components and systems which are galvanically connected to the high voltage bus of the electric power train.

This regulation does not cover post crash safety requirements of road vehicles.

2. DEFINITIONS

For the purpose of this regulation the following definitions apply:

2.1. 'Active driving possible mode' means the vehicle mode when application of pressure to the accelerator pedal (or activation of an equivalent control) or release of the brake system will cause the electric power train to move the vehicle.

2.2. 'Barrier' means the part providing protection against direct contact to the live parts from any direction of access.

2.3. 'Conductive connection' means the connection using connectors to an external power supply when the rechargeable energy storage system (RESS) is charged.

2.4. 'Coupling system for charging the rechargeable energy storage system (RESS)' means the electrical circuit used for charging the RESS from an external electric power supply including the vehicle inlet.

2.5. 'Direct contact' means the contact of persons with live parts.

2.6. 'Electrical chassis' means a set made of conductive parts electrically linked together, whose potential is taken as reference.

2.7. 'Electrical circuit' means an assembly of connected live parts which is designed to be electrically energized in normal operation.

2.8. 'Electric energy conversion system' means a system that generates and provides electric energy for electric propulsion.

2.9. 'Electric power train' means the electrical circuit which includes the traction motor(s), and may include the RESS, the electric energy conversion system, the electronic converters, the associated wiring harness and connectors, and the coupling system for charging the RESS.

2.10. 'Electronic converter' means a device capable of controlling and/or converting electric power for electric propulsion.

2.11. 'Enclosure' means the part enclosing the internal units and providing protection against direct contact from any direction of access.

2.12. 'Exposed conductive part' means the conductive part which can be touched under the provisions of the protection degree IPXXB, and which becomes electrically energized under isolation failure conditions.

2.13. 'External electric power supply' means an alternating current (AC) or direct current (DC) electric power supply outside of the vehicle.

2.14. 'High Voltage' means the classification of an electric component or circuit, if its working voltage is > 60 V and ≤ 1 500 V DC or > 30 V and ≤ 1 000 V AC root mean square (rms).

2.15. 'High voltage bus' means the electrical circuit, including the coupling system for charging the RESS that operates on high voltage.

2.16. 'Indirect contact' means the contact of persons with exposed conductive parts.

2.17. 'Live parts' means the conductive part(s) intended to be electrically energized in normal use.

2.18. 'Luggage compartment' means the space in the vehicle for luggage accommodation, bounded by the roof, hood, floor, side walls, as well as by the barrier and enclosure provided for protecting the power train from direct contact with live parts, being separated from the passenger compartment by the front bulkhead or the rear bulkhead.

2.19. 'On-board isolation resistance monitoring system' means the device which monitors the isolation resistance between the high voltage buses and the electrical chassis.

2.20. 'Open type traction battery' means a liquid type battery requiring refilling with water and generating hydrogen gas released to the atmosphere.

2.21. 'Passenger compartment' means the space for occupant accommodation, bounded by the roof, floor, side walls, doors, window glass, front bulkhead and rear bulkhead, or rear gate, as well as by the barriers and enclosures provided for protecting the power train from direct contact with live parts.

2.22. 'Protection degree' means the protection provided by a barrier/enclosure related to the contact with live parts by a test probe, such as a test finger (IPXXB) or a test wire (IPXXD), as defined in Annex 3.

2.23. 'Rechargeable energy storage system (RESS)' means the rechargeable energy storage system that provides electric energy for electric propulsion.

2.24. 'Service disconnect' means the device for deactivation of the electrical circuit when conducting checks and services of the RESS, fuel cell stack, etc.

2.25. 'Solid insulator' means the insulating coating of wiring harnesses provided in order to cover and protect the live parts against direct contact from any direction of access; covers for insulating the live parts of connectors, and varnish or paint for the purpose of insulation.

2.26. 'Vehicle type' means vehicles which do not differ in such essential aspects as:

(a) installation of the electric power train and the galvanically connected high voltage bus;

(b) nature and type of electric power train and the galvanically connected high voltage components.

2.27. 'Working voltage' means the highest value of an electrical circuit voltage root-mean-square (rms), specified by the manufacturer, which may occur between any conductive parts in open circuit conditions or under normal operating condition. If the electrical circuit is divided by galvanic isolation, the working voltage is defined for each divided circuit, respectively.

3. APPLICATION FOR APPROVAL

3.1. The application for approval of a vehicle type with regard to specific requirements for the electric power train shall be submitted by vehicle manufacturer or by his duly accredited Representative.

3.2. It shall be accompanied by the under-mentioned documents in triplicate and following particulars:

3.2.1. Detailed description of the vehicle type as regards the electric power train and the galvanically connected high voltage bus.

3.3. A vehicle representative of the vehicle type to be approved shall be submitted to the technical service responsible for conducting the approval tests.

3.4. The competent Authority shall verify the existence of satisfactory arrangements for ensuring effective control of the conformity of production before type approval is granted.

4. APPROVAL

4.1. If the vehicle submitted for approval pursuant to this Regulation meets the requirements of paragraph 5 below and Annexes 3, 4, 5 and 7 to this Regulation, approval of this vehicle type shall be granted.

4.2. An approval number shall be assigned to each type approved. Its first two digits (at present 01 for the Regulation in its current form) shall indicate the series of amendments incorporating the most recent major technical amendments made to the Regulation at the time of issue of the approval. The same Contracting Party shall not assign the same number to another vehicle type.

4.3. Notice of approval or of refusal or of extension or withdrawal of approval or production definitely discontinued of a vehicle type pursuant to this Regulation shall be communicated to the Parties to the Agreement applying this Regulation, by means of a form conforming to the model in Annex 1 to this Regulation.

4.4. There shall be affixed, conspicuously and in a readily accessible place specified on the approval form, to every vehicle conforming to a vehicle type approved under this Regulation an international approval mark consisting of:

4.4.1. A circle surrounding the Letter 'E' followed by the distinguishing number of the country which has granted approval [1].

4.4.2. The number of this Regulation, followed by the Letter 'R', a dash and the approval number to the right of the circle described in paragraph 4.4.1.

4.5. If the vehicle conforms to a vehicle type approved under one or more other Regulations annexed to the Agreement in the country which has granted approval under this Regulation, the symbol prescribed in paragraph 4.4.1 need not be repeated; in this case the Regulation and approval numbers and the additional symbols of all the Regulations under which approval has been granted in the country which has granted approval under this Regulation shall be placed in vertical columns to the right of the symbol prescribed in paragraph 4.4.1.

4.6. The approval mark shall be clearly legible and shall be indelible.

4.7. The approval mark shall be placed on or close to the vehicle data plate affixed by the Manufacturer.

4.8. Annex 2 to this Regulation gives examples of the arrangements of the approval mark.

5. SPECIFICATIONS AND TESTS

5.1. Protection against electrical shock

These electrical safety requirements apply to high voltage buses under conditions where they are not connected to external high voltage power supplies.

[1] 1 for Germany, 2 for France, 3 for Italy, 4 for the Netherlands, 5 for Sweden, 6 for Belgium, 7 for Hungary, 8 for the Czech Republic, 9 for Spain, 10 for Serbia, 11 for the United Kingdom, 12 for Austria, 13 for Luxembourg, 14 for Switzerland, 15 (vacant), 16 for Norway, 17 for Finland, 18 for Denmark, 19 for Romania, 20 for Poland, 21 for Portugal, 22 for the Russian Federation, 23 for Greece, 24 for Ireland, 25 for Croatia, 26 for Slovenia, 27 for Slovakia, 28 for Belarus, 29 for Estonia, 30 (vacant), 31 for Bosnia and Herzegovina, 32 for Latvia, 33 (vacant), 34 for Bulgaria, 35 (vacant), 36 for Lithuania, 37 for Turkey, 38 (vacant), 39 for Azerbaijan, 40 for The former Yugoslav Republic of Macedonia, 41 (vacant), 42 for the European Community (Approvals are granted by its member States using their respective ECE symbol), 43 for Japan, 44 (vacant), 45 for Australia, 46 for Ukraine, 47 for South Africa, 48 for New Zealand, 49 for Cyprus, 50 for Malta, 51 for the Republic of Korea, 52 for Malaysia, 53 for Thailand, 54 and 55 (vacant), 56 for Montenegro, 57 (vacant) and 58 for Tunisia. Subsequent numbers shall be assigned to other countries in the chronological order in which they ratify or accede to the Agreement Concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions, and the numbers thus assigned shall be communicated by the Secretary-General of the United Nations to the Contracting Parties to the Agreement.

5.1.1. Protection against direct contact

The protection against direct contact with live parts shall comply with paragraphs 5.1.1.1 and 5.1.1.2. These protections (solid insulator, barrier, enclosure, etc.) shall not be able to be opened, disassembled or removed without the use of tools.

5.1.1.1. For protection of live parts inside the passenger compartment or luggage compartment, the protection degree IPXXD shall be provided.

5.1.1.2. For protection of live parts in areas other than the passenger compartment or luggage compartment, the protection degree IPXXB shall be satisfied.

5.1.1.3. Connectors

Connectors (including vehicle inlet) are deemed to meet this requirement if:

(a) they comply with 5.1.1.1 and 5.1.1.2 when separated without the use of tools; or

(b) they are located underneath the floor and are provided with a locking mechanism; or

(c) they are provided with a locking mechanism and other components shall be removed with the use of tools in order to separate the connector; or

(d) the voltage of the live parts becomes equal or below DC 60V or equal or below AC 30V (rms) within 1 second after the connector is separated.

5.1.1.4. Service disconnect

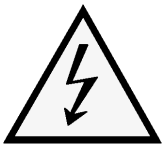
For a service disconnect which can be opened, disassembled or removed without tools, it is acceptable if protection degree IPXXB is satisfied under a condition where it is opened, disassembled or removed without tools.

5.1.1.5. Marking

5.1.1.5.1. The symbol shown in Figure 1 shall appear on or near the RESS. The symbol background shall be yellow, the bordering and the arrow shall be black.

Figure 1

Marking of high voltage equipment



5.1.1.5.2. The symbol shall also be visible on enclosures and barriers, which, when removed expose live parts of high voltage circuits. This provision is optional to any connector for high voltage buses. This provision shall not apply to any of the following cases:

(a) where barriers or enclosures cannot be physically accessed, opened, or removed; unless other vehicle components are removed with the use of tools;

(b) where barriers or enclosures are located underneath the vehicle floor.

5.1.1.5.3. Cables for high voltage buses which are not located within enclosures shall be identified by having an outer covering with the colour orange.

5.1.2. Protection against indirect contact

5.1.2.1. For protection against electrical shock which could arise from indirect contact, the exposed conductive parts, such as the conductive barrier and enclosure, shall be galvanically connected securely to the electrical chassis by connection with electrical wire or ground cable, or by welding, or by connection using bolts, etc. so that no dangerous potentials are produced.

5.1.2.2. The resistance between all exposed conductive parts and the electrical chassis shall be lower than 0.1 ohm when there is current flow of at least 0,2 amperes.

This requirement is satisfied if the galvanic connection has been established by welding.

5.1.2.3. In the case of motor vehicles which are intended to be connected to the grounded external electric power supply through the conductive connection, a device to enable the galvanic connection of the electrical chassis to the earth ground shall be provided.

The device should enable connection to the earth ground before exterior voltage is applied to the vehicle and retain the connection until after the exterior voltage is removed from the vehicle.

Compliance to this requirement may be demonstrated either by using the connector specified by the car manufacturer, or by analysis.

5.1.3. Isolation resistance

5.1.3.1. Electric power train consisting of separate Direct Current- or Alternating Current-buses

If AC high voltage buses and DC high voltage buses are galvanically isolated from each other, isolation resistance between the high voltage bus and the electrical chassis shall have a minimum value of 100 Ω/volt of the working voltage for DC buses, and a minimum value of 500 Ω/volt of the working voltage for AC buses.

The measurement shall be conducted according to Annex 4, 'Isolation resistance measurement method'.

5.1.3.2. Electric power train consisting of combined DC- and AC-buses

If AC high voltage buses and DC high voltage buses are galvanically connected isolation resistance between the high voltage bus and the electrical chassis shall have a minimum value of 500 Ω/volt of the working voltage.

However, if all AC high voltage buses are protected by one of the 2 following measures, isolation resistance between the high voltage bus and the electrical chassis shall have a minimum value of 100 Ω/V of the working voltage:

(a) double or more layers of solid insulators, barriers or enclosures that meet the requirement in paragraph 5.1.1 independently, for example wiring harness;

(b) mechanically robust protections that have sufficient durability over vehicle service life such as motor housings, electronic converter cases or connectors.

The isolation resistance between the high voltage bus and the electrical chassis may be demonstrated by calculation, measurement or a combination of both.

The measurement shall be conducted according to Annex 4, 'Isolation Resistance Measurement Method'.

5.1.3.3. Fuel cell vehicles

If the minimum isolation resistance requirement cannot be maintained over time, then protection shall be achieved by any of the following:

(a) double or more layers of solid insulators, barriers or enclosures that meet the requirement in paragraph 5.1.1 independently;

(b) on-board isolation resistance monitoring system together with a warning to the driver if the isolation resistance drops below the minimum required value. The isolation resistance between the high voltage bus of the coupling system for charging the RESS, which is not energized besides during charging the RESS, and the electrical chassis need not be monitored. The function of the on-board isolation resistance monitoring system shall be confirmed as described in Annex 5.

5.1.3.4. Isolation resistance requirement for the coupling system for charging the RESS

For the vehicle inlet intended to be conductively connected to the grounded external AC power supply and the electrical circuit that is galvanically connected to the vehicle inlet during charging of the RESS, the isolation resistance between the high voltage bus and the electrical chassis shall be at least 1 MΩ when the charger coupler is disconnected. During the measurement, the traction battery may be disconnected.

5.2. Rechargeable energy storage system (RESS)

5.2.1. Protection against excessive current

The RESS shall not overheat.

If the RESS is subject to overheating due to excessive current, it shall be equipped with a protective device such as fuses, circuit breakers or mains contactors.

However, the requirement may not apply if the manufacturer supplies data that ensure that overheating from excessive current is prevented without the protective device.

5.2.2. Accumulation of gas

Places for containing open type traction battery that may produce hydrogen gas shall be provided with a ventilation fan or a ventilation duct to prevent the accumulation of hydrogen gas.

5.3. Functional safety

At least a momentary indication shall be given to the driver when the vehicle is in 'active driving possible mode'.

However, this provision does not apply under conditions where an internal combustion engine provides directly or indirectly the vehicle's propulsion power.

When leaving the vehicle, the driver shall be informed by a signal (e.g. optical or audible signal) if the vehicle is still in the active driving possible mode.

If the on-board RESS can be externally charged by the user, vehicle movement by its own propulsion system shall be impossible as long as the connector of the external electric power supply is physically connected to the vehicle inlet.

This requirement shall be demonstrated by using the connector specified by the car manufacturer.

The state of the drive direction control unit shall be identified to the driver.

5.4. Determination of hydrogen emissions

5.4.1. This test shall be carried out on all vehicles equipped with open type traction batteries.

5.4.2. The test shall be conducted following the method described in Annex 7 to the present Regulation. The hydrogen sampling and analysis shall be the ones prescribed. Other analysis methods can be approved if it is proven that they give equivalent results.

5.4.3. During a normal charge procedure in the conditions given in Annex 7, hydrogen emissions shall be below 125 g during 5 h, or below $25 \times t_2$ g during t_2 (in h).

5.4.4. During a charge carried out by an on-board charger presenting a failure (conditions given in Annex 7), hydrogen emissions shall be below 42 g. Furthermore the on-board charger shall limit this possible failure to 30 minutes.

5.4.5. All the operations linked to the battery charging are controlled automatically, including the stop for charging.

5.4.6. It shall not be possible to take a manual control of the charging phases.

5.4.7. Normal operations of connection and disconnection to the mains or power cuts shall not affect the control system of the charging phases.

5.4.8. Important charging failures shall be permanently signalled to the driver. An important failure is a failure that can lead to a disfunctioning of the on-board charger during charging later on.

5.4.9. The manufacturer has to indicate in the owner's manual, the conformity of the vehicle to these requirements.

5.4.10. The approval granted to a vehicle type relative to hydrogen emissions can be extended to different vehicle types belonging to the same family, in accordance with the definition of the family given in Annex 7, Appendix 2.

6. MODIFICATIONS AND EXTENSION OF THE TYPE APPROVAL FOR VEHICLE TYPE

6.1. Every modification of the vehicle type shall be notified to the administrative department which approved the vehicle type. The department may then either:

6.1.1. Consider that the modifications made are unlikely to have an appreciable adverse effect and that in any case the vehicle still complies with the requirements, or

6.1.2. Require a further test report from the technical service responsible for conducting the tests.

6.2. Confirmation or refusal of approval, specifying the alteration, shall be communicated by the procedure specified in paragraph 4.3 above to the Parties to the Agreement applying this Regulation.

6.3. The competent Authority issuing the extension of approval shall assign a series number for such an extension and inform thereof the other Parties to the 1958 Agreement applying the Regulation by means of a communication form conforming to the model in Annex 1 to this Regulation.

7. CONFORMITY OF PRODUCTION

7.1. Every vehicle approved under this Regulation shall be so manufactured as to conform to the type approved by meeting the requirements set out in paragraph 5 above.

7.2. In order to verify that the requirements of paragraph 7.1 are met, suitable controls of the production shall be carried out.

7.3. The holder of the approval shall, in particular:

7.3.1. Ensure the existence of procedures for the effective quality control of vehicles.

7.3.2. Have access to the testing equipment necessary for checking the conformity of each approved type.

7.3.3. Ensure that test result data are recorded and that the annexed documents remain available for a period to be determined in agreement with the administrative department.

7.3.4. Analyse the results of each type of test, in order to verify and ensure the consistency of characteristics of the vehicle, making allowance for permissible variations in industrial production.

7.3.5. Ensure that for each type of vehicle at least the tests prescribed in paragraph 5 of this Regulation are carried out.

7.3.6. Ensure that any set of samples or test pieces giving evidence of non-conformity with the type of test in question shall give rise to a further sampling and test. All necessary steps shall be taken to re-establish conformity of the corresponding production.

7.4. The competent Authority which has granted type approval may at any time verify the conformity control methods applied in each production unit.

7.4.1. At every inspection, the test records and production records shall be presented to the visiting inspector.

7.4.2. The inspector may take samples at random to be tested in the Manufacturer's laboratory. The minimum number of samples may be determined according to the results of the Manufacturer's own checks.

7.4.3. When the quality level appears unsatisfactory or when it seems necessary to verify the validity of the tests carried out in application of paragraph 7.4.2, the inspector shall select samples to be sent to the technical service which has conducted the type approval tests.

7.4.4. The competent Authority may carry out any test prescribed in this Regulation.

7.4.5. The normal frequency of inspections by the competent Authority shall be one per year. If unsatisfactory results are recorded during one of these visits, the competent Authority shall ensure that all necessary steps are taken to re-establish the conformity of production as rapidly as possible.

8. PENALTIES FOR NON-CONFORMITY OF PRODUCTION

8.1. The approval granted in respect of a vehicle type, pursuant to this Regulation may be withdrawn if the requirements laid down in paragraph 7 above are not complied with, or if the vehicle or its components fail to pass the tests provided for in paragraph 7.3.5 above.

8.2. If a Contracting Party to the Agreement applying this Regulation withdraws an approval it has previously granted, it shall forthwith so notify the other Contracting Parties applying this Regulation, by means of a communication form conforming to the Model in Annex 1 to this Regulation.

9. PRODUCTION DEFINITIVELY DISCONTINUED

If the holder of the approval completely ceases to manufacture a type of vehicle approved in accordance with this Regulation, he shall so inform the Authority which granted the approval. Upon receiving the relevant communication, that Authority shall inform thereof the other Contracting Parties to the 1958 Agreement applying this Regulation by means of a communication form conforming to the model in Annex 1 to this Regulation.

10. NAMES AND ADDRESSES OF TECHNICAL SERVICES RESPONSIBLE FOR CONDUCTING APPROVAL TESTS AND OF ADMINISTRATIVE DEPARTMENTS

The Contracting Parties to the 1958 Agreement applying this Regulation shall communicate to the United Nations Secretariat the names and addresses of the technical services responsible for conducting approval tests and the administrative departments which grant approval and to which forms certifying approval or extension or refusal or withdrawal of approval or production definitely discontinued, issued in other countries are to be sent.

11. TRANSITIONAL PROVISIONS

11.1. As from the official date of entry into force of the 01 series of amendments, no Contracting Party applying this Regulation shall refuse to grant approval under this Regulation as amended by the 01 series of amendments.

11.2. As from 24 months after the date of entry into force, Contracting Parties applying this Regulation shall grant approvals only if the vehicle type to be approved meets the requirements of this Regulation as amended by the 01 series of amendments.

11.3. Contracting Parties applying this Regulation shall not refuse to grant extensions of approval to the preceding series of amendments to this Regulation.

11.4. Contracting Parties applying this Regulation shall continue to grant approvals to those types of vehicles which comply with the requirements of this Regulation as amended by the preceding series of amendments during the 24 months' period which follows the date of entry into force of the 01 series of amendments.

11.5. Notwithstanding the transitional provisions above, Contracting Parties whose application of this Regulation comes into force after the date of entry into force of the most recent series of amendments are not obliged to accept approvals which were granted in accordance with any of the preceding series of amendments to this Regulation.

ANNEX 1

COMMUNICATION

(maximum format: A4 (210 × 297 mm))

issued by: Name of administration:

.....

.....

.....

Concerning (2): APPROVAL GRANTED
APPROVAL EXTENDED
APPROVAL REFUSED
APPROVAL WITHDRAWN
PRODUCTION DEFINITELY DISCONTINUED

of a road vehicle pursuant to Regulation No 100

Approval No ..... Extension No .....

1. Trade name or mark of the vehicle: .....
2. Vehicle type: .....
3. Vehicle category: .....
4. Manufacturer's name and address: .....
5. If applicable, name and address of manufacturer's representative: .....
6. Description of the vehicle: .....
6.1. RESS type: .....
6.2. Working voltage: .....
6.3. Propulsion system (e.g. hybrid, electric): .....
7. Vehicle submitted for approval on: .....
8. Technical service responsible for conducting approval tests: .....
9. Date of report issued by that service: .....
10. Number of report issued by that service: .....
11. Location of the approval mark: .....
12. Reason(s) for extension of approval (if applicable) (2): .....
13. Approval granted/extended/refused/withdrawn (2): .....
14. Place: .....
15. Date: .....
16. Signature: .....
17. The documents filed with the request for approval or extension may be obtained on request.

(1) Distinguishing number of the country which has granted/extended/refused/withdrawn approval (see approval provisions in the Regulation).
(2) Strike out what does not apply.

ANNEX 2

ARRANGEMENTS OF APPROVAL MARKS

MODEL A

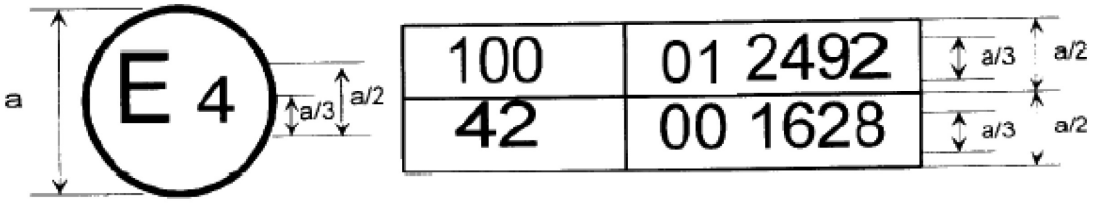
(see paragraph 4.4 of this Regulation)

a = 8 mm min.

The above approval mark affixed to a vehicle shows that the road vehicle type concerned has been approved in the Netherlands (E4), pursuant to Regulation No 100, and under the approval number 012492. The first two digits of the approval number indicate that the approval was granted in accordance with the requirements of Regulation No 100 as amended by 01 series of amendments.

MODEL B

(see paragraph 4.5 of this Regulation)



a = 8 mm min.

The above approval mark affixed to a vehicle shows that the road vehicle concerned has been approved in the Netherlands (E4) pursuant to Regulations No 100 and No 42 (*). The approval number indicates that, at the dates when the respective approvals were granted, Regulation No 100 was amended by the 01 series of amendments and Regulation No 42 was still in its original form.

(*) The latter number is given only as an example.

ANNEX 3

PROTECTION AGAINST DIRECT CONTACTS OF PARTS UNDER VOLTAGE

1. ACCESS PROBES

Access probes to verify the protection of persons against access to live parts are given in table 1.

2. TEST CONDITIONS

The access probe is pushed against any openings of the enclosure with the force specified in table 1. If it partly or fully penetrates, it is placed in every possible position, but in no case shall the stop face fully penetrate through the opening.

Internal barriers are considered part of the enclosure.

A low-voltage supply (of not less than 40 V and not more than 50 V) in series with a suitable lamp should be connected, if necessary, between the probe and live parts inside the barrier or enclosure.

The signal-circuit method should also be applied to the moving live parts of high voltage equipment.

Internal moving parts may be operated slowly, where this is possible.

3. ACCEPTANCE CONDITIONS

The access probe shall not touch live parts.

If this requirement is verified by a signal circuit between the probe and live parts, the lamp shall not light.

In the case of the test for IPXXB, the jointed test finger may penetrate to its 80 mm length, but the stop face (diameter 50 mm × 20 mm) shall not pass through the opening. Starting from the straight position, both joints of the test finger shall be successively bent through an angle of up to 90 degree with respect to the axis of the adjoining section of the finger and shall be placed in every possible position.

In case of the tests for IPXXD, the access probe may penetrate to its full length, but the stop face shall not fully penetrate through the opening.

Table 1

Access probes for the tests for protection of persons against access to hazardous parts

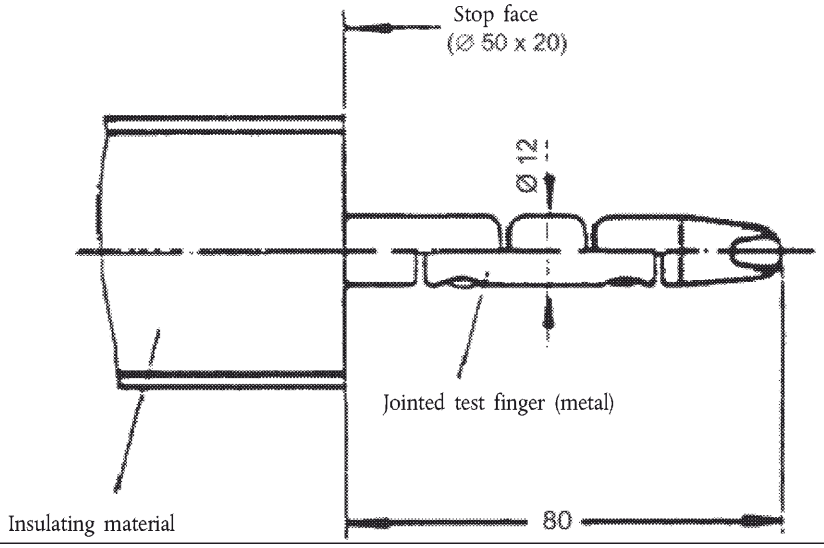
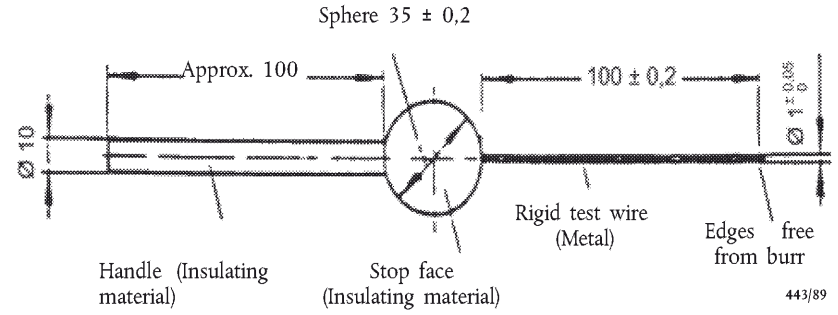
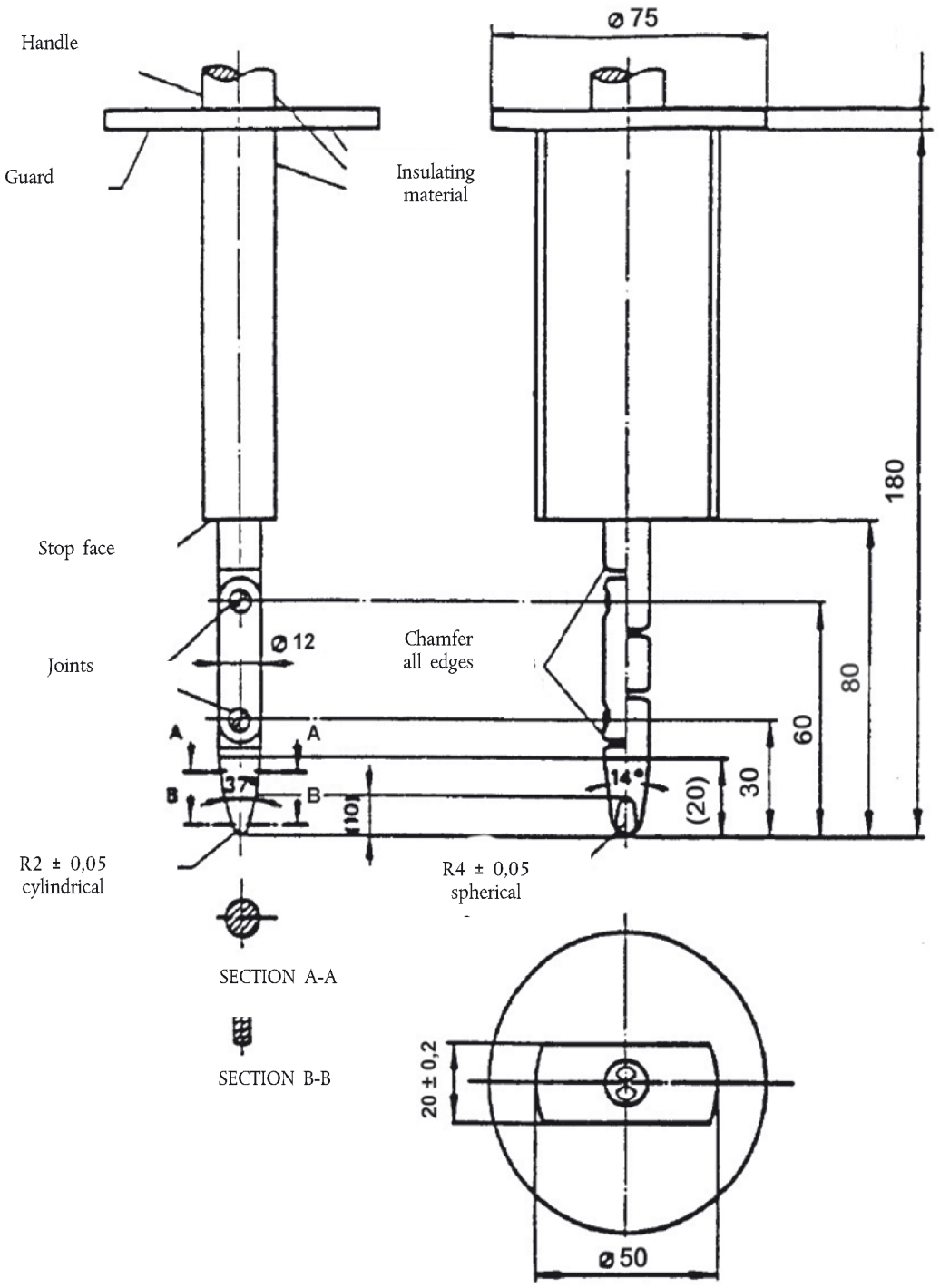
First numeral	Additional letter	Access probe	Test force
2	B	Jointed test finger See Figure 1 for full dimensions  	10 N ± 10 %
4, 5, 6	D	Test wire 1,0 mm diameter 100 mm long  	1 N ± 10 %

Figure 1

Jointed test finger



Material: metal, except where otherwise specified

Linear dimensions in millimetres

Tolerances on dimensions without specific tolerance:

(a) on angles: 0/– 10°;

(b) on linear dimensions: up to 25 mm: 0/– 0,05 mm over 25 mm: ± 0,2 mm.

Both joints shall permit movement in the same plane and the same direction through an angle of 90° with a 0 to + 10° tolerance.

ANNEX 4

ISOLATION RESISTANCE MEASUREMENT METHOD

1. GENERAL

The isolation resistance for each high voltage bus of the vehicle shall be measured or shall be determined by calculation using measurement values from each part or component unit of a high voltage bus (hereinafter referred to as the 'divided measurement').

2. MEASUREMENT METHOD

The isolation resistance measurement shall be conducted by selecting an appropriate measurement method from among those listed in paragraphs 2.1 through 2.2, depending on the electrical charge of the live parts or the isolation resistance, etc.

The range of the electrical circuit to be measured shall be clarified in advance, using electrical circuit diagrams, etc.

Moreover, modification necessary for measuring the isolation resistance may be carried out, such as removal of the cover in order to reach the live parts, drawing of measurement lines, change in software, etc.

In cases where the measured values are not stable due to the operation of the on-board isolation resistance monitoring system, etc., necessary modification for conducting the measurement may be carried out, such as stopping of the operation of the device concerned or removing it. Furthermore, when the device is removed, it shall be proven, using drawings, etc., that it will not change the isolation resistance between the live parts and the electrical chassis.

Utmost care shall be exercised as to short circuit, electric shock, etc., for this confirmation might require direct operations of the high-voltage circuit.

2.1. Measurement method using DC voltage from off-vehicle sources

2.1.1. Measurement instrument

An isolation resistance test instrument capable of applying a DC voltage higher than the working voltage of the high voltage bus shall be used.

2.1.2. Measurement method

An insulator resistance test instrument shall be connected between the live parts and the electrical chassis. Then, the isolation resistance shall be measured by applying a DC voltage at least half of the working voltage of the high voltage bus.

If the system has several voltage ranges (e.g. because of boost converter) in galvanically connected circuit and some of the components cannot withstand the working voltage of the entire circuit, the isolation resistance between those components and the electrical chassis can be measured separately by applying at least half of their own working voltage with those component disconnected.

2.2. Measurement method using the vehicle's own RESS as DC voltage source

2.2.1. Test vehicle conditions

The high voltage-bus shall be energized by the vehicle's own RESS and/or energy conversion system and the voltage level of the RESS and/or energy conversion system throughout the test shall be at least the nominal operating voltage as specified by the vehicle manufacturer.

2.2.2. Measurement instrument

The voltmeter used in this test shall measure DC values and shall have an internal resistance of at least 10 MΩ.

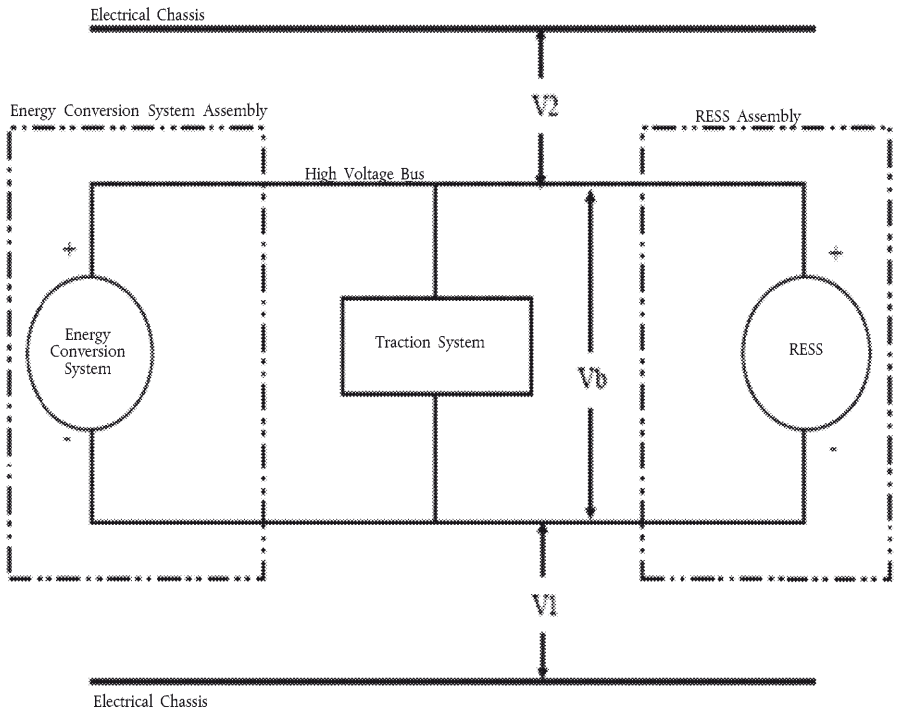
2.2.3. Measurement method

2.2.3.1. First step

The voltage is measured as shown in Figure 1 and the high voltage Bus voltage (Vb) is recorded. Vb shall be equal to or greater than the nominal operating voltage of the RESS and/or energy conversion system as specified by the vehicle manufacturer.

Figure 1

Measurement of Vb, V1, V2



2.2.3.2. Second step

Measure and record the voltage (V1) between the negative side of the high voltage bus and the electrical chassis (see Figure 1).

2.2.3.3. Third step

Measure and record the voltage (V2) between the positive side of the high voltage bus and the electrical chassis (see Figure 1).

2.2.3.4. Fourth step

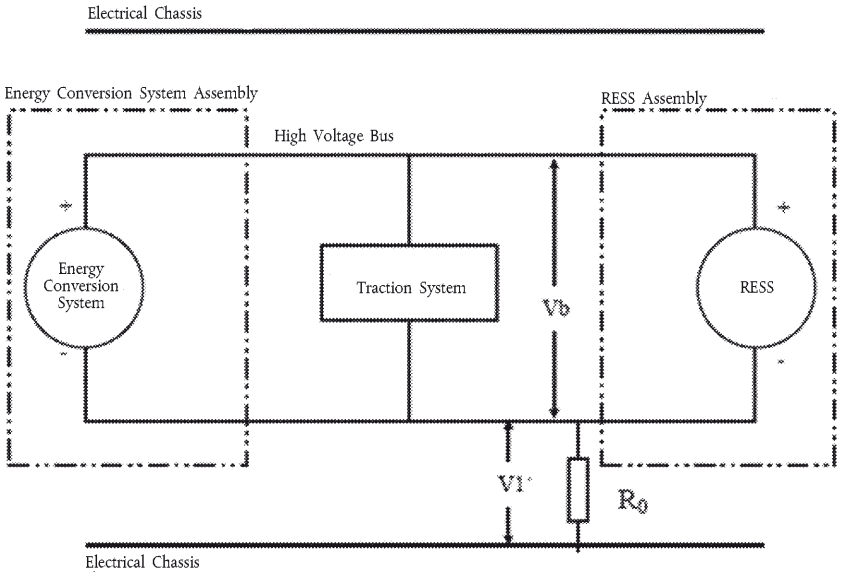
If V1 is greater than or equal to V2, insert a standard known resistance (Ro) between the negative side of the high voltage bus and the electrical chassis. With Ro installed, measure the voltage (V1') between the negative side of the high voltage bus and the electrical chassis (see Figure 2).

Calculate the electrical isolation (Ri) according to the following formula:

$$Ri = Ro * (Vb / V1' - Vb / V1) \text{ or } Ri = Ro * Vb * (1 / V1' - 1 / V1)$$

Figure 2

Measurement of V1'



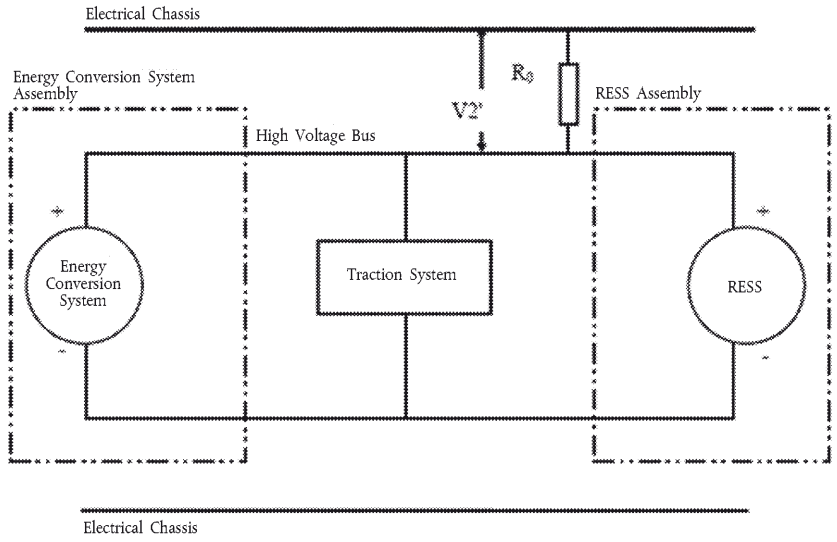
If V2 is greater than V1, insert a standard known resistance (Ro) between the positive side of the high voltage bus and the electrical chassis. With Ro installed, measure the voltage (V2') between the positive side of the high voltage bus and the electrical chassis (see Figure 3). Calculate the electrical isolation (Ri) according to the formula shown. Divide this electrical isolation value (in Ω) by the nominal operating voltage of the high voltage bus (in volts).

Calculate the electrical isolation (Ri) according to the following formula:

$$Ri = Ro * (Vb / V2' - Vb / V2) \text{ or } Ri = Ro * Vb * (1 / V2' - 1 / V2)$$

Figure 3

Measurement of V2'



2.2.3.5. Fifth step

The electrical isolation value Ri (in Ω) divided by the working voltage of the high voltage bus (in volts) results in the isolation resistance (in Ω/V).

Note 1: The standard known resistance Ro (in Ω) should be the value of the minimum required isolation resistance (in Ω/V) multiplied by the working voltage of the vehicle plus/minus 20 per cent (in volts). Ro is not required to be precisely this value since the equations are valid for any Ro; however, a Ro value in this range should provide good resolution for the voltage measurements.

ANNEX 5

CONFIRMATION METHOD FOR FUNCTION OF ON-BOARD ISOLATION RESISTANCE MONITORING SYSTEM

The function of the on-board isolation resistance monitoring system shall be confirmed by the following method:

Insert a resistor that does not cause the isolation resistance between the terminal being monitored and the electrical chassis to drop below the minimum required isolation resistance value. The warning shall be activated.

ANNEX 6

ESSENTIAL CHARACTERISTICS OF ROAD VEHICLES OR SYSTEMS

1. GENERAL

1.1. Make (trade name of manufacturer): .....

1.2. Type: .....

1.3. Vehicle category: .....

1.4. Commercial name(s) if available: .....

1.5. Manufacturer's name and address: .....

1.6. If applicable, name and address of manufacturer's representative: .....

1.7. Drawing and/or photograph of the vehicle: .....

2. ELECTRIC MOTOR (TRACTION MOTOR)

2.1. Type (winding, excitation): .....

2.2. Maximum hourly output (kW): .....

3. BATTERY (IF RESS IS BATTERY)

3.1. Trade name and mark of the battery: .....

3.2. Indication of all types of electro-chemical cells: .....

3.3. Nominal voltage (V): .....

3.4. Number of battery cells: .....

3.5. Gas combination rate (in per cent): .....

3.6. Type(s) of ventilation for battery module/pack: .....

3.7. Type of cooling system (if any): .....

3.8. Capacity (Ah): .....

4. FUEL CELL (IF ANY)

4.1. Trade name and mark of the fuel cell: .....

4.2. Types of fuel cell: .....

4.3. Nominal voltage (V): .....

4.4. Number of cells: .....

4.5. Type of cooling system (if any): .....

4.6. Max Power(kW): .....

5. FUSE AND/OR CIRCUIT BREAKER

5.1. Type: .....

5.2. Diagram showing the functional range: .....

6. POWER WIRING HARNESS

6.1. Type: .....

7. PROTECTION AGAINST ELECTRIC SHOCK

7.1. Description of the protection concept: .....

8. ADDITIONAL DATA

8.1. Brief description of the power circuit components installation or drawings/pictures showing the location of the power circuit components installation: .....

8.2. Schematic diagram of all electrical functions included in power circuit: .....

8.3. Working voltage (V): .....

ANNEX 7

DETERMINATION OF HYDROGEN EMISSIONS DURING THE CHARGE PROCEDURES OF THE TRACTION BATTERY

1. INTRODUCTION

This Annex describes the procedure for the determination of hydrogen emissions during the charge procedures of the traction battery of all road vehicles, according to paragraph 5.4 of this Regulation.

2. DESCRIPTION OF TEST

The hydrogen emission test (Figure 7.1) is conducted in order to determine hydrogen emissions during the charge procedures of the traction battery with the on-board charger. The test consists in the following steps:

(a) vehicle preparation;

(b) discharge of the traction battery;

(c) determination of hydrogen emissions during a normal charge;

(d) determination of hydrogen emissions during a charge carried out with the on-board charger failure.

3. VEHICLE

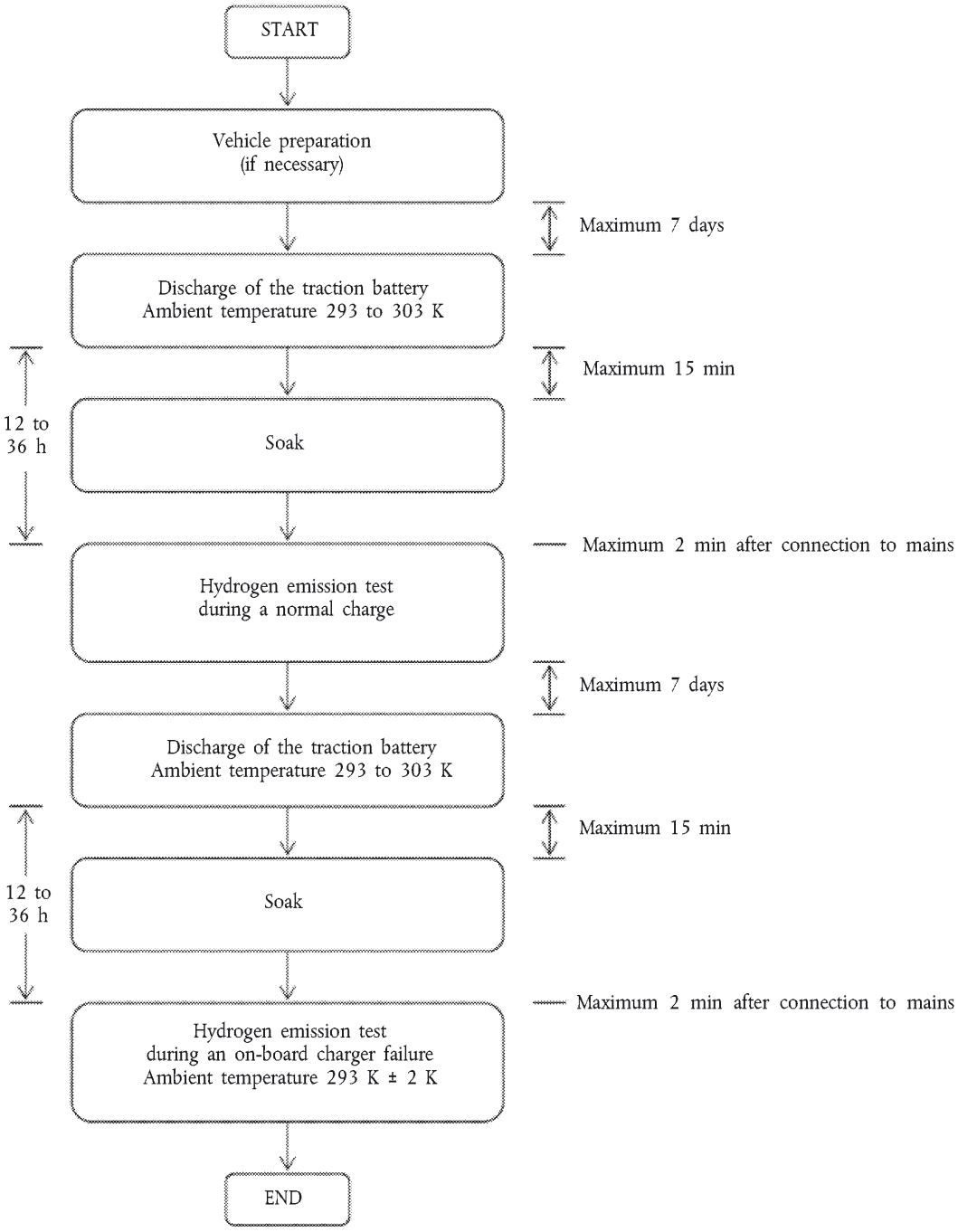
3.1. The vehicle shall be in good mechanical condition and have been driven at 300 km during 7 days before the test. The vehicle shall be equipped with the traction battery subject to the test of hydrogen emissions, over this period.

3.2. If the battery is used at a temperature above the ambient temperature, the operator shall follow the manufacturer's procedure in order to keep the traction battery temperature in normal functioning range.

The manufacturer's representative shall be able to certify that the temperature conditioning system of the traction battery is neither damaged nor presenting a capacity defect.

Figure 7.1

Determination of hydrogen emissions during the charge procedures of the traction battery



4. TEST EQUIPMENT FOR HYDROGEN EMISSION TEST

4.1. Chassis dynamometer

The chassis dynamometer shall meet the requirements of the 05 series of amendments to Regulation No 83.

4.2. Hydrogen emission measurement enclosure

The hydrogen emission measurement enclosure shall be a gas-tight measuring chamber able to contain the vehicle under test. The vehicle shall be accessible from all sides and the enclosure when sealed shall be gas-tight in accordance with Appendix 1 to this Annex. The inner surface of the enclosure shall be impermeable and non-reactive to hydrogen. The temperature conditioning system shall be capable of controlling the internal enclosure air temperature to follow the prescribed temperature throughout the test, with an average tolerance of ± 2 K over the duration of the test.

To accommodate the volume changes due to enclosure hydrogen emissions, either a variable-volume or another test equipment may be used. The variable-volume enclosure expands and contracts in response to the hydrogen emissions in the enclosure. Two potential means of accommodating the internal volume changes are movable panels, or a bellows design, in which impermeable bags inside the enclosure expand and contract in response to internal pressure changes by exchanging air from outside the enclosure. Any design for volume accommodation shall maintain the integrity of the enclosure as specified in Appendix 1 to this Annex.

Any method of volume accommodation shall limit the differential between the enclosure internal pressure and the barometric pressure to a maximum value of ± 5 hPa.

The enclosure shall be capable of latching to a fixed volume. A variable volume enclosure shall be capable of accommodating a change from its 'nominal volume' (see Annex 7, Appendix 1, paragraph 2.1.1), taking into account hydrogen emissions during testing.

4.3. Analytical systems

4.3.1. Hydrogen analyser

4.3.1.1. The atmosphere within the chamber is monitored using a hydrogen analyser (electrochemical detector type) or a chromatograph with thermal conductivity detection. Sample gas shall be drawn from the mid-point of one sidewall or roof of the chamber and any bypass flow shall be returned to the enclosure, preferably to a point immediately downstream of the mixing fan.

4.3.1.2. The hydrogen analyser shall have a response time to 90 per cent of final reading of less than 10 seconds. Its stability shall be better than 2 per cent of full scale at zero and at 80 per cent ± 20 per cent of full scale, over a 15-minute period for all operational ranges.

4.3.1.3. The repeatability of the analyser expressed as one standard deviation shall be better than 1 per cent of full scale, at zero and at 80 per cent ± 20 per cent of full scale on all ranges used.

4.3.1.4. The operational ranges of the analyser shall be chosen to give best resolution over the measurement, calibration and leak checking procedures.

4.3.2. Hydrogen analyser data recording system

The hydrogen analyser shall be fitted with a device to record electrical signal output, at a frequency of at least once per minute. The recording system shall have operating characteristics at least equivalent to the signal being recorded and shall provide a permanent record of results. The recording shall show a clear indication of the beginning and end of the normal charge test and charging failure operation.

4.4. Temperature recording

4.4.1. The temperature in the chamber is recorded at two points by temperature sensors, which are connected so as to show a mean value. The measuring points are extended approximately 0,1 m into the enclosure from the vertical centre line of each sidewall at a height of 0,9 ± 0,2 m.

4.4.2. The temperatures of the battery modules are recorded by means of the sensors.

4.4.3. Temperatures shall, throughout the hydrogen emission measurements, be recorded at a frequency of at least once per minute.

4.4.4. The accuracy of the temperature recording system shall be within ± 1,0 K and the temperature shall be capable of being resolved to ± 0,1 K.

4.4.5. The recording or data processing system shall be capable of resolving time to ± 15 seconds.

4.5. Pressure recording

4.5.1. The difference Δp between barometric pressure within the test area and the enclosure internal pressure shall, throughout the hydrogen emission measurements, be recorded at a frequency of at least once per minute.

4.5.2. The accuracy of the pressure recording system shall be within ± 2 hPa and the pressure shall be capable of being resolved to ± 0,2 hPa.

4.5.3. The recording or data processing system shall be capable of resolving time to ± 15 seconds.

4.6. Voltage and current intensity recording

4.6.1. The on-board charger voltage and current intensity (battery) shall, throughout the hydrogen emission measurements, be recorded at a frequency of at least once per minute.

4.6.2. The accuracy of the voltage recording system shall be within ± 1 V and the voltage shall be capable of being resolved to ± 0,1 V.

4.6.3. The accuracy of the current intensity recording system shall be within ± 0,5 A and the current intensity shall be capable of being resolved to ± 0,05 A.

4.6.4. The recording or data processing system shall be capable of resolving time to ± 15 seconds.

4.7. Fans

The chamber shall be equipped with one or more fans or blowers with a possible flow of 0,1 to 0,5 m^3/second in order to thoroughly mix the atmosphere in the enclosure. It shall be possible to reach a homogeneous temperature and hydrogen concentration in the chamber during measurements. The vehicle in the enclosure shall not be subjected to a direct stream of air from the fans or blowers.

4.8. Gases

4.8.1. The following pure gases shall be available for calibration and operation:

(a) purified synthetic air (purity < 1 ppm C1 equivalent; < 1 ppm CO; < 400 ppm CO_2; < 0,1 ppm NO); oxygen content between 18 and 21 per cent by volume;

(b) hydrogen (H_2), 99,5 per cent minimum purity.

4.8.2. Calibration and span gases shall contain mixtures of hydrogen (H2) and purified synthetic air. The real concentrations of a calibration gas shall be within ± 2 per cent of the nominal values. The accuracy of the diluted gases obtained when using a gas divider shall be within ± 2 per cent of the nominal value. The concentrations specified in Appendix 1 may also be obtained by a gas divider using synthetic air as the dilution gas.

5. TEST PROCEDURE

The test consists in the five following steps:

(a) vehicle preparation;

(b) discharge of the traction battery;

(c) determination of hydrogen emissions during a normal charge;

(d) discharge of the traction battery;

(e) determination of hydrogen emissions during a charge carried out with the on-board charger failure.

If the vehicle has to be moved between two steps, it shall be pushed to the following test area.

5.1. Vehicle preparation

The ageing of traction battery shall be checked, proving that the vehicle has performed at least 300 km during 7 days before the test. During this period, the vehicle shall be equipped with the traction battery submitted to the hydrogen emission test. If this cannot be demonstrated then the following procedure will be applied.

5.1.1. Discharges and initial charges of the battery

The procedure starts with the discharge of the traction battery of the vehicle while driving on the test track or on a chassis dynamometer at a steady speed of 70 per cent ± 5 per cent of the maximum speed of the vehicle during 30 minutes.

Discharging is stopped:

(a) when the vehicle is not able to run at 65 per cent of the maximum thirty minutes speed; or

(b) when an indication to stop the vehicle is given to the driver by the standard on-board instrumentation; or

(c) after having covered the distance of 100 km.

5.1.2. Initial charge of the battery

The charge is carried out:

(a) with the on-board charger;

(b) in an ambient temperature between 293 K and 303 K.

The procedure excludes all types of external chargers.

The end of traction battery charge criteria corresponds to an automatic stop given by the on-board charger.

This procedure includes all types of special charges that could be automatically or manually initiated like, for instance, the equalisation charges or the servicing charges.

5.1.3. Procedure from paragraphs 5.1.1 to 5.1.2 shall be repeated two times.

5.2. Discharge of the battery

The traction battery is discharged while driving on the test track or on a chassis dynamometer at a steady speed of 70 per cent ± 5 per cent from the maximum thirty minutes speed of the vehicle.

Stopping the discharge occurs:

(a) when an indication to stop the vehicle is given to the driver by the standard on-board instrumentation; or

(b) when the maximum speed of the vehicle is lower than 20 km/h.

5.3. Soak

Within fifteen minutes of completing the battery discharge operation specified in 5.2, the vehicle is parked in the soak area. The vehicle is parked for a minimum of 12 hours and a maximum of 36 hours, between the end of the traction battery discharge and the start of the hydrogen emission test during a normal charge. For this period, the vehicle shall be soaked at 293 K ± 2 K.

5.4. Hydrogen emission test during a normal charge

5.4.1. Before the completion of the soak period, the measuring chamber shall be purged for several minutes until a stable hydrogen background is obtained. The enclosure mixing fan(s) shall also be turned on at this time.

5.4.2. The hydrogen analyser shall be zeroed and spanned immediately prior to the test.

5.4.3. At the end of the soak, the test vehicle, with the engine shut off and the test vehicle windows and luggage compartment opened shall be moved into the measuring chamber.

5.4.4. The vehicle shall be connected to the mains. The battery is charged according to normal charge procedure as specified in paragraph 5.4.7 below.

5.4.5. The enclosure doors are closed and sealed gas-tight within two minutes from electrical interlock of the normal charge step.

5.4.6. The start of a normal charge for hydrogen emission test period begins when the chamber is sealed. The hydrogen concentration, temperature and barometric pressure are measured to give the initial readings C_{H2i}, T_i and P_i for the normal charge test.

These figures are used in the hydrogen emission calculation (paragraph 6). The ambient enclosure temperature T shall not be less than 291 K and no more than 295 K during the normal charge period.

5.4.7. Procedure of normal charge

The normal charge is carried out with the on-board charger and consists of the following steps:

(a) charging at constant power during t_1;

(b) over-charging at constant current during t_2. Over-charging intensity is specified by manufacturer and corresponds to the one used during equalisation charging.

The end of traction battery charge criteria corresponds to an automatic stop given by the on-board charger to a charging time of $t_1 + t_2$. This charging time will be limited to $t_1 + 5$ h, even if a clear indication is given to the driver by the standard instrumentation that the battery is not yet fully charged.

5.4.8. The hydrogen analyser shall be zeroed and spanned immediately before the end of the test.

5.4.9. The end of the emission-sampling period occurs $t_1 + t_2$ or $t_1 + 5$ h after the beginning of the initial sampling, as specified in paragraph 5.4.6. The different times elapsed are recorded. The hydrogen concentration, temperature and barometric pressure are measured to give the final readings C_{H2f}, T_f and P_f for the normal charge test, used for the calculation in paragraph 6.

5.5. Hydrogen emission test with the on-board charger failure

5.5.1. Within 7 days maximum after having completed the prior test, the procedure starts with the discharge of the traction battery of the vehicle according to paragraph 5.2.

5.5.2. The steps of the procedure in paragraph 5.3 shall be repeated.

5.5.3. Before the completion of the soak period, the measuring chamber shall be purged for several minutes until a stable hydrogen background is obtained. The enclosure mixing fan(s) shall also be turned on at this time.

5.5.4. The hydrogen analyser shall be zeroed and spanned immediately prior to the test.

5.5.5. At the end of the soak, the test vehicle, with the engine shut off and the test vehicle windows and luggage compartment opened shall be moved into the measuring chamber.

5.5.6. The vehicle shall be connected to the mains. The battery is charged according to failure charge procedure as specified in paragraph 5.5.9 below.

5.5.7. The enclosure doors are closed and sealed gas-tight within two minutes from electrical interlock of the failure charge step.

5.5.8. The start of a failure charge for hydrogen emission test period begins when the chamber is sealed. The hydrogen concentration, temperature and barometric pressure are measured to give the initial readings C_{H2i}, T_i and P_i for the failure charge test.

These figures are used in the hydrogen emission calculation (paragraph 6). The ambient enclosure temperature T shall not be less than 291 K and no more than 295 K during the charging failure period.

5.5.9. Procedure of charging failure

The charging failure is carried out with the on-board charger and consists of the following steps:

(a) charging at constant power during t'_1;

(b) charging at maximum current during 30 minutes. During this phase, the on-board charger is blocked at maximum current.

5.5.10. The hydrogen analyser shall be zeroed and spanned immediately before the end of the test.

5.5.11. The end of test period occurs t'_1 + 30 minutes after the beginning of the initial sampling, as specified in paragraph 5.5.8. The times elapsed are recorded. The hydrogen concentration, temperature and barometric pressure are measured to give the final readings C_{H2f}, T_f and P_f for the charging failure test, used for the calculation in paragraph 6.

6. CALCULATION

The hydrogen emission tests described in paragraph 5 allow the calculation of the hydrogen emissions from the normal charge and charging failure phases. Hydrogen emissions from each of these phases are calculated using the initial and final hydrogen concentrations, temperatures and pressures in the enclosure, together with the net enclosure volume.

The formula below is used:

$$M_{H2} = k \times V \times 10^{-4} \times \left(\frac{\left(1 + \frac{V_{out}}{V}\right) \times C_{H2f} \times P_f}{T_f} - \frac{C_{H2i} \times P_i}{T_i} \right)$$

where:

M_{H2} = hydrogen mass, in grams

C_{H2} = measured hydrogen concentration in the enclosure, in ppm volume

V = net enclosure volume in cubic metres (m^3) corrected for the volume of the vehicle, with the windows and the luggage compartment open. If the volume of the vehicle is not determined a volume of 1,42 m^3 is subtracted.

V_{out} = compensation volume in m^3, at the test temperature and pressure

T = ambient chamber temperature, in K

P = absolute enclosure pressure, in kPa

k = 2,42

where: i is the initial reading

f is the final reading

6.1. Results of test

The hydrogen mass emissions for the vehicle are:

MN = hydrogen mass emission for normal charge test, in grams

MD = hydrogen mass emission for charging failure test, in grams

Appendix 1

CALIBRATION OF EQUIPMENT FOR HYDROGEN EMISSION TESTING

1. CALIBRATION FREQUENCY AND METHODS

All equipment shall be calibrated before its initial use and then calibrated as often as necessary and in any case in the month before type approval testing. The calibration methods to be used are described in this Appendix.

2. CALIBRATION OF THE ENCLOSURE

2.1. Initial determination of enclosure internal volume

2.1.1. Before its initial use, the internal volume of the chamber shall be determined as follows. The internal dimensions of the chamber are carefully measured, taking into account any irregularities such as bracing struts. The internal volume of the chamber is determined from these measurements.

The enclosure shall be latched to a fixed volume when the enclosure is held at an ambient temperature of 293 K. This nominal volume shall be repeatable within ± 0,5 per cent of the reported value.

2.1.2. The net internal volume is determined by subtracting 1,42 m^3 from the internal volume of the chamber. Alternatively the volume of the test vehicle with the luggage compartment and windows open may be used instead of the 1,42 m^3.

2.1.3. The chamber shall be checked as in paragraph 2.3. If the hydrogen mass does not agree with the injected mass to within ± 2 per cent then corrective action is required.

2.2. Determination of chamber background emissions

This operation determines that the chamber does not contain any materials that emit significant amounts of hydrogen. The check shall be carried out at the enclosure's introduction to service, after any operations in the enclosure which may affect background emissions and at a frequency of at least once per year.

2.2.1. Variable-volume enclosure may be operated in either latched or unlatched volume configuration, as described in paragraph 2.1.1. Ambient temperature shall be maintained at 293 K ± 2 K, throughout the 4-hour period mentioned below.

2.2.2. The enclosure may be sealed and the mixing fan operated for a period of up to 12 hours before the four-hour background-sampling period begins.

2.2.3. The analyser (if required) shall be calibrated, then zeroed and spanned.

2.2.4. The enclosure shall be purged until a stable hydrogen reading is obtained, and the mixing fan turned on if not already on.

2.2.5. The chamber is then sealed and the background hydrogen concentration, temperature and barometric pressure are measured. These are the initial readings C_{H2i}, T_i and P_i used in the enclosure background calculation.

2.2.6. The enclosure is allowed to stand undisturbed with the mixing fan on for a period of 4 hours.

2.2.7. At the end of this time the same analyser is used to measure the hydrogen concentration in the chamber. The temperature and the barometric pressure are also measured. These are the final readings C_{H2f}, T_f and P_f.

2.2.8. The change in mass of hydrogen in the enclosure shall be calculated over the time of the test in accordance with paragraph 2.4 and shall not exceed 0,5 g.

2.3. Calibration and hydrogen retention test of the chamber

The calibration and hydrogen retention test in the chamber provides a check on the calculated volume (paragraph 2.1) and also measures any leak rate. The enclosure leak rate shall be determined at the enclosure's introduction to service, after any operations in the enclosure which may affect the integrity of the enclosure, and at least monthly thereafter. If six consecutive monthly retention checks are successfully completed without corrective action, the enclosure leak rate may be determined quarterly thereafter as long as no corrective action is required.

2.3.1. The enclosure shall be purged until a stable hydrogen concentration is reached. The mixing fan is turned on, if not already switched on. The hydrogen analyser is zeroed, calibrated if required, and spanned.

2.3.2. The enclosure shall be latched to the nominal volume position.

2.3.3. The ambient temperature control system is then turned on (if not already on) and adjusted for an initial temperature of 293 K.

2.3.4. When the enclosure temperature stabilizes at 293 K ± 2 K, the enclosure is sealed and the background concentration, temperature and barometric pressure measured. These are the initial readings C_{H2i}, T_i and P_i used in the enclosure calibration.

2.3.5. The enclosure shall be unlatched from the nominal volume.

2.3.6. A quantity of approximately 100 g of hydrogen is injected into the enclosure. This mass of hydrogen shall be measured to an accuracy of ± 2 per cent of the measured value.

2.3.7. The contents of the chamber shall be allowed to mix for five minutes and then the hydrogen concentration, temperature and barometric pressure are measured. These are the final readings C_{H2f}, T_f and P_f for the calibration of the enclosure as well as the initial readings C_{H2i}, T_i and P_i for the retention check.

2.3.8. On the basis of the readings taken in paragraphs 2.3.4 and 2.3.7 and the formula in paragraph 2.4, the mass of hydrogen in the enclosure is calculated. This shall be within ± 2 per cent of the mass of hydrogen measured in paragraph 2.3.6.

2.3.9. The contents of the chamber shall be allowed to mix for a minimum of 10 hours. At the completion of the period, the final hydrogen concentration, temperature and barometric pressure are measured and recorded. These are the final readings C_{H2f}, T_f and P_f for the hydrogen retention check.

2.3.10. Using the formula in paragraph 2.4, the hydrogen mass is then calculated from the readings taken in paragraphs 2.3.7 and 2.3.9. This mass may not differ by more than 5 per cent from the hydrogen mass given by paragraph 2.3.8.

2.4. Calculation

The calculation of net hydrogen mass change within the enclosure is used to determine the chamber's hydrocarbon background and leak rate. Initial and final readings of hydrogen concentration, temperature and barometric pressure are used in the following formula to calculate the mass change.

$$M_{H2} = k \times V \times 10^{-4} \times \left\{ \frac{(1 + \frac{V_{out}}{V}) \times C_{H2f} \times P_f}{T_f} - \frac{C_{H2i} \times P_i}{T_i} \right\}$$

where:

M_{H2} = hydrogen mass, in grams

C_{H2} = measured hydrogen concentration into the enclosure, in ppm volume

V = enclosure volume in cubic metres (m^3) as measured in paragraph 2.1.1

V_{out} = compensation volume in m^3, at the test temperature and pressure

T = ambient chamber temperature, in K

P = absolute enclosure pressure, in kPa

k = 2,42

where: i is the initial reading

f is the final reading

3. CALIBRATION OF THE HYDROGEN ANALYSER

The analyser should be calibrated using hydrogen in air and purified synthetic air. See paragraph 4.8.2 of Annex 7.

Each of the normally used operating ranges is calibrated by the following procedure:

3.1. Establish the calibration curve by at least five calibration points spaced as evenly as possible over the operating range. The nominal concentration of the calibration gas with the highest concentrations to be at least 80 per cent of the full scale.

3.2. Calculate the calibration curve by the method of least squares. If the resulting polynomial degree is greater than 3, then the number of calibration points shall be at least the number of the polynomial degree plus 2.

3.3. The calibration curve shall not differ by more than 2 per cent from the nominal value of each calibration gas.

3.4. Using the coefficients of the polynomial derived from paragraph 3.2 above, a table of analyser readings against true concentrations shall be drawn by steps no greater than 1 per cent of full scale. This is to be carried out for each analyser range calibrated.

This table shall also contain other relevant data such as:

(a) date of calibration;

(b) span and zero potentiometer readings (where applicable);

(c) nominal scale;

(d) reference data of each calibration gas used;

(e) real and indicated value of each calibration gas used together with the percentage differences;

(f) calibration pressure of analyser.

3.5. Alternative methods (e.g. computer, electronically controlled range switch) can be used if it is proven to the technical service that these methods give equivalent accuracy.

Appendix 2

ESSENTIAL CHARACTERISTICS OF THE VEHICLE FAMILY

1. Parameters defining the family relative to hydrogen emissions

   The family may be defined by basic design parameters which shall be common to vehicles within the family. In some cases there may be interaction of parameters. These effects shall also be taken into consideration to ensure that only vehicles with similar hydrogen emission characteristics are included within the family.

2. To this end, those vehicle types whose parameters described below are identical are considered to belong to the same hydrogen emissions.

   Traction battery:

   (a) trade name or mark of the battery;

   (b) indication of all types of electro-chemical couples used;

   (c) number of battery cells;

   (d) number of battery modules;

   (e) nominal voltage of the battery (V);

   (f) battery energy (kWh);

   (g) gas combination rate (in per cent);

   (h) type(s) of ventilation for battery module(s) or pack;

   (i) type of cooling system (if any).

   On-board charger:

   (a) make and type of different charger parts;

   (b) output nominal power (kW);

   (c) maximum voltage of charge (V);

   (d) maximum intensity of charge (A);

   (e) make and type of control unit (if any);

   (f) diagram of operating, controls and safety;

   (g) characteristics of charge periods.

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