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## II

*(Non-legislative acts)*

## INTERNATIONAL AGREEMENTS

## COUNCIL DECISION

of 18 July 2011

**on the signing, on behalf of the Union, of the Agreement between the European Union and New Zealand amending the Agreement on mutual recognition in relation to conformity assessment between the European Community and New Zealand**

(2011/464/EU)

THE COUNCIL OF THE EUROPEAN UNION,

(4) The Agreement should be signed,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(5) thereof,

HAS ADOPTED THIS DECISION:

*Article 1*

Having regard to the proposal from the European Commission,

The signing of the Agreement between the European Union and New Zealand amending the Agreement on mutual recognition in relation to conformity assessment between the European Community and New Zealand (the Agreement) is hereby authorised on behalf of the Union, subject to the conclusion of the said Agreement <sup>(3)</sup>.

Whereas:

*Article 2*

(1) The Agreement on mutual recognition in relation to conformity assessment between the European Community and New Zealand <sup>(1)</sup> (the Agreement on Mutual Recognition) entered into force on 1 January 1999 <sup>(2)</sup>.

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union subject to its conclusion.

*Article 3*

(2) On 8 July 2002, the Council authorised the Commission to open negotiations with New Zealand with a view to amending the Agreement on Mutual Recognition. The negotiations were successfully concluded by the initialling of the Agreement between the European Union and New Zealand amending the Agreement on mutual recognition in relation to conformity assessment between the European Community and New Zealand (the Agreement) in Brussels on 29 June 2009.

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

(3) As a consequence of the entry into force of the Treaty of Lisbon on 1 December 2009, the European Union has replaced and succeeded the European Community.

Done at Brussels, 18 July 2011.

*For the Council**The President*

M. DOWGIELEWICZ

<sup>(1)</sup> OJ L 229, 17.8.1998, p. 62.

<sup>(2)</sup> OJ L 5, 9.1.1999, p. 74.

<sup>(3)</sup> The text of the Agreement will be published together with the Decision on its conclusion.

## COUNCIL DECISION

of 18 July 2011

**amending the appropriate measures laid down by Decision 2009/618/EC concerning the conclusion of consultations with the Republic of Guinea under Article 96 of the Cotonou Agreement and repealing that Decision**

(2011/465/EU)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 <sup>(1)</sup> and revised at Ouagadougou, Burkina Faso, on 22 June 2010 <sup>(2)</sup> (the ACP-EU Partnership Agreement), and in particular Article 96 thereof,

Having regard to the Internal Agreement between the representatives of the governments of the Member States, meeting within the Council, on measures to be taken and procedures to be followed for the implementation of the ACP-EC Partnership Agreement <sup>(3)</sup>, and in particular Article 3 thereof,

Having regard to a proposal from the European Commission,

In agreement with the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) The Republic of Guinea has made progress in implementing the undertakings set out in the letter in the Annex to Council Decision 2009/618/EC of 27 July 2009 concerning the conclusion of consultations with the Republic of Guinea under Article 96 of the Cotonou Agreement <sup>(4)</sup>. Fulfilment of those undertakings is a condition for the lifting of the related measures.

(2) The Republic of Guinea has made progress in the transition to the return to constitutional rule and the establishment of democracy in particular with the inauguration of a president, following free and transparent presidential elections, and a civil government.

(3) The holding of presidential elections and the appointment of the new president constitute the partial achievement of the last milestone established in the Annex to the letter annexed to Decision 2009/618/EC.

(4) The fourth and last milestone marking the end of the transition will not be achieved by 27 July 2011, the date of expiry of Decision 2009/618/EC.

(5) In the light of the progress made in the return to constitutional rule, the appropriate measures should therefore be updated to take account of the progress achieved and Decision 2009/618/EC should be repealed,

HAS ADOPTED THIS DECISION:

*Article 1*

The appropriate measures provided for under Article 96(2)(c) of the ACP-EU Partnership Agreement are specified in the letter in the Annex to this Decision.

*Article 2*

Decision 2009/618/EC is hereby repealed.

*Article 3*

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

It shall expire on 19 July 2012.

It shall be reviewed, if necessary, after an indicative period of 6 months in the light of the conclusions of an on-the-spot mission of the European Union.

Done at Brussels, 18 July 2011.

*For the Council*  
*The President*  
C. ASHTON

<sup>(1)</sup> OJ L 317, 15.12.2000, p. 3.

<sup>(2)</sup> OJ L 287, 4.11.2010, p. 3.

<sup>(3)</sup> OJ L 317, 15.12.2000, p. 376.

<sup>(4)</sup> OJ L 214, 19.8.2009, p. 34.

## ANNEX

**DRAFT LETTER**

Sirs,

The European Union welcomes the progress made by the Republic of Guinea in the return to constitutional rule in particular following the peaceful conclusion of the presidential elections in 2010 and the inauguration of a legitimate President and a civil government. The presidential elections that have just concluded were the first genuinely open and competitive elections since the Republic of Guinea gained independence, marking a crucial stage in the return to democratic legitimacy.

You are now facing the huge challenge of putting your country back on the path of stability and economic growth, a challenge that you have taken up by adopting an ambitious programme of reforms. The Council of the European Union is aware of the economic and social difficulties facing the Republic of Guinea and wishes to assist you in this last but important stage of the political transition. The Council has therefore decided to revise the conditions relating to the last stage of the resumption of cooperation between the European Union and the Republic of Guinea, namely the signing of the Country Strategy Paper and National Indicative Programme (CSP/NIP) for the 10th European Development Fund (EDF), which will cover the cooperation with the Republic of Guinea until 2013.

In accordance with this Decision, the European Union will be able to sign the CSP/NIP with the Republic of Guinea as soon as they are completed and after the Guinean authorities have sent a formal communication to the European Union with a detailed timetable, drawn up and adopted by the competent authorities, specifying the date and stages for holding parliamentary elections by the end of 2011.

Once the CSP/NIP has been signed, the funds for direct support to the people of Guinea, to be assigned to basic social services, can be released. Technical appraisal of the other projects and programmes referred to in these documents, as well as any new operations by the European Investment Bank (EIB) <sup>(1)</sup> may also be carried out, but no funds can be disbursed until free and transparent parliamentary elections have been held.

The European Union considers that, although the presidential elections are fundamental in the transition to democracy, the parliamentary elections and the constitution of a new democratically elected assembly are crucial for achieving the transition and establishing a full democratic framework. The European Union remains confident of the fact that the parliamentary elections will be held by the last quarter of 2011 at the latest, as announced by the Guinean authorities, and is willing to provide financial support for the organisation of the elections (for an indicative amount of EUR 5 million).

The European Union undertakes to hold a regular political dialogue with the Guinean government under Article 8 of the Cotonou Agreement concerning the essential elements of this agreement as referred to in Article 9 thereof, in particular human rights, democratic principles and the rule of law, and also national reconciliation, an end to impunity and reforms in the areas of political, judicial and economic governance and the security sector.

The Government of the Republic of Guinea can continue to count on the support and assistance of the European Union on its ambitious path towards a return to sustainable economic growth and the welfare of its people.

Yours faithfully, ...

Done at Brussels, ...

For the European Union

...

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<sup>(1)</sup> The measures do not apply to interim relief already initiated by the EIB in the framework of the Heavily Indebted Poor Countries initiative, including for the clearing of amounts in arrears on EDF loans managed by the EIB.

## ANNEX

**COMMITMENTS BY PARTNERS**

Commitments by the Republic of Guinea	Commitment by the European Union
1. Detailed timetable (preliminary dates and stages/preparatory operations), drawn up and adopted by the competent authorities, for the holding of parliamentary elections by the end of 2011.	1.1. Signature of the 10th EDF CSP/NIP once programming is completed. 1.2. Technical appraisal of the projects/programmes contained in this CSP/NIP. 1.3. Release of funds in direct support of the people of Guinea.
2. Holding of free and transparent parliamentary elections.	2.1. Financing decisions and effective implementation of the other 10th EDF projects/programmes.

**COUNCIL DECISION**  
**of 19 July 2011**  
**on the conclusion of an Agreement on civil aviation safety between the European Community and**  
**Canada**

(2011/466/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) and the first subparagraph of Article 207(4), in conjunction with Article 218(6)(a) and Article 218(7) and the first subparagraph of Article 218(8), thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament <sup>(1)</sup>,

Whereas:

- (1) The Commission has negotiated on behalf of the Union an Agreement on civil aviation safety between the European Community and Canada <sup>(2)</sup> ('the Agreement') in accordance with the Council Decision authorising the Commission to open negotiations.
- (2) The Agreement was signed on 6 May 2009 on behalf of the Union subject to its possible conclusion at a later date, in conformity with Council Decision 2009/469/EC <sup>(3)</sup>.
- (3) Following the entry into force of the Treaty of Lisbon on 1 December 2009, the European Union should make a notification to Canada as regards the succession of the European Community by the European Union.
- (4) The Agreement should be approved.
- (5) It is necessary to lay down procedural arrangements for the participation of the Union in the joint bodies established by the Agreement, as well as for the adoption of certain decisions concerning in particular the amendment of the Agreement and its Annexes, the addition of new annexes, the termination of individual annexes, consultations and dispute resolution and the adoption of safeguard measures.

- (6) The Member States should take the necessary measures in order to ensure that their bilateral agreements with Canada on the same subject are terminated as of the date of entry into force of the Agreement,

HAS ADOPTED THIS DECISION:

*Article 1*

The Agreement on civil aviation safety between the European Community and Canada ('the Agreement') is hereby approved on behalf of the Union.

The text of the Agreement <sup>(4)</sup> is attached to this Decision.

*Article 2*

The President of the Council is hereby authorised to designate the person(s) empowered to make the notification provided in Article 16(1) of the Agreement and make the following notification:

'As a consequence of the entry into force of the Treaty of Lisbon on 1 December 2009, the European Union has replaced and succeeded the European Community and from that date exercises all rights and assumes all obligations of the European Community. Therefore, references to the "European Community" in the text of the Agreement are, where appropriate, to be read as the "European Union".'

*Article 3*

1. The Union shall be represented in the Joint Committee of the Parties established in Article 9 of the Agreement by the European Commission assisted by the European Aviation Safety Agency and accompanied by the Aviation Authorities as representatives of the Member States.

2. The Union shall be represented in the Joint Sectorial Committee on Certification provided for in paragraph 2 of Annex A to the Agreement and in the Joint Sectorial Committee on Maintenance provided in paragraph 4 of Annex B to the Agreement by the European Aviation Safety Agency assisted by the Aviation Authorities directly concerned by the agenda of each meeting.

<sup>(1)</sup> Consent of 23 June 2011.

<sup>(2)</sup> OJ L 153, 17.6.2009, p. 11.

<sup>(3)</sup> OJ L 153, 17.6.2009, p. 10.

<sup>(4)</sup> The text of the Agreement has been published in OJ L 153, 17.6.2009, p. 11 together with the decision on signature.

*Article 4*

1. The Commission, after consultation with the special committee appointed by the Council, shall determine the position to be taken by the Union in the Joint Committee of the Parties with respect to the following matters:

— the adoption or amendment of the rules of procedures of the Joint Committee of the Parties provided for in Article 9(3) of the Agreement.

2. The Commission, after consultation with the special committee referred to in paragraph 1 and taking full account of its opinion, may take the following action:

— adopt safeguard measures in accordance with Article 6 of the Agreement,

— request consultations in accordance with Article 15 of the Agreement,

— take measures for suspension in accordance with Article 10 of the Agreement,

— provided that the Commission has submitted a thorough factual analysis of the effects and feasibility of the intended modifications, amend annexes to the Agreement

in accordance with Article 16(5) of the Agreement in so far as such amendments are consistent with, and do not entail any modification of, relevant Union legal acts,

— remove individual annexes in accordance with Article 16(3) and (5) of the Agreement,

— any other action to be taken by a Party as provided for in the Agreement, subject to paragraph 3 of this Article and EU law.

3. The Council shall decide, acting by qualified majority, on a proposal from the Commission and in accordance with the provisions of the Treaty, with respect to any other amendments to the Agreement not falling within the scope of paragraph 2 of this Article.

*Article 5*

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

Done at Brussels, 19 July 2011.

*For the Council*

*The President*

M. SAWICKI



## COUNCIL DECISION

of 19 July 2011

**on the position to be taken by the European Union within the EU-Swiss Joint Committee established by Article 14 of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, as regards the replacement of Annex III (Mutual recognition of professional qualifications) thereto**

(2011/467/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(9) in conjunction with Articles 46, 53 and 62 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons ('the Agreement') was signed on 21 June 1999 and entered into force on 1 June 2002.
- (2) Article 14 of the Agreement establishes a Joint Committee. Pursuant to Article 18 of the Agreement, amendments to, inter alia, Annex III (Mutual recognition of professional qualifications) thereto are to be adopted by decision of that Joint Committee.
- (3) In order to preserve the coherent and correct application of EU legal acts and to avoid administrative — and possibly legal — difficulties, Annex III to the Agreement should be amended to integrate new EU legal acts to which the Agreement does not currently refer.
- (4) In the interests of clarity and rationality, Annex III to the Agreement should be consolidated and replaced by a new Annex.

- (5) The position of the Union within the EU-Swiss Joint Committee should therefore be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken by the European Union within the EU-Swiss Joint Committee established by Article 14 of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, as regards the replacement of Annex III (Mutual recognition of professional qualifications) thereto shall be based on the draft Decision of the EU-Swiss Joint Committee, attached to this Decision.

*Article 2*

The Decision of the EU-Swiss Joint Committee shall be published in the *Official Journal of the European Union*.

*Article 3*

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

Done at Brussels, 19 July 2011.

*For the Council*  
*The President*  
M. SAWICKI

DRAFT

**DECISION No .../2011 OF THE EU-SWISS JOINT COMMITTEE****established by Article 14 of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons****of ...****replacing Annex III (Mutual recognition of professional qualifications) thereto**

THE JOINT COMMITTEE,

Having regard to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons <sup>(1)</sup> ('the Agreement'), and in particular Articles 14 and 18 thereof,

Having regard to the Protocol to the Agreement regarding the participation, as Contracting Parties, of the Republic of Bulgaria and Romania pursuant to their accession to the European Union <sup>(2)</sup>, and in particular Article 4(2) thereof,

Whereas:

- (1) The Agreement was signed on 21 June 1999 and entered into force on 1 June 2002.
- (2) Annex III (Mutual recognition of professional qualifications) to the Agreement was last amended by Decision No 1/2004 of the EU-Swiss Joint Committee <sup>(3)</sup> and should be updated to take into account the new legal acts of the European Union (EU) that have been adopted since 2004, in particular Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications <sup>(4)</sup>.
- (3) Annex III to the Agreement should be adapted to take into account the accession of the Republic of Bulgaria and Romania to the EU on 1 January 2007.
- (4) Therefore, in the interest of clarity and rationality, Annex III to the Agreement should be consolidated and replaced by a new Annex.
- (5) Switzerland will, in accordance with Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of

their diplomas, certificates and other evidence of formal qualifications <sup>(5)</sup> and Directive 2005/36/EC, provide for a single professional qualification and a single professional title for general practitioners which will be the same for all existing and future general practitioners.

- (6) In order to ensure the effective application of Directive 2005/36/EC between the Contracting Parties, the Commission will continue to cooperate closely with Switzerland and in particular will continue to provide for an appropriate consultation of the Swiss experts,

HAS ADOPTED THIS DECISION:

*Article 1*

Annex III (Mutual recognition of professional qualifications) to the Agreement shall be replaced by the text in the Annex to this Decision.

*Article 2*

Switzerland shall apply without restrictions the acquired rights provided for by Directive 2005/36/EC subject to the conditions set out in this Decision and in the Annex.

*Article 3*

This Decision is drawn up in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, the texts in each of these languages being equally authentic.

*Article 4*

This Decision shall enter into force on the day following the date of notification of completion by Switzerland of its internal procedures for the implementation of this Decision.

It shall be applied on a provisional basis from the first day of the second month after its adoption, with the exception of Title II of Directive 2005/36/EC, which shall apply from the date of entry into force of this Decision.

<sup>(1)</sup> OJ L 114, 30.4.2002, p. 6.

<sup>(2)</sup> OJ L 124, 20.5.2009, p. 53.

<sup>(3)</sup> OJ L 352, 27.11.2004, p. 129.

<sup>(4)</sup> OJ L 255, 30.9.2005, p. 22.

<sup>(5)</sup> OJ L 165, 7.7.1993, p. 1.

In the event that the notification referred to in the first paragraph has not been made within 24 months after the adoption of this Decision, this Decision shall lapse.

Done at Brussels, ...

*For the Joint Committee*

*The Chairman*

*The Secretaries*

\_\_\_\_\_

## ANNEX

## 'ANNEX III

**MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS****(Diplomas, certificates and other evidence of formal qualifications)**

1. The Contracting Parties agree to apply amongst themselves, in the field of the mutual recognition of professional qualifications, the legal acts and communications of the European Union (EU) to which reference is made in Section A of this Annex, in accordance with the scope of the Agreement.
2. Unless otherwise specified, the term "Member State(s)" in the acts to which reference is made in Section A of this Annex is considered to apply to Switzerland in addition to the States covered by the EU legal acts in question.
3. For the purposes of applying this Annex, the Contracting Parties take note of the EU legal acts to which reference is made in Section B of this Annex.

## SECTION A: ACTS REFERRED TO

- 1a. **32005 L 0036:** Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22),

as amended by:

- Council Directive 2006/100/EC of 20 November 2006 adapting certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania (OJ L 363, 20.12.2006, p. 141),
- Commission Regulation (EC) No 1430/2007 of 5 December 2007 amending Annexes II and III to Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications (OJ L 320, 6.12.2007, p. 3),
- Commission Regulation (EC) No 755/2008 of 31 July 2008 amending Annex II to Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications (OJ L 205, 1.8.2008, p. 10),
- Commission Regulation (EC) No 279/2009 of 6 April 2009 amending Annex II to Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications (OJ L 93, 7.4.2009, p. 11),
- Commission Regulation (EU) No 213/2011 of 3 March 2011 amending Annexes II and V to Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications (OJ L 59, 4.3.2011, p. 4),
- Notification of Titles of Qualification in Architecture (OJ C 332, 30.12.2006, p. 35),
- Notification of Titles of Qualification in Architecture (OJ C 148, 24.6.2006, p. 34),
- Notification of Titles of qualification in architecture (OJ C 3, 6.1.2006, p. 12),
- Communication from the Commission — Notification of evidence of formal qualifications of practitioners of dentistry (OJ C 165, 19.7.2007, p. 18),
- Communication from the Commission — Notification of evidence of formal Qualifications of specialised doctors and general practitioners (OJ C 165, 19.7.2007, p. 13),
- Communication from the Commission — Notification of evidence of formal qualifications of specialised doctors, nurses responsible for general care, specialised dental practitioners, midwives and architects (OJ C 137, 4.6.2008, p. 8),
- Communication — Notification of evidence of formal qualifications — Directive 2005/36/EC on the recognition of professional qualifications (Annex V) (OJ C 322, 17.12.2008, p. 3),

- Communication from the Commission — Notification of the professional associations or organisations fulfilling the conditions of Article 3(2) listed under Annex I to Directive 2005/36/EC (OJ C 111, 15.5.2009, p. 1),
  - Communication from the Commission — Notification of evidence of formal qualifications — Directive 2005/36/EC on the recognition of professional qualifications (Annex V) (OJ C 114, 19.5.2009, p. 1),
  - Communication from the Commission — Notification of evidence of formal qualifications — Directive 2005/36/EC on the recognition of professional qualifications (Annex V) (OJ C 279, 19.11.2009, p. 1),
  - Communication from the Commission — Notification of evidence of formal qualifications — Directive 2005/36/EC on recognition of professional qualifications (Annex V) (OJ C 129, 19.5.2010, p. 3),
  - Communication from the Commission — Notification of evidence of formal qualifications — Directive 2005/36/EC on recognition of professional qualifications (Annex V) (OJ C 337, 14.12.2010, p. 10),
  - Corrigendum to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 271, 16.10.2007, p. 18),
  - Corrigendum to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 93, 4.4.2008, p. 28).
- b. For the purposes of this Agreement, Directive 2005/36/EC shall be adapted as follows:
1. The procedures laid down in the following Articles of the Directive shall not apply between the Contracting Parties:
    - the third subparagraph of Article 3(2) — procedure for the update of Annex I to the Directive,
    - the last sentence of Article 11(c)(ii) — procedure for the update of Annex II to the Directive,
    - the third subparagraph of Article 13(2) — procedure for the update of Annex III to the Directive,
    - the second and third subparagraph of Article 14(2) — procedure in the case of a derogation to the migrant's choice between an adaptation period and an aptitude test,
    - paragraphs 2 and 5 of Article 15 — procedure to adopt or revoke common platforms,
    - Article 20 — procedure to amend Annex IV to the Directive,
    - the second subparagraph of Article 21(6) — procedure to update knowledge and skills,
    - Article 21(7) — procedure to update Annex V to the Directive,
    - Article 25(5) — procedure to update the minimum periods of training for specialised doctors,
    - the second paragraph of Article 26 — procedure for inserting new medical specialties,
    - the second subparagraph of Article 31(2) — procedure to update the training of nurses responsible for general care,
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    - the second subparagraph of Article 38(1) — procedure to update the training of veterinary surgeons,
    - the third subparagraph of Article 40(1) — procedure to update the training of midwives,
    - the second subparagraph of Article 44(2) — procedure to update the training of pharmacists,
    - Article 46(2) — procedure to update knowledge and skills in the case of architects,
    - Article 61 — derogation clause.

2. Article 56(3) and (4) shall be implemented as follows:

The information of Member States on the competent authorities and on the coordinator designated by Switzerland is done by the Commission, once Switzerland has informed the Commission with copy to the Joint Committee.

3. The second paragraph of Article 57 shall be implemented as follows:

The coordinator designated by Switzerland informs the Commission with copy to the Joint Committee.

4. Article 63 shall not apply. However, the Swiss coordinator designated by Switzerland in conformity with Article 56 of Directive 2005/36/EC informs the Commission with copy to the Joint Committee of the legislation adopted on the basis of the legal acts and communications referred to in point 1a. Articles 58 and 64 shall not apply.

- c. The following text shall be added to point 1 of Annex II to the Directive:

“in Switzerland:

- Opticien diplômé, diplomierter Augenoptiker, ottico diplomato (Optometrist with Federal Diploma of Higher Vocational Education and Training)

Requires a minimum of 17 years education, consisting of at least nine years basic education, four years vocational education and training provided partly in the workplace and partly by a professional institution, followed by a four-year apprenticeship or work placement, of which two years can be spent following full-time private education, and finally a higher vocational examination. This entitles the holder to adapt contact lenses or carry out eye tests either independently or in an employed capacity.

- Audioprothésiste avec brevet fédéral, Hörgeräte-Akustiker mit eidg. Fachausweis, audioprotesista con attestato professionale federale (Dispenser of hearing aids with Advanced Federal Certificate of Higher Vocational Education and Training)

Requires a minimum of 15 years education, consisting of at least nine years basic education, a minimum of three years vocational education and training provided partly in the workplace and partly by a professional institution, followed by a three-year apprenticeship or work placement, including private education, and finally a vocational examination. This entitles the holder to pursue this profession either independently or in an employed capacity.

- Bottier-orthopédiste diplômé, calzolaio ortopedico diplomato (Orthopaedic footwear maker with Federal Diploma of Higher Vocational Education and Training)

Requires a minimum of 17 years education, consisting of at least nine years basic education, four years vocational education and training provided partly in the workplace and partly by a professional institution, followed by a four-year apprenticeship or work placement, including private education, and finally a higher vocational examination. This entitles the holder to pursue this profession either independently or in an employed capacity.

- Technicien dentiste, maître, diplomierter Zahntechnikermeister, odontotecnico, maestro (Dental Technician with Federal Diploma of Higher Vocational Education and Training)

Requires a minimum of 18 years education, consisting of at least nine years basic education, four years vocational education and training provided partly in the workplace and partly by a professional institution, followed by a five-year apprenticeship or work placement, including private education, and finally a higher vocational examination. This entitles the holder to pursue this profession either independently or in an employed capacity.

- Orthopédiste diplômé, ortopedista diplomato (Prosthetist with Advanced Federal Certificate of Higher Vocational Education and Training)

Requires a minimum of 18 years education, consisting of at least nine years basic education, four years vocational education and training provided partly in the workplace and partly by a professional institution, followed by a five-year apprenticeship or work placement, including private education, and finally a higher vocational examination. This entitles the holder to pursue this profession either independently or in an employed capacity.”.

- d. The following text shall be added to point 4 of Annex II to the Directive:

“in Switzerland:

- Guide de montagne avec brevet fédéral, Bergführer mit eidg. Fachausweis, guida alpina con attestato professionale federale (Mountain Guide with Advanced Federal Certificate of Higher Vocational Education and Training)

Requires a minimum of 13 years education, consisting of at least nine years basic education, four years vocational training under the supervision of a qualified professional, including private education, and finally a vocational examination. This entitles the holder to pursue this profession independently.

- Professeur de sports de neige avec brevet fédéral, Schneesportlehrer mit eidg. Fachausweis, Maestro di sport sulla neve con attestato professionale federale (Snow Sport Teacher with Advanced Federal Certificate of Higher Vocational Education and Training)

Requires a minimum of 15 years education, consisting of at least nine years basic education, four years vocational education and training provided partly in the workplace and partly by a professional institution or a professional experience of four years, followed by a two-years education and experience as apprenticeship, and finally a vocational examination. This entitles the holder to pursue this profession independently.”.

- e. The following text shall be added to point 5.1.1 of Annex V to the Directive:

“Country	Evidence of formal qualifications	Body awarding the qualifications	Certificate accompanying the qualifications	Reference date
Switzerland	Eidgenössisches Arztdiplom Diplôme fédéral de médecin Diploma federale di medico	Eidgenössisches Departement des Innern Département fédéral de l'intérieur Dipartimento federale dell'interno		1 June 2002”

- f. The following text shall be added to point 5.1.2 of Annex V to the Directive:

“Country	Evidence of formal qualifications	Body awarding the qualifications	Reference date
Switzerland	Diplom als Facharzt Diplôme de médecin spécialiste Diploma di medico specialista	Eidgenössisches Departement des Innern und Verbindung der Schweizer Ärztinnen und Ärzte Département fédéral de l'intérieur et Fédération des médecins suisses Dipartimento federale dell'interno e Federazione dei medici svizzeri	1 June 2002”

- g. The following text shall be added to point 5.1.3 of Annex V to the Directive:

“Country	Title
<b>Anaesthetics</b> <b>Minimum period of training: 3 years</b>	
Switzerland	Anästhesiologie Anesthésiologie Anestesiologia
Country	Title
<b>General surgery</b> <b>Minimum period of training: 5 years</b>	
Switzerland	Chirurgie Chirurgie Chirurgia

Country	Title
<b>Neurological surgery</b>	
<b>Minimum period of training: 5 years</b>	
Switzerland	Neurochirurgie Neurochirurgie Neurochirurgia
Country	Title
<b>Obstetrics and Gynaecology</b>	
<b>Minimum period of training: 4 years</b>	
Switzerland	Gynäkologie und Geburtshilfe Gynécologie et obstétrique Ginecologia e ostetricia
Country	Title
<b>General (internal) medicine</b>	
<b>Minimum period of training: 5 years</b>	
Switzerland	Innere Medizin Médecine interne Medicina interna
Country	Title
<b>Ophthalmology</b>	
<b>Minimum period of training: 3 years</b>	
Switzerland	Ophthalmologie Ophtalmologie Oftalmologia
Country	Title
<b>Otorhinolaryngology</b>	
<b>Minimum period of training: 3 years</b>	
Switzerland	Oto-Rhino-Laryngologie Oto-rhino-laryngologie Otorinolaringoiatria
Country	Title
<b>Paediatrics</b>	
<b>Minimum period of training: 4 years</b>	
Switzerland	Kinder- und Jugendmedizin Pédiatrie Pediatria
Country	Title
<b>Respiratory Medicine</b>	
<b>Minimum period of training: 4 years</b>	
Switzerland	Pneumologie Pneumologie Pneumologia



Country	Title
<b>Urology</b>	
<b>Minimum period of training: 5 years</b>	
Switzerland	Urologie Urologie Urologia
Country	Title
<b>Orthopaedics</b>	
<b>Minimum period of training: 5 years</b>	
Switzerland	Orthopädische Chirurgie und Traumatologie des Bewegungsapparates Chirurgie orthopédique et traumatologie de l'appareil locomoteur Chirurgia ortopedica e traumatologia del sistema motorio
Country	Title
<b>Pathological anatomy</b>	
<b>Minimum period of training: 4 years</b>	
Switzerland	Pathologie Pathologie Patologia
Country	Title
<b>Neurology</b>	
<b>Minimum period of training: 4 years</b>	
Switzerland	Neurologie Neurologie Neurologia
Country	Title
<b>Psychiatry</b>	
<b>Minimum period of training: 4 years</b>	
Switzerland	Psychiatrie und Psychotherapie Psychiatrie et psychothérapie Psichiatria e psicoterapia
Country	Title
<b>Diagnostic radiology</b>	
<b>Minimum period of training: 4 years</b>	
Switzerland	Radiologie Radiologie Radiologia
Country	Title
<b>Radiotherapy</b>	
<b>Minimum period of training: 4 years</b>	
Switzerland	Radio-Onkologie/Strahlentherapie Radio-oncologie/radiothérapie Radio-oncologia/radioterapia

Country	Title
<b>Plastic surgery</b>	
<b>Minimum period of training: 5 years</b>	
Switzerland	Plastische, Rekonstruktive und Ästhetische Chirurgie Chirurgie plastique, reconstructive et esthétique Chirurgia plastica, ricostruttiva ed estetica
Country	Title
<b>Thoracic surgery</b>	
<b>Minimum period of training: 5 years</b>	
Switzerland	Herz- und thorakale Gefässchirurgie Chirurgie cardiaque et vasculaire thoracique Chirurgia del cuore e dei vasi toracici
Country	Title
<b>Paediatric surgery</b>	
<b>Minimum period of training: 5 years</b>	
Switzerland	Kinderchirurgie Chirurgie pédiatrique Chirurgia pediatrica
Country	Title
<b>Cardiology</b>	
<b>Minimum period of training: 4 years</b>	
Switzerland	Kardiologie Cardiologie Cardiologia
Country	Title
<b>Gastroenterology</b>	
<b>Minimum period of training: 4 years</b>	
Switzerland	Gastroenterologie Gastroentérologie Gastroenterologia
Country	Title
<b>Rheumatology</b>	
<b>Minimum period of training: 4 years</b>	
Switzerland	Rheumatologie Rhumatologie Reumatologia
Country	Title
<b>General Haematology</b>	
<b>Minimum period of training: 3 years</b>	
Switzerland	Hämatologie Hématologie Ematologia

Country	Title
<b>Endocrinology</b>	
<b>Minimum period of training: 3 years</b>	
Switzerland	Endokrinologie-Diabetologie Endocrinologie-diabétologie Endocrinologia-diabetologia
Country	Title
<b>Physiotherapy</b>	
<b>Minimum period of training: 3 years</b>	
Switzerland	Physikalische Medizin und Rehabilitation Médecine physique et réadaptation Medicina fisica e riabilitazione
Country	Title
<b>Dermato-venereology</b>	
<b>Minimum period of training: 3 years</b>	
Switzerland	Dermatologie und Venerologie Dermatologie et vénéréologie Dermatologia e venerologia
Country	Title
<b>Tropical medicine</b>	
<b>Minimum period of training: 4 years</b>	
Switzerland	Tropen- und Reisemedizin Médecine tropicale et médecine des voyages Medicina tropicale e medicina di viaggio
Country	Title
<b>Child psychiatry</b>	
<b>Minimum period of training: 4 years</b>	
Switzerland	Kinder – und Jugendpsychiatrie und –psychotherapie Psychiatrie et psychothérapie d'enfants et d'adolescents Psichiatria e psicoterapia infantile e dell'adolescenza
Country	Title
<b>Renal diseases</b>	
<b>Minimum period of training: 4 years</b>	
Switzerland	Nephrologie Néphrologie Nefrologia
Country	Title
<b>Communicable diseases</b>	
<b>Minimum period of training: 4 years</b>	
Switzerland	Infektiologie Infectiologie Malattie infettive

Country	Title
<b>Community medicine</b> <b>Minimum period of training: 4 years</b>	
Switzerland	Prävention und Gesundheitswesen Prévention et santé publique Prevenzione e salute pubblica
Country	Title
<b>Pharmacology</b> <b>Minimum period of training: 4 years</b>	
Switzerland	Klinische Pharmakologie und Toxikologie Pharmacologie et toxicologie cliniques Farmacologia e tossicologia cliniche
Country	Title
<b>Occupational medicine</b> <b>Minimum period of training: 4 years</b>	
Switzerland	Arbeitsmedizin Médecine du travail Medicina del lavoro
Country	Title
<b>Allergology</b> <b>Minimum period of training: 3 years</b>	
Switzerland	Allergologie und klinische Immunologie Allergologie et immunologie clinique Allergologia e immunologia clinica
Country	Title
<b>Nuclear medicine</b> <b>Minimum period of training: 4 years</b>	
Switzerland	Nuklearmedizin Médecine nucléaire Medicina nucleare
Country	Title of diploma
<b>Dental, oral and maxillo-facial surgery</b> <b>(basic medical and dental training)</b> <b>Minimum period of training: 4 years</b>	
Switzerland	Mund-, Kiefer- und Gesichtschirurgie Chirurgie orale et maxillo-faciale Chirurgia oro-maxillo-facciale

- h. The following text shall be added to point 5.1.4 of Annex V to the Directive:

"Country	Evidence of formal qualifications	Professional title	Reference date
Switzerland	Diplom als praktischer Arzt/praktische Ärztin Diplôme de médecin praticien Diploma di medico generico	Médecin praticien Praktischer Arzt Medico generico	1 June 2002"

- i. The following text shall be added to point 5.2.2 of Annex V to the Directive:

"Country"	Evidence of formal qualifications	Body awarding the evidence of qualifications	Professional title	Reference date
Switzerland	1. Diplomierte Pflegefachfrau, diplomierter Pflegefachmann  Infirmière diplômée et infirmier diplômé  Infermiera diplomata e infermiere diplomato	Schulen, die staatlich anerkannte Bildungsgänge durchführen  Ecoles qui proposent des filières de formation reconnues par l'État  Scuole che propongono dei cicli di formazione riconosciuti dallo Stato	Pflegefachfrau, Pflegefachmann  Infirmière, infirmier  Infermiera, infermiere	1 June 2002
	2. Bachelor of Science in nursing	Schulen, die staatlich anerkannte Bildungsgänge durchführen  Ecoles qui proposent des filières de formation reconnues par l'État  Scuole che propongono dei cicli di formazione riconosciuti dallo Stato	Pflegefachfrau, Pflegefachmann  Infirmière, infirmier  Infermiera, infermiere	(*) ..."

(\*) Please insert the date of adoption of the Joint Committee Decision.

- j. The following text shall be added to point 5.3.2 of Annex V to the Directive:

"Country"	Evidence of formal qualifications	Body awarding the evidence of qualifications	Certificate accompanying the evidence of qualifications	Professional title	Reference date
Switzerland	Eidgenössisches Zahnarzt Diplom  Diplôme fédéral de médecin-dentiste  Diploma federale di medico-dentista	Eidgenössisches Departement des Innern  Département fédéral de l'intérieur  Dipartimento federale dell'interno		Zahnarzt  Médecin-dentiste  Medico-dentista	1 June 2002"

- k. The following text shall be added to point 5.3.3 of Annex V to the Directive:

Orthodontics				
"Country"	Evidence of formal qualifications	Body awarding the evidence of qualifications	Reference date	
Switzerland	Diplom für Kieferorthopädie  Diplôme fédéral d'orthodontiste  Diploma di ortodontista	Eidgenössisches Departement des Innern und Schweizerische Zahnärzte-Gesellschaft  Département fédéral de l'intérieur et Société Suisse d'Odonto-stomatologie  Dipartimento federale dell'interno e Società Svizzera di Odontologia e Stomatologia	1 June 2002	

Oral surgery			
Country	Evidence of formal qualifications	Body awarding the evidence of qualifications	Reference date
Switzerland	Diplom für Oralchirurgie Diplôme fédéral de chirurgie orale Diploma di chirurgia orale	Eidgenössisches Departement des Innern und Schweizerische Zahnärzte- Gesellschaft  Département fédéral de l'intérieur et Société Suisse d'Odonto-stomatologie  Dipartimento federale dell'interno e Società Svizzera di Odontologia e Stomatologia	30 April 2004"

- l. The following text shall be added to point 5.4.2 of Annex V to the Directive:

"Country	Evidence of formal qualifications	Body awarding the evidence of qualifications	Certificate accompanying the evidence of qualifications	Reference date
Switzerland	Eidgenössisches Tierarztdiplom  Diplôme fédéral de vétérinaire  Diploma federale di veterinario	Eidgenössisches Departement des Innern  Département fédéral de l'intérieur  Dipartimento federale dell'interno		1 June 2002"

- m. The following text shall be added to point 5.5.2 of Annex V to the Directive:

"Country	Evidence of formal qualifications	Body awarding the evidence of qualifications	Professional title	Reference date
Switzerland	Diplomierte Hebamme Sage-femme diplômée Levatrice diplomata	Schulen, die staatlich anerkannte Bildungsgänge durchführen  Ecoles qui proposent des filières de formation reconnues par l'État  Scuole che propongono dei cicli di formazione riconosciuti dallo Stato	Hebamme Sage-femme Levatrice	1 June 2002"

- n. The following text shall be added to point 5.6.2 of Annex V to the Directive:

"Country	Evidence of formal qualifications	Body awarding the evidence of qualifications	Certificate accompanying the evidence of qualifications	Reference date
Switzerland	Eidgenössisches Apothekerdiplom  Diplôme fédéral de pharmacien  Diploma federale di farmacista	Eidgenössisches Departement des Innern  Département fédéral de l'intérieur  Dipartimento federale dell'interno		1 June 2002"

o. The following text shall be added to point 5.7.1 of Annex V to the Directive:

"Country	Evidence of formal qualifications	Body awarding the evidence of qualifications	Certificate accompanying the evidence of qualifications	Reference academic year
Switzerland	Diploma di architettura (Arch. Dipl. USI)	Accademia di Architettura dell'Università della Svizzera Italiana		1996-1997
	Master of Arts BFH/HES-SO en architecture, Master of Arts BFH/HES-SO in Architecture	Haute école spécialisée de Suisse occidentale (HES-SO) together with Berner Fachhochschule (BFH)	—	2007-2008
	Master of Arts BFH/HES-SO in Architektur, Master of Arts BFH/HES-SO in Architecture	Haute école spécialisée de Suisse occidentale (HES-SO) together with Berner Fachhochschule (BFH)		2007-2008
	Master of Arts FHNW in Architektur	Fachhochschule Nordwestschweiz FHNW	—	2007-2008
	Master of Arts FHZ in Architektur	Fachhochschule Zentralschweiz (FHZ)	—	2007-2008
	Master of Arts ZFH in Architektur	Zürcher Fachhochschule (ZFH), Zürcher Hochschule für Angewandte Wissenschaften (ZHAW), Departement Architektur, Gestaltung und Bauingenieurwesen	—	2007-2008
	Master of Science MSc in Architecture, Architecte (arch. dipl. EPF)	Ecole Polytechnique Fédérale de Lausanne		2007-2008
	Master of Science ETH in Architektur, MSc ETH Arch	Eidgenössische Technische Hochschule Zurich		2007-2008"

p. The following text is added to Annex VI to the Directive:

"Country	Evidence of formal qualifications	Reference academic year
Switzerland	1. Dipl. Arch. ETH, arch. dipl. EPF, arch. dipl. PF	2004-2005
	2. Architecte diplômé EAUG	2004-2005
	3. Architekt REG A Architecte REG A Architetto REG A	2004-2005"

2a. **377 L 0249:** Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ L 78, 26.3.1977, p. 17),

as amended by:

- 1 79 H: Act concerning the conditions of accession of the Hellenic Republic and the adjustments to the Treaties (OJ L 291, 19.11.1979, p. 91),
- 1 85 I: Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ L 302, 15.11.1985, p. 160),

- Decision of the Council of the European Union 95/1/EC, Euratom, ECSC, of 1 January 1995 adjusting the instruments concerning the accession of new Member States to the European Union (OJ L 1, 1.1.1995, p. 1),
  - **1 2003 T**: Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L 236, 23.9.2003, p. 33),
  - Council Directive 2006/100/EC of 20 November 2006 adapting certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania (OJ L 363, 20.12.2006, p. 141).
- b. For the purposes of this Agreement, Directive 77/249/EEC shall be adapted as follows:
1. The following text shall be added to Article 1(2):

“Switzerland:

Advokat, Rechtsanwalt, Anwalt, Fürsprecher, Fürsprech

Avocat

Avvocato”.
  2. Article 8 shall not apply. However, the Swiss coordinator designated by Switzerland in conformity with Article 56 of Directive 2005/36/EC informs the Commission with copy to the Joint Committee of the legislation adopted on the basis of Directive 77/249/EEC.
- 3a. **398 L 0005**: Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ L 77, 14.3.1998, p. 36),
- as amended by:
- **1 2003 T**: Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L 236, 23.9.2003, p. 33),
  - Council Directive 2006/100/EC of 20 November 2006 adapting certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania (OJ L 363, 20.12.2006, p. 141).
- b. For the purposes of this Agreement, Directive 98/5/EC shall be adapted as follows:
1. The following text shall be added to point (a) of Article 1(2):

“Switzerland:

Advokat, Rechtsanwalt, Anwalt, Fürsprecher, Fürsprech

Avocat

Avvocato”.
  2. Articles 16 and 17 shall not apply. However, the Swiss coordinator designated by Switzerland in conformity with Article 56 of Directive 2005/36/EC informs the Commission with copy to the Joint Committee of the legislation adopted on the basis of Directive 98/5/EC.
  3. Article 14 shall be implemented as follows:

The information of Member States on the competent authorities designated by Switzerland is done by the Commission, once Switzerland has informed the Commission with copy to the Joint Committee.
- 4a. **374 L 0556**: Council Directive 74/556/EEC of 4 June 1974 laying down detailed provisions concerning transitional measures relating to activities, trade in and distribution of toxic products and activities entailing the professional use of such products including activities of intermediaries (OJ L 307, 18.11.1974, p. 1).



b. For the purposes of this Agreement, Directive 74/556/EEC shall be adapted as follows:

1. Article 4(3) shall be implemented as follows:

The information of Member States on the competent authorities designated by Switzerland is done by the Commission, once Switzerland has informed the Commission with copy to the Joint Committee.

2. Article 7 shall not apply. However, the Swiss coordinator designated by Switzerland in conformity with Article 56 of Directive 2005/36/EC informs the Commission with copy to the Joint Committee of the legislation adopted on the basis of Directive 74/556/EEC.

5a. **374 L 0557:** Council Directive 74/557/EEC of 4 June 1974 on the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons and of intermediaries engaging in the trade and distribution of toxic products (OJ L 307, 18.11.1974, p. 5),

as amended by:

— Decision of the Council of the European Union 95/1/EC, Euratom, ECSC, of 1 January 1995 adjusting the instruments concerning the accession of new Member States to the European Union (OJ L 1, 1.1.1995, p. 1),

— 1 2003 T: Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L 236, 23.9.2003, p. 33),

— Council Directive 2006/101/EC of 20 November 2006 adapting Directives 73/239/EEC, 74/557/EEC and 2002/83/EC in the field of freedom to provide services, by reason of the accession of Bulgaria and Romania (OJ L 363, 20.12.2006, p. 238),

b. For the purposes of this Agreement, Directive 74/557/EEC shall be adapted as follows:

1. in Switzerland:

All the products and toxic substances set out in the poisons act (classified compilation of federal law (CC 813.1), and in particular those on the ordinances relating thereto (CC 813) and on the poisonous substances for the environment (CC 814.812.31, 814.812.32 and 814.812.33).

2. Article 7(5) shall be implemented as follows:

The information of Member States on the competent authorities designated by Switzerland is done by the Commission, once Switzerland has informed the Commission with copy to the Joint Committee.

3. Article 8 shall not apply. However, the Swiss coordinator designated by Switzerland in conformity with Article 56 of Directive 2005/36/EC informs the Commission with copy to the Joint Committee of the legislation adopted on the basis of Directive 74/557/EEC.

6a. **386 L 0653:** Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (OJ L 382, 31.12.1986, p. 17).

b. For the purposes of this Agreement, Directive 86/653/EEC shall be adapted as follows:

Article 22 shall not apply. However, the Swiss coordinator designated by Switzerland in conformity with Article 56 of Directive 2005/36/EC informs the Commission with copy to the Joint Committee of the legislation adopted on the basis of Directive 86/653/EEC.

## SECTION B: ACTS OF WHICH THE CONTRACTING PARTIES SHALL TAKE NOTE

The Contracting Parties shall take note of the content of the following act:

7. **389 X 0601:** Commission Recommendation 89/601/EEC of 8 November 1989 concerning the training of health personnel in the matter of cancer (OJ L 346, 27.11.1989, p. 1).

# REGULATIONS

## COMMISSION REGULATION (EU) No 729/2011

of 20 July 2011

**establishing a prohibition of fishing for tusk in EU and international waters of V, VI and VII by vessels flying the flag of Spain**

THE EUROPEAN COMMISSION,

HAS ADOPTED THIS REGULATION:

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

### *Article 1*

#### **Quota exhaustion**

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy <sup>(1)</sup>, and in particular Article 36(2) thereof,

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2011 shall be deemed to be exhausted from the date set out in that Annex.

Whereas:

### *Article 2*

#### **Prohibitions**

(1) Council Regulation (EU) No 57/2011 of 18 January 2011 fixing for 2011 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in certain non-EU waters <sup>(2)</sup>, lays down quotas for 2011.

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

(2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2011.

### *Article 3*

#### **Entry into force**

(3) It is therefore necessary to prohibit fishing activities for that stock,

This Regulation shall enter into force on the 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, 20 July 2011.

*For the Commission,  
On behalf of the President,*

Lowri EVANS

*Director-General for Maritime Affairs and Fisheries*

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 1.

<sup>(2)</sup> OJ L 24, 27.1.2011, p. 1.

## ANNEX

No	15/T&Q
Member State	Spain
Stock	USK/567EL
Species	Tusk ( <i>Brosme brosme</i> )
Zone	EU and international waters of V, VI and VII
Date	7 April 2011

**COMMISSION REGULATION (EU) No 730/2011****of 20 July 2011****establishing a prohibition of fishing for black scabbardfish in EU and international waters of V, VI, VII and XII by vessels flying the flag of Spain**

THE EUROPEAN COMMISSION,

HAS ADOPTED THIS REGULATION:

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

*Article 1***Quota exhaustion**

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy <sup>(1)</sup>, and in particular Article 36(2) thereof,

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2011 shall be deemed to be exhausted from the date set out in that Annex.

Whereas:

*Article 2***Prohibitions**

(1) Council Regulation (EU) No 1225/2010 of 13 December 2010 fixing for 2011 and 2012 the fishing opportunities for EU vessels for fish stocks of certain deep-sea fish species <sup>(2)</sup>, lays down quotas for 2011.

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

(2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2011.

*Article 3***Entry into force**

(3) It is therefore necessary to prohibit fishing activities for that stock,

This Regulation shall enter into force on the 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, 20 July 2011.

*For the Commission,  
On behalf of the President,*

Lowri EVANS

*Director-General for Maritime Affairs and Fisheries*

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 1.

<sup>(2)</sup> OJ L 336, 21.12.2010, p. 1.

## ANNEX

No	13/DSS
Member State	SPAIN
Stock	BSF/56712-
Species	Black scabbardfish ( <i>Aphanopus carbo</i> )
Zone	EU and international waters of V, VI, VII and XII
Date	22 April 2011

**COMMISSION IMPLEMENTING REGULATION (EU) No 731/2011****of 22 July 2011****entering a name in the register of protected designations of origin and protected geographical indications (Prosciutto Amatriciano (PGI))**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs <sup>(1)</sup>, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

(1) Pursuant to the first subparagraph of Article 6(2) of Regulation (EC) No 510/2006, Italy's application to register the name 'Prosciutto Amatriciano' was published in the *Official Journal of the European Union* <sup>(2)</sup>.

(2) As no statement of objection under Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, that name should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

*Article 1*

The name contained in the Annex to this Regulation is hereby entered in the register.

*Article 2*

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

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

Done at Brussels, 22 July 2011.

*For the Commission,  
On behalf of the President,  
Dacian CIOLOŞ  
Member of the Commission*

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<sup>(1)</sup> OJ L 93, 31.3.2006, p. 12.

<sup>(2)</sup> OJ C 307, 12.11.2010, p. 21.

## ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

**Class 1.2. Meat products (cooked, salted, smoked, etc.)**

ITALY

Prosciutto Amatriciano (PGI)

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**COMMISSION IMPLEMENTING REGULATION (EU) No 732/2011****of 22 July 2011****entering a name in the register of protected designations of origin and protected geographical indications (Göttinger Feldkieker (PGI))**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs <sup>(1)</sup>, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 6(2) of Regulation (EC) No 510/2006, Germany's application to register the name 'Göttinger Feldkieker' was published in the *Official Journal of the European Union* <sup>(2)</sup>.

- (2) As no statement of objection under Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, that name should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

*Article 1*

The name contained in the Annex to this Regulation is hereby entered in the register.

*Article 2*

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

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

Done at Brussels, 22 July 2011.

*For the Commission,  
On behalf of the President,*

Dacian CIOLOȘ  
*Member of the Commission*

<sup>(1)</sup> OJ L 93, 31.3.2006, p. 12.

<sup>(2)</sup> OJ C 309, 13.11.2010, p. 16.



## ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

**Class 1.2. Meat products (cooked, salted, smoked, etc.)**

GERMANY

Göttinger Feldkieker (PGI)

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**COMMISSION IMPLEMENTING REGULATION (EU) No 733/2011****of 22 July 2011****entering a name in the register of protected designations of origin and protected geographical indications (Kołocz śląski/kołacz śląski (PGI))**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs <sup>(1)</sup>, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 6(2) of Regulation (EC) No 510/2006, Poland's application to register the name 'Kołocz śląski/kołacz śląski' was published in the *Official Journal of the European Union* <sup>(2)</sup>.

- (2) As no statement of objection under Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, that name should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

*Article 1*

The name contained in the Annex to this Regulation is hereby entered in the register.

*Article 2*

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

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

Done at Brussels, 22 July 2011.

*For the Commission,  
On behalf of the President,  
Dacian CIOLOȘ  
Member of the Commission*

<sup>(1)</sup> OJ L 93, 31.3.2006, p. 12.

<sup>(2)</sup> OJ C 299, 5.11.2010, p. 7.

## ANNEX

Foodstuffs listed in Annex I to Regulation (EC) No 510/2006:

**Class 2.4. Bread, pastry, cakes, confectionery, biscuits and other baker's wares**

POLAND

Kołocz śląski/kołacz śląski (PGI)

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**COMMISSION IMPLEMENTING REGULATION (EU) No 734/2011****of 22 July 2011****entering a name in the register of protected designations of origin and protected geographical indications (Αρνάκι Ελασσόνας (Arnaki Elassonas) (PDO))**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs <sup>(1)</sup>, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 6(2) of Regulation (EC) No 510/2006, Greece's application to register the name 'Αρνάκι Ελασσόνας (Arnaki Elassonas)' was published in the *Official Journal of the European Union* <sup>(2)</sup>.

- (2) As no statement of objection pursuant to Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, that name should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

*Article 1*

The name contained in the Annex to this Regulation is hereby entered in the register.

*Article 2*

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

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

Done at Brussels, 22 July 2011.

*For the Commission,  
On behalf of the President,  
Dacian CIOLOŞ  
Member of the Commission*

<sup>(1)</sup> OJ L 93, 31.3.2006, p. 12.

<sup>(2)</sup> OJ C 307, 12.11.2010, p. 24.

## ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

**Class 1.1. Fresh meat (and offal)**

GREECE

Αρνάκι Ελασσόνας (Arnaki Elassonas) (PDO)

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## COMMISSION IMPLEMENTING REGULATION (EU) No 735/2011

of 22 July 2011

**entering a name in the register of protected designations of origin and protected geographical indications (Göttinger Stracke (PGI))**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs <sup>(1)</sup>, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 6(2) of Regulation (EC) No 510/2006, Germany's application to register the name 'Göttinger Stracke' was published in the *Official Journal of the European Union* <sup>(2)</sup>.

- (2) As no statement of objection under Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, that name should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

*Article 1*

The name contained in the Annex to this Regulation is hereby entered in the register.

*Article 2*This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 22 July 2011.

*For the Commission,  
On behalf of the President,  
Dacian CIOLOŞ  
Member of the Commission*

<sup>(1)</sup> OJ L 93, 31.3.2006, p. 12.

<sup>(2)</sup> OJ C 309, 13.11.2010, p. 13.

## ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

**Class 1.2. Meat products (cooked, salted, smoked, etc.)**

GERMANY

Göttinger Stracke (PGI)

## COMMISSION IMPLEMENTING REGULATION (EU) No 736/2011

of 26 July 2011

**approving the active substance fluroxypyr, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

azoxystrobin, fluroxypyr, imazalil, kresoxim-methyl, prohexadione and spiroxamine, and establishing the list of the notifiers concerned <sup>(5)</sup>.

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

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC <sup>(1)</sup>, and in particular Article 13(2) and Article 78(2) thereof,

Whereas:

(1) In accordance with Article 80(1)(b) of Regulation (EC) No 1107/2009, Council Directive 91/414/EEC <sup>(2)</sup> is to apply to active substances listed in Annex I to Commission Regulation (EC) No 737/2007 of 27 June 2007 on laying down the procedure of the renewal of the inclusion of a first group of active substances in Annex I to Council Directive 91/414/EEC and establishing the list of those substances <sup>(3)</sup>, with respect to the procedure and the conditions for approval. Fluroxypyr is listed in Annex I to Regulation (EC) No 737/2007.

(2) The approval of fluroxypyr, as set out in Part A of the Annex to Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances <sup>(4)</sup>, expires on 31 December 2011. A notification was submitted in accordance with Article 4 of Regulation (EC) No 737/2007 for the renewal of the inclusion of fluroxypyr in Annex I to Directive 91/414/EEC within the time period provided for in that Article.

(3) That notification was found to be admissible by Commission Decision 2008/656/EC of 28 July 2008 on the admissibility of the notifications concerning the renewal of the inclusion in Annex I to Council Directive 91/414/EEC of the active substances azimsulfuron,

(4) Within the time period provided for in Article 6 of Regulation (EC) No 737/2007, the notifier submitted the data required in accordance with that Article together with an explanation as regards the relevance of each new study submitted.

(5) The rapporteur Member State prepared an assessment report in consultation with the co-rapporteur Member State and submitted it to the European Food Safety Authority (hereinafter 'the Authority') and the Commission on 26 November 2009. In addition to the assessment of the active substance, that report includes a list of the studies the rapporteur Member State relied on for its assessment.

(6) The Authority communicated the assessment report to the notifier and to the Member States for comments and forwarded the comments received to the Commission. The Authority also made the assessment report available to the public.

(7) At the request of the Commission, the assessment report was peer reviewed by the Member States and the Authority. The Authority presented its conclusion on the peer review of the risk assessment of fluroxypyr <sup>(6)</sup> to the Commission on 24 February 2011. The assessment report and the conclusion of the Authority were reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 17 June 2011 in the format of the Commission review report for fluroxypyr.

(8) It has appeared from the various examinations made that plant protection products containing fluroxypyr may be expected to continue to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) of

<sup>(1)</sup> OJ L 309, 24.11.2009, p. 1.

<sup>(2)</sup> OJ L 230, 19.8.1991, p. 1.

<sup>(3)</sup> OJ L 169, 29.6.2007, p. 10.

<sup>(4)</sup> OJ L 153, 11.6.2011, p. 1.

<sup>(5)</sup> OJ L 214, 9.8.2008, p. 70.

<sup>(6)</sup> European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance fluroxypyr. EFSA Journal 2011;9(3):2091. [91 pp.]. doi:10.2903/j.efsa.2011.2091. Available online: [www.efsa.europa.eu/efsajournal.htm](http://www.efsa.europa.eu/efsajournal.htm)

Directive 91/414/EEC, in particular as regards the uses which were examined and detailed in the Commission review report. It is therefore appropriate to approve fluroxypyr.

- (9) In accordance with Article 13(2) of Regulation (EC) No 1107/2009 in conjunction with Article 6 thereof and in the light of current scientific and technical knowledge, it is, however, necessary to include certain conditions and restrictions not provided for in the first inclusion in Annex I to Directive 91/414/EEC.
- (10) Without prejudice to the conclusion that fluroxypyr should be approved, it is, in particular, appropriate to require further confirmatory information.
- (11) A reasonable period should be allowed to elapse before approval in order to permit Member States and interested parties to prepare themselves to meet the new requirements resulting from the approval.
- (12) Without prejudice to the obligations provided for by Regulation (EC) No 1107/2009 as a consequence of approval, taking into account the specific situation created by the transition from Directive 91/414/EEC to Regulation (EC) No 1107/2009 the following should, however, apply. Member States should be allowed a period of 6 months after approval to review authorisations of plant protection products containing fluroxypyr. Member States should, as appropriate, vary, replace or withdraw authorisations. By way of derogation from that deadline, a longer period should be provided for the submission and assessment of the update of the complete Annex III dossier, as set out in Directive 91/414/EEC, of each plant protection product for each intended use in accordance with the uniform principles.
- (13) The experience gained from inclusions in Annex I to Directive 91/414/EEC of active substances assessed in the framework of Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market <sup>(1)</sup> has shown that difficulties can arise in interpreting the duties of holders of existing authorisations in relation to access to data. In order to avoid further difficulties it therefore appears necessary to clarify the duties of the Member States, especially the duty to verify that the holder of an authorisation demonstrates access to a dossier satisfying the requirements of Annex II to that Directive. However, this clarification does not impose any new obligations on Member States or holders of authorisations compared to the directives which have been adopted until now amending Annex I to that Directive or the Regulations approving active substances.
- (14) In accordance with Article 13(4) of Regulation (EC) No 1107/2009 the Annex to Implementing Regulation (EU) No 540/2011 should be amended accordingly.

- (15) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

#### Article 1

##### Approval of active substance

The active substance fluroxypyr, as specified in Annex I, is approved subject to the conditions laid down in that Annex.

#### Article 2

##### Re-evaluation of plant protection products

1. Member States shall in accordance with Regulation (EC) No 1107/2009, where necessary, amend or withdraw existing authorisations for plant protection products containing fluroxypyr as an active substance by 30 June 2012.

By that date they shall in particular verify that the conditions in Annex I to this Regulation are met, with the exception of those identified in Part B of the column on specific provisions of that Annex, and that the holder of the authorisation has, or has access to, a dossier satisfying the requirements of Annex II to Directive 91/414/EEC in accordance with the conditions of Article 13(1) to (4) of that Directive and Article 62 of Regulation (EC) No 1107/2009.

2. By way of derogation from paragraph 1, for each authorised plant protection product containing fluroxypyr as either the only active substance or as one of several active substances all of which were listed in the Annex to Implementing Regulation (EU) No 540/2011 by 31 December 2011 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, on the basis of a dossier satisfying the requirements of Annex III to Directive 91/414/EEC and taking into account Part B of the column on specific provisions of Annex I to this Regulation. On the basis of that evaluation, they shall determine whether the product still satisfies the conditions set out in Article 29(1) of Regulation (EC) No 1107/2009.

Following that determination Member States shall:

- (a) in the case of a product containing fluroxypyr as the only active substance, where necessary, amend or withdraw the authorisation by 31 December 2015 at the latest; or
- (b) in the case of a product containing fluroxypyr as one of several active substances, where necessary, amend or withdraw the authorisation by 31 December 2015 or by the date fixed for such an amendment or withdrawal in the respective act or acts which added the relevant substance or substances to Annex I to Directive 91/414/EEC or approved that substance or substances, whichever is the latest.

<sup>(1)</sup> OJ L 366, 15.12.1992, p. 10.



*Article 3***Amendments to Implementing Regulation (EU) No 540/2011**

The Annex to Implementing Regulation (EU) No 540/2011 is amended in accordance with Annex II to this Regulation.

*Article 4***Entry into force and application**

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

It shall apply from 1 January 2012.

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

Done at Brussels, 26 July 2011.

*For the Commission*

*The President*

José Manuel BARROSO

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## ANNEX I

Common Name, Identification Numbers	IUPAC Name	Purity <sup>(1)</sup>	Date of approval	Expiration of approval	Specific provisions
Fluroxypyr CAS No 69377-81-7 CIPAC No 431	4-amino-3,5-dichloro- 6-fluoro-2-pyridylo- xyacetic acid	≥ 950 g/kg (fluroxypyr-meptyl)	1 January 2012	31 December 2021	<p>PART A</p> <p>Only uses as herbicide may be authorised.</p> <p>PART B</p> <p>For the implementation of the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on fluroxypyr, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 17 June 2011 shall be taken into account.</p> <p>In this overall assessment Member States shall:</p> <p>(1) pay particular attention to the potential contamination of groundwater by metabolite fluroxypyr pyridinol, when the active substance is applied in regions with alkaline or vulnerable soil and/or with vulnerable climatic conditions;</p> <p>(2) pay particular attention to the risk to aquatic organisms.</p> <p>Conditions of authorisation shall include risk mitigation measures, where appropriate.</p> <p>The notifier shall submit confirmatory information as regards:</p> <p>(a) the relevance of the impurities present in the technical specifications;</p> <p>(b) the relevance of the test material used in the toxicity dossiers in view of the specification of the technical material;</p> <p>(c) the toxicological relevance of the metabolites fluroxypyr pyridinol and fluroxypyr methoxypyridine;</p> <p>(d) the residue analytical methods for plants;</p> <p>(e) the fate of fluroxypyr esters in animal matrices;</p> <p>(f) the long-term risk for earthworms and soil organisms.</p> <p>The notifier shall submit to the Member States, the Commission and the Authority the information set out in point (a) and (b) by 1 July 2012 and the information set out in points (c), (d), (e) and (f) by 31 December 2013.</p>

<sup>(1)</sup> Further details on identity and specification of active substance are provided in the review report.

The Annex to Implementing Regulation (EU) No 540/2011 is amended as follows:

(1) in Part A, the entry relating to fluroxypyr is deleted;

(2) in Part B, the following entry is added:

No	Common Name, Identification Numbers	IUPAC Name	Purity <sup>(1)</sup>	Date of approval	Expiration of approval	Specific provisions
'9	Fluroxypyr CAS No 69377-81-7 CIPAC No 431	4-amino-3,5-dichloro-6-fluoro-2-pyridyloxyacetic acid	≥ 950 g/kg (fluroxypyr-meptyl)	1 January 2012	31 December 2021	<p>PART A</p> <p>Only uses as herbicide may be authorised.</p> <p>PART B</p> <p>For the implementation of the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on fluroxypyr, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 17 June 2011 shall be taken into account.</p> <p>In this overall assessment Member States shall:</p> <p>(1) pay particular attention to the potential contamination of groundwater by metabolite fluroxypyr pyridinol, when the active substance is applied in regions with alkaline or vulnerable soil and/or with vulnerable climatic conditions;</p> <p>(2) pay particular attention to the risk to aquatic organisms.</p> <p>Conditions of authorisation shall include risk mitigation measures, where appropriate.</p> <p>The notifier shall submit confirmatory information as regards:</p> <p>(a) the relevance of the impurities present in the technical specifications;</p> <p>(b) the relevance of the test material used in the toxicity dossiers in view of the specification of the technical material;</p> <p>(c) the toxicological relevance of the metabolites fluroxypyr pyridinol and fluroxypyr methoxypyridine;</p> <p>(d) the residue analytical methods for plants;</p> <p>(e) the fate of fluroxypyr esters in animal matrices;</p> <p>(f) the long-term risk for earthworms and soil organisms.</p> <p>The notifier shall submit to the Member States, the Commission and the Authority the information set out in point (a) and (b) by 1 July 2012 and the information set out in points (c), (d), (e) and (f) by 31 December 2013.'</p>

<sup>(1)</sup> Further details on identity and specification of active substance are provided in the review report.

**COMMISSION IMPLEMENTING REGULATION (EU) No 737/2011****of 26 July 2011****amending Annex I to Council Regulation (EC) No 1217/2009 as regards the list of divisions**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1217/2009 of 30 November 2009 setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Community <sup>(1)</sup>, and in particular Article 3 thereof,

Having regard to the requests of France and Hungary,

Whereas:

- (1) Annex I to Regulation (EC) No 1217/2009 contains a list of divisions within the meaning of Article 2(d) of that Regulation.
- (2) According to that Annex, France is divided into 22 divisions. For the purposes of Regulation (EC) No 1217/2009, France has requested to add Guadeloupe, Martinique and La Réunion to the list of divisions.
- (3) According to that Annex, Hungary is divided into seven divisions. For the purposes of Regulation (EC) No 1217/2009, Hungary has requested to reduce the

number of divisions by merging the divisions Közép-Dunántúl, Nyugat-Dunántúl and Dél-Dunántúl into one division Dunántúl and by merging Közép-Magyarország, Észak-Alföld and Dél-Alföld into one division Alföld.

(4) Regulation (EC) No 1217/2009 should therefore be amended accordingly.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Community Committee for the Farm Accountancy Data Network,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex I to Regulation (EC) No 1217/2009 is amended in accordance with the Annex to this Regulation.

*Article 2*

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

It shall apply from the 2012 accounting year.

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

Done at Brussels, 26 July 2011.

*For the Commission*

*The President*

José Manuel BARROSO

<sup>(1)</sup> OJ L 328, 15.12.2009, p. 27.

## ANNEX

Annex I to Regulation (EC) No 1217/2009 is amended as follows:

(1) in the part concerning France, the following divisions are added:

‘23. Guadeloupe

24. Martinique

25. La Réunion.’;

(2) the part concerning Hungary is replaced by the following:

*‘Hungary*

1. Észak-Magyarország

2. Dunántúl

3. Alföld.’.

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**COMMISSION IMPLEMENTING REGULATION (EU) No 738/2011****of 26 July 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) <sup>(1)</sup>,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors <sup>(2)</sup>, and in particular Article 136(1) thereof,

Whereas:

Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto,

HAS ADOPTED THIS REGULATION:

*Article 1*

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 27 July 2011.

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

Done at Brussels, 26 July 2011.

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

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<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

<sup>(2)</sup> OJ L 157, 15.6.2011, p. 1.

## ANNEX

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

(EUR/100 kg)

CN code	Third country code <sup>(1)</sup>	Standard import value
0707 00 05	TR	102,8
	ZZ	102,8
0709 90 70	TR	111,7
	ZZ	111,7
0805 50 10	AR	73,7
	TR	62,0
	UY	62,6
	ZA	89,7
	ZZ	72,0
0806 10 10	CL	54,3
	EG	150,1
	MA	82,5
	TN	223,5
	TR	177,7
	ZA	62,8
	ZZ	125,2
0808 10 80	AR	153,0
	BR	81,8
	CL	87,4
	CN	87,0
	NZ	117,4
	US	89,9
	ZA	84,7
	ZZ	100,2
0808 20 50	AR	76,4
	CL	61,7
	CN	81,8
	NZ	148,5
	ZA	95,5
	ZZ	92,8
0809 10 00	TR	180,0
	XS	88,0
	ZZ	134,0
0809 20 95	CL	267,8
	TR	293,2
	ZZ	280,5
0809 30	TR	172,9
	ZZ	172,9
0809 40 05	BA	50,0
	EC	64,7
	XS	57,7
	ZA	70,8
	ZZ	60,8

<sup>(1)</sup> 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 2011/71/EU

of 26 July 2011

**amending Directive 98/8/EC of the European Parliament and of the Council to include creosote as an active substance in Annex I thereto**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market <sup>(1)</sup>, and in particular the second subparagraph of Article 16(2) thereof,

Whereas:

(1) Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market <sup>(2)</sup> establishes a list of active substances to be assessed, with a view to their possible inclusion in Annex I, IA or IB to Directive 98/8/EC. That list includes creosote.

(2) Pursuant to Regulation (EC) No 1451/2007, creosote has been evaluated in accordance with Article 11(2) of Directive 98/8/EC for use in product-type 8, wood preservatives, as defined in Annex V to that Directive.

(3) Sweden was designated as rapporteur Member State and submitted the competent authority report, together with a recommendation, to the Commission on 31 October 2007 in accordance with Article 14(4) and (6) of Regulation (EC) No 1451/2007. It follows from the report that the evaluation only covers Grade B and Grade C creosote as specified in European Standard EN 13991:2003.

(4) A stakeholder consultation was launched on 30 April 2008. The outcome of the consultation was made public and discussed in the 30th meeting of representatives of Member States Competent Authorities for the implementation of Directive 98/8/EC concerning the placing of biocidal products on the market.

(5) The competent authority report was reviewed by the Member States and the Commission. In accordance with Article 15(4) of Regulation (EC) No 1451/2007, the findings of the review were incorporated, within the Standing Committee on Biocidal Products on 17 December 2010 in an assessment report.

(6) It appears from the assessment report that wood preservatives containing creosote may be expected to satisfy the requirements laid down in Article 5 of Directive 98/8/EC, when applied on wood in some of the scenarios evaluated. Furthermore, there were strong indications in the abovementioned stakeholder consultation that there are considerable socioeconomic benefits of using creosote in certain applications. Life cycle analyses submitted and published in the context of the consultation have suggested that, in certain cases, no appropriate alternatives to creosote exist, which are less damaging to the environment. It is therefore appropriate to include creosote in Annex I.

(7) However, for certain wood use scenarios presented in the assessment report, unacceptable risks for the environment were identified in the risk assessment.

(8) Furthermore, creosote is considered to be a non-threshold carcinogen and is classified as carcinogen category 1B in accordance with Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 <sup>(3)</sup>.

<sup>(1)</sup> OJ L 123, 24.4.1998, p. 1.

<sup>(2)</sup> OJ L 325, 11.12.2007, p. 3.

<sup>(3)</sup> OJ L 353, 31.12.2008, p. 1.



- (9) Creosote, which is a mixture of hundreds of compounds, contains mainly polycyclic aromatic hydrocarbons (PAHs). Some of these have been considered by the Committee for Risk Assessment of the European Chemicals Agency as persistent, bioaccumulative and toxic (PBT; anthracene<sup>(1)</sup>) or very persistent and very bioaccumulative (vPvB; fluoranthene, phenanthrene and pyrene<sup>(2)</sup>) in accordance with the criteria set out in Annex XIII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC<sup>(3)</sup>.
- (10) PAHs are listed as substances subject to release reduction provisions in Annex III to the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants (POPs) and in Annex III to Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC<sup>(4)</sup>.
- (11) A guidance document adopted by Decision 2009/4 of the Executive Body to the 1979 Convention on Long-Range Transboundary Air Pollution lists best available techniques to control emissions of POPs from major stationary sources. Part E of Section V of that guidance document specifically addresses emissions of PAHs associated with the preservation of wood using coal tar derived products containing PAHs, such as creosote. The techniques relate to impregnation, storage, handling and use of the wood, and include using alternatives that minimise reliance on PAH-based products. It also recommends best available techniques to be applied if treated wood is burned.
- (12) According to the second subparagraph of Article 6(2) of Regulation (EC) No 850/2004 read in conjunction with Annex III to that Regulation, Member States are required to adopt action plans including measures to promote the development and, where they deem appropriate, require the use of substitute or modified materials, products and processes to prevent the formation and release of PAHs. Pursuant to Article 3(3) of Regulation (EC) No 850/2004, Member States and the Commission shall, within the assessment and authorisation schemes for existing chemicals and pesticides under the relevant Union legislation, take appropriate measures to control existing chemicals and pesticides which exhibit characteristics of POPs.
- (13) Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy<sup>(5)</sup> identifies PAHs as priority hazardous substances, from which pollution of surface waters through discharge, emission or loss must cease or be phased out.
- (14) It is therefore appropriate to limit the inclusion to 5 years only and to make it subject to a comparative risk assessment in accordance with the second subparagraph of Article 10(5)(i) of Directive 98/8/EC before its inclusion in Annex I is renewed.
- (15) Furthermore, biocidal products containing creosote should be authorised only for applications where, all local and other circumstances taken into account, no appropriate alternatives are available. When an application is made for product authorisation or mutual recognition, the Member State receiving the application should therefore ask the applicant for an analysis regarding the technical and economic feasibility of substitution. Based on this analysis and any other information available to it, an authorising Member State should justify their conclusion that there are no appropriate alternatives and report the justification to the Commission at a stage when product authorisations can be expected to have been granted. In this context, to increase transparency, it is appropriate to require Member States to include in the report their information on how the development of alternatives is promoted in accordance with Article 6(2) of Regulation (EC) No 850/2004, either directly or by reference to a published action plan. To further increase transparency, it is appropriate to ensure that this information is made public.
- (16) Not all potential uses of wood treated with creosote have been evaluated at the Union level. It is therefore appropriate that Member States assess those uses or exposure scenarios and those risks to compartments and populations that have not been representatively addressed in the Union level risk assessment and, when granting product authorisations, ensure that appropriate measures are taken or specific conditions imposed in order to reduce the identified risks to acceptable levels.
- (17) Entry number 31 in Annex XVII to Regulation (EC) No 1907/2006 regulates the conditions for the use of creosote in wood treatment and for the placing on the market of wood treated with creosote. It is appropriate to
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- (1) Member State Committee support document for identification of anthracene as a substance of very high concern, adopted on 8 October 2008.
- (2) Member State Committee support document for identification of anthracene oil, anthracene low as a substance of very high concern because of its CMR, PBT and vPvB properties, adopted on 4 December 2009.
- (3) OJ L 396, 30.12.2006, p. 1.
- (4) OJ L 158, 30.4.2004, p. 7.
- (5) OJ L 327, 22.12.2000, p. 1.

require that product authorisations for biocidal products containing creosote are subject to compliance with those restrictions. Through Commission Decisions 1999/832/EC of 26 October 1999 concerning the national provisions notified by the Kingdom of the Netherlands concerning the limitations of the marketing and use of creosote <sup>(1)</sup>, 2002/59/EC of 23 January 2002 concerning draft national provisions notified by the Kingdom of the Netherlands under Article 95(5) of the EC Treaty on limitations on the marketing and use of creosote-treated wood <sup>(2)</sup>, and 2002/884/EC of 31 October 2002 concerning national provisions on restrictions on the marketing and use of creosote-treated wood notified by the Netherlands under Article 95(4) and (5) of the EC Treaty <sup>(3)</sup>, the Commission has authorised the Netherlands to maintain existing and more stringent national provisions notified under the EC Treaty. By virtue of Article 67(3) of Regulation (EC) No 1907/2006, and as stated in the Communication from the Commission pursuant to Article 67(3) of Regulation (EC) No 1907/2006 <sup>(4)</sup>, these restrictions may be maintained until 1 June 2013. They include a prohibition of the use of creosote-treated wood for applications involving contact with surface water or groundwater.

(18) In the light of the findings of the assessment report, it is appropriate to require that risk mitigation measures are applied at product authorisation level to products containing creosote and used as wood preservatives. Due to the carcinogenic properties of creosote, it is appropriate to require that product authorisations for biocidal products containing the substance are subject to the requirement that all possible measures in accordance with Regulation (EC) No 1907/2006 and Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC) <sup>(5)</sup> be applied to protect workers, including down-stream users, from exposure during treatment and handling of treated wood. In the view of the risks identified for the soil and aquatic compartments, appropriate measures should be taken to protect those compartments. Instructions should therefore be provided to indicate that freshly treated timber must be stored after treatment under shelter or on impermeable hard standing, or both, and that any losses must be collected for reuse or disposal.

(19) It is important that the provisions of this Directive be applied simultaneously in all the Member States in order to ensure equal treatment of biocidal products on the market containing the active substance creosote and also to facilitate the proper operation of the biocidal products market in general.

(20) A reasonable period should be allowed to elapse before an active substance is included in Annex I in order to permit Member States and the interested parties to prepare themselves to meet the new requirements entailed and to ensure that applicants who have prepared dossiers can benefit fully from the 10-year period of data protection, which, in accordance with Article 12(1)(c)(ii) of Directive 98/8/EC, starts from the date of inclusion.

(21) After inclusion, Member States should be allowed a reasonable period to implement Article 16(3) of Directive 98/8/EC.

(22) Directive 98/8/EC should therefore be amended accordingly.

(23) The Committee established by Article 28(1) of Directive 98/8/EC has not delivered an opinion on the measures provided for in this Directive and the Commission therefore submitted to the Council a proposal relating to the measures and forwarded it to the European Parliament. The Council did not act within the 2-month period provided for by Article 5a of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(6)</sup>, and the Commission therefore submitted the proposal to the European Parliament without delay. The European Parliament did not oppose the measure within 4 months from the abovementioned forwarding,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

Annex I to Directive 98/8/EC is amended in accordance with the Annex to this Directive.

#### *Article 2*

##### **Transposition**

1. Member States shall adopt and publish, by 30 April 2012 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive.

They shall apply those provisions from 1 May 2013.

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

<sup>(1)</sup> OJ L 329, 22.12.1999, p. 25.

<sup>(2)</sup> OJ L 23, 25.1.2002, p. 37.

<sup>(3)</sup> OJ L 308, 9.11.2002, p. 30.

<sup>(4)</sup> OJ C 130, 9.6.2009, p. 3.

<sup>(5)</sup> OJ L 158, 30.4.2004, p. 50.

<sup>(6)</sup> OJ L 184, 17.7.1999, p. 23.

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

*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, 26 July 2011.

*For the Commission*  
*The President*  
José Manuel BARROSO

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## ANNEX

In Annex I to Directive 98/8/EC, the following entry is added:

'45	Creosote	Creosote EC No: 232-287-5 CAS No: 8001-58-9	Grade B or Grade C creosote as specified in European Standard EN 13991:2003	1 May 2013	30 April 2015	30 April 2018	8	<p>Biocidal products containing creosote may only be authorised for uses where the authorising Member State, based on an analysis regarding the technical and economic feasibility of substitution which it shall request from the applicant, as well as on any other information available to it, concludes that no appropriate alternatives are available. Those Member States authorising such products in their territory shall no later than 31 July 2016 submit a report to the Commission justifying their conclusion that there are no appropriate alternatives and indicating how the development of alternatives is promoted. The Commission will make these reports publicly available.</p> <p>The active substance is to be subject to a comparative risk assessment in accordance with the second subparagraph of Article 10(5)(i) before its inclusion in this Annex is renewed.</p> <p>When assessing the application for authorisation of a product in accordance with Article 5 and Annex VI, Member States shall assess, where relevant for the particular product, those uses or exposure scenarios and those risks to environmental compartments and populations that have not been representatively addressed at the Union level risk assessment.</p> <p>Member States shall ensure that authorisations are subject to the following conditions:</p> <p>(1) Creosote may only be used under the conditions mentioned in point 2 of the second column of entry No 31 in Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC<sup>(1)</sup>.</p> <p>(2) Creosote shall not be used for the treatment of wood intended for those uses referred to in point 3 of the second column of entry No 31 in Annex XVII to Regulation (EC) No 1907/2006.</p>
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								<p>(3) Appropriate risk mitigation measures shall be taken to protect workers, including down-stream users, from exposure during treatment and handling of treated wood in compliance with Regulation (EC) No 1907/2006 and Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC) <sup>(2)</sup>.</p> <p>(4) Appropriate risk mitigation measures shall be taken to protect the soil and aquatic compartments. In particular, labels and, where provided, safety data sheets of products authorised shall indicate that freshly treated timber must be stored after treatment under shelter or on impermeable hard standing, or both, to prevent direct losses to soil or water and that any losses must be collected for reuse or disposal.</p>
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<sup>(1)</sup> OJ L 396, 30.12.2006, p. 1.  
<sup>(2)</sup> OJ L 158, 30.4.2004, p. 50.'

## DECISIONS

## DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 6 July 2011

**on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 28 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (application EGF/2010/025 DK/Odense Steel Shipyard from Denmark)**

(2011/468/EU)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management <sup>(1)</sup>, and in particular point 28 thereof,

Having regard to Regulation (EC) No 1927/2006 of the European Parliament and of the Council of 20 December 2006 establishing the European Globalisation Adjustment Fund <sup>(2)</sup>, and in particular Article 12(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The European Globalisation Adjustment Fund (EGF) was established to provide additional support for workers made redundant as a result of major structural changes in world trade patterns due to globalisation and to assist them with their reintegration into the labour market.
- (2) The scope of the EGF was broadened for applications submitted from 1 May 2009 to include support for workers made redundant as a direct result of the global financial and economic crisis.
- (3) The Interinstitutional Agreement of 17 May 2006 allows the mobilisation of the EGF within the annual ceiling of EUR 500 million.

(4) Denmark submitted an application on 6 October 2010 to mobilise the EGF, in respect of redundancies in the enterprise Odense Steel Shipyard and supplemented it by additional information up to 8 March 2011. This application complies with the requirements for determining the financial contributions as laid down in Article 10 of Regulation (EC) No 1927/2006. The Commission, therefore, proposes to mobilise an amount of EUR 14 181 901.

(5) The EGF should, therefore, be mobilised in order to provide a financial contribution for the application submitted by Denmark,

HAVE ADOPTED THIS DECISION:

*Article 1*

For the general budget of the European Union for the financial year 2011, the European Globalisation Adjustment Fund shall be mobilised to provide the sum of EUR 14 181 901 in commitment and payment appropriations.

*Article 2*

This Decision shall be published in the *Official Journal of the European Union*.

Done at Strasbourg, 6 July 2011.

*For the European Parliament*  
*The President*  
J. BUZEK

*For the Council*  
*The President*  
M. DOWGIELEWICZ

<sup>(1)</sup> OJ C 139, 14.6.2006, p. 1.

<sup>(2)</sup> OJ L 406, 30.12.2006, p. 1.

## DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 6 July 2011

**on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 28 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (application EGF/2010/022 DK/LM Glasfiber from Denmark)**

(2011/469/EU)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management <sup>(1)</sup>, and in particular point 28 thereof,

Having regard to Regulation (EC) No 1927/2006 of the European Parliament and of the Council of 20 December 2006 establishing the European Globalisation Adjustment Fund <sup>(2)</sup>, and in particular Article 12(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The European Globalisation Adjustment Fund (EGF) was established to provide additional support for workers made redundant as a result of major structural changes in world trade patterns due to globalisation and to assist them with their reintegration into the labour market.
- (2) The scope of the EGF was broadened for applications submitted from 1 May 2009 to include support for workers made redundant as a direct result of the global financial and economic crisis.
- (3) The Interinstitutional Agreement of 17 May 2006 allows the mobilisation of the EGF within the annual ceiling of EUR 500 million.

(4) Denmark submitted an application on 7 July 2010 to mobilise the EGF, in respect of redundancies in the enterprise LM Glasfiber and supplemented it by additional information up to 3 February 2011. This application complies with the requirements for determining the financial contributions as laid down in Article 10 of Regulation (EC) No 1927/2006. The Commission, therefore, proposes to mobilise an amount of EUR 6 247 415.

(5) The EGF should, therefore, be mobilised in order to provide a financial contribution for the application submitted by Denmark,

HAVE ADOPTED THIS DECISION:

*Article 1*

For the general budget of the European Union for the financial year 2011, the European Globalisation Adjustment Fund shall be mobilised to provide the sum of EUR 6 247 415 in commitment and payment appropriations.

*Article 2*

This Decision shall be published in the *Official Journal of the European Union*.

Done at Strasbourg, 6 July 2011.

*For the European Parliament*

*The President*

J. BUZEK

*For the Council*

*The President*

M. DOWGIELEWICZ

<sup>(1)</sup> OJ C 139, 14.6.2006, p. 1.

<sup>(2)</sup> OJ L 406, 30.12.2006, p. 1.



## DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 6 July 2011

**on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 28 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (application EGF/2010/031 BE/General Motors Belgium from Belgium)**

(2011/470/EU)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management <sup>(1)</sup>, and in particular point 28 thereof,

Having regard to Regulation (EC) No 1927/2006 of the European Parliament and of the Council of 20 December 2006 establishing the European Globalisation Adjustment Fund <sup>(2)</sup>, and in particular Article 12(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The European Globalisation Adjustment Fund (EGF) was established to provide additional support for workers made redundant as a result of major structural changes in world trade patterns due to globalisation and to assist them with their reintegration into the labour market.
- (2) The scope of the EGF was broadened for applications submitted from 1 May 2009 to include support for workers made redundant as a direct result of the global financial and economic crisis.
- (3) The Interinstitutional Agreement of 17 May 2006 allows the mobilisation of the EGF within the annual ceiling of EUR 500 million.

(4) Belgium submitted an application on 20 December 2010 to mobilise the EGF in respect of redundancies in the enterprise General Motors Belgium and four of its suppliers, and supplemented it by additional information up to 24 January 2011. This application complies with the requirements for determining the financial contributions as laid down in Article 10 of Regulation (EC) No 1927/2006. The Commission, therefore, proposes to mobilise an amount of EUR 9 593 931.

(5) The EGF should, therefore, be mobilised in order to provide a financial contribution for the application submitted by Belgium,

HAVE ADOPTED THIS DECISION:

*Article 1*

For the general budget of the European Union for the financial year 2011, the European Globalisation Adjustment Fund shall be mobilised to provide the sum of EUR 9 593 931 in commitment and payment appropriations.

*Article 2*

This Decision shall be published in the *Official Journal of the European Union*.

Done at Strasbourg, 6 July 2011.

*For the European Parliament*  
*The President*  
J. BUZEK

*For the Council*  
*The President*  
M. DOWGIELEWICZ

<sup>(1)</sup> OJ C 139, 14.6.2006, p. 1.

<sup>(2)</sup> OJ L 406, 30.12.2006, p. 1.



**COMMISSION DECISION****of 14 December 2010****on State aid granted by Germany to the Biria group (C 38/05 (ex NN 52/04))***(notified under document C(2010) 8289)***(Only the German text is authentic)****(Text with EEA relevance)**

(2011/471/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 <sup>(1)</sup>,

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

Having called on interested parties to submit their comments pursuant to the provisions cited above <sup>(2)</sup>, and having regard to their comments,

Whereas:

submitted further information concerning another public guarantee to the Biria group and public holdings in companies belonging to the group.

(4) The Commission requested information by letter of 9 September 2003, to which Germany replied by letter dated 14 October 2003, registered as incoming mail on 16 October 2003. The Commission requested further information on 9 December 2003, which Germany provided by letter dated 19 March 2004, registered as incoming mail the same day.

(5) The Commission doubted whether the aid granted to the Biria group complied with the schemes on the basis of which it had ostensibly been granted, and on 18 October 2004 it issued an information injunction. In response to the information injunction Germany submitted further information, by letter dated 31 January 2005, registered as incoming mail the same day.

**I. PROCEDURE****1.1. Proceedings before the Commission**

(1) On 23 January 2002 and 20 August 2002 the Commission received a complaint with regard to State aid given to the Biria group in the form of a public guarantee.

(2) There followed an exchange of correspondence between the Commission and Germany; by letter dated 24 January 2003, registered as incoming mail at the Commission on 28 January 2003, Germany informed the Commission that the plan to grant the guarantee, which was conditional on the Commission's approval, had been withdrawn. The complainant was informed accordingly by letter dated 17 February 2003.

(3) By letters dated 1 July 2003, registered as incoming mail on 9 July 2003, and 8 August 2003, registered as incoming mail on 5 September 2003, the complainant

(6) On 20 October 2005 the Commission initiated a formal investigation in respect of three suspected State aid measures. In the same decision the Commission took the view that several other measures that had been alleged to constitute illegal State aid either did not constitute State aid or had been granted in accordance with approved aid schemes. The Commission's decision to initiate the investigation was published in the *Official Journal of the European Union* <sup>(3)</sup>. The Commission invited interested parties to submit comments on the supposed aid measures. Comments were submitted by a third party who wished to remain anonymous, in a letter dated 27 January 2006, registered as incoming mail on 30 January 2006; by Prophete GmbH & Co. KG, Rheda-Wiedenbrück, and Pantherwerke AG, Löhne, by letter dated 6 February 2006, registered as incoming mail the same day; and by Vaterland-Werke GmbH & Co. KG, Neuenrade, in two letters, one dated 6 February 2006, registered as incoming mail the same day, and one dated 27 February 2006, registered as incoming mail the same day.

<sup>(1)</sup> With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty became Articles 107 and 108 respectively of the Treaty on the Functioning of the European Union (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 where appropriate as references to Articles 87 and 88, respectively, of the EC Treaty, and references to the General Court as references to the Court of First Instance.

<sup>(2)</sup> OJ C 2, 5.1.2006, p. 14.

(7) The comments were transmitted to Germany by letters of 6 February 2006 and 2 March 2006. Germany replied to the comments by letter dated 5 April 2006, registered as incoming mail on 7 April 2006, and by letter dated 12 May 2006, registered as incoming mail the same day.

<sup>(3)</sup> See footnote 2.

- (8) Germany's response to the initiation of the formal investigation was provided by letter dated 23 January 2006, registered as incoming mail the same day.
- (9) The Commission requested further information on 6 February 2006, and Germany provided this by letter dated 5 April 2006, registered as incoming mail on 7 April 2006. The Commission sent another request for information on 19 July 2006, to which Germany replied by letter dated 25 September 2006, registered as incoming mail on 26 September 2006.
- (10) On 24 January 2007 the Commission adopted a Decision<sup>(4)</sup> under Article 7(5) and Article 14(1) 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<sup>(5)</sup>.

### 1.2. Proceedings before the General Court

- (11) On 5 April 2007 the *Land* of Saxony brought an action challenging the Commission Decision with regard to measures 2 and 3 (Case T-102/07). A further application was lodged on 16 April 2007 by MB Immobilien Verwaltungs GmbH und MB System GmbH & Co. KG, legal successors to the recipients of the aid to which the Decision related (Case T-120/07). This second application concerned all three of the measures that were the subject of the Decision. On 24 November 2008 the President of the Court decided to join the two cases.
- (12) By judgment of 3 March 2010, the General Court annulled the Commission's Decision of 24 January 2007.
- (13) The pleas of the parties overlapped to a large extent: their main submissions were as follows. First, the Commission had been wrong to conclude that measures 2 and 3 were outside the scope of the approved German aid scheme. Second, the Commission was mistaken in its assessment of the facts with regard to the question whether the recipients were to be considered firms in difficulty. Third, the Decision did not provide a proper statement of reasons for the assessment it had made of the amount of aid involved.
- (14) The General Court upheld the finding in the Decision that measures 2 and 3 were outside the scope of the approved scheme. The Court also upheld the Commission's finding that the recipients constituted 'firms in difficulty' under the definition in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty (1999, hereinafter 'the Rescue and Restructuring Guidelines 1999')<sup>(6)</sup>. It annulled the Decision only on the ground that it did not provide a proper statement of reasons for the risk premiums it used to determine the aid component. In

particular, the General Court held that in order to determine the aid component in a loan to a firm in difficulty, a mere reference to the Commission notice on the method for setting the reference and discount rates (1997, hereinafter 'the Reference Rates Notice 1997')<sup>(7)</sup> was not a sufficient statement of reasons for the application of the different risk premiums.

- (15) As required by the first paragraph of Article 266 TFEU, therefore, the present Decision implements the General Court's judgment, and explains in greater detail the method followed by the Commission in order to calculate the aid component in the measures at issue. This Decision changes nothing in the assessment under State aid law that the Commission made in the Decision of 24 January 2007, in particular with regard to the aspects already considered by the Court.

### 1.3. Proceedings after the judgment

- (16) Following the judgment, by letter of 7 June 2010, registered as incoming mail the same day, the recipients submitted further comments. The comments were forwarded to Germany on 16 June 2010. Germany sent the Commission a reply to the recipients' comments by letter of 12 July 2010, registered as incoming mail the same day.
- (17) On 19 August 2010 the Commission sent Germany a request for information, to which Germany replied by letter dated 14 September 2010, registered as incoming mail the same day.

## II. DESCRIPTION

### 2.1. The recipient

- (18) Until 7 November 2005 the Biria group manufactured and sold bicycles. The parent company of the group was at that time called Biria AG, and was based in Neukirch, Saxony, an area assisted under Article 107(3)(a) TFEU<sup>(8)</sup>.
- (19) In 2003 the group had a turnover of EUR 93,2 million (compared with EUR 83,8 million in 2002) and made profits of EUR 3,7 million (compared with losses of EUR 5,8 million in 2002). The group had 415 employees in 2003 (490 in 2002), and was therefore to be classified as a large undertaking.
- (20) The parent company was created in 2003, by merging the old Biria AG into one of its subsidiaries, Sachsen Zweirad GmbH. The name of the absorbing company was changed from Sachsen Zweirad GmbH to Biria

<sup>(4)</sup> OJ L 183, 13.7.2007, p. 27.

<sup>(5)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(6)</sup> OJ C 288, 9.10.1999, p. 2.

<sup>(7)</sup> OJ C 273, 9.9.1997, p. 3.

<sup>(8)</sup> The area was an assisted area at the time of the measure at issue, and under Germany's regional aid map for 2007-2013 it continues to be so (OJ C 295, 5.12.2006, p. 6).

GmbH. In April 2005 Biria GmbH was converted into a new Biria AG. In 2003 Biria GmbH had an annual turnover of EUR 55,7 million and made profits of EUR 3,6 million. The sole owner of Biria AG was Mr Mehdi Biria. The parent company is hereinafter referred to as 'Biria'.

- (21) Apart from the parent company the main companies in the group were Bike Systems GmbH & Co. Thüringer Zweiradwerk KG (Bike Systems) — which Biria owned via Biria's subsidiary Bike Systems Betriebs- und Beteiligungsgesellschaft mbH (BSBG) — and Checker Pig GmbH.
- (22) Bike Systems was based in Nordhausen, Thuringia, which is an area assisted under Article 107(3)(a) TFEU. In 2003 it had a turnover of EUR 6,1 million, and losses of EUR 0,6 million. It had 157 employees. Bike Systems produced bicycles exclusively for its parent company BSBG, under a production contract known as a *Lohnherstellungsvertrag*. BSBG was responsible for the distribution of the bicycles.
- (23) Checker Pig GmbH was based in Dresden, Saxony, which is an area assisted under Article 107(3)(a) TFEU. In 2003, Checker Pig had a turnover of EUR 6,9 million, and made losses of EUR 0,4 million. It had 43 employees.
- (24) On 7 November 2005 Biria sold the bulk of its assets to two companies belonging to the Lone Star group, a private equity fund. The real estate remained with Biria, which let it to the Lone Star group. The sales price of the assets was EUR 11,5 million. An external expert had evaluated the market price of the assets at EUR 10,7 million.
- (25) According to the information submitted by Germany, the sale was conducted by means of an open, transparent and unconditional tender. The tender was published on the Internet and in several print media. For the involvement of a new investor there were several options: an asset deal, a purchase of the entire assets en bloc, or a share deal. The assets were ultimately taken over by the Lone Star group by means of an asset deal.
- (26) According to Germany the efforts to sell the company started before the Commission's decision to initiate the formal investigation, which was taken on 20 October 2005. First offers were to be submitted by 4 October 2005.
- (27) At the present time the legal successor to the new Biria AG is MB Immobilien Verwaltungs GmbH (hereinafter 'MB Immobilien'); the legal successor to Bike Systems is MB System GmbH & Co. KG (hereinafter 'MB System'). MB Immobilien has been in liquidation since July 2008.
- (28) In this Decision the companies, with the exception of the parent company Biria, are referred to by the names they had at the time of the measures at issue.

## 2.2. The financial measures

- (29) Measure 1: In March 2001, gbb Beteiligungs AG (hereinafter 'gbb') provided Bike Systems with a silent participation (*stille Einlage*) amounting to EUR 2 070 732, to run until the end of 2010. gbb was a wholly owned subsidiary of DtA-Beteiligungs-Holding AG, which was itself a wholly owned subsidiary of Deutsche Ausgleichsbank, a Federal Government development bank that had been set up by legislation in the form of a corporation governed by public law.
- (30) gbb was already in existence in the time of the former German Democratic Republic, when it was a State bank for agriculture. In 1990, under the Unification Treaty, it became Berliner Genossenschaftsbank, a public-law corporation under the supervision of the Federal Ministry of Finance. In 1991 its name was changed to gbb Beteiligungsholding, and in 1997 it was converted into the form of a public limited company (AG). It was now no longer the property of the Federal Government, but became a subsidiary of Deutsche Ausgleichsbank. Ever since gbb was set up the public administration has exercised far-reaching influence over it. When it was a corporation governed by public law, it was under the direct supervision of the responsible ministry, and the authorities were represented on its supervisory board. When it was converted into a limited company, and became a subsidiary of Deutsche Ausgleichsbank, it came under the supervision that the public authorities exercised over Deutsche Ausgleichsbank (see recitals following).
- (31) Deutsche Ausgleichsbank was a corporation governed by public law and was under the supervision of the Federal Ministry of the Interior. A majority of the members of its supervisory board were representatives of federal or *Land* ministries or members of the Bundestag.
- (32) Section 4(1) of the Deutsche Ausgleichsbank Act states that the activities of the bank are limited to the financing of measures supporting small and medium-sized firms and the professions, protecting the environment, promoting social policies, and integrating persons displaced as a consequence of the Second World War.
- (33) Section 4(4) of the Act provides that Deutsche Ausgleichsbank may acquire interests in other undertakings if its supervisory board and the ministry supervising it agree.
- (34) The silent participation in Bike Systems is listed in Deutsche Ausgleichsbank's annual reports for the years 2001 and 2002: the holding represented by the participation amounted to 20 %, which brought it over the threshold that triggered the reporting obligation. In 2001, gbb had interests of 20 % or more in a total of 18 companies.

- (35) In 2003, under a Federal Act, Deutsche Ausgleichsbank merged with Kreditanstalt für Wiederaufbau.
- (36) Both Deutsche Ausgleichsbank and Kreditanstalt für Wiederaufbau are what are known as development institutions (*Förderinstitute*), i.e. banks whose activities are limited to supporting regional, economic and social policy measures. In State aid Case E 10/2000 Germany accepted appropriate measures that confined the activities of the development institutions to specific non-commercial activities, including the administration of support programmes for SMEs <sup>(9)</sup>.
- (37) According to Germany, gbb's participation in Bike Systems was provided on market terms, and consequently did not constitute State aid.
- (38) Measure 2: On 20 March 2003 the *Land* of Saxony granted an 80 % guarantee on a working capital loan of EUR 5,6 million to Sachsen Zweirad GmbH, which was originally to run until the end of 2008. The guarantee was returned in January 2004, and replaced by a guarantee for Biria GmbH (see measure 3). The guarantee was granted on the basis of the loan guarantee scheme in Saxony, an aid scheme approved by the Commission <sup>(10)</sup>.
- (39) Measure 3: On 9 December 2003 the *Land* of Saxony granted an 80 % guarantee on working capital loans amounting to EUR 24 875 000 to Biria GmbH (later Biria AG) to finance the planned increase in turnover and the restructuring of the group's financing plan. The loans were to mature on 31 December 2011, and consisted of EUR 8 million to repay working capital loans (*Betriebsmitteltilgungsdarlehen*), a EUR 7,45 million overdraft facility (*Kontokorrentlinie*), and EUR 9,425 million for seasonal financing needs (*Saisonfinanzierungslinie*). The guarantee was granted on the basis of the loan guarantee scheme in Saxony, an aid scheme approved by the Commission. It was provided subject to the condition that the earlier guarantee for Sachsen Zweirad GmbH (measure 2) would be returned. It entered into force only on 5 January 2004, once the guarantee to Sachsen Zweirad had indeed been returned.

### III. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION

- (40) The Commission initiated the formal investigation because it doubted whether the silent participation had been contributed on market terms, as Germany claimed. The Commission considered that Bike Systems had just emerged from insolvency, through the adoption of an

insolvency plan, so that its future prospects were uncertain. At that time, therefore, it ought to have been considered a firm in difficulty. The Commission doubted whether the remuneration took proper account of the risk, and consequently whether the silent participation had been provided on market terms. With regard to possible exemption under Article 107(2) and (3) TFEU, the Commission had no information to show that the tests of the Rescue and Restructuring Guidelines 1999 were satisfied.

- (41) A further ground for initiating the formal investigation was that the Commission provisionally took the view that the conditions of the approved aid scheme on the basis of which the guarantees for Sachsen Zweirad GmbH and Biria GmbH had ostensibly been given were not in fact fulfilled, so that the guarantees granted fell outside the scope of the scheme. The Commission considered that at the time the guarantees were given Sachsen Zweirad GmbH and Biria GmbH were firms in difficulty. In addition, as Sachsen Zweirad GmbH and Biria GmbH were large undertakings, the guarantees ought to have been notified to the Commission individually even under the approved aid scheme. With regard to possible exemption under Article 107(2) and (3) TFEU, the Commission doubted whether the tests of the Rescue and Restructuring Guidelines 1999 were satisfied.

### IV. COMMENTS FROM INTERESTED PARTIES

- (42) The Commission received comments from a third party that wished to remain anonymous; from Prophete GmbH & Co. KG and Pantherwerke AG; and from Vaterland-Werke GmbH & Co. KG.

#### 4.1. Competitor that wished to remain anonymous

- (43) In its comments on the initiation of the formal investigation, the competitor that wished to remain anonymous argued that because of the public guarantee on a EUR 24,5 million loan Biria AG was able to sell bicycles to the competitor's customers below production cost, even though the competitor had the most cost-efficient production site in Germany.
- (44) In 2003 Biria AG was able to show a profit only because banks had waived claims amounting to EUR 8,567 million. In the succeeding years 2004 and 2005, Biria AG had again recorded losses.
- (45) In addition, Biria had been sold to Lone Star by way of an asset deal. In connection with this deal Landesbank Sachsen and Mittelständische Beteiligungsgesellschaft Sachsen had probably waived large amounts of debt. The new Biria GmbH, which was owned by the Lone Star group, had taken over all the assets of the old Biria AG.

<sup>(9)</sup> Commission Decision C(2002) 1286 of 27 March 2002, *Anstaltslast and Gewährträgerhaftung — State guarantees for public credit institutions in Germany* (OJ C 146, 19.6.2002, p. 6).

<sup>(10)</sup> State aid measure No N 73/1993, *Land of Saxony guarantee guidelines*, SG(93) D/9273, 7 June 1993.



#### 4.2. **Prophete GmbH & Co. KG and Pantherwerke AG**

- (46) In their comments on the initiation of the formal investigation, Prophete GmbH & Co. KG and Pantherwerke AG (hereinafter 'Prophete' and 'Pantherwerke') alleged that the State aid enabled Biria to sell at prices that would be untenable under normal market conditions. The two companies were in competition with Biria, and were thus directly affected by the aid.
- (47) Biria group, they argued, was the largest manufacturer of bicycles in Germany, with an annual output of around 700 000 bicycles. The companies of the Biria group operated in two segments of the bicycle market, namely the non-specialised trade and the specialised wholesale trade.
- (48) The non-specialised trade included all retailing by the larger retail chains and mail order business. Bicycles in this segment usually sold at a price between EUR 100 and EUR 199. Prophete and Pantherwerke estimated that there were around 1,5 million bicycles sold on this market, and that Biria sold 650 000, giving it a share of around 50 % of the segment.
- (49) According to Prophete and Pantherwerke, the Biria group also had a dominant position in the specialised wholesale trade segment. This market segment had a volume of 150 000 to 200 000 bicycles. In the specialised wholesale trade prices ranged up to EUR 400. In this segment Pantherwerke was a direct competitor with Biria.
- (50) Prophete and Pantherwerke had observed that the prices offered by the Biria group had for years been consistently below those offered by other manufacturers. The difference could not be explained by economic factors, because although the Biria group's dominant position meant that it had a larger purchase volume this did not translate into more advantageous terms. Prophete and Pantherwerke surmised that the Biria group had suffered significant losses in recent years as a result of its low selling prices.
- (51) As regards the silent participation, Prophete and Pantherwerke doubted whether given the economic situation of Bike Systems in March 2001 such a participation would have been provided by a private investor.
- (52) Prophete and Pantherwerke took the view that the guarantees given for Sachsen Zweirad GmbH and Biria in 2003 and 2004 were not compatible with the EU State aid rules. Prophete and Pantherwerke considered that the companies were in difficulty at the time the guarantees were granted. The new Biria was the legal successor to the two former companies from which it had emerged. The opening balance sheet of the newly created company had no informative value.

- (53) The granting of the two guarantees violated the 'one time, last time' principle, as the companies of the Biria group had repeatedly been able to stay in business only with State assistance.
- (54) No compensatory measures had been taken to offset adverse effects on competitors. No attempt had been made to limit the presence of the Biria group in the market. Quite the reverse, the Biria group's plan was to expand its business further by pursuing an aggressive pricing policy. On its homepage Biria had announced that it planned to increase sales further from their 2004 level by selling 850 000 bicycles in 2005. Prophete and Pantherwerke also drew attention to a press release according to which the owner of Biria AG had sold the business to the private equity fund Lone Star.

#### 4.3. **Vaterland-Werke GmbH & Co. KG**

- (55) In its comments on the initiation of the formal investigation, Vaterland-Werke GmbH & Co. KG (Vaterland-Werke) stated that with a total output of between 700 000 and 800 000 bicycles the Biria group was the biggest manufacturer of bicycles in Germany. The only comparable company was MIFA Mitteldeutsche Fahrradwerke, which had an annual output of around 700 000 bicycles; other manufacturers produced only 250 000 to 400 000.
- (56) Vaterland-Werke and Biria both operated in the non-specialised trade segment, which included the larger retail chains and large mail order firms. Competition in this segment was fierce, and Biria was known as an aggressive competitor that offered prices below production cost. Conduct of this kind was possible only with external financing, which in Biria's case was provided by State aid. This threatened the existence of all small competitors that were not supported by State aid. Vaterland-Werke was particularly affected, and free capacity could not be filled by alternative work orders. The market was suffering from overcapacity, so that any expansion of a manufacturer's capacity with the help of State aid placed a burden on other competitors.
- (57) As regards the silent participation, Vaterland-Werke doubted whether given the economic situation of Bike Systems in March 2001 such a participation would have been provided by a private investor.
- (58) Vaterland-Werke took the view that the guarantees given for Sachsen Zweirad GmbH and Biria in 2003 and 2004 were not compatible with the EU State aid rules. Vaterland-Werke considered that the companies were in difficulty at the time the guarantees were granted. The new Biria was the legal successor to the two former companies from which it had emerged. The opening balance sheet of the newly created company had no informative value.

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#### 4.4. The recipients

- (61) In their comments of 7 June 2010, following the annulment of the original decision by the General Court, the recipients of the aid submitted further information.
- (62) In particular, they argued that when assessing the silent participation in Bike Systems contributed by gbb in 2001 (measure 1), the Commission had to take into account the existence of a 'comfort letter' (*Patronatserklärung*) provided by Biria GmbH. This Biria GmbH is not the legal entity created through the merger of the old Biria AG into its subsidiary Sachsen Zweirad GmbH referred to in recital 20. The Biria GmbH that issued this comfort letter for Bike Systems was the legal predecessor of the old Biria AG.

#### V. COMMENTS BY GERMANY

- (63) In its comments on the initiation of the formal investigation, Germany argued that the terms of the silent participation provided by gbb were in line with market conditions. Germany agreed with the Commission that the risk associated with a silent participation was greater than the risk associated with a conventional bank loan. But the terms of the silent participation were such that the Reference Rates Notice 1997 was complied with. That notice stated that the reference interest rate was a floor rate which could be increased in situations involving a particular risk. In such cases, the premium could amount to 400 basis points or more.
- (64) The remuneration on the silent participation amounted to 12,25 % (8,75 % fixed and 3,5 % depending on profits). This was 600 basis points above the Commission's reference rate of 6,33 %. gbb had taken account of the fact that the company was going through a restructuring process, and that the risk carried by the silent participation was higher owing to the reorientation of the company and the lack of collateral. The increased risk was reflected in the additional premium of 200 basis points.

- (65) In addition, the decision to provide the silent participation was taken on the basis of a forecast of the company's development according to which its turnover would increase from EUR 0,89 million in 2001 to EUR 3,38 million in 2003. Germany concluded that the 12,25 % remuneration agreed for the silent participation properly reflected the associated risk. The fact that part of the remuneration was variable was of no relevance, as this was normal practice in the case of silent participations and was in line with the behaviour of a market economy investor.
- (66) As regards the guarantee provided for Sachsen Zweirad GmbH, Germany argued that the company was not in difficulty at the time of the guarantee, and did not display any of the usual signs of a firm in difficulty set out in the Rescue and Restructuring Guidelines 1999. Among other things, in the year 2003 (up to the merger with Biria in October) the company's capital and reserves were positive, at EUR 404 million, and it generated a profit of EUR 2,1 million. The economic situation of the company had improved in 2003 by comparison with 2001/2002, as a result of consolidation efforts started at the end of 2002 and an improved market.
- (67) The company's liquidity situation was difficult, but not 'serious'. There had not been any danger that the private banks would not extend their credit lines. Moreover, high interest payments had not led to liquidity problems, as the Commission had claimed.
- (68) The basis of the guarantee given for Biria GmbH (later Biria AG) was the new plan for the Biria group, which called for streamlined organisation of the group and a concentration of procurement, production responsibilities and distribution at Biria GmbH. Alongside the financial requirements of the expansion of turnover, the plan provided for a reorganisation of the overall financing of the group.
- (69) Biria GmbH (later Biria AG) was not in difficulty at the time the guarantee was granted. A distinction had to be made between the old and the new Biria AG. The new company could be regarded as a firm in difficulty only if it inherited the difficulties of the old company (always assuming that the old company was in fact in difficulty). But the new Biria AG had not inherited any such difficulties. The new Biria AG was the outcome of a merger of Sachsen Zweirad GmbH and the old Biria AG. Sachsen Zweirad GmbH, which was certainly not in difficulty, was economically dominant in the merger. Thus it could not be automatically assumed that the new Biria AG was a firm in difficulty. Even if the old Biria AG had indeed been in difficulty, the merger with Sachsen Zweirad GmbH meant that the new Biria AG was not necessarily so.

- (70) Germany argued that the withdrawal of one of the private banks from the financing of the company was due to a reorientation of the bank's strategy following a merger. The two other banks ended their involvement at the same time as this private bank. However, this could not be seen as a sign of distrust, as one of the banks had still provided financing for two individual projects.
- (71) Nor was the merger of Sachsen Zweirad GmbH and Biria AG aimed at circumventing the State aid rules and the classification of the company as a firm in difficulty: it was the consequence of a new plan for the group.
- (72) In its observations on the comments of the competitor that wished to remain anonymous, Germany argued that the figures for the competitor's cost structure and for Biria's cost structure were not comparable. The competitor's turnover had increased while the Biria group's sales had decreased. At the same time the competitor's EBITDA (earnings before interest, taxes, depreciation and amortisation) had fallen, while the Biria group's EBITDA had remained constant. This showed that Biria was not selling at dumping prices, and that the competitor was pricing more aggressively than the Biria group was.
- (73) Germany argued that the competitor's claim to have suffered damage as a result of the Biria group's behaviour was not supported by evidence and was not presented in a coherent manner. In a competitive market it was normal that one company should find itself undercut by another.
- (74) With regard to the sale of the assets of the Biria group to the Lone Star group mentioned by the competitor, Germany provided details of the sale itself and of the repayment of the claims of private and public creditors.
- (75) In its observations on the comments submitted by Prophete, Pantherwerke and Vaterland-Werke, Germany argued that the market for bicycles was divided into three segments, and not two, as those companies had alleged. The three segments were the specialised trade, mail order selling, and self-service. Biria had a strong position in mail order, which was due less to aggressive pricing than to its just-in-time delivery system. In the self-service trade the leading supplier was MIFA AG, and Biria's market share was less than 10 %.
- (76) Referred back to information that had already been submitted in the course of the proceedings, Germany rejected Vaterland-Werke's statement that the Biria group planned to expand its business further by means of an aggressive pricing strategy. Biria AG had produced 670 000 bicycles in 2003, and since then output had been falling.

## VI. ASSESSMENT

- (77) Article 107(1) TFEU states that 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'. The Court of Justice has consistently held that trade is affected if the recipient firm carries on an economic activity involving trade between Member States.
- (78) In order to consider whether or not there is State aid, the Commission will first identify the relevant undertaking. It will then consider each measure individually and assess whether the conditions of Article 107(1) TFEU are met. It will then calculate the aid component, and assess whether the measure is compatible with the internal market.

### 6.1. The recipient undertaking

- (79) The aid was granted to Sachsen Zweirad GmbH, to Biria, and to Bike Systems, a subsidiary of Biria. On 7 November 2005 Biria sold the bulk of its assets to two companies belonging to the Lone Star group, a private equity fund. According to the information provided, the assets were sold following an open, transparent and unconditional tender. Germany states that an expert opinion put the sales value of the assets at EUR 10,7 million. The price paid by the Lone Star group amounted to EUR 11,5 million, which was above that valuation.
- (80) On the basis of the information at its disposal, the Commission concludes that there is no evidence to suggest that any benefit of the aid measures was transferred to the Lone Star group so as to make the Lone Star group the direct or indirect recipient of aid granted to Biria and Bike Systems.

### 6.2. Measure 1: Measure allegedly on market terms

#### *State resources and imputability to the State*

- (81) The silent participation (measure 1) was contributed by gbb. Germany claims that the participation was provided under gbb's own programme, so that State resources were not used. However, as the Commission pointed out in the decision initiating the formal investigation, at the time the participation was provided gbb was a wholly owned subsidiary of Deutsche Ausgleichsbank, which in turn was wholly owned by the Federal Republic of Germany. gbb is therefore an undertaking governed by public law. According to the settled case-law of the Court of Justice, all resources of public undertakings constitute State resources <sup>(11)</sup>.

<sup>(11)</sup> See Case C-482/99 *France v Commission (Stardust Marine)* [2002] ECR I-4397, paragraphs 32 to 43.

(82) In the Commission's view, therefore, the measure is necessarily imputable to the State. In Case C-482/99 *Stardust Marine*, paragraphs 53 to 56, the Court of Justice held as follows:

'53. On that point, it cannot be demanded that it be demonstrated, on the basis of a precise inquiry, that in the particular case the public authorities specifically incited the public undertaking to take the aid measures in question. In the first place, having regard to the fact that relations between the State and public undertakings are close, there is a real risk that State aid may be granted through the intermediary of those undertakings in a non-transparent way and in breach of the rules on State aid laid down by the Treaty.

54. Moreover, it will, as a general rule, be very difficult for a third party, precisely because of the privileged relations existing between the State and a public undertaking, to demonstrate in a particular case that aid measures taken by such an undertaking were in fact adopted on the instructions of the public authorities.

55. For those reasons, it must be accepted that the imputability to the State of an aid measure taken by a public undertaking may be inferred from a set of indicators arising from the circumstances of the case and the context in which that measure was taken. In that respect, the Court has already taken into consideration the fact that the body in question could not take the contested decision without taking account of the requirements of the public authorities (see, in particular, *Van der Kooy*, paragraph 37) or the fact that, apart from factors of an organic nature which linked the public undertakings to the State, those undertakings, through the intermediary of which aid had been granted, had to take account of directives issued by a Comitato Interministeriale per la Programmazione Economica (CIPE) (Case C-303/88 *Italy v Commission*, cited above, paragraphs 11 and 12; Case C-305/89 *Italy v Commission*, cited above, paragraphs 13 and 14).

56. Other indicators might, in certain circumstances, be relevant in concluding that an aid measure taken by a public undertaking is imputable to the State, such as, in particular, its integration into the structures of the public administration, the nature of its activities and the exercise of the latter on the market in normal conditions of competition with private operators, the legal status of the undertaking (in the sense of its being subject to public law or ordinary company law), the intensity of the supervision exercised by the public authorities over the management of the undertaking, or any other indicator showing, in the particular case, an involvement by the public authorities in the adoption of a measure or the unlikelihood of their not being involved, having regard also to the compass of the measure, its content or the conditions which it contains.'

(83) In the present case, the Commission has found indicators of this kind that allow it to conclude that the decision taken by gbb is imputable to the State.

(84) gbb was entrusted by the Federal Government with responsibilities for development: for example, it was responsible for the Eastern Germany Consolidation and Growth Fund (*Konsolidierungs- und Wachstumsfonds Ostdeutschland*), whose purpose was to provide equity capital to small and medium-sized enterprises in eastern Germany in order to strengthen their capital base.

(85) Second, gbb's history indicates that the State has been closely involved in its decision-making. First, as a corporation governed by public law, it was under the supervision of the responsible ministry, and the authorities were represented on its supervisory board. Since it became a limited company, its parent, Deutsche Ausgleichsbank, has been supervised by the responsible ministry, and its supervisory board has been dominated by representatives of public authorities.

(86) Third, at the time of the decision to provide the participation, gbb's parent company, Deutsche Ausgleichsbank, was a corporation governed by public law, under the supervision of the Ministry of the Interior, with a supervisory board dominated by representatives of federal and *Land* ministries and members of the Bundestag. Deutsche Ausgleichsbank is not permitted to take interests in other undertakings without the prior consent of both the supervising ministry and its own supervisory board. Even after gbb was converted from a corporation governed by public law into a limited company, therefore, the State kept control over its business decisions via its parent company.

(87) Fourth, in 2002 Germany accepted appropriate measures with respect to the German development banks<sup>(12)</sup>. These appropriate measures also apply to Deutsche Ausgleichsbank. The appropriate measures limit Deutsche Ausgleichsbank's activities to supporting the structural, economic and social policies and the public functions of its public-law owners in accordance with its public mandate. The Commission considers that this makes Deutsche Ausgleichsbank part of the public administration, so that all its actions are imputable to the State.

(88) Fifth, the provision of the silent participation appears to fall within Deutsche Ausgleichsbank's development objective of financing SMEs<sup>(13)</sup>.

(89) The Commission concludes that the measure is imputable to the State.

<sup>(12)</sup> See footnote 9. The decision establishes that Deutsche Ausgleichsbank is part of the public administration.

<sup>(13)</sup> See footnote 9: appropriate measures, p. 11, point (a).



*Selective advantage granted to one undertaking*

- (90) According to Germany, the silent participation that gbb contributed to Bike Systems (measure 1) was provided on market terms. The risk carried by such a silent participation is comparable to that carried by a subordinated loan, so that a silent participation should be treated as a loan carrying a high risk. In case of insolvency or liquidation, a silent participation will be repaid only after all other liabilities have been honoured. The risk associated with the participation thus exceeds the risk carried by a conventional bank loan towards an investment, which will normally be secured on terms requested by the bank. At the time of the acquisition the average level of the interest rates being charged in the market on medium- and long-term loans backed by the customary security was 6,33 %. The remuneration to be paid for a participation of this kind should significantly exceed that rate.
- (91) The participation bore a fixed remuneration of 8,75 % plus a variable remuneration of 3,5 % depending on the profits made<sup>(14)</sup>. The agreed remuneration is consequently above the reference rate.
- (92) It should be pointed out, however, that this reasoning supposes that Bike Systems would succeed in returning to profitability: but Bike Systems had just emerged from insolvency, and then only as a result of the adoption of an insolvency plan. Its future prospects were uncertain, as there had been only limited restructuring of its operations. According to the company's annual report for 2001, it continued to make a loss that year. Its equity figure continued to be negative, although because of hidden reserves this did not trigger insolvency. At that time, therefore, Bike Systems had to be considered a firm in difficulty.
- (93) At the time of the first Decision the Commission had no information regarding the comfort letter (see recital 62 above). The wording of the comfort letter was submitted only in the course of the court proceedings.
- (94) In the comfort letter, dated 6 March 2001, Biria GmbH takes note of the silent participation, and undertakes to ensure that for the duration of the participation Bike Systems is managed and financed in such a way that it is able to meet its obligations in respect of the participation.
- (95) The Commission makes the following observations.
- (96) With regard to the financial strength of the parent company that issued the comfort letter, Germany has

stated that in 2001 Biria GmbH's turnover was negligible: it was merely acting as a distributor for other divisions of the group<sup>(15)</sup>. As regards financial performance, the company showed a modest after-tax profit of DEM 205 000 in 1999, and net losses of DEM 473 000 in 2000<sup>(16)</sup>.

- (97) Owing to the company's past losses, its equity was negative in 1999. It became positive in 2000, but this was due not to its own performance but to a transfer of profits from its subsidiary Sachsen Zweirad<sup>(17)</sup>. The Commission notes that the comfort letter was issued not by a company within the group enjoying a solid financial position but by a parent company that was performing less well.
- (98) Irrespective of whether Biria GmbH was to be formally regarded as a firm in difficulty within the meaning of the Rescue and Restructuring Guidelines 1999, therefore, the Commission concludes that Biria GmbH had the capacity to satisfy potential claims arising from the comfort letter covering the silent participation, which amounted to over EUR 2 million. As already mentioned, its book profit in 2000 (before the comfort letter was issued) was in fact due only to a transfer of profits from a subsidiary, and not to its own economic performance, and without this transfer of profits it would have had negative equity (including the subscribed capital and other forms such as reserves or cash in the balance sheet). It is thus questionable how Biria GmbH could have prevented a possible insolvency of Bike Systems. Consequently, the Commission considers that the comfort letter has no real economic value that might offset the difficulties of Bike Systems, and thus does not constitute valuable collateral that would reduce the remuneration that a market investor would have sought for the silent participation.
- (99) The Commission concludes that the remuneration was not commensurate with the risk, and consequently that the participation was not provided on market terms. The participation thus conferred an advantage on Bike Systems that it could not have obtained on the market.

*Distortion of competition and effect on trade*

- (100) Bike Systems, Sachsen Zweirad GmbH and Biria GmbH were manufacturers of bicycles. As this product is traded across borders, the measures threaten to distort competition and affect trade between Member States.

<sup>(14)</sup> If the company made a loss, the remuneration would not be paid. In the event of a loss or if the profit was not sufficient, the variable remuneration was to be paid the following year.

<sup>(15)</sup> Furthermore, according to the documents submitted by Germany, Biria GmbH employed a staff of 13 in 1999 and 21 in 2000.

<sup>(16)</sup> As the terms and conditions of the silent participation were fixed at the time it was provided, the financial status of the issuer of the comfort letter should be assessed as it was at the time that the letter was issued, even though the letter covered the entire duration of the participation.

<sup>(17)</sup> Profit transfers from Sachsen Zweirad GmbH amounted to about DEM 2,4 million in 1999 and DEM 3,4 million in 2000.

### 6.3. Measures 2 and 3: Aid ostensibly within the scope of approved aid schemes

*The guarantees fell outside the scope of the existing aid schemes*

- (101) The guarantee given on a working capital loan to Sachsen Zweirad GmbH amounting to EUR 5,6 million (measure 2) and the guarantee given on a working capital loan to Biria amounting to EUR 24,875 million (measure 3) were granted on the basis of the loan guarantee scheme of the Land of Saxony<sup>(18)</sup>. This is an approved aid scheme that allows guarantees to be given on loans of more than DEM 5 million (EUR 2,6 million) to healthy companies for the financing of new investment, and in special cases for supplementary financing of investment and working capital. In exceptional cases the scheme also allows the financing of reorganisation and restructuring. But any guarantees given to a large undertaking for purposes of restructuring must be notified to the Commission individually.
- (102) According to Germany, the conditions of the scheme were fulfilled, so that the guarantees were granted in accordance with the scheme. Germany considers that at the time the guarantees were granted Sachsen Zweirad GmbH and Biria were not in difficulty. The guarantees were provided to secure working capital loans, and this was permissible under the scheme.
- (103) The Commission does not agree that the guarantees were in accordance with the aid scheme on the basis of which they were ostensibly granted. As will be explained in more detail below, the Commission, contrary to the German view, considers that when Sachsen Zweirad GmbH was given a guarantee in March 2003 it was a firm in difficulty, and that when Biria GmbH was given a guarantee in December 2003 it too was a firm in difficulty. A guarantee given to a firm in difficulty for purposes of restructuring is notifiable individually.

*Guarantee for Sachsen Zweirad GmbH (measure 2)*

- (104) Germany argues that Sachsen Zweirad GmbH did not display any of the usual signs of a firm in difficulty listed in the Rescue and Restructuring Guidelines 1999. The Commission points out that the usual signs of a firm being in difficulty set out in point 6 of the Rescue and Restructuring Guidelines 1999 are intended only to give an indication of when a company can be considered to be in difficulty, and need not all be present at the same time. Sachsen Zweirad GmbH made a loss of EUR 1 274 000 on its ordinary operations in 2001, and a loss of EUR 733 000 in 2002. The losses were taken over by the parent company, Biria, under an existing contract for the transfer of annual profits and losses (*Ergebnisabführungsvertrag*). Turnover decreased in 2002 from what it had been in 2001, as did cash flow.
- (105) According to the annual report for 2002, Sachsen Zweirad GmbH also faced liquidity problems. It is

explicitly stated in the annual report that Sachsen Zweirad GmbH's liquidity position was tight, owing to heavy expenditure for the advance financing of the inventory and the growth of the group. According to the annual report, the survival of the company could be ensured only if the banks agreed to maintain the existing lines of credit or to restructure them.

- (106) Germany argues that there was never any danger that the banks would not prolong their credit lines. The Commission points out that this does not invalidate the statement that the company's liquidity situation was tight. According to the annual report the bulk of the credit had a remaining duration of less than 5 years, which is a suboptimal form of financing for a business, and increases the company's risk. The short-term nature of the credit also led to high interest payments (although the payments fell slightly in 2002 compared to 2001), and this put a further burden on the company's liquidity position.
- (107) The Commission concludes that at the time the guarantee was granted Sachsen Zweirad GmbH was a firm in difficulty, and that the guarantee consequently has to be considered a guarantee for restructuring. The granting of such a guarantee for a large undertaking has to be notified to the Commission individually, so that the conditions of the approved aid scheme on the basis of which the guarantee was ostensibly granted were not fulfilled, and the guarantee was outside the scope of the scheme.

*Guarantee for Biria GmbH (measure 3)*

- (108) Biria was created with effect from 1 October 2003 by the merger of the old Biria AG into its subsidiary Sachsen Zweirad GmbH.
- (109) According to Germany Biria must be clearly distinguished from the old Biria AG and from Sachsen Zweirad GmbH, as the merger created a new company. The question whether this company was in difficulty at the time the guarantee was granted, on 9 December 2004, should therefore be assessed by reference to the balance sheet of the new merged company. According to Germany, this balance sheet demonstrates that Biria GmbH could not be regarded as a firm in difficulty.
- (110) The Commission does not accept this reasoning. It considers that the new merged Biria GmbH cannot be seen in isolation from the old Biria AG and Sachsen Zweirad GmbH, because it is was created by merging the two companies. Otherwise it would be easy to circumvent the definition of a firm in difficulty by merging entities or setting up new ones. The old Biria AG suffered losses and liquidity problems in 2002, as did Sachsen Zweirad GmbH. Biria GmbH inherited all the debts and liabilities of the old Biria AG and of Sachsen Zweirad GmbH. Biria GmbH owned the same assets and

<sup>(18)</sup> See footnote 10.

carried on the same business as the old Biria AG and Sachsen Zweirad GmbH. The Commission therefore considers that Biria GmbH inherited the difficulties of the old Biria AG and Sachsen Zweirad GmbH.

- (111) Germany claims that Sachsen Zweirad GmbH dominated in the merger. According to Germany, Sachsen Zweirad GmbH was not in difficulty, so that it cannot automatically be assumed that the new Biria GmbH was in difficulty. Contrary to the German view, however, the Commission considers that Sachsen Zweirad GmbH was indeed a firm in difficulty. Consequently, the new Biria GmbH also inherited the difficulties of Sachsen Zweirad GmbH.
- (112) According to its annual report for 2003, the Biria group continued its restructuring and reorganisation process that year. This process had started in 2002, and included a reorganisation of the group's financing. On the basis of the guarantee given by the *Land* of Saxony on the EUR 24,875 million loan, the Biria group drew up a new plan for the financing of its business in the medium term. The new financing plan provided for a significant adjustment of the interest rates it was paying, and thus a reduction of its heavy interest burden.
- (113) At the same time the pool of banks was reorganised: three banks agreed to waive claims amounting to EUR 8 567 000, which seems to have represented significantly more than 50 % of their total claims, in return for immediate redemption of their remaining claims. Consequently, the loan covered by the 80 % guarantee that constitutes measure 3 consists of EUR 8 million to repay working capital loans, a EUR 7,45 million overdraft facility, and EUR 9,425 million for seasonal financing needs.
- (114) At the time the guarantee was given, therefore, Biria faced liquidity problems, and was thus a firm in difficulty. This assessment is supported by the fact that three banks withdrew from financing Biria's activities and indeed agreed to waive a large part of their claims in return for the immediate redemption of the remaining claims. This shows that the banks seriously doubted whether Biria would be able to service its debts, and thus whether it was a viable company.
- (115) Germany argues that the banks withdrew only because of a reorientation of their business strategy. The Commission points out that the banks agreed to waive probably around 50 % of their claims. Even if the banks withdrew as a result of a reorientation of their strategy, this waiver is a sign that they felt that it was very unlikely that they would be able to recover the full amount of the loans.
- (116) The Commission concludes that at the time the guarantee was given Biria was a firm in difficulty, and that the guarantee consequently has to be considered a guarantee for restructuring. The granting of such guarantees for large undertakings has to be notified to

the Commission individually, and at the time the guarantee was given Biria was a large undertaking, so that the conditions of the approved aid scheme on the basis of which the guarantee was ostensibly granted were not fulfilled, and the guarantee was outside the scope of the scheme.

*Advantage conferred by the guarantees*

- (117) The guarantees in measures 2 and 3 were granted by the *Land* of Saxony; they were consequently provided from State resources and are imputable to the State.
- (118) A State aid measure must confer an advantage on the recipient. The Commission considers that the two guarantees conferred an undue advantage on Sachsen Zweirad GmbH and Biria GmbH (later Biria AG).
- (119) For the reasons set out in the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (hereinafter 'the Guarantees Notice'), points 2.2 and 3.2 <sup>(19)</sup>, a borrower who does not pay a market price for a guarantee obtains an advantage. In some cases, a firm in financial difficulty would not find a financial institution prepared to lend to it without a State guarantee.
- (120) In the case at issue loans to a firm in difficulty were guaranteed, and the guarantor — the State — did not receive a premium on commercial terms.
- (121) In point 3.2 of the Guarantees Notice, the Commission sets out four tests which together are sufficient to rule out the possibility that a guarantee may comprise State aid:
1. the borrower is not in financial difficulty;
  2. the extent of the guarantee can be properly measured when it is granted;
  3. the guarantee does not cover more than 80 % of the outstanding loan;
  4. a market-oriented price is paid for the guarantee.
- (122) The Commission has applied these tests to the case at hand, and finds, first of all, that at the time the guarantee was given Sachsen Zweirad GmbH and Biria were in financial difficulty.
- (123) No premiums were charged for the guarantees, and they were granted on loans to a firm in difficulty. The mere fact that no ordinary commercial fee was paid for the guarantees indicates that the measures conferred an advantage on Sachsen Zweirad GmbH and Biria. On the commercial banking market guarantees cannot be obtained without a commercial premium. This is all the more true in the case of guarantees given to firms in difficulty, who may not be able to repay.

<sup>(19)</sup> OJ C 155, 20.6.2008, p. 10.

(124) Following the reasoning set out in the Guarantees Notice, therefore, the guarantees constitute State aid.

(125) The Commission concludes that the guarantees conferred an advantage on Sachsen Zweirad GmbH and Biria GmbH (later Biria AG) because neither of them would have been able to obtain a guarantee on the same terms on the market.

#### *Distortion of competition and effect on trade*

(126) For the reasons referred to in recital 100, measures 2 and 3 are liable to distort competition and affect trade.

#### **6.4. Conclusions on the presence of State aid**

(127) The Commission concludes that the silent participation and the two guarantees constitute State aid within the meaning of Article 107(1) TFEU, and that the guarantees were not granted in accordance with an approved aid scheme. Measures 1, 2 and 3 thus constitute new aid, which has to be assessed accordingly.

#### **6.5. Calculation of the aid component**

(128) Point 4.1 of the Guarantees Notice states that 'Where an individual guarantee or a guarantee scheme does not comply with the market economy investor principle, it is deemed to entail State aid. The State aid element therefore needs to be quantified in order to check whether the aid may be found compatible under a specific State aid exemption.' Before considering whether the aid is compatible, therefore, the Commission needs to quantify the aid element.

(129) The Commission has laid down general principles for calculating the aid element in a guarantee in the Guarantees Notice.

(130) The Commission takes the view that the aid component in a State guarantee may in principle amount to the whole value of the underlying loan, if the recipient is unable to access financial markets by itself (Guarantees Notice, points 2.2 and 4.1(a)).

(131) The rules for calculating the aid component are set out in the Guarantees Notice in points 4.1 (General), 4.2 (Aid element in individual guarantees) and 4.4 (Aid element in guarantee schemes). In what follows the Commission will apply these rules to the case at hand.

(132) Point 4.2 of the Guarantees Notice states that in the absence of a comparable market premium, a comparison should be made between the all-in financing costs of a

loan on the market with and without guarantee (i.e. the interest rate for a similar loan without guarantee should be compared to the total of the interest rate and the guarantee premium for the loan with the guarantee).

(133) In many cases, such a market interest rate is not available. In its notices on the method for setting the reference and discount rates, therefore, the Commission has developed a methodology which, for the reasons set out in point 4.2 of the Guarantees Notice, can be used as a proxy for the market interest rate.

(134) Under the Reference Rates Notice 1997 the Commission sets reference rates which are intended to reflect the average level of interest rates charged in the market on medium- and long-term loans backed by normal security. The Reference Rates Notice 1997 also points out that the reference rate thus determined is a floor rate which may be increased in situations involving a particular risk (for example, in the case of an undertaking in difficulty, or where the security normally required by banks is not provided). In such cases, the premium may amount to 400 basis points or more. The Reference Rates Notice 1997 does not explain whether risk premiums for different risks can be added together. Combination of this kind is not ruled out, but in its decision the Commission must justify the method used to combine different risk premiums by referring to an analysis of the practice of the financial markets <sup>(20)</sup>.

(135) In 2004 the auditors Deloitte & Touche GmbH carried out a study for the Commission's Directorate-General for Competition (hereinafter 'the study') <sup>(21)</sup>. On the basis of empirical research, the study among other things identified risk premiums observable in the market for firms in different categories of risk and for transactions with different collateralisation. The study clearly shows that the combination of different dimensions of risk (such as the creditworthiness of the borrower or the collateral provided) can be reflected in differentiated margins to be added to the base rate.

(136) On the basis of the study, the Commission further refined its approach to the calculation of the aid component in loans in a Communication on the revision of the method for setting the reference and discount rates (2008, hereinafter 'the Reference Rates Communication 2008') <sup>(22)</sup>. The Reference Rates Communication 2008 reflects the approach adopted in the study: it takes a base rate and applies premiums for creditworthiness and collateralisation.

<sup>(20)</sup> See Joined Cases T-102/07 and T-120/07 *Freistaat Sachsen, MB Immobilien Verwaltungs GmbH and MB System GmbH v Commission*, not yet reported, paragraphs 218-222.

<sup>(21)</sup> Deloitte & Touche GmbH Wirtschaftsprüfungsgesellschaft, *Study in relation to the updating of the reference rates of interest applied to State aid control in the EU*, October 2004: [http://ec.europa.eu/competition/state\\_aid/studies\\_reports/full\\_report.pdf](http://ec.europa.eu/competition/state_aid/studies_reports/full_report.pdf)

<sup>(22)</sup> OJ C 14, 19.1.2008, p. 6.



(137) The Commission considers, moreover, that the determination of the aid component in the measures to be assessed is linked to the concept of State aid. The Court of Justice has held that the question whether an aid measure constitutes State aid has to be determined on the basis of objective factors which must be appraised on the date on which the Commission takes its decision <sup>(23)</sup>.

(138) The Commission therefore considers that the appropriate basis for the determination of the aid component is the Reference Rates Communication 2008, and in what follows it will make its assessment in the light of that Communication.

#### *Aid component in measure 1*

(139) The Commission considers that the aid component in the silent participation is the difference between the remuneration that Bike Systems would have had to pay for the participation on the market and the remuneration it actually did pay. Given that Bike Systems was in difficulty at the time the silent participation was provided, and the related risk was high, the aid component may amount to the whole amount of the participation, as it may be that no market economy investor would ever have provided it <sup>(24)</sup>.

(140) The Commission takes the view that such a silent participation is not a loan, but that it is nevertheless comparable to a loan with a high risk, because in the event of insolvency it is subordinated to all other claims, including subordinated loans.

(141) As explained in recital 92, the Commission takes the view that the situation of Bike Systems, which had just emerged from insolvency proceedings, had to be considered weak. Its future prospects were uncertain, as there had been only limited restructuring of its operations. As pointed out in recital 92, therefore, the company had to be regarded as a firm in difficulty. Moreover, no collateral was provided for the silent participation, which increased the risk of default. The Commission consequently takes the view that the guarantee has to be considered a transaction with 'low' collateralisation within the meaning of the Reference Rates Communication 2008. Not only is there a lack of collateral, but in the event of insolvency the participation is also subordinated to all other loans, which increases the risk of default even further. The Commission considers that this has to be treated as a risk factor additional to the absence of collateral: low collateralisation increases the risk that if the borrower becomes insolvent it will not be possible to satisfy the creditor's claim direct by realising the security, but the low rank of the claim means that in the event of insolvency the creditor will be able to obtain satisfaction only after other creditors, and hence will probably recover nothing at all.

(142) The Commission considers that since at the time the measure was taken Bike Systems was in difficulty, it must be classified in the credit category 'bad'. The Reference Rates Communication 2008 stipulates that for companies in this category with low collateral, the margin that would rule out the presence of State aid may be as high as 1 000 basis points. Taking into account the absence of collateral and the low ranking of the silent participation, the Commission considers a premium of 1 000 basis points justified.

(143) The aid component in the silent participation is thus the difference between the reference interest rate plus 1 000 basis points and the remuneration paid on the participation.

(144) Moreover, the Commission considers that for the calculation of the aid component the variable remuneration of 3,5 % can be taken into account only partially, as it was dependent on profits. The company's situation was weak, and the prospects of profit were unclear. The Commission considers that account should be taken of only half of the variable remuneration, or 1,75 %. For purposes of the calculation of the aid component, therefore, the remuneration to be taken into consideration should be the fixed remuneration of 8,75 % plus half of the variable remuneration of 3,5 %, giving a total remuneration of 10,5 %. The aid component is consequently the difference between the reference interest rate plus 1 000 basis points and a remuneration of 10,5 %.

#### *Aid components in measures 2 and 3*

(145) The guarantees under measures 2 and 3 enabled Sachsen Zweirad GmbH and Biria GmbH to obtain financial terms for loans that were better than those normally available on the financial markets. The Commission considers that the aid component in the guarantees under measures 2 and 3 is the difference between the interest rate that Sachsen Zweirad GmbH and Biria GmbH would have had to pay for a loan on market terms, i.e. without a guarantee, and the interest rate at which the guaranteed loan was actually provided. This difference can be deemed to correspond to the premium that a market economy guarantor would have asked for these guarantees. As Sachsen Zweirad GmbH and Biria GmbH were in difficulty at the time the guarantees were given and the loans were granted, the aid component may even amount to the whole of the guarantee, as it may be that without the guarantee no lender would have granted the loan <sup>(25)</sup>.

(146) Moreover, the Commission considers that the loan and the guarantee to Sachsen Zweirad GmbH involved an additional risk, as the collateral provided was particularly low. The guarantee on the loan to Sachsen Zweirad GmbH was secured only by a directly enforceable guarantee (*selbstschuldnerische Bürgschaft*) given by the

<sup>(23)</sup> See Joined Cases C-341/06 P and C-342/06 P *Chronopost SA and La Poste v Union française de l'express (UFEX) and Others* [2008] ECR I-4777, paragraph 95.

<sup>(24)</sup> For similar reasoning see the Guarantees Notice.

<sup>(25)</sup> See footnote 24.

companies in the group. The economic value of such guarantees is very low. The Commission consequently takes the view that the guarantee has to be considered a transaction with 'low' collateralisation within the meaning of the Reference Rates Communication 2008.

- (147) The security provided for the loan and guarantee to Biria GmbH was of a higher economic value than that for the guarantee to Sachsen Zweirad GmbH. Nevertheless, the security was still lower than normally required. The guarantee to Biria GmbH was secured by a first-rank mortgage on property belonging to Bike Systems worth EUR 15 million. But this mortgage was subordinate to another loan of EUR 2 million. The first-rank mortgage was consequently equal to only just above 50 % of the total amount of the loan. However, there is no indication of what would be a proper liquidation value for the mortgage. There was further collateral, in the form of mortgages, the abandonment of claims, the transfer of ownership of materials in the possession of the group companies, and a directly enforceable guarantee given by the owner of Biria GmbH: this collateral was of low economic value. The Commission considers that, despite the collateral offered, the guarantee has to be considered a transaction with 'low' collateralisation within the meaning of the Reference Rates Communication 2008.
- (148) As explained above, at the time the guarantees were given Biria GmbH and Sachsen Zweirad GmbH were in difficulty, so that they had to be classified in the credit category 'bad'. The Reference Rates Communication 2008 stipulates that for firms in this rating category with low collateral the premium that would rule out the presence of State aid may be as high as 1 000 basis points. Taking into account the low collateral, the Commission considers that in the case of Sachsen Zweirad GmbH a premium of 800 basis points is justified. Biria GmbH provided slightly better collateral. Here a premium of 700 basis points is appropriate. The premium in both cases is lower than that for the silent participation as a result of the participation's low ranking.
- (149) The aid component in the guarantee for Sachsen Zweirad GmbH (measure 2) is the difference between the reference interest rate plus 800 basis points and the total financing cost of the guaranteed loan (the interest rate at which the guaranteed loan was provided plus any premiums paid for the guarantee).
- (150) In the same way, the aid component in the guarantee for Biria GmbH (measure 3) is the difference between the reference interest rate plus 700 basis points and the total financing cost of the guaranteed loan (the interest rate at which the guaranteed loan was provided plus any premiums paid for the guarantee).

#### 6.6. Exemptions in Article 107(2) and (3) TFEU

- (151) Paragraphs 2 and 3 of Article 107 TFEU provide for exemptions from the general prohibition of State aid imposed by paragraph 1.

(152) The exemptions in Article 107(2) TFEU do not apply in the present case: the aid is not aid of a social character granted to individual consumers, nor aid to make good the damage caused by natural disasters or exceptional occurrences, nor aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany.

(153) The exemptions provided for in Article 107(3)(b) and (d) do not apply either. They refer to aid to promote the execution of an important project of common European interest, and aid to promote culture and heritage conservation.

(154) There remain the exemptions provided for in Articles 107(3)(a) and 107(3)(c) TFEU and the Community guidelines based on those provisions.

#### Measure 1

- (155) The Commission notes, first of all, that Bike Systems was located in an area that qualified for regional aid under Article 107(3)(a) TFEU. When the Commission initiated the formal investigation it expressed doubts on this point, but despite this Germany has not produced any information to show that the measure satisfies the requirements for the granting of regional aid laid down in the Guidelines on national regional aid <sup>(26)</sup>.
- (156) There are other exceptions in other Community guidelines. As the aid was granted in March 2001, the Rescue and Restructuring Guidelines 1999 apply. The Commission does not possess any information that might show that the aid can be considered compatible with the TFEU on the basis of those Guidelines. Under the Rescue and Restructuring Guidelines 1999, restructuring aid can be granted only if there is a sound restructuring plan, any undue distortion of competition is avoided, and the aid is limited to the minimum. When it initiated the formal investigation the Commission expressed doubts on this point, but despite this Germany has not produced any information to show that the requirements are satisfied. The Commission concludes that the requirements of the Rescue and Restructuring Guidelines 1999 are not satisfied.
- (157) The measure under consideration does not fall within the scope of any of the other guidelines or regulations applying to aid in such areas as research and development, the environment, small and medium-sized enterprises, employment and training, or risk capital. Since the measure does not pursue any objective of common interest, it constitutes operating aid that is incompatible with the TFEU.

<sup>(26)</sup> OJ C 74, 10.3.1998, p. 9.

*Measures 2 and 3*

- (158) Sachsen Zweirad GmbH and Biria GmbH were located in an area assisted under Article 107(3)(a) TFEU. However, the exemptions provided for in Article 107(3)(a) and the regional limb of Article 107(3)(c) are not applicable, as Sachsen Zweirad GmbH and Biria GmbH were in difficulty, and the objective of the aid measures was not the economic development of a certain region.
- (159) The Commission considers that the only provision that the Community guidelines on State aid for rescuing and restructuring firms in difficulty are the only rules that might apply here. As the aid was granted in March 2003, the relevant guidelines are the Rescue and Restructuring Guidelines 1999.
- (160) The grant of aid is there made conditional on the implementation of a restructuring plan, the duration of which must be as short as possible, and which must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. When it initiated the formal investigation the Commission expressed doubts on this point, but despite this Germany has not produced any information to show that the guarantees were given on the basis of a sound restructuring plan that would restore the group to profitability.
- (161) In addition, measures must be taken to mitigate, as far as possible, any adverse effects of the aid on competitors. This usually means limiting the presence of the undertaking in its market or markets after the end of the restructuring period. The Commission does not possess any information regarding the relevant market and the Biria group's share of it. Nor has it any information at its disposal regarding any compensatory measures that might limit the undertaking's presence in the market. Quite the reverse, it would appear that with the takeover of Checker Pig and Bike Systems the Biria group expanded in 2001.
- (162) According to the Rescue and Restructuring Guidelines 1999, the amount of aid must be limited to the strict minimum required to enable restructuring to be undertaken in the light of the existing financial resources of the company and its shareholders. In addition, the recipients of aid must make a substantial contribution to the restructuring costs, from their own resources or by means of external financing at market conditions. As the aid was not given on the basis of a restructuring plan, the Commission has no information regarding a contribution on the part of the recipient or a limitation of the aid to the minimum.
- (163) According to the Rescue and Restructuring Guidelines 1999, restructuring aid should be granted once only. If the firm concerned has already received restructuring aid in the past, and less than 10 years have elapsed since the restructuring period came to an end, the Commission will normally allow further restructuring aid only in exceptional and unforeseeable circumstances.
- (164) Sachsen Zweirad GmbH received restructuring aid on the basis of an approved aid scheme, in the form of a public holding amounting to a total of EUR 1 278 200, in April 1996 and March 1998. Since less than 10 years had elapsed since Sachsen Zweirad GmbH's period of restructuring came to an end, and the Commission is not aware of any exceptional and unforeseeable circumstances, the two guarantees did not satisfy the 'one time, last time' condition.
- (165) The Commission concludes that the requirements of the Rescue and Restructuring Guidelines 1999 are not satisfied.
- (166) The Commission further takes the view that measures 2 and 3 do not fall within the scope of any of the other Community guidelines or regulations applying to aid in such areas as research and development, the environment, small and medium-sized enterprises, employment and training, or risk capital. Since the measure does not pursue any objective of common interest, it constitutes operating aid that is incompatible with the TFEU.

**VII. CONCLUSION**

- (167) The Commission concludes that gbb's participation in Bike Systems, amounting to EUR 1 070 732, the 80 % guarantee given on a loan of EUR 5,6 million to Sachsen Zweirad GmbH, and the 80 % guarantee given on a loan of EUR 24 875 000 to Biria GmbH (later Biria AG) constitute State aid, and do not satisfy the tests of compatibility with the internal market.
- (168) Under Article 14(1) of Regulation (EC) No 659/1999, the Commission has a fundamental obligation to order the recovery of this incompatible aid from the beneficiary,

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid granted by Germany to Bike Systems GmbH & Co. Thüringer Zweiradwerk KG (now MB System), Sachsen Zweirad GmbH, and Biria GmbH (later Biria AG, now MB Immobilien) is incompatible with the internal market. The aid consists of the following measures:

- (a) measure 1: a silent participation (*stille Einlage*) amounting to EUR 2 070 732 contributed to Bike Systems GmbH & Co. Thüringer Zweiradwerk KG (now MB System); the aid component is the difference between the reference interest rate plus 1 000 basis points and the remuneration to be paid on the participation (the fixed remuneration plus 50 % of the variable remuneration);

- (b) measure 2: a guarantee of EUR 4 480 000 given for Sachsen Zweirad GmbH (later Biria AG, now MB Immobilien); the aid component is the difference between the reference interest rate plus 800 basis points and the total financing cost of the guaranteed loan (the interest rate at which the guaranteed loan was provided plus any premiums paid for the guarantee);
- (c) measure 3: a guarantee of EUR 19 900 000 given to Biria GmbH (later Biria AG, now MB Immobilien); the aid component is the difference between the reference interest rate plus 700 basis points and the total financing cost of the guaranteed loan (the interest rate at which the guaranteed loan was provided plus any premiums paid for the guarantee).

#### Article 2

1. Germany shall recover the aid referred to in Article 1 from the recipient.
2. Recovery shall be effected without delay and in accordance with the procedures of national law, provided these allow the immediate and effective enforcement of this Decision.
3. The sums to be recovered shall bear interest from the date on which the aid was placed at the disposal of the recipient until their actual recovery.
4. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 <sup>(27)</sup>.
5. With effect from the date of notification of this Decision, Germany shall cancel all outstanding payments of the aid referred to in Article 1.

#### Article 3

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

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

#### Article 4

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

- (a) the total amount (principal and interest) to be recovered from the recipient;
- (b) a detailed description of the measures already taken or planned to comply with this Decision;
- (c) documentary evidence that the recipient has been ordered to repay the aid.

2. Germany shall keep the Commission informed of the progress of the national measures taken to implement this Decision until the recovery of the aid referred to in Article 1 has been completed. Upon request by the Commission, Germany shall immediately submit information on the measures already taken or planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and interest already recovered from the recipient.

#### Article 5

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 14 December 2010.

*For the Commission*

Joaquín ALMUNIA

*Vice-President*

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<sup>(27)</sup> OJ L 140, 30.4.2004, p. 1.



**COUNCIL DECISION****of 19 July 2011****on the launch of automated data exchange with regard to DNA data in Portugal**

(2011/472/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime <sup>(1)</sup>, in particular Article 2(3) and Article 25 thereof,

Having regard to Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA <sup>(2)</sup>, in particular Article 20 and Chapter 4 of the Annex thereto,

Whereas:

(1) According to the Protocol on Transitional Provisions annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community, the legal effects of the acts of the institutions, bodies, offices and agencies of the Union adopted prior to the entry into force of the Treaty of Lisbon are preserved until those acts are repealed, annulled or amended in implementation of the Treaties.

(2) Accordingly, Article 25 of Decision 2008/615/JHA is applicable and the Council must unanimously decide whether the Member States have implemented the provisions of Chapter 6 of that Decision.

(3) Article 20 of Decision 2008/616/JHA provides that decisions referred to in Article 25(2) of Decision 2008/615/JHA are to be taken on the basis of an evaluation report based on a questionnaire. With respect to automated data exchange in accordance with Chapter 2 of Decision 2008/615/JHA, the evaluation report is to be based on an evaluation visit and a pilot run.

(4) Portugal has informed the General Secretariat of the Council of the national DNA analysis files to which Articles 2 to 6 of Decision 2008/615/JHA apply and the conditions for automated searching as referred to in Article 3(1) of that Decision in accordance with Article 36(2) of that Decision.

(5) According to Chapter 4, point 1.1, of the Annex to Decision 2008/616/JHA, the questionnaire drawn up by the relevant Council Working Group concerns each of the automated data exchanges and has to be answered by a Member State as soon as it believes it fulfils the prerequisites for sharing data in the relevant data category.

(6) Portugal has completed the questionnaire on data protection and the questionnaire on DNA data exchange.

(7) A successful pilot run has been carried out by Portugal with Germany.

(8) An evaluation visit has taken place in Portugal and a report on the evaluation visit has been produced by the German evaluation team and forwarded to the relevant Council Working Group.

(9) An overall evaluation report, summarising the results of the questionnaire, the evaluation visit and the pilot run concerning DNA data exchange has been presented to the Council,

HAS ADOPTED THIS DECISION:

*Article 1*

For the purposes of automated searching and comparison of DNA data, Portugal has fully implemented the general provisions on data protection of Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from the date of the entry into force of this Decision.

*Article 2*

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

Done at Brussels, 19 July 2011.

*For the Council*  
*The President*  
M. SAWICKI

<sup>(1)</sup> OJ L 210, 6.8.2008, p. 1.

<sup>(2)</sup> OJ L 210, 6.8.2008, p. 12.

**COUNCIL DECISION 2011/473/CFSP****of 25 July 2011****amending Decision 2010/279/CFSP on the European Union Police Mission in Afghanistan  
(EUPOL AFGHANISTAN)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and, in particular Article 28 and Article 43(2) thereof,

Whereas:

(1) On 30 May 2007 the Council adopted Joint Action 2007/369/CFSP <sup>(1)</sup> establishing the European Union Police Mission in Afghanistan (EUPOL AFGHANISTAN).

(2) On 18 May 2010 the Council adopted Decision 2010/279/CFSP <sup>(2)</sup> that extended EUPOL AFGHANISTAN until 31 May 2013. Pursuant to Decision 2011/298/CSFP amending Decision 2010/279/CSFP <sup>(3)</sup>, the financial reference amount of EUR 54 600 000 covers the period until 31 July 2011.

(3) Article 13(2) of Decision 2010/279/CFSP provides that the financial reference amount for the subsequent periods shall be decided by the Council.

(4) Decision 2010/279/CFSP should therefore be amended to include a financial reference amount for the period from 1 August 2011 to 31 July 2012,

HAS ADOPTED THIS DECISION:

*Article 1*

The following subparagraph is hereby added to Article 13(1) of Decision 2010/279/CFSP:

'The financial reference amount intended to cover the expenditure related to EUPOL AFGHANISTAN for the period from 1 August 2011 to 31 July 2012 shall be EUR 60 500 000.'

*Article 2*

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

Done at Brussels, 25 July 2011.

*For the Council*

*The President*

M. DOWGIELEWICZ

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<sup>(1)</sup> OJ L 139, 31.5.2007, p. 33.

<sup>(2)</sup> OJ L 123, 19.5.2010, p. 4.

<sup>(3)</sup> OJ L 136, 24.5.2011, p. 64.

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