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

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

EN

([1]) Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 895/2013

of 18 September 2013

amending for the 202nd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network, [1] and in particular Article 7(1)(a) and 7a(5) thereof,

Whereas:

(1) Annex I to Regulation (EC) No 881/2002 lists the persons, groups and entities covered by the freezing of funds and economic resources under that Regulation.

(2) On 11 September 2013 the Sanctions Committee of the United Nations Security Council (UNSC) decided to remove one person from its list of persons, groups and entities to whom the freezing of funds and economic resources should apply.

(3) Annex I to Regulation (EC) No 881/2002 should therefore be updated accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 881/2002 is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 18 September 2013.

For the Commission,
On behalf of the President,
Head of the Service for Foreign Policy Instruments

[1] OJ L 139, 29.5.2002, p. 9.

ANNEX

Annex I to Regulation (EC) No 881/2002 is amended as follows:

The following entry under the heading 'Natural persons' is deleted:

'Mufti Rashid Ahmad **Ladehyanoy** (*alias* (a) Ludhianvi, Mufti Rashid Ahmad, (b) Ahmad, Mufti Rasheed, (c) Wadehyanoy, Mufti Rashid Ahmad). Nationality: Pakistani. Other information: (a) Founder of Al-Rashid Trust; (b) Reportedly deceased in Pakistan on 18 Feb. 2002. Date of designation referred to in Article 2a (4) (b): 17.10.2001.'

COMMISSION IMPLEMENTING REGULATION (EU) No 896/2013

of 18 September 2013

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

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 18 September 2013.

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

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 157, 15.6.2011, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	MK	59,4
	XS	46,1
	ZZ	52,8
0707 00 05	MK	53,8
	TR	121,6
	ZZ	87,7
0709 93 10	TR	132,6
	ZZ	132,6
0805 50 10	AR	108,8
	CL	148,5
	IL	110,5
	TR	117,7
	UY	99,8
	ZA	118,3
	ZZ	117,3
0806 10 10	EG	188,1
	TR	147,0
	ZZ	167,6
0808 10 80	AR	100,9
	BA	65,7
	BR	41,7
	CL	114,6
	CN	66,9
	NZ	150,8
	US	140,8
	ZA	119,4
	ZZ	100,1
0808 30 90	AR	231,4
	CL	29,5
	CN	82,5
	TR	131,5
	ZZ	118,7
0809 30	TR	125,5
	ZZ	125,5
0809 40 05	BA	47,2
	XS	46,6
	ZZ	46,9

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

DECISIONS

COUNCIL DECISION

of 16 September 2013

appointing a Swedish member of the European Economic and Social Committee

(2013/459/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 302 thereof,

Having regard to the proposal of the Swedish Government,

Having regard to the opinion of the European Commission,

Whereas:

(1) On 13 September 2010 the Council adopted Decision 2010/570/EU, Euratom appointing the members of the European Economic and Social Committee for the period from 21 September 2010 to 20 September 2015 ([1]).

(2) A member's seat on the European Economic and Social Committee has become vacant following the end of the term of office of Ms Annika BRÖMS,

HAS ADOPTED THIS DECISION:

Article 1

Mr Jonas BERGGREN, *Head of the Brussels office of the Confederation of Swedish Enterprise*, is hereby appointed as a member of the European Economic and Social Committee for the remainder of the current term of office, which runs until 20 September 2015.

Article 2

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

Done at Brussels, 16 September 2013.

For the Council
The President
L. LINKEVIČIUS

([1]) OJ L 251, 25.9.2010, p. 8.

COMMISSION IMPLEMENTING DECISION

of 17 September 2013

refusing to grant a derogation from Council Decision 2001/822/EC, as regards the rules of origin for sugar from Curaçao

(notified under document C(2013) 5826)

(2013/460/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community ('Overseas Association Decision') [1], and in particular Article 37 of Annex III thereto,

Whereas:

THE RULES OF ORIGIN SET OUT IN ANNEX III TO DECISION 2001/822/EC

(1) Annex III to Decision 2001/822/EC concerns the definition of the concept of 'originating products' and methods of administrative cooperation. Article 37 thereto provides that derogations from those rules of origin may be adopted where justified by the development of existing industries or the creation of new industries in a country or territory.

(2) Points (g), (j), (k) and (o) of paragraph 1 of Article 5 of Annex III to Decision 2001/822/EC provide that partial or total milling of sugar, sifting and placing in bags are considered to be operations that are insufficient to confer the status of originating products.

(3) Paragraph 4 of Article 6 of Annex III to Decision 2001/822/EC provides that ACP/EC-OCTs cumulation for all sugar products classified within HS Chapter 17 is phased out over time and reduces the quantities for which such cumulation is allowed progressively. By setting the quantity at zero tonnes, the phasing out finally led to the prohibition of such cumulation as of 1 January 2011.

PREVIOUS DEROGATIONS GRANTED TO THE NETHERLANDS ANTILLES FOR SUGAR PRODUCTS

(4) In 2002 the Netherlands requested a derogation from the rule of origin in respect of sugar products falling within CN codes 1701 11 90, 1701 99 10 and 1701 91 00 processed in the Netherlands Antilles for an annual quantity of 3 000 tonnes. That request was granted and the derogation ended on 31 December 2007.

(5) In 2009 the Netherlands submitted a request for extension of the derogation granted in 2002, which request was rejected by Commission Decision 2009/699/EC [2]. That Decision however granted a new request for derogation included in the request for extension, within the limits of the quantities for which import licences for sugar were allocated to the Netherlands Antilles in 2009 and in 2010.

(6) In 2010, the Netherlands requested a new derogation in respect of sugar products processed in the Netherlands Antilles for the period from 2011 to 2013. By Commission Decision 2011/47/EU [3] the derogation was granted in accordance with paragraphs 1, 3 and 7 of Article 37 of Annex III to Decision 2001/822/EC and under certain conditions which aimed to balance the legitimate interests of the Overseas Countries and Territories (OCTs) operators with the objectives of the Union's common market organisation for sugar. The products for which derogation was granted were subject to actual processing activities in the Netherlands Antilles and the value added to the raw sugar in the Netherlands Antilles was considered to be at least 45 % of the value of the finished product.

(7) Decision 2011/47/EU explained that the phasing out of the ACP/EC-OCTs cumulation of origin with regard to sugar, as provided for in paragraph 4 of Article 6 of Annex III to Decision 2001/822/EC, showed that it was the Union's intention to focus trade preferences on economic activity that contributes sustainably to OCTs development while taking due account of the Union's sugar sector. That principle was applied for the purpose of determining the quantities for which the derogation was granted by Decision 2011/47/EU. The request submitted in 2010 also indicated that the company in Curaçao benefiting from the previous derogations aimed to diversify away from sugar production requiring further derogation. Therefore the amounts for derogation were phased out over time (5 000 tonnes for 2011, 3 000 tonnes for 2012 and 1 500 tonnes for 2013).

(8) In the request submitted in 2010, the Netherlands highlighted that the company in Curaçao, benefiting from the previous derogations, aimed to diversify into producing mixtures and 'bio-sugar' which both address distinctly different markets than the sugar products covered by the request submitted in 2010. The derogation requested in 2010 was needed to earn the necessary

[1] OJ L 314, 30.11.2001, p. 1.

[2] OJ L 239, 10.9.2009, p. 55.

[3] OJ L 21, 25.1.2011, p. 3.

capital for the investments required for such diversification. Consequently, when granting the derogation by Decision 2011/47/EU, it was expected that the derogation would generate the required turnover to finance the said investments in diversification of products and activities, so that the company benefiting from the derogation would no longer be required to request derogations.

THE FIRST REQUEST SUBMITTED IN 2013 FOR DEROGATION FOR SUGAR PRODUCTS

(9) On 11 February 2013 the Netherlands requested on behalf of the government of Curaçao a new derogation from the rules of origin set out in Annex III to Decision 2001/822/EC for the period from 1 January to 31 December 2013, the date of expiry of Decision 2001/822/EC. The request covered a total annual quantity of 5 500 tonnes of sugar products of CN code 1701 14 90, described as 'bio-sugar', originating in third countries and processed in Curaçao for export to the Union.

(10) This request was officially withdrawn by the Netherlands on 17 April 2013 because the processing activities described in the request were no longer carried out in the Netherlands Antilles. The company in Curaçao had moved part of its sugar processing activities, in particular the production of sugar lumps manufactured from raw cane sugar, packed for retail sale, to Belgium from where it currently supplies supermarkets in the Netherlands. It has reoriented its remaining production line towards sifting, cleaning, milling and simple mixing of organic sugar and packing it into 1 000 kg bags for transport.

THE SECOND REQUEST SUBMITTED 2013 FOR DEROGATION FOR SUGAR PRODUCTS

(11) On 17 April 2013, the Netherlands submitted a second request for derogation for 5 000 tonnes of sugar products, described as organic raw cane sugar of CN code 1701 14 90, for the period from 1 January to 31 December 2013. The Netherlands explained that it had appeared from discussions with the authorities of Curaçao that the quantities for which derogation was granted for 2013 by Decision 2011/47/EU would be insufficient to continue the activities of the company carrying out the sugar processing in Curaçao.

(12) The second request was mainly motivated by a change of circumstances in the company involved, because the company had changed its business activity towards the processing of organic cane sugar, a change on the world sugar market, since the EU has become a net importer of sugar, the fact that the value added to the third country raw materials was more than 45 % of the ex-works price of the final product, and the creation of direct and indirect employment in Curaçao. On 14 and 28 June 2013 the Netherlands provided additional information to support its request of 17 April 2013.

(13) By letter of 16 July 2013, the Commission requested that the Dutch authorities take note of the Commission's assessment of the request and its intention to recommend the refusal of the request. The Commission also requested that the Dutch authorities transmit this assessment to the company potentially concerned by the derogation to allow both the Netherlands and the company concerned to raise any issues of fact or law which might concern the request before the Commission reached its final decision. The deadline for reply was set at 25 July 2013. A reply was received from the Dutch authorities on 24 July 2013.

THE VALUE ADDED TO THE NON-ORIGINATING PRODUCTS USED

(14) Paragraph 7 of Article 37 of Annex III to Decision 2001/822/EC provides that derogations shall be granted where the value added to the non-originating products used in the OCTs concerned is at least 45 % of the value of the finished product, provided that the derogation is not such as to cause serious injury to an economic sector of the Union or of one or more Member States.

(15) The information received from the company in Curaçao, as transmitted by the Netherlands, regarding the calculation of the value generated in Curaçao for the production of 'bio cane sugar' in 2013 indicates the value added by the processing of 5 000 tonnes of 'bio-sugar'. The company also indicated the purchase price for 1 tonne of raw 'bio-sugar' originating in third countries and the ex-works price at which 1 tonne of 'bio-sugar' is sold. According to the company, these figures generate a value added in relation to the ex-works price of 52 %. According to the same information the production of 1 500 tonnes of 'bio-sugar' would generate a value added in relation to the ex-works price of 88 %.

(16) The information received from the company, as transmitted by the Netherlands, with regard to the calculation of the value generated in Curaçao for 'brown crystal sugar' on 1 January 2013, indicates the value added by the working and processing of 5 500 tonnes of 'brown crystal sugar'. Where the highest available value added per tonne for 'brown crystal sugar' is considered as realistic, the value added in relation to the ex-works price amounts to approximately 52,4 %. However, the processing operations carried out on 'bio-sugar' involve less processing than for 'crystal sugar' packed for retail sale. The added value inherent in those operations and

the actual processing costs can therefore only be lower for 'bio-sugar' packed in 1 000 kg bags for transport than for 'brown crystal sugar' packed for retail sale.

(17) According to the 'Global Sugar Outlook — 2013 Report' ([1]) the production cost of cane sugar in Brazil, which is the most competitive region for sugar production in the world, amounts to USD 224,7 per tonne to produce cane and USD 95 per tonne to process the cane into raw sugar. The total costs, including the administrative costs, are USD 367,8 per tonne or, at an exchange rate of EUR 1 = USD 1,3, EUR 283 per tonne raw cane sugar. Taking into account the farming and processing operations involved in the production of raw sugar from cane, it appears unlikely that the costs for merely cleaning, milling and packing of organic cane sugar, which constitutes only a fraction of the production process, would be higher. Considering EUR 283 per tonne as a realistic production costs for the calculation of the value added for cleaning, milling and packing of organic raw cane sugar in the company in Curaçao, the ex-works price amounts to EUR 1 020,19 per tonne and the value added in relation to the ex-works price amounts to merely 32,2 %.

(18) In the simulation of comparable costs in recital 17, the value added would not reach 45 %. It is therefore unrealistic that such a value added could be obtained by the company in Curaçao performing simple processing. Instead, the figures transmitted to the Commission have to be considered to contain other overhead components and gains which do not constitute amounts that contribute to the benefit of the population in Curaçao.

INVESTMENT IN THE EXISTING INDUSTRY IN THE NETHERLANDS ANTILLES TO ENABLE THE RULES OF ORIGIN FOR SUGAR TO BE SATISFIED

(19) According to paragraph 3 point (c) of Article 37 of Annex III to Decision 2001/822/EC, the examination of requests for derogations should take into account the cases where it can be clearly demonstrated that significant investment in an industry would be deterred by the rules of origin and where a derogation favouring the realisation of the investment programme would enable these rules to be satisfied by stages.

(20) The phasing out of the ACP/OCTs-EC cumulation of origin for sugar on 1 January 2011 was known in advance by the company in Curaçao and it had sufficient time to prepare itself and diversify towards the production of products not requiring derogation.

(21) During the period from 2009 to 2013 the company in Curaçao benefitted from derogations helping to generate the necessary turnover to invest in diversification towards the production of products not requiring derogation from the rules of origin. According to the information received from the company, investments were very low in 2009, and no investments at all were made between 2010 and 2012. The derogations therefore only have helped to maintain the current activities of the company in Curaçao without contributing sustainably to the development of an existing industry or the creation of a new one. It is therefore doubtful that a new derogation would encourage the company to make new investments.

(22) In order for sugar mixtures of HS 2106, containing pectin or casein, to be considered as originating from Curaçao to thus benefit from preferential access to the Union, the value of the non-originating sugar used in the manufacture of the final product may not exceed 30 % of the ex-works price of the product. By diversifying towards production of such mixtures, as proposed in the current request, the company would still need to apply for derogation in order to be able to comply with the rules of origin.

ABILITY OF THE EXISTING INDUSTRY IN THE NETHERLANDS ANTILLES TO CONTINUE ITS SUGAR EXPORTS TO THE UNION

(23) According to paragraph 3 point (b) of Article 37 of Annex III to Decision 2001/822/EC, the examination of requests for derogations should take into account the cases where the application of the existing rules of origin would significantly affect the ability of an existing industry in an OCTs to continue its exports to the Union, with particular reference to cases where this could lead to cessation of its activities.

(24) The Commission maintains a balance sheet in order to analyse the sugar market and to see whether sugar stocks are sufficient, whether additional sugar is necessary or whether sugar has to be taken out of the market in order to maintain a price level close to the reference price. That balance sheet continuously shows a quantity of 50 000 to 60 000 tonnes of sugar that is imported at full duty.

(25) For sugar products of CN code 1701 14 90, a customs tariff of EUR 419 per tonne applies in the Union. Considering that the world market price for white sugar, which includes the costs for refining, traded at London Futures Exchange is around EUR 380 per tonne and a customs duty of EUR 419 per tonne applies, the price of this sugar would be at least EUR 800 per tonne when delivered in the Union duties paid. The average price of such sugar products manufactured in the Union as communicated by Member States in accordance with Article 9 of Council Regulation (EC)

([1]) Published in the 'Sugar and HFCS production costs — global benchmarking' review, issued by LMC international.

No 1234/2007 ([1]) is around EUR 725 per tonne. Under such conditions these sugar products are not likely to be imported profitably into the Union unless it is premium sugar such as organic or fair trade sugar, which is sold at a much higher price than other sugar products.

(26) It is therefore likely that a substantial part of imports into the Union at the full customs duty is organic or fair trade sugar, as such sugar can be sold for up to EUR 3 000 per tonne in the retail sector. The volume of imports of organic cane sugar at full duty into the Union show that sugar exporters worldwide are surviving in the current market.

(27) Adding to the purchase price of the raw sugar as communicated by the company, EUR 283 per tonne as a realistic production cost for the calculation of the value added for milling and packing of organic raw cane sugar in the company in Curaçao, the profit margin and shipping costs as communicated by the company and the import duties to be paid in the Union, the company in Curaçao should still be in a position to export 'bio-sugar' to the Union cost-effectively without having to rely on a derogation which will exempt the importer in the Union from payment of the applicable import duties. Moreover, the level of the sales price per tonne of 'bio-sugar' to the buyer in the Netherlands as indicated by the Netherlands' request can be considered to be sufficient to offset the impact of the full customs duty being applied.

(28) As an OCTs operator, the company in Curaçao performing the processing activities on the sugar products is placing itself on the world market and is free to export its products to any part of the world, including the Union. That company may therefore be compared to other operators all over the world undertaking the same activity. In particular, the level of the transport costs from the OCTs to the Union, which according to the information received from the company amounts to EUR 42,59 per tonne, does not put the company in Curaçao in a disadvantageous position when competing with other players on the market because the company is free to sell its products to markets that are closer to its place of operation than the Union.

(29) Exports of sugar, molasses and honey represent only 6 % of the total export of goods from Curaçao, except oil products. Container handling activities related to the import and export of sugar products represent only 2 % of the total container handling activities related to import and export. The contribution of these exports to the development of the territory can only be small at best.

(30) In terms of employment, it is expected that the derogation would create 10 additional jobs which is disproportionally low compared to the requested increase in production volume. In particular, the 10 additional jobs expected to be created is less than the 20 jobs lost since the request in 2010, where the Netherlands indicated that 35 persons worked in the company in Curaçao, and the second request of 2013 stating that 15 persons worked in the company.

CONCLUSION

(31) The impact of a refusal of the new derogation requested on 17 April 2013 would be minimal. A refusal would neither hinder the company in continuing its exports of sugar products to the Union nor would it deter investment in the sugar industry in Curaçao because the profit margin would still be sufficient to facilitate investments, even where the full duty rate is paid in the Union.

(32) As a result, the requested derogation is not justified with regard to paragraph 1, points (b) and (c) of paragraph 3, and paragraph 7 of Article 37 of Annex III to Decision 2001/822/EC.

(33) The measures provided for in this Decision are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS DECISION:

Article 1

The request submitted on 17 April 2013 by the Netherlands, and completed on 14 and 28 June 2013, for derogation from Decision 2001/822/EC, as regards the rules of origin for sugar from Curaçao, is hereby rejected.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 17 September 2013.

For the Commission

Algirdas ŠEMETA

Member of the Commission

([1]) OJ L 299, 16.11.2007, p. 1.

RECOMMENDATIONS

COMMISSION RECOMMENDATION

of 17 September 2013

on the principles governing SOLVIT

(Text with EEA relevance)

(2013/461/EU)

THE EUROPEAN COMMISSION,

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

Whereas:

(1) Article 26 of the TFEU defines the internal market as an area without internal borders in which the free movement of goods, persons, services and capital is ensured. Article 4, paragraph 3 of the TEU requires Member States to take any appropriate steps to comply fully with their obligations in accordance with Union law.

(2) The internal market offers many opportunities to individuals who want to live and work in another Member State and to businesses that wish to expand their markets. While the internal market generally functions well, problems sometimes arise where public authorities do not respect Union law.

(3) Following Commission Recommendation 2001/893/EC of 7 December 2001 on principles for using 'SOLVIT' – the Internal Market Problem Solving Network [1], SOLVIT was created as a network of centres set up by Member States within their own national administrations, as a fast and informal means of resolving problems individuals and businesses encounter when exercising their rights in the internal market.

(4) Whilst SOLVIT is informal and pragmatic in nature, its set-up contributes to ensuring that solutions found are compliant with Union law. SOLVIT is based on a transparent problem-solving process involving two Member States. Whilst the Commission is not normally involved in resolving cases, it is in close contact with SOLVIT centres, offers regular legal training and, in some complex cases, provides informal advice. It also monitors SOLVIT case handling and outcomes via the online database and can intervene whenever it considers that solutions proposed by SOLVIT centres are not compliant with Union law. The aforementioned set-up not only contributes to the legality of outcomes in individual cases, but evaluation results indicate that the work of SOLVIT has also led to an overall improved compliance with Union law by national authorities.

(5) SOLVIT has evolved significantly since its inception. It now handles ten times more cases than it did 10 years ago. It also handles a much wider variety of cases than originally foreseen. The overwhelming majority of cases are resolved successfully, within an average of nine weeks, leading to high satisfaction scores amongst those individuals and businesses that have used SOLVIT.

(6) Whilst SOLVIT is a success, the increased scale of the service has amplified various challenges. An in-depth evaluation of the network carried out over 2010 indicates that not all SOLVIT centres are equally well resourced or positioned. The take-up of cases and the level of service offered also vary across the network. In addition, too few people and businesses find their way to SOLVIT.

(7) Based on those findings, it is necessary to take measures to further reinforce SOLVIT and increase its visibility on and off line, as stressed in the Commission Staff Working Document 'Reinforcing effective problem-solving in the Single Market', in the Communication on Better Governance for the Single Market [2] and in the EU Citizenship Report [3]. As a part of this exercise, Recommendation 2001/893/EC should be replaced by a new one. This new Recommendation aims to provide clarity on what SOLVIT should deliver, based on best practice. It sets out targets and standards for both Member States and the Commission to ensure that businesses and citizens receive effective assistance in those situations where Union law is not being respected. It also aims to guarantee that SOLVIT centres apply the same rules and deliver the same consistent type of service across the network.

[1] OJ L 331, 15.12.2001, p. 79.

[2] COM(2012) 259 final.

[3] COM(2013) 269 final.

(8) In order to ensure a consistent interpretation of the mandate across the network, this Recommendation defines the types of cases that should be handled by SOLVIT. Recommendation 2001/893/EC stated that SOLVIT deals with cases of 'misapplication' of 'single market rules'. Defining the scope in this way has led to inconsistency. First it has been argued that the term misapplication implies that SOLVIT centres cannot deal with cases where national rules run counter to Union law (so called 'structural cases'), and second that SOLVIT can only act where the Union legislation in question has an internal market basis.

(9) SOLVIT cases are now defined as all cross-border problems caused by a potential breach of Union law governing the internal market by a public authority, where and to the extent such problems are not subject to legal proceedings at either national or EU level.

(10) The term 'breach' is used to specify that SOLVIT centres take on as a SOLVIT case all situations where public authorities do not respect Union law governing the internal market, regardless of the root cause of the problem. The overwhelming majority of cases handled by SOLVIT reflect situations wherein a public authority incorrectly applies Union law governing the internal market. However, SOLVIT centres have also shown to be able to offer effective help where structural problems arise. Although structural cases present only a small part of SOLVIT's overall case load, the take-up of such cases by SOLVIT is important to ensure that such problems do not pass unnoticed. It offers the best guarantee that the structural problems are effectively tackled at the appropriate level.

(11) This Recommendation confirms that SOLVIT deals with cases presenting a cross-border problem with a public authority. The cross-border criterion ensures that a SOLVIT case is handled by SOLVIT centres in two Member States, which guarantees transparency and quality of outcomes. The public authority criterion is linked to the fact that SOLVIT is part of the national administration and acts on an informal basis only.

(12) This Recommendation also seeks to clarify the level of service individuals and businesses can expect from SOLVIT. It indicates how applicants should be informed and what minimum assistance they should be offered. It also clarifies the various procedural steps and deadlines to be respected when handling a SOLVIT case together with the follow-up to be given when a case cannot be resolved.

(13) Further, this Recommendation sets out minimum standards SOLVIT centres should comply with, in terms of organisation, legal expertise, and relations with other networks. It also clarifies the role of the Commission within the SOLVIT network.

(14) The Commission has recently rebuilt the SOLVIT online database as a stand-alone module in the Internal Market Information system. Given this technical integration, the rules set out in Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (the 'IMI Regulation') [1] on the processing of personal data and of confidential information also apply to SOLVIT procedures. This Recommendation further specifies certain aspects of the processing of personal data in SOLVIT, in accordance with the IMI Regulation.

(15) This Recommendation does not aim to specify how the Commission deals with complaints it receives directly and does not prejudice in any manner the Commission's role as the guardian of the Treaties. It also does not aim to specify the role of EU Pilot and the national EU Pilot coordinators. These elements are addressed in specific guidelines, which are regularly updated.

HAS ADOPTED THIS RECOMMENDATION:

I. OBJECTIVE AND DEFINITIONS

A. Objective

This Recommendation sets out principles governing the functioning of SOLVIT. SOLVIT aims to deliver fast, effective and informal solutions to problems individuals and businesses encounter when their EU rights in the internal market are being denied by public authorities. It contributes to a better functioning single market by fostering and promoting better compliance with Union law. To achieve this purpose, national SOLVIT centres should work together on the basis of the principles set out in this Recommendation.

B. Definitions

For the purposes of this Recommendation the following definitions apply:

1. 'Applicant': a natural or legal person encountering a cross-border problem and submitting it to SOLVIT directly or through an intermediary, or an organisation submitting a concrete problem on behalf of its member(s);

2. 'Cross-border problem': a problem an applicant in one Member State encounters involving a potential breach of EU law governing the internal market by a public authority in another Member State; this includes problems caused to applicants by their own public administrations, after having exercised their free movement rights or when trying to do so;

[1] OJ L 316, 14.11.2012, p. 1.

3. 'Union law governing the internal market': any Union legislation, rules or principles related to the functioning of the internal market within the meaning of Article 26(2) TFEU. This includes rules that do not aim to regulate the internal market as such but have an impact on the free movement of goods, services, persons or capital between Member States;

4. 'Public authority': any part of the public administration of a Member State, at national, regional or local level, or any body, whatever its legal form, which has been made responsible, pursuant to a measure adopted by the State, for providing a public service under the control of the State and that has for that purpose special powers beyond those which result from the normal rules applicable in relations between individuals;

5. 'Legal proceedings': formal proceedings for the resolution of a dispute before a judicial or quasi-judicial body. This excludes administrative appeals against the same authority that has caused the problem;

6. 'Structural problem': a breach caused by a national rule running counter to Union law;

7. 'Home Centre': the SOLVIT centre in the Member State that has the closest links with the applicant based on for example nationality, residence, establishment or the place where the applicant acquired the rights at stake;

8. 'Lead Centre': the SOLVIT centre of the Member State in which the alleged breach of Union law governing the internal market has occurred;

9. 'SOLVIT database': the online application created within the Internal Market Information System (IMI) to support the handling of SOLVIT cases.

II. **MANDATE OF SOLVIT**

The SOLVIT network deals with cross-border problems caused by a potential breach of Union law governing the internal market by a public authority, where and to the extent such problems are not subject to legal proceedings at either national or Union level. It contributes to a better functioning single market by fostering and promoting better compliance with Union law.

III. **SERVICE OFFERED BY SOLVIT**

Member States should ensure that applicants can benefit from the following minimum service:

1. SOLVIT centres should be available by telephone or e-mail, and should provide a prompt reply to communications directed to them.

2. Applicants should receive within one week a first reaction to their problem, including an indication whether or not SOLVIT could take on their case, if such indication is possible on the basis of the information provided. If necessary, they should at the same time be invited to submit any documentation needed to process their file. Within one month after this first assessment and provided their file is complete, applicants should receive a confirmation of whether their case is accepted by the Lead centre and therefore opened as a SOLVIT case.

3. When a problem cannot be taken up as a SOLVIT case, applicants should be given reasons and be advised of another possible course of action that might help them overcome the problem, including signposting or transferring the problem, where possible, to another relevant information or problem-solving network or to the relevant national competent authority.

4. Within 10 weeks from the date of opening of the case, the applicant should receive a solution to its problem, which may include a clarification of the applicable Union law. In exceptional circumstances and in particular where a solution is close at hand or where it concerns a structural problem, the case can be kept open beyond the deadline, subject to informing the applicant, up to a maximum of 10 weeks.

5. Applicants should be informed about the informal nature of SOLVIT and the procedures and timeframes that apply. This information should include information about other possible means of redress, a warning that handling a case in SOLVIT does not put on hold national deadlines for appeal, and that solutions offered by SOLVIT are informal and cannot be appealed. Applicants should also be informed that SOLVIT is free of charge. Applicants should be regularly informed about the state of their case.

6. Whereas SOLVIT proceedings are of an informal nature, it does not preclude an applicant from launching formal proceedings at national level, which will result in closure of the SOLVIT case.

7. When a successful outcome has been found, the applicant should be advised on actions to take in order to benefit from the proposed solution.

8. As soon as it becomes apparent that a case will not be resolved within SOLVIT, the case should be closed and the applicant should be informed without delay. In such case, SOLVIT should also advise the applicant on other possible ways of redress at national or Union level. When advising complainants to file a complaint with the Commission, SOLVIT centres should encourage them to refer to prior proceedings in SOLVIT (by giving a reference number and shortly summarising these proceedings). Unresolved cases should be systematically reported to the Commission through the database.

9. After closing the case, applicants should be invited to give their feedback on how the case has been handled by SOLVIT.

IV. ORGANISATION OF SOLVIT CENTRES

1. Each Member State should have a SOLVIT centre.

2. To secure that SOLVIT centres can fulfil the tasks set out in this Recommendation, Member States should ensure that SOLVIT centres:

   (a) have sufficient and well-trained staff with an operational knowledge of more than one Union language where needed to ensure fast and transparent communication with other SOLVIT centres;

   (b) have adequate legal expertise or relevant experience with the application of Union law in order to be able to make independent legal assessments of cases;

   (c) are situated in the part of the national administration with sufficient powers of coordination to be able to ensure the correct implementation of Union law within their administration;

   (d) are able to establish a network within the national administration in order to have access to the specific legal expertise and support needed in order to find practical solutions to cases.

V. SOLVIT PROCEDURE

A. Principles governing the handling of SOLVIT cases

1. All SOLVIT cases should be handled by two SOLVIT centres, the Home centre and the Lead centre.

2. The Home and Lead centres should cooperate in an open and transparent manner with a view to finding fast and effective solutions for applicants.

3. The Home and Lead centres should agree what language they use to communicate with each other, bearing in mind the aim of resolving the problems through informal contacts as quickly and efficiently as possible and ensuring transparency and reporting.

4. All problems received, the assessments done by the SOLVIT centres involved in the case, steps taken and outcomes proposed should be registered in the SOLVIT database in a clear and comprehensive manner. Where a case presents structural problems, it should be flagged as such in the database so as to enable the Commission to systematically monitor such cases.

5. All proposed solutions need to be always in full conformity with Union law.

6. SOLVIT centres should abide by the detailed case handling rules set out in SOLVIT's case handling manual, which the Commission will regularly review in cooperation with the SOLVIT centres.

B. Home centre

1. The Home centre should register all legal problems received, whether or not they qualify as a SOLVIT case.

2. Once the Home centre has accepted to take up a complaint as a SOLVIT case, it should constitute a complete file and carry out a comprehensive legal analysis of the problem before submitting it to the Lead centre.

3. When receiving a proposal for a solution from the Lead centre, including a clarification of the applicable Union law, it should check that the solution is in conformity with Union law.

4. The Home centre should provide the applicant with timely and appropriate information during the relevant steps of the procedure.

C. Lead centre

1. The Lead centre should confirm acceptance of a case within one week after it is submitted by the Home centre.

2. The Lead centre should aim at finding solutions for applicants, including clarification of the applicable Union law and should regularly inform the Home centre about how it is progressing.

3. Where the problem submitted by the applicant is a structural problem, the Lead centre should assess as soon as possible whether the problem can be resolved through the SOLVIT procedure. If it considers that this is not possible, it should close the case as unresolved and inform the relevant national authorities responsible for the correct implementation of Union law in that Member State, so as to secure that the breach of Union law is effectively put to an end. The Commission should also be informed through the database.

VI. ROLE OF THE COMMISSION

1. The Commission assists and supports the functioning of SOLVIT by:

   (a) organising regular training sessions and network events in cooperation with national SOLVIT centres;

   (b) drafting and updating the SOLVIT case-handling manual in cooperation with national SOLVIT centres;

   (c) providing case-handling assistance at the request of SOLVIT centres. In complex cases this may include providing informal legal advice. The Commission services should reply to requests for informal legal advice within two weeks. Such advice is informal only and cannot be considered as binding on the Commission;

(d) managing and maintaining the SOLVIT database and a public interface and providing specific training and materials to facilitate its use by the SOLVIT centres;

(e) monitoring the quality and performance of SOLVIT centres and the cases they handle. In cases presenting a structural problem, the Commission will closely monitor the case and, where needed, lend advice and assistance to ensure that the structural problem is put to an end. The Commission will consider whether unresolved structural problems require further follow-up;

(f) securing appropriate communication between SOLVIT, CHAP ([1]) and EU Pilot ([2]) in order to ensure an appropriate follow up of unresolved SOLVIT cases, to monitor structural cases and to avoid duplication of the handling of complaints;

(g) informing SOLVIT centres, at their request, about the follow-up given by the Commission to unresolved cases, where a complaint has been lodged with the Commission.

2. Where appropriate, the Commission may refer complaints it has received to SOLVIT with a view to finding a rapid and informal solution, subject to the consent of the complainant.

VII. **QUALITY CONTROL AND REPORTING**

1. SOLVIT centres should conduct regular quality checks of cases they handle as Home centre and as Lead centre as detailed in the case handling manual.

2. The Commission services will conduct regular overall quality checks of all cases and signal possible problems to the SOLVIT centres concerned, which should take appropriate action to redress the shortcomings identified.

3. The Commission will regularly report on the quality and performance of SOLVIT. It will also report on the type of problems SOLVIT has received and cases handled within SOLVIT, with a view to defining trends and identifying remaining problems in the internal market. Within this reporting framework, the Commission will separately report on structural cases.

VIII. **VISIBILITY OF THE NETWORK**

1. The Commission will promote the knowledge and use of SOLVIT with European stakeholder organisations and Union institutions and will improve the accessibility and presence of SOLVIT via on-line means.

2. Member States should ensure that user-friendly information and easy access to the SOLVIT services is available, in particular on all relevant websites of the public administration.

3. Member States should also undertake activities to raise awareness about SOLVIT amongst its stakeholders. The Commission will provide assistance to such activities.

IX. **COOPERATION WITH OTHER NETWORKS AND CONTACT POINTS**

1. To ensure that applicants get effective help, SOLVIT centres should cooperate with other European and national information and help networks, such as Your Europe, Europe Direct, Your Europe Advice, the Enterprise Europe Network, European Consumer Centres, EURES, Fin-net and European Network of Ombudsmen. SOLVIT centres should also establish good working relationships with the respective national members of the Administrative Commission for the Coordination of Social Security, to enable an effective handling of social security cases.

2. SOLVIT centres should be in regular contact and cooperate closely with their national EU Pilot Contact Points, in order to secure a proper exchange of information on cases and complaints received.

3. The Commission will facilitate such cooperation by, among others, organising joint network events and establishing technical means of connection, with such networks and contact points as indicated in point 1 ([3]).

X. **PROTECTION OF PERSONAL DATA AND CONFIDENTIALITY**

The processing of personal data for the purposes of this Recommendation, including, in particular, transparency requirements and the rights of data subjects, is governed by the IMI Regulation. In line with that Regulation, the following should apply:

1. Applicants should be able to submit their complaints to SOLVIT through a public interface linked to the Internal Market Information System, put at their disposal by the Commission. Applicants do not have access to the SOLVIT database.

2. Home and Lead centres should have access to the SOLVIT database and be able to deal with the case they are involved in through this database. This includes access to personal data of the applicant.

([1]) Complaint handling/Accueil des plaignants – Commission complaint registration system.
([2]) COM(2007) 502 final.
([3]) At the time of the adoption of this Recommendation the technical means are established with Your Europe Advice and are being developed with Europe Direct.

3. Other SOLVIT centres not involved in a particular case and the Commission should have read-only access to anonymous information on the case.

4. The Home centre should normally disclose the applicant's identity to the Lead centre to facilitate problem solving. The applicant should be informed of this at the start of the process and offered the opportunity to object, in which case the applicant's identity should not be disclosed.

5. The information provided by the applicant should be used by the Lead centre and the public authorities concerned by the complaint only for the purpose of trying to resolve the case. Officials dealing with the case shall process the personal data only for the purposes for which they were transmitted. Appropriate steps should also be taken to safeguard commercially sensitive information not including personal data.

6. A case can be transferred to another problem-solving network or organisation only with consent of the applicant.

7. Staff of the Commission should only have access to personal data of applicants where this is necessary in order to:

   (a) avoid parallel treatment of the same problem submitted to the Commission or another Union institution by means of another procedure;

   (b) offer informal legal advice in accordance with Section VI;

   (c) decide on the possible follow-up to cases already handled by SOLVIT;

   (d) resolve technical issues affecting the SOLVIT database.

8. Personal data related to SOLVIT cases should be blocked in the Internal Market Information System 18 months after the closure of a SOLVIT case. Anonymised descriptions of SOLVIT cases should remain in the SOLVIT database and may be used for statistical, reporting and policy development purposes.

XI. **OTHER PROVISIONS**

This Recommendation replaces Recommendation 2001/893/EC. All references to Recommendation 2001/893/EC should be understood as references to this Recommendation.

XII. **DATE OF APPLICATION AND ADDRESSEES**

This Recommendation applies from 1 October 2013

This Recommendation is addressed to the Member States.

Done at Brussels, 17 September 2013.

For the Commission
Michel BARNIER
Member of the Commission

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 178/13/COL

of 30 April 2013

exempting the exploration and the extraction of crude oil and natural gas on the Norwegian Continental Shelf from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (Norway)

THE EFTA SURVEILLANCE AUTHORITY ("THE AUTHORITY")

HAVING REGARD to the Agreement on the European Economic Area ("the EEA Agreement"),

HAVING REGARD to the Act referred to at point 4 of Annex XVI to the EEA Agreement laying down the procedures for the award of public contracts in the utilities sector (Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors) ("Directive 2004/17/EC"), and in particular Article 30(1), 30(4) and 30(6) thereof,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("the Surveillance and Court Agreement"), in particular Articles 1 and 3 of Protocol 1 thereto,

HAVING REGARD to the Decision of the Authority of 19 April 2012 empowering the Member with special responsibility for public procurement to take certain decisions in the field of public procurement (Decision No 136/12/COL),

AFTER Consulting the EFTA Public Procurement Committee,

Whereas:

I. FACTS

1. PROCEDURE

(1) By letter of 5 November 2012 [1], and following pre-notification discussions, the Authority received a request from the Norwegian Government to adopt a decision establishing the applicability of Article 30(1) of Directive 2004/17/EC to petroleum activities on the Norwegian Continental Shelf ("the NCS"). In a letter dated 25 January 2013, the Authority requested the Norwegian Government to submit additional information [2]. The Norwegian Government submitted its reply to the Authority in a letter dated 15 February 2013 [3]. The notification and the reply from the Norwegian Government were discussed in a telephone conference on 4 March 2013 [4]. By letters from the Authority of 22 March 2013, the EFTA Public Procurement Committee was consulted and asked to provide its view by written procedure [5]. Upon a count of the votes by its members, the EFTA Public Procurement Committee delivered a positive opinion on the Authority's draft decision on 16 April 2013 [6].

(2) The request by the Norwegian Government concerns the exploration and production of crude oil and natural gas on the NCS, including development (*i.e.*, the setting up of adequate infrastructure for future production, such as production platforms, pipelines, terminals etc). The Norwegian Government has in its request described three activities:

(a) the exploration for crude oil and natural gas;

(b) the production of crude oil; and

(c) the production of natural gas.

[1] Received by the Authority on 6 November 2012 (Event No 652027).

[2] Event No 657306.

[3] Received by the Authority on 19 February 2013 (Event No 663304).

[4] Event No 665288.

[5] Event No 666730, Event No 666722 and Event No 666680.

[6] Event No 669171.

2. THE LEGAL FRAMEWORK

(3) The intention behind Article 30(1) of Directive 2004/17/EC is to allow for an exemption to the requirements of the rules on public procurement in a situation where the participants on a market are operating in a competitive manner. Article 30(1) of the Directive provides that:

> "Contracts intended to enable an activity mentioned in Articles 3 to 7 to be carried out shall not be subject to this Directive if, in the Member State in which it is performed, the activity is directly exposed to competition on markets to which access is not restricted."

(4) Article 30(1) of the Directive sets out two requirements which must both be met before the Authority can adopt a positive decision regarding a request for exemption under Article 30(4), taking into account Article 30(6), of the Directive.

(5) The first requirement in Article 30(1) of Directive 2004/17/EC is that the activity must be taking place on a market to which access is not restricted. Article 30(3) of the Directive provides that "access to a market shall be deemed not to be restricted if the Member State has implemented and applied the provisions of Community legislation mentioned in Annex XI". Annex XI of the Directive lists several directives.

(6) Among the directives listed in Annex XI is Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons ([7]), which was incorporated into EEA law in 1995 and is referred to in point 12 of Annex IV to the EEA Agreement.

(7) Also listed among the directives set out in Annex XI is Directive 98/30/EC. This Directive was replaced by Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC. The latter was incorporated into EEA law in 2005 and is referred to in point 23 of Annex IV to the EEA Agreement ([8]).

([7]) OJ L 164, 30.6.1994, p. 3 and OJ L 79, 29.3.1996, p. 30 and incorporated into the EEA Agreement by Joint Committee Decision No 19/95 (OJ L 158, 8.7.1995, p. 40 and EEA Supplement No 25, 8.7.1995, p. 1) ("the Licensing Directive").

([8]) OJ L 176, 15.7.2003, p. 57, as corrected by OJ L 16, 23.1.2004, p. 74 and incorporated into the EEA Agreement by Joint Committee Decision No 146/2005 (OJ L 53, 23.2.2006, p. 43 and EEA Supplement No 10, 23.2.2006, p. 17) ("the Gas Directive"). This Directive was replaced by Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94) but the latter has not yet been incorporated into EEA law.

(8) Accordingly, access to the market can be deemed to be unrestricted if the Norwegian State has implemented and properly applied the Acts referred to in points 12 and 23 of Annex IV to the EEA Agreement, which correspond to Directive 94/22/EC and Directive 2003/55/EC respectively ([9]).

(9) The second requirement in Article 30(1) of the Directive 2004/17/EC is that the activity, in the EFTA State where it is performed, is directly exposed to competition. The question of whether an activity is directly exposed to competition is to be decided on the basis of "criteria that are in conformity with the EC Treaty on competition, such as the characteristics of the goods or services concerned, the existence of alternative goods or services, the prices and the actual or potential presence of more than one supplier of the goods or services in question" ([10]).

(10) The existence of direct exposure to competition is to be evaluated on the basis of various indicators, none of which is, *per se*, decisive. In respect of the markets concerned by this Decision, the market share of the main players on a given market constitutes one criterion which should be taken into account. Another criterion is the degree of concentration on those markets ([11]). Direct exposure to competition is assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. As the conditions vary for the different activities that are the subject of this Decision, a separate assessment is made for each relevant activity or market.

(11) This Decision is made solely for the purpose of granting an exemption pursuant to Article 30 of Directive 2004/17/EC and is without prejudice to the application of the rules on competition.

3. THE NORWEGIAN LICENSING SYSTEM

(12) The Norwegian Petroleum Act ([12]) provides the underlying legal basis for the licensing system for petroleum activities on the NCS. The Petroleum Act and Petroleum Regulations regulate the award

([9]) See Section 5 below.

([10]) Article 30(2) of Directive 2004/17/EC.

([11]) See also the Authority's Decision of 22 May 2012 exempting the production and wholesale of electricity in Norway from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (Decision No 189/12/COL, OJ L 287, 18.10.2012, p. 21 and EEA Supplement No 58, 18.10.2012, p. 14).

([12]) Act of 19 November 1996 No 72 relating to petroleum activities. (http://www.npd.no/en/Regulations/-Acts/Petroleum-activities-act/). The Hydrocarbons Licensing Directive 94/22/EC is implemented in the Norwegian Petroleum Act as of 1 September 1995 and in Regulations to the Act relating to petroleum (the Norwegian Regulation of 27 June 1997 No 653) (http://www.npd.no/en/Regulations/Regulations/Petroleum-activities/).

of licences to explore for and produce crude oil and natural gas on the NCS. The Norwegian Ministry of Petroleum and Energy announces the blocks for which companies can submit an application for a licence. The Norwegian King in Council grants the production licence. The granting of a production licence is made on the basis of factual and objective criteria ([13]). Normally a production licence will be awarded to a group of companies, of which one company is appointed as the operator responsible for the day-to-day management of the licence.

(13) In Norway, there are two types of licensing rounds: (i) the licensing rounds covering immature areas on the NCS (numbered licensing rounds); and (ii) the Awards in Predefined Areas (APA rounds) covering mature areas. The two types of licensing rounds are the same, apart from the way they are initiated. The APA licensing rounds are conducted every year and cover acreage on the NCS that is considered to be mature (*i.e.*, where the geology is well-known) ([14]). Numbered licensing rounds are (on average) carried out every second year covering immature areas (*i.e.*, where the geology is little-known) ([15]). The numbered licensing rounds are started by the Norwegian Ministry of Petroleum and Energy inviting companies active on the NCS to nominate areas (blocks) which they want to be included in the next licensing round. The legal conditions (laws, regulations, licensing documents) governing the two types of licensing rounds are exactly the same. The Norwegian Government has informed the Authority that exploration activities carried out under the two types of licensing rounds are also the same.

(14) In licensing rounds, qualified oil companies apply for production licences, *i.e.*, the exclusive right to carry out petroleum activities on the NCS. As defined in Section 1-6 c) of the Norwegian Petroleum Act, petroleum activities include "all activities associated with subsea petroleum deposits, including exploration, exploration drilling, production, transportation, utilisation and decommissioning, including planning of such activities, but not including, however, transport of petroleum in bulk by ship". Consequently, in licensing rounds, companies apply for the exclusive right to explore for and produce any crude oil and natural gas that may be discovered in the area covered by the production licence.

(15) When a discovery of crude oil and/or natural gas is made, the licensees are, if they decide to develop the field, obliged to submit a Plan for Development and Operation ("PDO") of the field to the Norwegian Ministry of Petroleum and Energy for approval ([16]). The approval of the PDO gives the licensees the exclusive right to start development and, subsequently, production. Produced petroleum becomes the property of the individual licensee.

(16) The companies which are licensees on the NCS range from major international oil companies to very small oil companies, many of which have been new entrants on the NCS during approximately the last 10 years.

(17) The tables below are submitted by the Norwegian Government and show activities on the NCS in terms of awarded new production licences, awarded acreage and number of companies on the NCS ([17]).

([13]) See Sections 3-3 and 3-5 of the Norwegian Petroleum Act and Section 10 of the Norwegian Petroleum Regulation.

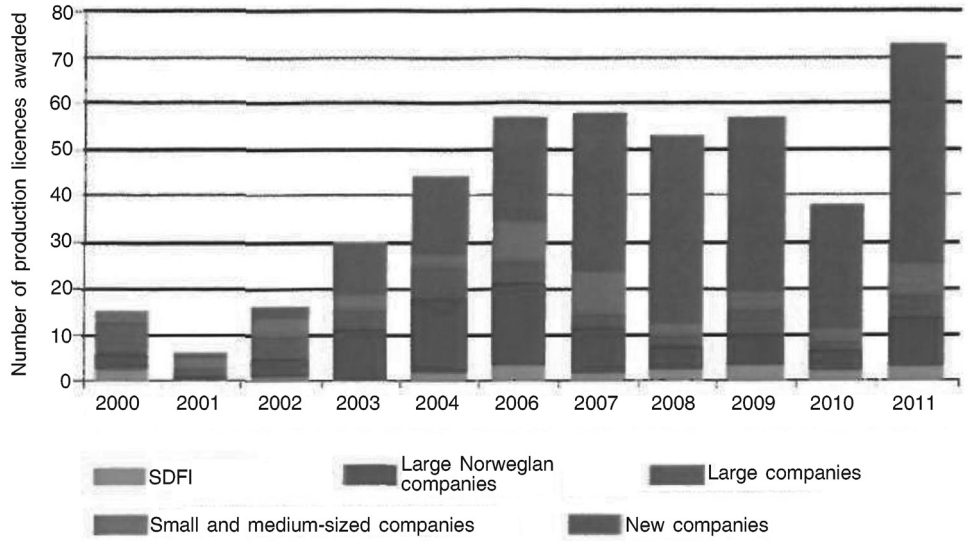
([14]) The criteria for mature areas are described in the white paper to the Norwegian Parliament - *An industry for the future – Norway's petroleum activities* (Meld. St. 28 (2010–2011) Report to the Norwegian Parliament (Storting), p. 88). The following criteria have been applied in expanding the APA area: (i) areas close to infrastructure (which includes both existing and planned infrastructure, with potential resources in the areas being regarded as time-critical); (ii) areas with an exploration history (which includes areas that have previously been awarded and relinquished, areas with known play models and areas situated between awarded and relinquished areas); and (iii) areas that border on existing predefined areas, but that have not been applied for in numbered licensing rounds (see http://www.regjeringen.no/en/dep/oed/press-center/press-releases/2013/apa-2013-acreage-announcement.html?id=714569). A total of 324 production licences have been awarded since the APA system was established in 2003 and a total of 32 discoveries have been made (Meld. St. 28 (2010–2011) Report to the Norwegian Parliament (Storting), p. 86 - 87).

([15]) The numbered licensing rounds are designed with a view towards areas where there is limited geological knowledge, and where stepwise exploration is expedient. Areas have been awarded through 21 numbered licensing rounds, with licences awarded in the 21st round in the spring of 2011 (the white paper - *An industry for the future – Norway's petroleum activities* (Meld. St. 28 (2010–2011) Report to the Norwegian Parliament (Storting), p. 21). Numbered licensing rounds include mainly frontier areas of the NCS where the potential for large discoveries is highest. The 22nd licensing round was initiated on 2 November 2011 with awards of new production licences planned during the spring of 2013 (http://www.regjeringen.no/nb/dep/oed/-pressesenter/pressemeldinger/2011/initiates-22nd-licensing-round.html?id=661990). Also see the publication by the Norwegian Ministry of Petroleum and Energy together with the Norwegian Petroleum Directorate – *Facts 2012 – The Norwegian Petroleum Sector*, Chapter 5 on *Exploration Activity*, p. 30 *et seq* (http://www.npd.no/en/Publications/Facts/Facts-2012/Chapter-5/).

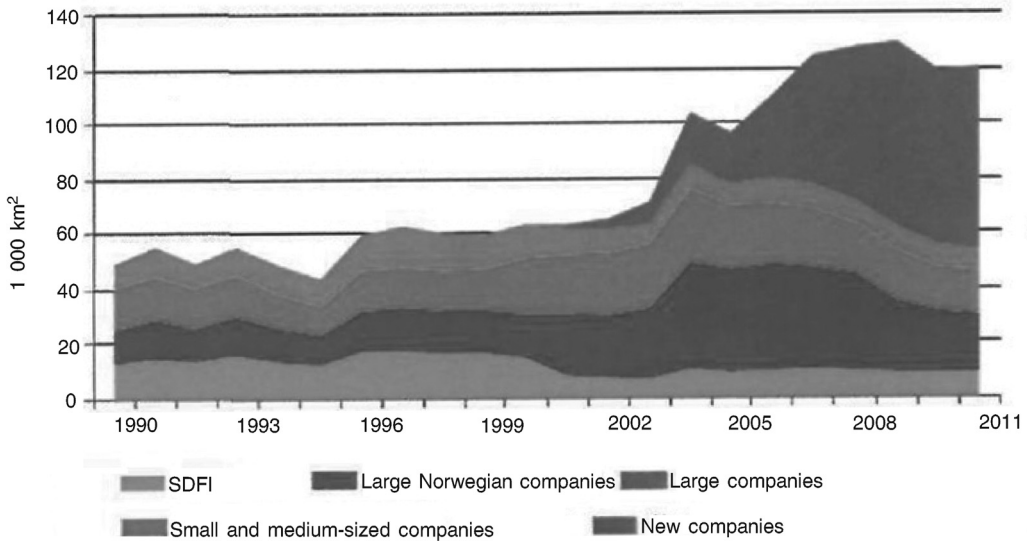
([16]) Cf. Section 4-2 of the Norwegian Petroleum Act.

([17]) SDFI in the first two tables refers to the Norwegian State's Direct Financial Interest. The Norwegian State has large holdings in oil and gas licences on the NCS through SDFI. The SDFI portfolio is managed by the state-owned company Petoro AS (www.petoro.no).

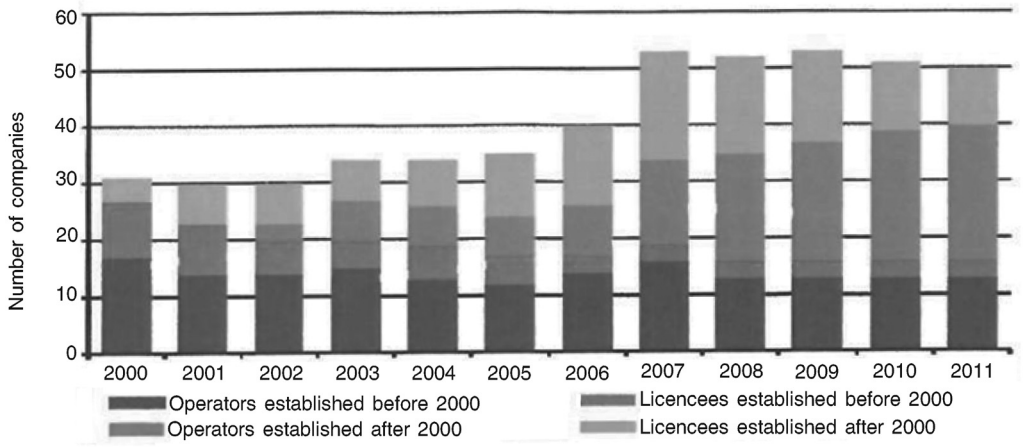
Awarded new licences:



Awarded acreage:



Number of companies on the NCS:



II. **ASSESSMENT**

4. THE ACTIVITIES COVERED BY THIS DECISION

(18) The Norwegian Government's request for an exemption under Article 30 of directive 2004/17/EC covers three separate activities on the NCS: (a) the exploration of crude oil and natural gas; (b) the production of crude oil; and (c) the production of natural gas. The Authority has examined the three activities separately ([18]).

(19) "Production" will for the purposes of this Decision be taken to include "development" (*i.e.*, the setting up of adequate infrastructure for production, such as oil platforms, pipelines, terminals, etc). The transportation of natural gas from the NCS to the market through the upstream pipeline network is not part of this Decision.

5. ACCESS TO THE MARKET(S)

(20) Directive 94/22/EC (the Licensing Directive) was incorporated in point 12 of Annex IV in the EEA Agreement by a Joint Committee Decision No 19/1995 which entered into force on 1 September 1995.

([18]) This is in line with the practice of the European Commission in merger decisions and in its decisions granting an exemption under Article 30 of Directive 2004/17/EC. See in particular the European Commission Decision of 29 September 1999 declaring a concentration compatible with the common market and the EEA Agreement (Case No IV/M.1383 – *Exxon/Mobil*); Commission Decision of 29 September 1999 declaring a concentration to be compatible with the common market and the EEA Agreement (Case IV/M.1532 – *BP Amoco/Arco*); Commission Decision of 5 July 1999 declaring a concentration compatible with the common market and the EEA Agreement (COMP/M.1573 – *Norsk Hydro/Saga*), Commission Decision of 3 May 2007 declaring a concentration to be compatible with the common market and the EEA Agreement (Case No IV/M.4545 – *STATOIL/HYDRO*); Commission Decision of 19 November 2007 declaring a concentration to be compatible with the common market (Case No COMP/M.4934 – *KAZMUNAIGAZ/ROMPETROL*), and Commission Decision of 21 August 2009 declaring a concentration compatible with the common market (Case No COMP/M.5585 – *Centrica/Venture* production). See also Commission Implementing Decision of 28 July 2011 exempting exploration for oil and gas and exploitation of oil in Denmark excluding Greenland and the Faroe Islands from the application of Directive 2004/17/EC (OJ L 197, 29.7.2011, p. 20); Commission Implementing Decision of 24 June 2011 exempting exploration for oil and gas and exploitation of oil in Italy from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 166, 25.6.2011, p. 28); Commission Implementing Decision of 29 March 2010 exempting exploration for and exploitation of oil and gas in England, Scotland and Wales from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 84, 31.3.2010, p. 52), and Commission Implementing Decision exempting exploration for and exploitation of oil and gas in the Netherlands from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 181, 14.7.2009, p. 53).

(21) The Norwegian Government notified the Authority of its transposition of this Directive on 18 March 1996. A conformity assessment was performed by the Authority, following which Norway made a number of modifications to its legislation. After these modifications were carried out, the Authority took the view that Norway had properly implemented the Licensing Directive.

(22) Directive 2003/55/EC (the Gas Directive) was incorporated into the EEA Agreement in point 23 by the Joint Committee Decision No 146/2005/EC on 2 December 2005. The Directive entered into force for the EEA EFTA States on 1 June 2007.

(23) The Norwegian Government notified partial implementation of the Gas Directive on 4 June 2007 and full implementation on 19 February 2008. A conformity assessment was likewise carried out by the Authority for this Directive. Following a number of modifications to the Norwegian national legislation, the Authority took the view that Norway had properly implemented the Gas Directive.

(24) In the light of the information presented in this Section, and for the present purposes, it appears that the Norwegian State has implemented and properly applied the Acts referred to in points 12 and 23 of Annex IV to the EEA Agreement, which correspond to Directive 94/22/EC and Directive 2003/55/EC respectively.

(25) Consequently, and in accordance with the first subparagraph of Article 30(3) of Directive 2004/17/EC, access to the market should be deemed not to be restricted on the territory of Norway, including the NCS.

6. EXPOSURE TO COMPETITION

(26) As explained above, the Authority takes the view that it is necessary to examine whether the sectors concerned are directly exposed to competition. To this end, it has examined the evidence provided by the Norwegian Government and supplemented with evidence available in the public sphere where needed.

6.1. **Exploration of crude oil and natural gas**

6.1.1. *Relevant market*

(27) Exploration of crude oil and natural gas consists in finding new reserves of hydrocarbon resources. Production encompasses both the setting up of adequate infrastructures for the production and exploitation of the resources. Exploration for crude oil and natural gas constitutes one relevant product market separate from the markets for production of crude oil and natural gas. This definition is based on the fact that it is not possible from the outset to determine whether the exploration will result in any discovery of crude oil or natural gas. The Norwegian Government has confirmed that this applies both to the numbered licensing rounds and the APA licensing rounds. This market definition is also in line with the practice of the European Commission ([19]).

(28) The exploration of immature and mature areas is carried out by the same type of companies and the activities rely on the same type of technology (*i.e.*, irrespective of the type of licensing round). Even though the geology is better known in the APA licensing rounds, the oil companies have no exact knowledge of the existence of petroleum, or whether a possible discovery may contain oil or gas or both. The Authority therefore finds that the relevant market is the exploration of crude oil and natural gas, which includes exploration activities carried out under both the numbered licensing rounds and the APA licensing rounds.

(29) The companies engaged in exploration activities do not tend to limit their activities to a particular geographical area. Rather, most of the companies are present on a global level. The European Commission has in its decisions consistently held that the geographical scope of the exploration market is worldwide ([20]). The Norwegian Government agrees with the Commission's geographical market definition. The Authority finds that the relevant geographical market is worldwide.

6.1.2. *Direct exposure to competition*

(30) During the period 2011 – 2013, about 50 companies have been granted status as a licensee in production licences and consequently participate in exploration activities on the NCS ([21]).

(31) The market shares of operators active in exploration are typically measured by reference to two variables: proven reserves and expected production ([22]).

(32) The worldwide proven reserves of oil in 2011 amounted to 1 652,6 billion barrels and the corresponding figure for natural gas was 208,4 trillion cubic metres, or

([19]) See the European Commission Decision of 23 January 2003 declaring a concentration compatible with the common market (Case No COMP/M.3052 – *ENI/FORTUM GAS*), Case No IV/M.1383 – *Exxon/Mobil*, and the European Commission Implementing Decisions concerning Denmark, Italy, England, Wales, Scotland and the Netherlands (see footnote 18 above).

([20]) See, *e.g.*, Case No COMP/M.3052 – *ENI/FORTUM GAS* (paragraph 13) and Case No COMP/M.4545 – *STATOIL/HYDRO* (paragraph 7) (see footnote 18 above).

([21]) The number covers both production licences in numbered licensing rounds and APA-licences (cf. Event No 663313, p. 1-20).

([22]) See *e.g.*, the European Commission Decision in *Exxon/Mobil* (paragraphs 25 and 27) (footnote 18 above).

approximately 1 310,8 billion barrels of oil equivalents ([23]). At the end of 2011, the proven reserves of oil in Norway amounted to 6,9 thousand million barrels, representing 0,4 % of the world reserves ([24]). The proven reserves of natural gas in Norway in 2011 amounted to 2,1 trillion cubic metres, representing 1 % of the world reserves ([25]). None of the five largest companies active on the NCS has a worldwide share of proven reserves exceeding 1 % ([26]).

(33) The Norwegian Government does not possess information on the worldwide market shares of the five largest companies on the NCS measured in terms of expected production. However, it is reasonable to assume that there is a direct correlation between proven reserves of crude oil and natural gas and expected future production ([27]). In the light of the available information, the worldwide market shares of the largest companies on the NCS measured in terms of expected production is not likely, in any event, to lead to any change in the Authority's assessment.

(34) In addition, the Authority has considered information on the number of applications for licensing rounds on the NCS and new entrants on the NCS. Figures received from the Norwegian Government on the award of licences in the three last licensing rounds on the NCS (held in 2011 – 2012) show that the number of applications have been up to nine companies for each announced licence. In the period from 2008 – 2012, 13 new entrants were awarded a production licence on the NCS. Thus, the number of companies being awarded a licence on the NCS is considerable ([28]).

(35) On the basis of the elements above, the degree of concentration on the worldwide market for exploration of crude oil and natural gas must be characterised as low. It is likely that companies active in this market are subject to considerable competitive pressure. There is nothing to indicate that the sector is not functioning in a market-driven fashion. The Authority therefore concludes that the market for exploration of crude oil and natural gas is directly exposed to competition within the meaning of Directive 2004/17/EC.

([23]) See the June 2012 BP Statistical Review of World Energy ("the BP Statistics"), at p. 6. (http://www.bp.com/liveassets/bp_internet/globalbp/globalbp_uk_english/reports_and_publications/statistical_energy_review_2011/STAGING/local_assets/pdf/statistical_review_of_world_energy_full_report_2012.pdf).

([24]) See the BP Statistics, p. 6.

([25]) See the BP Statistics, p. 20.

([26]) Cf. the Norwegian Government's letter to the Authority dated 15 February 2013 (Event No 663313, p. 22).

([27]) See *e.g.*, the European Commission Implementing Decision concerning Denmark (see footnote 18 above) and the Commission's Implementing Decision concerning Italy (see footnote 18 above).

([28]) See also the publication by the Norwegian Ministry of Petroleum and Energy together with the Norwegian Petroleum Directorate – *Facts 2012 – The Norwegian Petroleum Sector*, Chapter 5 on *Player scenario and activity*, p. 33 – 35 (http://www.npd.no/en/Publications/Facts/Facts-2012/Chapter-5/).

6.2. **Production of crude oil**

6.2.1. *Relevant market*

(36) Crude oil is a global commodity and its price is determined by supply and demand on a worldwide basis. According to the established practice of the European Commission ([29]), the development and production of crude oil is a separate product market, the geographical scope of which is worldwide. The Norwegian Government agrees with this market definition ([30]). The Authority maintains the same market definition for the purposes of this Decision.

6.2.2. *Direct exposure to competition*

(37) When a discovery of crude oil (or natural gas) is made, the licensees are, if they decide to develop the field, obliged to submit a Plan for Development and Operation (a "PDO") of the field to the Norwegian Ministry of Petroleum and Energy for approval. Fields on the NCS that are primarily producing oil ([31]) and for which a PDO has been submitted and approved during the last five years are as follows:

Year	Description (Field name and licence)	Awarded to
2008	Morvin, PL134B	Statoil Petroleum Eni Norge Total E&P Norge
2009	Goliat, PL229	Eni Norge Statoil Petroleum
2011	Knarr, PL373S	BG Norge Idemitsu Petroleum Norge Wintershall Norge RWE Dea Norge
2011	Ekofisk Sør, Eldfisk II, PL	ConocoPhillips Total E&P Norge Eni Norge Statoil Petroleum Petoro AS
2011	Vigdis nordøst, PL089	Statoil Petroleum Petoro AS ExxonMobil E&P Norway Idemitsu Petroleum Norge Total E&P Norge RWE Dea Norge

([29]) See footnote 18 above.

([30]) However, given that the majority of the fields on the NCS contain both oil and gas, the Norwegian Government has expressed that the joint production of oil and gas on the fields makes it impossible to distinguish between the two within the framework of Directive 2004/17/EC.

([31]) As fields contain both oil and gas, the table in this Section 6.2 contains the fields that are primarily producing oil. The fields that are primarily producing gas are listed in Section 6.3 below.

Year	Description (Field name and licence)	Awarded to
2011	Stjerne, part of Oseberg Sør PL079, PL104	Statoil Petroleum Petoro AS Total E&P Norge ConocoPhillips
2011	Hyme, PL348	Statoil Petroleum GDF Suez E&P Norge Core Energy E.ON E&P Norge Faroe Petroleum Norge VNG Norge
2011	Brynhild, PL148	Lundin Norway Talisman Energy Norway
2012	Jette, PL027C, PL169C, PL504	Det norske oljeselskap Petoro AS
2012	Skuld, PL128	Statoil Petroleum Petoro AS Eni Norge
2012	Edvard Grieg, PL338	Lundin Norway Wintershall Norge OMV Norge
2012	Bøyla, PL340	Marathon Oil Norge ConocoPhillips Lundin Norway
2012	Svalin, PL169	Statoil Petroleum Petoro AS ExxonMobil E&P Norway

(38) Thus, PDOs for the production of oil covering in total 20 companies have been accepted in the period from 2008 – 2012. Moreover, a PDO covering three new market entrants was accepted by the Ministry of Petroleum and Energy in 2010 ([32]).

(39) Apart from the Norwegian state-owned companies, the list shows that the licensees are large oil companies as well as smaller companies. The Norwegian Government submits that most of the oil companies on the NCS are part of corporations with a diversified global business portfolio. Produced petroleum is therefore to a considerable extent sold to associated companies. However, more than half of the production is sold in the spot market. The figure below shows the volume of sale of crude oil in 2009 from the NCS.

Volume of sale of crude oil in 2009 from the NCS:

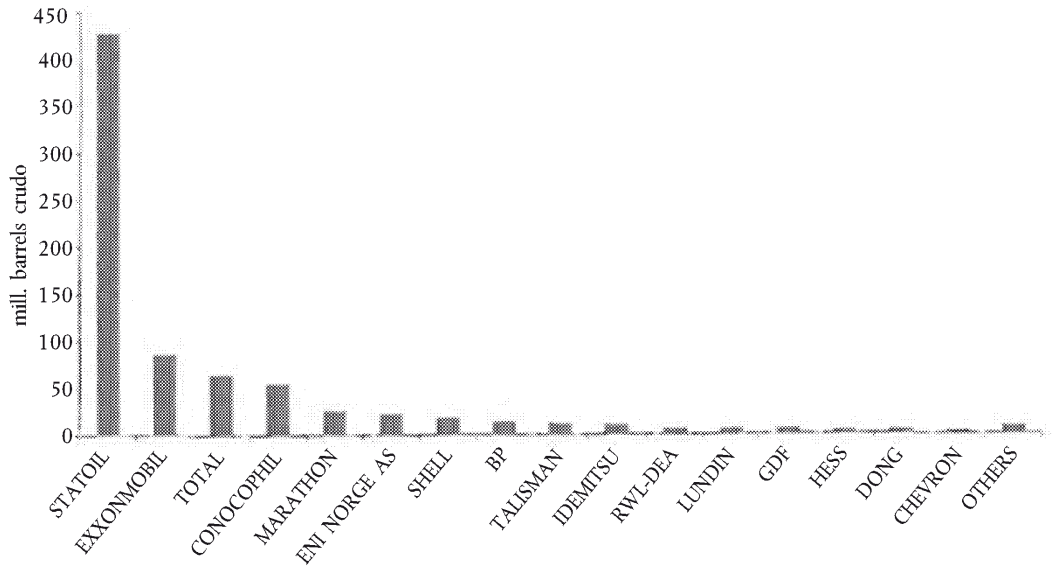


Figure. Sellers of Norwegian crude oil in 2009. The category Others consists of Altinex Oil, Bayerngas, Ruhrgas, Dana, Wintershall, Det Norske Oljeselskap, VNG, Revus Energy, Endeavour and EADS (MPE).

([32]) See the Norwegian Government's letter to the Authority dated 15 February 2013 (Event No 663313, p. 25).

(40) The total daily production of oil worldwide in 2011 amounted to 83 576 thousand barrels. In 2011, a total of 2 039 thousand barrels per day were produced in Norway. This amounted to 2,3 % of worldwide production ([33]).

(41) In terms of production of crude oil on the NCS, Statoil accounted for the highest share in 2011. Other producers on the NCS included large international oil companies such as ExxonMobil, Total, ConocoPhillips, Marathon, Shell, BP and Eni. None of these players had a market share on the worldwide market for the production of oil in 2011 exceeding 3 % ([34]). The degree of concentration in the relevant market as a whole was therefore low.

(42) The European Commission has in its decisions under Directive 2004/17EC considered that the globalised market of the production of oil is characterised by strong competition among a number of players ([35]). There are no indications that this should have changed during recent years.

(43) In the light of the elements above, the Authority concludes that there is nothing to indicate that the sector is not functioning in a market-driven fashion, and therefore, that the market for development and production of crude oil is directly exposed to competition within the meaning of Directive 2004/17/EC.

6.3. **Production of natural gas**

6.3.1. *Relevant market*

(44) The market for the development, production and wholesale of gas has been examined by the European Commission under the EU Merger Regulation ([36]) in a number of decisions in which it has considered that there is one market for the upstream supply of gas (comprising also the development and production of gas) to customers in the EEA (*i.e.* gas produced at the gas fields and sold to customers – including the national incumbents – in the EEA) ([37]).

([33]) See the BP Statistics, p. 8.

([34]) Cf. the Norwegian Government's letter to the Authority dated 15 February 2013 (Event No 663313, p. 26).

([35]) See the European Commission Implementing Decision concerning Denmark (paragraph 16) (footnote 18 above). Also see the Commission Implementing Decision concerning Italy (paragraph 16); the Commission Implementing Decision concerning England, Scotland and Wales (paragraph 16), and the Commission Implementing Decision concerning the Netherlands (paragraph 12) (see footnote 18 above).

([36]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), (OJ L 24, 29.01.2004, p. 1). Incorporated into the EEA Agreement in Annex XIV, Chapter A, point 1 by Decision No 78/2004 (OJ No L 219, 19.6.2004, p. 13 and EEA Supplement No 32, 19.6.2004, p. 1).

([37]) See Case No IV/M.4545 – *STATOIL/HYDRO* (paragraph 9) (see footnote 18 above).

LNG versus piped gas

(45) Natural gas can be transported through up-stream gas pipelines or by vessels in the form of Liquefied Natural Gas ("LNG"). Norway's gas export for 2012 was approximately 112 billion cubic meters, of which 107 billion cubic meters was piped gas and 5 billion cubic meters was shipped as LNG ([38]).

(46) The Norwegian Government submits that LNG supplies are substitutable and compete directly with piped gas. Once the LNG is regasified it can enter the natural gas pipeline grid interchangeably with the gas that is supplied through pipelines from the upstream fields. Zeebrugge in Belgium is mentioned as an example: once the piped gas from the NCS has passed through the landing terminal and the LNG has been regasified at Zeebrugge LNG terminal, both sources of gas are completely substitutable. Although regasification infrastructure is not present in all EEA States, regasification capacity has been growing strongly over the recent years. Regasification capacity in the EEA is approaching 200 billion cubic metres. With the expansion of the pipeline network, LNG is becoming available to an increasing number of EEA customers.

(47) The European Commission has in recent decisions left open the question whether LNG supplied gas should be distinguished from supplies of piped gas ([39]).

(48) For the purpose of the present Decision, the Authority finds that the question of whether a distinction should be made between piped gas and LNG can likewise be left open.

High Calorific Value versus Low Calorific Value

(49) Downstream there are separate networks in place for the distribution of HCV gas and LCV gas and end-users are connected to the appropriate grid for their supply. HCV gas can be converted to LCV gas and *vice versa*. Norwegian gas producers supply gas of the HCV type.

(50) The Norwegian Government submits that the level of substitutability between LCV gas and HCV gas should imply that these products fall within the same gas supply market from an upstream perspective. It is also submitted that the supply of LCV gas make up a relatively small part of the total supply of gas to the EEA: some 10 %.

([38]) See the Norwegian Government's letter to the Authority dated 15 February 2013 (Event No 663313, p. 33).

([39]) See the European Commission Decision of 16 May 2012 declaring a concentration compatible with the common market and the EEA Agreement Case No COMP/M.6477 – BP/CHEVRON/ENI/SONANGOL/TOTAL/JV (paragraph 19). Also see Case No IV/M.4545 – *STATOIL/HYDRO* (paragraph 12); the Commission Implementing Decision concerning the Netherlands (paragraph 13), and the Commission's Implementing Decision concerning England, Scotland and Wales (paragraph 15) (see footnote 18 above).

(51) For the purpose of the present Decision, the Authority finds that the question of whether a distinction should be made between HCV gas and LCV gas can be left open.

Conclusion on product market definition

(52) With respect to the product market definition, for the purposes of this Decision, the Authority considers that there is one market for the upstream supply of gas (comprising also the development and production of gas). The questions whether LNG or LCV gas are included in the relevant product market are immaterial to the outcome of this Decision.

Geographical scope

(53) The Norwegian Government submits that the three gas market directives have created a liberalised and integrated natural gas market in North-West Europe. The EU aims to fully integrate markets by 2014. With a single market for gas the Norwegian Government takes the view that it is not relevant to consider the market shares for individual EEA States. Once the gas has reached the border of the European internal market, it is submitted, it will flow freely to where it is needed according to the sources of supply and demand.

(54) Of the pipeline export of gas from the NCS, some 70 % was transported to receiving terminals in Germany and the UK, the remaining share to terminals in Belgium and France. Pipeline gas from Norway is sold via pipeline connections and swap-agreements to an additional number of EEA States: more than 10 EEA States in total. Of the LNG production from the NCS, some two-thirds has historically been sold to the EEA. This means that almost all Norwegian gas is exported to the EEA.

(55) Furthermore, the Norwegian Government submits that gas buyers in the EEA have a number of different supply sources available. These include both gas from the EU (typically Denmark, Netherlands, and the UK) or from neighbouring countries (typically Russia, Algeria, and Libya in addition to Norway) or from countries further afield (for example, the Middle East countries or Nigeria, in the form of LNG).

(56) The Norwegian Government also submits that hubs both in the UK and on the European continent are increasingly liquid and price formation on the different hubs show that a considerable level of integration has been reached.

(57) With respect to the geographic market definition, previous European Commission Decisions under the EU Merger Regulation have concluded that it most likely comprises the EEA, plus Russian and Algerian gas imports, but has left open the geographic market definition. In the decision on the merger between Statoil and Hydro the Commission did not find it necessary to decide whether the appropriate relevant geographic area to be considered was: (i) the EEA, (ii) an area comprising those EEA countries in which gas from the NCS is sold (directly by pipelines or via swaps) or (iii) each individual country in which the parties sell gas ([40]). Regardless of the geographic definition considered, that concentration would not give rise to competitive concerns in the market for upstream supply of gas.

(58) For the purpose of the present Decision, and for the reasons set out below, the Authority finds that it is not necessary to decide on the exact scope of the geographical market for natural gas. Under any reasonable geographic market delineation the Authority holds that the sector concerned is directly exposed to competition.

6.3.2. *Direct exposure to competition*

(59) When a discovery of natural gas (or crude oil) is made, the licensees are, if they decide to develop the field, obliged to submit a Plan for Development and Operation (a "PDO") of the field to the Norwegian Ministry of Petroleum and Energy for approval. The fields that are primarily producing gas on the NCS ([41]), and for which a PDO has been submitted and approved the last few years, are as follows:

Year	Description (Field name and licence)	Awarded to
2008	Yttergryta, PL062	Statoil Petroleum Total E&P Norge Petoro AS Eni Norge
2008	Troll redevelopment, PL054, PL085, PL085C	Petoro AS Statoil Petroleum Norske Shell Total E&P Norge ConocoPhillips
2009	Oselvar, PL274	DONG E&P Norge Bayerngas Norge Noreco Norway
2010	Trym, PL147	Bayerngas Norge DONG E&P Norge
2010	Gudrun, PL025	Statoil Petroleum GDF SUEZ E&P Norge

([40]) Case No IV/M.4545 – *STATOIL/HYDRO*, paragraph 16 (footnote 18 above).

([41]) As fields on the NCS contain both oil and gas, the table in this Section 6.3 contains the fields that are primarily producing gas. The fields that are primarily producing oil are listed in Section 6.2 above.

Year	Description (Field name and licence)	Awarded to
2010	Marulk, PL122	Statoil Petroleum DONG E&P Norge Eni Norge
2010	Gaupe, PL292	BG Norge Lundin Norway
2011	Valemon, PL050, PL050B, PL050C, PL050D, PL193B, PL193D	Statoil Petroleum Petoro AS Centrica Resources Norge Enterprise Oil Norge
2011	Visund, Sør, PL120	Statoil Petroleum Petoro AS ConocoPhillips Total E&P Norge
2012	Åsgard subsea compression	Petoro AS Statoil Petroleum Eni Norge Total E&P Norge ExxonMobil E&P Norway
2011	Atla, PL102C	Total E&P Norge Petoro AS Centrica Resources Norge Det norske oljeselskap
2012	Martin Linge, PL040, PL043	Total E&P Norge Petoro AS Statoil Petroleum

(60) PDOs for the production of gas covering in total 14 companies have been accepted during the period from 2008 – 2012. PDOs covering three new entrants have been accepted in the period from 2009 – 2011 ([42]). More than 25 companies on the NCS export gas to the EEA ([43]).

(61) In 2011, the production of gas in Norway amounted to 101,4 billion cubic meters representing 3,1 % of the world-wide production ([44]). More than 95 % of the production on the NCS is exported to the EEA via gas pipelines to six landing points in four countries (the UK, Germany, Belgium, and France) ([45]). Approximately 1,4 billion cubic meters (less than 2 %) of the gas produced on the NCS was consumed domestically in Norway.

([42]) See the Norwegian Government's letter to the Authority dated 15 February 2013 (Event No 663313, p. 28).

([43]) Cf. the Norwegian Government's notification to the Authority dated 5 November 2012 (Event No 652027, p. 30).

([44]) See the BP Statistics, p. 22.

([45]) Receiving terminals at: Dornum, Dunkerque, Easington, Emden, St Fergus and Zeebrugge (http://www.gassco.no/wps/wcm/connect/Gassco-NO/Gassco/Home/norsk-gass/Transportsystemet).

(62) There are a number of independent companies who are active in the production of gas on the NCS. Moreover, new companies are accepted as licensees. The five largest gas producing companies on the NCS, measured in terms of annual production level, are: Petoro, Statoil, Exxon Mobil, Total and Shell. Statoil is the largest gas-producing company on the NCS. The three largest gas-producing companies' combined share of total production of gas on the NCS does not exceed 50 % ([46]).

(63) The EU Member States consume about 500 billion cubic metres gas per year. According to Eurogas ([47]), in 2011, gas supplies from the EU Member States accounted for 33 % of total net supplies, followed by Russia (24 %), Norway (19 %) ([48]) and Algeria (9 %), delivered both by pipeline and as LNG. Other sources from different parts of the world contributed the remaining 15 %.

(64) All licensees on the NCS are responsible for selling their own gas. Producing companies on the NCS have gas sales agreements with buyers in a number of EU Member States. The share in 2011 of the total consumption of gas which was provided by Norwegian gas in each of the six EU Member States importing the most gas from the NCS was as follows ([49]):

EEA State	% of consumption provided by Norwegian gas
UK	35 %
Germany	32 %
Belgium	34 %
Netherlands	24 %
France	26 %
Italy	14 %

EEA national gas consumption – IHS CERA

([46]) See the Norwegian Government's letter to the Authority dated 15 February 2013 (Event No 663313, p. 28).

([47]) See Eurogas, Statistical Report 2012, p. 1 (http://www.eurogas.org/uploaded/Statistical%20-Report%202012_final_211112.pdf).

([48]) It appears from the information submitted by the Norwegian Government to the Authority that the figure might be somewhat higher. However, this is immaterial to the outcome of the Decision in this case.

([49]) The statistics for the destination of Norwegian natural gas to the EEA are based on the nationality of the purchasing company.

(65) Statoil is the second largest gas supplier to the EEA after Gazprom with approximately 20 % ([50]) of total EEA consumption. As can be seen from the table above, in the main EEA States to which Norwegian gas is supplied, the NCS suppliers face competition from suppliers who source their gas from other geographical areas. Consequently, buyers at the wholesale level in these EEA States have alternative sources of supply to gas from the NCS. This can be illustrated further by the statistics compiled by Eurogas (table below), which shows that in addition to Norwegian gas, EU Member States received gas supplies from indigenous production, Russia, Algeria, Qatar and other sources:

NATURAL GAS SUPPLIES IN EUROGAS MEMBER COUNTRIES AND EU, 2011 ([1])

TWh	Indigenous Production	Russia	Norway	Algeria	Qatar	Other sources (*)	Changes in stocks (**)	Other balances	Total Net Supplies	% Change 2011/2010
Austria	18,8	59,8	14,5	0,0	0,0	29,4	– 22,1	– 4,9	95,6	– 6 %
Belgium	0,0	3,4	82,4	0,0	30,8	66,9	– 0,2	0,0	183,3	– 15 %
Bulgaria	4,2	29,3	0,0	0,0	0,0	0,0	0,2	– 1,4	32,3	11 %
Czech Republic	1,4	63,3	12,2	0,0	0,0	23,2	– 10,0	– 4,6	85,5	– 10 %
Denmark	81,7	0,0	0,0	0,0	0,0	– 31,9	– 1,8	– 7,4	40,6	– 18 %
Estonia	0,0	6,5	0,0	0,0	0,0	0,0	0,0	0,0	6,5	– 10 %
Finland	0,0	43,4	0,0	0,0	0,0	0,0	0,0	0,0	43,4	– 12 %
France	6,5	72,6	182,9	66,7	37,4	135,0	– 22,4	– 1,5	477,2	– 13 %
Germany	137,3	336,9	303,1	0,0	0,0	110,2	– 22,8	0,0	864,7	– 11 %
Greece	0,0	30,3	0,0	8,7	1,9	10,5	– 0,1	– 0,1	51,2	23 %
Hungary	32,5	72,6	0,0	0,0	0,0	5,6	14,0	– 0,6	124,2	– 6 %
Ireland	2,1	0,0	0,0	0,0	0,0	51,1	0,0	0,0	53,2	– 12 %
Italy	88,5	247,1	38,6	242,8	65,7	149,0	– 8,2	0,9	824,4	– 6 %
Latvia	0,0	16,2	0,0	0,0	0,0	0,0	0,0	0,0	16,2	– 13 %
Lithuania	0,0	57,0	0,0	0,0	0,0	– 21,9	– 0,1	0,0	35,0	9 %
Luxemburg	0,0	3,2	6,9	0,0	0,0	3,2	0,0	0,0	13,4	– 13 %
Netherlands	746,7	44,0	129,0	0,9	3,7	– 481,6	0,0	15,8	458,3	– 10 %
Poland	47,6	102,7	0,0	0,0	0,0	17,4	– 8,4	– 1,4	157,9	2 %
Portugal	0,0	0,0	0,0	21,6	0,0	36,9	0,0	0,0	58,5	0 %

([50]) This sales volume includes Statoil's sales on behalf of Petoro / SDFI.

TWh	Indigenous Production	Russia	Norway	Algeria	Qatar	Other sources (*)	Changes in stocks (**)	Other balances	Total Net Supplies	% Change 2011/2010
Romania	117,0	34,2	0,0	0,0	0,0	0,0	– 0,4	0,0	150,8	3 %
Slovakia	1,0	62,4	0,0	0,0	0,0	– 5,7	0,2	– 0,1	57,7	– 3 %
Slovenia	0,0	5,3	0,0	2,6	0,0	0,9	– 0,1	0,1	8,8	– 16 %
Spain	1,9	0,0	13,9	147,4	51,5	160,4	– 4,5	1,6	372,2	– 7 %
Sweden	0,0	0,0	0,0	0,0	0,0	14,9	0,0	0,0	14,9	– 20 %
United Kingdom	526,7	0,0	244,2	2,6	230,6	– 76,7	– 22,6	– 0,1	904,7	– 17 %
EU	**1 813,9**	**1 290,1**	**1 027,7**	**493,3**	**421,6**	**196,8**	**– 109,2**	**– 3,7**	**5 130,5**	**– 10 %**
% Change 2011/10	**– 11 %**	**2 %**	**– 3 %**	**– 8 %**	**21 %**	**– 45 %**	**– 199 %**	**– 78 %**	**– 10 %**	
Switzerland	0,0	7,6	7,3	0,0	0,0	19,6	0,0	0,0	34,5	– 10 %
Turkey	8,1	270,3	0,0	44,2	0,0	144,7	0,0	2,4	469,7	18 %

([1]) This table is taken from the Eurogas, Statistical Report 2012, p. 6.
Units: terawatt hour (gross calorific value).
Note: Figures are best estimates available at the time of publication.
(*) Including net exports.
(**) (-) Injection / (+) Withdrawal.

(66) Considering the EU Member States with the highest share of gas from Norway, there are alternative sources of supply. Some of these alternatives are:

— In the UK, where gas from the NCS accounts for approximately 35 %, there is a considerable domestic production of gas (although this has been decreasing since 2000) ([51]). Imports of LNG to the UK has grown substantially over the last few years ([52]).

— In Belgium, where gas from the NCS accounts for approximately 34 %, LNG is regasified at Zeebrugge LNG terminal and is substitutable with piped gas.

— In Germany, where gas from the NCS accounts for approximately 32 %, the two Nord Stream pipelines from Russia was inaugurated in 2011 and 2012 respectively and provide a new source of gas supplies from Russia. The Norwegian Government is of the opinion that the opening of these pipelines most probably will lead to increased competition between Norwegian and Russian gas, as this increases supply diversification to Europe.

(67) Buyers at wholesale level must honour their take-or-pay commitments under relevant long-term sales contracts with Norwegian gas suppliers. Once these commitments are honoured, wholesale buyers are free to switch to alternative sources of supply, such as spot piped gas, spot LNG or they can increase volumes taken under long-term contracts with other suppliers. More recent sales contracts tend to have shorter duration. As submitted by the Norwegian Government, the spot market is becoming more important with increasingly liquid hubs both in the UK and on the European continent. Furthermore, in the EU, regasification

([51]) Digest of UK energy statistics' ("DUKES") 2012, Department of Energy & Climate Change, Chapter 4 Natural gas (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/65800/5954-dukes-2012-chapter-4-gas.pdf), p. 95.
([52]) DUKES (see footnote 50), p. 95.

capacity has more than doubled in the past five years. In 2011, 25 % of EU's net imports of gas were delivered by LNG, broken down by the following EU Member States:

LNG SUPPLIES IN EUROGAS MEMBER COUNTRIES AND EU, 2011 [1]

TWh	LNG Net-Imports	% Change 2011/2010
Belgium	49,8	– 19 %
France	163,9	5 %
Greece	13,5	5 %
Italy	94,2	– 2 %
Netherlands	9,5	
Portugal	34,7	7 %
Spain	257,2	– 18 %
United Kingdom	270,7	33 %
EU	**893,5**	**2 %**
Turkey	68,9	– 21 %

[1] This table is taken from the Eurogas, Statistical Report 2012, p. 7. *Units: terawatt hours (gross calorific value).*

(68) Competitive pressure in the natural gas market also comes from the existence of alternative products to gas (such as coal or renewables).

(69) All major gas transportation pipelines from the NCS to the European continent and to the UK are owned by Gassled [53]. Access to the upstream pipeline network is managed by Gassco AS, a company wholly owned by the Norwegian State. Gassco AS does not own any shares or capacity in the upstream pipeline network and it acts independently in granting access to free capacity. The gas transport system is neutral for all players with a need to transport natural gas. Producing companies and qualified users have a right to access the system on non-discriminatory, objective and transparent conditions. The users have access to capacity in the system based on their need for gas transport [54]. Thus, current and new gas operators on the NCS can get access to the upstream pipeline network and can supply gas to customers in competition with other operators on the NCS.

(70) In the light of the elements above, the Authority considers that there is nothing to indicate that the sector is not functioning in a market-driven fashion, and that the production of natural gas on the NCS therefore is directly exposed to competition within the meaning of Directive 2004/17/EC.

[53] Gassled is an unincorporated joint venture regulated under Norwegian law. The Gassled owners each hold an undivided interest, corresponding to their respective participating interest, in all rights and obligations of the joint venture (cf. the Norwegian Government's notification to the Authority dated 5 November 2012 (Event No 652027, p. 7-8).

[54] See the white paper *An industry for the future – Norway's petroleum activities* (Meld. St. 28 (2010–2011) Report to the Norwegian Parliament (Storting), p. 68.

III. **CONCLUSION**

(71) The Authority considers that the following activities in Norway and in particular on the Norwegian Continental Shelf are directly exposed to competition within the meaning of Article 30(1) of Directive 2004/17/EC:

(a) exploration for crude oil and natural gas;

(b) production of crude oil; and

(c) production of natural gas.

(72) Since the condition of unrestricted access to the market is deemed to be met, Directive 2004/17/EC should not apply when contracting entities award contracts intended to enable the services listed in points (a), (b) and (c) of paragraphs 2 and 71 of this Decision to be carried out in Norway and in particular on the Norwegian Continental Shelf.

(73) This Decision is based on the legal and factual situation in March 2013 as it appears from the information submitted by the Norwegian Government. It may be revised, should significant changes in the legal or factual situation mean that the conditions for the applicability of Article 30(1) of Directive 2004/17/EC are no longer met.

HAS ADOPTED THIS DECISION:

Article 1

The Act referred to at point 4 of Annex XVI to the Agreement on the European Economic Area laying down the procedures for the award of public contracts in the utilities sector (Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors) shall not apply to contracts awarded by contracting entities and intended to enable the following services to be carried out on in Norway and in particular on the Norwegian Continental Shelf:

(a) exploration for crude oil and natural gas;

(b) production of crude oil; and

(c) production of natural gas.

Article 2

This Decision is addressed to the Kingdom of Norway.

Done at Brussels, 30 April 2013.

For the EFTA Surveillance Authority

Sverrir Haukur GUNNLAUGSSON
College Member

Markus SCHNEIDER
Acting Director

NOTICE TO READERS

Council Regulation (EU) No 216/2013 of 7 March 2013 on the electronic publication of the *Official Journal of the European Union*

In accordance with Council Regulation (EU) No 216/2013 of 7 March 2013 on the electronic publication of the *Official Journal of the European Union* (OJ L 69, 13.3.2013, p. 1), as of 1 July 2013, only the electronic edition of the Official Journal shall be considered authentic and shall have legal effect.

Where it is not possible to publish the electronic edition of the Official Journal due to unforeseen and exceptional circumstances, the printed edition shall be authentic and shall have legal effect in accordance with the terms and conditions set out in Article 3 of Regulation (EU) No 216/2013.

NOTE TO READERS — WAY OF REFERRING TO ACTS

As of 1 July 2013 the way of referring to acts has changed.

During a transitional period this new practice will coexist with the previous one.

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