

Official Journal

of the European Union

L 62

English edition

Legislation

Volume 51

6 March 2008

Contents

I Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory

REGULATIONS

Commission Regulation (EC) No 205/2008 of 5 March 2008 establishing the standard import values for determining the entry price of certain fruit and vegetables 1

Commission Regulation (EC) No 206/2008 of 5 March 2008 laying down the allocation coefficient to be applied to import licence applications lodged from 22 to 29 February 2008 under the tariff quota opened by Regulation (EC) No 1002/2007 for rice originating in and coming from Egypt 3

★ **Commission Regulation (EC) No 207/2008 of 5 March 2008 adopting the specifications of the 2009 ad hoc module on the entry of young people into the labour market provided for by Council Regulation (EC) No 577/98 ⁽¹⁾** 4

DIRECTIVES

★ **Commission Directive 2008/38/EC of 5 March 2008 establishing a list of intended uses of animal feedingstuffs for particular nutritional purposes (Codified version) ⁽¹⁾** 9

II *Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory*

DECISIONS

Council

2008/202/EC:

- ★ **Council Decision of 28 January 2008 concerning the conclusion of the Agreement between the European Community and the Government of Japan on cooperation and mutual administrative assistance in customs matters** 23

Agreement between the European Community and the Government of Japan on cooperation and mutual administrative assistance in customs matters 24

IV *Other acts*

EUROPEAN ECONOMIC AREA

EFTA Surveillance Authority

- ★ **EFTA Surveillance Authority Decision No 329/05/COL of 20 December 2005 amending for the 54th time the procedural and substantive rules in the field of State Aid including proposal for appropriate measures** 30
- ★ **EFTA Surveillance Authority Decision No 320/06/COL of 31 October 2006 amending the list contained in point 39 in Part 1.2 of Chapter I of Annex I to the Agreement on the European Economic Area listing border inspection posts in Iceland and Norway agreed for veterinary checks on live animals and animal products from third countries and repealing EFTA Surveillance Authority Decision 246/06/COL of 6 September 2006** 44

I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COMMISSION REGULATION (EC) No 205/2008**of 5 March 2008****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes

the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 6 March 2008.

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

Done at Brussels, 5 March 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

to Commission Regulation of 5 March 2008 establishing the 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	JO	72,2
	MA	52,9
	TN	120,5
	TR	94,7
	ZZ	85,1
0707 00 05	EG	178,8
	MA	114,7
	TR	177,0
	ZZ	156,8
0709 90 70	MA	93,0
	TR	116,9
	ZZ	105,0
0805 10 20	EG	45,4
	IL	54,7
	MA	58,3
	TN	49,0
	TR	62,8
	ZZ	54,0
0805 50 10	EG	95,9
	IL	109,4
	SY	56,4
	TR	120,8
	ZZ	95,6
0808 10 80	AR	97,3
	CA	73,8
	CN	92,7
	MK	42,4
	US	108,1
	UY	71,7
	ZZ	81,0
0808 20 50	AR	82,4
	CL	82,4
	CN	60,6
	US	123,2
	ZA	97,1
	ZZ	89,1

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 206/2008**of 5 March 2008****laying down the allocation coefficient to be applied to import licence applications lodged from 22 to 29 February 2008 under the tariff quota opened by Regulation (EC) No 1002/2007 for rice originating in and coming from Egypt**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1785/2003 of 29 September 2003 on the common organisation of the market in rice ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽²⁾, and in particular Article 7(2) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1002/2007 ⁽³⁾ opens an annual import tariff quota, per marketing year, of 32 000 tonnes of rice falling within CN code 1006 originating in and coming from Egypt (serial No 09.4094).
- (2) The notification made in accordance with Article 5(a) of Regulation (EC) No 1002/2007 shows that the applications lodged between 22 February 2008 at 13:00 (Brussels time) and 29 February 2008 at 13:00 (Brussels time) in accordance with Article 2(3) of that Regulation exceed the quantities available. The extent to

which import licences may be issued should therefore be determined and the allocation coefficient to be applied to the quantities applied for should be laid down.

- (3) The submission of new import licence applications under Regulation (EC) No 1002/2007 should also be suspended until the end of the current quota period in accordance with the first subparagraph of Article 3(3) of that Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for rice originating in and coming from Egypt under the quota referred to in Regulation (EC) No 1002/2007 lodged between 22 February 2008 at 13:00 (Brussels time) and 29 February 2008 at 13:00 (Brussels time) shall be accepted for the quantities applied for multiplied by an allocation coefficient of 22,728704 %.
2. The submission of new import licence applications is suspended from 29 February 2008 at 13:00 (Brussels time) until the end of the current quota period.

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, 5 March 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 270, 21.10.2003, p. 96. Regulation as last amended by Commission Regulation (EC) No 797/2006 (OJ L 144, 31.5.2006, p. 1). Regulation (EC) 1785/2003 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 September 2008.

⁽²⁾ OJ L 238, 1.9.2006, p. 13. Regulation as amended by Regulation (EC) No 289/2007 (OJ L 78, 17.3.2007, p. 17).

⁽³⁾ OJ L 226, 30.8.2007, p. 15.

COMMISSION REGULATION (EC) No 207/2008**of 5 March 2008****adopting the specifications of the 2009 ad hoc module on the entry of young people into the labour market provided for by Council Regulation (EC) No 577/98****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 577/98 of 9 March 1998 on the organisation of a labour force sample survey in the Community⁽¹⁾, and in particular Article 4(2) thereof,

Whereas:

(1) The European Employment guidelines⁽²⁾ include a number of policy orientations relevant for youth employment, underlining that more efforts should be undertaken to build employment pathways for young people and to reduce youth unemployment. These guidelines also refer to the targets and benchmarks set in the European Employment Strategy since 2003 for the reduction of early school-leaving, the rise in educational attainment levels and the 'new start' for unemployed youth.

(2) The education benchmarks are enshrined in the Education and Training 2010 Work Programme which is implemented by Member States and the Commission⁽³⁾. These benchmarks should help to monitor the rise in educational attainment levels and in lifelong learning and the reduction of number of early school-leavers — policy goals aimed to prepare best the young people to their professional and social life.

(3) The Council Decision 2006/702/EC of 6 October 2006 on Community Strategic Guidelines on Cohesion⁽⁴⁾ calls

upon Member States to pay special attention to 'implementing the European Youth Pact, by facilitating access to employment for young people, by easing the transition from education to work, including through career guidance, assistance in completing education, access to appropriate training and apprenticeships'.

(4) Consequently, there is an evident need for a comprehensive and comparable set of data on the entry of the young people into the labour market in order to monitor progress towards the common objectives of the European Employment Strategy and of the Social Inclusion Process.

(5) Commission Regulation (EC) No 384/2005 of 7 March 2005 adopting the programme of ad hoc modules, covering the years 2007 to 2009, for the labour force sample survey provided for by Council Regulation (EC) No 577/98⁽⁵⁾ already included an ad hoc module on the entry of the young people into the labour market. The list of variables for this module should be defined.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Statistical Programme Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The detailed list of variables to be collected in 2009 by the ad hoc module on the entry of the young people into the labour market shall be as set out in the Annex.

Article 2

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

⁽¹⁾ OJ L 77, 14.3.1998, p. 3. Regulation as last amended by Regulation (EC) No 1372/2007 of the European Parliament and of the Council (OJ L 315, 3.12.2007, p. 42).

⁽²⁾ Council Decision of 12 July 2005 on Guidelines for the employment policies of the Member States (2005/600/EC), OJ L 205, 6.8.2005, p. 21.

⁽³⁾ Council, Detailed work programme on the follow-up of the objectives of Education and training systems in Europe (2002/C 142/01), OJ C 142, 14.6.2002, p. 1.

⁽⁴⁾ OJ L 291, 21.10.2006, p. 11.

⁽⁵⁾ OJ L 61, 8.3.2005, p. 23. Regulation as amended by Regulation (EC) No 341/2006 (OJ L 55, 25.2.2006, p. 9).

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

Done at Brussels, 5 March 2008.

For the Commission
Joaquín ALMUNIA
Member of the Commission

ANNEX

LABOUR FORCE SURVEY

Specifications of the 2009 ad hoc module on the entry of young people into the labour market

1. Member States and regions concerned: all.

2. The variables shall be coded as follows:

The labelling of variables of the Labour Force Survey in the column 'Filter' refers to Annex II to Commission Regulation (EC) No 430/2005.

Column	Code	Description	Filter
203 (PARHAT)		Highest level of education successfully completed by father or mother	Everybody aged 15-34
	1	Low: ISCED 0, 1, 2 and 3c short	
	2	Medium: ISCED 3-4 (without 3c short)	
	3	High: ISCED 5-6	
	9	Not applicable (persons aged less than 15 or more than 34)	
	Blank	No answer	
204-207 PARFOR		Country of birth of father and mother	Everybody aged 15-34
		(For Germany: nationality/former nationality of father and mother when they have in the reference week the German nationality)	
		For coding, see ISO country classification	
		4 digits (father — 2 first digits, mother — 2 last digits)	
	9999	Not applicable	
	Blank	No answer	
208 HATVOC		Orientation of the highest level of formal education attained (HATLEVEL)	Everybody aged 15-34 and HATLEVEL=21-43
	1	General education	
	2	Vocational education mainly (or solely) school based	
	3	Combination of school and workplace based vocational education	
	4	Vocational education mainly workplace based	
	5	Vocational education, with no distinction possible between 2, 3 and 4	
	9	Not applicable	
	Blank	No answer	
209-214 STOPDATE		Month and year of leaving formal education for the last time	Everybody aged 15-34 and EDUCSTAT=2 and HATLEVEL#00
	...	Month and year	
	999999	Not applicable	
	Blank	No answer	

Column	Code	Description	Filter
215 WORKEDUC		Work during studies in formal education	Everybody aged 15-34
	0	No work or work less than 1 month per year	
	1	Work (only) as part of educational programme	
	2	Work while studying but outside educational programmes	
	3	Work (only) during an interruption of studies	
	4	Work as combination of 1 and 2	
	5	Work as combination of 1 and 3	
	6	Work as combination of 2 and 3	
	7	Work as combination of 1, 2 and 3	
	9	Not applicable	
	Blank	No answer	
216-221 JOBSTART		Month and year of start of the first job of more than 3 months after leaving formal education for the last time	Col.209-214 ≠ 999999 and blank
	000000	Never had a job of more than 3 months	
	000001	Current job is my first job	
		Month and year	
	999999	Not applicable	
	Blank	No answer	
222-224 JOB DUR		Duration of the first job of more than 3 months (after leaving formal education for the last time)	Col. 216-221 ≠ 000000 and 000001 and 999999
	...	Number of months	
	999	Not applicable	
	Blank	No answer	
225 FINDMETH		Method which allowed to find the first job of more than 3 months (after leaving formal education for the last time)	Col. 216-221 ≠ 000000 and 999999
	1	Via educational institution	
	2	Via PES (Public Employment Services)	
	3	Via ads in press or on the Internet	
	4	Submission of direct (spontaneous) job application to employer	
	5	Via family and friends	
	6	Job found after previous experience (summer/student job, apprenticeship, traineeship, voluntary job) in the same company	
	7	Launching private business	
	8	Other	
	9	Not applicable	
	Blank	No answer	

Column	Code	Description	Filter
226-229 JOBOCC		Occupation of the first job of more than 3 months (after leaving formal education for the last time)	Col. 216-221 ≠ 000000 and 000001 and 999999
		ISCO-88 (COM) coded at 3 or if possible 4 digits level	
	9999	Not applicable	
	Blank	No answer	
230 JOBCONTR		Type of contract of the first job of more than 3 months (after leaving formal education for the last time)	Col. 216-221 ≠ 000000 and 000001 and 999999
	1	Self-employed	
	2	Employee, permanent full-time	
	3	Employee, permanent part-time	
	4	Employee, temporary full-time	
	5	Employee, temporary part-time	
	6	Family worker	
	9	Not applicable	
	Blank	No answer	
231 TRANSACT		Main activity after leaving formal education for the last time and before starting the first job of a duration of at least 3 months	Col.209-214 ≠ 999999 and blank and {first job started more than 3 months after the date in Col.209-214 or Col.216-221 =000000}
	1	Employed — work in job(s) of short duration (maximum 3 months)	
	2	Compulsory military or community service	
	3	Not employed, actively looking for a job	
		Not employed, not looking actively for a job because of:	
	4	Family responsibilities	
	5	Participation in non-formal education	
	6	Voluntary activities	
	7	Health problems	
	8	Other reasons	
	9	Not applicable	
	Blank	No answer	
232/237		Weighting factor for the LFS module 2009 (optional)	Everybody aged 15-34
	0000-9999	Columns 232-235 contain whole numbers	
	00-99	Columns 236-237 contain decimal places	
238 (PARNAT)		Nationality at birth of parents (optional)	Everybody aged 15-34
		For coding, see ISO country classification	
	9999	Not applicable	
	Blank	No answer	

DIRECTIVES

COMMISSION DIRECTIVE 2008/38/EC

of 5 March 2008

establishing a list of intended uses of animal feedingstuffs for particular nutritional purposes

(Text with EEA relevance)

(Codified version)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 93/74/EEC of 13 September 1993 on feedingstuffs intended for particular nutritional purposes ⁽¹⁾, and in particular Article 6(a) thereof,

Whereas:

(1) Commission Directive 94/39/EC of 25 July 1994 establishing a list of intended uses of animal feedingstuffs for particular nutritional purposes ⁽²⁾ has been substantially amended several times ⁽³⁾. In the interests of clarity and rationality the said Directive should be codified.

(2) Directive 93/74/EEC provides for the establishment of a positive list of the intended uses of animal feedingstuffs for particular nutritional purposes. That list must indicate the precise use, that is to say, the particular nutritional purpose, the essential nutritional characteristics, the labelling declarations and where appropriate the special labelling requirements.

(3) Certain nutritional purposes cannot be included at present in the list of intended uses due to the absence of Community methods of control for the energy value in pet foods and for dietary fibre in feedingstuffs. This list must be completed as soon as these methods have been adopted.

(4) The established list may be modified, where appropriate, following developments in scientific and technical knowledge.

(5) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health.

(6) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex II, Part B,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall require that feedingstuffs intended for particular nutritional purposes within the meaning of Directive 93/74/EEC shall be marketed only if their intended uses are included in Part B of Annex I to this Directive and if they fulfil the other provisions laid down in that Part of Annex I.

Furthermore, the Member States shall ensure that the provisions under 'General provisions' of Part A of Annex I are complied with.

Article 2

Directive 94/39/EC, as amended by the Directives listed in Annex II, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex II, Part B.

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

Article 3

This Directive shall enter into force on 31 July 2008.

⁽¹⁾ OJ L 237, 22.9.1993, p. 23. Directive as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

⁽²⁾ OJ L 207, 10.8.1994, p. 20. Directive as last amended by Directive 2008/4/EC (OJ L 6, 10.1.2008, p. 4).

⁽³⁾ See Annex II, part A.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 5 March 2008.

For the Commission
The President
José Manuel BARROSO

ANNEX I

PART A

General provisions

1. Where there is more than one group of nutritional characteristics indicated in column 2 of Part B, denoted by 'and/or', for the same nutritional purpose, the manufacturer has the option to use either or both groups of essential characteristics, in order to achieve the nutritional purpose defined in column 1. For each option the corresponding labelling declarations are given opposite in column 4.
2. Where a group of additives is mentioned in column 2 or column 4 of Part B the additive(s) used must be authorised in Regulation (EC) No 1831/2003 of the European Parliament and of the Council ⁽¹⁾ as corresponding to the specified essential characteristic.
3. Where the source(s) of ingredients or of analytical constituents is (are) required in column 4 of Part B, the manufacturer must make a precise declaration (e.g. specific name of the ingredient(s), animal species or part of the animal) allowing the evaluation of conformity of the feedingstuff with the corresponding essential nutritional characteristics.
4. Where the declaration of a substance, also authorised as an additive, is required in column 4 of Part B and is accompanied by the expression 'total' the declared content must refer to, as appropriate, the quantity naturally present where none is added or, by derogation from Council Directive 70/524/EEC ⁽²⁾, the total quantity of the substance naturally present and the amount added as an additive.
5. The declarations required in column 4 of Part B with the reference 'if added' are compulsory where the ingredient or the additive has been incorporated or increased specifically to enable the achievement of the particular nutritional purpose.
6. The declarations to be given in accordance with column 4 of Part B concerning analytical constituents and additives must be quantitative.
7. The recommended period of use indicated in column 5 of part B indicates a range within which the nutritional purpose should normally be achieved. Manufacturers can refer to more precise periods of use, within the fixed limits.
8. Where a feedingstuff is intended to meet more than one particular nutritional purpose, it must comply with the corresponding entries in Part B.
9. In the case of complementary feedingstuffs intended for particular nutritional purposes guidance on the balance of the daily ration must be provided in the instructions for use contained on the label.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ OJ L 270, 14.12.1970, p. 1.

(1)	(2)	(3)	(4)	(5)	(6)
Reduction of struvite stone recurrence ⁽³⁾	Urine acidifying properties and moderate level of magnesium	Dogs and cats	— Calcium — Phosphorus — Sodium — Magnesium — Potassium — Chlorides — Sulphur — Urine acidifying substances	Up to 6 months	Indicate on the package, container or label: 'It is recommended that a veterinarian's opinion be sought before use.'
Reduction of urate stones formation	Low level of purines, low level of protein but of high quality	Dogs and cats	Protein source(s)	Up to 6 months but lifetime use in cases of irreversible disturbance of uric acid metabolism	Indicate on the package, container or label: 'It is recommended that a veterinarian's opinion be sought before use.'
Reduction of oxalate stones formation	Low level of calcium, low level of vitamin D, and urine alkalinising properties	Dogs and cats	— Phosphorus — Calcium — Sodium — Magnesium — Potassium — Chlorides — Sulphur — Total vitamin D — Hydroxyproline — Urine alkalinising substances	Up to 6 months	Indicate on the package, container or label: 'It is recommended that a veterinarian's opinion be sought before use.'
Reduction of cystine stones formation	Low level of protein, moderate level of sulphur amino acids and urine alkalinising properties	Dogs and cats	— Total sulphur amino acids — Sodium — Potassium — Chlorides — Sulphur — Urine alkalinising substances	Initially up to 1 year	Indicate on the package, container or label: 'It is recommended that a veterinarian's opinion be sought before use or before extending the period of use.'

(1)	(2)	(3)	(4)	(5)	(6)
Reduction of ingredient and nutrient intolerances ⁽⁴⁾	— Selected protein source(s) and/or — Selected carbohydrate source(s)	Dogs and cats	— Protein source(s) — Content of essential fatty acids (if added) — Carbohydrate source(s) — Content of essential fatty acids (if added)	3 to 8 weeks: if signs of intolerance disappear this feed can be used indefinitely	
Reduction of acute intestinal absorptive disorders	Increased level of electrolytes and highly digestible ingredients	Dogs and cats	— Highly digestible ingredients including their treatment if appropriate — Sodium — Potassium — Source(s) of mucilaginous substances (if added)	1 to 2 weeks	Indicate on the package, container or label: — 'During periods of and recovery from acute diarrhoea.' — 'It is recommended that a veterinarian's opinion be sought before use.'
Compensation for maldigestion ⁽⁵⁾	Highly digestible ingredients and low level of fat	Dogs and cats	Highly digestible ingredients including their treatment if appropriate	3 to 12 weeks, but lifetime in the case of chronic pancreatic insufficiency	Indicate on the package, container or label: — 'It is recommended that a veterinarian's opinion be sought before use.'
Support of heart function in the case of chronic cardiac insufficiency	Low level of sodium and increased K/Na ratio	Dogs and cats	— Sodium — Potassium — Magnesium	Initially up to 6 months	Indicate on the package, container or label: — 'It is recommended that a veterinarian's opinion be sought before use or before extending the period of use.'
Regulation of glucose supply (<i>Diabetes mellitus</i>)	Low level of rapid glucose-releasing carbohydrates	Dogs and cats	— Carbohydrate source(s) — Treatment of carbohydrates if appropriate — Starch — Total sugar — Fructose (if added) — Content of essential fatty acids (if added) — Source(s) of short and medium chain fatty acids (if added)	Initially up to 6 months	Indicate on the package, container or label: — 'It is recommended that a veterinarian's opinion be sought before use or before extending the period of use.'

(1)	(2)	(3)	(4)	(5)	(6)
Support of liver function in the case of chronic liver insufficiency	- High quality protein, moderate level of protein, high level of essential fatty acids and high level of highly digestible carbohydrates - High quality protein, moderate level of protein and high level of essential fatty acids	Dogs Cats	- Protein source(s) - Content of essential fatty acids - Highly digestible carbohydrates including their treatment if appropriate - Sodium - Total copper - Protein source(s) - Content of essential fatty acids - Sodium - Total copper	Initially up to 6 months	Indicate on the package, container or label: 'It is recommended that a veterinarian's opinion be sought before use or before extending the period of use.' Indicate in the instructions for use: 'Water should be available at all times.' Indicate on the package, container or label: 'It is recommended that a veterinarian's opinion be sought before use or before extending the period of use.' Indicate in the instructions for use: 'Water should be available at all times.'
Regulation of lipid metabolism in the case of hyperlipidaemia	Low level of fat and high level of essential fatty acids	Dogs and cats	- Content of essential fatty acids - Content of n-3 fatty acids (if added)	Initially up to 2 months	Indicate on the package, container or label: 'It is recommended that a veterinarian's opinion be sought before use or before extending the period of use.'
Reduction of copper in the liver	Low level of copper	Dogs	Total copper	Initially up to 6 months	Indicate on the package, container or label: 'It is recommended that a veterinarian's opinion be sought before use or before extending the period of use.'
Reduction of excessive body weight	Low energy density	Dogs and cats	Energy value	Until target body weight is achieved	In the instructions for use an appropriate daily intake must be recommended.

(1)	(2)	(3)	(4)	(5)	(6)
Nutritional restoration, convalescence ⁽⁶⁾	High energy density, high concentrations of essential nutrients and highly digestible ingredients	Dogs and cats	— Highly digestible ingredients, including their treatment if appropriate — Energy value — Content of n-3 and n-6 fatty acids (if added)	Until restoration is achieved	In the case of feedstuffs specially presented to be given via tubing, indicate on the package, container or label: 'Administration under veterinary supervision.'
Support of skin function in the case of dermatosis and excessive loss of hair	High level of essential fatty acids	Dogs and cats	Content of essential fatty acids	Up to 2 months	Indicate on the package, container or label: 'It is recommended that a veterinarian's opinion be sought before use.'
Reduction of the risk of milk fever	— Low level of calcium and/or — Low cations/anions ratio	Dairy cows	— Calcium — Phosphorus — Magnesium	1 to 4 weeks before calving	Indicate in the instructions for use: 'Stop feeding after calving'
	or — High level of zeolite (synthetic sodium aluminium silicate)		— Calcium — Phosphorus — Sodium — Potassium — Chlorides — Sulphur	1 to 4 weeks before calving	Indicate in the instructions for use: 'Stop feeding after calving'
			Content of synthetic sodium aluminium silicate	The 2 weeks before calving	Indicate in the instructions for use: — 'The amount of feed shall be restricted to ensure that a daily intake of 500 g sodium aluminium-silicate per animal is not exceeded.' — 'Stop feeding after calving'

(1)	(2)	(3)	(4)	(5)	(6)
	or — High level of calcium in the form of highly available calcium salts		Total calcium content, sources and respective quantity of calcium	Star at first signs of parturition to two days subsequent to parturition	Indicate on the package, container or label: — The instruction of use i.e. the number of applications and the time before and after calving. — The text 'It is recommended that a nutritional expert's opinion be sought before use'
Reduction of the risk of ketosis ⁽⁷⁾ ⁽⁸⁾	Ingredients providing glucogenic energy sources	Dairy cows and ewes	- Ingredients providing glucogenic energy sources - Propan-1,2-diol (if added as a glucose precursor) - Glycerol (if added as a glucose precursor)	3 to 6 weeks after calving ⁽⁹⁾ Last 6 weeks before and the first 3 weeks after lambing ⁽¹⁰⁾	
Reduction of the risk of tetany (hypomagnesaemia)	High level of magnesium, easily available carbohydrates, moderate level of protein and low level of potassium	Ruminants	- Starch - Total sugars - Magnesium - Sodium - Potassium	3 to 10 weeks during periods of fast grass growth	In the instructions for use guidance shall be provided on the balance of the daily ration, with regard to the inclusion of fibre and easily available energy sources. In the case of feedings for ovines indicate on the package, container or label: 'Especially for lactating ewes.'
Reduction of the risk of acidosis	Low level of easily fermentable carbohydrates and high buffering capacity	Ruminants	- Starch - Total sugars	Maximum 2 months ⁽¹¹⁾	In the instructions for use guidance shall be provided on the balance of the daily ration, with regard to the inclusion of fibre and easily fermentable carbohydrate sources. In the case of feedings for dairy cows indicate on the package, container or label: 'Especially for high yielding cows.' In the case of feedings for ruminants for fattening indicate on the package, container or label: 'Especially for intensively fed.' ⁽¹²⁾

(1)	(2)	(3)	(4)	(5)	(6)
Stabilisation of water and electrolyte balance	Predominantly electrolytes and easily absorbable carbohydrates	Calves Piglets Lambs Kids Foals	— Carbohydrate source(s) — Sodium — Potassium — Chlorides	1 to 7 days (1 to 3 days if fed exclusively)	Indicate on the package, container or label: — 'In case of risk of, during periods of, or recovery from digestive disturbance (diarrhoea).' — 'It is recommended that a veterinarian's opinion be sought before use.'
Reduction of the risk of urinary calculi	Low level of phosphorus, magnesium, and urine acidifying properties	Ruminants	— Calcium — Phosphorus — Sodium — Magnesium — Potassium — Chlorides — Sulphur — Urine acidifying substances	Up to 6 weeks	Indicate on the package, container or label: 'Especially for intensively fed young animals.' Indicate in the instructions for use: 'Water should be available at all times.'
Reduction of stress reactions	— High level magnesium - and/or — Highly digestible ingredients	Pigs	— Magnesium — Highly digestible ingredients including their treatment if appropriate — Content of n-3 fatty acids (if added)	1 to 7 days	Guidance shall be provided on the situation in which the use of this feed is appropriate.
Stabilisation of physiological digestion	— Low buffering capacity, and highly digestible ingredients	Piglets	— Highly digestible ingredients including their treatment if appropriate — Buffering capacity — Source(s) of astringent substances (if added) — Source(s) of mucilaginous substances (if added)	2 to 4 weeks	Indicate on the package, container or label: 'In case of risk of, during periods of, or recovery from, digestive disturbance.'

(1)	(2)	(3)	(4)	(5)	(6)
	— Highly digestible ingredients	Pigs	— Highly digestible ingredients including their treatment if appropriate — Source(s) of astringent substances (if added) — Source(s) of mucilaginous substances (if added)		
Reduction of the risk of constipation	Ingredients stimulating intestinal passage	Sows	Ingredients stimulating intestinal passage	10 to 14 days before and 10 to 14 days after farrowing	
Reduction of the risk of fatty liver syndrome	Low energy and high proportion of metabolisable energy from lipids with high level of polyunsaturated fatty acids	Laying hens	— Energy value (calculated according to EC method) — Percentage of metabolisable energy from lipids — Content of poly-unsaturated fatty acids	Up to 12 weeks	
Compensation for malabsorption	Low level of saturated fatty acids and high level of fat soluble vitamins	Poultry excluding geese and pigeons	— Percentage of saturated fatty acids in relation to total fatty acids — Total vitamin A — Total vitamin D — Total vitamin E — Total vitamin K	During the first 2 weeks after hatching	
Compensation for chronic insufficiency of small intestine function	Highly preceacally digestible carbohydrates proteins and fats	Equines ⁽¹³⁾	— Source(s) of highly digestible carbohydrates, proteins and fats, including their treatment if appropriate	Initially up to six months	Guidance should be provided on the situations in which the use of the feed is appropriate and the manner in which it should be fed including many small meals per day. Indicate on the package, container or label: 'It is recommended that a veterinarian's opinion be sought before use or before extending the period of use.'

(1)	(2)	(3)	(4)	(5)	(6)
Compensation for chronic digestive disorders of large intestine	Highly digestible fibre	Equines	— Fibre source(s) — Content of n-3 fatty acids (if added)	Initially up to six months	Guidance should be provided on the situations in which the use of the feed is appropriate and the manner in which the feed should be fed. Indicate on the package, container or label: 'It is recommended that a veterinarian's opinion be sought before use or before extending the period of use.'
Reduction of stress reactions	Highly digestible ingredients	Equines	— Magnesium — Highly digestible ingredients including their treatment if appropriate — Content of n-3 fatty acids (if added)	Two to four weeks	Guidance shall be provided on the precise situations in which the use of the feed is appropriate.
Compensation of electrolyte loss in the cases of heavy sweating	Predominantly electrolytes and easily absorbable carbohydrates	Equines	— Calcium — Sodium — Magnesium — Potassium — Chlorides — Glucose	One to three days	Guidance shall be provided on the situations in which the use of the feed is appropriate. When the feed corresponds to a significant part of the daily ration, guidance should be provided to prevent the risk of abrupt changes in the nature of the feed. Indicate on the instructions for use: 'Water should be available at all times.'
Nutritional restoration, convalescence	High concentration of essential nutrients and highly digestible ingredients	Equines	— Highly digestible ingredients, including their treatment if appropriate — Content of n-3 and n-6 fatty acids (if added)	Until restoration is achieved	Guidance shall be provided on the situations in which the use of the feed is appropriate. In the case of feedstuffs specially presented to be given via tubing, indicate on the package, container or label: 'Administration under veterinary supervision.'

(1)	(2)	(3)	(4)	(5)	(6)
Support of liver function in the case of chronic liver insufficiency	Low level of protein but of high quality and highly digestible carbohydrates	Equines	— Protein and fibre sources — Highly digestible carbohydrates including their treatment if appropriate — Methionine — Choline — Content of n-3 fatty acids (if added)	Initially up to six months	Guidance should be provided on the manner in which the feed should be fed including many small meals per day. Indicate on the package, container or label: 'It is recommended that a veterinarian's opinion be sought before use or before extending the period of use.'
Support of renal function in the case of chronic renal insufficiency	Low level of protein but of high quality and low level of phosphorus	Equines	— Protein source(s) — Calcium — Phosphorus — Potassium — Magnesium — Sodium	Initially up to six months	Indicate on the package, container or label: 'It is recommended that a veterinarian's opinion be sought before use or before extending the period of use.' Indicate in the instructions for use: 'Water should be available at all times.'

(1) If appropriate the manufacturer may also recommend use of temporary renal insufficiency.

(2) If the feedingstuff is recommended for temporary renal insufficiency the recommended period for use shall be two to four weeks.

(3) In the case of feedingstuffs for cats, 'feline lower urinary tract disease' or 'feline urological syndrome — FUS' may complete the particular nutritional purpose.

(4) In the case of feedingstuffs for a particular intolerance reference to the specific intolerance can replace 'ingredient and nutrient'.

(5) The manufacturer may complete the particular nutritional purpose with the reference: 'exocrine pancreatic insufficiency'.

(6) In the case of feedingstuffs for cats, the manufacturer may complete the particular nutritional purpose with a reference to 'Feline hepatic lipidosis'.

(7) The term 'ketosis' may be replaced by 'acetonæmia'.

(8) The manufacturers may also recommend the use for ketosis recuperation.

(9) In the case of feedingstuffs for dairy cows.

(10) In the case of feedingstuffs for ewes.

(11) In the case of feedingstuffs for dairy cows: 'maximum two months from the start of lactation'.

(12) Indicate the category of ruminants concerned.

(13) In the case of feedingstuffs specially prepared to meet the specific conditions of very old animals (easily ingestible ingredients) a reference to 'old animals' shall complete the indication of the species or category of animals.

ANNEX II

PART A

Repealed Directive with list of its successive amendments

(referred to in Article 2)

Commission Directive 94/39/EC	(OJ L 207, 10.8.1994, p. 20)
Commission Directive 95/9/EC	(OJ L 91, 22.4.1995, p. 35)
Commission Directive 2002/1/EC	(OJ L 5, 9.1.2002, p. 8)
Commission Directive 2008/4/EC	(OJ L 6, 10.1.2008, p. 4)

PART B

List of time-limits for transposition into national law

(referred to in Article 2)

Directive	Time-limit for transposition
94/39/EC	30 June 1995
95/9/EC	30 June 1995
2002/1/EC	20 November 2002
2008/4/EC	30 July 2008

ANNEX III

Correlation table

Directive 94/39/EC	This Directive
Article 1	Article 1
Article 2	—
—	Article 2
Article 3	Article 3
—	Article 4
Annex	Annex I
—	Annex II
—	Annex III

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 28 January 2008

concerning the conclusion of the Agreement between the European Community and the Government of Japan on cooperation and mutual administrative assistance in customs matters

(2008/202/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 in conjunction with the first sentence of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) On 5 April 1993 the Council authorised the Commission to start negotiating on behalf of the European Community customs cooperation agreements with some of the Community's main trading partners.
- (2) The Agreement between the European Community and the Government of Japan on cooperation and mutual administrative assistance in customs matters should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Government of Japan on cooperation and mutual administrative assistance in customs matters is hereby approved on behalf of the European Community.

The text of the Agreement is attached to this Decision.

Article 2

The Commission, assisted by representatives of the Member States, shall represent the Community in the Joint Customs Cooperation Committee set up under Article 21 of the Agreement.

Article 3

The President of the Council is hereby authorised to designate the persons empowered to sign the Agreement on behalf of the Community.

Article 4

The President of the Council shall effect the notification provided for in Article 22 of the Agreement on behalf of the Community ⁽¹⁾.

Article 5

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

Done at Brussels, 28 January 2008.

For the Council

The President

D. RUPEL

⁽¹⁾ The date of the entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

AGREEMENT**between the European Community and the Government of Japan on cooperation and mutual administrative assistance in customs matters**

THE EUROPEAN COMMUNITY and THE GOVERNMENT OF JAPAN (hereinafter referred to as the Contracting Parties),

CONSIDERING the importance of the commercial links between Japan and the European Community (hereinafter referred to as the Community), and desirous of contributing, to the benefit of both Contracting Parties, to the harmonious development of those links;

BELIEVING that, in order to attain this objective, there should be an undertaking to develop customs cooperation;

TAKING into account the development of customs cooperation between the Contracting Parties, concerning customs procedures;

CONSIDERING that operations in breach of customs legislation are prejudicial to the economic, fiscal and commercial interests of both Contracting Parties, and recognising the importance of ensuring the accurate assessment of customs duties and other taxes;

CONVINCED that action against such operations can be made more effective by cooperation between customs authorities;

RECOGNISING the significant role of customs authorities and the importance of customs procedures in promoting trade facilitation;

HAVING regard to the high level of commitment of both Contracting Parties to customs actions and cooperation in the fight against infringements of intellectual property rights;

HAVING regard to obligations imposed under international conventions already accepted by, or applied to the Contracting Parties, as well as customs related activities undertaken by the World Trade Organisation (hereinafter referred to as the WTO);

HAVING regard to the Recommendation of the Customs Cooperation Council (hereinafter referred to as the CCC) on Mutual Administrative Assistance of December 5, 1953; and

WHEREAS in 1991 the Joint Declaration on Relations between The European Community and its Member States and Japan provided general guidelines for the relationship and set procedural objectives to further develop relations;

HAVE AGREED AS FOLLOWS:

TITLE I**GENERAL PROVISIONS***Article 1***Definitions**

For the purpose of this Agreement:

- (a) 'customs legislation' shall mean any laws and regulations of Japan or the Community, governing the import, export and transit of goods and placing of goods under any other customs procedures, including measures of prohibitions, restrictions and controls falling under the competence of the customs authorities;

- (b) 'laws and regulations of the Contracting Party' and 'laws and regulations of each Contracting Party' shall mean the laws and regulations of Japan or the laws and regulations of the Community, as the context requires;

- (c) 'customs authority' shall mean, in Japan, the Ministry of Finance and, in the Community, the competent services of the Commission of the European Communities responsible for customs matters and the customs authorities of the Member States of the Community;

- (d) 'applicant authority' shall mean a customs authority of a Contracting Party which makes a request for assistance, on the basis of this Agreement;

- (e) 'requested authority' shall mean a customs authority of a Contracting Party which receives a request for assistance, on the basis of this Agreement;
- (f) 'personal data' shall mean all information relating to an identified or identifiable individual;
- (g) 'operation in breach of customs legislation' shall mean any violation or attempted violation of the customs legislation;
- (h) 'person' shall mean any natural person, any legal person, or any other entity without legal personality constituted or organised under the laws and regulations of each Contracting Party, carrying on importation, exportation, or transit of goods; and
- (i) 'information' shall mean data, documents, reports, and other communications in any format, including electronic copies thereof.

Article 2

Territorial application

This Agreement shall apply, on the one hand, to the territory of Japan in which its customs legislation is in force and, on the other hand, to the territories where the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty.

Article 3

Implementation

This Agreement shall be implemented by the Contracting Parties in accordance with the laws and regulations of each Contracting Party, and within the available resources of their respective customs authorities.

Article 4

Scope of the cooperation

1. Under this Agreement, customs cooperation shall cover all matters relating to the application of customs legislation.
2. The Contracting Parties through their customs authorities undertake to develop customs cooperation. In particular, the Contracting Parties shall cooperate in:
 - (a) establishing and maintaining channels of communications between their customs authorities to facilitate the secure and rapid exchange of information;
 - (b) facilitating effective coordination between their customs authorities; and

- (c) any other administrative matters related to this Agreement that may from time to time require their joint action.

3. The Contracting Parties also undertake to make cooperative efforts through their customs authorities in order to develop trade facilitation actions in the field of customs in accordance with international standards.

Article 5

Scope of assistance

1. The Contracting Parties through their customs authorities shall assist each other, in the areas within their competence and within the limits of available resources, and in the manner and under the conditions laid down in this Agreement, to ensure the correct application of customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.

2. Assistance in customs matters under this Agreement shall be provided between the customs authorities of the Contracting Parties, which are competent for the application of this Agreement. It shall not prejudice the rights and obligations of either Contracting Party on mutual assistance in criminal matters under international agreements or the laws and regulations of each Contracting Party. Nor shall it cover information obtained under powers exercised at the request of a judicial authority.

3. Assistance to recover duties, taxes or fines is not covered by this Agreement.

Article 6

Relation to other international agreements

1. The provisions of this Agreement shall not affect the rights and obligations of either Contracting Party under any other international agreements.
2. Notwithstanding the provisions of paragraph 1, the provisions of this Agreement shall take precedence over the provisions of any bilateral agreement on customs cooperation and mutual administrative assistance which has been or may be concluded between individual Member States of the Community and Japan, insofar as the provisions of the latter are incompatible with those of this Agreement.
3. The provisions of this Agreement shall not affect the Community provisions governing the communication between the competent services of the Commission and the customs authorities of the Member States of the Community of any information obtained under this Agreement which could be of interest to the Community.

TITLE II

CUSTOMS COOPERATION*Article 7***Cooperation in customs procedures**

For the purpose of facilitating the legitimate movement of goods, the customs authorities shall exchange information and expertise on measures to improve customs techniques and procedures and on computerised systems in accordance with the provisions of this Agreement.

*Article 8***Technical cooperation**

The customs authorities may provide technical cooperation to each other and exchange personnel and expertise on measures to improve customs techniques and procedures and on computerised systems with a view towards achieving these objectives in accordance with the provisions of this Agreement.

*Article 9***Discussions in international organisations**

The customs authorities shall seek to develop and strengthen their cooperation on topics of common interest with a view to facilitating discussions on customs matters in the framework of relevant international organisations such as the CCC and the WTO.

TITLE III

MUTUAL ADMINISTRATIVE ASSISTANCE*Article 10***Assistance on request**

1. At the request of the applicant authority, the requested authority shall provide it with all relevant information which may enable it to ensure that customs legislation of the Contracting Party of the applicant authority is correctly applied, including information regarding activities detected or planned which are or could be operations in breach of such customs legislation.

In particular, upon request, the requested authority shall furnish the applicant authority with information regarding activities that may result in operations in breach of customs legislation of the Contracting Party of the applicant authority, for example, incorrect customs declarations and certificates of origin, invoices, or other documents known to be, or suspected of being, incorrect or falsified.

2. At the request of the applicant authority, the requested authority shall inform it:

(a) whether goods exported from the territory of one of the Contracting Parties have been properly imported into the

other, specifying where appropriate, the customs procedure applied to the goods; and

(b) whether goods imported into the territory of one of the Contracting Parties have been properly exported from the other, specifying where appropriate, the customs procedure applied to the goods.

3. At the request of the applicant authority, the requested authority shall, within the framework of the laws and regulations of the Contracting Party of the requested authority, provide information on and exercise special surveillance of:

(a) persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation of the Contracting Party of the applicant authority;

(b) places where stocks of goods have been or may be stored or assembled in such a way that there are reasonable grounds for believing that these goods are intended to be used in operations in breach of customs legislation of the Contracting Party of the applicant authority;

(c) goods that are or may be transported in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation of the Contracting Party of the applicant authority; and

(d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation of the Contracting Party of the applicant authority.

*Article 11***Spontaneous assistance**

The Contracting Parties shall assist each other, at their own initiative and in accordance with the laws and regulations of each Contracting Party, if they consider that to be necessary for the correct application of customs legislation, in particular, in situations that could involve substantial damage to the economy, public health, public security, or similar vital interest of the other Contracting Party, particularly by providing information obtained pertaining to:

(a) activities which are or appear to be operations in breach of customs legislation and which may be of interest to the other Contracting Party;

(b) new means or methods employed in carrying out operations in breach of customs legislation;

- (c) goods known to be subject to operations in breach of customs legislation;
- (d) persons in respect of whom there are reasonable grounds for believing they are or have been involved in operations in breach of customs legislation; and
- (e) means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs legislation.

Article 12

Form and substance of requests for assistance

1. Requests pursuant to this Agreement shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. When required because of the urgency of the situation, an oral request may be accepted, but must be confirmed immediately in writing.
2. Requests pursuant to paragraph 1 shall include the following information:
 - (a) the applicant authority;
 - (b) the action requested;
 - (c) the object of and the reason for the request;
 - (d) indications as exact and comprehensive as possible on the persons who are the target of the investigations;
 - (e) a summary of the relevant facts and of the enquiries already carried out; and
 - (f) legal elements involved.

3. Requests shall be submitted in a language acceptable to both requested and applicant authorities. This requirement may also apply, to the extent necessary, to any documents that accompany the request under paragraph 1.

4. If a request does not meet the formal requirement set out above, its correction or completion may be requested; precautionary measures may be taken by the requested authority in the meantime.

Article 13

Execution of requests

1. In order to comply with a request for assistance, the requested authority shall, within the limits of its competence

and available resources, take all reasonable measures by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out.

2. Requests for assistance shall be executed in accordance with the laws and regulations of the Contracting Party of the requested authority.

3. Duly authorised officials from the applicant authority, may, with the agreement of the requested authority and subject to the conditions laid down by the latter, be present to obtain in the offices of the requested authority, information related to activities that are or may be operations in breach of customs legislation which the applicant authority needs for the purpose of this Agreement.

4. Duly authorised officials from the applicant authority may, with the agreement of the requested authority and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's jurisdiction into specific cases.

5. In the event that the request cannot be complied with, the applicant authority shall be notified promptly of that fact with a statement of the reasons. The statement may be accompanied by the relevant information that the requested authority considers may be of assistance to the applicant authority.

6. The requested authority shall, upon request by the applicant authority and when it deems appropriate, advise the applicant authority of the time and place of the action it will take in response to the request for assistance so that such action may be coordinated.

Article 14

Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries to the applicant authority in writing together with relevant documents or other items.

2. This information may be in computerised form.

Article 15

Exceptions to the obligation to provide assistance

1. Assistance may be refused or withheld, or may be made subject to the satisfaction of certain conditions or requirements, in cases where the Contracting Party of the requested authority is of the opinion that assistance under this Agreement would infringe upon the sovereignty of a Member State of the Community or of Japan, or upon its security, public policy, or other essential interest such as that referred to in paragraph 2 of Article 16.

In particular, each Contracting Party may limit the information it communicates to the other Contracting Party when the latter Contracting Party is unable to give the assurance requested by the former Contracting Party with respect to confidentiality or with respect to the limitations of purposes for which the information will be used.

2. Assistance may be withheld by the requested authority on the ground that it will interfere with an ongoing investigation, including investigation by the relevant law enforcement agencies, prosecution or judicial and administrative proceedings. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

3. Where the applicant authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.

4. For the cases referred to in paragraphs 1 and 2, the decision of the requested authority and the reasons thereof must be communicated to the applicant authority without undue delay.

Article 16

Information exchange and confidentiality

1. Any information communicated in whatsoever form pursuant to this Agreement shall be treated as of a confidential nature, depending on the laws and regulations of each Contracting Party and shall enjoy the protection extended to similar information under the relevant laws and regulations of the Contracting Party of the customs authority that received it and the corresponding provisions applying to the Community authorities, unless the Contracting Party which provided the information gives a prior consent to the disclosure of such information.

2. Personal data may be exchanged only where the Contracting Party which may receive it undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Contracting Party that may supply it. The Contracting Party that may supply the information shall not stipulate any requirements that are more onerous than those applicable to it in its own jurisdiction.

The Contracting Parties shall communicate to each other information on the laws and regulations of each Contracting Party, including where appropriate, those in the Member States of the Community.

3. Information obtained shall be used solely for the purposes of this Agreement. Where one of the Contracting Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the customs authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

4. Paragraph 3 shall not impede the use of information obtained in accordance with this Agreement as evidence in administrative proceedings subsequently instituted in respect of operations in breach of customs legislation. Therefore, the Contracting Parties may in their records of evidence, reports and testimonies and in administrative proceedings use as evidence information obtained in accordance with the provisions of this Agreement. The customs authority which supplied that information shall be notified of such use.

5. Notwithstanding paragraph 3 of this Article, unless otherwise notified by the customs authority providing the information, the customs authority receiving the information may provide the information received pursuant to this Agreement to the relevant law enforcement agencies of its Contracting Party. These agencies may only use this information for the correct application of customs legislation and shall be subject to the conditions set out in Articles 16 and 17 of this Agreement.

6. This Article shall not preclude the use or disclosure of information to the extent that there is an obligation to do so under the laws and regulations of the Contracting Party of the customs authority that received it. Such customs authority shall, wherever possible, give advance notice of any such disclosure to the customs authority which provided the information.

The receiving Contracting Party shall, unless otherwise agreed by the Contracting Party which provided the information, wherever appropriate, use all available measures under the applicable laws and regulations of the former Contracting Party to maintain the confidentiality of information and to protect personal data as regards applications by a third party or other authorities for disclosure of the information concerned.

Article 17

Criminal proceedings

Information provided from the customs authority of a Contracting Party to the customs authority of the other Contracting Party pursuant to this Agreement shall not be used by the latter Contracting Party in criminal proceedings carried out by a court or a judge.

Article 18

Assistance expenses

1. Expenses incurred in the implementation of this Agreement shall be borne by the respective Contracting Parties.

2. If during the execution of a request it becomes apparent that completion of the execution of the request will entail expenses of an extraordinary nature, the customs authorities shall consult to determine the terms and conditions under which the execution may continue.

TITLE IV

FINAL PROVISIONS

Article 19

Headings

The headings of the Titles and the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

Article 20

Consultation

All questions or disputes related to the interpretation or implementation of this Agreement shall be settled by mutual consultation between the Contracting Parties.

Article 21

Joint Customs Cooperation Committee

1. A Joint Customs Cooperation Committee is hereby established, consisting of officials from the Ministry of Finance and the Ministry of Foreign Affairs of Japan and of officials of the European Community responsible for customs matters. Other officials of both Contracting Parties with the necessary expertise relevant to the issues to be discussed may be included on an ad hoc basis. It shall meet at a place, on a date and with an agenda, fixed by mutual consent.

2. The Joint Customs Cooperation Committee shall, *inter alia*:

- (a) see to the proper functioning of this Agreement;
- (b) take measures necessary for customs cooperation in accordance with the objectives of this Agreement;
- (c) exchange views on any points of common interest regarding customs cooperation, including future measures and the resources for them;
- (d) recommend solutions aimed at attaining the objectives of this Agreement; and
- (e) adopt its internal rules of procedure.

Article 22

Entry into force and duration

1. This Agreement shall enter into force on the first day of the month following the date on which the Contracting Parties have notified each other of the completion of the procedures necessary for this purpose through diplomatic notes exchanged between them.

2. This Agreement may be amended by mutual consent of the Contracting Parties through diplomatic notes exchanged between them. Amendments shall enter into force within the same conditions as mentioned in paragraph 1, except as otherwise agreed by the Contracting Parties.

3. Each Contracting Party may terminate this Agreement by giving notice to the other in writing. The termination shall take effect three months from the date of notification to the other Contracting Party. Requests for assistance which have been received prior to the termination of the Agreement shall be completed in accordance with the provisions of this Agreement.

Article 23

Authentic texts

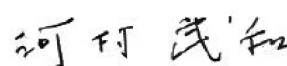
This Agreement shall be drawn up in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Japanese languages, each text being equally authentic. In case of divergence of interpretation, the English and Japanese texts shall prevail over the other language texts.

In witness whereof, the undersigned, being duly authorised to do so, have signed this Agreement.

Done at Brussels, this thirtieth day of January, 2008.

For the European Community

For the Government of Japan

IV

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

No 329/05/COL

of 20 December 2005

**amending for the 54th time the procedural and substantive rules in the field of State Aid including
proposal for appropriate measures**

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area ⁽¹⁾, in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice ⁽²⁾, in particular to Article 24, Article 5(2)(b) and Article 1 in Part I of Protocol 3 and Articles 18 and 19 in Part II of Protocol 3 thereof,

WHEREAS under Article 24 of the Surveillance and Court Agreement, the EFTA Surveillance Authority shall give effect to the provisions of the EEA Agreement concerning State aid,

WHEREAS under Article 5(2)(b) of the Surveillance and Court Agreement the EFTA Surveillance Authority shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if the EFTA Surveillance Authority considers it necessary,

RECALLING the Procedural and Substantive Rules in the Field of State Aid ⁽³⁾ adopted on 19 January 1994 by the EFTA Surveillance Authority ⁽⁴⁾,

WHEREAS, on 6 September 2005, the European Commission adopted a new Communication setting out the principles for the application of the State aid rules on financing of airports and start-up aid to airlines departing from regional airports ⁽⁵⁾,

WHEREAS this Communication is also of relevance for the European Economic Area,

WHEREAS a uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area,

WHEREAS, according to point II under the heading 'GENERAL' at the end of Annex XV to the EEA Agreement, the EFTA Surveillance Authority is to adopt, after consultation with the Commission, acts corresponding to those adopted by the European Commission,

HAVING consulted the European Commission,

RECALLING that the EFTA Surveillance Authority has consulted the EFTA States by letters dated 7 November 2005 on the subject,

HAS ADOPTED THIS DECISION:

1. The State Aid Guidelines shall be amended by introducing a new Chapter 30A, financing of airports and start up aid to airlines departing from regional airports. The new chapter is contained in Annex I to this Decision. Appropriate measures, contained in Annex I to this Decision, are proposed.

⁽¹⁾ Hereinafter referred to as the EEA Agreement.

⁽²⁾ Hereinafter referred to as the Surveillance and Court Agreement.

⁽³⁾ Hereinafter referred to as the State Aid Guidelines.

⁽⁴⁾ Initially published in OJ L 231, 3.9.1994, and in the EEA Supplement thereto No 32 on the same date. An updated version of the State Aid Guidelines is available on the Authority's website: www.eftasurv.int

⁽⁵⁾ Community guidelines on financing of airports and start-up aid to airlines departing from regional airports (OJ C 312, 9.12.2005, p. 1).

2. The EFTA States shall be informed by means of a letter, including a copy of this Decision and including the Annex thereto. The EFTA States are requested to signify their agreement to the proposal for appropriate measures within 1 June 2006.
3. The European Commission shall be informed, in accordance with point (d) of Protocol 27 of the EEA Agreement, by means of a copy of this Decision, including the Annex.
4. The Decision, including Annex I, shall be published in the EEA Section of and in the EEA Supplement to the *Official Journal of the European Union*.
5. In case the EFTA States accept the proposal for appropriate measures, a summary notice shall be published in the EEA

Section of and in the EEA Supplement to the *Official Journal of the European Union* (attached in Annex II to this Decision).

6. The Decision is authentic in the English language.

Done at Brussels, 20 December 2005.

For the EFTA Surveillance Authority

Einar M. BULL
President

Kurt JÄGER
College Member

ANNEX

30A. FINANCING OF AIRPORTS AND START UP AID TO AIRLINES DEPARTING FROM REGIONAL AIRPORTS**30A.1. Introduction****30A.1.1. General context**

- (1) The Commission of the European Communities (hereinafter the "European Commission" or the "Commission") has issued a communication on financing of airports and start up aid to airlines departing from regional airports which form part of the general plan to create a single European airspace. The set of liberalisation measures known as the "third air package", in force in the European Union since 1993 and the EEA since 1994, has enabled all air carriers holding an EEA licence to have unrestricted access within the area covered by the EEA Agreement, with freedom of tariffs, since April 1997 ⁽¹⁾. As a corollary, to guarantee citizens continuous quality service at affordable prices throughout their territory, those EEA States that wish to do so have established public service obligations relating to frequency, service punctuality, availability of seats or preferential rates for certain categories of users within a clear legal framework. These public service obligations have enabled air transport to make a significant contribution to economic and social cohesion and to balanced development in the regions.
- (2) In addition, a number of measures have been taken in areas such as allocation of slots ⁽²⁾, ground handling services ⁽³⁾ and computerised reservation systems ⁽⁴⁾, in order to underpin this market liberalisation and allow businesses to compete on a level playing field.
- (3) The EFTA Surveillance Authority ("hereinafter the Authority") considers the European Commission guidelines to be EEA relevant and hereby adopts corresponding guidelines under the power conferred upon it by Article 5(2)(b) in the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (hereinafter the "Surveillance and Court Agreement") ⁽⁵⁾.
- (4) The Authority considers that airports can have an impact on the success of local economies and on maintaining local services such as education and health. Passenger and freight services can be crucial for competitiveness and development in some regions. Airports that provide good services can act as a magnet for airlines and thus promote business activity as well as economic, social and regional cohesion within the area covered by the EEA Agreement.
- (5) Further, the Authority welcomes the development and appreciates the contribution made by low cost airlines on the general reduction in the price of air travel in Europe, the wider range of services available, and the accessibility of air travel to a wider public. However, the Authority must nevertheless ensure that the EEA Agreement is complied with, in particular the competition rules, especially those concerning State aid.

30A.1.1.1. Types of airport

- (6) In the airport industry there are currently several different levels of competition between the different types of airport. This is a key factor when investigating State aid, and makes it necessary to examine the extent to which competition could be distorted and the functioning of the EEA Agreement affected. Competition scenarios are evaluated case by case, based on the markets in question. However, research ⁽⁶⁾ has shown that, generally, major international hubs are competing with similar airports in all the transport markets concerned, with the level of competition depending on factors such as congestion and the existence of alternative transport, or, in certain cases (see below), with large regional airports. Large regional airports may be competing not only with other large regional airports but also with the major EEA hubs and land transport, especially if there is high-quality land access to the airport. This research has also shown that small airports do not generally compete with other airports except, in some cases, with neighbouring airports of a similar size whose markets overlap.

⁽¹⁾ Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers (OJ L 240, 24.8.1992), incorporated into point 66b of Annex XIII to the EEA Agreement by Joint Committee Decision No 7/94 of 21 March 1994 (OJ L 160, 28.6.1994, p. 1 and the EEA Supplement No 17, 28.6.1994), Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ L 240, 24.8.1992), incorporated into point 64a of Annex XIII of the EEA Agreement by Joint Committee Decision No 7/94 of 21 March 1994 (OJ L 160, 28.6.1994, p. 1 and the EEA Supplement No 17, 28.6.1994) and Council Regulation (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services (OJ L 240, 24.8.1992), incorporated into point 65 of Annex XIII of the EEA Agreement by Joint Committee Decision No 7/94 of 21 March 1994 (OJ L 160, 28.6.1994, p. 1 and the EEA Supplement No 17, 28.6.1994).

⁽²⁾ Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ L 14, 22.1.1993), incorporated into point 64b of Annex XIII of the EEA Agreement by Joint Committee Decision No 154/2004 (OJ L 102, 21.4.2005, p. 33 and the EEA Supplement No 20, 21.4.2005).

⁽³⁾ Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports (OJ L 272, 25.10.1996), incorporated into point 64c of Annex XIII of the EEA Agreement by Joint Committee Decision No 79/2000 of 2 October 2000 (OJ L 315, 14.12.2000, p. 20 and the EEA Supplement No 59, 14.12.2000).

⁽⁴⁾ Council Regulation (EEC) No 2299/89 of 24 July 1989 on a code of conduct for computerised reservation systems (OJ L 220, 29.7.1989), incorporated into point 63 of Annex XIII of the EEA Agreement by Joint Committee Decision No 148/99 of 5 November 1999 (OJ L 15, 18.1.2001, p. 45 and the EEA Supplement No 3, 18.1.2001).

⁽⁵⁾ The full text of the Surveillance and Court Agreement, including all its amendments can be found at the website of the EFTA Secretariat: <http://secretariat.efta.int/Web/legaldocuments/>

⁽⁶⁾ "Study on competition between airports and the application of State aid rules" — Cranfield University, June 2002.

- (7) For the purpose of these guidelines, the Authority has defined the following four categories of airports;
- category A, hereinafter “large EEA airports”, with more than 10 million passengers a year,
 - category B comprises “national airports”, with an annual passenger volume of between 5 and 10 million,
 - category C comprises “large regional airports”, with an annual passenger volume of between 1 and 5 million,
 - category D, hereinafter “small regional airports”, with an annual passenger volume of less than 1 million.

30A.2. Objectives of these guidelines and changes compared with the 1994 guidelines

- (8) Chapter 30 of the EFTA Surveillance Authority's State Aid Guidelines refers to the European Commission's 1994 guidelines on the application of Articles 92 (now 87) and 93 (now 88) of the EC Treaty and Article 61 of the EEA Agreement on State aid to the aviation sector⁽⁷⁾ (hereinafter the aviation sector guidelines). The aviation sector guidelines do not cover all the new aspects relating to the financing of airports and start-up aid for new routes.
- (9) The Commission guidelines of 1994 relate almost exclusively to the conditions for granting State aid to airlines, by limiting direct operating aid to airlines solely to public service obligations and aid of a social nature. Part II.3 of the Commission guidelines of 1994 relates to public investment in airport infrastructure. It states that “the construction of (airport) infrastructure projects represents a general measure of economic policy which cannot be controlled by the Commission under the Treaty rules on State aid. This general principle applies only to the construction of infrastructures by Member States, and does not apply to aid resulting from preferential treatment of certain companies for the use of the infrastructures.”

The current guidelines therefore add to, rather than replace, those from 1994 by specifying how the competition rules must be applied to the various means of financing airports (see Section 30A.4), and start-up aid for airlines leaving from regional airports (see Section 30A.5).

- (10) To this end, the Authority takes account of the contribution that developing regional airports makes. Thus:
- increased use of regional airports is an asset in combating air traffic congestion at the major European hubs. In its White Paper “European transport policy for 2010: Time to decide”⁽⁸⁾, the Commission explains that “there is already a specific action plan on congestion of the sky, but congestion on the ground is not yet receiving the necessary attention or commitment. However, almost half of Europe's 50 largest airports have already reached or are close to reaching saturation point in terms of ground capacity.”,
 - more access points for intra-European flights increase the mobility of European citizens,
 - developing these airports also helps develop the regional economies concerned.

However, regional airports often face a less favourable situation when developing their services than the major European hubs such as London, Paris or Frankfurt. They do not have a large reference airline that focuses its operations on that airport in order to offer passengers as many connections as possible and to take advantage of the significant economies of scale that such a structure allows. They may not have reached the critical size needed to be sufficiently attractive. In addition, regional airports often have to overcome a poor image and low profile due to their location in areas affected by economic difficulties.

- (11) This is why in these guidelines the Authority has taken a positive approach to developing regional airports, while at the same time ensuring strict compliance with the principles of transparency, non-discrimination and proportionality so as to prevent any distortion of competition which would not be in the common interest in terms of public funding to regional airports and State aid to airlines.

⁽⁷⁾ Chapter 30 of the EFTA Surveillance Authority State Aid Guidelines on aid to the aviation sector (OJ L 124, 23.5.1996 and the EEA Supplement No 23, 23.5.1996) refers to the Community guidelines on the application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aid in the aviation sector and states that the Authority will apply criteria corresponding to those found in the Commission guidelines.

⁽⁸⁾ White Paper, European Transport Policy for 2010: “Time to decide” COM(2001) 370 final.

- (12) This approach must also fit in with the general aims of transport policy, in particular intermodality with railways. In recent years a significant contribution has been made, in terms of both policy and financing, to the pursuit of ambitious programmes to develop a high-speed rail network. High-speed rail offers a highly attractive alternative to air travel in terms of time, price, comfort and sustainable development. Notwithstanding the work that remains to be done to extend the high-speed rail network to the whole area covered by the EEA Agreement, it should therefore seek to benefit from the capacity of high-speed rail travel to provide efficient, high-quality connections, and encourage rail and air operators to cooperate in accordance with Article 53 of the EEA Agreement in order to develop complementarity between the two modes in the interest of users.
- (13) Insofar as these guidelines take a stand on issues such as the absence or presence of aid, they set out, for information purposes, the Authority's general interpretation of these issues at the time of drafting. This is purely indicative, and without prejudice to the interpretation of this concept by the EFTA Court or the Community Courts.

30A.3. Scope and common compatibility rules

30A.3.1. Scope and legal basis

- (14) This framework specifies to what extent and how public financing of airports and State aid for starting up air routes will be assessed by the Authority in the light of the rules and procedures on State aid. The Authority will base its assessment on Article 59(2) or Article 61(3)(a), (b) or (c) of the EEA Agreement.
- (15) Article 59(2) of the EEA Agreement allows EFTA States to derogate from the rules on State aid in respect of undertakings entrusted with the operation of services of general economic interest if the application of such rules obstructs the performance, in law or in fact, of the particular tasks assigned to them and provided the development of trade is not affected to such an extent as would be contrary to the interests of the Contracting Parties.
- (16) Article 61(3) of the EEA Agreement lists the aid that may be declared compatible with the functioning of the EEA Agreement. Article 61(3)(a) and (c) provide for derogations for aid granted to promote or facilitate the development of certain areas and/or certain economic activities.
- (17) In Chapter 25 of the State Aid Guidelines on national regional aid (hereinafter the guidelines on national regional aid), the Authority has indicated the conditions under which regional aid can be considered compatible with the functioning of the EEA Agreement in accordance with Article 61(3)(a) and (c). Operating aid ⁽⁹⁾ granted to airports or airlines (such as start-up aid) can only be declared compatible under exceptional circumstances and under strict conditions in underprivileged regions, i.e. regions covered by the derogation set out in Article 61(3)(a) of the EEA Agreement, and for sparsely populated areas ⁽¹⁰⁾.
- (18) In accordance with Article 61(3)(b), aid to promote the execution of an important project of common European interest may be considered to be compatible with the functioning of the EEA Agreement. Particular reference is made to projects relating to trans-European networks, which may include airport projects.
- (19) When the above provisions are not applicable, the Authority will evaluate the compatibility of the aid given to airports and start-up aid under Article 61(3)(c) of the EEA Agreement. The following provisions set out the principles the Authority will follow in carrying out its assessment.

30A.3.2. Existence of State aid

30A.3.2.1. Airports' economic activity

- (20) The EEA Agreement adopts a neutral stance on the question of whether a State opts for public or private ownership of airports. As regards the existence of State aid, the essential point is whether the beneficiary is engaged in an economic activity ⁽¹¹⁾. There can be no doubt that airlines are engaged in an economic activity. Likewise, once an airport engages in economic activities, regardless of its legal status or the way in which it is financed, it constitutes an undertaking within the meaning of Article 61(1) of the EEA Agreement, and the rules on State aid therefore apply ⁽¹²⁾.

⁽⁹⁾ The EFTA Surveillance Authority's State Aid Guidelines on national regional aid (OJ L 111, 29.4.1999 and the EEA Supplement No 18, 29.4.1999). In the guidelines on national regional aid, operating aid is defined as aid "intended to reduce a firm's current expenditure" (point 25.4.26), while initial investment aid relates to "an investment in fixed capital relating to the creation of a new establishment, the extension of an existing establishment, or the commencement of an activity that involves a fundamental change in the product or procedure provided by an existing establishment" (point 25.4.6).

⁽¹⁰⁾ See point 25.4.26 *et seq.* of the guidelines on national regional aid.

⁽¹¹⁾ According to Court of Justice case law, any activity consisting in offering goods and services on a given market is an economic activity. See Case C-35/96 *Commission v Italy* [1998] ECR I-3851 and Cases C-180/98 to 184/98 *Pavlov* [2000] ECR I-6451.

⁽¹²⁾ Cases C-159/91 and C-160/91, *Poucet v AGF and Pistre v Cancava* [1993] ECR I-637.

- (21) In the “Aéroports de Paris” case ⁽¹³⁾, the European Court of Justice (hereinafter the Court of Justice) ruled that airport management and operation activities consisting in the provision of airport services to airlines and to the various service providers within airports are economic activities because they consist in the provision of airport facilities to airlines and the various service providers, in return for a fee at a rate freely fixed by the manager, and do not fall within the exercise of its official powers as a public authority and are separable from its activities in the exercise of such powers. Thus, the airport operator, in principle, is engaged in an economic activity within the meaning of Article 61(1) of the EEA Agreement, to which the rules on State aid apply.
- (22) However, not all the activities of an airport operator are necessarily of an economic nature. It is necessary to distinguish between its activities and to establish to what extent its activities are of an economic nature ⁽¹⁴⁾.
- (23) The Court of Justice has held that activities that normally fall under State responsibility in the exercise of its official powers as a public authority are not of an economic nature and do not fall within the scope of the rules on State aid. Such activities include safety, air traffic control, police, customs, etc. Generally speaking, the financing of these activities must be strictly limited to compensation of the costs to which they give rise and may not be used instead to fund other economic activities ⁽¹⁵⁾. As explained by the European Commission in its Communication of 10 October 2001 following the attacks of 11 September 2001, “It goes without saying that, if certain measures are imposed directly on airlines and other operators in the sector such as airports, suppliers of ground handling services and providers of air navigation services, the financing of such measures by the public authorities must not give rise to operating aid incompatible with the Treaty.”

30A.3.2.2. Airport activities constituting services of general economic interest

- (24) Certain economic activities carried out by airports can be considered by the public authority as constituting a service of general economic interest. In this case, the authority imposes on the airport operator certain public service obligations in order to ensure that the general public interest is appropriately served. In such circumstances, the airport operator may be compensated by the public authorities for the additional costs deriving from the public service obligation. It is not impossible for the overall management of an airport, in exceptional cases, to be considered a service of general economic interest. In this case, the public authority might impose public service obligations on an airport — for example, an airport located in an isolated region — and might decide to pay compensation for these obligations. However, it should be noted that the overall management of an airport as a service of general economic interest should not cover activities which are not directly linked to its basic activities and listed in paragraph 43(iv).
- (25) In this connection, the Authority draws attention to the judgment by the Court of Justice in the *Altmark* case ⁽¹⁶⁾, which established case law in this regard. The Court of Justice ruled that compensation for public service does not constitute State aid within the meaning of Article 87 of the EC Treaty provided that the following four criteria are met:
1. the recipient undertaking must actually have public service obligations to discharge and the obligations must be clearly defined;
 2. the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner;
 3. the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations; and
 4. where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tendered capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant revenues and a reasonable profit for discharging the obligations.

⁽¹³⁾ Case T-128/98, *Aéroports de Paris v Commission of the European Communities* [2000] ECR II-3929, confirmed by Case C-82/01 [2002] ECR I-9297, points 75-79.

⁽¹⁴⁾ Case C-364/92 *SAT Fluggesellschaft v Eurocontrol* [1994] ECR I-43.

⁽¹⁵⁾ Case C-343/95 *Cali & Figli v Servizi ecologici porto di Genova* [1997] ECR I-1547. Commission Decision N309/2002 of 19 March 2003, Aviation security — compensation for costs incurred following the attacks of 11 September 2001. Commission Decision N438/2002 of 16 January 2002, aid in support of public authority functions in the port sector.

⁽¹⁶⁾ Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark* [2003] ECR I-7747.

- (26) When it complies with the conditions established by the Altmark judgment, compensation for public service obligations imposed on an airport operator do not constitute State aid.

- (27) Public financing of airports other than those referred to above may constitute State aid within the meaning of Article 61(1) of the EEA Agreement if it affects competition and trade between Contracting Parties to the EEA Agreement.

30A.3.2.3. Effects of financing given to airports on competition and trade between Contracting Parties to the EEA Agreement

- (28) Competition between airports can be assessed in the light of airlines' criteria of choice, and in particular by comparing factors such as the type of airport services provided and the clients concerned, population or economic activity, congestion, whether there is access by land, and also the level of charges for use of the airport infrastructure and services. The charge level is a key factor, since public funding granted to an airport could be used to maintain airport charges at an artificially low level in order to attract traffic and may significantly distort competition.
- (29) However, on the basis of these guidelines, the Authority considers that the categories identified in point 7 can provide an indication of the extent to which airports are competing with one another and therefore also the extent to which public funding granted to an airport may distort competition.

Thus, public financing granted to national and EEA airports (categories A and B) will normally be considered to distort or threaten to distort competition and to affect trade between the Contracting Parties to the EEA Agreement. Conversely, funding granted to small regional airports (category D) is unlikely to distort competition or affect trade to an extent contrary to the common interest.

- (30) However, beyond these general indications, it is not possible to establish rules covering every possible case, particularly for airports in categories C and D.

For this reason any measure which may constitute State aid to an airport must be notified so that its impact on competition and trade between Contracting Parties to the EEA Agreement can be examined, and, where appropriate, its compatibility with the functioning of the EEA Agreement.

- (31) The Commission Decision of 13 July 2005 on the application of Article 86 of the EC Treaty on State aid in the form of public service compensation applies when airports in category D are entrusted with a mission of general economic interest. Public service compensation constituting State aid is however exempted from the prior notification requirement, as long as the compensation complies with certain conditions laid down in the Decision⁽¹⁷⁾. The Commission Decision has not yet been incorporated into the EEA Agreement.

30A.3.2.4. The principle of private investor in a market economy

- (32) Article 125 of the EEA Agreement States that the Agreement in no way prejudices the rules of the Contracting Parties governing the system of property ownership. Contracting Parties can accordingly own and manage undertakings, and can purchase shares or other interests in public or private undertakings.
- (33) This principle means that the Authority's action cannot penalise or give more favourable treatment to public authorities which subscribe to the capital of certain companies. Similarly, it is not for the Authority to make any judgment on the choices made by undertakings between different types of financing.
- (34) Consequently, these guidelines make no distinction between the different types of beneficiaries in terms of their legal structure or whether they belong to the public or private sector, and all references to airports or the companies which manage them include all types of legal entity.

⁽¹⁷⁾ See Commission Decision 2005/842/EC on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 312, 29.11.2005, p. 67). The decision has not yet been incorporated into the EEA Agreement. Hence, until the decision is incorporated into the EEA legal framework, these types of public service compensations are subject to the general notification requirement as stipulated in Part I and Article 2 in Part II of Protocol 3 to the Surveillance and Court Agreement.

- (35) Moreover, these principles of non-discrimination and equality do not exempt public authorities or public companies from applying competition rules.
- (36) In general, whether the public funding benefits airports or is granted directly or indirectly by the public authorities to airlines, the Authority will assess whether it constitutes aid by considering whether “in similar circumstances a private shareholder, having regard to the foreseeability of obtaining a return and leaving aside all social, regional-policy and sectoral considerations, would have subscribed to the capital in question” ⁽¹⁸⁾.
- (37) The Court of Justice has ruled that “the principle of equality, to which the governments refer in connection with the relationship between public and private undertakings, in general, presupposes that the two are in comparable situations. [...] private undertakings determine their industrial and commercial strategy by taking into account in particular requirements of profitability. Decisions of public undertakings, on the other hand, may be affected by factors of a different kind within the framework of the pursuit of objectives of public interest by public authorities which may exercise an influence over those decisions.” ⁽¹⁹⁾. Thus the concept of foreseeable profitability for the operator who effectively provides the funds as a market player is of central importance.
- (38) The Community Courts have also ruled that the conduct of a public investor must be compared with that of a private investor pursuing a structural policy — whether general or sectoral — and guided by prospects of profitability in the longer term ⁽²⁰⁾. These considerations are particularly pertinent to investment in infrastructure.
- (39) All State resources used by EFTA States or public authorities to benefit airport operators or airlines must therefore be assessed with regard to these principles. In cases where EFTA States or public authorities act as private economic operators would, these advantages will not constitute State aid.
- (40) If, on the other hand, public resources are made available to a company under more favourable conditions (i.e., in economic terms, at a lower cost) than would be provided by a private economic operator to a company in a comparable financial situation and facing similar competition, that company is receiving assistance which constitutes State aid.
- (41) In terms of start-up aid, it is possible that a public airport gives an airline financial advantages from its own resources generated by its business activity, which would not constitute State aid if it proves to be acting as a private investor, for example by providing a business plan setting out the profitability forecasts for its airport economic activity. Conversely, if a private airport gives funding which in fact is no more than a redistribution of public resources given to it for this purpose by a public body, these subsidies must be considered as State aid if the decision to redistribute public resources is taken by the public authorities.
- (42) Applying the principle of the private investor, and therefore that there is no aid, presupposes the reliability of the whole economic model of the operator acting as an investor: an airport which does not finance its investments or does not pay the corresponding fees, or whose operating costs are partly covered by public funds, over and above a task undertaken in the general interest, cannot usually be considered as a private operator in a market economy, subject to a case-by-case assessment; it is therefore extremely difficult to apply this reasoning to such an operator.

30A.4. Financing airports

- (43) Airport activities can be categorised as follows:
- (i) construction of airport infrastructure and equipment (runways, terminals, aprons, control tower) or facilities that directly support them (fire-fighting facilities, security or safety equipment);
 - (ii) operation of the infrastructure, comprising the maintenance and management of airport infrastructure;
 - (iii) provision of airport services ancillary to air transport, such as ground handling services and the use of related infrastructure, fire-fighting services, emergency services, security services, etc; and
 - (iv) pursuit of commercial activities not directly linked to the airport's core activities, including the construction, financing, use and renting of land and buildings, not only for offices and storage but also for the hotels and industrial enterprises located within the airport, as well as shops, restaurants and car parks. As these are not transport activities, public financing of them is not covered by these guidelines and will be assessed on the basis of the relevant sectoral and general rules.

⁽¹⁸⁾ Case 40/85 *Kingdom of Belgium v Commission* [1986] ECR I-2321.

⁽¹⁹⁾ Joined Cases 188/80 to 190/80 *French Republic, Italian Republic and United Kingdom of Great Britain and Northern Ireland v Commission of the European Communities* [1982] ECR 2571, point 21.

⁽²⁰⁾ Case C-305/89 *Italy v Commission (Alfa Romeo)* [1991] ECR I-1603, point 20. Case T-228/99 *Westdeutsche Landesbank Girozentrale v Commission* [2003] ECR II-435, point(s) 250-270.

- (44) These guidelines apply to all airport activities, with the exception of safety, air traffic control and any other activities for which an EFTA State is responsible as part of its official powers as a public authority ⁽²¹⁾.

30A.4.1. *Financing of airport infrastructure*

- (45) This section concerns aid for the construction of airport infrastructure and equipment or facilities that directly support them as defined in paragraphs 43(i) and 44 above.
- (46) Infrastructure is the basis for the economic activities carried out by the airport operator. However, it also represents one of the ways in which the State can affect regional economic development, land-use planning policy, transport policy, etc.
- (47) Any airport operator engaging in an economic activity within the meaning of the judgment referred to in paragraph 21 should finance the costs of using or building the infrastructure it manages from its own resources. Consequently, the provision of airport infrastructure to an operator by an EFTA State (including regional or local authorities) not acting as a private investor without adequate financial consideration or the granting to an airport operator of public subsidies intended to finance infrastructure can give that airport operator an economic advantage over its competitors and must therefore be notified and examined in the light of the rules on State aid.
- (48) The European Commission and the Authority have already had occasion to spell out the conditions under which operations such as the sale of land or buildings ⁽²²⁾ or the privatisation of an undertaking ⁽²³⁾ does not, in its opinion, involve the possibility of State aid. This is generally the case if these operations are made at market prices, in particular where the price is the outcome of a sufficiently well-publicised, open, unconditional and non-discriminatory bidding procedure which ensures that potential applicants are treated equally. Without prejudice to the obligations deriving from the rules and principles applicable to public procurement and concessions, when these are applicable, the same kind of reasoning applies in principle, *mutatis mutandis*, to the sale or provision of infrastructure by public authorities.
- (49) In any case, it is not possible to rule out the possibility that particular cases may contain elements of aid. For example, there might be aid if the infrastructure in question were allotted to a predetermined manager which gained undue advantage therefrom, or if an unjustifiable difference between the sale price and a recent construction price were to give the purchaser an undue advantage.
- (50) In particular, when additional infrastructure, which was not planned when the existing infrastructure was allotted, is made available to the airport operator, the operator must pay rent at market values commensurate with the costs of the new infrastructure and the duration of its use. Moreover, if further development of the infrastructure was not provided for in the original contract, the additional infrastructure must be closely linked to use of the existing infrastructure and the subject of the manager's initial contract must stay the same.
- (51) If it is not possible to rule out the possibility of State aid, the measure in question must be notified. If it is confirmed that the measure involves aid, such aid may be declared compatible, in particular pursuant to Articles 61(3)(a), (b) or (c) or 59(2) of the EEA Agreement and, where applicable, their implementing provisions. To that end, the Authority will in particular examine whether:

- construction and operation of the infrastructure meets a clearly defined objective of general interest (regional development, accessibility, etc.),
- the infrastructure is necessary and proportional to the objective which has been set,
- the infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure,
- all potential users of the infrastructure have access to it in an equal and non-discriminatory manner,
- the development of trade is not affected to an extent contrary to the functioning of the EEA Agreement.

⁽²¹⁾ See Commission Decision No 309/2002 — France: Air Safety — compensation for costs following the attacks of 11.9.2001 (OJ C 148, 25.6.2003).

⁽²²⁾ The EFTA Surveillance Authority Guidelines on State aid elements in sales of land and buildings by public authorities (OJ L 137, 8.6.2000 and EEA Supplement No 26, 8.6.2000). These guidelines correspond to Commission Communication on State aid elements in sales of land and buildings by public authorities.

⁽²³⁾ The European Commission report on competition policy, 1993, points 402 and 403.

30A.4.2. Aid for operation of airport infrastructure

- (52) In principle, the Authority considers that an airport operator, like any other business, should meet the normal costs of running and maintaining the airport infrastructure from its own resources. Any public financing of these services would reduce the expenses normally borne by the airport operator in carrying out its current operations.
- (53) Such funding does not constitute State aid if it is compensation for public services allocated for management of the airport in accordance with the conditions established by the Altmark judgment⁽²⁴⁾. In other cases, operating subsidies are operating aid. As Stated in Part 30A.3.1 of these guidelines, such aid may be declared compatible with the functioning of the EEA Agreement only on the basis of Article 61(3)(a) or (c), under certain conditions, in disadvantaged regions, or on the basis of Article 59(2) if it meets certain conditions which ensure that it is necessary for the operation of a service of general economic interest and does not affect trade to an extent contrary to the interests of the Contracting Parties.
- (54) As regards the application of Article 59(2) of the EEA Agreement, as Stated in point 31 of these guidelines, the Commission Decision of 13 July 2005 on the application of Article 86 of the Treaty to State aid in the form of public service compensation considers compensation for public services constituting State aid granted to category D airports to be compatible, subject to certain conditions⁽²⁵⁾.
- (55) To that end, the Authority will verify that the airport really has been entrusted with the operation of a service of general interest and that the compensation does not exceed what is necessary to cover the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit.
- (56) The award of public service missions to the airport must be recorded in one or more official documents, the form of which may be determined by each EFTA State. These documents should contain all the information needed to identify the specific costs of the public service, and must in particular specify:
- the precise nature of the public service obligation,
 - the operators and the territory in question,
 - the nature of any special or exclusive rights granted to the airport,
 - the arrangements for calculating, monitoring and reviewing compensation,
 - the means of preventing and correcting any over- or under compensation.
- (57) When calculating the amount of compensation, the costs and revenues to be taken into consideration must include all costs and revenues linked to performance of the service of general economic interest. If the airport operator in question has other special or exclusive rights associated with this service of general economic interest, the associated revenues must also be taken into account. Consequently, there must be a transparent accounting system and separation of the accounts for the operator's different activities⁽²⁶⁾.

30A.4.3. Aid for airport services

- (58) Ground handling services are a commercial activity open to competition over a threshold of 2 million passengers annually under Directive 96/67/EC⁽²⁷⁾. An airport operator acting as a provider of ground handling services may charge different rates for the ground handling charges invoiced to airlines if these different rates reflect cost differences linked to the nature or scale of the services provided⁽²⁸⁾.

⁽²⁴⁾ See footnote 16.

⁽²⁵⁾ The Decision has not yet been incorporated into the EEA Agreement. If incorporated, any compensation for public services constituting State aid granted to larger airports (categories A, B or C) or failing to meet the criteria and conditions of that act should still be notified and examined on a case-by-case basis.

⁽²⁶⁾ Although not applicable to the transport sector, Chapter 18C of the State Aid Guidelines on State aid in the form of public service compensation can provide indications of how paragraphs 55 to 57 apply [not yet published]. These guidelines correspond to the Community framework for State aid in the form of public service compensation. (OJ C 297, 29.11.2005, p. 4).

⁽²⁷⁾ Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports (OJ L 272, 25.10.1996), incorporated into point 64c of Annex XIII of the EEA Agreement by Joint Committee Decision No 79/2000 of 2 October 2000 (OJ L 315, 14.12.2000, p. 20 and the EEA Supplement No 59, 14.12.2000).

⁽²⁸⁾ Paragraph 85 of the decision of the European Commission to initiate the proceeding concerning the case of Ryanair at Charleroi reads, "With regard to ground handling tariffs, the Commission believes that economies of scale could be applied when an airport user makes significant use of a company's assistance services. It comes as no great shock that the tariff applied to some companies will be lower than the general tariff, insofar as the service requested by these companies will be less than for other clients".

- (59) Up to the threshold of 2 million passengers, the airport operator acting as service provider may offset its various sources of revenues and losses between purely commercial activities (such as its ground handling activities or the management of a car park), with the exclusion of public resources granted to it as airport authority or operator of a service of general economic interest. However, in the absence of competition in the provision of ground handling services, it must take particular care not to infringe national provisions or provisions of the EEA Agreement, in particular not to abuse its dominant market position, thereby infringing Article 54 of the EEA Agreement (which prohibits undertakings in a dominant position within the area covered by the EEA Agreement or in a substantial part of it from applying dissimilar conditions to equivalent transactions with different airlines, thereby placing them at a competitive disadvantage).
- (60) Above the threshold of 2 million passengers, ground handling services must be self-financing and must not be cross-subsidised by the airport's other commercial revenues or by public resources granted to it as airport authority or operator of a service of general economic interest.

30A.5. **Start-up aid**

30A.5.1. *Objectives*

- (61) Small airports often do not have the passenger volumes necessary for them to reach critical mass and the break-even point.
- (62) There are no absolute figures with regard to the break-even point. The European Committee of the Regions has evaluated it at 1,5 million passengers per year, while the University of Cranfield study mentioned above, which cites two different figures (500 000 and 1 million passengers per year), shows that there are variations according to the country and the way in which the airports are organised ⁽²⁹⁾.
- (63) While certain regional airports can perform well when sufficient numbers of passengers are brought in by airlines carrying out public service obligations ⁽³⁰⁾, or when social aid schemes are established by the public authorities, airlines prefer tried and tested hubs in good locations which provide rapid connections, have an established passenger base, and where they have slots which they do not wish to lose. Furthermore, in many cases, airport and air traffic policies and investment have for years concentrated traffic at major national cities.
- (64) As a result, airlines are not always prepared, without appropriate incentives, to run the risk of opening routes from unknown and untested airports. This is why the Authority can accept that public aid be paid temporarily to airlines under certain conditions, if this provides them with the necessary incentive to create new routes or new schedules from regional airports and to attract the passenger numbers which will enable them to break even within a limited period. The Authority will ensure that such aid does not give any advantage to large airports already largely open to international traffic and competition.
- (65) However, in the light of the general objective of intermodality and optimising the use of infrastructure described above, it will not be acceptable to grant start-up aid for a new air route corresponding to a high-speed train link.
- (66) Further, the European Commission has laid down guidelines for the harmonious development of outermost regions ⁽³¹⁾. Their development strategy is based on three main principles: helping to make the regions more accessible, increasing their competitiveness and bolstering their regional integration in order to reduce the impact of their remoteness from the European economy.
- (67) For these reasons the European Commission accepts that start-up aid for routes from the outermost regions is subject to more flexible compatibility criteria, in particular in terms of intensity and duration, and will not raise any objection to such aid for services to neighbouring non-member countries.

The Authority considers that similar provisions in terms of intensity and duration will be accepted for the regions referred to in Article 61(3) of the EEA Agreement and for sparsely populated regions.

⁽²⁹⁾ Report "Study on Competition between airports and the application of State Aid Rules", Cranfield University, September 2002, points 5.33 and 6.11.

⁽³⁰⁾ Ibid. points 5-27: "To some extent, subsidisation of air services within the PSO framework can be interpreted, as an indirect subsidy to an airport".

⁽³¹⁾ Commission communications of 26 May 2004 [COM(2004) 343 final] and 6 August 2004 [SEC(2004) 1030] on a stronger partnership for the outermost regions.

30A.5.2. *Compatibility criteria*

- (68) Financial start-up incentives, except in cases where the public authorities act as a private investor working in a market economy (see section 30A.3.2.4), advantage beneficiary undertakings and can therefore directly create distortions between companies as they reduce the beneficiary's operating costs.
- (69) They can also indirectly affect competition between airports by helping airports to develop or by encouraging a company to "relocate" from one airport to another and transfer a route from an EEA airport to a regional one. For these reasons they usually constitute State aid and must be notified to the Authority.
- (70) In view of the above objectives and the significant difficulties which can result from launching a new route, the Authority may approve such aid if it fulfils the following conditions:
- (a) Recipients: the aid is paid to air carriers with a valid operating licence issued by a Contracting Party to the EEA Agreement pursuant to Council Regulation (EEC) No 2407/92 on licensing of air carriers ⁽³²⁾.
 - (b) Regional airports: the aid is paid for routes linking a regional airport in categories C or D to another airport within the area covered by the EEA Agreement. Aid for routes between national airports (category B) can be considered only in duly substantiated exceptional cases, in particular where one of the airports is located in a disadvantaged region.
 - (c) New routes: aid will apply only to the opening of new routes or new schedules, as defined below, which will lead to an increase in the net volume of passengers ⁽³³⁾.

This aid must not encourage traffic simply to be transferred from one airline or company to another. In particular, it must not lead to a relocation of traffic which is unjustified with regard to the frequency and viability of existing services leaving from another airport in the same city, the same conurbation ⁽³⁴⁾ or the same airport system ⁽³⁵⁾, which serves the same or a similar destination under the same criteria. Also, start-up aid must not be paid when the new air route is already being operated by a high-speed rail service under the same criteria.

The Authority will not accept cases of abuse in which a company seeks to circumvent the temporary nature of start-up aid by replacing a line receiving aid with a supposedly new line offering a similar service. In particular, aid will not be able to be granted to an airline which, having used up all the aid for a given route, applies for aid for a competing route departing from another airport in the same city or conurbation or the same airport system and serving the same or a similar destination. However, the mere substitution, during the aid period, of one route for another leaving from the same airport and expected to generate at least an equivalent number of passengers, will not call into question the continuation of payment of aid for the complete period, as long as this substitution does not affect the other criteria under which the aid was initially granted.

- (d) Long-term viability and degressiveness: the route receiving the aid must ultimately prove profitable, i.e. it must at least cover its costs, without public funding. For this reason start-up aid must be degressive and of limited duration.
- (e) Compensation for additional start-up costs: the amount of aid must be strictly linked to the additional start-up costs incurred in launching the new route or frequency and which the air operator will not have to bear once it is up and running. Examples of such costs are the marketing and advertising costs incurred at the outset for publicising the new link; they may include the installation costs incurred by the airline at the regional airport in question in order to launch the route, provided the airport falls within categories C or D and aid has not already been received in respect of the same costs. Conversely, aid cannot be granted in relation to standard operating costs such as hire or depreciation of aircraft, fuel, crew salaries, airport charges or catering costs. The remaining eligible costs must correspond to real costs obtained in normal market conditions.
- (f) Intensity and duration: degressive aid may be granted for a maximum period of three years. The amount of aid in any one year may not exceed 50 % of total eligible costs for that year and total aid may not exceed an average of 30 % of eligible costs.

⁽³²⁾ Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers (OJ L 240, 24.8.1992), as incorporated into point 66b of Annex XIII to the EEA Agreement by Joint Committee Decision No 7/94 of 21 March 1994 (OJ L 160, 28.6.1994, p. 1 and the EEA Supplement No 17, 28.6.1994).

⁽³³⁾ This concerns in particular a seasonal route being made permanent or a non-daily frequency becoming at least daily.

⁽³⁴⁾ Council Regulation (EEC) No 2408/92 on access for Community air carriers to intra-Community air routes (OJ L 240, 24.8.1992, p. 8), incorporated into point 64a of Annex XIII to the EEA Agreement by Joint Committee Decision No 7/94 of 21 March 1994 (OJ L 160, 28.6.1994, p. 1 and the EEA Supplement No 17, 28.6.1994).

⁽³⁵⁾ As defined under Article 2(m) of Council Regulation (EEC) No 2408/92 on access for Community air carriers to intra-Community air routes (OJ L 240, 24.8.1992, p. 8), incorporated into point 64a of Annex XIII to the EEA Agreement by Joint Committee Decision No 7/94 of 21 March 1994 (OJ L 160, 28.6.1994, p. 1 and the EEA Supplement No 17, 28.6.1994).

For routes from disadvantaged regions, i.e., the regions referred to in Article 61(3)(a), and sparsely populated regions, degressive aid may be granted for a maximum period of five years. The amount of aid in any one year may not exceed 50 % of total eligible costs for that year and total aid may not exceed an average of 40 % of eligible costs. If the aid is granted for five years, it may be maintained at 50 % of total eligible costs for the initial three years.

In any event, the period during which start-up aid is granted to an airline must be substantially less than the period during which the airline undertakes to operate from the airport in question, as indicated in the business plan required in point 70(i). Furthermore, the aid should be stopped once the objectives in terms of passengers have been reached or when the line breaks even, even if this is achieved before the end of the period initially foreseen.

- (g) Link with the development of the route: aid payments must be linked to the net development of the number of passengers transported. The amount per passenger must, for example, decrease with the net increase in traffic for the aid to remain an incentive and to avoid adjusting ceilings.
 - (h) Non-discriminatory allocation: any public body which plans to grant start-up aid to an airline for a new route, whether or not via an airport, must make its plans public in good time and with adequate publicity to enable all interested airlines to offer their services. The notification must in particular include the description of the route as well as the objective criteria in terms of the amount and the duration of the aid. The rules and principles relating to public procurement and concessions must be respected where applicable.
 - (i) Impact on other routes and business plan: when submitting its application, any airline which proposes a service to a public body offering to grant start-up aid must provide a business plan showing, over a substantial period, the viability of the route after the aid has expired. The public body should also carry out an analysis of the impact of the new route on competing routes prior to granting start-up aid.
 - (j) Publicity: The EFTA States must ensure that the list of routes receiving aid is published annually for each airport, in each instance indicating the source of public funding, the recipient company, the amount of aid paid and the number of passengers concerned.
 - (k) Appeals: in addition to the appeal procedures provided for by the "Public Procurement" Directives 89/665/EEC and 92/13/EEC ⁽³⁶⁾, where applicable, appeal procedures must be provided for at the EFTA State level to ensure that there is no discrimination in the granting of aid.
 - (l) Penalties: penalty mechanisms must be implemented in the event that a carrier fails to keep to the undertakings that it gave in relation to an airport when the aid was paid. A system for recovering aid or for seizing a guarantee initially deposited by the carrier will allow the airport to ensure that the airline honours its commitments.
- (71) Cumulation: start-up aid cannot be combined with other types of aid granted for the operation of a route, such as aid of a social nature granted to certain categories of passengers and compensation for discharging public services. In addition, such aid cannot be granted when access to a route has been reserved for a single carrier under Article 4 of Regulation (EEC) No 2408/92 ⁽³⁷⁾, and in particular paragraph 1(d) of that Article. Also, in accordance with the rules of proportionality, such aid cannot be combined with other aid granted to cover the same costs, including aid paid in another State.
- (72) Start-up aid must be notified to the Authority. The Authority calls on the EFTA States to notify start-up aid schemes rather than individual cases since this results in greater coherence across the area covered by the EEA Agreement. The Authority may carry out a case-by-case assessment of aid or a scheme which fails to fully comply with these criteria, but the end result of which would be comparable.

⁽³⁶⁾ Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395, 30.12.1989, p. 33), as incorporated into point 5 of Annex XVI to the EEA Agreement. Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23.3.1992, p. 14) incorporated into point 5a of Annex XVI to the EEA Agreement by Joint Committee Decision No 7/94 of 21 March 1994 (OJ L 160, 28.6.1994, p. 1 and the EEA Supplement No 17, 28.6.1994).

⁽³⁷⁾ See footnote 1.

30A.6. Recipients of previous unlawful aid

- (73) When unlawful aid, on which the Authority has adopted a negative decision involving a recovery order, has been granted to a company and the aid has not been recovered in accordance with Article 14 in Part II of Protocol 3 to the Surveillance and Court Agreement, the assessment of all airport infrastructure aid or start-up aid should take account of both the cumulative effect of the earlier and the new aid and the fact that the earlier aid has not been repaid ⁽³⁸⁾.

30A.7. Appropriate measures within the meaning of Article 1(1) in Part I of Protocol 3 to the Surveillance and Court agreement

- (74) In accordance with Article 1(1) in Part I of Protocol 3 to the Surveillance and Court Agreement, the Authority proposes that the EFTA States amend their existing schemes relating to State aid covered by these guidelines to conform to these guidelines by 1 June 2007 at the latest. The EFTA States are asked to confirm in writing that they accept these proposals by 1 June 2006 at the latest.
- (75) Should an EFTA State fail to confirm its acceptance in writing before that date, the Authority will apply Article 19(2) in Part II of Protocol 3 to the Surveillance and Court Agreement and, if necessary, initiate the proceedings provided for in that Article.

30A.8. Date of application

- (76) These guidelines will apply as of their adoption by the Authority. Notifications registered by the Authority prior to that date will be examined in the light of the rules in force at the time of notification.

The Authority will assess the compatibility of all aid to finance airport infrastructure, or start-up aid granted without its authorisation and which therefore infringes Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, on the basis of these guidelines if payment of the aid started after the guidelines were adopted. In other cases, the Authority will carry out an assessment based on the rules applicable when the aid started to be paid.

- (77) The Authority informs the EFTA States and interested parties that it intends to undertake a detailed assessment of the application of these guidelines four years after the date of their implementation. The results of that study may lead the Authority to revise these guidelines.

⁽³⁸⁾ See Case C-355/95 P *Textilwerke Deggendorf v Commission* [1997] ECR I-2549.

EFTA SURVEILLANCE AUTHORITY DECISION

No 320/06/COL

of 31 October 2006

amending the list contained in point 39 in Part 1.2 of Chapter I of Annex I to the Agreement on the European Economic Area listing border inspection posts in Iceland and Norway agreed for veterinary checks on live animals and animal products from third countries and repealing EFTA Surveillance Authority Decision 246/06/COL of 6 September 2006

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD to the Agreement on the European Economic Area, in particular Article 109 and Protocol 1 thereof,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 5(2)(d) and Protocol 1 thereof,

HAVING REGARD to points 4(B)(1) and (3) and point (5)(b) of the Introductory Part of Chapter I of Annex I to the EEA Agreement,

HAVING REGARD to the Act referred to at point 1.1.4 of Chapter I of Annex I to the EEA Agreement (Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries), as amended and adapted to the EEA Agreement by the sectorial adaptations referred to in Annex I to that Agreement, and in particular to Article 6(2) thereof,

HAVING REGARD to the Act referred to at point 1.1.5 of Chapter I of Annex I to the EEA Agreement (Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC), as amended and adapted to the EEA Agreement by the sectorial adaptations referred to in Annex I to that Agreement, and in particular to Article 6(4) thereof,

HAVING REGARD to the Act referred to at point 1.2.111 of Chapter I of Annex I to the EEA Agreement (Commission Decision 2001/812/EC of 21 November 2001 laying down the requirements for the approval of border inspection posts responsible for veterinary checks on products introduced into the Community from third countries), as amended, and in particular to Article 3(5) thereof,

WHEREAS the EFTA Surveillance Authority by Decision 246/06/COL of 6 September 2006 repealed the EFTA Surveillance Authority Decision 86/02/COL of 24 May 2002 and drew up a new list of border inspections posts in Iceland and Norway approved for veterinary checks on live animal and animal products from third countries,

WHEREAS the Government of Norway has requested to the EFTA Surveillance Authority to add the proposed border inspection post at the port of Egersund to the list of border inspection posts in Iceland and Norway approved for veterinary checks on products and animals from third countries contained in point 39 in Part 1.2 of Chapter I of Annex I to the EEA Agreement,

WHEREAS the Government of Norway has requested the EFTA Surveillance Authority to list the proposed border inspection post at the port of Egersund for the import of fish oil for human and non-human consumption and fish meal in bulk,

WHEREAS the Government of Norway has proposed to the EFTA Surveillance Authority to add the additional product categories of fish oil in bulk and packed fish oil for human and non-human consumption for the inspection centre Kristiansund at the border inspection post in Kristiansund,

WHEREAS the EFTA Surveillance Authority and the European Commission, in close cooperation with and the Competent Authorities of Norway, have jointly inspected the border inspection post in Egersund and the inspection centre in Kristiansund,

WHEREAS following the joint inspection, and according to paragraph 4(B)3 of the Introductory part of Annex I to the EEA Agreement, the inspectors of the EFTA Surveillance Authority and of the European Commission adopted a common recommendation on 16 October 2006 (Case No 59362/Event No 391554) to add the border inspection post in Egersund and the new categories for the inspection centre Kristiansund to the list of border inspection posts,

WHEREAS the EFTA Surveillance Authority by its Decision 312/06/COL referred the matter to the EFTA Veterinary Committee assisting the EFTA Surveillance Authority,

WHEREAS the measures provided for in this Decision are in accordance with the opinion of the EFTA Veterinary Committee assisting the EFTA Surveillance Authority,

HAS ADOPTED THIS DECISION:

1. Veterinary checks on live animals and animal products brought into Iceland and Norway from third countries shall be carried out by the competent national authorities at the agreed border inspections posts listed in the Annex to this Decision.

2. The EFTA Surveillance Authority Decision No 246/06/COL of 6 September 2006 is hereby repealed.

3. This Decision shall enter into force on 31 October 2006.

4. This Decision is addressed to Iceland and Norway.

5. This Decision shall be authentic in the English language.

Done at Brussels, 31 October 2006.

For the EFTA Surveillance Authority

Björn T. GRYDELAND
President

Kristján Andri STEFÁNSSON
College Member

ANNEX

LIST OF AGREED BORDER INSPECTION POSTS

Country: Iceland

1	2	3	4	5	6
Akureyri	1700499	P		HC-T(FR)(1)(2)(3), NHC(16)	
Hafnarfjörður	1700299	P		HC-T(FR)(1)(2)(3), NHC(16)	
Húsavík	1701399	P		HC-T(FR)(1)(2)(3)	
Ísafjörður	1700399	P		HC-T(FR)(1)(2)(3)	
Keflavík Airport	1700799	A		HC(1)(2)(3)	O(15)
Reykjavík	1700199	P		HC-T(FR)(1)(2)(3), NHC(16)	
Þorlákshöfn	1701899	P		HC-T(FR)(1)(2)(3)	

Country: Norway

1	2	3	4	5	6
Borg	1501499	P		HC, NHC	E(7)
Båtsfjord	1501199	P		HC-T(FR)(1)(2)(3), HC-NT(1)(2)(3)	
Egersund	NO02299	P		HC-NT(6), NHC-NT(6)(16)	
Hammerfest	1501099	P	Rypefjord	HC-T(FR)(1)(2)(3), HC-NT(1)(2)(3)	
Honningsvåg	1501799	P	Honningsvåg	HC-T(1)(2)(3)	
			Gjesvær	HC-T(1)(2)(3)	
Kirkenes	1502199	P		HC-T(FR)(1)(2)(3)	
Kristiansund	1500299	P	Harøysund	HC-T(FR)(1)(2)(3)	
			Kristiansund	HC-T(FR)(1)(2)(3), NHC-T(FR)(2)(3) HC-NT(6), NHC-NT(6)	
Måløy	1500599	P	Grotteberg	HC-T(FR)(1)(2)(3), NHC-T(FR)(2)(3)	
			Moldøen	HC-T(FR)(1)(2)(3), NHC-T(FR)(2)(3)	
			Trollebø	HC-T(FR)(1)(2)(3), NHC-T(FR)(2)(3)	
Oslo	1500199	P		HC, NHC	
Oslo	1501399	A		HC, NHC	U,E,O
Skjervøy	1502099	P		HC-T(FR)(1)(2)(3)	
Sortland	1501699	P	Andenes	HC-T(FR)(1)(2)(3)	
			Melbu	HC-T(FR)(1)(2)(3)	
			Sortland	HC-T(FR)(1)(2)(3)	
Storskog	1501299	R		HC, NHC	U,E,O
Tromsø	1500999	P	Bukta	HC-T(FR)(1)(2)(3)	
			Kaldfjord	HC-T(FR)(1)(2)(3)	
			Solstrand	HC-T(FR)(1)(2)(3)	
			Senjahopen	HC-T(FR)(1)(2)(3)	
			Vannøy	HC-T(FR)(1)(2)(3)	
Vadsø	1501599	P		HC-T(FR)(1)(2)(3)	
Ålesund	1500699	P	Breivika	HC-T(FR)(1)(2)(3), NHC-T(FR)(2)(3)	
			Ellingsøy	HC-T(FR)(1)(2)(3)	
			Skutvik	HC-T(FR)(1)(2)(3), NHC-T(FR)(2)(3)	

- 1 = Name
 - 2 = Animo Code
 - 3 = Type
 - A = Airport
 - F = Rail
 - P = Port
 - R = Road
 - 4 = Inspection centre
 - 5 = Products
 - HC = All products for human consumption
 - NHC = Other products
 - NT = No temperature requirements
 - T = Frozen/chilled products
 - T(FR) = Frozen products
 - T(CH) = Chilled products
 - 6 = Live Animals
 - U = Ungulates: cattle, pigs, sheep, goats, wild and domestic solipeds
 - E = Registered equidae as defined in Council Directive 90/426/EEC
 - O = Other animals
 - 5-6 = Special remarks
 - (1) = Checking in line with the requirements of Commission Decision 93/352/EEC taken in execution of Article 19(3) of Council Directive 97/78/EC
 - (2) = Packed products only
 - (3) = Fishery products only
 - (4) = Animal proteins only
 - (5) = Wool hides and skins only
 - (6) = Only liquid fats, oils, and fish oils
 - (7) = Icelandic ponies (from April to October only)
 - (8) = Equidae only
 - (9) = Tropical fish only
 - (10) = Only cats, dogs, rodents, lagomorphs, live fish, reptiles and other birds than ratites
 - (11) = Only feedstuffs in bulk
 - (12) = For (U) in the case of solipeds, only those consigned to a zoo; and for (O), only day old chicks, fish, dogs, cats, insects, or other animals consigned to a zoo
 - (13) = Nagylak HU: This is a border inspection post (for products) and crossing point (for live animals) on the Hungarian-Romanian border, subject to transitional measures as negotiated and laid down in the Treaty of Accession for both products and live animals. See Commission Decision 2003/630/EC
 - (14) = Designated for transit across the European Community for consignments of certain products of animal origin for human consumption, coming to or from Russia under the specific procedures foreseen in relevant Community legislation
 - (15) = Aquaculture animals only
 - (16) = Fishmeal only
-