

Official Journal

of the European Union

L 332



English edition

Legislation

Volume 52

17 December 2009

Contents

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

DECISIONS

Commission

2009/967/EC:

- ★ **Commission Decision of 30 November 2009 on establishing the ecological criteria for the award of the Community Ecolabel for textile floor coverings (notified under document C(2009) 9523) ⁽¹⁾** 1

III Acts adopted under the EU Treaty

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

- ★ **Council Decision 2009/968/JHA of 30 November 2009 adopting the rules on the confidentiality of Europol information** 17

Price: EUR 4

⁽¹⁾ Text with EEA relevance

(Continued overleaf)

EN

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

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

IV *Other acts*

EUROPEAN ECONOMIC AREA

The EEA Joint Committee

- ★ **EFTA Surveillance Authority Decision No 191/08/COL of 17 March 2008 on unpaid labour in relation to research and development activities (Norway)** 23

V *Acts adopted from 1 December 2009 under the Treaty on European Union, the Treaty on the Functioning of the European Union and the Euratom Treaty*

ACTS WHOSE PUBLICATION IS OBLIGATORY

- Commission Regulation (EU) No 1235/2009 of 16 December 2009 establishing the standard import values for determining the entry price of certain fruit and vegetables 36
- ★ **Commission Regulation (EU) No 1236/2009 of 10 December 2009 amending Annex I to Council Regulation (EC) No 732/2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011** 38
- ★ **Commission Regulation (EU) No 1237/2009 of 11 December 2009 entering a name in the register of protected designations of origin and protected geographical indications (Marrone di Caprese Michelangelo (PDO))** 46
- ★ **Commission Regulation (EU) No 1238/2009 of 11 December 2009 entering a name in the register of protected designations of origin and protected geographical indications [Pomodoro del Piennolo del Vesuvio (PDO)]** 48
- ★ **Commission Regulation (EU) No 1239/2009 of 15 December 2009 entering a name in the register of protected designations of origin and protected geographical indications (Crudo di Cuneo (PDO))** 50
- ★ **Commission Regulation (EU) No 1240/2009 of 16 December 2009 amending Regulation (EC) No 428/2008 determining the intervention centres for cereals** 52

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 30 November 2009

on establishing the ecological criteria for the award of the Community Ecolabel for textile floor coverings

(notified under document C(2009) 9523)

(Text with EEA relevance)

(2009/967/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme⁽¹⁾, and in particular the second subparagraph of Article 6(1) thereof,

After consulting the European Union Eco-labelling Board,

Whereas:

- (1) Under Regulation (EC) No 1980/2000 the Community eco-label may be awarded to a product possessing characteristics which enable it to contribute significantly to improvements in relation to key environmental aspects.
- (2) Regulation (EC) No 1980/2000 provides that specific eco-label criteria, drawn up on the basis of the criteria drafted by the European Union Eco-labelling Board, are to be established according to product groups.
- (3) The ecological criteria, as well as the related assessment and verification requirements, should be valid for four years from the date of notification of this Decision.

- (4) Measures provided for in this Decision are in accordance with the opinion of the Committee instituted by Article 17 of Regulation (EC) No 1980/2000,

HAS ADOPTED THIS DECISION:

Article 1

Textile floor coverings shall be defined as floor coverings, usually of woven, knitted, or needle-tufted fabric; commonly installed with tacks or staples, or by adhesives. Loose mats and rugs are excluded. It does not apply to wall coverings or that for external use.

This product group will not include textiles treated with biocidal products, except where the active substance in those biocidal products are included in Annex IA to Directive 98/8/EC of the European Parliament and of the Council⁽²⁾, and where the biocidal product is authorised for the use in question according to Annex V to Directive 98/8/EC.

Article 2

In order to be awarded the Community eco-label under Regulation (EC) No 1980/2000, a textile floor covering must fall within the product group 'textile floor coverings' as defined in Article 1 of this Decision and must comply with the ecological criteria set out in the Annex.

⁽¹⁾ OJ L 237, 21.9.2000, p. 1.

⁽²⁾ OJ L 123, 24.4.1998, p. 1.

Article 3

The ecological criteria for the product group 'textile floor coverings', as well as the related assessment and verification requirements, shall be valid for four years from the date of notification of this Decision.

Article 4

For administrative purposes the code number assigned to the product group 'textile floor coverings' shall be '34'.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 30 November 2009.

For the Commission

Stavros DIMAS

Member of the Commission

ANNEX

FRAMEWORK

The aims of the criteria

These criteria aim in particular at promoting:

- the reduction of impacts on habitats and associated resources,
- the reduction of energy consumption,
- the reduction of discharges of toxic or otherwise polluting substances into the environment,
- the reduction of use of dangerous substances in the materials and in the finished products,
- safety and absence of risk to health in the living environment,
- information that will enable the consumer to use the product in an efficient way which minimises the whole environmental impact.

The criteria are set at levels that promote the labelling of coverings that are produced with low environmental impact.

Assessment and verification requirements

The specific assessment and verification requirements are indicated within each criterion.

This product group includes the family of carpets, defined as 'floor covering, usually of woven, knitted, or needle-tufted fabric; commonly installed with tacks or staples, or by adhesives'.

It does not apply to wall coverings or that for external use. Loose mats and rugs are excluded.

The definition of the textile floor coverings product group accords to the DIN ISO 2424 norm.

The European Textile floor coverings industry determines its technical position in the European commission of normalisation CEN/TC 134.

The functional unit, to which inputs and outputs should be related, is 1 m² of finished product.

Where appropriate, test methods other than those indicated for each criterion may be used if their equivalence is accepted by the Competent Body assessing the application.

Where possible, testing should be performed by appropriately accredited laboratories or laboratories that meet the general requirements expressed in standard EN ISO 17025.

Where appropriate, Competent Bodies may require supporting documentation and may carry out independent verifications.

TEXTILE FLOOR COVERINGS CRITERIA**1. RAW MATERIALS****Generic materials requirements**

The materials used for the manufacture of the product shall not contain substances or preparation that are assigned, or may be assigned at the time of application, any of the following risk phrases (or combinations thereof):

R23 (toxic by inhalation),

R24 (toxic in contact with skin),

R25 (toxic if swallowed),

R26 (very toxic by inhalation),

- R27 (very toxic in contact with skin),
 R28 (very toxic if swallowed),
 R39 (danger of very serious irreversible effects),
 R40 (limited evidence of a carcinogenic effect),
 R42 (May cause sensitisation by inhalation),
 R43 (May cause sensitisation by skin contact),
 R45 (may cause cancer),
 R46 (may cause heritable genetic damage),
 R48 (danger or serious damage to health by prolonged exposure),
 R49 (may cause cancer by inhalation),
 R50 (very toxic to aquatic organisms),
 R51 (toxic to aquatic organisms),
 R52 (harmful to aquatic organisms),
 R53 (may cause long-term adverse effects in the aquatic environment),
 R60 (may impair fertility),
 R61 (may cause harm to the unborn child),
 R62 (possible risk of impaired fertility),
 R63 (possible risk of harm to the unborn child),
 R68 (possible risk of irreversible effects),

as laid down in Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ⁽¹⁾ (Dangerous Substances Directive), and its subsequent amendments, and considering the Directive 1999/45/EC of the European Parliament and of the Council ⁽²⁾ (Dangerous Preparations Directive).

Alternatively, classification may be considered according to Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 ⁽³⁾. In this case no substances or preparations may be added to the raw materials that are assigned, or may be assigned at the time of application, with and of the following hazard statements (or combinations thereof): H300, H301, H310, H311, H317 H330, H331, H334, H351, H350, H340, H350i, H400, H410, H411, H412, H413, H360F, H360D, H361f, H361d H360FD, H361fd, H360Fd, H360Df, H341, H370, H372.

Assessment and verification: in terms of chemical analysis, the materials typology and formulation shall be provided by the applicant together with a declaration of compliance with the abovementioned criteria.

1.1. Textile fibres — chemical substances

If the fibres are of recycled origin, the criteria set in this section do not apply. With regard to the presence of dangerous substances, the requirements described in criteria 1 'Generic material requirements' shall be applied.

Specific-fibre-criteria are set in this section for wool, polyamide, polyester and polypropylene.

Wool treatments

(a) The total sum content of the following substances shall not exceed 0,5 ppm:

Substance	CAS no
γ-hexachlorocyclohexane (lindane)	319-84-6
α-hexachlorocyclohexane	319-85-7

⁽¹⁾ OJ 196, 16.8.1967, p. 1.

⁽²⁾ OJ L 200, 30.7.1999, p. 1.

⁽³⁾ OJ L 353, 31.12.2008, p. 1.

Substance	CAS no
β -hexachlorocyclohexane	58-89-9
δ -hexachlorocyclohexane	319-86-8
aldrin	309-00-2
dieldrin	60-57-1
endrin	72-20-8
p,p'-DDT	50-29-3
p,p'-DDD	72-54-8

(b) The total sum content of the following substances shall not exceed 2 ppm:

Substance	CAS no
Propetamphos	31218-83-4
Diazinon	333-41-5
Dichlofenthion	97-17-6
Fenchlorphos	299-84-3
Chlorpyrifos	2921-88-2
Chlorfenvinphos	470-90-6
Ethion	563-12-2
Pirimiphos-Methyl	29232-93-7

(c) The total sum content of the following substances shall not exceed 0,5 ppm:

Substance	CAS no
Cyhalothrin	68085-85-8
Cybermethrin	52315-07-8
Deltamethrin	52918-63-5
Fenvalerate	51630-58-1
Flumethrin	69770-45-2

(d) The total sum content of the following substances shall not exceed 2 ppm:

Substance	CAS no
Diiflubenzuron	35367-38-5
Triflumuron	64628-44-0
Dicyclanil	112636-83-6

These requirements (as detailed in (a), (b), (c) and (d) and taken separately) do not apply if documentary evidence can be presented that establishes the identity of the farmers producing at least 75 % of the wool or keratin fibres in question, together with a declaration from these farmers that the substances listed above have not been applied to the fields or animals concerned.

Assessment and verification: the applicant shall either provide the documentation indicated above or provide a test report, using the following test method: IWTO Draft Test Method 59. If the textile materials used are awarded with the EU Ecolabel scheme for the textile products, the requirements are satisfied. The applicant shall provide only the appropriate documentation.

Polyamide fibres

The emissions to air of N_2O during monomer production, expressed as an annual average, shall not exceed 10 g/kg of finished polyamide-6 fibres produced or 50 g/kg of polyamide-6,6 produced.

Assessment and verification: the applicant shall provide detailed documentation and/or test reports showing compliance with this criterion, together with a declaration of compliance. If the textile materials used are awarded with the Ecolabel scheme for the textile products, the requirements are satisfied. The applicant shall provide only the appropriate documentation.

Polyester

- a) The amount of antimony in the polyester fibres shall not exceed 260 ppm. Where no antimony is used, the applicant may state 'antimony free' (or equivalent text) next to the eco-labelled product.
- b) The emissions of VOCs during polymerisation and fibre production of polyester, measured at the process steps where they occur, including fugitive emissions as well, expressed as an annual average, shall not exceed 1,2 g/kg of produced polyester resin. (VOCs are any organic compound having at 293,15 K a vapour pressure of 0,01 kPa or more, or having a corresponding volatility under the particular conditions of use).

Assessment and verification: For (a) the applicant shall either provide a declaration of non-use or a test report using the following test method: direct determination by Atomic Absorption Spectrometry. The test shall be carried out on the raw fibre prior to any wet processing. For (b) the applicant shall provide detailed documentation and/or test reports showing compliance with this criterion, together with a declaration of compliance. If the textile materials used are awarded with the Ecolabel scheme for the textile products, the requirements are satisfied. The applicant shall provide only the appropriate documentation.

Polypropylene

- (a) Lead-based pigments shall not be used.

Assessment and verification: the applicant shall provide a declaration of non-use.

- (b) Emissions of NO_x and SO_2 from the production of PP (monomer production, polymerisation and granulation) must not exceed the following limits:

NO_x : 12 kg/ton PP

SO_2 : 11 kg/ton PP

Assessment and verification: the fibre manufacturer must measure or calculate the quantities of NO_x and SO_2 emitted during PP production and provide a declaration of compliance with the criterion. The applicant shall provide only the appropriate documentation.

1.2. Backing agents

With regard to the presence of dangerous substances, the requirements described in criteria 1 'Generic material requirements' shall be applied.

Foam rubber (natural and synthetic latex and polyurethane)

Note: The following criteria needs to be met only if latex foam contributes to more than 5 % of the total weight of the carpet.

- (a) Extractable heavy metals: the concentrations of the following metals shall not exceed the following values:

Substance	Hurdle value (ppm)
antimony	0,5
arsenic	0,5

Substance	Hurdle value (ppm)
lead	0,5
cadmium	0,1
chromium	1,0
cobalt	0,5
copper	2,0
nickel	1,0
mercury	0,02

Assessment and verification: The applicant shall provide a test report, using the following test method: Milled sample extracted according to DIN 38414-S4, L/S = 10. Filtration with 0,45 µm membrane filter. Analysis by means of atomic emission spectroscopy with inductive coupled plasma (ICP-AES) or with hydride or cold vapour technique.

- (b) Volatile organic compounds ⁽¹⁾ (VOCs): The concentration of VOCs shall not exceed 0,5 mg/m³.

Assessment and verification: The applicant shall provide a test report, using the following test method: chamber test with DIN ISO 16000-6 for air sampling and analysis.

- (c) Metal complex dyes: Metal complex dyes based on copper, lead, chromium or nickel shall not be used.

Assessment and verification: The applicant shall provide a declaration of non-use.

- (d) Chlorophenols: No chlorophenol (salts and esters) shall be present in concentrations exceeding 0,1 ppm, except mono- and di-chlorinated phenols (salts and esters) which shall not exceed 1 ppm.

Assessment and verification: The applicant shall provide a test report, using the following test method: Milling of 5 g sample, extraction of the chlorophenol or sodium salt. Analysis by means of gas chromatography (GC), detection with mass spectrometer or ECD.

- (e) Butadiene: The concentration of butadiene shall not exceed 1 ppm.

Assessment and verification: The applicant shall provide a test report, using the following test method: Milling and weighing of sample. Sampling by headspace sampler. Analysis by gas chromatography, detection by flame-ionisation detector.

- (f) Nitrosamines: The concentration of N-nitrosamines shall not exceed 0,001 mg/m³ as measured with the chamber test.

Assessment and verification: The applicant shall provide a test report, using the following test method: the chamber test with Hauptverband der gewerblichen Berufsgenossenschaften ZH 1/120,23 (or equivalent) for air sampling and analysis.

Foam rubber (only for polyurethane)

- (a) Organic tin: Tin in organic form (tin bonded to a carbon atom) shall not be used.

Assessment and verification: The applicant shall provide a declaration of non-use.

- (b) Blowing agents: CFCs, HCFCs, HFCs or methylene chloride shall not be used as blowing agents or as auxiliary blowing agents.

Assessment and verification: The applicant shall provide a declaration that these blowing agents have not been used.

⁽¹⁾ VOCs are any organic compound having at 293,15 K a vapour pressure of 0,01 kPa or more, or having a corresponding volatility under the particular conditions of use.

Vulcanized foams

Vulcanized foams shall not be used for back coating.

Assessment and verification: the applicant shall provide a declaration of non-use.

Formaldehyde

The concentration of formaldehyde shall not exceed 30 ppm as measured with EN ISO 14184-1. Alternatively it shall not exceed 0,01 mg/m³ as measured with the chamber test.

Assessment and verification: The applicant shall provide a test report, using the following test method: EN ISO 14184-1. Sample of 1 g with 100 g water heated to 40 °C for 1 hour. Formaldehyde in extract analysed with acetylacetone, photometric.

Alternatively, the emission chamber test may be used: ENV 13419-1, with EN ISO 16000-3 or VDI 3484-1 for air sampling and analysis.

2. PRODUCTION OF ALL MATERIALS

With regard to the presence of dangerous substances, the requirements described in criteria 1 'Generic material requirements' shall be applied.

The applicant shall also comply with the following specific requirements:

Flame retardants

Only flame retardants that are chemically bound into the polymer fibre or onto the fibre surface (reactive flame retardants) may be used in the product. If the flame retardants used have any of the R-phrases listed below, these reactive flame retardants should, on application, change their chemical nature to no longer warrant classification under any of these R-phrases. (Less than 0,1 % of the flame retardant on the treated yarn or fabric may remain in the form as before application.):

R40 (limited evidence of a carcinogenic effect),

R45 (may cause cancer),

R46 (may cause heritable genetic damage),

R49 (may cause cancer by inhalation),

R50 (very toxic to aquatic organisms),

R51 (toxic to aquatic organisms),

R52 (harmful to aquatic organisms),

R53 (may cause long-term adverse effects in the aquatic environment),

R60 (may impair fertility),

R61 (may cause harm to the unborn child),

R62 (possible risk of impaired fertility),

R63 (possible risk of harm to the unborn child),

R68 (possible risk of irreversible effects),

as laid down in Directive 67/548/EEC.

Alternatively, classification may be considered according to Regulation (EC) No 1272/2008. In this case no substances or preparations may be added to the raw materials that are assigned, or may be assigned at the time of application, any of the following hazard statements (or combinations thereof): H351, H350, H340, H350i, H400, H410, H411, H412, H413, H360F, H360D, H361f, H361d, H360FD, H361fd, H360Fd, H360Df, H341.

Flame retardants which are only physically mixed into the polymer fibre or into a textile coating are excluded (additive flame retardants).

Assessment and verification: The applicant shall provide a declaration that additive flame retardants have not been used and indicate which reactive flame retardants, if any, have been used and provide documentation (such as safety data sheets) and/or declarations indicating that those flame retardants comply with this criterion.

Plasticizers

If any plasticizer substance in the manufacturing process is applied, only phthalates that at the time of application have been risk assessed and have not been classified with the phrases (or combinations thereof) may be used:

R50 (very toxic to aquatic organisms),

R51 (toxic to aquatic organisms),

R52 (harmful to aquatic organisms),

R53 (may cause long-term adverse effects in the aquatic environment),

R60 (may impair fertility),

R61 (may cause harm to the unborn child),

R62 (possible risk of impaired fertility),

as laid down in Directive 67/548/EEC.

Alternatively, classification may be considered according to Regulation (EC) No 1272/2008. In this case no substances or preparations may be added to the raw materials that are assigned, or may be assigned at the time of application, with and of the following hazard statements (or combinations thereof): H400, H410, H411, H412, H413, H360F, H360D, H361f, H361d H360FD, H361fd, H360Fd, H360Df

Additionally DNOP (di-n-octyl phthalate), DINP (di-isononyl phthalate), DIDP (di-isodecyl phthalate) are not permitted in the product.

Assessment and verification: the applicant shall provide a declaration of non-use. No more than 0,1 % of phthalate in mass shall be present as impurities in the textile floor covering, as defined in Directive 2005/84/EC of the European Parliament and of the Council ⁽¹⁾.

2.1. Chemicals used as auxiliaries for textile fibres treatment

Alkylphenoethoxylates (APEOs), linear alkylbenzene sulfonates (LAS), bis(hydrogenated tallow alkyl) dimethyl ammonium chloride (DTDMAC), distearyl dimethyl ammonium chloride (DSDMAC), di(hardened tallow) dimethyl ammonium chloride (DHTDMAC), ethylene diamine tetra acetate (EDTA), and diethylene triamine penta acetate (DTPA) shall not be used and shall not be part of any preparations or formulations used.

Assessment and verification: the applicant shall provide a declaration of non-use.

2.2. Dyes and pigments**Azo dyes**

Azo dyes shall not be used that may cleave to any one of the following aromatic amines:

4-aminodiphenyl (92-67-1)

Benzidine (92-87-5)

4-chloro-o-toluidine (95-69-2)

2-naphthylamine (91-59-8)

o-amino-azotoluene (97-56-3)

2-amino-4-nitrotoluene (99-55-8)

p-chloroaniline (106-47-8)

2,4-diaminoanisole (615-05-4)

4,4'-diaminodiphenylmethane (101-77-9)

3,3'-dichlorobenzidine (91-94-1)

3,3'-dimethoxybenzidine (119-90-4)

3,3'-dimethylbenzidine (119-93-7)

⁽¹⁾ OJ L 344, 27.12.2005, p. 40.

3,3'-dimethyl-4,4'-diaminodiphenylmethane (838-88-0)

p-cresidine (120-71-8)

4,4'-oxydianiline (101-80-4)

4,4'-thiodianiline (139-65-1)

o-toluidine (95-53-4)

2,4-diaminotoluene (95-80-7)

2,4,5-trimethylaniline (137-17-7)

4-aminoazobenzene (60-09-3)

o-anisidine (90-04-0)

2,4-Xylidine

2,6-Xylidine

Assessment and verification: The applicant shall provide a declaration of non-use of these dyes. Should this declaration be subject to verification the following standard shall be used = EN 14362-1 and 2. (Note: false positives may be possible with respect to the presence of 4-aminoazobenzene, and confirmation is therefore recommended).

Dyes that are carcinogenic, mutagenic or toxic to reproduction

(a) The following dyes shall not be used:

C.I. Basic Red 9

C.I. Disperse Blue 1

C.I. Acid Red 26

C.I. Basic Violet 14

C.I. Disperse Orange 11

C. I. Direct Black 38

C. I. Direct Blue 6

C. I. Direct Red 28

C. I. Disperse Yellow 3

Assessment and verification: The applicant shall provide a declaration of non-use of such dyes.

(b) No use is allowed of dye substances or of dye preparations containing more than 0,1 % by weight of substances that are assigned or may be assigned at the time of application any of the following risk phrases (or combinations thereof):

R40 (limited evidence of a carcinogenic effect),

R45 (may cause cancer),

R46 (may cause heritable genetic damage),

R49 (may cause cancer by inhalation),

R60 (may impair fertility),

R61 (may cause harm to the unborn child),

R62 (possible risk of impaired fertility),

R63 (possible risk of harm to the unborn child),

R68 (possible risk of irreversible effects),

as laid down in Directive 67/548/EEC.

Alternatively, classification may be considered according to Regulation (EC) No 1272/2008. In this case no substances or preparations may be added to the raw materials that are assigned, or may be assigned at the time of application, with and of the following hazard statements (or combinations thereof): H351, H350, H340, H350i, H360F, H360D, H361f, H361d H360FD, H361fd, H360Fd, H360Df, H341.

Assessment and verification: The applicant shall provide a declaration of non-use of such dyes.

Potentially sensitising dyes

The following dyes shall not be used:

C.I. Disperse Blue 3 C.I. 61 505

C.I. Disperse Blue 7 C.I. 62 500

C.I. Disperse Blue 26 C.I. 63 305

C.I. Disperse Blue 35

C.I. Disperse Blue 102

C.I. Disperse Blue 106

C.I. Disperse Blue 124

C.I. Disperse Brown 1

C.I. Disperse Orange 1 C.I. 11 080

C.I. Disperse Orange 3 C.I. 11 005

C.I. Disperse Orange 37

C.I. Disperse Orange 76

(previously designated Orange 37)

C.I. Disperse Red 1 C.I. 11 110

C.I. Disperse Red 11 C.I. 62 015

C.I. Disperse Red 17 C.I. 11 210

C.I. Disperse Yellow 1 C.I. 10 345

C.I. Disperse Yellow 9 C.I. 10 375

C.I. Disperse Yellow 39

C.I. Disperse Yellow 49

Assessment and verification: The applicant shall provide a declaration of non-use of these dyes.

Heavy metals

Dyes and pigments containing lead (Pb), cadmium (Cd), mercury (Hg) or chromium (chromium total) or Cr(VI) as ingredients of the dyeing component must not be used to dye the materials:

The limit value for the total heavy metal content of a fitted carpet is 100 mg/kg.

Assessment and verification: The applicant shall provide a declaration of non-use of these dyes together with the documentation demonstrating that the limit imposed is not exceeded.

If the products used are GUT label, they fulfil this requirement and appropriate documentation shall be provided.

2.3. Water emissions**Wool — COD**

For scouring effluent discharged to sewer, the COD discharged to sewer shall not exceed 60 g/kg greasy wool, and the effluent shall be treated off-site so as to achieve at least a further 75 % reduction of COD content, expressed as an annual average.

For scouring effluent treated on-site and discharged to surface waters, the COD discharged to surface waters shall not exceed 45 g/kg greasy wool. The pH of the effluent discharged to surface waters shall be between 6 and 9 (unless the pH of the receiving waters is outside this range), and the temperature shall be below 40 °C (unless the temperature of the receiving water is above this value). The wool scouring plant shall describe, in detail, their treatment of the scouring effluent and continuously monitor the COD-levels.

Assessment and verification: The applicant shall provide relevant data and test reports related to this criterion, using the following test method: ISO 6060.

Wastewater discharges from wet-processing

- (a) Waste water from wet-processing sites (except greasy wool scouring sites) shall, when discharged after treatment (whether on-site or off-site), have a COD content of less than 20 g/kg, expressed as an annual average.

Assessment and verification: the applicant shall provide detailed documentation and test reports, using ISO 6060, showing compliance with this criterion, together with a declaration of compliance.

- (b) If the effluent is treated on site and discharged directly to waters, it shall also have a pH between 6 and 9 (unless the pH of the receiving water is outside this range) and a temperature of less than 40 °C (unless the temperature of the receiving water is above this value).

Assessment and verification: The applicant shall provide documentation and test reports showing compliance with this criterion, together with a declaration of compliance. If the products used are awarded with the EU eco-label for textile products they fulfil this requirement and appropriate documentation shall be provided.

Detergents, fabric softeners and complexing agents

At each wet-processing site, at least 95 % by weight of the detergents, at least 95 % by weight of fabric softeners and at least 95 % by weight complexing agents used shall be sufficiently degradable or eliminable in wastewater treatment plants. At each wet-processing site, the detergents (which contain surfactants) in use shall fulfil the criteria: the surfactants meet the criteria for ultimate aerobic biodegradation. At least 95 % of the other substances by weight shall be sufficiently degradable or eliminable in wastewater treatment plants.

Assessment and verification: 'sufficiently biodegradable' means:

- if when tested with one of the methods OECD 301 A, OECD 301 E, ISO 7827, OECD 302 A, ISO 9887, OECD 302 B, or ISO 9888 it shows a percentage degradation of at least 70 % within 28 days,
- or if when tested with one of the methods OECD 301 B, ISO 9439, OECD 301 C, OECD 302 C, OECD 301 D, ISO 10707, OECD 301 F, ISO 9408, ISO 10708 or ISO 14593 it shows a percentage degradation of at least 60 % within 28 days,
- or if when tested with one of the methods OECD 303 or ISO 11733 it shows a percentage degradation of at least 80 % within 28 days,
- or, for substances for which these test methods are inapplicable, if evidence of an equivalent level of biodegradation is presented.

The applicant shall provide appropriate documentation, safety data sheets, test reports and/or declarations, indicating the test methods and results as indicated above, showing compliance with this criterion for all detergents, fabric softeners and complexing agents used.

Metal complex dyes

- (a) In case of cellulose dyeing, where metal complex dyes are part of the dye recipe, less than 20 % of each of those metal complex dyes applied (input to the process) shall be discharged to waste water treatment (whether on-site or off-site).

In case of all other dyeing processes, where metal complex dyes are part of the dye recipe, less than 7 % of each of those metal complex dyes applied (input to the process) shall be discharged to waste water treatment (whether on-site or off-site).

- (b) The emissions to water after treatment shall not exceed: Cu 75 mg/kg (fibre, yarn or fabric); Cr 50 mg/kg; Ni 75 mg/kg.

Assessment and verification: The applicant shall either provide a declaration of non-use or documentation and test reports using the following test methods: ISO 8288 for Cu, Ni; EN 1233 for Cr.

2.4. Energy consumption

The energy consumption shall be calculated as the process energy used for the production of the floor coverings.

The process energy, calculated as indicated in the Technical Appendix, shall exceed the following values (P = scoring point):

Product Family	Limit value (P)
Synthetic Carpets	8

Assessment and verification: the applicant shall calculate the Energy consumption of the production process according to the Technical Appendix instructions. The applicant shall provide the related results and supporting documentation.

3. USE PHASE

3.1. Release of dangerous substances

The following emissions values shall not be exceeded:

Substance	Requirement (after 3 days)
Total organic compounds within the retention range C6 – C16 (TVOC)	0,25 mg/m ³ air
Total organic compounds within the retention range > C16 – C22 (TSVOC)	0,03 mg/m ³ air
Total VOC without LCI (*)	0,05 mg/m ³ air

(*) LCI = Lowest Concentration of Interest.

Assessment and verification: the applicant shall submit a test certificate according to the emission tests prEN 15052 or DIN ISO 16000-9.

4. FITNESS FOR USE

The product shall be fit for use. This evidence may include data from appropriate ISO, CEN or equivalent test methods, such as national test procedures.

Assessment and verification: details of the test procedures and results shall be provided, together with a declaration that the product is fit for use based on all other information about the best application by the end-user. According to Council Directive 89/106/EEC⁽¹⁾ a product is presumed to be fit for use if it conforms to a harmonised standard, a European technical approval or a non-harmonised technical specification recognised at Community level. The EC conformity mark 'CE' for construction products provides producers with an attestation of conformity easily recognisable and may be considered as sufficient in this context. Furthermore the norm CEN/TS 14472-2 could be used to demonstrate compliance with this criterion.

5. CONSUMER INFORMATION

The product shall be sold with relevant user information, which provides advice on the product's proper and best general and technical use as well as its maintenance. It shall bear the following information on the packaging and/or on documentation accompanying the product:

- (a) information that the product has been awarded the EU Eco-label together with a brief yet specific explanation as to what this means in addition to the general information provided by box 2 of the logo;
- (b) recommendations for the use and maintenance of the product. This information should highlight all relevant instructions particularly referring to the maintenance and use of products. As appropriate, reference should be made to the features of the product's use under difficult climatic or other conditions, for example, frost resistance/water absorption, stain resistance, resistance to chemicals, necessary preparation of the underlying surface, cleaning instructions and recommended types of cleaning agents and cleaning intervals. The information should also include any possible indication on the product's potential life expectancy in technical terms, either as an average or as a range value;

⁽¹⁾ OJ L 40, 11.2.1989, p. 12.

- (c) an indication of the route of recycling or disposal (explanation in order to give the consumer information about the high possible performance of such a product);
- (d) information on the EU Eco-label and its related product groups, including the following text (or equivalent): 'for more information visit the EU Eco-label website: <http://www.ecolabel.eu>'.

A s s e s s m e n t a n d v e r i f i c a t i o n : the applicant shall provide a sample of the packaging and/or texts enclosed also according to the ISO 6347: Textile floor coverings — Consumer information.

6. INFORMATION APPEARING ON THE ECOLABEL

Box 2 of the Ecolabel shall contain the following text:

- hazardous and toxic substance restricted,
 - production process energy saving,
 - limited pollutant emissions to water,
 - lower risk to health in the living environment.
-

*Technical Appendix for Textile Flooring***ENERGY CONSUMPTION CALCULATION**

Energy consumption is calculated as an annual average of the energy consumed during the production process (excluding premises heating) from the raw material to the finished floor covering.

For synthetic (non-renewable) raw materials, the calculations start from the fabrication of the product used. The calculation shall not include the energy content of the raw material (i.e.: feedstock energy).

The energy calculation shall include at least 95 % of the energy required to produce the raw materials. The energy required to manufacture adhesives shall not be included in the calculations.

The unit chosen for the calculations is the MJ/m².

The energy contents of various fuels are given.

Electricity consumption refers to electricity purchased from an external supplier.

If the producer has an energy surplus that is sold as electricity, steam or heat, the quantity sold can be deducted from the fuel consumption. Only the fuel that is actually used in floor covering production shall be included in the calculations.

Environmental parameters

A = Proportion of renewable raw materials and recycled non-renewable raw materials (%) (*)

B = Proportion of renewable fuels (%)

C = Electricity consumption (MJ/m²)

D = Fuel consumption (MJ/m²)

(*) The use of 'renewable raw materials' and/or 'recycled non-renewable raw materials' is left on voluntary base.

$$P = \frac{A}{25} + \frac{B}{25} + (4 - 0,055 \times C) + (4 - 0,022 \times D)$$

The energy contents of various fuels are given in the following table.

Table for calculating fuel consumption

Production period — year:

Days:

From:

To:

Fuel	Quantity	Units	Conversion factor	Energy (MJ)
Straw (15 % W)		kg	14,5	
Pellets (7 % W)		kg	17,5	
Waste wood (20 % W)		kg	14,7	
Wood chips (45 % W)		kg	9,4	
Peat		kg	20	
Natural gas		kg	54,1	

Fuel	Quantity	Units	Conversion factor	Energy (MJ)
Natural gas		Nm ³	38,8	
Butane		kg	49,3	
Kerosene		kg	46,5	
Gasoline		kg	52,7	
Diesel		kg	44,6	
Gas oil		kg	45,2	
Heavy Fuel oil		kg	42,7	
Dry Steam Coal		kg	30,6	
Anthracite		kg	29,7	
Charcoal		kg	33,7	
Industrial Coke		kg	27,9	
Electricity (from net)		kWh	3,6	
Total energy (MJ)				

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL DECISION 2009/968/JHA

of 30 November 2009

adopting the rules on the confidentiality of Europol information

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) ⁽¹⁾ (the Europol Decision) and in particular Article 40 thereof,

Having regard to the draft rules submitted by the Management Board,

Having regard to the Opinion of the European Parliament,

Whereas in accordance with the Europol Decision, it is for the Council, acting by qualified majority after consulting the European Parliament, to adopt implementing rules on the confidentiality of information which is obtained by, or exchanged with, Europol (hereinafter the rules),

HAS DECIDED AS FOLLOWS:

CHAPTER I

DEFINITIONS AND SCOPE

Article 1

Definitions

For the purposes of these rules,

- (a) 'processing of information' or 'processing' means any operation or set of operations which is performed on personal or non-personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;
- (b) 'third party' means an entity referred to in Articles 22(1) and 23(1) of the Europol Decision;
- (c) 'Security Committee' means the Committee consisting of representatives of the Member States and Europol, as described in Article 4;

(d) 'Security Coordinator' means the Deputy Director to whom the Director — in pursuance of Article 38(2) of the Europol Decision — assigns, alongside his other tasks, the function of coordination and control in matters of security;

(e) 'Security Officers' means the Europol staff, appointed by the Director, responsible for security issues in accordance with Article 6;

(f) 'Security Manual' means the manual implementing these rules, to be established in accordance with Article 7;

(g) 'classification level' means a security marking assigned to a document processed by or through Europol, as referred to in Article 10;

(h) 'security package' means a specified combination of security measures to be applied to information subject to a Europol classification level as referred to in Article 10;

(i) 'basic protection level' means the level of protection which shall be applied to all information processed by or through Europol, except information which is expressly marked or is clearly recognisable as being public information, as referred to in Article 10(1);

(j) 'staff' means temporary staff and contract staff as defined in Article 39(4) of the Europol Decision;

(k) 'Europol classified information' means any information and material in any form, an unauthorised disclosure of which could cause varying degrees of prejudice to the essential interests of Europol or of one or more Member States, and that requires the application of appropriate security measures as defined in Article 7(2)(b).

Article 2

Scope

1. These rules establish the security measures to be applied to all information which is processed by or through Europol.

⁽¹⁾ OJ L 121, 15.5.2009, p. 37.

2. Communication channels between Europol and the national units of the Member States, referred to in Article 8 of the Europol Decision, shall provide a level of protection which is equivalent to the level offered by these measures. A common standard for these communication channels shall be approved by the Security Committee.

3. The Annex sets out an overview of the Europol classification levels, as referred to in Article 10, and the equivalent markings currently applied by the Member States to information subject to those classification levels. When a Member State informs the other Member States and Europol of any changes in its national provisions on classification levels or in the equivalent markings, Europol shall elaborate a revised version of the overview reproduced in the Annex. At least once a year the Security Committee shall ascertain whether the overview is up to date.

CHAPTER II

SECURITY RESPONSIBILITIES

Article 3

Member States' Responsibilities

1. Member States shall undertake to ensure that, within their territory, Europol information receive a level of protection which is equivalent to the level of protection offered by the security measures established under these rules.

2. Member States shall undertake to inform the Security Coordinator of all security breaches that may compromise the interests of Europol or of a Member State. In the latter case, the Member State concerned shall also be informed directly through the national unit.

Article 4

Security Committee

1. A Security Committee shall be set up, consisting of representatives of the Member States and of Europol, which shall meet at least twice a year.

2. The Security Committee shall have as its task to advise the Management Board and Director of Europol on issues relating to security policy, including the application of the Security Manual.

3. The Security Committee shall establish its rules of procedure. The meetings of the Security Committee shall be chaired by the Security Coordinator.

Article 5

Security Coordinator

1. The Security Coordinator shall have general responsibility for all issues relating to security, including the security measures laid down in these rules and in the Security Manual. The

Security Coordinator shall monitor the enforcement of security provisions and inform the Director of all breaches of security. In serious cases, the Director shall inform the Management Board. If such breaches risk compromising the interests of a Member State, that Member State shall also be informed.

2. The Security Coordinator shall be directly answerable to the Director of Europol.

3. The Security Coordinator shall be security cleared to the highest level in accordance with the laws and regulations applicable in the Member State of which the Security Coordinator is a national.

Article 6

Security Officers

1. Security Officers shall support the Director in the implementation of the security measures laid down in these rules and in the Security Manual. Security Officers shall be directly answerable to the Security Coordinator. The specific tasks of the Security Officers shall be:

- (a) to instruct, assist and advise all persons at Europol — as well as any other person involved in Europol-related activities who is under a particular obligation of discretion or confidentiality — as to their duties under these rules and under the Security Manual;
- (b) to enforce security provisions, investigate breaches thereof and report on them immediately to the Security Coordinator;
- (c) to regularly review the adequacy of security measures on the basis of risk assessments; to that end, they shall report to the Security Coordinator as a rule at least once a month and, in exceptional cases, whenever it is deemed necessary and shall provide appropriate recommendations and advice;
- (d) to perform the tasks assigned to them under these rules or under the Security Manual; and
- (e) to perform any other tasks assigned to them by the Security Coordinator.

2. Security Officers shall be security cleared to the appropriate level required by their duties and in accordance with the laws and regulations applicable in the Member States of which they are a national.

Article 7

Security Manual, procedure and content

1. The Security Manual shall be adopted by the Management Board after having consulted the Security Committee.

2. The Security Manual shall provide management direction and support for security in accordance with business requirements and shall set out Europol's approach to managing security. The Security Manual shall contain:

- (a) detailed rules on the security measures to be applied within Europol in order to provide for the basic protection level referred to in Article 10(1) of these rules, such measures being based on Articles 35 and 41(2) of the Europol Decision and taking account of Article 40(3) thereof; and
- (b) detailed rules on the security measures associated with the different Europol classification levels and the corresponding security packages referred to in Article 10(2) and 10(3); the Security Manual shall also take account of Article 46 of the Europol Decision.

3. The Security Manual shall be reviewed at regular intervals, or when significant changes occur, in order to ensure its continuing suitability, adequacy, and effectiveness.

4. Amendments to the Security Manual shall be adopted in accordance with the procedure set out in paragraph 1.

Article 8

Security accreditation of systems

1. All Europol systems used to process Europol classified information shall be accredited by the Management Board after having consulted the Security Committee and after having obtained assurance of the effective implementation of the required security measures deriving from the system specific security requirements (SSSR), Information Risk Register and any other relevant documentation. Subsystems and remote terminals or workstations shall be accredited as part of all the systems to which they are connected.

2. The SSSR shall be adopted and amended by the Management Board after having consulted the Security Committee. This SSSR shall comply with the relevant provisions of the Security Manual.

Article 9

Observance

1. The security measures laid down in these rules and in the Security Manual shall be observed by all persons at Europol, as well as by any other person involved in Europol-related activities who is under a particular obligation of discretion or confidentiality.

2. The Director, the liaison bureaux and Europol national units shall be responsible for ensuring observance of these

rules and of the Security Manual in accordance with paragraph 1.

CHAPTER III

GENERAL PRINCIPLES

Article 10

Basic protection level, classification levels and security packages

1. All information processed by or through Europol, with the exception of information which is expressly marked or is clearly recognisable as being public information, shall be subject to a basic protection level within Europol and in Member States.

2. In accordance with Article 3, Member States shall ensure the application of the basic protection level referred to in paragraph 1, by a variety of measures in accordance with national legislation and regulations, including the obligation of discretion and confidentiality, limiting access to information to authorised personnel, data protection requirements as far as personal data are concerned and general technical and procedural measures to safeguard the security of the information, taking into account Article 41(2) of the Europol Decision.

3. Information requiring additional security measures shall be subject to a Europol classification level, which shall be indicated by a specific marking. Information shall be subject to a security level only where strictly necessary and only for the time necessary.

4. The following Europol classification levels shall be used:

(a) 'RESTREINT UE/EU RESTRICTED': this classification shall be applied to information and material the unauthorised disclosure of which could be disadvantageous to the interests of Europol, the EU or one or more Member States;

(b) 'CONFIDENTIEL UE/EU CONFIDENTIAL': this classification shall be applied to information and material the unauthorised disclosure of which could harm the essential interests of Europol, the EU or one or more Member States;

(c) 'SECRET UE/EU SECRET': this classification shall be applied to information and material the unauthorised disclosure of which could seriously harm the essential interests of Europol, the EU or one or more Member States;

(d) 'TRÈS SECRET UE/EU TOP SECRET': this classification shall be applied to information and material the unauthorised disclosure of which could cause exceptionally grave prejudice to the essential interests of Europol, the EU or one or more Member States.

Such classified information and material shall bear an additional marking ('EUROPOL') under the classification marking to indicate that it originates in Europol.

Each Europol classification level shall relate to a specific security package, to be applied within Europol. The security packages shall offer different levels of protection, depending on the content of the information, and taking account of the detrimental effect which unauthorised access, dissemination or use of the information might have on the interests of Europol or the Member States.

When information classified at different levels is gathered, the classification level to be applied shall be at least as high as that applicable to the information protected at the highest level. In any event, a group of information may be given a higher protection level than that of each of its parts.

The translation of a classified document shall be given the same classification level, and shall be subject to the same protection, as the original document.

5. A caveat marking may be used for specifying additional conditions such as distribution of the information is limited to specific information exchange channels, embargo and a particular distribution on a need-to-know basis. Such caveat markings shall be defined in the Security Manual.

6. The security packages shall consist of various measures of a physical, technical, organisational or administrative nature, as laid down in the Security Manual.

Article 11

Choice of classification level

1. The Member State supplying information to Europol shall be responsible for the choice of any appropriate classification level for such information in accordance with Article 10. Where applicable, when supplying information to Europol, the Member State shall mark it with a Europol classification level as referred to in Article 10(4).

2. In choosing a classification level, Member States shall take account of the classification of the information under their national regulations, the need for the operational flexibility required for Europol to function adequately and the requirement that classification of law enforcement information should be the exception and that, if such information has to be classified, the lowest possible level should be assigned.

3. If Europol, on the basis of information already in its possession, comes to the conclusion that the choice of a classification level needs changing (for instance removing or adding a classification level, or adding a classification level to a document previously subject to the basic protection level), it shall inform the Member State concerned and seek to agree

on an appropriate classification level. Europol shall not specify, change, add or remove a classification level without such agreement.

4. Where information generated by Europol is based upon, or contains, information supplied by a Member State, Europol shall determine, in agreement with the Member State concerned, whether the basic protection level is sufficient or whether the application of a Europol classification level is required.

5. Where information is generated by Europol itself, and such information is not based upon, nor contains, information supplied by a Member State, Europol shall determine any appropriate classification level for such information, using criteria laid down by the Security Committee. Where necessary, Europol shall mark the information accordingly.

6. Member States and Europol shall, where information also concerns the essential interests of another Member State, consult that Member State on whether any classification level should be applied to that information and, if so, which classification level should be applied.

Article 12

Changing the classification level

1. A Member State which has supplied information to Europol may, at any time, require that the selected classification level be changed, including by removing or adding a classification level. Europol shall be obliged to remove, amend or add a classification level in accordance with the wishes of the Member State concerned.

2. The Member State concerned shall, as soon as circumstances allow, request that the classification level in question be downgraded or removed altogether.

3. A Member State supplying information to Europol may specify the time period for which the choice of classification level will apply, and any possible amendments to the classification level thereafter.

4. Where the basic protection level or classification level has been determined by Europol in accordance with Article 11(4), Europol shall only change the basic protection or classification level in agreement with the Member States concerned.

5. Where the classification level has been determined by Europol in accordance with Article 11(5), Europol may change or remove the classification level at any time it is deemed necessary.

6. Where information, the classification level of which is changed in accordance with this Article, has already been supplied to other Member States, Europol shall inform the recipients of the change to the classification level.

*Article 13***Processing, access and security clearance**

1. Access to, and possession of, information shall be restricted within the Europol organisation to those persons who, by reason of their duties or obligations, need to be acquainted with such information or need to handle it. Persons entrusted with the processing of information shall have obtained an appropriate security clearance and shall further receive special training.

2. All persons who may have access to information subject to a classification level processed by Europol shall undergo security clearance in accordance with Article 40(2) of the Europol Decision and the Security Manual. The Security Coordinator shall, on the basis of the result of the security clearance procedure, subject to the provisions of the Security Manual, grant authorisation to those persons cleared at the appropriate national level, who by reason of their duties or obligations, need to be acquainted with information subject to a Europol classification level. The authorisation is subject to regular review by the Security Coordinator. Authorisation may be withdrawn immediately by the Security Coordinator on justifiable grounds. The Security Coordinator shall also be responsible for ensuring the implementation of paragraph 3.

3. No person shall have access to information subject to a classification level without having been granted security clearance at the appropriate level. Exceptionally, however, the Security Coordinator may, after consultation of a Security Officer,

- (a) give a specific and limited authorisation to persons cleared at 'CONFIDENTIEL UE/EU CONFIDENTIAL' level to have access to specific information classified up to 'SECRET UE/EU SECRET' level, if, by reason of their duties or obligations in a specific case, they need to be acquainted with information subject to a higher Europol classification level; or
- (b) grant temporary authorisation to access classified information for a period not exceeding six months, pending the outcome of the security clearance referred to in paragraph 2, if it is in the interest of Europol, and after giving the national competent authorities notification and provided there is no reaction from them within three months; the Security Coordinator shall inform the

national competent authorities concerned of the granting of such temporary authorisation. The granting of this temporary authorisation shall not give access to information classified as 'SECRET UE/EU SECRET' and above.

4. Such authorisation shall not be granted where a Member State, when supplying the information concerned, has specified that the discretion afforded to the Security Coordinator under paragraph 3 shall not be exercised in relation to that information.

*Article 14***Third parties**

When concluding confidentiality agreements with third parties, or when concluding agreements in accordance with Articles 22(4) and 23(7) of the Europol Decision, Europol shall take account of the principles laid down in these rules and in the Security Manual, which should be applied accordingly to information exchanged with such third parties.

*CHAPTER IV***FINAL PROVISIONS***Article 15***Review of the rules**

Any proposals for amendments to these rules shall be considered by the Management Board with a view to their adoption by the Council in accordance with the procedure provided for in Article 40(1) of the Europol Decision.

*Article 16***Entry into force**

These rules shall enter into force on 1 January 2010.

Done at Brussels, 30 November 2009.

For the Council

The President

B. ASK

ANNEX

TABLE OF EQUIVALENCE OF CLASSIFICATION LEVELS

Equivalence of classification levels				
Europol ⁽¹⁾	TRÈS SECRET UE/EU TOP SECRET	SECRET UE/EU SECRET	CONFIDENTIEL UE/EU CONFIDENTIAL	RESTREINT UE/EU RESTRICTED
Belgium	Très Secret Zeet Geheim	Secret Geheim	Confidentiel Vertrouwelijk	Diffusion restreinte Bepaalde verspreiding
Bulgaria	CTPOFO CEKPETHO	CEKPETHO	ΠΟΒΕΡΙΤΕΛΙΗΟ	ЗА СЛУЖЕБНО ΠΟΛΙΣΒΑΗΕ
Czech Republic	Přísne tajné	Tajné	Důvěrné	Vyhrazené
Denmark	Yderst hemmeligt	Hemmeligt	Fortroligt	Til tjenestebud
Germany	Streng geheim	Geheim	VS — Vertraulich	VS — Nur für den Dienstgebrauch
Estonia	Täiesti Salajane	Salajane	Konfidentsiaalne	Piiratud
Ireland	Top Secret	Secret	Confidential	Confidential
Greece	Άκρωσ Αποόρητο	Αποόρητο	Εμπιστευτικό	Περιορισμένης Χρήσης
Spain	Secreto	Reservado	Confidencial	Difusión Limitada
France	Très Secret Défense	Secret Défense	Confidentiel Défense	
Italy	Segretissimo	Segreto	Riservatissimo	Riservato
Cyprus	Άκρωσ Αποόρητο	Αποόρητο	Εμπιστευτικό	Περιορισμένης Χρήσης
Latvia	Sevišķi slepeni	Slepeni	Konfidenciali	Dienesta vajadzībām
Lithuania	Visiškai slaptai	Slaptai	Konfidencialiai	Riboto naudojimo
Luxembourg	Très secret	Secret	Confidentiel	Diffusion restreinte
Hungary	Szigorúan titkos!	Titkos!	Bizalmas!	Korlátozott terjesztésű!
Malta	L-Ghola Segretezza	Sigriet	Kunfidenzjali	Ristrett
Netherlands	BE Zeet geheim	STG Zeet geheim	STG Confidentieel	Vertrouwelijk
Austria	Streng geheim	Geheim	Vertraulich	Eingeschränkt
Poland	Ścisłe Tajne	Tajne	Poufne	Zastrzeżone
Portugal	Muito Secreto	Secreto	Confidencial	Reservado
Romania	Strict secret de importanță deosebită	Strict secret	Secret	Secret de serviciu
Slovenia	Strogo tajno	Tajno	Zaupno	Interno
Slovakia	Prísne tajné	Tajné	Dôverné	Vyhrazené
Finland	Erittäin salainen	Salainen	Luottamuksellinen	Viranomaiskäyttö
Sweden	Kvalificerat hemlig	Hemlig	Hemlig	Hemlig
United Kingdom	Top Secret	Secret	Confidential	Restricted

⁽¹⁾ The marking 'Europol' shall be inserted under the classification marking.

IV

(Other acts)

EUROPEAN ECONOMIC AREA

THE EEA JOINT COMMITTEE

EFTA SURVEILLANCE AUTHORITY DECISION

No 191/08/COL

of 17 March 2008

on unpaid labour in relation to research and development activities (Norway)THE EFTA SURVEILLANCE AUTHORITY ⁽¹⁾,

provided for in Article 1(2) of Part I and Article 6 of Part II of Protocol 3 to the Surveillance and Court Agreement,

Having regard to the Agreement on the European Economic Area ⁽²⁾, in particular to Articles 61 to 63 and Protocol 26 thereof,Having called on interested parties to submit their comments pursuant to that provision ⁽³⁾,

Whereas:

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ⁽³⁾, in particular to Article 24 thereof,

I. FACTS

1. PROCEDURE

Having regard to Article 1(2) and (3) of Part I and Articles 4(4), 6 and 7(4) of Part II of Protocol 3 to the Surveillance and Court Agreement,

By letter dated 14 October 2005 from the Norwegian Mission to the European Union, forwarding a letter from the Norwegian Ministry of Trade and Industry, dated 5 October 2005, both received and registered by the Authority on 17 October 2005 (Event No 346675), the Norwegian authorities notified, pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement, a proposal for a new scheme for State aid to support unpaid labour in relation to research and development activities. The proposed scheme is referred to in the following as the 'Unpaid R&D Labour Scheme'.

Having regard to the Authority's State Aid Guidelines ⁽⁴⁾ on the application and interpretation of Articles 61 and 62 of the EEA Agreement, in particular the section on research and development and innovation aid,

By letter dated 8 March 2006 (Event No 364666), and following various exchanges of correspondence ⁽⁶⁾, the Authority informed the Norwegian authorities that it had decided to initiate the procedure laid down in Article 6 of Part II of Protocol 3 to the Surveillance and Court Agreement in respect of the Unpaid R&D Labour Scheme and invited them to submit their comments on the decision.

Having regard to Decision No 59/06/COL of the Authority of 8 March 2006 to initiate the formal investigation procedure

⁽¹⁾ Hereinafter referred to as the 'Authority'.⁽²⁾ Hereinafter referred to as the 'EEA Agreement'.⁽³⁾ Hereinafter referred to as the 'Surveillance and Court Agreement'.⁽⁴⁾ Procedural and Substantive Rules in the Field of State Aid — Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Part I of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19 January 1994, published in OJ L 231, 3.9.1994, p. 1, and EEA Supplement No 32, 3.9.1994, p. 1. The Guidelines were last amended by Decision No 154/07/COL of the Authority of 3 May 2007. Hereinafter referred to as the 'State Aid Guidelines'.⁽⁵⁾ OJ C 258, 26.10.2006, p. 28, and EEA Supplement No 53, 26.10.2006.⁽⁶⁾ For more detailed information on the correspondence, reference is made to Decision No 59/06/COL to open the formal investigation procedure, a summary of which is published in OJ C 258, 26.10.2006, p. 28, and EEA Supplement No 53, 26.10.2006. The full decision is published on the website of the Authority: www.eftasurv.int

By letter dated 19 April 2006 from the Norwegian Mission to the European Union, forwarding letters from the Ministry of Government Administration and Reform and the Ministry of Trade and Industry, dated 11 and 7 April 2006 respectively, the Norwegian authorities submitted their comments. The letter was received and registered by the Authority on 20 April 2006 (Event No 370829).

Decision No 59/06/COL to initiate the formal investigation procedure was published in the *Official Journal of the European Union* and the EEA Supplement thereto ⁽⁷⁾. The Authority called on interested parties to submit their comments. The Authority received no comments from interested parties.

Finally, in a letter submitted electronically on 15 February 2008 by the Ministry of Government Administration and Reform (Event No 465311), the Norwegian authorities consolidated information transmitted as a result of informal contact both via telephone and electronic mail during the course of 2007 and January 2008.

2. DESCRIPTION OF THE PROPOSED MEASURE

2.1. THE OBJECTIVE, LEGAL BASIS AND OPERATION OF THE UNPAID R&D LABOUR SCHEME

Objective

It appears from legislative preparatory works that the overall objective of the Unpaid R&D Labour Scheme is to stimulate increased investment in research and development activities, particularly by small companies such as entrepreneurs and one-man enterprises ⁽⁸⁾. More specifically, the objective of the new scheme is to stimulate efforts by individuals in research and development oriented companies which, in the start-up phase, are often dependent on labour resources that cannot be paid for. Research and development oriented companies are considered by the Norwegian authorities to be important for the purposes of value creation derived from research as well as for innovation.

On a more detailed level, the Norwegian authorities have explained that the introduction of the Unpaid R&D Labour Scheme was motivated by the fact that under the existing 'Skattefunn Scheme' ⁽⁹⁾, it is not possible to support unpaid labour in

relation to research and development activities undertaken by entrepreneurs and one-man enterprises due to the fact that the Skattefunn Scheme is a tax deduction scheme ⁽¹⁰⁾. In this respect the authorities have explained that under the Skattefunn Scheme, aid is granted to research and development activities in the form of a tax deduction (or tax credit) whereby an amount, corresponding to a percentage of the eligible costs, is deducted from the amount due in tax by the company. However, the Norwegian authorities considered that it would not be in compliance with general tax legislation to deduct, from the amount to be paid in tax, an amount which is not based on *actual* eligible costs but rather on unpaid labour, i.e. 'costs' which have not been incurred in the sense that no salary has been paid out and nothing is reflected in the accounts of the business. On this basis it was considered that unpaid labour could not qualify as an eligible cost under the Skattefunn Scheme.

It is against this background that the Norwegian authorities proposed to set up the Unpaid R&D Labour Scheme, under which financial support is to be awarded to unpaid labour in relation to research and development activities in the form of grants which are exempt from tax. As such the Norwegian authorities consider the Unpaid R&D Labour Scheme as a correction or supplement to the existing Skattefunn Scheme.

In the notification, the Norwegian authorities also explained that many companies have projects that were approved under the Skattefunn Scheme but in relation to which they were subsequently prevented from benefiting from the tax deduction (or had to repay an amount corresponding to a tax deduction already received) due to the fact that the projects involved unpaid labour. The Norwegian authorities had therefore decided to introduce a 'Compensation Scheme' for the purposes of compensating companies for financial losses caused to their research and development projects during the years between 2002-2004 as a result of the fact that unpaid labour could not be covered by the Skattefunn Scheme ⁽¹¹⁾. In its decision to open the formal investigation procedure in respect of the Unpaid R&D Labour Scheme the Authority took the view that aid granted to undertakings under the Compensation Scheme would qualify as *de minimis* aid under the 'de minimis Regulation' ⁽¹²⁾. The Compensation Scheme did not form part of the formal investigation procedure.

⁽¹⁰⁾ The terms used by the Norwegian authorities for the company forms mentioned are 'gründerselskaper' and 'enkeltpersonforetak'.

⁽¹¹⁾ On 2 July 2006 the Norwegian authorities adopted Royal Decree No 123 on the implementation of the Compensation Scheme: 'Forskrift om kompensasjon for ulønnet arbeidsinnsats i Skattefunn-godkjente forsknings- og utviklingsprosjekter for inntektsårene 2002, 2003 og 2004'. See also a description in section 3.9 of St. prp. nr. 65 (2004-2005).

⁽¹²⁾ Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ L 10, 13.1.2001, p. 30) which has been incorporated into point 1(e) of Annex XV to the EEA Agreement.

⁽⁷⁾ Publication details are cited in footnote 6 above.

⁽⁸⁾ Section 3.9 of St. prp. nr. 65 (2004-2005).

⁽⁹⁾ The Skattefunn Scheme was approved by the Authority in its Decision No 171/02/COL of 25 September 2002 and amendments to the Skattefunn Scheme were approved by the Authority in its Decision No 16/03/COL of 5 February 2003.

Legal basis

In the original proposition on the fiscal budget from the Norwegian Government to the Norwegian Parliament⁽¹³⁾, which was followed up by a Recommendation from a Parliamentary Committee to the Parliament⁽¹⁴⁾, the Government proposed to earmark a total of NOK 70 million for both the Unpaid R&D Labour Scheme and the Compensation Scheme⁽¹⁵⁾. Pending the approval by the Authority no funds have been paid out under the Unpaid R&D Labour Scheme but the Norwegian authorities have explained that the annual budget for the scheme is expected to be maximum approximately NOK 50 million⁽¹⁶⁾.

In parallel with the adoption of the original budget for the Unpaid R&D Labour Scheme, the Norwegian Parliament adopted, on 17 June 2005, a proposal amending the Norwegian Act on Taxation of wealth and income by introducing provisions on tax treatment and ceilings in respect of funding to be awarded under the Unpaid R&D Labour Scheme (hereinafter referred to as the 'Tax law on the Unpaid R&D Labour Scheme')⁽¹⁷⁾.

Aside from the adoption of the budget and the Tax law on the Unpaid R&D Labour Scheme, the Norwegian Ministry of Trade and Industry has issued draft guidelines on the implementation of the Unpaid R&D Labour Scheme⁽¹⁸⁾ (hereinafter referred to as the 'Guidelines on the Unpaid R&D Labour Scheme'). The draft guidelines provide that 'Norges forskningsråd' (the Norwegian Research Council) will be the body responsible for administering and implementing the scheme.

Operation of the Unpaid R&D Labour Scheme — eligible projects

It appears from the Guidelines on the Unpaid R&D Labour Scheme that eligible projects must involve research and development activities performed by individuals who are not

receiving any pay or other compensation for their labour. Individuals who receive payment by means of other public sources are not covered⁽¹⁹⁾.

According to the Guidelines on the Unpaid R&D Labour Scheme, eligible projects are:

- (i) those that involve planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. They cover the creation of components of complex systems, which is necessary for such research, notably for generic technology validation, to the exclusion of prototypes as covered by option (ii);⁽²⁰⁾ and
- (ii) those that aim at providing new information, knowledge or experience which is presumed to be of use to the enterprise in connection with the development of new or better products, services or production methods. Moreover, activities where results from industrial research are transferred into a plan, a project or a design for new enhanced products, services or production processes, as well as the development of a first prototype or pilot project that cannot be commercially exploited are also eligible activities under the scheme⁽²¹⁾.

The Norwegian authorities have stated that these definitions of eligible research and development projects are identical to the definitions of eligible research and development projects under the existing Skattefunn Scheme. In fact, in practice the Norwegian authorities refer to eligible projects under the Unpaid R&D Labour Scheme as projects which meet the 'Skattefunn criteria' or have been approved under the Skattefunn Scheme⁽²²⁾.

⁽¹³⁾ Section 3.9 of St. prp. nr. 65 (2004-2005), Chapter 928, item 71.

⁽¹⁴⁾ Section 10.1.1.2 of Innst. S. nr. 240 (2004-2005), Chapter 928, item 71.

⁽¹⁵⁾ The budget was approved by the Parliament on 17 June 2005. During 2006-2007 NOK 35 million has been granted under the Compensation Scheme.

⁽¹⁶⁾ This is an estimate and hence not reflected in any legal texts.

⁽¹⁷⁾ Lov 2005-06-17 nr 74: Lov om endringer i lov 26. mars 1999 nr. 14 om skatt av formue og inntekt (skatteloven). The Government's proposal to the Parliament is in section 14.1 of Ot. prp. nr. 92 (2004-2005) and refers to the original budget proposition in St. prp. nr. 65 (2004-2005). The proposal was supported in a Recommendation from the Finance Committee in the Parliament, see section 15.1 of Innst. O. nr. 125 (2004-2005).

⁽¹⁸⁾ The draft guidelines on Unpaid R&D Labour Scheme is an administrative instruction issued on the basis of internal regulations on the management of finances within the State entitled 'Reglement for økonomistyring i staten' and 'Bestemmelser om økonomistyring i staten'.

⁽¹⁹⁾ Section 6 of Part III.6.A in the Standard Notification Form and Section 3 of the Guidelines on the Unpaid R&D Labour Scheme.

⁽²⁰⁾ The notification cross-referred to the Skattefunn Scheme but only specifically mentioned the type of project listed under (ii) below and it was therefore not clear whether other types of project were nevertheless included in the scope of the Unpaid R&D Labour Scheme. However, by e-mail dated 12 March 2008 (Event No 469276), the Norwegian authorities confirmed that the type of research and development described in (i) above is covered by the Scheme.

⁽²¹⁾ Section 6 of Part I in the Standard Notification Form and Section 3 of the Guidelines on the Unpaid R&D Labour Scheme. However, ordinary business oriented product development not having the character of research is not covered, for example projects that have a continuing character or include modification of methods without requiring the development of new knowledge or the use of existing knowledge in new ways, are of an organisational character, or consist of inquires, etc.

⁽²²⁾ Section 3 of the Guidelines on the Unpaid R&D Labour Scheme and Section IX of the Tax law on the Unpaid R&D Labour Scheme.

As mentioned above, the Unpaid R&D Labour Scheme will be administered and implemented by the Norwegian Research Council. The latter body is also the secretariat and the administering body assessing whether projects are eligible under the Skattefunn Scheme⁽²³⁾. The Norwegian authorities have explained that the fact that eligible research and development activities are defined in the same manner under both the Skattefunn Scheme and the Unpaid R&D Labour Scheme, and that the administering body, assessing whether the projects qualify as eligible, is the same under both schemes, means that for the purposes of implementation the two schemes are closely coordinated. In this regard the intention is that applicants applying for support for eligible research and development activities need only complete one single application form in which the applicant has the option to select whether support is sought for paid and/or unpaid labour in relation to the relevant research and development activity⁽²⁴⁾. Moreover, financial support to be granted under the Unpaid R&D Labour Scheme will be taken into account when applicants also request support under the Skattefunn Scheme and overall aid will be subject to the maximum limit for support under the latter scheme⁽²⁵⁾. In fact, according to the Norwegian authorities the only difference between the two schemes is the type of eligible costs (*i.e.* paid as opposed to unpaid labour) and the form in which support is granted (*i.e.* a tax deduction as opposed to a tax-free grant).

In addition, the Norwegian authorities have stated that in order to qualify as eligible projects under the Unpaid R&D Labour Scheme projects may not have started prior to the application for support⁽²⁶⁾.

2.2. RECIPIENTS

In the notification, the Norwegian authorities explained that the Unpaid R&D Labour Scheme would be open to all tax payers with tax liability in Norway, including all undertakings, irrespective of their size, sector and region⁽²⁷⁾. Undertakings participating jointly in a co-operation project may also benefit from the Scheme⁽²⁸⁾.

The Norwegian authorities explained that the reason that the Unpaid R&D Labour Scheme included medium-sized and large

companies was to keep it in conformity with the conditions of the Skattefunn Scheme (which is open to all undertakings regardless of size). The Norwegian authorities stated, in this context, that '[t]his is also why there is no formal discrimination against larger companies in the Unpaid R&D Labour Scheme's definition of beneficiaries' (emphasis added)⁽²⁹⁾.

However, the Norwegian authorities have also made it clear that, in practice, the Unpaid R&D Labour Scheme is intended to target only entrepreneurs and one-man enterprises: 'Even if the scheme includes enterprises of all sizes, the very nature of the scheme (support for unpaid labour) implies that the incentive effect will be most significant for entrepreneur-firms and one-man enterprises'⁽³⁰⁾. In the same vein the authorities have stated that the Unpaid R&D Labour Scheme is '... primarily targeting newly established technology-based companies with no ability to pay salaries to the individuals performing the R&D activity' and '[a]s the Unpaid R&D Labour Scheme shall give support to unpaid labour performed by R&D personnel not receiving salary or other compensation for the labour, the scheme will not be relevant for ordinary medium-sized and large companies'⁽³¹⁾.

On this basis the Norwegian authorities have stated that 'Companies with an annual turnover or an annual balance sheet total corresponding to the ESA definition of medium-sized companies will in practise not receive support for unpaid labour'⁽³²⁾. The authorities have added that 'Larger companies generally use employed and paid R&D personnel to perform the actual R&D activity in a Skattefunn-project' and '[t]he costs of paying these employees will be eligible for tax-refund in the Skattefunn Scheme, and such companies will therefore neither have need nor basis for applying for subsidy from the Unpaid R&D Labour Scheme'⁽³³⁾.

Finally, the Norwegian authorities have stated that since the maximum limit for support to an eligible project is the same whether support is granted exclusively in the form of a tax deduction under the Skattefunn Scheme, or by a combination of a tax deduction and a grant under the Unpaid R&D Labour Scheme, there is no incentive for large companies to obtain support from both schemes.

As a result, by letter dated 15 February 2008 (Event No 465311), the Norwegian authorities informed the Authority that 'the scheme is formally restricted to the Authority's definition of small and micro companies'.

⁽²³⁾ Section 3.9 of St. prp. nr. 65 (2004-2005), Section 14.1 of Ot. prp. nr. 92 (2004-2005) and the introduction to the Guidelines on the Unpaid R&D Labour Scheme. Although 'Innovasjon Norge' previously 'Statens nærings- og distriktsutviklingsfond' is also involved in the administration of the Skattefunn Scheme it has a subordinate role only.

⁽²⁴⁾ Section 7 of the Guidelines on the Unpaid R&D Labour Scheme.

⁽²⁵⁾ See further Section 2.3 on 'Eligible costs and aid intensity' below.

⁽²⁶⁾ E-mail dated 12 March 2008 from the Norwegian authorities (Event No 469275).

⁽²⁷⁾ See also Section 3.9 of St. prp. nr. 65 (2004-2005) where it is stated that the Unpaid R&D Labour Scheme is addressed to one-man enterprises, limited liability companies and other types of companies.

⁽²⁸⁾ In this case the project costs are allocated to participants in proportion to their share of participation.

⁽²⁹⁾ Letter dated 10 January 2006 from the Norwegian authorities (Event No 356994).

⁽³⁰⁾ Section 8.1 of Part III.6.A of the Standard Notification Form.

⁽³¹⁾ See footnote 29.

⁽³²⁾ See footnote 29.

⁽³³⁾ See footnote 29.

2.3. ELIGIBLE COSTS AND AID INTENSITY

Eligible costs

The Norwegian authorities have notified that under the Unpaid R&D Labour Scheme eligible expenditure consists of the unpaid labour costs in relation to an eligible project ⁽³⁴⁾. In terms of identifying the appropriate hourly rate(s) for the unpaid labour, the Norwegian authorities have explained that as formal qualifications of an individual are not always reflected in the ability to carry out research and development projects it is difficult to identify separate rates which correspond to relevant education, experience and field of work. It was therefore decided to use one common hourly rate for the calculation of support under the Unpaid R&D Labour Scheme.

The hourly rate proposed by the Norwegian authorities is based on calculating 1,6 % of the nominal annual industrial worker's salary for 2005 (NOK 348 300) ⁽³⁵⁾, resulting in an hourly rate of NOK 557,28 which, for simplicity, was rounded off to NOK 500. The hourly rate of NOK 500 may be subject to adjustment by the Ministry of Trade and Industry on the basis of general wage developments.

The methodology of calculating the hourly rate (as 1,6 % of the nominal annual salary) has been developed by the Norwegian Research Council. In this regard the Norwegian authorities have explained that an hourly rate for labour can, in fact, be easily established simply by reference to the average annual salary (based on statistics) and the average annual working hours. However, in order to simplify the grant of support for research and development activities the Norwegian Research Council wanted to go further. It developed therefore a methodology according to which the hourly rate includes not only (i) pure salary costs, but also (ii) 'other operating costs' calculated on a per employee basis and consisting of (a) social costs related to salary (such as pension and social security etc.); (b) costs of equipment use per employee (e.g. use of telephone, computer/IT equipment, copy machine etc.); (c) general overhead costs of electricity, heating, office rent, canteen & service personnel and temporary use of supporting staff; and (d) rent/purchase of instruments and office supplies.

The hourly rate for 'unpaid labour' covers therefore not only pure salary costs but also 'other operating costs' on a per employee basis ⁽³⁶⁾.

⁽³⁴⁾ Section 6 of Part III.6.A of the Standard Notification Form.

⁽³⁵⁾ See NOU: 2004:14 entitled 'Om grunnlaget for inntektsoppgjørene', which is a report on a review of the background for establishing salary levels in public statistics issued by a body established by the Government. According to the report, the average annual industrial worker's salary (for full time employees) for 2003 was NOK 319 600. Taking account of annual salary growth estimated at 4,4 % between 2004 and 2005 (which corresponds to the annual salary growth between 2002 and 2003) the average annual industrial worker's salary for 2005 was estimated at NOK 348 300. The reason for this approach was that at the time of notification in 2005 these were the best data available. By comparison, NOU: 2007:3 shows that the average industrial worker's salary for 2006 turned out to be NOK 355 600.

⁽³⁶⁾ While the level of such 'other operating costs' is therefore calculated on a per employee/hour basis, the fact that such costs are actually incurred is verified via invoices, as explained below.

In order to establish the methodology the Norwegian Research Council undertook a review of the accounts of a number of Norwegian companies which showed that, on average, annual operating costs are 1,8 times higher than annual salary costs (including social costs) ⁽³⁷⁾. After having corrected the annual salary costs for the fact that they included social costs (corresponding to 40 % of the salary), the average operating costs turned out to be 2,52 times higher than pure salary costs. By dividing this figure by the annual average of working hours (1 500) ⁽³⁸⁾, operating costs, measured on an hourly basis, were found to be 1,68 % (rounded off to 1,6 %) times the annual pure salary costs. Accordingly, the methodology is that the hourly rate for unpaid labour (covering both pure salary costs and 'other operating costs') is calculated as 1,6 % of the relevant annual salary.

The Guidelines on the Unpaid R&D Labour Scheme provide that eligible unpaid labour costs are subject to a fixed ceiling of NOK 2 million annually per undertaking ⁽³⁹⁾.

Finally, as regards control measures, the unpaid labour and other project costs must be certified by an accountant for each grant application ⁽⁴⁰⁾. While evidence of the incurrence of 'other operating costs' is verified via invoices, the Norwegian authorities have explained that as there is no evidence of reported hours of unpaid labour, companies are required to record the date, task, number of hours spent and the name of the relevant individual. In projects with more than one individual, the records must be signed both by the individual having carried out the unpaid labour and the individual responsible for the project. Moreover, the reported number of hours may be reduced by the Norwegian Research Council if it is revealed during the procedure that the declared number of hours is incorrect.

Aid intensity

The Guidelines on the Unpaid R&D Labour Scheme provide that grants awarded under the Scheme are subject to the thresholds set out in Section 16-40 of the Norwegian Act on Taxation of wealth and income ⁽⁴¹⁾. That provision is the basis for the Skattefunn Scheme and provides that aid intensities of up to 20 % in the case of small and medium-sized enterprises (SMEs) are acceptable.

⁽³⁷⁾ The review was carried out in 1990 on the basis of a number of companies of different sizes.

⁽³⁸⁾ Following corrections for illness, maternity leave etc.

⁽³⁹⁾ Section 3 of the Guidelines on Unpaid R&D Labour Scheme. It appears from Section 3.9 of St. prp. nr. 65 (2004-2005) that the ceiling is basically 50 % of the maximum limit for costs (in relation to projects carried out by the undertaking itself) under the Skattefunn Scheme (NOK 4 million).

⁽⁴⁰⁾ Section 4 of the Guidelines on the Unpaid R&D Labour Scheme.

⁽⁴¹⁾ Section 3 of the Guidelines on the Unpaid R&D Labour Scheme.

In the notification, the Norwegian authorities submitted information on gross aid intensities of 27,8 % for SMEs⁽⁴²⁾. Support under the Unpaid R&D Labour Scheme is paid in the form of a grant corresponding to 20 % of eligible costs⁽⁴³⁾. However, in addition, by virtue of the Tax law on the Unpaid R&D Labour Scheme, the grants are exempt from corporate tax, the rate of which is currently 28 %. A tax-free grant of 20 % of eligible costs therefore corresponds to a taxable grant of 27,8 % of those costs. The gross aid intensity is therefore 27,8 %.

The grants awarded under the Unpaid R&D Labour Scheme are considered in conjunction with aid received under the Skattefunn Scheme and support under the former is included when calculating the limits under the latter. Under the Skattefunn Scheme, the total amount of support for SMEs may not exceed 20 % of eligible costs which may not be in excess of NOK 4 million per undertaking per year. Where the total amount of financial support would exceed the limits set forth under the Skattefunn Scheme, the tax deduction will be reduced accordingly. The Norwegian authorities have clarified that these limits are, however, without prejudice to the fact that the costs attributed to unpaid labour must in any event be within the abovementioned ceiling of NOK 2 million per undertaking per year. Finally the authorities have explained that in cases where a project receives grants under the Unpaid R&D Labour Scheme and public support from other sources, other than the Skattefunn Scheme, which together exceed the limit for total support, a reduction in the support granted under the Unpaid R&D Labour Scheme will be made.

2.4. BUDGET AND DURATION

As mentioned above, the Norwegian authorities envisage that the future budget for the Unpaid R&D Labour Scheme will be maximum approximately NOK 50 million on an annual basis.

The Unpaid R&D Labour Scheme was notified as being unlimited in time. However, by letter dated 15 February 2008 (Event No 465311), the Norwegian authorities stated that the maximum duration of the Scheme would be linked to the duration of the current State Aid Guidelines on aid for Research and Development and Innovation (hereinafter referred to as the 'R&D&I Guidelines'), which expire on 31 December 2013. The Norwegian authorities are aware that a longer duration of the Unpaid R&D Labour Scheme requires a new notification.

3. GROUNDS FOR INITIATING THE PROCEDURE

The Authority opened the formal investigation procedure on the basis of the preliminary finding that the Unpaid R&D

Labour Scheme involves State aid which it doubted could be considered compatible with the EEA Agreement. One of the concerns of the Authority was whether the aid intensities under the Unpaid R&D Labour Scheme could exceed those set forth in the State Aid Guidelines⁽⁴⁴⁾. Indeed, grants which may be awarded under the Unpaid R&D Labour Scheme are tax exempt and a change in the tax rate may therefore result in a higher gross aid intensity. Moreover, since the costs of 'unpaid labour' are not in fact incurred the Authority doubted whether they could qualify as eligible costs under those Guidelines. In this regard the Authority took account of the fact that under the Sixth Community Research Framework Programme, support for 'unpaid' labour was not allowed. Finally, the Authority had concerns as to the necessary incentive effect.

4. COMMENTS BY THE NORWEGIAN AUTHORITIES

The Norwegian authorities have clarified that if the tax rate increases, the grant under the Unpaid R&D Labour Scheme will, if necessary, be reduced to ensure that the aid intensity does not exceed the maximum aid intensities fixed under the R&D&I Guidelines. The Norwegian authorities base this statement on the last paragraph of Section 3 of the Guidelines on the Unpaid R&D Labour Scheme which, translated into English, provides that '[w]hen considering total public funding to the project, the grant [for unpaid labour] is accounted for in the same manner as the tax deduction. If total public funding for the project exceeds [the ceiling] for permitted aid according to the ESA rules the tax deduction will be reduced. If support to unpaid labour in and of itself results in exceeding the limit for total aid permitted the grant for unpaid labour will be reduced'⁽⁴⁵⁾.

In relation to the statement that '[p]hysical persons may not charge any labour costs in relation to their personal involvement in the project', contained in the Sixth Community Research Framework Programme, the Norwegian authorities have argued that the term 'physical persons' refers to employed personnel in universities/colleges receiving a salary from the research institution (as opposed to a one-man company). Since such persons are in any event not eligible for support under the Unpaid R&D Labour Scheme the Norwegian authorities consider the reference to the Sixth Community Research Framework Programme to be irrelevant.

With respect to the proposed hourly rate, the Norwegian authorities have pointed out that the point of departure for

⁽⁴²⁾ Section 7 of Part III.6.A of the Standard Notification form.

⁽⁴³⁾ The Norwegian authorities have stated that in view of the fact that the ceiling for eligible unpaid labour costs is NOK 2 million, and that the aid intensity is 20 % for SMEs, the grant ceiling in absolute figures would be NOK 400 000 on an annual basis. Section 3 of the Guidelines on the Unpaid R&D Labour Scheme and Section 6 of Part I in the Standard Notification form.

⁽⁴⁴⁾ The previous State Aid Guidelines on Research and Development were replaced by new guidelines on Research and Development and Innovation as of 7 February 2007. At the time of the decision to initiate the formal investigation procedure with respect to the Unpaid R&D Labour Scheme the previous guidelines were applicable. However, since the substantive rules relevant for the assessment of the present case have remained largely the same, the legislative change is therefore not commented on any further in the following.

⁽⁴⁵⁾ Translation by the Authority.

calculating the hourly rate of NOK 500 is the nominal annual industrial worker's salary, which is much lower than the nominal annual salary for research and development personnel. Since the education level in one-man companies and entrepreneurs generally corresponds to the higher level of education of research and development personnel, the calculation of the hourly rate for the purposes of the Unpaid R&D Labour Scheme could have been based on the higher salary for civil engineers. For 2005 this amounted to NOK 460 000 or NOK 530 000 (depending on whether employees have five or ten years experience) resulting in an hourly rate of NOK 772,80 or NOK 890,40 ⁽⁴⁶⁾. On this basis the Norwegian authorities have argued that, by proposing an hourly rate calculated on the basis of the much lower nominal annual salary for industrial workers, the hourly rate is therefore kept to a minimum.

As to the incentive effect the Norwegian authorities argue that since cash is a major problem for early-phase start-ups, an incentive effect will automatically be present for the scheme's major target group, namely small entrepreneurs and one-man companies.

II. ASSESSMENT

1. THE PRESENCE OF STATE AID WITHIN THE MEANING OF ARTICLE 61(1) OF THE EEA AGREEMENT

Article 61(1) of the EEA Agreement provides that:

'Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.'

To constitute State aid within the meaning of Article 61(1) of the EEA Agreement a measure must satisfy the following four cumulative criteria: (i) the measure must confer on recipients an economic advantage which is not received in the normal course of business; (ii) the advantage must be granted by the State or through State resources; (iii) the measure must be selective by favouring certain undertakings or the production of certain goods; and (iv) the measure must distort competition and affect trade between Contracting Parties. In the following it is examined whether the four cumulative criteria are met in the present case.

1.1. ECONOMIC ADVANTAGE

The measure must confer on recipients an economic advantage which is not received in the normal course of business.

⁽⁴⁶⁾ Source: Salary statistics issued in 2007 by the Norwegian association for individuals with a higher degree in engineering, 'TEKNA'.

Under the Unpaid R&D Labour Scheme the Norwegian authorities will award financial grants to tax payers, including undertakings. The undertakings receiving such grants therefore receive an economic advantage, i.e. a grant, which they would not have received in their normal course of business.

Moreover, the grants are exempted from corporate tax. The tax exemption relieves recipients from a charge that is normally borne out of their budgets, such that the exemption represents a further economic advantage, in addition to the grant itself.

1.2. PRESENCE OF STATE RESOURCES

The measure must be granted by the State or through State resources.

The grants awarded under the Unpaid R&D Labour Scheme are financed by the Ministry of Trade and Industry and are therefore financed by the State.

Moreover, with respect to the exemption of grants from corporate tax, a tax exemption implies that the State foregoes tax revenue and a loss of tax revenue is equivalent to consumption of state resources in the form of fiscal expenditure ⁽⁴⁷⁾.

1.3. FAVOURING CERTAIN UNDERTAKINGS OR THE PRODUCTION OF CERTAIN GOODS

The measure must be selective in that it favours 'certain undertakings or the production of certain goods'.

In the notification it was stated that funding under the Unpaid R&D Labour Scheme would be available to all undertakings irrespective of their size, sector and region.

In Decision No 16/03/COL of 5 February 2003, authorising the extension of the Skattefunn Scheme to all undertakings, irrespective of their size and sector ⁽⁴⁸⁾, the Authority found that the body administering and implementing the Skattefunn Scheme (the Norwegian Research Council) enjoyed discretionary powers for the purposes of assessing the research character of the projects and the incentive effect of the support measure.

⁽⁴⁷⁾ Section 3(3) of the State Aid Guidelines on the application of State aid rules to measures relating to business taxation.

⁽⁴⁸⁾ Although not explicitly mentioned funding was also granted irrespective of region.

In view of the above and the fact that the criteria for determining the eligibility of projects under the Skattefunn Scheme and the Unpaid R&D Labour Scheme are the same and are assessed by the same administering body, i.e. the Norwegian Research Council, the Authority takes the view that the latter enjoys discretionary powers also for the purposes of implementing the Unpaid R&D Labour Scheme. In this regard the Authority recalls that the European Court of Justice has held that discretionary powers enjoyed by the public authorities, administering a financial support scheme, means that the scheme is, de facto, selective⁽⁴⁹⁾. As a result, the Authority concludes that such a scheme would, de facto, be selective.

Indeed, statements by the Norwegian authorities to the effect that while '... there is no formal discrimination against larger companies in the Unpaid R&D Labour Scheme's definition of beneficiaries' (emphasis added), '[c]ompanies with an annual turnover or an annual balance sheet total corresponding to the ESA definition of medium-sized companies will in practice not receive support for unpaid labour' confirm that the Norwegian Research Council would have used its discretionary powers to preclude larger companies from support in practice.

The assessment set out above would be equally valid for the exemption from corporate tax enjoyed by recipients of grants under the Unpaid R&D Labour Scheme.

Therefore, during the course of the formal investigation procedure, the Norwegian authorities decided to formally limit the Unpaid R&D Labour Scheme to micro and small companies in line with the definitions given thereof in the State Aid Guidelines on aid to SMEs⁽⁵⁰⁾. The Scheme is therefore selective.

1.4. DISTORTION OF COMPETITION AND EFFECT ON TRADE BETWEEN CONTRACTING PARTIES

The measure must distort competition and affect trade between the Contracting Parties.

⁽⁴⁹⁾ See Case C-241/94 *France v Commission* [1996] ECR I-4551, paragraphs 23 and 24; Case C-200/97 *Ecotrade v AFS* [1998] ECR I-7907, paragraph 40; and Case C-295/97 *Piaggio v Ifitalia* [1999] ECR I-3735, paragraph 39.

⁽⁵⁰⁾ Letter dated 15 February 2008 from the Norwegian authorities (Event No 465311). According to Section 2.2 of the State Aid Guidelines on aid to micro, small and medium-sized enterprises (SMEs), a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million, and a micro enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million. Ownership structures may exclude the qualification of small and micro companies as set out in the State Aid Guidelines on aid to SMEs.

The Unpaid R&D Labour Scheme applies to all sectors of the economy established in Norway. In view of the fact that, for the year 2006, exports to the EU represented about 82 % of total exports from Norway, whereas imports from the EU represented approximately 69 % of total imports to Norway, there is extensive trade between Norway and the EU⁽⁵¹⁾.

In such circumstances, the Authority considers that the grant of support and the connected tax exemption under the Unpaid R&D Labour Scheme will strengthen the relative position of recipients compared to undertakings located in other EEA countries and competing in similar sectors or businesses. Furthermore, based on the formal exclusion of larger companies from the Scheme, the position of small and micro companies receiving support under the Scheme will be reinforced. The Unpaid R&D Labour Scheme is therefore to be regarded as affecting trade and distorting or threatening to distort competition.

1.5. CONCLUSION

In light of the above, the Authority concludes that the grant of support, including the tax exemption, under the Unpaid R&D Labour Scheme constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

2. PROCEDURAL REQUIREMENTS

Pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement, 'the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. [...] The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision'.

By means of a letter dated 14 October 2005, the Norwegian authorities notified the Unpaid R&D Labour Scheme. According to preparatory legislative works the Unpaid R&D Labour Scheme may enter into force only following a notification to, and approval by, the Authority⁽⁵²⁾. Therefore, the authorisation by the Norwegian authorities of the entry into force of the Tax law on the Unpaid R&D Labour Scheme and the final adoption of the draft Guidelines on the Unpaid R&D Labour Scheme are both conditional upon the prior approval of the scheme by the Authority⁽⁵³⁾.

⁽⁵¹⁾ The relevant statistics have been issued by 'Statistisk Sentralbyrå' and are entitled 'Utenrikshandel med varer, årsserier 2006' (Table 17 'Import etter handelsområder, verdensdeler og land' for 2001-2006 and Table 18 'Eksport etter handelsområder, verdensdeler og land' for 2001-2006). The statistics are available at: http://www.ssb.no/emner/09/05/nos_utenriks/

⁽⁵²⁾ Section 14.3 of Ot. prp. nr. 92 (2004-2005) which refers to Section 3.9 of St. prp. nr. 65 (2004-2005).

⁽⁵³⁾ Section 15.1 of Innst. O. nr. 125 (2004-2005) and Section 14.3 of Ot. prp. nr. 92 (2004-2005) which refers to Section 3.9 of St. prp. nr. 65 (2004-2005).

In these circumstances, the Authority considers that the Norwegian authorities have respected the notification and standstill obligations pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement.

3. COMPATIBILITY OF THE AID

As the conclusion of the Authority is that the Unpaid R&D Labour Scheme involves State aid, it has to be examined whether the scheme may be considered compatible with the functioning of the EEA Agreement under Article 61(2) or (3) of the EEA Agreement.

3.1. COMPATIBILITY WITH ARTICLE 61(2) OF THE EEA AGREEMENT

None of the exceptions under Article 61(2) of the EEA Agreement apply in this case as the Unpaid R&D Labour Scheme is not aimed at the objectives listed in that provision.

3.2. COMPATIBILITY WITH ARTICLE 61(3) OF THE EEA AGREEMENT

A State aid measure is considered compatible with the functioning of the EEA Agreement under Article 61(3)(a) of the EEA Agreement when it is designed to promote economic development where the standard of living is abnormally low or where there is serious underemployment. However, as no such areas are defined in the regional aid map of Norway, this provision does not apply ⁽⁵⁴⁾.

Moreover, the exception in Article 61(3)(b) of the EEA Agreement does not apply since the State aid granted under the Unpaid R&D Labour Scheme is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of Norway.

However, the exception laid down in Article 61(3)(c) of the EEA Agreement which provides that State aid may be considered compatible with the common market where it facilitates the development of certain economic activities or of certain economic areas and does not adversely affect trading conditions to an extent contrary to the common interest, may be applicable.

⁽⁵⁴⁾ Decision No 226/06/COL of 19 July 2006 on the map of assisted areas and levels of aid in Norway.

In the following the Authority considers the compatibility of the Unpaid R&D Labour Scheme with the functioning of the EEA Agreement under Article 61(3)(c) of the EEA Agreement on the basis of the R&D&I Guidelines.

Aid for R&D&I

According to the R&D&I Guidelines, compatibility of aid pursuant to Article 61(3)(c) of the EEA Agreement is generally assumed provided the conditions set out in Section 5 of those Guidelines are fulfilled and the aid constitutes an incentive to engage in more research and development pursuant to Section 6 of the Guidelines ⁽⁵⁵⁾.

Section 5 of the R&D&I Guidelines lists different types of research and development, such as 'fundamental research', 'industrial research' and 'experimental development' and indicates the aid intensities which apply to each category of research.

It appears from Section 2.2 subparagraph (f) of the R&D&I Guidelines that 'industrial research' means 'the planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components of complex systems, which is necessary for the industrial research, notably for generic technology validation, to the exclusion of prototypes as covered by [experimental development] point (g)'. Subparagraph (g) of the same Section provides that 'experimental development' is defined as 'the acquiring, combining, shaping and using of existing scientific, technological, business and other relevant knowledge and skills for the purpose of producing plans and arrangements or designs for new, altered or improved products, processes or services. These may also include, for example, other activities aiming at the conceptual definition, planning and documentation of new products, processes and services. The activities may comprise producing drafts, drawings, plans and other documentation, provided that they are not intended for commercial use. The development of commercially usable prototypes and pilot projects is also included where the prototype is necessarily the final commercial product and where it is too expensive to produce for it to be used only for demonstration and validation purposes. In case of a subsequent commercial use of demonstration or pilot projects, any revenue generated from such use must be deducted from the eligible costs'.

The Authority considers that the descriptions of eligible projects under the Unpaid R&D Labour Scheme, set out above in Section 2.1 of Part I hereof, are in line with the descriptions given of 'industrial research' and 'experimental development' in Section 2.2 subparagraphs (f) and (g) of the R&D&I Guidelines.

⁽⁵⁵⁾ Paragraphs 29 and 30 of Section 1.4 of the R&D&I Guidelines.

(i) Aid intensities

According to Section 5.1.2 of the R&D&I Guidelines, the permissible gross aid intensity for industrial research and experimental development are fixed at 50 % and 25 %, respectively, of eligible costs. Moreover, according to Section 5.1.3 where the aid is given to SMEs (as defined in the Annex to the block exemption Regulation on aid to SMEs) an extra 10 (medium-sized) or 20 (small) percentage points may be granted ⁽⁵⁶⁾. This brings the permissible aid intensity up to 60 % (medium-sized) or 70 % (small) of eligible costs in the case of industrial research. In the case of experimental development the maximum aid intensity becomes 35 % (medium-sized) or 45 % (small).

While the Norwegian authorities have notified aid intensities both for SMEs and large companies under the Unpaid R&D Labour Scheme, it is recalled that the Norwegian authorities have decided to limit the scheme to cover only micro and small companies. Hence only the aid intensity for SMEs (20 %) is relevant. The grant is tax exempt at the current rate of 28 %. The gross aid intensity is therefore 27,8 % ⁽⁵⁷⁾. The maximum aid intensity for micro and small companies under the Unpaid R&D Labour Scheme is therefore at an acceptable level by reference to Section 5 of the State Aid Guidelines on R&D&I.

Were the corporate tax rate to be increased, the total gross aid intensity would increase correspondingly. However, in this regard, the Norwegian authorities have clarified that even if the tax rate increases, the Guidelines on the Unpaid R&D Labour Scheme require that grants do not exceed the aid intensity resulting from the application of the State Aid Guidelines. Since the Unpaid R&D Labour Scheme is limited to micro and small companies the relevant maximum ceiling is therefore 70 % for industrial research and 45 % for experimental development based on the current R&D&I Guidelines. The Authority accepts that if the corporate tax rate is raised the total aid intensity for micro and small companies under the Unpaid R&D Labour Scheme may increase up to these maximum levels.

In conclusion the Authority approves the aid intensity applicable to micro and small companies of 27,8 % and notes that this may, as a result of an increase in the corporate tax rate,

rise to 70 % for industrial research and 45 % for experimental development. The Norwegian authorities have informed the Authority that the Guidelines on the Unpaid R&D Labour Scheme will be formally modified in order to reflect both the general limit for each category of research and the maximum level up to which aid may be increased following a rise in the tax rate ⁽⁵⁸⁾.

(ii) Eligible costs

Section 5.1.4 of the R&D&I Guidelines sets out a list of costs which are to be regarded as eligible for the purposes of calculating the aid intensity. Such cost items include, amongst others, (i) personnel costs which cover the costs of researchers, technicians and other support staff employed solely for the research activity; (ii) additional overheads incurred directly as a result of the research project; and (iii) other operating expenses, including costs of materials, supplies and similar products incurred directly as a result of the research activity ⁽⁵⁹⁾.

Community Research Framework Programme — labour costs

Section 5.1.4 of the R&D&I Guidelines does not elaborate on whether personnel costs may cover the costs of unpaid labour. However, the Authority considers that guidance for interpreting the term as used in the State Aid Guidelines can be obtained by examining how this term is being used in the context of the so-called Community Research Framework Programme ⁽⁶⁰⁾.

As stated in the decision to initiate the formal investigation procedure, under the Sixth Framework Programme financial support from the Community for unpaid labour costs could not be obtained. Part B.II.22.3 of Annex II to the General Model Agreement, used for the purposes of granting support under the Sixth Framework Programme, stated that '[p]hysical persons may not charge any labour cost in relation to their personal involvement in the project' and in Part B.II.19.1(a) it appeared that eligible costs 'must be actual, economic and necessary for the implementation for the project'. In this context the European Commission adopted the view that if the value of the labour costs could not be identified and registered in the books of the company, it could not be charged to the Framework Programme either. In line with this the Authority, in its decision to open the formal investigation procedure in relation to the Unpaid R&D Labour Scheme, expressed doubts as to whether unpaid labour costs could qualify as eligible costs within the meaning of the R&D&I Guidelines.

⁽⁵⁶⁾ Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33), as amended by Commission Regulation (EC) No 364/2004 of 25 February 2004 (OJ L 63, 28.2.2004, p. 22). Both Regulations have been incorporated into point 1(f) of Annex XV to the EEA Agreement. The definition contained therein corresponds to the definition in the State Aid Guidelines on aid to SMEs (see Section 1.3 in Part II hereof).

⁽⁵⁷⁾ Receiving a grant of 20 % of costs free of tax corresponds, at a tax rate of 28 %, to receiving 27,8 % of costs gross (28 % of 27,8 = 7,8 to be 'paid' in taxes and 20 left as the grant).

⁽⁵⁸⁾ A statement in the Guidelines on the Unpaid R&D Labour Scheme that the maximum aid intensities are as stated in the R&D&I Guidelines is insufficient.

⁽⁵⁹⁾ They correspond to subparagraphs (a) personnel costs; (e) additional overheads and (f) other operating expenses of Section 5.1.4 of the R&D&I Guidelines.

⁽⁶⁰⁾ The Community Research Framework Programme is the Community's main instrument for research funding in Europe and is referred to in the Community Framework for State aid for Research and Development and Innovation (OJ C 323, 30.12.2006, p. 1).

However, the Seventh Framework Programme has now been adopted and provides that, under certain conditions, support can be requested for costs which are not 'actual' ⁽⁶¹⁾. In this regard the standard grant agreement used by the European Commission (the General Model Agreement on support under the Seventh Framework Programme) states that, notwithstanding the general requirement that eligible costs must be actual, 'beneficiaries may opt to declare average personnel costs if based on a certified methodology approved by the Commission and consistent with the management principles and usual accounting practices of the beneficiary. Average personnel costs charged to this grant agreement by a beneficiary having provided a certificate on the methodology are deemed not to significantly differ from actual personnel costs' ⁽⁶²⁾.

In the relevant guidance documents, it is explained that the abovementioned rule, which is referred to as the '*average personnel costs method based on a certified methodology*', allows (i) physical persons assimilated to a SME; and (ii) SME owners who do not receive a salary for their work for the SME, the possibility to apply and receive support for their work efforts in relation to R&D projects. While there is no explicit requirement as to which methodology should be used, it is clear from the guidance documents that, under the Community programme, a '*certified methodology*' means that an auditor has to certify the methodology forming the basis for calculating the value of the work efforts or 'labour costs' (that is, effectively, the hourly rate).

In relation to acceptable methodologies, the Authority first observes that the guidance in relation to physical persons makes reference to a methodology for identifying the hourly rate by means of income (e.g. tax declarations) ⁽⁶³⁾. However, particularly in light of the guidance by the European Commission in the case of SME owners not receiving a salary and unable to show any trace of their labour costs in the accounts of the company, which indicate that costs can be calculated using estimates, the Authority considers that the reference to an income-based methodology is not sufficient to automatically exclude the use of alternative methodologies. The aim under the Seventh Framework Programme is to allow the value of the work efforts made in respect of the R&D project to be calculated. There is no explicit requirement that the potential beneficiary receives any income in relation to that activity. On this basis the Authority has taken the view that, for both (i) and (ii) above, the presence of income is not in and of itself a condition for being eligible for support and that other methodologies for determining an hourly rate may be acceptable.

⁽⁶¹⁾ Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) (OJ L 412, 30.12.2006, p. 1).

⁽⁶²⁾ Part B.II.14.1(g) of Annex II to the General Model Agreement on support under the Seventh Framework Programme. The text of the Agreement is available on the website of DG Research: <http://ec.europa.eu/research/index.cfm>

⁽⁶³⁾ According to Article II.12.3 'Non-eligible costs', p. 42 of the 'Guide to Financial Issues relating to FP7 Indirect Actions' (prepared for interpreting the Model Grant Agreement under FP7), such individuals can opt to 'declare average personnel costs based on a certified methodology approved by the Commission and based on their income (e.g. tax declarations) as recognised by national law (usually fiscal law)'.

Turning to the methodology proposed by the Norwegian authorities, the Authority observes, as a preliminary point, that the approach of calculating 1,6 % of nominal annual salary identifies an hourly rate which includes not only a labour cost element but also an element of 'other operating costs'. So, although the purpose of the present analysis is to verify whether the labour costs are eligible, it is also necessary, in order to be able to draw a final conclusion on whether the methodology is acceptable, to verify whether the element relating to 'other operating costs' qualifies as an eligible cost under the R&D&I Guidelines. These two elements are therefore addressed separately below.

'Unpaid' labour costs

With respect to the costs attributable to unpaid labour, this element of the methodology is simply defined by reference to wage statistics. Indeed, the proposed methodology implies that the labour cost element is equivalent to what would have been the result if the hourly rate would have been identified by dividing annual average working hours by the nominal annual industrial worker's salary, as it appears from statistics for 2005. The labour cost element for an industrial worker's salary corresponds to an hourly rate of NOK 232,20 (348 300/1 500).

The Authority considers that an hourly rate which is defined by reference to official wage statistics (for 2005) ensures that the labour cost element is not inflated. Moreover, the fact that the hourly rate is determined by reference to the annual industrial worker's salary (as opposed to the much higher salary of, say, a civil engineer) means that the labour cost element is kept at a relatively low level ⁽⁶⁴⁾. Finally, the fact that the reported unpaid labour hours must be co-signed by the project manager and be certified by an accountant for each grant application ensures the presence of an audit control which is in line with — or even stricter than — the audit certification referred to in the General Model Agreement under the Seventh Framework Programme ⁽⁶⁵⁾. Finally, the Authority notes that, in addition, control is also exercised by the Norwegian Research Council, which verifies that the declared numbers are not manifestly incorrect.

In these circumstances the Authority concludes that the identification of the unpaid labour cost element in the methodology for determining the hourly rate is acceptable. The unpaid labour costs, considered in isolation, therefore qualify as eligible personnel costs within the meaning of the R&D&I Guidelines.

⁽⁶⁴⁾ The annual industrial worker's salary of NOK 348 300, as opposed to the civil engineer's salary of NOK 460 000 (or NOK 530 000), results in an hourly rate of NOK 500, as opposed to NOK 772,80 (or NOK 890,40) if based on the methodology. The labour cost element corresponds to NOK 232,20 for industrial workers compared to NOK 333,33 or NOK 353,33 for civil engineers.

⁽⁶⁵⁾ Indeed a control of each individual case is similar to, or even stricter than, a one-off audit control of the methodology.

'Other operating costs'

The Authority considers that the description of 'other operating costs' under the Unpaid R&D Labour Scheme (set out in Section 2.3 of Part I hereof) corresponds to eligible costs in the form of 'additional overheads' and/or 'other operating expenses' in subparagraphs (e) and (f) of Section 5.1.4 of the R&D&I Guidelines. The level of the operating costs is calculated automatically on an hourly basis per employee in relation to the salary of an industrial worker — rather than being based on the cost level stated in invoices⁽⁶⁶⁾. However, the operating cost element under the methodology has been calculated on the basis of the company review carried out by the Norwegian Research Council. This ensures that the level of operating costs is realistic. Moreover, the share of operating costs is calculated on the basis of the low salary of the industrial worker and the operating cost element remains at a fixed maximum on an hourly basis. On this basis, and taking into account that the actual incurrence of operating costs is verified via invoices as part of the audit control, the Authority considers that the proposed methodology constitutes an acceptable manner of identifying the level of 'other operating costs' and they therefore qualify as eligible costs under the R&D&I Guidelines.

Conclusion on methodology

In conclusion, the Authority considers that, based on the change in principle under the Seventh Framework Programme, unpaid labour costs may qualify as eligible costs, depending on the methodology chosen for identifying the hourly rate. As appears from the above, the Authority considers that under the methodology proposed by the Norwegian authorities, the manner in which the level of both the labour cost element and the operating cost element is fixed, is acceptable. Hence, the methodology is approved and the costs qualify as eligible under the R&D&I Guidelines. This conclusion is also in line with the position taken by the Authority in 2002 in its decision on the Skattefunn Scheme, in the context of which the Authority approved an identical methodology for determining (the level of) eligible costs⁽⁶⁷⁾.

Although the proposed methodology implies that one single hourly rate is applied even if the potential beneficiaries under the scheme may vary in size, it is recalled that the Norwegian authorities have decided to limit the scheme to micro and small companies and the potential beneficiaries therefore represent a rather homogeneous group. The Authority therefore approves of the use of one common rate.

(iii) Incentive effect

According to Section 6 of the R&D&I Guidelines an incentive effect is automatically considered to be present where the aided

R&D&I project has not started before the application for support, the aid beneficiary is a SME and the aid amount is below EUR 7,5 million per project per SME⁽⁶⁸⁾.

As appears from above, the Norwegian authorities have limited the Unpaid R&D Labour Scheme to small and micro companies. Moreover, in view of the fact that eligible costs under the Unpaid R&D Labour Scheme are subject to a fixed ceiling of eligible costs of NOK 2 million annually per undertaking and that the applicable aid intensity is 27,8 %, the maximum value of aid granted per undertaking in any one year would be NOK 556 000 (approximately EUR 70 500), which is far below the abovementioned maximum limit. Even taking account of a maximum aid intensity of up to 45 % (which may be triggered by an increase in the tax rate), the maximum aid amount is NOK 900 000 (approximately EUR 114 000), which is still far below the maximum limit stipulated in the R&D&I Guidelines⁽⁶⁹⁾.

Finally, the Norwegian authorities have confirmed that support under the Scheme will not be given if research projects have been started prior to the application for support.

On this basis the Authority considers that grants which may be awarded under the Unpaid R&D Labour Scheme therefore have an incentive effect pursuant to Section 6 of the R&D&I Guidelines.

(iv) Duration

The Unpaid R&D Labour Scheme was notified by the Norwegian authorities as being of indefinite duration. However, the Norwegian authorities have agreed to formally limit the duration of the scheme to 31 December 2013, which is also the expiry date of the current R&D&I Guidelines. On this basis the Authority considers the duration of the scheme to be acceptable.

3.3. CONCLUSION ON THE COMPATIBILITY OF THE SCHEME WITH THE EEA AGREEMENT

As appears from the above the Authority considers that both the projects and cost elements under the Unpaid R&D Labour Scheme qualify as eligible under the R&D&I Guidelines. Since the Scheme is limited to small and micro companies, aid intensities are in line with those Guidelines, an incentive effect has been demonstrated and the duration of the scheme has been limited in line with the Guidelines, the Authority has taken the view that the Unpaid R&D Labour Scheme is compatible with the functioning of the EEA Agreement.

⁽⁶⁶⁾ The operating costs element represents NOK 267,80, which is the difference between the combined hourly rate and the labour cost element: NOK 500 – NOK 232,20 = NOK 267,80.

⁽⁶⁷⁾ Decision No 171/02/COL of 25 September 2002, as amended by Decision No 16/03/COL of 5 February 2003.

⁽⁶⁸⁾ Paragraphs 122-124 of the R&D&I Guidelines.

⁽⁶⁹⁾ Indeed a limitation per undertaking is stricter than a limitation per project. Moreover, even if an undertaking were to receive funding under the Scheme for the same project up to the maximum on an annual basis for the entire duration of the Scheme, the ceiling of EUR 7,5 million is still not reached.

4. DECISION

On the basis of the foregoing assessment the Authority considers the Unpaid R&D Labour Scheme to be compatible with the EEA Agreement subject to the following conditions.

- (a) The scope of the Unpaid R&D Labour Scheme is limited to micro and small companies as defined in the State Aid Guidelines on aid to SMEs;
- (b) The total aid intensity for micro and small companies is 27,8 %, which may increase as a result of a possible increase in the corporate tax rate (in which case the applicable ceilings are maximum 45 % for experimental development and 70 % for industrial research); and
- (c) The duration of the Scheme does not extend beyond 31 December 2013, the date on which the current R&D&I Guidelines expire.

The Norwegian authorities are reminded of their obligation to provide annual reports on the implementation of the Scheme as stipulated in Article 21 of Part II of Protocol 3 to the Surveillance and Court Agreement in conjunction with Article 6 of Decision No 195/04/COL of 14 July 2004.

The Norwegian authorities have stated that the hourly rate applied under the Unpaid R&D Labour Scheme can be adjusted based on salary developments. In this regard, the Authority reminds the Norwegian authorities of their obligation to notify, pursuant to Article 1 of Part 1 of the Surveillance and Court Agreement, any changes qualifying as amendments within the meaning of Article 1 of Part II of Protocol 3 to the Court and Surveillance Agreement ⁽⁷⁰⁾,

HAS ADOPTED THIS DECISION:

Article 1

The Unpaid R&D Labour Scheme which the Norwegian authorities are planning to implement constitutes State aid

within the meaning of Article 61(1) of the EEA Agreement, but can be declared compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(c) of the EEA Agreement and the R&D&I Guidelines and subject to the conditions set out in Article 2 below.

Article 2

The Unpaid R&D Labour Scheme is limited to micro and small companies as defined in the State Guidelines on aid to micro, small and medium-sized enterprises (SMEs) and the maximum total aid intensity is 27,8 %, which may be increased in case of a possible increase in the corporate tax rate (in which case the maximum applicable ceilings are 45 % for experimental development and 70 % for industrial research). The duration of the Unpaid R&D Labour Scheme is limited to 31 December 2013.

Article 3

The Norwegian authorities shall inform the EFTA Surveillance Authority, within two months of notification of this Decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to the Kingdom of Norway.

Article 5

Only the English version is authentic.

Done at Brussels, 17 March 2008.

For the EFTA Surveillance Authority

Per SANDERUD
President

Kurt JAEGER
College Member

⁽⁷⁰⁾ Unless the changes would qualify for notification under the simplified procedure according to Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Surveillance and Court Agreement (OJ L 139, 25.5.2006, p. 37).

V

(Acts adopted from 1 December 2009 under the Treaty on European Union, the Treaty on the Functioning of the European Union and the Euratom Treaty)

ACTS WHOSE PUBLICATION IS OBLIGATORY

COMMISSION REGULATION (EU) No 1235/2009

of 16 December 2009

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

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 17 December 2009.

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

Done at Brussels, 16 December 2009.

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

Jean-Luc DEMARTY
*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	AL	54,6
	MA	78,2
	TN	111,3
	TR	73,2
	ZZ	79,3
0707 00 05	EG	155,5
	MA	59,4
	TR	89,2
	ZZ	101,4
0709 90 70	MA	45,7
	TR	104,6
	ZZ	75,2
0709 90 80	EG	175,4
	ZZ	175,4
0805 10 20	MA	58,2
	TR	70,0
	ZA	57,0
	ZZ	61,7
0805 20 10	MA	77,7
	TR	58,0
	ZZ	67,9
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	HR	38,5
	IL	65,1
	TR	71,4
	ZZ	58,3
0805 50 10	TR	68,6
	ZZ	68,6
0808 10 80	CA	76,2
	CN	98,3
	MK	24,5
	US	90,8
	ZZ	72,5
0808 20 50	CN	41,5
	TR	97,0
	US	151,3
	ZZ	96,6

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

COMMISSION REGULATION (EU) No 1236/2009**of 10 December 2009****amending Annex I to Council Regulation (EC) No 732/2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, (EC) No 1933/2006 and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007 ⁽¹⁾, and in particular Article 25 thereof,

After consulting the Generalised Preferences Committee,

Whereas:

- (1) Commission Decision 2008/938/EC of 9 December 2008 ⁽²⁾ as amended by Decision 2009/454/EC ⁽³⁾, has established the list of the beneficiary countries which qualify for the special incentive arrangement for sustainable development and good governance provided

for in Regulation (EC) No 732/2008 from 1 January 2009 to 31 December 2011.

- (2) Column E of Annex I to Regulation (EC) No 732/2008 should include information on the beneficiary countries of the special incentive arrangement for sustainable development and good governance. Annex I to Regulation (EC) No 732/2008 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 732/2008 is replaced by the text set out in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 10 December 2009.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 211, 6.8.2008, p. 1.

⁽²⁾ OJ L 334, 12.12.2008, p. 90.

⁽³⁾ OJ L 149, 12.6.2009, p. 78.

ANNEX

'ANNEX I

Beneficiary countries ⁽¹⁾ and territories of the Community's scheme of generalised tariff preferences

- Column A:* alphabetical code, in accordance with the nomenclature of countries and territories for the external trade statistics of the Community
- Column B:* name of the country or territory
- Column C:* section(s) in respect of which the tariff preferences have been removed, for the beneficiary country concerned (Article 13)
- Column D:* country included in the special arrangement for the least developed countries (Article 11)
- Column E:* country included in the special incentive arrangement for sustainable development and good governance (Article 7)

A	B	C	D	E
AE	United Arab Emirates			
AF	Afghanistan		X	
AG	Antigua and Barbuda			
AI	Anguilla			
AM	Armenia			X
AN	Netherlands Antilles			
AO	Angola		X	
AQ	Antarctica			
AR	Argentina			
AS	American Samoa			
AW	Aruba			
AZ	Azerbaijan			X
BB	Barbados			
BD	Bangladesh		X	
BF	Burkina Faso		X	
BH	Bahrain			
BI	Burundi		X	
BJ	Benin		X	
BM	Bermuda			
BN	Brunei Darussalam			
BO	Bolivia			X

⁽¹⁾ This list includes countries which may have been suspended temporarily from the Community's GSP or which may not have complied with the requirements for administrative cooperation (a precondition for goods to be granted the benefit of tariff preferences). The Commission or the competent authorities of the country concerned will provide an updated list.

A	B	C	D	E
BR	Brazil	S-IV Prepared foodstuffs; beverages, spirits and vinegar; tobacco and manufactured tobacco substitutes		
		S-IX Wood and articles of wood; wood charcoal; cork and articles of cork; manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork		
BS	Bahamas			
BT	Bhutan		X	
BV	Bouvet Island			
BW	Botswana			
BY	Belarus			
BZ	Belize			
CC	Cocos Islands (or Keeling Islands)			
CD	Congo, Democratic Republic of		X	
CF	Central African Republic		X	
CG	Congo			
CI	Côte d'Ivoire			
CK	Cook Islands			
CM	Cameroon			
CN	China, People's Republic of	S-VI Products of the chemical or allied industries		
		S-VII Plastics and articles thereof; rubber and articles thereof		
		S-VIII Raw hides and skins, leather, furskins and articles thereof; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silkworm gut)		
		S-IX Wood and articles of wood; wood charcoal; cork and articles of cork; manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork		
		S-XI(a) Textiles; S-XI(b) Textile articles		
		S-XII Footwear, headgear, umbrellas, sun umbrellas, walking sticks, seat-sticks, whips, riding-crops and parts thereof; prepared feathers and articles made therewith; artificial flowers; articles of human hair		
		S-XIII Articles of stone, plaster, cement, asbestos, mica or similar materials; ceramic products; glass and glassware		

A	B	C	D	E
		S-XIV Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal, and articles thereof; imitation jewellery; coin		
		S-XV Base metals and articles of base metal		
		S-XVI Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles		
		S-XVII Vehicles, aircraft, vessels and associated transport equipment		
		S-XVIII Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; clocks and watches; musical instruments; parts and accessories thereof		
		S-XX Miscellaneous manufactured articles		
CO	Colombia			X
CR	Costa Rica			X
CU	Cuba			
CV	Cape Verde		X	
CX	Christmas Island			
DJ	Djibouti		X	
DM	Dominica			
DO	Dominican Republic			
DZ	Algeria			
EC	Ecuador			X
EG	Egypt			
ER	Eritrea		X	
ET	Ethiopia		X	
FJ	Fiji			
FK	Falkland Islands			
FM	Micronesia, Federated States of			
GA	Gabon			
GD	Grenada			
GE	Georgia			X
GH	Ghana			
GI	Gibraltar			
GL	Greenland			
GM	Gambia		X	

A	B	C	D	E
GN	Guinea		X	
GQ	Equatorial Guinea		X	
GS	South Georgia and South Sandwich Islands			
GT	Guatemala			X
GU	Guam			
GW	Guinea-Bissau		X	
GY	Guyana			
HM	Heard Island and McDonald Islands			
HN	Honduras			X
HT	Haiti		X	
ID	Indonesia	S-III Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes		
IN	India	S-XI(a) Textiles		
IO	British Indian Ocean Territory			
IQ	Iraq			
IR	Iran			
JM	Jamaica			
JO	Jordan			
KE	Kenya			
KG	Kyrgyzstan			
KH	Cambodia		X	
KI	Kiribati		X	
KM	Comoros		X	
KN	St Kitts and Nevis			
KW	Kuwait			
KY	Cayman Islands			
KZ	Kazakhstan			
LA	Lao People's Democratic Republic		X	
LB	Lebanon			
LC	St Lucia			
LK	Sri Lanka			X
LR	Liberia		X	

A	B	C	D	E
LS	Lesotho		X	
LY	Libyan Arab Jamahiriya			
MA	Morocco			
MG	Madagascar		X	
MH	Marshall Islands			
ML	Mali		X	
MM	Myanmar		X	
MN	Mongolia			X
MO	Macao			
MP	Northern Mariana Islands			
MR	Mauritania		X	
MS	Montserrat			
MU	Mauritius			
MV	Maldives		X	
MW	Malawi		X	
MX	Mexico			
MY	Malaysia	S-III Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes		
MZ	Mozambique		X	
NA	Namibia			
NC	New Caledonia			
NE	Niger		X	
NF	Norfolk Island			
NG	Nigeria			
NI	Nicaragua			X
NP	Nepal		X	
NR	Nauru			
NU	Niue			
OM	Oman			
PA	Panama			
PE	Peru			X
PF	French Polynesia			
PG	Papua New Guinea			

A	B	C	D	E
PH	Philippines			
PK	Pakistan			
PM	St Pierre and Miquelon			
PN	Pitcairn			
PW	Palau			
PY	Paraguay			X
QA	Qatar			
RU	Russian Federation			
RW	Rwanda		X	
SA	Saudi Arabia			
SB	Solomon Islands		X	
SC	Seychelles			
SD	Sudan		X	
SH	Saint Helena			
SL	Sierra Leone		X	
SN	Senegal		X	
SO	Somalia		X	
SR	Suriname			
ST	São Tomé and Príncipe		X	
SV	El Salvador			X
SY	Syrian Arab Republic			
SZ	Swaziland			
TC	Turks and Caicos Islands			
TD	Chad		X	
TF	French Southern Territories			
TG	Togo		X	
TH	Thailand	S-XIV Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal, and articles thereof; imitation jewellery; coin		
TJ	Tajikistan			
TK	Tokelau			
TL	Timor-Leste		X	
TM	Turkmenistan			
TN	Tunisia			

A	B	C	D	E
TO	Tonga			
TT	Trinidad and Tobago			
TV	Tuvalu		X	
TZ	Tanzania		X	
UA	Ukraine			
UG	Uganda		X	
UM	United States Minor Outlying Islands			
UY	Uruguay			
UZ	Uzbekistan			
VC	St Vincent and the Grenadines			
VE	Venezuela			
VG	Virgin Islands, British			
VI	Virgin Islands, US			
VN	Vietnam	S-XII Footwear, headgear, umbrellas, sun umbrellas, walking sticks, seat-sticks, whips, riding crops and parts thereof; prepared feathers and articles made therewith; artificial flowers; articles of human hair		
VU	Vanuatu		X	
WF	Wallis and Futuna			
WS	Samoa		X	
YE	Yemen		X	
YT	Mayotte			
ZA	South Africa			
ZM	Zambia		X	
ZW	Zimbabwe			

COMMISSION REGULATION (EU) No 1237/2009**of 11 December 2009****entering a name in the register of protected designations of origin and protected geographical indications (Marrone di Caprese Michelangelo (PDO))**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Pursuant to the first subparagraph of Article 6(2) and in accordance with Article 17(2) of Regulation (EC) No 510/2006, Italy's application to register the name 'Marrone di Caprese Michelangelo' was published in the *Official Journal of the European Union* ⁽²⁾.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 11 December 2009.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ C 112, 16.5.2009, p. 17.

ANNEX

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

Class 1.6. Fruit, vegetables and cereals, fresh or processed

ITALY

Marrone di Caprese Michelangelo (PDO)

COMMISSION REGULATION (EU) No 1238/2009**of 11 December 2009****entering a name in the register of protected designations of origin and protected geographical indications [Pomodorino del Piennolo del Vesuvio (PDO)]**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Pursuant to Article 6(2) of Regulation (EC) No 510/2006, Italy's application to register the name 'Pomodorino del Piennolo del Vesuvio' has been published in the *Official Journal of the European Union* ⁽²⁾.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

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

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

Done at Brussels, 11 December 2009.

*For the Commission**The President*

José Manuel BARROSO

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ C 111, 15.5.2009, p. 21.

ANNEX

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

Class 1.6. Fruit, vegetables and cereals, fresh or processed

ITALY

Pomodorino del Piennolo del Vesuvio (PDO)

COMMISSION REGULATION (EU) No 1239/2009**of 15 December 2009****entering a name in the register of protected designations of origin and protected geographical indications (Crudo di Cuneo (PDO))**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Pursuant to the first subparagraph of Article 6(2) and in accordance with Article 17(2) of Regulation (EC) No 510/2006, Italy's application to register the name 'Crudo di Cuneo' was published in the *Official Journal of the European Union* ⁽²⁾.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 15 December 2009.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ C 112, 16.5.2009, p. 12.

ANNEX

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

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

ITALY

Crudo di Cuneo (PDO)

COMMISSION REGULATION (EU) No 1240/2009**of 16 December 2009****amending Regulation (EC) No 428/2008 determining the intervention centres for cereals**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products ('Single CMO' Regulation) ⁽¹⁾, and in particular Article 41 in conjunction with Article 4 thereof,

Whereas:

- (1) Estonia and Romania have requested amendments relating to some of the intervention centres listed in Annex I to Commission Regulation (EC) No 428/2008 ⁽²⁾ with a view to improving their location or responding better to the conditions required. Their requests should be granted.

- (2) Regulation (EC) No 428/2008 should be amended accordingly.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 428/2008 is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 16 December 2009.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 129, 17.5.2008, p. 8.

ANNEX

Annex I to Regulation (EC) No 428/2008 is amended as follows:

1. the table entitled 'ESTONIA' is to be replaced with the following table:

Intervention centre	Common wheat	Barley	Maize	Sorghum
ESTONIA				
Tartu	+	+	-	-
Viljandi	+	+	-	-
Tamsalu	+	+	-	-
Keila	+	+	-	-

2. the table entitled 'ROMANIA' is amended as follows:

- a) the line corresponding to the 'Brăila' centre is to be replaced by the following:

Intervention centre	Common wheat	Barley	Maize	Sorghum
Brăila	+	+	+	-

- b) the following line is to be inserted after the line for the 'Brăila' centre:

Intervention centre	Common wheat	Barley	Maize	Sorghum
Ianca	-	+	-	-

- c) the line corresponding to the 'Roman' centre is to be replaced by the following:

Intervention centre	Common wheat	Barley	Maize	Sorghum
Roman	+	+	-	-

COMMISSION REGULATION (EU) No 1241/2009**of 16 December 2009****continuing and updating the scope of prior surveillance of imports of certain iron and steel products originating in certain third countries**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 260/2009 of 26 February 2009 on common rules for imports ⁽¹⁾, and in particular Article 11 thereof,

Having regard to Council Regulation (EC) No 625/2009 of 7 July 2009 on common rules for imports from certain third countries ⁽²⁾ and in particular Article 9 thereof,

After consultations with the Advisory Committee,

Whereas:

- (1) By Regulation (EC) No 76/2002 ⁽³⁾, the Commission introduced prior Community surveillance of imports of certain iron and steel products originating in third countries.
- (2) The Union's external trade statistics are not available within the periods established by Commission Regulation (EC) No 1917/2000 ⁽⁴⁾.
- (3) Although the situation has changed since the introduction of surveillance in 2002, developments in the world steel market continue to require a reliable and quick information system on the future imports of the Union.
- (4) The trends of imports of the products currently under surveillance as well as stainless steel flat products and large welded tubes, currently not under the surveillance system, were examined. It was deemed necessary to examine trends for these additional products given the fact that they represent the most value-added products on the market.
- (5) In the last years, imports into the EU of those steel products increased substantially (by 40 %) in absolute terms between 2005 and 2008. Even if imports started

to decrease since the end of 2008, imports merely followed the drop in demand and, in terms relative to consumption, they remained significant.

- (6) Worldwide steel production capacities have grown in 2006-2008 and are expected to continue to grow until 2010. Two-digit capacity growth in the next 2 years is expected in a variety of regions especially in China, India, Brazil and the Middle East. China, the most important country in terms of increasing capacity, represents today about 40 % of the world crude steel making capacity and about three times the EU's yearly consumption of steel.
- (7) Given the fact that the EU is an important market for steel in terms of size and price, especially in the context of a strong currency, it is likely that once the market recovers and the demand on the Union market improves, any excess in steel capacity would be re-directed to the EU. In comparison, access to third country markets has been reduced to a various extent recently as countries in several geographical areas (such as Americas, Asia, Middle East) have taken measures to protect or support their steel industry. These measures took different forms, including tariff increases, licensing requirement, buy local requirements, and concern markets with a significant share of the global consumption.
- (8) The production of crude steel and stainless steel flat products in the EU reached the highest level in 2007 and 2006 respectively, and then started decreasing in 2008. During the first semester 2009 there was a contraction of 43,2 % compared to the first semester of 2008 as opposed to a contraction in world steel output of 22,4 % during the same period. The crisis has had an impact on all the largest steel producing countries of the EU, and as a reaction steel producers have reduced the number of days of production, thus increasing the idle capacity.
- (9) All producers have significantly reduced employment. In June 2009 around 40 % of the work force in the EU steel sector was affected by the economic crises in the form of permanent or temporary lay-offs and short-time working.
- (10) On the basis of recent trends in imports of steel products, of the current vulnerable situation of the EU industry, the continuing weak demand on the EU market and of the likelihood that current and future excess capacity would be re-directed to EU if demand would recover, a threat of injury to Union producers pursuant to Article 11 of Regulation (EC) No 260/2009 can therefore be deemed to exist.

⁽¹⁾ OJ L 84, 31.3.2009, p. 1.

⁽²⁾ OJ L 185, 17.7.2009, p. 1.

⁽³⁾ OJ L 16, 18.1.2002, p. 3.

⁽⁴⁾ OJ L 229, 9.9.2000, p. 14.

- (11) Thus, the Union interest requires that imports of certain steel products should continue to be subject to prior surveillance in order to provide advanced statistical information permitting rapid analysis of import trends. Rapid and anticipated trade data is necessary to deal with the vulnerability of the European steel market to sudden changes on world steel markets. This is particularly important in the present crisis situation marked by uncertainties as to whether the demand will structurally pick up and whether the EU industry will actually benefit from it.
- (12) Furthermore, in view of the developments on the market of flat stainless steel products and large welded tubes and the situation of the industries at stake, and given that similar steel import monitoring systems include these products, it is appropriate that the scope of this system includes the products listed in Annex I.
- (13) Taking into account the developments mentioned above, and taking into consideration that other major steel producing countries such as Canada and the United States of America have recently decided to extend their similar steel import monitoring systems (extended until 31 August 2011 and 21 March 2013, respectively), it is appropriate that this system should continue until 31 December 2012.

- (14) In order to minimise unnecessary constraints and not disturb excessively the activities of companies close to the borders, the net weight of imports that are excluded from the application of this Regulation remains at 2 500 kilograms,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 76/2002 is amended as follows:

1. the scope of the prior surveillance shall be extended to the products listed in Annex I;
2. in Article 6 delete '31 December 2009' and substitute with '31 December 2012';
3. the list of competent national authorities shall be replaced by the list in Annex II.

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, 16 December 2009.

For the Commission

The President

José Manuel BARROSO

ANNEX I

List of products to be added to the list of products subject to prior surveillance

7219 11 00	7219 24 00	7220 11 00
7219 12 10	7219 31 00	7220 12 00
7219 12 90	7219 32 10	7220 20 21
7219 13 10	7219 32 90	7220 20 29
7219 13 90	7219 33 10	7220 20 41
7219 14 10	7219 33 90	7220 20 49
7219 14 90	7219 34 10	7220 20 81
7219 21 10	7219 34 90	7220 20 89
7219 21 90	7219 35 10	7220 90 20
7219 22 10	7219 35 90	7220 90 80
7219 22 90	7219 90 20	7228 50 20
7219 23 00	7219 90 80	Complete CN heading 7305

ANNEX II

LISTA DE LAS AUTORIDADES NACIONALES COMPETENTES

СПИСК НА КОМПЕТЕНТНИТЕ НАЦИОНАЛНИ ОРГАНИ

SEZNAM PŘÍSLUŠNÝCH VNITROSTÁTNÍCH ORGÁNŮ

LISTE OVER KOMPETENTE NATIONALE MYNDIGHEDER

LISTE DER ZUSTÄNDIGEN BEHÖRDEN DER MITGLIEDSTAATEN

PĀDEVATE RIIKLIKE ASUTUSTE NIMEKIRI

ΔΙΕΥΘΥΝΣΕΙΣ ΤΩΝ ΑΡΧΩΝ ΕΚΔΟΣΗΣ ΑΔΕΙΩΝ ΤΩΝ ΚΡΑΤΩΝ ΜΕΛΩΝ

LIST OF THE COMPETENT NATIONAL AUTHORITIES

LISTE DES AUTORITÉS NATIONALES COMPÉTENTES

ELENCO DELLE COMPETENTI AUTORITÀ NAZIONALI

VALSTU KOMPETENTO IESTAŽU SARAKSTS

ATSAKINGŲ NACIONALINIŲ INSTITUCIJŲ SĄRAŠAS

AZ ILLETÉKES NEMZETI HATÓSÁGOK LISTÁJA

LISTA TAL-AWTORITAJIET KOMPETENTI NAZZJONALI

LIJST VAN BEVOEGDE NATIONALE INSTANTIES

LISTA WŁAŚCIWYCH ORGANÓW KRAJOWYCH

LISTA DAS AUTORIDADES NACIONAIS COMPETENTES

LISTA AUTORITĂȚILOR NAȚIONALE COMPETENTE

ZOZNAM PŘÍSLUŠNÝCH ŠTÁTNYCH ORGÁNŮV

SEZNAM PRISTOJNIH NACIONALNIH ORGANOV

LUETTELO TOIMIVALTAISISTA KANSALLISISTA VIRANOMAISISTA

FÖRTECKNING ÖVER BEHÖRIGA NATIONELLA MYNDIGHETER

BELGIQUE/BELGIË

Service public fédéral de l'économie, des PME,
des classes moyennes et de l'énergie
Direction générale du potentiel économique
Service des licences
Rue de Louvain 44
1000 Bruxelles
BELGIQUE
Tél. +32 25486469
Fax +32 22775063

Federale Overheidsdienst Economie, Kmo,
Middenstand & Energie
Algemene Directie Economisch Potentieel
Dienst Vergunningen
Leuvenseweg 44
1000 Brussel
BELGIË
Tel. +32 25486469
Fax +32 22775063

БЪЛГАРИЯ

Министерство на икономиката, енергетиката и туризма
Дирекция дирекция „Регистриране, лицензиране и
контрол“
ул. „Славянска“ № 8
1052 София
Тел. +359 29407008 / +359 29407673 /
+359 29407800
Факс +359 29815041 / +359 29804710 /
+359 29883654

ČESKÁ REPUBLIKA

Ministerstvo průmyslu a obchodu
Licenční správa
Na Františku 32
110 15 Praha 1
ČESKÁ REPUBLIKA
Tel. +420 224907111
Fax +420 224212133

DANMARK

Erhvervs- og Byggestyrelsen
Økonomi- og Erhvervsministeriet
Langelinie Allé 17
2100 København Ø
Tlf. +45 35466030
Fax +45 35466029
Fax +45 35466001

DEUTSCHLAND

Bundesamt für Wirtschaft und Ausfuhrkontrolle,
(BAFA)
Frankfurter Straße 29-35
65760 Eschborn 1
DEUTSCHLAND
Tel. +49 61969080
Fax +49 6196908800

EESTI

Majandus- ja Kommunikatsiooniministeerium
Harju 11
15072 Tallinn
Tel. +372 6256400
Faks +372 6313660

FRANCE

Ministère de l'économie, de l'Industrie et de l'emploi
Direction générale de la compétitivité, de l'industrie et
des services
Sous-direction «industries de santé, de la chimie et des
nouveaux matériaux»
Bureau «matériaux du futur et nouveaux procédés»
Le Bervil
12 rue Villiot
75572 Paris Cedex 12
FRANCE
Tél. +33 153449026
Fax +33 153449172

ITALIA

Ministero delle Attività produttive
Direzione generale per la politica commerciale e
per la gestione del regime degli scambi
Viale America 341
00144 Roma RM
ITALIA
Tel. +39 0659647517 / +39 0659932471 /
+39 0659932245 / +39 0659932260
Fax +39 0659932235 / +39 0659932636

ΚΥΠΡΟΣ/KYPROS

Υπουργείο Εμπορίου, Βιομηχανίας και Τουρισμού
Υπηρεσία Εμπορίου
Μονάδα Έκδοσης Αδειών Εισαγωγής/Εξαγωγής
Οδός Ανδρέα Αραούζου Αρ. 6
1421 Λευκωσία
ΚΥΠΡΟΣ/KYPROS
Τηλ. +357 22867100
Φαξ +357 22375120

IRELAND

Department of Enterprise, Trade and Employment
Import/Export Licensing, Block C
Earlsfort Centre
Hatch Street
Dublin 2
IRELAND
Tel. +353 16312121
Fax +353 16312562

ΕΛΛΑΣ

Υπουργείο Οικονομίας, Ανταγωνιστικότητας & Ναυτιλίας
Γενική Διεύθυνση Διεθνούς Οικονομικής Πολιτικής
Διεύθυνση Καθεστώτων Εισαγωγών-Εξαγωγών, Εμπορικής
Άμυνας
Κορνάρου 1
105 63 Αθήνα
ΕΛΛΑΣ
Τηλ. +30 2103286021/22
Φαξ +30 2103286094

ESPAÑA

Ministerio de Industria, Turismo y Comercio
Secretaría General de Comercio Exterior
Subdirección General de Comercio Exterior de Productos
Industriales
Paseo de la Castellana 162
28046 Madrid
ESPAÑA
Tel. +34 913493817 / +34 9134937488
Fax +34 913493831

LATVIJA

Latvijas Republikas Ekonomikas ministrija
Brīvības iela 55
Rīga, LV-1519
Tel. +371 670132 99/00 / +371 67013248
Fakss +371 67280882

LIETUVA

Lietuvos Respublikos ūkio ministerija
Prekybos departamentas
Gedimino pr. 38/2
LT-01104 Vilnius
Tel. +370 52628750 / +370 52619488
Faks. +370 52623974

LUXEMBOURG

Ministère de l'économie et du commerce extérieu
Office des licences
BP 113
2011 Luxembourg
LUXEMBOURG
Tél. +352 4782371
Fax +352 466138

MAGYARORSZÁG

Magyar Kereskedelmi Engedélyezési Hivatal
Budapest
Margit krt. 85.
1024
MAGYARORSZÁG
Tel. +36 13367303
Fax +36 13367302
E-mail: mkeh@mkeh.gov.hu

MALTA

Divizjoni għall-Kummerċ
Servizzi Kummerċjali
Lascaris
Valletta
CMR 02
Tel. +356 21237112
Fax +356 25690299

NEDERLAND

Belastingdienst/Douane centrale dienst voor in- en uitvoer
Postbus 30003, Engelse Kamp 2
9700 RD Groningen
NEDERLAND
Tel. +31 505232600
Fax +31 505232210

ROMÂNIA

Ministerul Întreprinderilor Mici și Mijlocii, Comerțului și Mediului de Afaceri
Direcția Generală Politici Comerciale
Str. Ion Câmpineanu, nr. 16, sector 1
010036 București
Tel. +40 213150081
Fax +40 213150454
e-mail: clc@dce.gov.ro

SLOVENIJA

Ministrstvo za finance
Carinska uprava Republike Slovenije
Carinski urad Jesenice
Spodnji plavž 6C
SI-4270 Jesenice
SLOVENIJA
Tel. +386 42974470
Faks +386 42974472

SLOVENSKO

Ministerstvo hospodárstva
Mierová 19
827 15 Bratislava 212
Slovenská republika
Tel. +421 248542021 / +421 248547119
Fax +421 248543116

ÖSTERREICH

Bundesministerium für Wirtschaft, Familie und Jugend
Außenwirtschaftsadministration
Abteilung C2/2
Stubenring 1
1011 Wien
Tel. +43 171100-0
Fax +43 171100/83 86

POLSKA

Ministerstwo Gospodarki
Plac Trzech Krzyży 3/5
00-507 Warszawa
POLSKA
Tel. +48 226935553
Fax +48 226934021

PORTUGAL

Ministério das Finanças e da Administração Pública
Direcção-Geral das Alfândegas e dos Impostos
Especiais sobre o Consumo
Rua da Alfândega, n.º 5, r/c
1149-006 Lisboa
PORTUGAL
Tel. +35 1218814263
Fax +35 1218813990

SUOMI/FINLAND

Tullihallitus
PL 512
FI-00101 Helsinki
P. +358 96141
F. +358 204922852

Tullstyrelsen
PB 512
FI-00101 Helsingfors
Fax +358 204922852

SVERIGE

Kommerskollegium
Box 6803
SE-113 86 Stockholm
Tfn +46 86904800
Fax +46 8306759

UNITED KINGDOM

Department for Business, Innovation and Skills Import Licensing Branch
Queensway House — West Precinct
Billingham
TS23 2NF
UNITED KINGDOM
Tel. +44 1642364333 / +44 1642364334
Fax +44 1642364269
E-mail: enquiries.ilb@bis.gsi.gov.uk

COMMISSION REGULATION (EU) No 1242/2009**of 16 December 2009****imposing a provisional anti-dumping duty on imports of certain cargo scanning systems originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (the basic Regulation)⁽¹⁾, and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

requested and showed that there were particular reasons why they should be heard were granted a hearing.

(4) In order to allow the sole known exporting producer in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if it so wished, the Commission sent claim forms to the exporting producer known to be concerned and to the authorities of the PRC. The sole known exporting producer in the PRC did not request MET pursuant to Article 2(7) of the basic Regulation but requested IT.

(5) The Commission sent questionnaires to all parties known to be concerned and to all other parties that requested so within the deadlines set out in the notice of initiation.

1. PROCEDURE**1.1. Initiation**

(1) On 18 March 2009, the European Commission announced by a notice published in the *Official Journal of the European Union*⁽²⁾ (notice of initiation), the initiation of an anti-dumping proceeding concerning imports into the Community of certain cargo scanning systems originating in the People's Republic of China (PRC).

(2) The anti-dumping proceeding was initiated following a complaint lodged on 2 February 2009 by the Community producer Smiths Detection Group Limited (the complainant), representing a major proportion, in this case more than 80 % of the total Community production of certain cargo scanning systems. This complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.

1.2. Parties concerned by the proceeding

(3) The Commission officially advised the complainant, other known producers in the Community, the sole known exporting producer in the PRC, the representatives of the exporting country concerned, and producers in the United States of America (USA), which was envisaged as analogue country. In addition, the Commission contacted all known Community users of the product concerned/like product. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation. All interested parties who so

(6) Questionnaire replies were received from the sole known Chinese exporting producer, from two Community producers, from one producer in the USA which was envisaged as analogue country and from nine Community users.

(7) The Commission sought and verified all the information it deemed necessary for the purpose of MET/IT and for a provisional determination of dumping, resulting injury and Community interest. Verification visits were carried out at the premises of the following companies:

(a) Community producers

Smiths Heimann SAS, Vitry (France) and Smiths Heimann GmbH, Wiesbaden (Germany), both related companies of Smiths Detection Group Limited

(b) Exporting producer in the PRC

Nuctech Company Limited, Beijing, People's Republic of China

(8) In view of the need to establish a normal value for the exporting producer in the PRC which did not claim MET, a verification visit to establish normal value on the basis of data from an analogue country, the USA in this case, took place at the premises of the following company:

Rapiscan Systems Inc., Torrance, CA, USA

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ C 63, 18.3.2009, p. 20.

1.3. Investigation period and period considered

- (9) The investigation of dumping and injury covered the period from 1 July 2007 to 31 December 2008 (the 'investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2004 to the end of the IP ('the period considered'). With respect to the length of the IP it is noted that the 18-month period was selected due to the specific particularities of the product concerned/like product market, i.e. the existence of public procurement/tendering processes which entail long lead time periods for the materialisation of a transaction and the existence of relatively few transactions.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (10) The product concerned is systems for scanning of cargo, based on the use of neutron technology or based on the use of X-rays with an X-ray source of 250 KeV or more or based on the use of alpha, beta or gamma radiations, currently falling within CN codes ex 9022 19 00, ex 9022 29 00, ex 9027 80 17 and ex 9030 10 00 and motor vehicles equipped with such systems currently falling within CN code ex 8705 90 90 originating in the People's Republic of China ('the product concerned').
- (11) Those scanners constitute advanced technology screening systems for monitoring freight. They help enhancing security and safety by detecting shipments of, *inter alia*, explosives, weapons, radioactive materials, narcotics, contraband and counterfeited goods. They are a key tool for customs administrations and port authorities, as well as for certain air cargo companies and other private actors specialised in safety and security matters, to identify suspect goods in unopened loads transiting by sea, road, air or rail.
- (12) The product concerned exists in different configurations depending on the item to be scanned and whether they have to be mobile or static. The main configurations are the following: stationary systems (that are permanently installed on a dedicated site), relocatable systems (that are light scanning systems that move on rails and can be relocated), rail systems, mobile systems (that have scanners incorporated in a motor vehicle), pass-through systems and portal systems. Within the same configuration, cargo scanning systems share the same general physical, technological and performance characteristics, serve for exactly the same purposes in terms of uses, are sold exclusively to end users and are produced using the same type of equipment.
- (13) The sole cooperating Chinese exporting producer claimed that the product scope of the product concerned should be radically reduced and should only include a certain part of the X-ray cargo scanning systems, i.e. non-mobile

cargo scanning systems based on the use of X-rays (with an X-ray source of more than 450 KeV), excluding cargo scanning systems containing Interlaced Dual-Energy (IDE), binocular stereoscopic (BS) and fast-scan technologies. It was submitted that certain technologies are not scientifically or technically suitable for cargo scanners. It was argued that, in some cases, technologies, end uses and consumer perception are different. The company claimed that alpha or beta radiation technologies are not scientifically or technically capable of being used with cargos scanners. It also argued that cargo scanners with neutron and gamma technology are not produced within the Community. Furthermore, it submitted that certain scanners are different (i.e. mobile cargo scanners, cargo scanners with fast-scan technology, cargo scanners with IDE technology and cargo scanners containing BS technology, cargo scanners with a certain energy level) and thus cannot be treated as the product concerned. It was finally claimed that certain product types are different and that some product types are not produced in the PRC or the Community

- (14) The investigation has shown that all technologies covered by the product scope can be used in cargo scanners and that all product types serve the same purpose which is to scan cargo by using the same main principal feature, i.e. the emission of radiation concentrated in scanning cargo. This is the reason why changes in the source or level of energy and also the better suitability of some technologies for specific types of the items to be scanned (e.g. organic items) could not warrant the exclusion of a certain product type. At the same time all product types, irrespectively of technologies, serve to satisfy the same sole aim pursued by the user of the product which is none other than to scan cargo. Furthermore, the calls for tender in the European Union typically do not exclude any type of technology, irrespectively of where the corresponding product is produced. It also appears that alpha and beta radiation technologies can be used for scanning certain type of cargo. In respect to product types not produced in the European Union, it is noted that this is not relevant as such. It follows from the constant practice of the Institutions that the definition of the product scope is based on whether the various types share the same basic physical and technical characteristics and essentially the same end uses. To limit the product scope only to exactly the same product types produced by the Community industry would make the product definition and any anti-dumping measure unworkable. As to the claim that certain X-ray cargo scanners should be excluded solely on the grounds that they are combined with certain types of technologies, it should be noted that the existence of any additional feature or functionality of an X-ray cargo scanner does not put into question the fact that this product is used in the same way as all other types of the product concerned and shares the same basic physical and technical characteristics. As regards the distinction between mobile and non-mobile cargo scanning systems, it should be noted that both serve the same purpose, use the same core technology and, in both, the scanning technology is integrated into a wider structure, be it a truck or a permanent installation. Finally, with respect to energy levels, it should be noted that both low and high

energy levels are used in cargo scanning and that, therefore, all product types share the same main physical and technical characteristics, provided that the energy level is within the limits defined in the notice of initiation. It would appear therefore illogical to exclude cargo scanners with certain energy level especially taking into account that calls for tenders usually do not specify the energy level and it is up to the cargo scanner supplier to determine the appropriate level in its offer. Consequently, all existing types are considered as one product for the purposes of this investigation.

- (15) It was also submitted that since the primary component of the product concerned (i.e. the accelerator) is not produced by the complainant, it should not be considered as a producer. In this respect, it is noted that cargo scanners and accelerators are different products. The production of accelerators is another type of business since accelerators are used in a variety of sectors and applications. Cargo scanning is only one application for accelerators. Worldwide, producers of cargo scanners do not normally produce accelerators. To the Commission's knowledge, only Nuctech is vertically integrated and produces also the upstream product.

2.2. Like product

- (16) The product concerned in the PRC, the one produced and sold on the US domestic market, which served as an analogue country, as well as the product produced and sold in the Community by the Community industry were found identical in terms of overall general physical and technical characteristics. Moreover, there is no difference in use between those products. This is confirmed by the fact that the products generally compete in public tendering processes, where they have to comply with the same standard requirements. These tenders are published by government authorities (usually the customs authorities who are purchasers/users of the product). Tenders contain detailed specifications of the product to be delivered, sometimes coupled with concrete requirements with respect to installation, service-related support and maintenance requirements. By definition any offer made by a producer in a tendering process normally entails that the competing products have the same basic physical and technical characteristics and uses. Furthermore, given the transparent nature of the market in terms of size (small volume of transactions) and number of participants (small number of participants), and the stringent requirements set out in the invitations to tender, the possibility to differentiate products is considerably reduced.
- (17) It is therefore provisionally concluded that all types of cargo scanning systems are alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. General methodology

- (18) The general methodology set out below has been applied to the sole cooperating exporting producer in the PRC.

3.2. Market economy treatment (MET)

- (19) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which have shown that they meet the criteria laid down in Article 2(7)(c) of the basic Regulation.
- (20) However, as explained in recital (4) above, the sole cooperating exporting producer in the PRC only requested Individual Treatment ('IT'). These criteria were therefore not investigated.

3.3. Individual treatment (IT)

- (21) As a general rule, pursuant to Article 2(7)(a) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation. Briefly, and for ease of reference only, these criteria are set out below:
- in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;
 - export prices and quantities, and conditions and terms of sale are freely determined;
 - the majority of the shares belong to private persons. State officials appearing on the Boards of Directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference;
 - exchange rate conversions are carried out at the market rate; and
 - state interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

- (22) The sole cooperating exporting producer in the PRC claimed IT and supplied all information necessary for the evaluation of its claim within the given deadlines.

- (23) On the basis of the information available and verified during the verification visit, it was found that there is strong likelihood of the existence of state interference in the trading activities of this company with respect to the product concerned. Indeed, the sole cooperating exporting producer in the PRC was not in a position to demonstrate that it is sufficiently independent from state interference as its controlling shareholder is a subsidiary of a public Chinese university. Moreover, any changes in the share structure of the company need to be approved in advance by the state authorities since state assets were used in the company's register capital. The Commission also noted the existence of a contract linked with a government-to-government agreement between the PRC and one other third country. This is a further indication of some form of state intervention with respect to the company's business activities and more specifically the ability to freely determine export prices and quantities, and conditions and terms of sale.
- (24) In this respect it is recalled that the Chinese company in question is the only exporting producer in the PRC of the product concerned. Thus, any individual duty established will also be the country-wide duty since the anti-dumping duty shall be imposed on a non-discriminatory basis on the imports of the product concerned from the sole source producing the product concerned in the PRC, found to be dumped and causing injury.
- (25) Account taken of the above, as well as of the fact that precise import/export statistics for the product concerned cannot be obtained through the Harmonized System and the Combined Nomenclature, it is provisionally established that the sole cooperating exporting producer could not be granted IT as set forth in Article 9(5) of the basic Regulation.
- ### 3.4. Normal value
- #### 3.4.1. *Analogue country*
- (26) According to Article 2(7)(a) of the basic Regulation, in case of imports from non-market economy countries and to the extent that MET could not be granted for countries specified in Article 2(7)(b) of the basic Regulation, normal value has to be established on the basis of the price or constructed value in an analogue country.
- (27) In the notice of initiation the Commission indicated its intention to use the United States of America (USA) as an appropriate analogue country for the purpose of establishing normal value for the PRC and invited the interested parties to comment thereon.
- (28) Comments were received from the sole cooperating exporting producer in the PRC expressing skepticism with regards to the use of USA as an appropriate analogue country. The main argument made against the use of this analogue country was the highly protected government procurement market in the USA with an emphasis on 'Buy American' leading to artificial prices on the USA market.
- (29) The Commission sought cooperation from producers in the USA. Letters and relevant questionnaires were sent to five known companies mentioned in the complaint. Out of all these companies, only one producer submitted in due time all the necessary information for the determination of normal value and finally agreed to cooperate with the investigation.
- (30) The Commission sent reminders to the US companies that were initially contacted. It also asked the complainant and the sole cooperating exporting producer in the PRC for comments concerning the selection of market economy third country.
- (31) The sole cooperating exporting producer in the PRC submitted that one company established in the USA and related to the complainant is not cooperating with the investigation in the envisaged analogue country. It was argued that due to the lack of cooperation of the subsidiary in the analogue country, the complainant should be qualified as non-cooperator and the proceeding should be terminated. The complainant stated that its related company in the USA did not qualify as a producer within the meaning of the European Union anti-dumping rules and therefore it did not mention it in the complaint.
- (32) The arguments put forward by the cooperating exporting producer are not convincing. The existence of simple shareholding links between Community producers and producers in a possible analogue country cannot be regarded as a compelling factor in the selection of the analogue country. What matters is whether production and sales in a country that is envisaged as a possible analogue country, can be considered as representative for the exports from the country concerned in order to establish normal value. There is no duty for any producer in an analogue country to cooperate with the Commission's anti-dumping investigation. Moreover, no specific information was submitted suggesting that the non-cooperation of the complainant's related company located in the USA would have unduly influenced the outcome of this investigation. This is even more obvious since one unrelated USA producer did cooperate with the investigation.
- (33) The investigation established that the USA is the only other market apart from the PRC and the Community where the product concerned/like product is manufactured. It was also shown that the USA has a competitive market for the like product. The like product is sold both to private clients and public bodies.

(34) All sales to the USA Government are covered by the 'Federal Acquisition Regulation' which makes reference to the 'Buy American Act' in relation to the foreign acquisition of supplies. By this Act the US Government gives preference to domestic products in its purchases unless the exporting country has signed the plurilateral WTO Trade Agreement on Government Procurement. The Buy American Act contains exceptions to the general rule of domestic procurement in case of public interest and non-availability. The sole cooperating exporting producer in the PRC claimed that the Federal Acquisition Regulation and the Buy American Act distort the purchase of raw materials, increase purchase costs in particular for foreign-based companies, and prevent effective competition in the US market.

(35) On the basis of the information available, it was found that sole cooperating Chinese exporting producer had participated in the past in one public tender procedure in the USA. The investigation has not shown any reason pointing to the conclusion that foreign producers, who are signatories to the plurilateral WTO Trade Agreement on Government Procurement, cannot participate in public tender procedures in the USA under the same conditions. Therefore, the argument that the US could not be used as an analogue country because of the Federal Acquisition Regulation cannot be accepted.

(36) The investigation further revealed that the production volume of the cooperating US producer constitutes considerably more than 5 % of the volume of Chinese exports of the product concerned to the Community. As for the quality, technical specifications and standards of the like product in the USA, no major overall differences were found when compared to Chinese products. Therefore, the US market was deemed sufficiently representative for the determination of normal value for the PRC.

(37) In view of all the above it was provisionally concluded that the USA constitutes an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation.

3.4.2. Determination of normal value

(38) Following the choice of the USA as an analogue country, normal value was calculated on the basis of the data verified at the premises of the sole cooperating US producer.

(39) The domestic sales of the US producer of the like product were found to be representative compared to the product concerned exported to the Community by the sole cooperating exporting producer in the PRC.

(40) An examination was also made as to whether the domestic sales could be regarded as having been made

in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers. The verification carried out at the USA producer showed that its sales volume, sold at a net sales price equal to or above the unit cost, represented more than 80 % of the total sales volume. Therefore, normal value was based on the actual domestic price per product type, calculated as a weighted average of the prices of all domestic sales of that product type made during the IP, irrespective of whether these sales were profitable or not.

(41) It is noted that the cooperating US producer produced and sold in the US market only one type of the like product during the investigation period.

(42) For the types of the product concerned for which no normal value could be calculated on the basis of data available in the analogue country, normal value was established on the basis of verified information from the Community industry for the same type of products. This was done in line with the provisions of Article 2(7)(a) of the basic Regulation stipulating that costs and prices of the Community industry may be used as any other reasonable basis when determining normal value in case of imports from non-market economy countries.

3.5. Export price

(43) The sole cooperating exporting producer in the PRC made export sales to the Community only to public authorities following the award of public tenders.

(44) The investigation revealed that the accounting of the company was deficient so that the exact details of export sales and prices could not be established with certainty for a number of transactions. Contracts awarding the tenders included on-spot construction works, and installation and service costs in the Community that could not always be traced back in the accounting of the company although they should normally be available. Furthermore, some export related costs were not reflected accurately in the accounts of the company thereby raising doubts as to their completeness. Thus, certain necessary adjustments to the export prices for the purpose of fair comparison with the normal value could not be established with the desirable degree of precision.

(45) The company was informed of the aforesaid shortcomings and the possibility of applying Article 18 of the basic Regulation in order to establish the export price of the product concerned. The company was requested to comment thereon but the comments received were of a general nature that did not dispute the problems established.

- (46) In view of the above the export prices of the product concerned were established pursuant to Article 18(1) of the basic Regulation on the basis of the prices paid for the product concerned.

3.6. Comparison

- (47) The comparison between normal value and export price was made on an ex-factory basis.
- (48) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. For the investigated exporting producer in the PRC, adjustments for differences in transport and insurance costs, packing costs, credit costs, warranty and guarantee costs, commissions, civil works and on-spot installation, and service costs have been made where applicable and justified. In this respect, as mentioned under recital (45), facts available pursuant to Article 18(1) of the basic Regulation have been used for the establishment of service costs.

3.7. Dumping margin

- (49) Pursuant to Article 2(11) and (12) of the basic Regulation, the dumping margin for the sole cooperating exporting producer in the PRC was established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type as established above.
- (50) Based on information available from the complaint and the cooperating Chinese exporting producer, there are no other known producers of the product concerned in the PRC. Therefore, the country-wide dumping margin to be established for the PRC should be equal to the dumping margin established for the sole cooperating exporting producer in the PRC.
- (51) The provisional dumping margin for the PRC, expressed as a percentage of the CIF Community frontier price duty unpaid, is 36,6 %.

4. INJURY

4.1. Community production

- (52) The investigation established that the like product is manufactured in the Community by two Community producers with manufacturing sites in France, Germany and the United Kingdom.
- (53) The output of the above companies constitutes the total Community production.

- (54) It is recalled that in this case there are only two Community producers and one exporting producer which represent the main share of the Community market. Therefore, no precise figures can be given in order to protect business proprietary information. In these circumstances, indicators are given in indexed form or ranges.

4.2. Definition of the Community industry

- (55) The complaint was lodged on behalf of one Community producer representing more than 80 % of the total known Community production of the like product.
- (56) The other Community producer cooperated initially with the investigation by submitting a questionnaire reply but later discontinued active participation in the investigation.

4.3. Community consumption

- (57) It is recalled that there are no precise Eurostat import statistics for the product concerned. All interested parties were requested to provide information on the Community consumption. Information was cross-verified when possible with any available information from producers of the product concerned in China and USA, with European Union users as well as with information on contracts and tenders lost by the Community industry on the Community market. The Community consumption was thus established on the basis of the volume of sales in the Community of the like product produced by the Community industry, the volume of sales in the Community of the like product produced by the other known Community producer and the volume of imports of the product concerned from third countries. The date of signature of sales contracts resulting from tendering proceedings was used as the date to determine whether a transaction was taking place within a specific time period.

On this basis, the Community consumption developed as follows:

	2004	2005	2006	2007	IP
<i>Index: 2004=100</i>	100	59	112	118	200

Source: Questionnaire replies and subsequent submissions.

- (58) The consumption of the product concerned and the like product in the Community doubled during the period considered due to increased security, anti-fraud and crime fight concerns. The purchase of a few units was EU-funded in the framework of a series of anti-fraud or border-protection initiatives.

4.4. Imports from the country concerned

4.4.1. Volume, price and market share of dumped imports from the country concerned

- (59) The volume of imports of the product concerned increased significantly throughout the period considered. Imports in the IP increased significantly since 2004.

	2004	2005	2006	2007	IP
Volume of imports	100	100	500	600	1 500

Index: 2004=100

Source: Questionnaire replies and subsequent submissions.

- (60) The average import price varies considerably from one import to another because the configuration of the system has a big impact on the average unit price. Consequently, the development of average unit prices is not meaningful as such.

	2004	2005	2006	2007	IP
Average import price	100	100	800	530	670

Index: 2004=100

Source: Questionnaire replies and subsequent submissions.

- (61) The market share of the imports from the country concerned more than quadrupled in the period considered. In this respect it should be also noted that imports from the country concerned constitute for the period considered the overwhelming majority of imports to the European Union.

	2004	2005	2006	2007	IP
PRC market share	0–10 %	0–10 %	20–30 %	30–40 %	40–50 %
Index: 2004=100	100	100	260	300	440

Source: Questionnaire replies and subsequent submissions.

4.4.2. Undercutting

- (62) For the purpose of analysing price undercutting, the import prices of the cooperating exporting producer were compared to the Community industry tender prices during the IP, on the basis of comparable product configurations. This comparison was made for all transactions where both the Community industry and the exporting producer presented a bid and where these bids were made on the same terms and accepted by the awarding authority. The Community industry prices were adjusted to a net ex-works level, and compared to CIF

European Union frontier import prices plus applicable customs duties.

- (63) On the basis of the prices of the cooperating exporting producer, the weighted average undercutting margin found, expressed as a percentage of the Community industry's prices is between 20 and 25 %.

4.5. Situation of the Community industry

4.5.1. Preliminary remarks

- (64) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all economic factors and indices having a bearing on the state of the Community industry.

- (65) It should be noted that this type of business is 'knowledge or know how-intensive' rather than 'machine-intensive' and it is based on production to order. This should be borne in mind when interpreting a number of injury indicators and determining their importance for the purposes of the injury analysis. The aforesaid indicators include information on average prices, return on assets, stock indicators, production capacity and capacity utilisation. With respect to average prices information is not considered significant because of the low volumes and differences in various types of scanning system from one year to another. As to return on assets and stocks indicators, information provided do not give an accurate picture since the former is based on assets that have already been depreciated while the latter is a reflection of a sale-to-order market. Production capacity and the capacity utilisation are also indicators that have only a very limited relevance because products are basically produced when contracts are ensured following the tendering processes.

4.5.2. Injury indicators

Production, capacity and capacity utilisation

	2004	2005	2006	2007	IP
Production	100	75	89	163	166
Capacity	100	82	83	168	222
Capacity utilization	100	92	107	97	75

Index: 2004=100

Source: Questionnaire replies

- (66) During the period considered, the Community industry's production volume increased by 66 %. This positive trend is mainly due to the good export sales of the like product. The Community industry more than doubled its production capacity over the period considered for the same reason. Capacity utilisation of the Community industry went down by 25 % over the period considered.

Stocks

	2004	2005	2006	2007	IP
Stocks	100	164	127	118	118

Index: 2004=100

Source: Questionnaire replies.

- (67) The Community industry's stock level varied up and down throughout the period considered. However, the like product's market production is made on order and business stocks are always kept to the minimum possible level.

Sales volume, sales price and market share

	2004	2005	2006	2007	IP
Community sales volume	100	67	93	80	53
Market share	80–90 %	90–100 %	70–80 %	60–70 %	20–30 %
Index of market share	100	113	84	68	27
Sales price	100	87	107	87	116

Index: 2004=100

Source: Questionnaire replies and subsequent submissions.

- (68) Sales of the Community industry decreased during the period considered and in the IP were almost half of their original volume. The Community industry lost 73 % of its market share between 2004 and the end of the IP.
- (69) The average sales price of the Community industry's own production highly depends on the configuration of the scanner sold and the number of units sold per contract in each period. A comparison of the figures throughout the period considered is therefore not meaningful.

Profitability

	2004	2005	2006	2007	IP
Pre-tax profit margin	100	85	90	7	– 50

Index: 2004=100

Source: Questionnaire replies

- (70) Over the period considered the Community industry has become loss-making. The situation was particularly bad during the IP. It is evident that the profitability levels

observed in 2007 and during the IP put into question the survival of the Community industry.

Investments, return on investment, cash flow and the ability to raise capital

	2004	2005	2006	2007	IP
Investments	100	164	100	354	105
Return on investment	110–120 %	85–95 %	210–220 %	215–225 %	60–70 %
Cash flow	100	124	257	196	– 106

Index: 2004=100

Source: Questionnaire replies.

- (71) Investments remained low over the period considered. A major part of the investments was devoted to maintaining the Community industry's operating premises. The higher level of investment observed in 2007 concerns a new patent to improve the performance of the product concerned. It is recalled that this business is know-how intensive.
- (72) The return on investment, expressed in terms of net profits of the Community industry and the net book value of its investments shows a drop during the period considered, but is not a good injury indicator because it mainly reflects assets that had already been depreciated.
- (73) The cash flow situation of the Community industry deteriorated severely over the period considered.

Employment, productivity and wages

	2004	2005	2006	2007	IP
Employment	100	110	113	131	137
Average labour cost per worker	100	98	99	101	156
Productivity per worker	100	68	79	124	121

Index: 2004=100

Source: Questionnaire replies.

- (74) The number of employees of the Community industry involved with the like product increased during the period considered due to the good export performance of the complainant. The average labour cost per worker increased reflecting the wage level of more highly qualified personnel.

- (75) Productivity, expressed in terms of output per worker, increased by 21 % over the period considered. This is a reflection of increased activity for non-EU markets.

4.5.3. Magnitude of dumping

- (76) Given the volume and the prices of dumped imports from the country concerned the impact on the Community market of the actual margin of dumping cannot be considered to be negligible.

4.6. Conclusion on injury

- (77) During the period considered the presence of low-priced dumped imports from the PRC increased considerably. In terms of volume, imports from the country concerned reached very high levels by the end of the period considered. Market share of the product concerned in the Community increased by 440 % during the same period.
- (78) The analysis of the economic indicators of the Community industry revealed that there is injury in terms of decrease of sales volume (– 47 %), sales price and market share (– 73 %). This had a further direct negative impact on the financial situation of the Community industry. In fact, financial indicators confirm that the future of the Community industry is at risk and that the presence of dumped imports from the country concerned prevents it from increasing sales volumes and/or prices to levels that could restore its financial situation.
- (79) Injury was assessed for the whole Community industry (macro-economic indicators). On this basis, no significant differences were identified between the complainant and the rest of the Community industry.
- (80) In the light of the foregoing, it is provisionally established that a major proportion of the Community industry has suffered within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

5.1. Introduction

- (81) In accordance with Articles 3(6) and (7) of the basic Regulation, the Commission examined whether the dumped imports from the PRC had caused injury to the Community industry to a degree sufficient to be considered as material. Known factors other than the dumped imports, which could at the same time have injured the Community industry, were also examined in order to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

5.2. Effects of the dumped imports

- (82) First, it is recalled that the investigation revealed that the cargo scanning systems imported from the country concerned directly competes with the products produced and sold by the Community industry not least because they compete in tender procedures.
- (83) The significant increase in volume of the dumped imports from the country concerned resulted in a deterioration of the economic situation of the Community industry. This deterioration included, *inter alia*, a decline in sales and price levels of the Community production sold in the Community during the same period.
- (84) The market share of the dumped imports increased by 440 % during the period considered, whilst the Community industry's market share decreased by more than two thirds. These negative changes for the Community industry occurred against the backdrop of a Community consumption that roughly doubled between 2004 and the IP.
- (85) The dumped imports undercut the prices of the Community industry so it can be reasonably concluded that they were responsible for the price suppression underlying the worsened financial situation of the Community industry.
- (86) In view of the clearly established coincidence in time between, on the one hand, the surge of dumped imports at prices undercutting the Community industry's prices and, on the other hand, the Community industry's loss of sales and production volume, decrease in market shares and price depression, it is provisionally concluded that the dumped imports played a determining role in the injurious situation of the Community industry.

5.3. Effects of other factors

5.3.1. Export performance of the Community industry

	2004	2005	2006	2007	IP
Export sales of Community production	100	83	42	96	108
Export sales price	100	76	56	35	65

Index: 2004=100

Source: Questionnaire replies.

(87) The export volume of the Community industry increased during the period considered. Exports represented the overwhelming majority (between 90 and 95 %) of the total volume of Community production in the IP. The Community industry sold during the IP the product concerned both to unrelated and related customers. The Community industry's non-EU sales consist of identical product types to those sold in the EU. The exports of the Community industry were usually profitable during the period considered although their profitability shows a downward trend. Export prices went down but still remained higher than the sale prices in the Community. The strong export performance suggests that this type of industry is viable and competitive.

(88) Therefore, the export performance of the Community industry helped sustain its business and did not contribute to the material injury suffered.

5.3.2. Competition between Community producers

(89) The second producer in the Community is related to a long-established US producer of the product concerned. This producer did not manufacture the product concerned at the beginning of the period considered. It only entered into the market in 2007 and won two contracts during the IP. In this respect it should be noted that the contracts awarded relate to a tender where only this producer participated and to the award of a contract that was the result of a legal challenge. Moreover, related injury indicators of the second producer in the Community followed a similar pattern as that of the complainant. Thus any injury caused to the complainant which is clearly observed in the deterioration of the injury indicators during the period considered could not be attributed to this new player in the Community market.

5.3.3. Imports from third countries

(90) Imports from third countries were quasi non-existent during the IP, like during the period considered. This is the conclusion derived from submissions of interested parties, given that the relevant Eurostat statistics are not detailed enough to show only the product concerned or a fair estimation. Indeed, the relevant information illustrate that there were only some sporadic imports from the USA which could not cause injury to the Community industry because of its insignificant number.

	2004	2005	2006	2007	IP
Volume of imports	100	0	0	0	100

Index: 2004=100

Source: Submissions of interested parties.

5.3.4. The Community industry did not present a bid for all tendering processes taking place during the IP

(91) It is recalled that the Community market is mainly supplied by tenders. In view of the transparent nature of the market it has been observed that some tendering documents are a result of a process of exchanging views between the awarding authority and the producers prior to the publication of the tender as such. Thus, in these cases, tendering terms could seem to discourage other players from participating in bidding procedures. The investigation has confirmed that neither the Community industry nor the sole cooperating Chinese exporting producer presented a bid in each and every tendering process. The Community industry presented bids only when it could submit a reasonable commercial offer. No compelling factor was found to suggest that the clearly observed injury during the period considered results from the Community industry not participating in bids that were not deemed reasonable business options.

5.3.5. Impact of non-price related factors of the product concerned

(92) The investigation has shown that tenders may not only cover the product concerned but also other elements such as maintenance, services or construction works. Moreover, price is not always the only award criteria. Awarding authorities may introduce further criteria, apart from price, such as criteria related to extra technical capabilities of the product or additional non product-related elements. However, even if the award criteria contain such elements, the investigation has shown that price-related points account for a significant part of the points that can be awarded. The investigation also showed that no awarding authority excluded a bid on the basis that such bid did not include some extra features. In other words, the essential requirements were always met. Additional features typically do not come without a cost. The fact that the exporter concerned offered in some instances additional features beyond what was required simply demonstrates the low and injurious level of prices of the dumped imports.

(93) Considering all the above, only imports from the country concerned could have caused material injury to the Community industry.

5.4. Conclusion of causation

(94) In conclusion, it is provisionally confirmed that the material injury to the Community industry, which is characterized by a decrease in EU sales and market share in the Community market as well as negative financial results, was caused by the dumped imports concerned. Indeed, the export performance of the Community industry, the imports from third countries, the competition between Community producers and the above-mentioned bid-related issues did not have a significant effect on the Community industry's negative developments.

- (95) Given the above analysis which has properly distinguished and separated the effects of all the known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is hereby confirmed that these other factors as such do not reverse the fact that the injury assessed must be attributed to the dumped imports.

6. COMMUNITY INTEREST

6.1. General remarks

- (96) The Commission examined whether, despite the provisional conclusion on the existence of injurious dumping, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and in accordance with Article 21(1) of the basic Regulation, the impact of possible measures on all parties involved in this proceeding and also the consequences of not taking measures were considered on the basis of all evidence submitted.

6.2. Interest of the Community industry

- (97) The injury analysis has clearly demonstrated that the Community industry has suffered from the dumped imports. The increased presence of dumped imports in recent years caused a suppression of sales prices and volumes in the Community market and a loss of market share for the Community industry. This prevented the Community industry from achieving profitability levels commensurate with its competitive strengths.
- (98) Without the imposition of measures the already bad financial position of the Community industry would clearly deteriorate further and ultimately lead to the Community industry closing down. Measures would prevent a further substantial increase of dumped imports from the country concerned, which would allow the Community industry to, at least, maintain its current position on the market. The investigation has shown that any increase in the market share of the dumped imports from the country concerned is gained at the direct expense of the Community industry. Furthermore, it should also be noted that the market for the product concerned is likely to grow further in the medium to long term because of the increasing importance of security policy and the forthcoming implementation from non-EU countries (namely the USA) of the compulsory scanning of exports before they leave their point of departure in the European Union. In this respect, the Community industry has a clear interest not to see its position further worsening in order to benefit from the aforesaid future positive market developments.

- (99) The imposition of measures will restore the import price to non-injurious levels, allowing the Community industry to compete under fair trade circumstances, on the basis of proper comparative advantage.

- (100) It is therefore provisionally concluded that imposing measures would clearly be in the interest of the Community industry.

6.3. Interest of importers/distributors

- (101) The likely impact of measures on importers/distributors has not been considered as no unrelated importers/distributors of the product concerned are known to exist in the Community.

6.4. Interest of upstream suppliers

- (102) No upstream suppliers have made themselves known or provided information in accordance with Article 21 (2) of the basic Regulation.

6.5. Interest of users and consumers

- (103) No representations were received from consumers' organisations following the publication of the notice of initiation of this proceeding. Therefore, and since the product concerned is not used in the production of consumer goods, the analysis has been limited to the effect of measures on users.
- (104) Questionnaires were sent to all Customs authorities in the Community. No other users made themselves known after the publication of the proceeding. Customs authorities and/or Port Authorities of Malta, Belgium, the Netherlands, the United Kingdom, Spain, Portugal, the Czech Republic, Latvia and Slovakia cooperated with the investigation although each to a different extent. These users represent almost 6 million turnover of the product concerned and 15 % of the Community consumption during the IP. The investigation has shown that during the IP the aforesaid users bought 5 units of the product concerned from the sole cooperating Chinese exporting producer, one from a US producer and none from the Community industry.
- (105) It is noted that during the period considered some users had several sources of supply. One of the users expressed concerns over the possibility to procure quickly and in line with its needs the product concerned. In this respect it is noted that the Community industry would clearly be in a position to supply, as it did in the past, the European operations of any user, account taken that the lead time between scheduling of a tender and awarding of a contract will enable the Community industry to respond to any demand without any noticeable problem.

- (106) Two cooperating users were concerned about the negative impact that measures could have both on competition and on stimulating innovative solutions but no concrete evidence was provided that could substantiate this claim. In this respect it should also be noted that any imposition of anti-dumping measures aims at correcting unfair trade practices and not halting competition. Furthermore, the number of players involved in this particular market and the type of products produced ('know-how intensive') ensure that innovation will remain one of the most important priorities of the market players.
- (107) The main general concern of Community users is that measures might have a negative impact on their budgets and increase the cost of investment by Customs administrations. However some users report that any customs-related procedures and, thus, any anti-dumping duties should be born by the seller of the product concerned. This could constitute absorption pursuant to Article 12 of the basic Regulation. In any event, the overall share of the product concerned in the users' budget would be low.
- (108) Furthermore, the product concerned is considered as a fixed asset investment because of its long useful life period (normally more than 10 years). Thus, any anti-dumping duties paid should be spread over the useful life of the cargo scanner.
- (109) The investigation has not shown any evidence suggesting that measures would have an impact on the activities of users or on the number of staff operating this type of systems, on customs personnel or on personnel responsible for any ancillary services.
- (110) It was also argued that public authorities within the EU abide by strict public procurement rules which ensure transparent selection procedures. To this extent it should be noted that public procurement procedures are not designed to counteract dumping practices. To the contrary, the existence of an indeed transparent market makes evident any attempt of unfair trade practices and enforces the need to correct the level playing field in the market.
- (111) The Community industry would clearly be in a position to benefit from any measures by increased economies of scale because of an increase in production and sales.
- (112) Account taken of the above, it is considered that, under the current circumstances, the imposition of measures against the PRC will not affect the Community users significantly.

6.6. Conclusion on Community interest

- (113) Having examined the various interests involved, it is provisionally concluded that, from an overall Community interest perspective, no interest outweighs the Community industry's interest to provisionally impose measures with the aim to eliminate trade distorting effects resulting from dumped imports.

7. PROVISIONAL ANTI-DUMPING MEASURES

- (114) In view of the conclusions reached above with regard to dumping, resulting injury and Community interest, provisional measures on imports of the product concerned from the PRC should be imposed in order to prevent further injury being caused to the Community industry by dumped imports.

7.1. Injury elimination level

- (115) The level of the provisional anti-dumping measures should be sufficient to eliminate the injury to the Community industry caused by the dumped imports, without exceeding the dumping margins found.
- (116) When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs and obtain a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports. The pre-tax profit margin used for this calculation was in the range of 12 to 16 % (exact figure can not be disclosed for reasons of confidentiality) of turnover. It was demonstrated that this was the profit level that could reasonably be expected in the absence of injurious dumping since this type of profit margins rests in line with what the Community industry was able to achieve before the appearance of Chinese imports into the Community. On this basis, a non-injurious price was calculated for the Community industry of the like product. The non-injurious price has been obtained by adding the above mentioned profit margin to the cost of production.
- (117) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the average non-injurious price of products sold by the Community industry on the Community market. Any difference resulting from this comparison was then expressed as a percentage of the average import CIF value. This difference was for the sole Chinese cooperating exporting producer above the dumping margin found.

7.2. Provisional measures

- (118) In the light of the foregoing, and in accordance with Article 7(2) of the basic Regulation, it is considered that the provisional anti-dumping measures should be imposed on imports originating in the PRC at the level of the dumping margin found.
- (119) On the basis of the above, the rate of the provisional anti-dumping duty for the PRC is 36,6 %.
- (120) It recalled that the market in the European Union is governed mainly by public tendering processes with a rather small market size and number of players involved it. Thus, for reasons of enhanced transparency and careful monitoring of the effectiveness of the measures, it is considered appropriate to request the relevant authorities of the Member States to provide to the Commission on a confidential and periodic basis information concerning awards of tenders.

8. FINAL PROVISION

- (121) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on systems for scanning of cargo, based on the use of neutron technology or based on the use of X-rays with an X-ray source of 250 KeV or more or based on the use of alpha, beta or gamma radiations, currently falling within CN codes

ex 9022 19 00, ex 9022 29 00, ex 9027 80 17 and ex 9030 10 00 (TARIC codes 9022 19 00 10, 9022 29 00 10, 9027 80 17 10 and 9030 10 00 91) and motor vehicles equipped with such systems currently falling within CN code ex 8705 90 90 (TARIC code 8705 90 90 10) originating in the People's Republic of China.

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-European Union-frontier price, before duty, of the products described in paragraph 1 shall be 36,6 %.

3. The release for free circulation in the European Union of the product referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

Without prejudice to Article 20 of Council Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Council Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 16 December 2009.

For the Commission

The President

José Manuel BARROSO

COMMISSION REGULATION (EU) No 1243/2009**of 16 December 2009****amending Regulation (EU) No 1231/2009 fixing the import duties in the cereals sector applicable from 16 December 2009**

THE EUROPEAN COMMISSION,

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

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

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 in respect of import duties in the cereals sector ⁽²⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) The import duties in the cereals sector applicable from 16 December 2009 were fixed by Commission Regulation (EU) No 1231/2009 ⁽³⁾.

- (2) As the average of the import duties calculated differs by more than EUR 5/tonne from that fixed, a corresponding adjustment must be made to the import duties fixed by Regulation (EU) No 1231/2009.

- (3) Regulation (EU) No 1231/2009 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EU) No 1231/2009 are hereby replaced by the text in the Annex to this Regulation.

Article 2

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

It shall apply from 17 December 2009.

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

Done at Brussels, 16 December 2009.

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

Jean-Luc DEMARTY
*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 161, 29.6.1996, p. 125.

⁽³⁾ OJ L 330, 16.12.2009, p. 65.

ANNEX I

Import duties on the products referred to in Article 136(1) of Regulation (EC) No 1234/2007 applicable from 17 December 2009

CN code	Description	Import duties ⁽¹⁾ (EUR/t)
1001 10 00	Durum wheat, high quality	0,00
	medium quality	0,00
	low quality	5,68
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	High quality common wheat, other than for sowing	0,00
1002 00 00	Rye	31,46
1005 10 90	Maize seed other than hybrid	16,87
1005 90 00	Maize, other than seed ⁽²⁾	16,87
1007 00 90	Grain sorghum other than hybrids for sowing	31,46

⁽¹⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal the importer may benefit, under Article 2(4) of Regulation (EC) No 1249/96, from a reduction in the duty of:

- 3 EUR/t, where the port of unloading is on the Mediterranean Sea, or
- 2 EUR/t, where the port of unloading is in Denmark, Estonia, Ireland, Latvia, Lithuania, Poland, Finland, Sweden, the United Kingdom or the Atlantic coast of the Iberian peninsula.

⁽²⁾ The importer may benefit from a flatrate reduction of EUR 24 per tonne where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating the duties laid down in Annex I

15.12.2009

1. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

(EUR/t)

	Common wheat ⁽¹⁾	Maize	Durum wheat, high quality	Durum wheat, medium quality ⁽²⁾	Durum wheat, low quality ⁽³⁾	Barley
Exchange	Minneapolis	Chicago	—	—	—	—
Quotation	151,95	110,33	—	—	—	—
Fob price USA	—	—	134,05	124,05	104,05	79,70
Gulf of Mexico premium	—	8,39	—	—	—	—
Great Lakes premium	6,55	—	—	—	—	—

⁽¹⁾ Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).⁽²⁾ Discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).⁽³⁾ Discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

2. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

Freight costs: Gulf of Mexico–Rotterdam: 22,87 EUR/t

Freight costs: Great Lakes–Rotterdam: 48,48 EUR/t

COUNCIL DECISION 2009/969/CFSP**of 15 December 2009****extending the restrictive measures against certain officials of Belarus laid down in Common Position 2006/276/CFSP, and repealing Common Position 2009/314/CFSP**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Whereas:

- (1) On 10 April 2006, the Council adopted Common Position 2006/276/CFSP concerning restrictive measures against certain officials of Belarus ⁽¹⁾.
- (2) By Common Position 2009/314/CFSP of 6 April 2009 amending Common Position 2006/276/CFSP ⁽²⁾ the restrictive measures were extended until 15 March 2010. However, the travel restrictions imposed on certain leading figures in Belarus, with the exception of those involved in the disappearances which occurred in 1999 and 2000 and of the President of the Central Electoral Commission, were suspended until 15 December 2009.
- (3) The Council agreed on 17 November 2009 that, due to the absence of tangible progress in the areas identified in the Council Conclusions of 13 October 2008, the restrictive measures provided for by Common Position 2006/276/CFSP should be extended until October 2010, whilst the suspension of the travel restrictions imposed on certain leading figures in Belarus, with the exception of those involved in the disappearances which occurred in 1999 and 2000 and of the President of the Central Electoral Commission, should also be extended until October 2010. At the end of that period, the Council will review the restrictive measures in light of the situation in Belarus. The Council may decide to reapply or lift travel restrictions at any time, in light of actions by the Belarusian authorities in the sphere of democracy and human rights.
- (4) Common Position 2009/314/CFSP should therefore be repealed,

HAS ADOPTED THIS DECISION:

Article 1

The restrictive measures provided for in Common Position 2006/276/CFSP are hereby extended until 31 October 2010.

Article 2

1. The measures referred to in Article 1(1)(b) of Common Position 2006/276/CFSP, in so far as they apply to Mr Yuri Nikolaïevich Podobed, are hereby suspended until 31 October 2010.

2. The measures referred to in Article 1(1)(c) of Common Position 2006/276/CFSP are hereby suspended until 31 October 2010.

Article 3

This Decision shall be re-examined before 31 October 2010 in light of the situation in Belarus.

Article 4

Common Position 2009/314/CFSP is hereby repealed.

Article 5

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

*Article 6*This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 15 December 2009.

*For the Council**The President*

E. ERLANDSSON

⁽¹⁾ OJ L 101, 11.4.2006, p. 5.

⁽²⁾ OJ L 93, 7.4.2009, p. 21.

ACTS WHOSE PUBLICATION IS NOT OBLIGATORY

COMMISSION DECISION

of 10 December 2009

amending Appendix 2A to the Annex to Decision 2007/65/EC with regard to access to Commission buildings by contractors' staff

(2009/970/EU)

THE EUROPEAN COMMISSION,

HAS DECIDED AS FOLLOWS:

Article 1

Having regard to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and in particular Article 249(1) thereof,

Point 4.2(b) of Appendix 2A of the Annex to Decision 2007/65/EC shall be replaced by the following text:

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 131 thereof,

'(b) Access cards shall be issued to all other personnel requiring access to the Commission buildings to fulfil contractual obligations with the Commission services. Cards for personnel with a contract limited in time shall not extend beyond this time-limit unless authorised by the Commission's Security Directorate.

Whereas:

Access cards shall also be issued to all contractors' staff who need access to Commission buildings to fulfil their contractual obligations. The access cards issued to contractors' staff will be valid until the end of the contract with the Commission, provided that the person in question is in possession of an identity document that is valid until the end of the contract. If the identity document is not valid until the end of the contract, the access card will be valid until the date of expiry of the identity document.

(1) The Commission Communication concerning the new access-control and security system for Commission buildings (document C(2007) 797) is designed to increase the security of persons, data, buildings and other property.

Where a Member of the European Parliament wishes to enter a Commission building, he may do so on presentation of his access card issued by the European Parliament to the security guard on duty, without the need to undergo the additional security checks required of external visitors.'

(2) To this end, the Global Security Project (GSP), which provides for the installation of automatic access-control systems employing powerful modern access-control technology in all Commission buildings, was established.

Article 2

(3) One of the key features of the project is to rationalise and reduce the large number of types of badge that currently exist and to simplify the procedures for issuing badges and access cards for the different categories of staff and visitors to the Commission.

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

(4) In order to allow the first operational phase of the new system for issuing badges to be implemented, in particular for contractors' staff, a number of purely administrative and technical changes must be made to Commission Decision 2007/65/EC of 15 December 2006 establishing the Commission's standard security measures and alert states and amending its Rules of Procedure as regards operational procedures for management of crisis situations ⁽¹⁾,

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

Done at Brussels, 10 December 2009.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 32, 6.2.2007, p. 144.

DECISION OF THE PRESIDENT OF THE EUROPEAN COMMISSION**of 2 December 2009****on the signature of Commission regulations, directives and decisions, when the latter do not specify to whom they are addressed**

(C(2009) 9848)

THE PRESIDENT OF THE EUROPEAN COMMISSION,

Having regard to the Treaty on European Union,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 297(2) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community,

HAS ADOPTED THIS DECISION:

Article 1

Commission regulations, directives and decisions, when the latter do not specify to whom they are addressed, adopted by oral procedure pursuant to Article 8 of the Rules of Procedure of the Commission, shall be signed by the President by means of a summary note during the Commission meeting when they are adopted. This note shall be signed by the President or the Member of the Commission who deputises for him, following the order of precedence laid down by the President.

Commission regulations, directives and decisions, when the latter do not specify to whom they are addressed, adopted by written procedure pursuant to Article 12 of the Rules of Procedure, shall be listed in a day note. The day notes shall be mentioned in and attached to the summary note prepared for the Commission meeting in accordance with Article 17(1) of

the Rules of Procedure, which is signed by the President during the meeting. However, the President delegates to the Secretary General the signature of those acts where urgency requires that they cannot await the next Commission meeting in order to be published and enter into force.

The signature of Commission regulations, directives and decisions, when the latter do not specify to whom they are addressed, adopted by empowerment procedure pursuant to Article 13 of the Rules of Procedure, is delegated to the Members of the Commission to whom powers of adoption are conferred.

The signature of Commission regulations, directives and decisions, when the latter do not specify to whom they are addressed, adopted by delegation or subdelegation procedure pursuant to Articles 13, 14, and 15 of the Rules of Procedure, is delegated to the delegated officials to whom powers of adoption are conferred.

Article 2

This Decision shall apply as of 1 December 2009.

Done at Brussels, 2 December 2009.

The President
José Manuel BARROSO

★ Commission Regulation (EU) No 1241/2009 of 16 December 2009 continuing and updating the scope of prior surveillance of imports of certain iron and steel products originating in certain third countries	54
★ Commission Regulation (EU) No 1242/2009 of 16 December 2009 imposing a provisional anti-dumping duty on imports of certain cargo scanning systems originating in the People's Republic of China	60
Commission Regulation (EU) No 1243/2009 of 16 December 2009 amending Regulation (EU) No 1231/2009 fixing the import duties in the cereals sector applicable from 16 December 2009	73
★ Council Decision 2009/969/CFSP of 15 December 2009 extending the restrictive measures against certain officials of Belarus laid down in Common Position 2006/276/CFSP, and repealing Common Position 2009/314/CFSP	76

ACTS WHOSE PUBLICATION IS NOT OBLIGATORY

2009/970/EU:

★ Commission Decision of 10 December 2009 amending Appendix 2A to the Annex to Decision 2007/65/EC with regard to access to Commission buildings by contractors' staff	77
★ Decision of the President of the European Commission of 2 December 2009 on the signature of Commission regulations, directives and decisions, when the latter do not specify to whom they are addressed (C(2009) 9848)	78

2009 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 1 000 per year (*)
EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 100 per month (*)
EU Official Journal, L + C series, paper + annual CD-ROM	22 official EU languages	EUR 1 200 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 700 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 70 per month
EU Official Journal, C series, paper edition only	22 official EU languages	EUR 400 per year
EU Official Journal, C series, paper edition only	22 official EU languages	EUR 40 per month
EU Official Journal, L + C series, monthly CD-ROM (cumulative)	22 official EU languages	EUR 500 per year
Supplement to the Official Journal (S series), tendering procedures for public contracts, CD-ROM, two editions per week	multilingual: 23 official EU languages	EUR 360 per year (= EUR 30 per month)
EU Official Journal, C series — recruitment competitions	Language(s) according to competition(s)	EUR 50 per year

(*) Sold in single issues: up to 32 pages: EUR 6
from 33 to 64 pages: EUR 12
over 64 pages: Priced individually.

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual CD-ROM.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

Sales and subscriptions

Priced publications issued by the Publications Office are available from our commercial distributors. The list of commercial distributors is available at:

http://publications.europa.eu/others/agents/index_en.htm

EUR-Lex (<http://eur-lex.europa.eu>) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.

For further information on the European Union, see: <http://europa.eu>



Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN