

Official Journal

of the European Union

L 46



English edition

Legislation

Volume 54

19 February 2011

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⁽¹⁾ Text with EEA relevance

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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 149/2011

of 18 February 2011

amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards Improvements to International Financial Reporting Standards (IFRSs)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards ⁽¹⁾, and in particular Article 3(1) thereof,

Whereas:

(1) By Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council ⁽²⁾ certain international standards and interpretations that were in existence at 15 October 2008 were adopted.

(2) On 10 May 2010, the International Accounting Standards Board (IASB) published Improvements to International Financial Reporting Standards, hereinafter 'the Improvements', in the framework of its annual improvement process which aims at streamlining and clarifying the international accounting standards. The majority of the amendments are clarifications or corrections of existing International Financial Reporting Standards (IFRS) or amendments consequential to changes previously made to IFRS. Three amendments (two amendments to IFRS 1 and one amendment to IAS 34) involve changes to the existing requirements or additional guidance on the implementation of those requirements.

(3) The consultation with the Technical Expert Group (TEG) of the European Financial Reporting Advisory Group (EFRAG) confirms that the Improvements meet the technical criteria for adoption set out in Article 3(2) of Regulation (EC) No 1606/2002. In accordance with Commission Decision 2006/505/EC of 14 July 2006 setting up a Standards Advice Review Group to advise the Commission on the objectivity and neutrality of the European Financial Reporting Advisory Group's (EFRAG's) opinions ⁽³⁾, the Standards Advice Review Group considered EFRAG's opinion on endorsement and advised the Commission that it is well-balanced and objective.

(4) Regulation (EC) No 1126/2008 should therefore be amended accordingly.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Accounting Regulatory Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 1126/2008 is amended as follows:

1. International Financial Reporting Standard (IFRS) 1 is amended as set out in the Annex to this Regulation;
2. IFRS 7 is amended as set out in the Annex to this Regulation;

⁽¹⁾ OJ L 243, 11.9.2002, p. 1.

⁽²⁾ OJ L 320, 29.11.2008, p. 1.

⁽³⁾ OJ L 199, 21.7.2006, p. 33.

3. IFRS 3 is amended as set out in the Annex to this Regulation;
4. International Accounting Standard (IAS) 1 is amended as set out in the Annex to this Regulation;
5. IAS 34 is amended as set out in the Annex to this Regulation;
6. International Financial Reporting Interpretations Committee's (IFRIC) Interpretation 13 is amended as set out in the Annex to this Regulation;
7. IFRS 7, IAS 32 and IAS 39 are amended in accordance with the amendments to IFRS 3 as set out in the Annex to this Regulation;
8. IAS 21, IAS 28 and IAS 31 are amended in accordance with IAS 27 as set out in the Annex to this Regulation.

Article 2

Each company shall apply the amendments referred to in points (3), (7) and (8) of Article 1, at the latest, as from the commencement date of its first financial year starting after 30 June 2010.

Each company shall apply the amendments referred to in points (1), (2), (4), (5) and (6) of Article 1, at the latest, as from the commencement date of its first financial year starting after 31 December 2010.

Article 3

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, 18 February 2011.

For the Commission

The President

José Manuel BARROSO

ANNEX

INTERNATIONAL ACCOUNTING STANDARDS

Improvements to International Financial Reporting Standards

Improvements to IFRSs**Amendments to IFRS 1 *First-time Adoption of International Financial Reporting Standards***

Paragraphs 27 and 32 are amended. Paragraph 27A, a heading and paragraphs 31B and 39E are added.

PRESENTATION AND DISCLOSURE

27 IAS 8 does not apply to the changes in accounting policies an entity makes when it adopts IFRSs or to changes in those policies until after it presents its first IFRS financial statements. Therefore, IAS 8's requirements about changes in accounting policies do not apply in an entity's first IFRS financial statements.

27A If during the period covered by its first IFRS financial statements an entity changes its accounting policies or its use of the exemptions contained in this IFRS, it shall explain the changes between its first IFRS interim financial report and its first IFRS financial statements, in accordance with paragraph 23, and it shall update the reconciliations required by paragraph 24(a) and (b).

Use of deemed cost for operations subject to rate regulation

31B If an entity uses the exemption in paragraph D8B for operations subject to rate regulation, it shall disclose that fact and the basis on which carrying amounts were determined under previous GAAP.

Interim financial reports

32 To comply with paragraph 23, if an entity presents an interim financial report in accordance with IAS 34 for part of the period covered by its first IFRS financial statements, the entity shall satisfy the following requirements in addition to the requirements of IAS 34:

(a) Each such interim financial report shall, if the entity presented an interim financial report for the comparable interim period of the immediately preceding financial year, include:

(i) a reconciliation of its equity in accordance with previous GAAP at the end of that comparable interim period to its equity under IFRSs at that date; and

(ii) a reconciliation to its total comprehensive income in accordance with IFRSs for that comparable interim period (current and year to date). The starting point for that reconciliation shall be total comprehensive income in accordance with previous GAAP for that period or, if an entity did not report such a total, profit or loss in accordance with previous GAAP.

(b) In addition to the reconciliations required by (a), an entity's first interim financial report in accordance with IAS 34 for part of the period covered by its first IFRS financial statements shall include the reconciliations described in paragraph 24(a) and (b) (supplemented by the details required by paragraphs 25 and 26) or a cross-reference to another published document that includes these reconciliations.

(c) If an entity changes its accounting policies or its use of the exemptions contained in this IFRS, it shall explain the changes in each such interim financial report in accordance with paragraph 23 and update the reconciliations required by (a) and (b).

EFFECTIVE DATE

39E *Improvements to IFRSs* issued in May 2010 added paragraphs 27A, 31B and D8B and amended paragraphs 27, 32, D1(c) and D8. An entity shall apply those amendments for annual periods beginning on or after 1 January 2011. Earlier application is permitted. If an entity applies the amendments for an earlier period it shall disclose that fact. Entities that adopted IFRSs in periods before the effective date of IFRS 1 or applied IFRS 1 in a previous period are permitted to apply the amendment to paragraph D8 retrospectively in the first annual period after the amendment is effective. An entity applying paragraph D8 retrospectively shall disclose that fact.

Amendment to Appendix D of IFRS 1 *First-time Adoption of International Financial Reporting Standards*

Paragraphs D1(c) and D8 are amended and paragraph D8B is added.

D1 An entity may elect to use one or more of the following exemptions:

...

(c) deemed cost (paragraphs D5–D8 B);

...

Deemed cost

D8 A first-time adopter may have established a deemed cost in accordance with previous GAAP for some or all of its assets and liabilities by measuring them at their fair value at one particular date because of an event such as a privatisation or initial public offering.

- (a) If the measurement date is *at or before* the date of transition to IFRSs, the entity may use such event-driven fair value measurements as deemed cost for IFRSs at the date of that measurement.
- (b) If the measurement date is *after* the date of transition to IFRSs, but during the period covered by the first IFRS financial statements, the event-driven fair value measurements may be used as deemed cost when the event occurs. An entity shall recognise the resulting adjustments directly in retained earnings (or if appropriate, another category of equity) at the measurement date. At the date of transition to IFRSs, the entity shall either establish the deemed cost by applying the criteria in paragraphs D5–D7 or measure assets and liabilities in accordance with the other requirements in this IFRS.

D8B Some entities hold items of property, plant and equipment or intangible assets that are used, or were previously used, in operations subject to rate regulation. The carrying amount of such items might include amounts that were determined under previous GAAP but do not qualify for capitalisation in accordance with IFRSs. If this is the case, a first-time adopter may elect to use the previous GAAP carrying amount of such an item at the date of transition to IFRSs as deemed cost. If an entity applies this exemption to an item, it need not apply it to all items. At the date of transition to IFRSs, an entity shall test for impairment in accordance with IAS 36 each item for which this exemption is used. For the purposes of this paragraph, operations are subject to rate regulation if they provide goods or services to customers at prices (ie rates) established by an authorised body empowered to establish rates that bind the customers and that are designed to recover the specific costs the entity incurs in providing the regulated goods or services and to earn a specified return. The specified return could be a minimum or range and need not be a fixed or guaranteed return.

Amendments to IFRS 3 *Business Combinations*

Paragraph 19, the heading before paragraph 30 and paragraph 30 are amended. Paragraphs 64B, 64C and 65A–65E are added.

THE ACQUISITION METHOD

Measurement principle

19 For each business combination, the acquirer shall measure at the acquisition date components of non-controlling interests in the acquiree that are present ownership interests and entitle their holders to a proportionate share of the entity's net assets in the event of liquidation at either:

- (a) fair value; or
- (b) the present ownership instruments' proportionate share in the recognised amounts of the acquiree's identifiable net assets.

All other components of non-controlling interests shall be measured at their acquisition-date fair values, unless another measurement basis is required by IFRSs.

Exceptions to the recognition or measurement principles*Exceptions to the measurement principle***Share-based payment transactions**

- 30 The acquirer shall measure a liability or an equity instrument related to share-based payment transactions of the acquiree or the replacement of an acquiree's share-based payment transactions with share-based payment transactions of the acquirer in accordance with the method in IFRS 2 *Share-based Payment* at the acquisition date. (This IFRS refers to the result of that method as the 'market-based measure' of the share-based payment transaction.)

EFFECTIVE DATE AND TRANSITION**Effective date**

- 64B *Improvements to IFRSs* issued in May 2010 amended paragraphs 19, 30 and B56 and added paragraphs B62A and B62B. An entity shall apply those amendments for annual periods beginning on or after 1 July 2010. Earlier application is permitted. If an entity applies the amendments for an earlier period it shall disclose that fact. Application should be prospective from the date when the entity first applied this IFRS.

- 64C Paragraphs 65A–65E were added by *Improvements to IFRSs* issued in May 2010. An entity shall apply those amendments for annual periods beginning on or after 1 July 2010. Earlier application is permitted. If an entity applies the amendments for an earlier period it shall disclose that fact. The amendments shall be applied to contingent consideration balances arising from business combinations with an acquisition date prior to the application of this IFRS, as issued in 2008.

Transition

- 65A Contingent consideration balances arising from business combinations whose acquisition dates preceded the date when an entity first applied this IFRS as issued in 2008 shall not be adjusted upon first application of this IFRS. Paragraphs 65B–65E shall be applied in the subsequent accounting for those balances. Paragraphs 65B–65E shall not apply to the accounting for contingent consideration balances arising from business combinations with acquisition dates on or after the date when the entity first applied this IFRS as issued in 2008. In paragraphs 65B–65E business combination refers exclusively to business combinations whose acquisition date preceded the application of this IFRS as issued in 2008.
- 65B If a business combination agreement provides for an adjustment to the cost of the combination contingent on future events, the acquirer shall include the amount of that adjustment in the cost of the combination at the acquisition date if the adjustment is probable and can be measured reliably.
- 65C A business combination agreement may allow for adjustments to the cost of the combination that are contingent on one or more future events. The adjustment might, for example, be contingent on a specified level of profit being maintained or achieved in future periods, or on the market price of the instruments issued being maintained. It is usually possible to estimate the amount of any such adjustment at the time of initially accounting for the combination without impairing the reliability of the information, even though some uncertainty exists. If the future events do not occur or the estimate needs to be revised, the cost of the business combination shall be adjusted accordingly.
- 65D However, when a business combination agreement provides for such an adjustment, that adjustment is not included in the cost of the combination at the time of initially accounting for the combination if it either is not probable or cannot be measured reliably. If that adjustment subsequently becomes probable and can be measured reliably, the additional consideration shall be treated as an adjustment to the cost of the combination.
- 65E In some circumstances, the acquirer may be required to make a subsequent payment to the seller as compensation for a reduction in the value of the assets given, equity instruments issued or liabilities incurred or assumed by the acquirer in exchange for control of the acquiree. This is the case, for example, when the acquirer guarantees the market price of equity or debt instruments issued as part of the cost of the business combination and is required to issue additional equity or debt instruments to restore the originally determined cost. In such cases, no increase in the cost of the business combination is recognised. In the case of equity instruments, the fair value of the additional payment is offset by an equal reduction in the value attributed to the instruments initially issued. In the case of debt instruments, the additional payment is regarded as a reduction in the premium or an increase in the discount on the initial issue.

Application guidance

In Appendix B, paragraph B56 is amended and a footnote to paragraph B56, a heading after paragraph B62 and paragraphs B62A and B62B are added.

DETERMINING WHAT IS PART OF THE BUSINESS COMBINATION TRANSACTION (APPLICATION OF PARAGRAPHS 51 AND 52)

Acquirer share-based payment awards exchanged for awards held by the acquiree's employees (application of paragraph 52(b))

B56 An acquirer may exchange its share-based payment awards ⁽¹⁾ (replacement awards) for awards held by employees of the acquiree. Exchanges of share options or other share-based payment awards in conjunction with a business combination are accounted for as modifications of share-based payment awards in accordance with IFRS 2 *Share-based Payment*. If the acquirer replaces the acquiree awards, either all or a portion of the market-based measure of the acquirer's replacement awards shall be included in measuring the consideration transferred in the business combination. Paragraphs B57–B62 provide guidance on how to allocate the market-based measure.

However, in situations, in which acquiree awards would expire as a consequence of a business combination and if the acquirer replaces those awards when it is not obliged to do so, all of the market-based measure of the replacement awards shall be recognised as remuneration cost in the post-combination financial statements in accordance with IFRS 2. That is to say, none of the market-based measure of those awards shall be included in measuring the consideration transferred in the business combination. The acquirer is obliged to replace the acquiree awards if the acquiree or its employees have the ability to enforce replacement. For example, for the purposes of applying this guidance, the acquirer is obliged to replace the acquiree's awards if replacement is required by:

- (a) the terms of the acquisition agreement;
- (b) the terms of the acquiree's awards; or
- (c) applicable laws or regulations.

Equity-settled share-based payment transactions of the acquiree

B62A The acquiree may have outstanding share-based payment transactions that the acquirer does not exchange for its share-based payment transactions. If vested, those acquiree share-based payment transactions are part of the non-controlling interest in the acquiree and are measured at their market-based measure. If unvested, they are measured at their market-based measure as if the acquisition date were the grant date in accordance with paragraphs 19 and 30.

B62B The market-based measure of unvested share-based payment transactions is allocated to the non-controlling interest on the basis of the ratio of the portion of the vesting period completed to the greater of the total vesting period or the original vesting period of the share-based payment transaction. The balance is allocated to post-combination service.

Appendix to amendments to IFRS 3

Amendments to other IFRSs

IFRS 7 *Financial Instruments: Disclosures*

Paragraph 44B is amended and paragraph 44K is added.

EFFECTIVE DATE AND TRANSITION

44B IFRS 3 (as revised in 2008) deleted paragraph 3(c). An entity shall apply that amendment for annual periods beginning on or after 1 July 2009. If an entity applies IFRS 3 (revised 2008) for an earlier period, the amendment shall also be applied for that earlier period. However, the amendment does not apply to contingent consideration that arose from a business combination for which the acquisition date preceded the application of IFRS 3 (revised 2008). Instead, an entity shall account for such consideration in accordance with paragraphs 65A–65E of IFRS 3 (as amended in 2010).

⁽¹⁾ In paragraphs B56–B62 the term 'share-based payment awards' refers to vested or unvested share-based payment transactions.

- 44K Paragraph 44B was amended by *Improvements to IFRSs* issued in May 2010. An entity shall apply that amendment for annual periods beginning on or after 1 July 2010. Earlier application is permitted.

IAS 32 *Financial Instruments: Presentation*

Paragraph 97B is amended and paragraph 97G is added.

EFFECTIVE DATE AND TRANSITION

- 97B IFRS 3 (as revised in 2008) deleted paragraph 4(c). An entity shall apply that amendment for annual periods beginning on or after 1 July 2009. If an entity applies IFRS 3 (revised 2008) for an earlier period, the amendment shall also be applied for that earlier period. However, the amendment does not apply to contingent consideration that arose from a business combination for which the acquisition date preceded the application of IFRS 3 (revised 2008). Instead, an entity shall account for such consideration in accordance with paragraphs 65A–65E of IFRS 3 (as amended in 2010).

- 97G Paragraph 97B was amended by *Improvements to IFRSs* issued in May 2010. An entity shall apply that amendment for annual periods beginning on or after 1 July 2010. Earlier application is permitted.

IAS 39 *Financial Instruments: Recognition and Measurement*

Paragraph 103D is amended and paragraph 103N is added.

EFFECTIVE DATE AND TRANSITION

- 103D IFRS 3 (as revised in 2008) deleted paragraph 2(f). An entity shall apply that amendment for annual periods beginning on or after 1 July 2009. If an entity applies IFRS 3 (revised 2008) for an earlier period, the amendment shall also be applied for that earlier period. However, the amendment does not apply to contingent consideration that arose from a business combination for which the acquisition date preceded the application of IFRS 3 (revised 2008). Instead, an entity shall account for such consideration in accordance with paragraphs 65A–65E of IFRS 3 (as amended in 2010).

- 103N Paragraph 103D was amended by *Improvements to IFRSs* issued in May 2010. An entity shall apply that amendment for annual periods beginning on or after 1 July 2010. Earlier application is permitted.

Amendments to IFRS 7 *Financial Instruments: Disclosures*

Paragraph 32A is added. Paragraphs 34 and 36–38 are amended. Paragraph 44L is added.

NATURE AND EXTENT OF RISKS ARISING FROM FINANCIAL INSTRUMENTS

- 32A Providing qualitative disclosures in the context of quantitative disclosures enables users to link related disclosures and hence form an overall picture of the nature and extent of risks arising from financial instruments. The interaction between qualitative and quantitative disclosures contributes to disclosure of information in a way that better enables users to evaluate an entity's exposure to risks.

Quantitative disclosures

- 34 For each type of risk arising from financial instruments, an entity shall disclose:
- (a) summary quantitative data about its exposure to that risk at the end of the reporting period. This disclosure shall be based on the information provided internally to key management personnel of the entity (as defined in IAS 24 *Related Party Disclosures*), for example the entity's board of directors or chief executive officer.
 - (b) the disclosures required by paragraphs 36–42, to the extent not provided in accordance with (a).
 - (c) concentrations of risk if not apparent from the disclosures made in accordance with (a) and (b).

Credit risk

36 An entity shall disclose by class of financial instrument:

- (a) the amount that best represents its maximum exposure to credit risk at the end of the reporting period without taking account of any collateral held or other credit enhancements (eg netting agreements that do not qualify for offset in accordance with IAS 32); this disclosure is not required for financial instruments whose carrying amount best represents the maximum exposure to credit risk;
- (b) a description of collateral held as security and of other credit enhancements, and their financial effect (eg a quantification of the extent to which collateral and other credit enhancements mitigate credit risk) in respect of the amount that best represents the maximum exposure to credit risk (whether disclosed in accordance with (a) or represented by the carrying amount of a financial instrument);
- (c) information about the credit quality of financial assets that are neither *past due* nor impaired.
- (d) [deleted]

Financial assets that are either past due or impaired

37 An entity shall disclose by class of financial asset:

- (a) an analysis of the age of financial assets that are past due as at the end of the reporting period but not impaired; and
- (b) an analysis of financial assets that are individually determined to be impaired as at the end of the reporting period, including the factors the entity considered in determining that they are impaired.
- (c) [deleted]

Collateral and other credit enhancements obtained

38 When an entity obtains financial or non-financial assets during the period by taking possession of collateral it holds as security or calling on other credit enhancements (eg guarantees), and such assets meet the recognition criteria in other IFRSs, an entity shall disclose for such assets held at the reporting date:

- (a) the nature and carrying amount of the assets; and
- (b) when the assets are not readily convertible into cash, its policies for disposing of such assets or for using them in its operations.

EFFECTIVE DATE AND TRANSITION

44L *Improvements to IFRSs* issued in May 2010 added paragraph 32A and amended paragraphs 34 and 36–38. An entity shall apply those amendments for annual periods beginning on or after 1 January 2011. Earlier application is permitted. If an entity applies the amendments for an earlier period it shall disclose that fact.

Amendments to IAS 1 Presentation of Financial Statements

Before paragraph 106 a heading is added. Paragraph 106 is amended. After paragraph 106 a heading and paragraph 106A are added. Paragraph 107 is amended. Paragraph 139F is added.

STRUCTURE AND CONTENT**Statement of changes in equity****Information to be presented in the statement of changes in equity**

106 An entity shall present a statement of changes in equity as required by paragraph 10. The statement of changes in equity includes the following information:

- (a) total comprehensive income for the period, showing separately the total amounts attributable to owners of the parent and to non-controlling interests;

(b) for each component of equity, the effects of retrospective application or retrospective restatement recognised in accordance with IAS 8; and

(c) [deleted]

(d) for each component of equity, a reconciliation between the carrying amount at the beginning and the end of the period, separately disclosing changes resulting from:

(i) profit or loss;

(ii) other comprehensive income; and

(iii) transactions with owners in their capacity as owners, showing separately contributions by and distributions to owners and changes in ownership interests in subsidiaries that do not result in a loss of control.

Information to be presented in the statement of changes in equity or in the notes

106A For each component of equity an entity shall present, either in the statement of changes in equity or in the notes, an analysis of other comprehensive income by item (see paragraph 106(d)(ii)).

107 An entity shall present, either in the statement of changes in equity or in the notes, the amounts of dividends recognised as distributions to owners during the period, and the related amount of dividends per share.

TRANSITION AND EFFECTIVE DATE

139F Paragraphs 106 and 107 were amended and paragraph 106A was added by *Improvements to IFRSs* issued in May 2010. An entity shall apply those amendments for annual periods beginning on or after 1 January 2011. Earlier application is permitted.

Transition requirements for amendments arising as a result of IAS 27 *Consolidated and Separate Financial Statements*

Amendments to IFRSs

IAS 21 *The Effects of Changes in Foreign Exchange Rates*

Paragraph 60B is amended and paragraph 60D is added.

EFFECTIVE DATE AND TRANSITION

60B IAS 27 (as amended in 2008) added paragraphs 48A–48D and amended paragraph 49. An entity shall apply those amendments prospectively for annual periods beginning on or after 1 July 2009. If an entity applies IAS 27 (amended 2008) for an earlier period, the amendments shall be applied for that earlier period.

60D Paragraph 60B was amended by *Improvements to IFRSs* issued in May 2010. An entity shall apply that amendment for annual periods beginning on or after 1 July 2010. Earlier application is permitted.

IAS 28 *Investments in Associates*

Paragraph 41B is amended and paragraph 41E is added.

EFFECTIVE DATE AND TRANSITION

41B IAS 27 (as amended in 2008) amended paragraphs 18, 19 and 35 and added paragraph 19A. An entity shall apply the amendment to paragraph 35 retrospectively and the amendments to paragraphs 18 and 19 and paragraph 19A prospectively for annual periods beginning on or after 1 July 2009. If an entity applies IAS 27 (amended 2008) for an earlier period, the amendments shall be applied for that earlier period.

41E Paragraph 41B was amended by *Improvements to IFRSs* issued in May 2010. An entity shall apply that amendment for annual periods beginning on or after 1 July 2010. Earlier application is permitted. If an entity applies the amendment before 1 July 2010 it shall disclose that fact.

IAS 31 *Interests in Joint Ventures*

Paragraph 58A is amended and paragraph 58D is added.

EFFECTIVE DATE AND TRANSITION

58A IAS 27 (as amended in 2008) amended paragraphs 45 and 46 and added paragraphs 45A and 45B. An entity shall apply the amendment to paragraph 46 retrospectively and the amendments to paragraph 45 and paragraphs 45A and 45B prospectively for annual periods beginning on or after 1 July 2009. If an entity applies IAS 27 (amended 2008) for an earlier period, the amendments shall be applied for that earlier period.

58D Paragraph 58A was amended by *Improvements to IFRSs* issued in May 2010. An entity shall apply that amendment for annual periods beginning on or after 1 July 2010. Earlier application is permitted. If an entity applies the amendment before 1 July 2010 it shall disclose that fact.

Amendments to IAS 34 *Interim Financial Reporting***CONTENT OF AN INTERIM FINANCIAL REPORT****Significant events and transactions**

15 An entity shall include in its interim financial report an explanation of events and transactions that are significant to an understanding of the changes in financial position and performance of the entity since the end of the last annual reporting period. Information disclosed in relation to those events and transactions shall update the relevant information presented in the most recent annual financial report.

15A A user of an entity's interim financial report will have access to the most recent annual financial report of that entity. Therefore, it is unnecessary for the notes to an interim financial report to provide relatively insignificant updates to the information that was reported in the notes in the most recent annual financial report.

15B The following is a list of events and transactions for which disclosures would be required if they are significant: the list is not exhaustive.

- (a) the write-down of inventories to net realisable value and the reversal of such a write-down;
- (b) recognition of a loss from the impairment of financial assets, property, plant and equipment, intangible assets, or other assets, and the reversal of such an impairment loss;
- (c) the reversal of any provisions for the costs of restructuring;
- (d) acquisitions and disposals of items of property, plant and equipment;
- (e) commitments for the purchase of property, plant and equipment;
- (f) litigation settlements;
- (g) corrections of prior period errors;
- (h) changes in the business or economic circumstances that affect the fair value of the entity's financial assets and financial liabilities, whether those assets or liabilities are recognised at fair value or amortised cost;
- (i) any loan default or breach of a loan agreement that has not been remedied on or before the end of the reporting period;
- (j) related party transactions;
- (k) transfers between levels of the fair value hierarchy used in measuring the fair value of financial instruments;
- (l) changes in the classification of financial assets as a result of a change in the purpose or use of those assets; and
- (m) changes in contingent liabilities or contingent assets.

- 15C Individual IFRSs provide guidance regarding disclosure requirements for many of the items listed in paragraph 15B. When an event or transaction is significant to an understanding of the changes in an entity's financial position or performance since the last annual reporting period, its interim financial report should provide an explanation of and an update to the relevant information included in the financial statements of the last annual reporting period.

16–18 [Deleted]

Other disclosures

- 16A In addition to disclosing significant events and transactions in accordance with paragraphs 15–15C, an entity shall include the following information, in the notes to its interim financial statements, if not disclosed elsewhere in the interim financial report. The information shall normally be reported on a financial year-to-date basis.
- (a) a statement that the same accounting policies and methods of computation are followed in the interim financial statements as compared with the most recent annual financial statements or, if those policies or methods have been changed, a description of the nature and effect of the change.
 - (b) explanatory comments about the seasonality or cyclicity of interim operations.
 - (c) the nature and amount of items affecting assets, liabilities, equity, net income or cash flows that are unusual because of their nature, size or incidence.
 - (d) the nature and amount of changes in estimates of amounts reported in prior interim periods of the current financial year or changes in estimates of amounts reported in prior financial years.
 - (e) issues, repurchases and repayments of debt and equity securities.
 - (f) dividends paid (aggregate or per share) separately for ordinary shares and other shares.
 - (g) the following segment information (disclosure of segment information is required in an entity's interim financial report only if IFRS 8 *Operating Segments* requires that entity to disclose segment information in its annual financial statements):
 - (i) revenues from external customers, if included in the measure of segment profit or loss reviewed by the chief operating decision maker or otherwise regularly provided to the chief operating decision maker.
 - (ii) intersegment revenues, if included in the measure of segment profit or loss reviewed by the chief operating decision maker or otherwise regularly provided to the chief operating decision maker.
 - (iii) a measure of segment profit or loss.
 - (iv) total assets for which there has been a material change from the amount disclosed in the last annual financial statements.
 - (v) a description of differences from the last annual financial statements in the basis of segmentation or in the basis of measurement of segment profit or loss.
 - (vi) a reconciliation of the total of the reportable segments' measures of profit or loss to the entity's profit or loss before tax expense (tax income) and discontinued operations. However, if an entity allocates to reportable segments items such as tax expense (tax income), the entity may reconcile the total of the segments' measures of profit or loss to profit or loss after those items. Material reconciling items shall be separately identified and described in that reconciliation.

- (h) Events after the interim period that have not been reflected in the financial statements for the interim period.
- (i) the effect of changes in the composition of the entity during the interim period, including business combinations, obtaining or losing control of subsidiaries and long-term investments, restructurings, and discontinued operations. In the case of business combinations, the entity shall disclose the information required by IFRS 3 *Business Combinations*.
- (j) [deleted]

EFFECTIVE DATE

- 49 Paragraph 15 was amended, paragraphs 15A–15C and 16A were added and paragraphs 16–18 were deleted by *Improvements to IFRSs* issued in May 2010. An entity shall apply those amendments for annual periods beginning on or after 1 January 2011. Earlier application is permitted. If an entity applies the amendments for an earlier period it shall disclose that fact.

Amendment to IFRIC 13 *Customer Loyalty Programmes*

Paragraph 10A is added.

EFFECTIVE DATE AND TRANSITION

- 10A Paragraph AG2 was amended by *Improvements to IFRSs* issued in May 2010. An entity shall apply that amendment for annual periods beginning on or after 1 January 2011. Earlier application is permitted. If an entity applies the amendment for an earlier period it shall disclose that fact.

Appendix

Application guidance

Paragraph AG2 is amended.

- AG2 An entity may estimate the fair value of award credits by reference to the fair value of the awards for which they could be redeemed. The fair value of the award credits takes into account, as appropriate:
- (a) the amount of the discounts or incentives that would otherwise be offered to customers who have not earned award credits from an initial sale; and
 - (b) the proportion of award credits that are not expected to be redeemed by customers.

If customers can choose from a range of different awards, the fair value of the award credits will reflect the fair values of the range of available awards, weighted in proportion to the frequency with which each award is expected to be selected.

COMMISSION REGULATION (EU) No 150/2011**of 18 February 2011****amending Annex III to Regulation (EC) No 853/2004 of the European Parliament and of the Council
as regards farmed and wild game and farmed and wild game meat****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin ⁽¹⁾, and in particular Article 10(1) thereof,

Whereas:

- (1) Regulation (EC) No 853/2004 lays down specific hygiene rules for food of animal origin. It provides, inter alia, the requirements for the production and placing on the market of meat from farmed and wild game. Food business operators are to ensure that such meat is placed on the market only if it is produced in compliance with Sections III and IV of Annex III to that Regulation.
- (2) Section III of Annex III to Regulation (EC) No 853/2004 provides that food business operators may slaughter farmed ratites and certain farmed ungulates at the place of origin with the authorisation of the competent authority subject to certain conditions. In particular, those conditions include that the slaughtered animals are to be accompanied to the slaughterhouse by a declaration by the food business operator who reared the animals and by a certificate issued and signed by the official or approved veterinarian.
- (3) The certificate issued and signed by the official or approved veterinarian is to attest to a favourable result of the ante-mortem inspection, correct slaughter and bleeding and the date and time of slaughter.
- (4) Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing ⁽²⁾ lays down rules for the killing of animals bred or kept for the production of food, wool, skin, fur or other products. That Regulation provides that business operators are to ensure that certain slaughter

operations are only carried out by persons holding a certificate of competence for such operations, demonstrating their ability to carry them out in accordance with the rules laid down in that Regulation.

- (5) The presence of the official veterinarian or of the approved veterinarian at all times during slaughter and bleeding at the farm may be considered unnecessary if the food business operators carrying out slaughter operations would have the appropriate level of competence and would hold a certificate of competence for such operations, in accordance with Regulation (EC) No 1099/2009. In such cases, it should be permitted for the attestation of the correct slaughter and bleeding, as well as of the date and time of slaughter, to be made by the food business operators instead of by the official or approved veterinarian.
- (6) In addition, Chapter II of Section IV of Annex III to Regulation (EC) No 853/2004 provides that, as soon as possible after the killing of large wild game, the trained person must carry out an examination of the body, and of any viscera removed, to identify any characteristics that may indicate that the meat presents a health risk. If during that examination no abnormal characteristics are found that may indicate that the meat presents a health risk, no abnormal behaviour was observed before killing and there is no suspicion of environmental contamination, the trained person must attach to the animal body a numbered declaration to that effect.
- (7) Experience in the application of those rules shows that it is reasonable to provide for the possibility not to attach the declaration to the animal body and also for that declaration to cover more than one animal body, provided that a clear link between the animal bodies and the declaration covering them is established and guaranteed.
- (8) Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption ⁽³⁾ lays down animal and public health rules for the collection, transport, storage, handling, processing and use or disposal of animal by-products, to prevent those products from presenting a risk to animal or public health. Chapter VII of Annex VIII to that Regulation sets out the requirements for the production of game trophies.

⁽¹⁾ OJ L 139, 30.4.2004, p. 55.

⁽²⁾ OJ L 303, 18.11.2009, p. 1.

⁽³⁾ OJ L 273, 10.10.2002, p. 1.

- (9) In addition, pursuant to that Regulation, technical plants are to be subject to approval by the competent authority, provided that certain conditions are met. Those conditions include, *inter alia*, the obligation of the technical plant to comply with the specific production requirements set out in that Regulation.
- (10) Chapter II of Section IV of Annex III to Regulation (EC) No 853/2004 provides that, in the case of large wild game, the head and the viscera need not accompany the body to the game-handling establishment, except in the case of species susceptible to trichinosis, whose head (except of tusks) and diaphragm must accompany the body.
- (11) In some Member States, where there is a long tradition of hunting game, it is customary to use whole heads of animals, including of those susceptible to *Trichinella* infestation, as a game trophy. The requirement in Chapter II of Section IV of Annex III to Regulation (EC) No 853/2004 creates difficulties to hunters and technical plants with regard to the production of game trophies in the case of species susceptible to *Trichinella* infestation.
- (12) The possibility should therefore be given to the competent authority to authorise the sending of heads of animals susceptible to *Trichinella* infestation to an approved technical plant for the production of game trophies, even before the result of the test for *Trichinella* is available. In all such cases, there should be sufficient guarantees of traceability.
- (13) Regulation (EC) No 853/2004 should therefore be amended accordingly.
- (14) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,
- HAS ADOPTED THIS REGULATION:
- Article 1*
- Annex III to Regulation (EC) No 853/2004 is amended in accordance with the Annex to this Regulation.
- Article 2*
- This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.
- (9) In addition, pursuant to that Regulation, technical plants are to be subject to approval by the competent authority, provided that certain conditions are met. Those conditions include, *inter alia*, the obligation of the technical plant to comply with the specific production requirements set out in that Regulation.
- (10) Chapter II of Section IV of Annex III to Regulation (EC) No 853/2004 provides that, in the case of large wild game, the head and the viscera need not accompany the body to the game-handling establishment, except in the case of species susceptible to trichinosis, whose head (except of tusks) and diaphragm must accompany the body.
- (11) In some Member States, where there is a long tradition of hunting game, it is customary to use whole heads of animals, including of those susceptible to *Trichinella* infestation, as a game trophy. The requirement in Chapter II of Section IV of Annex III to Regulation (EC) No 853/2004 creates difficulties to hunters and technical plants with regard to the production of game trophies in the case of species susceptible to *Trichinella* infestation.
- (12) The possibility should therefore be given to the competent authority to authorise the sending of heads

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

Done at Brussels, 18 February 2011.

For the Commission

The President

José Manuel BARROSO

ANNEX

Annex III to Regulation (EC) No 853/2004 is amended as follows:

(1) in Section III, the following point 3a is inserted:

‘3a. By way of derogation from point 3(j), the competent authority may authorise that the attestation of the correct slaughter and bleeding and of the date and time of slaughter be included only in the declaration by the food business operator referred to in point 3(i), provided that:

- (a) the holding is situated in a Member State or region, as defined in Article 2(2)(p) of Directive 64/432/EEC which is not under health restrictions in accordance with Union law or national legislation;
- (b) the food business operator has demonstrated the appropriate level of competence to slaughter animals without causing the animals any avoidable pain, distress or suffering in accordance with Article 7(2) of Regulation (EC) No 1099/2009 and without prejudice to Article 12 of that Regulation.’;

(2) in Chapter II of Section IV, point 4(a) is replaced by the following:

- ‘4. (a) If no abnormal characteristics are found during the examination referred to in point 2, no abnormal behaviour was observed before killing, and there is no suspicion of environmental contamination, the trained person must attach to the animal body a numbered declaration stating this. This declaration must also indicate the date, time and place of killing.

The declaration need not be attached to the animal body and may cover more than one animal body, provided that each animal body is appropriately identified and the declaration bears an indication of the identification number of each animal body covered by it, with the corresponding date, time and place of killing. All animal bodies covered by a single declaration may only be sent to a single game-handling establishment.

The head and the viscera need not accompany the body to the game-handling establishment, except in the case of species susceptible to trichinosis (porcine animals, solipeds and others), whose heads (except for tusks) and diaphragm must accompany the body.

However, the competent authority may authorise that heads of animals susceptible to *Trichinella* infestation be sent to a technical plant for the production of game trophies, which has been approved in accordance with Article 18 of Regulation (EC) No 1774/2002. The technical plant shall be indicated in the declaration of the trained person. A copy of that declaration shall be sent to the technical plant. Where the results of the *Trichinella* examination of the carcase are positive, the competent authority shall carry out an official check to verify the proper handling of the head in the technical plant.

However, hunters must comply with any additional requirements imposed in the Member State where hunting takes place, in particular to permit the monitoring of certain residues and substances in accordance with Directive 96/23/EC.’.

COMMISSION REGULATION (EU) No 151/2011**of 18 February 2011****amending Annex I to Regulation (EC) No 854/2004 of the European Parliament and of the Council
as regards farmed game****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption ⁽¹⁾, and in particular Article 17(1) thereof,

Whereas:

(1) Regulation (EC) No 854/2004 lays down specific rules for the organisation of official controls on products of animal origin intended for human consumption.

(2) Chapter VII of Section IV of Annex I to Regulation (EC) No 854/2004 sets out the specific requirements for official controls concerning farmed game and farmed game meat. One of those requirements is that the farmed game or the farmed game meat inspected is to be accompanied by a certificate conforming to one of the specimens set out in Chapter X of that Section.

(3) Regulation (EC) No 853/2004 of the European Parliament and the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin ⁽²⁾ provides that food business operators may slaughter farmed ruminants and certain farmed ungulates at the place of origin with the authorisation of the competent authority, subject to certain conditions. In particular, those conditions include that the slaughtered animals are to be accompanied to the slaughterhouse by a declaration by the food business operator who reared the animals and by a certificate issued and signed by the official or approved veterinarian. The certificate issued and signed by the official or approved veterinarian is to attest, inter alia, to correct slaughter and bleeding of the animal and the time and date of slaughter.

(4) Regulation (EC) No 853/2004, as amended by Commission Regulation (EU) No 150/2011 ⁽³⁾ permits that in certain cases, the attestation of the correct slaughter and bleeding of the animal and of the hour and date of slaughter be included in the declaration by the food business operator.

(5) In such cases, it is appropriate to provide that the official or approved veterinarian carry out regular checks on the performance of the persons carrying out the slaughter and bleeding of the animals. Chapter VII of Section IV of Annex I to Regulation (EC) No 854/2004 should therefore be amended accordingly.

(6) In addition, the specimen health certificate for animals slaughtered at the holding is set out in Part B of Chapter X of Section IV of Annex I to Regulation (EC) No 854/2004. That specimen health certificate also includes entries certifying that slaughter and bleeding were carried out correctly. For cases where such certification is made in the declaration by the food business operator a new specimen health certificate should be provided.

(7) Regulation (EC) No 854/2004 should therefore be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 854/2004 is amended in accordance with the Annex to this Regulation.

Article 2

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

⁽¹⁾ OJ L 139, 30.4.2004, p. 206.

⁽²⁾ OJ L 139, 30.4.2004, p. 55.

⁽³⁾ See page 14 of this Official Journal.

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

Done at Brussels, 18 February 2011.

For the Commission
The President
José Manuel BARROSO

ANNEX

Section IV of Annex I to Regulation (EC) No 854/2004 is amended as follows:

(1) Part A of Chapter VII is amended as follows:

(a) point 4 is replaced by the following:

‘4. A certificate conforming to the specimen in Chapter X, Part A, is to accompany live animals inspected at the holding. A certificate conforming to the specimen in Chapter X, Part B, is to accompany animals inspected and slaughtered at the holding. A certificate conforming to the specimen in Chapter X, Part C, is to accompany animals inspected and slaughtered at the holding in accordance with point 3a of Section III of Annex III to Regulation (EC) No 853/2004.’;

(b) the following point 5 is added:

‘5. When the competent authority authorises that the food business operator may attest the correct slaughter and bleeding of animals, the official veterinarian or approved veterinarian shall carry out regular checks on the performance of the person carrying out the slaughter and bleeding.’;

(2) in Chapter X, the following Part C is added:

‘C. SPECIMEN HEALTH CERTIFICATE FOR FARMED GAME SLAUGHTERED AT THE HOLDING in accordance with point 3a of Section III of Annex III to Regulation (EC) No 853/2004.

HEALTH CERTIFICATE

for farmed game slaughtered at the holding in accordance with point 3a of Section III of Annex III to Regulation (EC) No 853/2004

Competent service:

No:

1. Identification of the animals

Species:

Number of animals:

Identification marking:

2. Provenance of the animals

Address of holding of provenance:

Identification of house (*):

3. Destination of the animals

The animals will be transported to the following slaughterhouse:

.....

by the following means of transport:

4. Other relevant information

.....

5. Declaration

I, the undersigned, declare that:

— the animals described above were examined before slaughter at the abovementioned holding at
(time) on (date) and were found to be healthy,

— the records and documentation concerning these animals satisfied the legal requirements and did not prohibit slaughter of the animals.

Done at: ,
(Place)

on:
(Date)

Stamp

.....
(Signature of official or approved veterinarian)

.....
(*) optional.

COMMISSION REGULATION (EU) No 152/2011**of 18 February 2011****entering a name in the register of protected designations of origin and protected geographical indications (Chosco de Tineo (PGI))**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Pursuant to the first subparagraph of Article 6(2) of Regulation (EC) No 510/2006, Spain's application to register the name 'Chosco de Tineo' 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, 18 February 2011.

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

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ C 166, 25.6.2010, p. 8.

ANNEX

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

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

SPAIN

Chosco de Tineo (PGI)

COMMISSION REGULATION (EU) No 153/2011**of 18 February 2011****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 19 February 2011.

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

Done at Brussels, 18 February 2011.

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	IL	120,5
	MA	77,4
	TN	102,0
	TR	99,5
	ZZ	99,9
0707 00 05	JO	204,2
	MK	140,7
	TR	157,1
	ZZ	167,3
0709 90 70	MA	45,3
	TR	92,0
	ZZ	68,7
0805 10 20	EG	58,4
	IL	65,0
	MA	55,0
	TN	52,7
	TR	69,7
	ZZ	60,2
0805 20 10	IL	144,3
	MA	102,6
	TR	79,6
	US	107,8
	ZZ	108,6
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	70,4
	IL	81,1
	JM	80,9
	MA	111,9
	TR	51,9
	ZZ	79,2
0805 50 10	EG	62,1
	MA	49,3
	TR	39,7
	ZZ	50,4
0808 10 80	CA	112,7
	CM	53,6
	CN	104,3
	MK	55,8
	US	123,6
	ZZ	90,0
0808 20 50	AR	120,7
	CL	61,3
	CN	61,8
	US	113,5
	ZA	105,1
	ZZ	92,5

⁽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 154/2011**of 18 February 2011****amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EU) No 867/2010 for the 2010/11 marketing year**

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 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector ⁽²⁾, and in particular Article 36(2), second subparagraph, second sentence thereof,

Whereas:

- (1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups

for the 2010/11 marketing year are fixed by Commission Regulation (EU) No 867/2010 ⁽³⁾. These prices and duties have been last amended by Commission Regulation (EU) No 148/2011 ⁽⁴⁾.

- (2) The data currently available to the Commission indicate that those amounts should be amended in accordance with the rules and procedures laid down in Regulation (EC) No 951/2006,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EU) No 867/2010 for the 2010/11, marketing year, are hereby amended as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 19 February 2011.

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

Done at Brussels, 18 February 2011.

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 178, 1.7.2006, p. 24.

⁽³⁾ OJ L 259, 1.10.2010, p. 3.

⁽⁴⁾ OJ L 44, 18.2.2011, p. 26.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 19 February 2011

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 11 10 ⁽¹⁾	57,94	0,00
1701 11 90 ⁽¹⁾	57,94	0,00
1701 12 10 ⁽¹⁾	57,94	0,00
1701 12 90 ⁽¹⁾	57,94	0,00
1701 91 00 ⁽²⁾	53,60	1,39
1701 99 10 ⁽²⁾	53,60	0,00
1701 99 90 ⁽²⁾	53,60	0,00
1702 90 95 ⁽³⁾	0,54	0,20

⁽¹⁾ For the standard quality defined in point III of Annex IV to Regulation (EC) No 1234/2007.⁽²⁾ For the standard quality defined in point II of Annex IV to Regulation (EC) No 1234/2007.⁽³⁾ Per 1 % sucrose content.

COMMISSION REGULATION (EU) No 155/2011**of 18 February 2011****on the issue of import licences for applications submitted in the first seven days of February 2011
under the tariff quota for high-quality beef administered by Regulation (EC) No 620/2009**

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 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽²⁾, and in particular Article 7(2) thereof,

Whereas:

- (1) Commission Regulation (EC) No 620/2009 of 13 July 2009 providing for the administration of an import tariff quota for high-quality beef ⁽³⁾ sets out detailed rules for the submission and issue of import licences.
- (2) Article 7(2) of Regulation (EC) No 1301/2006 provides that in cases where quantities covered by licence appli-

cations exceed the quantities available for the quota period, allocation coefficients should be fixed for the quantities covered by each licence application. The applications for import licences submitted pursuant to Article 3 of Regulation (EC) No 620/2009 between 1 and 7 February 2011 exceed the quantities available. Therefore, the extent to which import licences may be issued and the allocation coefficient should be determined,

HAS ADOPTED THIS REGULATION:

Article 1

Import licence applications covered by the quota with order number 09.4449 and submitted between 1 and 7 February 2011 in accordance with Article 3 of Regulation (EC) No 620/2009, shall be multiplied by an allocation coefficient of 76,386457 %.

Article 2

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

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

Done at Brussels, 18 February 2011.

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 238, 1.9.2006, p. 13.

⁽³⁾ OJ L 182, 15.7.2009, p. 25.

DECISIONS

COMMISSION DECISION

of 15 September 2010

on State aid that Italy plans to grant to Fri-El Acerra Srl (Case C 8/09 (ex N 357/08))

(notified under document C(2010) 6159)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2011/110/EU)

THE EUROPEAN COMMISSION,

19 January 2009, which last was registered at the Commission on 21 January 2009 (A/1460).

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

- (4) On 10 March 2009 the Commission decided to initiate the procedure laid down in Article 108(2) TFEU in respect of the aid. The decision to initiate the procedure was published in the Official Journal on 24 April 2009 ⁽²⁾. The Commission there invited interested parties to submit their comments.

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

Having called on interested parties to submit their comments pursuant to those provisions ⁽¹⁾ and having regard to their comments,

- (5) On 15 May 2009 the recipient of the aid, Fri-El Acerra Srl, submitted its observations on the opening decision (A/11823). On 9 June 2009 these observations were sent to Italy for comment (D/52516). On 7 July 2009 the Italian authorities asked for a three-month extension of the deadline for the submission of comments (A/16162). On 20 August 2009 the Commission departments replied, allowing a further month for the submission of comments (D/53581). On 10 September 2009 the Italian authorities requested an urgent meeting to discuss the case with the Commission departments (A/19513). On 18 September 2009 the Italian authorities submitted comments for discussion at the meeting (A/20172); the meeting took place in Brussels on 24 September 2009, in the presence of the lawyers representing the granting authority (the Region of Campania) and the recipient (Fri-El Acerra Srl).

Whereas:

1. PROCEDURE

- (1) On 22 May 2008, a pre-notification meeting took place between the Commission departments and the Italian authorities.
- (2) By electronic notification dated 16 July 2008, registered at the Commission on the same day, the Italian authorities notified the Commission, pursuant to Article 108(3) TFEU, of their intention to grant ad hoc aid to Fri-El Acerra Srl.
- (3) By letters dated 2 September 2008 (D/53398) and 12 December 2008 (D/54895) the Commission requested additional information, which the Italian authorities provided by letters of 1 October 2008 (A/20101), 22 October 2008 (A/22018), and

- (6) By letter dated 21 October 2009 (D/54421) the Commission departments reminded the Italian authorities that at the meeting they had agreed to submit additional documents and information. The Italian authorities eventually provided this material on 2 November 2009, the consignment being registered at the Commission on the same day (A/23266). By letter dated 23 December 2009 (D/55541) the Commission departments asked the Italian authorities to submit further documents if available. By letter dated 1 February 2010 (A/1892) the Italian authorities provided various documents, mainly originating with the recipient of the aid. Italy submitted additional clarification by e-mail message of 5 May 2010.

⁽¹⁾ OJ C 95, 24.4.2009, p. 20.

⁽²⁾ OJ C 95, 24.4.2009, p. 20.

2. DETAILED DESCRIPTION OF THE AID MEASURE

- (7) The Italian authorities notified their intention to provide ad hoc regional aid to Fri-El Acerra Srl, in accordance with the guidelines on national regional aid for 2007–2013 ('the 2007 Guidelines')⁽³⁾, for the conversion of a closed thermoelectric power plant in Acerra in the Region of Campania into a power plant fuelled by vegetable oil (biofuel). Campania is a NUTS II region that qualifies for regional aid under Article 107(3)(a) TFEU, which in accordance with the Italian regional aid map 2007–2013 has a standard regional aid ceiling for large enterprises of 30 % gross grant equivalent (GGE)⁽⁴⁾. The Italian authorities intended the aid to promote regional development.

2.1. The recipient of the aid

- (8) The recipient of the aid is Fri-El Acerra Srl (hereinafter referred to as 'Fri-El Acerra' or 'the recipient'). Fri-El Acerra was set up on 20 December 2005, in the form of a private limited company (*società a responsabilità limitata*), 95 % of the shares being held by Fri-El Acerra Holding Srl and the remaining 5 % by NGP SpA, the owner of the closed thermoelectric plant. On 9 February 2006 NGP temporarily increased its equity share in Fri-El Acerra from 5 % to 90,5 %, against the transfer to Fri-El Acerra of the branch of NGP's business related to the power plant. A few days later, on 20 February 2006, NGP's stake was reduced to 49 %, and some months thereafter, on 10 October 2006, it was brought back to 5 %.
- (9) At the time the measure was notified, Fri-El Acerra was a 95 % subsidiary of Fri-El Acerra Holding, and the remaining 5 % belonged to NGP. In January 2009 the Italian authorities informed the Commission that on 11 December 2008 NGP had decided to withdraw from the ownership of Fri-El Acerra. At present, therefore, Fri-El is a wholly owned subsidiary of Fri-El Acerra Holding, and consequently of Fri-El Group Green Power SpA.
- (10) Fri-El Green Power SpA (the 'Fri-El Group') was set up in the Province of Bolzano in 1994, by the three Gostner brothers: it produces and sells electricity from renewable sources. The Fri-El Group operates especially in wind power production, producing electrical energy in 19 wind farms in Italy. The investment project in Acerra is the first in which the group to which the recipient belongs is to produce energy from liquid biomass: other biomass and biogas power plants are under development⁽⁵⁾.

- (11) NGP was set up in 2003, as a result of the divestment of polyester polymer production in Acerra by Montefibre, a producer of acrylic and polyester fibres. NGP ran into difficulties and received aid for restructuring, which was notified to the Commission (NN 15/2007, C 14/2007), to a total amount of EUR 20,87 million. The Commission approved the aid to NGP on 16 July 2008⁽⁶⁾. One component in the restructuring plan presented by the Italian authorities was the sale of the closed thermoelectric power plant.
- (12) The Italian authorities supplied data confirming that in 2006 the aid recipient and the Fri-El Group were both SMEs.
- (13) In the course of the assessment, the Italian authorities provided information about the changes in the structure of ownership of the aid recipient. This information showed that when ownership of the closed power plant was transferred, in February 2006, NGP, the former owner of the assets, owned 90,5 % of Fri-El Acerra's shares. Subsequently, in the course of 2006, NGP's stake in Fri-El Acerra decreased to 5 %.

2.2. The investment project

- (14) The notified investment project has been carried out in the Region of Campania, in the Acerra industrial area. A closed thermoelectric power plant belonging to NGP has been acquired and converted into a power plant fuelled by vegetable oil, principally palm oil.
- (15) The new power plant accommodates four Wärtsilä 18V46 combustion engines, each with a capacity of 17,2 MW, and one 6-MW steam turbine. Total production of electricity and heat is 74,8 MW.
- (16) The Italian authorities told the Commission that work on the project had started in July 2007 and was to be completed in 2009. However, the purchase of the old power plant was in fact initiated in February 2006. According to publicly available information, the biofuel power plant has been operational since 2009⁽⁷⁾.
- (17) The Italian authorities provided the Commission with authorisations and licences regarding the compliance of the investment project with national and European environmental regulations.

⁽³⁾ OJ C 54, 4.3.2006, p. 13.

⁽⁴⁾ Commission Decision of 28 November 2007 on state aid case N 324/2007 Italy: Regional state aid map 2007–2013, C(2007) 5618 def. cor. (OJ C 90, 11.4.2008, p. 4).

⁽⁵⁾ Information from the Internet site of the Fri-El Group: www.fri-el.it.

⁽⁶⁾ Commission Decision of 16 July 2008 on State aid C 14/07 (ex NN 15/07) implemented by Italy for NGP/SIMPE (OJ L 301, 12.11.2008, p. 14).

⁽⁷⁾ Information from the Internet site of the Fri-El Group: www.fri-el.it.

2.3. Eligible costs of the project

- (18) The total eligible investment costs of the project amount to EUR 80 635 000 in nominal value⁽⁸⁾, made up of EUR 3 300 000 for design and feasibility studies, EUR 60 920 000 for new equipment and machinery (the new biofuel power plant), and the remainder for existing infrastructure and building works. The cost of purchase of the existing infrastructure includes the cost of buying the closed thermoelectric power plant and the steel fuel tanks previously belonging to NGP.
- (19) The Italian authorities gave the Commission details of Fri-El Acerra's purchase of the closed power plant from NGP. The Italian authorities explained that when NGP had subscribed to the increase in Fri-El Acerra's capital it had transferred to Fri-El Acerra the branch of its business related to the power plant, at a total value of EUR 8 296 520; this was subject to EUR 3 771 043 in debts to third parties, and the difference, rounded to EUR 4 525 000, was allocated to reserves. The Italian authorities provided an external evaluation confirming the value of the power plant.
- (20) The Italian authorities also provided a copy of the agreement between Fri-El Acerra and NGP concerning the sale of fuel tanks. The price agreed was EUR 4 200 000. During the preliminary assessment stage, notwithstanding a request from the Commission, the Italian authorities did not present any external evaluation confirming the value of these fuel tanks.
- (21) The Italian authorities stated that the costs incurred by the recipient were EUR 35 000 000 in 2007 and EUR 45 635 000 in 2008.

2.4. Financing of the investment

- (22) The Italian authorities stated that EUR 21 000 000, equal to 25 % of the total EUR 80 635 000 cost of the investment (nominal value), was to be financed out of Fri-El Acerra's own resources; the aid would amount to EUR 19 000 000, and the rest would be covered by short-term and medium- to long-term bank loans.

2.5. Legal basis of the ad hoc aid measure

- (23) The Italian authorities stated that Fri-El Acerra had launched the investment project to convert the Acerra power plant in 2006 (on the date of the purchase of the closed power plant), on the basis of a commitment given by the Italian authorities under the Programme Agreement for Coordinated Action in the Industrial Crisis Area of NGP SpA in Acerra (*Accordo di programma per l'attuazione coordinata dell'intervento nell'area*

di crisi industriale della NGP Spa di Acerra). According to the Italian authorities, the incentive effect could be seen from the Programme Agreement, which was binding in law.

- (24) The Programme Agreement was concluded on 15 July 2005 between the national, regional and local authorities and NGP, Montefibre and Edison SpA, and concerns the NGP site and other activities in the Acerra zone. The agreement does not refer to aid for the conversion of the closed power plant. It lists investments to be carried out and measures to be taken with the aim of restructuring NGP. The energy company Edison SpA, which is not related to Fri-El Acerra, was cited at the time as a future investor in the existing power plant, but it ultimately withdrew from the transaction. The Programme Agreement was subsequently amended by a protocol of 6 April 2006⁽⁹⁾ and a protocol of 8 April 2008.
- (25) The decision of the Region of Campania to grant ad hoc regional aid to Fri-El Acerra for the conversion of the power plant in Acerra was taken on 26 October 2007.
- (26) In the initial notification the Italian authorities provided a chronology of events, and stated that the legal basis of the aid was provided by the following documents:
- the protocol of 8 April 2008 amending the Programme Agreement; and,
 - Resolution No 1857 of the Campania Regional Executive, 26 October 2007⁽¹⁰⁾.

2.6. The aid

- (27) The notified measure concerns aid for the takeover and the conversion of an existing establishment that has closed. The aid would be in the form of a direct grant totalling EUR 19,5 million in nominal value.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (28) After a preliminary assessment of the measure, the Commission expressed doubts as to whether the notified aid could be considered compatible with the internal market under Article 107(3)(c) TFEU in the light of the 2007 Guidelines, and decided to initiate the procedure laid down in Article 108(2) TFEU. The doubts expressed by the Commission in that decision are explained below.

⁽⁹⁾ The protocol itself is dated 6 April 2006, though its annexes were signed on 4 April 2006.

⁽¹⁰⁾ *Deliberazione della Giunta Regionale della Regione Campania n. 1857*, published in the official gazette of the Region of Campania (BURC), No 63 of 3 December 2007.

⁽⁸⁾ All values are nominal unless otherwise indicated.

Incentive effect

- (29) The Commission doubted whether the aid would have the incentive effect required by paragraph 38 of the 2007 Guidelines: 'In the case of ad hoc aid, the competent authority must have issued a letter of intent, conditional on Commission approval of the measure, to award aid before work starts on the project'. The document the Italian authorities referred to as the letter of intent — the Programme Agreement of 15 July 2005 — did not seem to fulfil these conditions: it did not grant aid for the project, nor did it mention the recipient, the project or the amount of the aid. The recipient of the aid was formally set up only later, on 20 December 2005. According to the information available to the Commission, the project had started in February 2006, with the takeover of the closed thermoelectric power plant, which was the first eligible cost for purposes of the aid measure notified, while the first document that could be considered a letter of intent within the meaning of paragraph 38 of the 2007 Guidelines had been issued by the Region of Campania much later, on 26 October 2007.

Eligible costs

- (30) The Commission also doubted whether part of the existing assets, namely the closed thermoelectric power plant, had been bought by an independent investor within the meaning of paragraphs 34 and 35 of the 2007 Guidelines, which read: 'In case of acquisition of an establishment, only the costs of buying assets from third parties should be taken into consideration ... The acquisition of the assets directly linked to an establishment may also be regarded as initial investment provided the establishment ... is bought by an independent investor'. At the time of the transaction, Fri-El Acerra, the recipient of the aid, was controlled by NGP, the owner of the assets being sold. More precisely, at the time that the transfer of assets took place, NGP owned 90,5 % of the shares in Fri-El Acerra: on 9 February 2006 Fri-El Acerra's capital had been increased from EUR 10 000 to EUR 100 000, and this capital increase had been subscribed exclusively by NGP. NGP had thus temporarily increased its equity share in Fri-El Acerra from 5 % to 90,5 %. After the transfer on 9 February 2006, the process which led to the withdrawal of NGP as majority shareholder in Fri-El Acerra was almost immediate. Only a few days later, on 20 February, NGP's stake was reduced to 49 %, and some months later, on 10 October, it was reduced to 5 %.

- (31) It was not clear whether the subsequent purchase from NGP of other existing assets — fuel tanks — had taken place 'under market conditions', as required by paragraphs 34 and 52 of the 2007 Guidelines. The Italian authorities had not provided a valuation by an independent expert clearly establishing the market price of the fuel tanks.

Contribution to regional development

- (32) The regional contribution of the ad hoc aid to Fri-El Acerra had not been demonstrated as required by paragraph 10 of the 2007 Guidelines: 'Where, exceptionally, it is envisaged to grant individual ad hoc aid to a single firm ... it is the responsibility of the Member State to demonstrate that the project contributes towards a coherent regional development strategy'. The creation (or maintenance) of 25 jobs, against aid of EUR 19,5 million, and the contribution of a biofuel power plant with a capacity of 75 MW to a regional energy deficit of 2 489 MW, did not appear to be sufficient, and the aid appeared to be disproportionate to the impact of the project. Nor had it been clearly shown that the project would contribute to a revitalisation of the industrial area of Acerra.
- (33) The Commission asked the Italian authorities and third parties for their observations on the question whether the new power plant fuelled by palm oil would indeed contribute to the development of the Acerra area and the Region of Campania.

Compliance with environmental rules

- (34) In the decision, the Commission also requested observations from the Italian authorities regarding the application of the Community guidelines on State aid for environmental protection ('the 2008 Environmental Guidelines') ⁽¹⁾.

4. OBSERVATIONS RECEIVED FROM THIRD PARTIES AND COMMENTS BY THE MEMBER STATE

- (35) As previously mentioned, the Commission received observations from the recipient of the aid, Fri-El Acerra, on 15 May 2009. The Italian authorities commented on those observations by letters of 18 September and of 2 November 2009. On 1 February 2010, following a further request from the Commission, the Italian authorities supplied the Commission with documents provided by the recipient.

4.1. Summary of the observations from the recipient, Fri-El Acerra

Incentive effect

- (36) With regard to the incentive effect, Fri-El Acerra refers to various documents signed by the Italian authorities between 2004 and 2008 with the aim of revitalising

⁽¹⁾ OJ C 82, 1.4.2008, p. 1.

the industrial area of Acerra. More specifically, Fri-El Acerra refers to the Memorandum of Understanding of 12 May 2004 ⁽¹²⁾, the Programme Agreement of 15 July 2005 ⁽¹³⁾, the amendment to the Programme Agreement of 6 April 2006 ⁽¹⁴⁾, Resolution No 1857 of the Regional Executive of Campania ⁽¹⁵⁾, and the amendment to the Programme Agreement of 8 April 2008 ⁽¹⁶⁾. Fri-El Acerra argues essentially that the doubts expressed by the Commission in the opening decision do not take proper account of these documents, and in particular of the Programme Agreement signed on 15 July 2005, which it says is an instrument that is legally binding with regard to the aid for all the steps it took subsequently.

- (37) The committee supervising the implementation of the Programme Agreement held two meetings, on 29 September and 6 October 2005, for which Italy provided the Commission with the minutes; at the second of these meetings the representative of NGP mentioned Fri-El Acerra as a potential investor, which had manifested interest in a takeover of the old power plant on the condition that the investment project would qualify for regional aid.
- (38) Fri-El Acerra considers that the legitimate expectation was reinforced by the first amendment to the Programme Agreement signed by the Italian authorities on 6 April 2006, Article 3 of which clearly referred to the Region of Campania's obligation to provide financial support for the new biofuel power plant project. Fri-El Acerra therefore takes the view that the Region of Campania was under a legal obligation to aid the investment long before 7 June 2006, when Fri-El Acerra formally submitted the first application for aid. The steps subsequently taken by the Region of Campania on 26 October 2007 and 8 April 2008 merely confirmed this obligation.

Eligible costs

- (39) On the question of eligible costs, Fri-El Acerra agrees with the Commission that at the time of the transfer of the assets (the closed power plant), the two

companies NGP and Fri-El Acerra were not independent, as NGP had 90,5 % control of Fri-El Acerra. However, Fri-El Acerra emphasises that the transaction did take place on market terms, as the purchase price was set at a value established by an independent expert. Fri-El Acerra adds that NGP's stake in Fri-El Acerra had fallen to 5 % by the end of 2006. In order to eliminate any possible doubt that there might be an advantage conferred on NGP, the Fri-El Group took over the remaining 5 % from NGP on 11 December 2008. Fri-El Acerra takes the view, therefore, that the transitional control by NGP did not reflect a medium- to long-term economic rationale, but was due to the specific mechanism chosen for the transfer of the assets (the closed power plant).

- (40) The price paid for the other assets Fri-El Acerra bought from NGP (the fuel tanks) was set in the preliminary purchase contract of 8 March 2006, and Fri-El Acerra confirms that it reflected the market value of the assets. In evidence Fri-El Acerra has produced a new document assessing the value of the fuel tanks, which was prepared by the same independent expert who assessed the value of the closed power plant. This new expert's report, drawn up *ex post* in 2009, during the formal investigation stage, refers expressly to the market prices of these used assets at November 2008 and confirms the price paid by the aid recipient to NGP.

Contribution to regional development

- (41) As to the project's contribution to regional development, Fri-El Acerra draws attention in the first place to the 25 jobs created. Fri-El Acerra also emphasises that the biofuel power plant forms part of the new development strategy for the Acerra industrial area. This development strategy takes account of the need for new investments with a low environmental impact, such as Fri-El Acerra's biofuel power plant. With the exception of the section formerly occupied by Montefibre, the Industrial Development Agency of the Province of Naples ⁽¹⁷⁾ intends to transform the area into an innovation pole for the aeronautic industry. All this would have a major impact on employment, on the environment and on social and economic conditions in the region, and Fri-El Acerra's biofuel power plant contributes positively to the strategy.

Compliance with environmental rules

- (42) As regards the environmental aspects, finally, Fri-El Acerra refers to the same programming documents of the Region of Campania previously mentioned by the Italian authorities: the 2002 guidelines for sustainable development in the energy sector, which set out the

⁽¹²⁾ The Memorandum of Understanding (*Protocollo d'intesa*) sought to secure a solution to the industrial crisis at NGP, and was signed on 12 May 2004 by, among others, national, regional and local authorities, Sviluppo Italia, Montefibre SpA, NGP SpA, Edison SpA and the trade unions.

⁽¹³⁾ Already referred to.

⁽¹⁴⁾ The first amendment to the Programme Agreement (*Protocollo integrativo dell'Accordo di programma*) sought to secure a solution to the industrial crisis at Ilmas SpA, and was signed on 6 April 2006 by, among others, national, regional and local authorities, Sviluppo Italia, Consorzio ASI di Napoli, Exide Italia Srl, ILMAS SpA and the trade unions.

⁽¹⁵⁾ Already referred to.

⁽¹⁶⁾ The second amendment to the Programme Agreement (*Protocollo integrativo dell'Accordo di programma*) was signed on 8 April 2008 by, among others, national, regional and local authorities, NGP and Fri-El Acerra.

⁽¹⁷⁾ Consorzio per l'Area di Sviluppo Industriale della Provincia di Napoli.

goals of the regional energy policy; the action plan for regional economic development of 2006; and the environmental energy plan of 2008. Fri-El Acerra considers that all these documents clearly point to the need for a power plant fuelled by renewable sources in the Region of Campania.

4.2. Summary of comments by the Member State

Incentive effect

- (43) In their letter of 18 September 2009, the Italian authorities submit detailed argument regarding the requirement of an incentive effect laid down in paragraph 38 of the 2007 Guidelines. In particular, they consider that the 2007 Guidelines do not clearly specify the form of the required letter of intent.
- (44) They repeat that the Programme Agreement signed on 15 July 2005 was of a binding nature, and reaffirm that the administrative proceedings started no later than the 2004 Memorandum of Understanding, which included a commitment on the part of the public authorities to provide incentives for the revitalisation of the Acerra industrial area. They observe that the first amendment to the Programme Agreement, dated 6 April 2006, contains an implicit reference to Fri-El Acerra, and that it states that the Region of Campania intends to provide incentives for the investment in the new power plant.
- (45) The Italian authorities argue that the identity of the private entities that are to implement the project is of absolutely marginal importance, as long as the project remains within the agreed scope and the agreed socio-economic and industrial aims. They stress that if the incentives had not been available the investor would not have located its operation in the area concerned, as can be seen from the minutes of the meeting of the committee supervising the implementation of the Programme Agreement held on 6 October 2005.

Eligible costs

- (46) The Italian authorities confirm Fri-El Acerra's position with regard to the mutual independence of Fri-El Acerra and NGP: the sole and exclusive project owner and recipient of the aid is Fri-El Acerra, a company wholly independent of NGP. NGP held a temporary stake in Fri-El Acerra only for a brief period, as a consequence of the mechanism chosen by the parties for transferring the power plant⁽¹⁸⁾. In their letter of 2 November 2009, the Italian authorities explain the reasons why the power plant was transferred from NGP to Fri-El Acerra, not by selling the assets, but by first transferring the business division to Fri-El Acerra and then transferring NGP's shareholding to the Fri-El Group; this was due essentially to (a) tax considerations; (b) the possibility of payment by instalments; and (c) authorisation issues.

- (47) As regards the determination of the value of the assets, the Italian authorities observe that for the closed power plant Fri-El Acerra paid the equivalent of the value arrived at by an independent expert, and that there appears therefore to be no possible doubt that the transfer of the power plant took place between independent parties, and that in any event it was undertaken on market terms.

- (48) The same considerations regarding the independence between NGP and Fri-El Acerra naturally also apply to the acquisition of the fuel tanks. Hence, the sale of the tanks was also between independent parties. And the parties determined the asset value of the tanks in strict adherence to market conditions, applying the same criteria and parameters that had been applied by the independent expert in the report valuing the power plant.

Contribution to regional development

- (49) As regards the regional contribution, the Italian authorities in their comments reaffirm that the investment project will:

- increase employment, by creating 25 jobs directly,
- produce a multiplier effect, as a result of the concentration of significant industrial initiatives on the Acerra site, with at least a further 10 jobs linked to the supply and storage of palm oil and assistance in transporting it,
- play a significant part in the development strategy for the Acerra industrial area, with the revitalisation of the area in social, industrial, and employment terms and the development in the area of a power plant with a low environmental impact,
- help to overcome the deficit in electrical power in the region in terms of quality of the energy, which will be produced from renewable sources (biofuels); with its output of 75 MW, the plant will play an important role in achieving the regional target of 200 MW from biomass by 2013 set in the Regional Environmental Energy Plan (PEAR) 2008.

- (50) With their letter of 2 November 2009 the Italian authorities enclose a memo from the Ministry of Economic Development, dated 21 October 2009, which they say will confirm the contribution the project will make to regional development. The Ministry there confirms the following:

⁽¹⁸⁾ The Commission observes that NGP held shares in Fri-El Acerra from the date on which Fri-El Acerra was set up, on 20 December 2005, until 11 December 2008.

- The Programme Agreement of 15 July 2005 focuses on: putting together a package of investments for the diversification of industrial activities in the area; modernising the main support infrastructure — the power plant and treatment plant — with a view among other things to reemploying redundant workers; and combining funding from central government and the Region of Campania in order to finance the incentives necessary to attract new investment.
- Three major economic and industrial objectives are to be pursued: (a) to avoid the closure of the newest part of the SIMPE (formerly NGP) establishment; (b) to launch a process of diversifying industrial activities on a site which in the past had been dominated by just one large business group, and thereby to reduce the risk of recurrent business crises; and (c) to exploit the potential of an industrial conurbation such as Acerra, which is particularly hard hit by unemployment and social difficulties.
- Great efforts have been made in all quarters to promote new investment aimed at giving shape to the 'industrial park' in Acerra proposed by the Region of Campania in the Programme Agreement,

Compliance with environmental rules

- (51) In their letter of 2 November 2009 the Italian authorities comment on the compliance of the power plant with the legal requirements governing energy sources and fuel supply, showing that the technology used allows the plant to be fuelled not only by palm oil but also by coconut, copra or rape-seed oil or other similar vegetable-based biofuels without prejudice to its normal operation or productivity.

4.3. Further documents originating with the recipient provided by the Member State

Incentive effect

- (52) On 23 December 2009, in order to have a full understanding of the decision-making process, the Commission departments asked the Italian authorities to provide any further documents available, dating from before the point at which Fri-El Acerra embarked upon the investment project, which might serve to justify the investment decision.
- (53) The Italian authorities answered on 1 February 2010, repeating that the minutes of the meeting of 6 October 2005 clearly identified the Fri-El Group as the alternative

investor after Edison's withdrawal. In these minutes, the NGP representative stated that the Fri-El Group expects regional support.

- (54) With their reply the Italian authorities enclosed a further letter from the recipient of the aid, enclosing internal documents of the Fri-El Group: a memo from a consultant, referring to the opportunity to take over NGP's power plant in Acerra after Edison's withdrawal; two subsequent contracts with the same consultant; and an internal report dated 26 January 2006, examining the financial feasibility of the project with and without regional aid

5. ASSESSMENT OF THE AID MEASURE

5.1. State aid

- (55) Article 107(1) TFEU states that 'Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.'
- (56) The aid is to be granted by the Italian authorities in the form of a direct grant. The assistance can thus be considered to be granted by the Member State and through state resources within the meaning of Article 107(1) TFEU.
- (57) The aid is to be granted to a single company, Fri-El Acerra, and is therefore selective.
- (58) The aid is to be granted for an investment relating to the production of energy. The electricity market has been gradually opened to competition, notably by Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity (OJ L 27, 30.1.1997, p. 20), a process that culminated in the full liberalisation of the sector on 1 July 2007⁽¹⁹⁾. Moreover, there was some competition in this sector in Italy even before the Community legislation⁽²⁰⁾. Since the product is traded between Member States, the measure is likely to affect trade between Member States.

⁽¹⁹⁾ The electricity market opened completely on 1 July 2007 under the terms of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC ('the Second Electricity Directive'), OJ L 17, 15.7.2003, p. 37.

⁽²⁰⁾ See Court of First Instance in Case T-297/02 *ACEA v Commission* [2009] ECR II-1683, paragraph 90, and Case T-301/02 *AEM v Commission* [2009] ECR II-1757, paragraph 95.

- (59) The aid granted to Fri-El Acerra will relieve the company from costs which, if it were to install a similar power station, it would ordinarily have to bear itself, and thus gives it an economic advantage over its competitors.
- (60) By favouring Fri-El Acerra and its product over its competitors, the measure distorts or threatens to distort competition.
- (61) Consequently, the Commission considers that the notified measure constitutes state aid within the meaning of Article 107(1) TFEU.
- (62) Having established that the notified measure constitutes state aid within the meaning of Article 107(1) TFEU, the Commission must consider whether it can be held to be compatible with the internal market.

5.2. Legality of the aid measure

- (63) By notifying the aid to Fri-El Acerra before putting it into effect, Italy has complied with the individual notification requirement laid down in Article 108(3) TFEU.

5.3. Legal basis of the assessment

- (64) Having established that the notified measure constitutes state aid within the meaning of Article 107(1) TFEU, the Commission must consider whether it can be held to be compatible with the internal market under one of the exemptions in Article 107(2) and (3) TFEU.

5.3.1. Article 107(2) TFEU

- (65) The exemptions in Article 107(2) TFEU concern aid having a social character granted to individual consumers, aid to make good the damage caused by natural disasters or exceptional occurrences, and aid granted to certain areas of the Federal Republic of Germany: they do not apply in this case.

5.3.2. Article 107(3)(a) TFEU

- (66) Article 107(3)(a) TFEU provides for the authorisation of aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. As explained

in section 2 of this Decision, the Region of Campania qualifies for aid under this exemption.

- (67) The Commission observes that the objective of the aid is to promote regional development, and the measure constitutes ad hoc regional aid towards an investment. The Commission notes that the investment project which the Italian authorities intend to support started in 2006. This raises the question whether the measure has to be assessed under the 2007 Guidelines or under the guidelines on national regional aid that covered the period 2000-2006 ('the 1998 Guidelines') ⁽²¹⁾.
- (68) Rules on the application *ratione temporis* of the two sets of guidelines are set out in paragraph 105 of the 2007 Guidelines: the 2007 Guidelines are to apply to all regional aid to be granted after 31 December 2006, and the 1998 Guidelines are to apply to all regional aid awarded or to be granted before 2007. In the present case, the aid was not awarded before 2007, despite the fact that the project started in 2006. The first act that can be considered an award of aid to the recipient is the decision of the Region of Campania of 26 October 2007 (see section 5.4.1.5) ⁽²²⁾. The compatibility of the aid with the internal market under Article 107(3)(a) TFEU has consequently to be assessed on the basis of the 2007 Guidelines.

5.3.3. Article 107(3)(b), (c) and (d) TFEU

- (69) The measure cannot be considered to be aid towards an important project of common European interest or aid to remedy a serious disturbance in the Italian economy, as provided for by Article 107(3)(b) TFEU. It is not aid to promote culture and heritage conservation as provided for by Article 107(3)(d) TFEU.
- (70) The exemption in Article 107(3)(c) TFEU allows the authorisation of aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest: the Commission notes that aid for the protection of the environment can be declared compatible on this basis, provided that it meets the conditions of the Community guidelines on State aid for environmental protection ('the 2008 Environmental Guidelines') ⁽²³⁾.

⁽²¹⁾ OJ C 74, 10.3.1998, p. 9.

⁽²²⁾ The Court of First Instance has held that in order to establish when aid was granted the relevant criterion is 'the legally binding act by which the competent [national] authorities undertake to grant aid': see Case T-109/01 *Fleuren Compost v Commission* [2004] ECR II-127, paragraph 74, and Joined Cases T-362/05 and T-363/05 *Nuova Agricast v Commission* [2008] ECR II-297*, paragraph 80. See also the recent judgment in Case T-62/08 *Thyssenkrupp Acciai Speciali Terni v Commission*, 1 July 2010, not yet published in the ECR, paragraphs 234-236.

⁽²³⁾ OJ C 82, 1.4.2008, p. 1.

- (71) The Italian authorities have not put forward any arguments to suggest the aid concerned might be compatible with other Treaty provisions or other state aid rules, frameworks or guidelines.

5.4. Compatibility under Article 107(3)(a) in the light of the 2007 Guidelines

- (72) The 2007 Guidelines set out the conditions for the approval of regional investment aid in sections 2 ('Scope') and 4 ('Regional investment aid'). The aid in the present case must comply with paragraph 10, on the contribution to be made by ad hoc measures to regional development strategy, and with sections 4.1 ('Form of aid and aid ceilings') and 4.2 ('Eligible expenses'), which lay down the following requirements:

— *Incentive effect*: In order to ensure that regional aid provides a real incentive to undertake investments which would not otherwise be made in the assisted areas, paragraph 38 of the 2007 Guidelines states that 'In the case of ad hoc aid, the competent authority must have issued a letter of intent, conditional on Commission approval of the measure, to award aid before work starts on the project'.

— *Contribution to a coherent regional development strategy*: Paragraph 10 of the 2007 Guidelines states that: 'Where, exceptionally, it is envisaged to grant individual ad hoc aid to a single firm ... it is the responsibility of the Member State to demonstrate that the project contributes towards a coherent regional development strategy'.

— *Eligible costs*: The precise definition of eligible costs is set out in paragraphs 34–36 and 50–56 of the 2007 Guidelines.

— *Recipient's own contribution*: Paragraph 39 of the 2007 Guidelines requires that the recipient provide a financial contribution of 25 %.

— *Maintenance of investment in the region*: Paragraph 40 of the 2007 Guidelines requires that the investment be maintained in the region for at least 5 years (or 3 years for an SME).

— *Aid ceilings*: Aid ceilings are set in paragraphs 42–49 of the 2007 Guidelines.

- (73) The Commission assessed the compliance of the proposed aid measure in paragraph 34, section 3.3 of the decision to initiate the formal investigation procedure⁽²⁴⁾. In paragraph 34(i) it explained that the measure concerned initial investment, namely the setting-up of a new establishment. The acquisition of assets directly linked to an establishment, in this case the closed thermoelectric power plant and the used fuel tanks, could also be regarded as initial investment, provided that the assets were bought by an independent investor (see paragraphs 34–35 of the 2007 Guidelines): this aspect will be assessed in section 5.4.3 below. Paragraph 34(vi) of the decision initiating the procedure stated that the recipient was to provide a financial contribution of at least 25 % of the eligible costs in a form free of any public support (see paragraph 39 of the 2007 Guidelines). Paragraph 34(vii) of the decision initiating the procedure stated that the aid was subject to an obligation to maintain the investment for at least 5 years after its completion (see paragraph 40 of the 2007 Guidelines). Paragraph 34(ii) and (iii) stated that the notified intensity of the aid was below the applicable regional aid ceiling of 30 % GGE adjusted in accordance with paragraph 67 of the 2007 Guidelines (see paragraphs 42–49 of the 2007 Guidelines). Paragraph 34(iv) stated that the aid towards the costs of preparatory studies and consultancy costs was below the ceiling of 50 % authorised for SMEs (see paragraph 51 of the 2007 Guidelines).

- (74) In what follows the Commission will assess compliance with the conditions relating to the incentive effect, to the contribution to regional development, and to eligible investment costs.

5.4.1. Incentive effect (paragraph 38 of the 2007 Guidelines)

- (75) Paragraph 38 of the 2007 Guidelines reads as follows:

— 'It is important to ensure that regional aid produces a real incentive effect to undertake investments which would not otherwise be made in the assisted areas. Therefore aid may only be granted under aid schemes if the beneficiary has submitted an application for aid and the authority responsible for administering the scheme has subsequently confirmed in writing that, subject to detailed verification, the project in principle meets the conditions of eligibility laid down by the scheme before the start of work on the project. An express reference to both conditions must also be included in all aid schemes. *In the case of ad hoc aid, the competent authority must have issued a letter of intent, conditional on Commission approval of the measure, to award aid before work starts on the project. If work begins before the conditions laid down in this paragraph are fulfilled, the whole project will not be eligible for aid.*'

⁽²⁴⁾ Decision on State aid case N 357/08, published OJ C 95, 24.4.2009, p. 20.

— Footnote 39 reads: ‘In the case of aid which is subject to individual notification to and approval by the Commission, confirmation of eligibility must be made conditional on the Commission decision approving the aid.’

— Footnote 40 reads: “‘Start of work’ means either the start of construction work or the first firm commitment to order equipment, excluding preliminary feasibility studies.’

— Footnote 41 reads: ‘The only exception to these rules is in the case of approved tax aid schemes where a tax exemption or reduction is granted automatically to qualifying expenditure without any discretion on the part of the authorities.’

(76) According to settled case-law:

The Commission can declare an aid measure compatible with Article 87(3) EC only if it can make a finding that the aid contributes to the achievement of one of the objectives listed, and that the recipient undertaking could not achieve that objective relying on its own resources under normal market conditions. In other words, in order for aid to benefit from one of the derogations contained in Article 87(3) EC, it must not only comply with one of the objectives set out in Article 87(3)(a), (b), (c) or (d) EC, but it must also be necessary for the attainment of those objectives (Court of First Instance in Case Case T-187/99 *Agrana Zucker und Stärke v Commission* [2001] ECR II-1587, paragraph 74).

Aid which improves the financial situation of the recipient undertaking without being necessary for the attainment of the objectives specified in Article 87(3) EC cannot be considered compatible with the common market (Court of Justice in Case C-390/06 *Nuova Agricast* [2008] ECR I-2577, paragraph 68; to the same effect Court of Justice in Case 310/85 *Deufl v Commission* [1987] ECR 901, paragraph 18, and Case C-400/92 *Germany v Commission* [1994] ECR I-4701, paragraphs 12, 20 and 21) ⁽²⁵⁾.

The Court of First Instance took the same approach in a case ⁽²⁶⁾ involving an ad hoc measure under the previous guidelines on national regional aid ⁽²⁷⁾, where it made it

clear that the provisions on the incentive effect also applied to ad hoc measures. It confirmed that the Commission could base its assessment of the incentive effect on a circumstance of a chronological nature ⁽²⁸⁾.

(77) The Commission’s settled practice in its decisions with regard to ad hoc aid measures to be approved under the 2007 Guidelines is that in order to be considered proof of incentive effect within the meaning of paragraph 38 of the 2007 Guidelines, the written confirmation provided by the authority responsible should specify at least the investment project to be supported, the amount of the eligible costs, and the amount of the aid, and should include the conditionality clause ⁽²⁹⁾.

(78) The Italian authorities and the recipient have submitted a number of documents which in their view constitute confirmation in writing within the scope of paragraph 38 of the 2007 Guidelines. The Commission will analyse each one of them, in order to verify whether it meets the conditions laid down in paragraph 38 of the 2007 Guidelines. Before doing so the Commission must determine the date on which realisation of the project began.

5.4.1.1. Date on which realisation of the project began

(79) The Italian authorities have stated that the realisation of the project began in July 2007. However, the Commission points out that the purchase of the closed thermoelectric power plant was initiated on 9 February 2006, with the transfer to Fri-El Acerra of the branch of NGP’s business related to the power plant. Since the acquisition of assets directly linked to an establishment (in this case the closed power plant) is regarded as an initial investment, the date on which realisation of the project began is the date of purchase of the closed thermoelectric power plant. The Commission consequently considers that the date on which the realisation of the project began is 9 February 2006. However, the Commission observes that its findings with regard to the incentive effect would remain unchanged if the view were to be taken that the relevant date was 4 August 2006, when Fri-El Acerra placed the order for the supply of the new power plant with Wärtsilä, or even 23-30 July 2007, when Fri-El Acerra started work on the construction of the new biofuel plant.

⁽²⁸⁾ *Kronoply v Commission*, paragraph 80.

⁽²⁹⁾ These conditions were met for example in the letter of intent (in the form of a written document signed by the recipient and the Region of Piedmont) in another recent Italian ad hoc regional aid case, Case N 381/2008 *Pirelli Industrie Pneumatici Srl* (OJ C 284, 25.11.2009), and also in a long list of Polish ad hoc regional aid cases: N 468/2009 *Roche Polska Sp z oo* (OJ C 53, 5.3.2010); N 448/2009 *Crisil Irevna Poland Sp z oo* (OJ C 147, 5.6.2010); N 447/2009 *TietoEnator Sp z oo* (OJ C 25, 2.2.2010); N 338/2009 *Unicredit Processes & Administration SA* (OJ C 93, 13.4.2010); N 293/2009 *Samsung Electronics Polska Sp z oo* (OJ C 94, 14.4.2010); N 433/2008 *UPS Polska Sp z oo* (OJ C 1, 5.1.2010); and N 67/2008 *Google Poland Sp z oo* (OJ C 217, 26.8.2008).

⁽²⁵⁾ Unofficial Commission translation. Court of First Instance in Case T-396/08 *Freistaat Sachsen v Commission*, 8 July 2010, not yet published in the ECR, paragraphs 46 and 47.

⁽²⁶⁾ Case T-162/89 *Kronoply v Commission* [2009] ECR II-1, paragraphs 80 and 81.

⁽²⁷⁾ OJ C 74, 10.3.1998, p. 9.

5.4.1.2. The Programme Agreement of 15 July 2005

(80) The Commission considers that this document, described in paragraphs 23 and 24, cannot be considered as written confirmation within the scope of Article 38 of the 2007 Guidelines, as it is concerned mainly with the rescue and restructuring plan for NGP ⁽³⁰⁾. The document does speak of the construction of a new power plant, but is referring to another company (Edison) and another project (a new 400 MW thermoelectric power plant), and does not mention any plan to grant aid towards that project. The Programme Agreement indicates only that NGP, Edison and the Italian authorities are to conclude a further agreement within 60 days, something that did not in fact happen. As explained in paragraph 24, Edison is a company completely unrelated to Fri-El Acerra

(81) The Italian authorities have argued that the 2007 Guidelines do not specify the precise form of the written confirmation required; the Commission considers that this argument does not justify the view that the requirements of paragraph 38 of the 2007 Guidelines are met by any document making a vague reference to a possible aid project. The Programme Agreement does not mention the investment project to be supported (the biofuel power plant), nor the amount of the eligible costs, nor the amount of the aid. It does not even mention that any aid is planned for the conversion of the closed power plant. The requirements for proof of incentive effect set out in paragraph 38 of the 2007 Guidelines clearly refer to an investment project; to aid; to a recipient; and to the need for Commission approval. A document establishing the incentive effect must contain all of this information.

(82) Nor can the Commission accept the Italian authorities' argument that the Programme Agreement has created a legitimate expectation that subsidies will be available for any project relating to the production of electricity in the Acerra industrial area: the Programme Agreement does not state that aid is to be granted for this purpose.

(83) The Commission concludes that the Programme Agreement of 15 July 2005 does not satisfy the tests of paragraph 38 of the 2007 Guidelines.

5.4.1.3. The amendment of 6 April 2006 to the Programme Agreement

(84) The Programme Agreement was amended on 6 April 2006 by the Region of Campania and NGP (see

paragraph 36 above). The amendment contains a reference to an alternative plan for the power plant, in which it would be converted to biofuel, and envisages aid for this project under a block-exempted scheme, namely measure 1.12 in the operational programme for the Region of Campania ⁽³¹⁾.

(85) However, that scheme could not cover the whole of the aid planned for the Fri-El Acerra project, because it excluded projects where the amount of aid would be substantial, i.e. projects with eligible costs above EUR 25 million and an aid intensity above 17,5 % GGE, and projects for which the total amount of aid was above EUR 15 million. The exempted scheme also excluded from the eligible costs the acquisition of used machinery and equipment ⁽³²⁾.

(86) Even if the Commission were to consider that the amendment of 6 April 2006 constituted a letter awarding aid (which it does not), the letter would not satisfy the tests of paragraph 38 of the 2007 Guidelines. First, the amendment came after the start of work (9 February 2006). Second, the amendment, like the original Programme Agreement, does not provide all the information required in a letter of intent: in particular, it does not indicate the amount of the eligible costs or the amount of aid to be granted, and does not contain a conditionality clause. Third, the letter refers expressly to a regional scheme that expired on 31 December 2006 ⁽³³⁾. The Commission has already decided that the incentive effect cannot be transferred from one aid scheme to another, because every scheme is independent and has its own conditions of eligibility ⁽³⁴⁾; this is all the more true when the national authorities have made reference to the prospect of assistance being provided under a specific scheme that

⁽³¹⁾ Measure covered by the SMEs scheme XS 67/05, published OJ C 19, 26.1.2006, p. 4. That scheme, exempted under Regulation (EC) No 70/2001 (OJ L 10, 13.1.2001, p. 33), expired on 31 December 2006.

⁽³²⁾ Resolution of the Campania Regional Executive (*Deliberazione della Giunta Regionale della Regione Campania*) No 168 of 15 February 2005, published in the *official gazette of the Region* (BURC), No 20 of 11 April 2005.

⁽³³⁾ The exempted SMEs scheme XS 67/05 referred to above.

⁽³⁴⁾ As in decision C(2008) 2997 final of 2 July 2008 on a State aid scheme (C 1/04 (ex NN 158/03 and CP 15/2003)): Misuse of aid measure N 272/98, Regional Act No 9 of 1998, where the Commission adopted a negative decision and ordered recovery. This approach has been upheld by the Court of First Instance: 'The general principle established by Article 87(1) EC is that state aid is prohibited. According to the case-law, exceptions to that principle are to be interpreted strictly ... It follows that a decision to raise no objection to an aid scheme relates only to the grant of aid under that scheme: it is for the national authorities concerned to grant the aid before that decision expires' (unofficial Commission translation; Joined Cases T-362/05 and T-363/05 *Nuova Agricast v Commission* [2008] ECR II-297*, paragraph 80). Thus the fact that a company meets the eligibility conditions of one aid scheme does not entitle it to obtain aid under another aid scheme or measure.

⁽³⁰⁾ Commission Decision of 16 July 2008 on State aid C 14/07 (ex NN 15/07) implemented by Italy for NGP/SIMPE, referred to above.

would not in fact allow the granting of aid of an amount such as that at issue here, or to a project of this size.

(87) The Commission concludes that the amendment of 6 April 2006 to the Programme Agreement of 15 July 2005 does not satisfy the tests of paragraph 38 of the 2007 Guidelines, and that in any event it dates from after the date on which the realisation of the project began.

(88) In the course of 2006, before the existing aid schemes expired, Fri-El Acerra applied for state aid twice: on 7 June 2006 it applied for EUR 30 000 000 under measure 1.12 in the operational programme for the Region of Campania 2000–2006, and on 18 December 2006 it applied for EUR 43 396 000 under the national scheme N 488/1992, as amended and approved as state aid measure N 715/99 ⁽³⁵⁾. The Commission is not aware of any positive reaction to those requests on the part of the Italian authorities. Nonetheless, Fri-El Acerra had already started work by taking over the assets from NGP in February 2006, and it placed the order for the supply of the new power plant with Wärtsilä on 4 August 2006. Finally, Fri-El Acerra started the construction work on 23–30 July 2007. Those applications consequently cannot be considered to be a letter of intent within the meaning of paragraph 38 of the 2007 Guidelines, and do not prove that the aid has a real incentive effect.

5.4.1.4. The authorisation of the Region of Campania dated 9 October 2006

(89) Another document dated 2006 which is mentioned by the Italian authorities in their comments, namely the authorisation granted by the Region of Campania on 9 October 2006 ⁽³⁶⁾, relates to administrative authorisations for the technical conversion of the existing power plant, and not to aid to be granted by the regional authorities for this purpose. Thus it cannot be considered a letter of intent within the meaning of paragraph 38 of the 2007 Guidelines; and it is dated after the date on which the realisation of the project began.

5.4.1.5. The decision of the Region of Campania dated 26 October 2007

(90) The Commission takes the view that the Resolution of the Campania Regional Executive of 26 October 2007 referred to in paragraphs 25, 26, 29 and 68 above (*Deliberazione della Giunta Regionale della Regione Campania No 1857*) is the first document issued by the Italian authorities which legally binds them to grant the aid to Fri-El Acerra and satisfies the tests of paragraph 38

of the 2007 Guidelines. This document clearly identifies the investment project (the biofuel power plant) and the amount of aid (maximum EUR 19,5 million), and is conditional on notification and Commission approval.

(91) Since work on the project began in February 2006, more than one and half years before the date of this document, the Commission considers that the notified project does not satisfy the tests of incentive effect laid down in paragraph 38 of the 2007 Guidelines ⁽³⁷⁾. The project was notified only on 16 July 2008. A decision of the Region taken in October 2007, containing a conditional commitment to grant aid, cannot be regarded as a decisive factor that provided Fri-El Acerra with an incentive to carry out an investment project that had in fact started with the purchase of the plant in February 2006. The decision of the Region taken in October 2007 cannot be considered sufficient to prove the incentive effect of the aid even if the date on which work started on the project is taken to be the date of the first construction work carried out by Fri-El Acerra, in July 2007, as that work also predated the decision.

5.4.1.6. The minutes of a meeting, held on 6 October 2005, of the committee supervising the implementation of the Programme Agreement of 15 July 2005

(92) As proof of the incentive effect for Fri-El Acerra's incentive project, the Italian authorities further refer to the minutes of a meeting, held on 6 October 2005, of the committee supervising the implementation of the Programme Agreement of 15 July 2005. At this meeting, according to the minutes, the NGP representative for the first time referred to the Fri-El Group as a potential investor that had manifested an interest in taking over the closed power plant. The Fri-El Group's interest was said to be motivated by the availability of regional aid to the industry which could reduce the financial costs at the site, which at the time was not very competitive.

(93) The Commission considers that the presence of this statement in the minutes does not point to a firm and binding intention on the part of the Italian authorities to grant aid to the investment project subject only to the Commission's approval. The statement comes from the representative of NGP, a company in difficulty that was looking for a buyer for its closed power plant. The minutes do not contain any statement on the part of the Italian authorities confirming that the Fri-El Group's expectations of regional investment aid would be fulfilled.

⁽³⁵⁾ Commission Decision D/105754 of 2 August 2000.

⁽³⁶⁾ *Decreto Dirigenziale* No 416, published BURC No 62, 26.11.2007.

⁽³⁷⁾ The 2007 Guidelines were published in the Official Journal on 4 March 2006, but Member States had been informed earlier. Press release IP/05/1653 ('State aid: Commission adopts new regional aid guidelines for 2007–2013') dates back to 21 December 2005.

- (94) The Commission stresses that a letter of intent clearly has to be a written document originating from the authority competent to grant the aid, and not from the representative of a company which is not the recipient of the aid and which has an interest in the sale of the asset in question (the thermoelectric plant). Moreover, these minutes do not meet the minimum requirements set out in paragraph 38 of the 2007 Guidelines for the content of a letter of intent.

5.4.1.7. Internal company documents

- (95) With regard to the other documents provided by the Italian authorities (see paragraph 54), the Commission considers that, in the light of the clear language of the last sentence of paragraph 38 of the 2007 Guidelines, and of the fact that a letter of intent must originate from the authority competent to grant the aid, the company's internal documents cannot be deemed equivalent to a letter of intent showing that the authorities intended to award aid for a regional investment project.
- (96) In any event, these documents tend in fact to confirm that the investment decision was taken without a firm and binding commitment on the part of the Italian authorities to grant aid. In particular, an internal report of 26 January 2006 assesses the financial feasibility of the project with and without regional aid. This shows that both hypotheses were being considered. The report concludes that if Fri-El Acerra did not receive regional investment aid the project would be less profitable and more risky. Nevertheless, just a couple of weeks thereafter, on 9 February 2006, Fri-El Acerra set the investment in motion by acquiring NGP's closed power plant. Neither the Italian authorities nor the recipient have argued that between 26 January 2006 and 9 February 2006 there was any event that might have indicated or confirmed the Italian authorities' intention to grant aid.

5.4.1.8. Conclusion: no incentive effect

- (97) The Commission therefore considers that the notified project does not fulfil the conditions with regard to the incentive effect of ad hoc aid set out in paragraph 38 of the 2007 Guidelines, which stipulates that the incentive effect has to be shown by a letter of intent from the authorities in charge, before work on the project starts, stating that the investment project is in principle eligible for aid subject to the Commission's approval.

5.4.2. Contribution to a coherent regional development strategy (paragraph 10 of the 2007 Guidelines)

- (98) The Commission repeats, first of all, that under paragraph 10 of the 2007 Guidelines ad hoc regional aid is to be considered admissible only by way of exception. Thus it is for the Member State to demon-

strate that ad hoc regional aid contributes to regional development by producing positive effects on such things as job creation (number of jobs directly and indirectly created by the investment), training and knowledge transfer, and spillover and multiplier effects generating further investment by related service providers and manufacturers, while limiting distortion of competition

- (99) The Commission takes account of the fact that the direct creation (or maintenance) of 25 jobs and the indirect creation of 10 jobs does represent a contribution to regional development. But the Commission considers that the number of jobs created is manifestly disproportionate to the amount to be given in aid, which is EUR 19,5 million, meaning that the ad hoc aid per directly created job is EUR 780 000; the disproportion is especially striking by comparison with a large number of ad hoc regional aid measures that the Commission has approved in recent years, where the average aid per job maintained or created was below EUR 70 000 ⁽³⁸⁾. This conclusion holds even when allowance is made for fact that the costs of job creation or maintenance may be vary between Member States.
- (100) The Commission considers, secondly, that the formal conditions laid down for energy production in the various regional development programming and planning documents ⁽³⁹⁾, in particular the target of 200 MW capacity for electricity generation from biomass by 2013 set in the regional environmental energy plan of 2008, do not provide a substantial and significant

⁽³⁸⁾ For examples see the following state aid cases: for Italy: N 381/2008, already referred to; for Poland: N 468/2009, already referred to; N 447/2009, already referred to; N 649/2008 *SWS Business Process Outsourcing Poland Sp z oo* (OJ C 122, 29.5.2009); N 522/2008 *Franklin Templeton Investments Poland Sp z oo* (OJ C 186, 8.8.2009); N 406/2008 *Robert Bosch Sp z oo* (OJ C 122, 29.5.2009); N 360/2008 *State Street Services (Poland) Limited Sp z oo* (OJ C 328, 31.12.2008); N 67/2008, already referred to; C 46/2008 *Dell Poland* (OJ L 22, 2.2.2010); N 299/2007 *Sharp Manufacturing Poland Sp z oo* (OJ C 20, 27.1.2009); NN 4/2007 *Delitissue Sp z oo* (OJ C 107, 11.5.2007); N 904/2006 *Funai Electric (Polska) Sp z oo* (OJ C 41, 15.2.2008); N 828/2006 *Bridgestone Stargard Sp z oo* (OJ C 278, 21.11.2007); N 535/2006 *Shell Polska Sp z oo* (OJ C 200, 28.8.2007); N 256/2006 *LG Electronics Wrocław Sp z oo* (OJ C 276, 17.11.2007); N 251/2006 *LG Innotek Poland Sp z oo* (OJ C 270, 13.11.2007); N 247/2006 *Lucky SMT Sp z oo* (OJ C 282, 24.11.2007); and N 630/2005 *MAN Trucks Sp z oo* (OJ C 126, 30.5.2006); for Romania: N 767/2007 *Ford Craiova* (OJ C 238, 17.9.2008); for Latvia: N 730/2007 *SIA Ekobriketes Karsava* (OJ C 210, 19.8.2008); and N 729/2007 *SIA Eko Osta Riga* (OJ C 80, 3.4.2009); for Slovakia: N 847/2006 *Samsung Electronics Co. Ltd* (OJ C 195, 19.8.2009); N 857/2006 *Kia Motors Slovakia* (OJ C 214, 13.9.2007); and N 651/2005 *INA Kysuce as* (OJ C 205, 5.9.2007); and for the Czech Republic: N 661/2006 *Hyundai Motor Manufacturing Czech sro* (OJ C 262, 1.11.2007).

⁽³⁹⁾ Annual update of the Regional Development Action Plan (PASER) under Article 27(1) of Regional Act No 1 of 19 January 2007, approved by the Campania Regional Executive on 30 May 2008, and Regional Environmental Energy Plan (PEAR) 2008.

argument for this ad hoc regional aid. The contribution of the Fri-El Acerra power plant, with a capacity of 74,8 MW and an output of 600 GWh per year, is marginal by comparison with the overall regional energy deficit of 15 000 GWh per year. The Commission considers that the existence of a functioning energy market renders this specific investment unnecessary. The Commission acknowledges that the investment project may help to achieve other formal targets set in various regional programming documents, but considers that its contribution in terms of energy produced from renewable sources is hardly a sufficient justification for ad hoc regional aid to a single company.

(101) At the notification stage the Italian authorities repeatedly argued that the power plant would produce energy for the Acerra industrial area, shielding enterprises to be established there from the risk of power failures. In the formal investigation stage this argument has been dropped, as Italy has confirmed that Fri-El Acerra must sell its output on the energy market by connecting to the national grid ⁽⁴⁰⁾. Thus one of the main arguments advanced in justification at the time of the notification has gone, because the energy produced by Fri-El Acerra is to be sold on the national energy market and the new biofuel power plant is directly connected to the national grid.

(102) In the light of the information provided by the Italian authorities during the formal investigation, the Commission takes note of the argument that the development of the Acerra industrial site might be adversely affected if the Fri-El Acerra investment project were to be discontinued, because this would give another negative signal to potential investors in the area, which is already hard hit by social and economic difficulties. The other enterprises that have manifested an interest in setting up on the site might withdraw, with a further negative impact on a run-down urban area already in crisis. However, it must be pointed out that if an aid measure has no incentive effect *ex ante*, the fact that the Commission declares it incompatible cannot prevent other investors from locating on the same industrial site or deprive other aid measures of their own incentive effect.

(103) Finally, the Commission observes that the Italian authorities have not provided specific data to show that the investment would produce a transfer of training or knowledge, a spillover effect or a multiplier effect similar

to the effects demonstrated in most ad hoc regional aid cases approved by the Commission in recent years ⁽⁴¹⁾.

(104) For the reasons set out here, and taking account of the practice followed in the past and of all possible relevant factors (the number of jobs created directly and indirectly by the project is limited, the contribution to the regional energy policy is negligible, there would be no direct energy supply to the industrial area, there would be no spillover effects, and above all the amount of aid per job created or maintained would clearly be excessive), the Commission concludes that the investment does not contribute to a coherent regional development strategy, as required by paragraph 10 of the 2007 Guidelines.

5.4.3. Eligible costs (paragraphs 34–36 and 50–56 of the 2007 Guidelines)

(105) Notwithstanding the economic rationale put forward by the Italian authorities, the transfer of the assets (the power plant) from NGP to Fri-El Acerra did not take place in full observance of the rules. The purchaser, Fri-El Acerra, confirms that at the time of the transfer it was 90,5 % controlled by NGP.

(106) Nevertheless, NGP's temporary stake in Fri-El Acerra seems to be linked to the chosen method for transferring the existing plant between two formally independent parties, in which a branch of the business of one was passed to the other as a contribution in kind to capital. The branch of NGP's business became a contribution to the joint venture, and the shares were then sold to the Fri-El Group; when the transaction was complete, the two companies were again independent. The requirement that the price of the closed thermoelectric power plant be assessed by an independent valuer has been complied with, in line with the principles and the purpose of paragraph 35 of the 2007 Guidelines.

(107) The Commission concludes that in formal terms the transfer of the closed thermoelectric power plant did not comply fully with paragraph 35 of the 2007 Guidelines, under which an establishment must be 'bought by an independent investor', but that the substance of that paragraph has in any event been respected. The price paid by Fri-El Acerra for the closed power plant was the value assessed by an independent expert, and shortly after completion of the transfer of the assets the buyer became independent of the seller, NGP.

⁽⁴⁰⁾ This is confirmed by the presence of Fri-El Acerra on the list of energy operators published by the organisation managing energy markets, Gestore del Mercato dell'Energia, at <http://www.mercatoelettrico.org/>

⁽⁴¹⁾ See footnote 38.

- (108) With regard to the other used assets included in the eligible costs, the Commission accepts the reasoning put forward by the Italian authorities and by Fri-El Acerra that even if there was no formal ex ante valuation by an independent expert, the transfer of the used fuel tanks took place between two independent parties at arm's length. The price paid for these assets corresponds to the market price, as confirmed in the new document drawn up by the same independent expert that had previously assessed the value of the closed power plant.
- (109) Consequently, the acquisition of these assets directly linked to the establishment, i.e. the closed thermoelectric power plant and the used fuel tanks, can be considered to be initial investment within the meaning of paragraph 35 of the 2007 Guidelines.

5.4.4. *Compatibility with the 2007 Guidelines*

- (110) While some of the requirements for regional investment aid set out in the 2007 Guidelines are fulfilled, therefore, the Commission concludes that the obligations for regional ad hoc aid to an investment project in terms of incentive effect and regional contribution are not met. The Commission concludes that the measure cannot be declared compatible under Article 107(3)(a) TFEU and the 2007 Guidelines.

5.5. **Compatibility with the 2008 Environmental Guidelines**

- (111) Neither at the preliminary assessment stage nor at the formal investigation stage have the Italian authorities responded to the Commission's observation that the 2008 Environmental Guidelines seem more relevant to the assessment of measures of this kind, where the objectives have to do with energy and the environment, and the investment is in a biofuel plant.
- (112) Section 1.3.4 of the 2008 Environmental Guidelines requires a measure to have an incentive effect. Point 27 provides, therefore, that 'it needs to be verified that the investment concerned would not have been undertaken without any State aid.'
- (113) In the present case, as explained in section 5.4.1 above, the investment was undertaken before the authority that was competent to grant the aid had expressed any firm intention actually to do so. The notified aid consequently cannot have any incentive effect, and for this reason alone the tests of the Environmental Guidelines 2008 are not satisfied.

- (114) In addition, the Commission observes that despite an express invitation to that effect Italy has not provided the information necessary to demonstrate that the measure meets the conditions for investment aid for renewable energy set out in the Environmental Guidelines 2008 (points 102-106).
- (115) It is for the Member State to demonstrate that an aid measure is compatible⁽⁴²⁾. As Italy has not provided information on this point the Commission does not possess sufficient information to reach a conclusion regarding compliance with the other criteria of the 2008 Environmental Guidelines.
- (116) The Commission concludes that the aid measure cannot be declared compatible with the internal market under Article 107(3)(c) TFEU or with the 2008 Environmental Guidelines, or with any of the other exemption clauses in the TFEU. The measure should therefore be prohibited.

6. **CONCLUSIONS**

- (117) In its decision to initiate the formal investigation procedure, the Commission explained why it doubted that the measure under scrutiny would qualify for exemption under Article 107(3)(a) TFEU; the reasons are summarised in section 3 of this Decision. Those doubts have not been entirely dispelled by the information and argument in the observations supplied by the Italian authorities and the recipient of the aid.
- (118) The Commission concludes that the notified ad hoc regional aid to be granted by the Italian authorities to Fri-El Acerra, described in section 2 of this Decision, does not satisfy all the tests set out in the 2007 Guidelines for compatibility with the internal market under Article 107(3)(a) TFEU, nor all the tests set out in the 2008 Environmental Guidelines for compatibility with the internal market under Article 107(3)(c) TFEU. There are no other grounds for compatibility that might apply.
- (119) As it does not qualify for any of the other exemptions set out in the TFEU, the aid measure may not be implemented. According to the Italian authorities, the aid has not yet been granted; there is consequently no need to order its recovery,

⁽⁴²⁾ See Court of Justice in Joined Cases C-278/92 to C-280/92 *Spain v Commission* [1994] ECR I-4103, paragraph 49, and Court of First Instance in Case T-176/01 *Ferriere Nord v Commission* [2004] ECR II-3931, paragraph 94.

HAS ADOPTED THE FOLLOWING DECISION:

Article 1

The state aid which Italy plans to grant to Fri-El Acerra Srl, amounting to EUR 19,5 million, is incompatible with the internal market.

Consequently, the aid may not be implemented.

Article 2

Within 2 months of notification of this Decision, Italy shall inform the Commission of the measures taken to comply with it.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 15 September 2010.

For the Commission
Joaquín ALMUNIA
Vice-President

COMMISSION DECISION

of 18 February 2011

authorising France, pursuant to Council Directive 92/66/EEC, to transport day-old chicks and ready-to-lay pullets outside the protection zone established due to an outbreak of Newcastle disease in the department of Côtes d'Armor

*(notified under document C(2011) 869)***(Text with EEA relevance)****(Only the French text is authentic)**

(2011/111/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 92/66/EEC of 14 July 1992 introducing Community measures for the control of Newcastle disease ⁽¹⁾, and in particular Article 9(2)(f)(ii) thereof,

Whereas:

- (1) Directive 92/66/EEC defines the Union control measures to be applied in the event of an outbreak of Newcastle disease in poultry or in racing pigeons and other birds kept in captivity. Pursuant to that Directive, once the diagnosis of Newcastle disease has been officially confirmed in poultry, the Member State concerned is to ensure that the competent authority establishes around the infected holding a protection zone based on a minimum radius of 3 kilometres, itself contained in a surveillance zone based on a minimum radius of 10 kilometres.
- (2) The measures applied in the protection zone are to include a prohibition on removing poultry and hatching eggs from the holding on which they are kept, unless the competent authority has authorised the transport under certain conditions.
- (3) In particular, the competent authority may authorise the transport of day-old chicks or ready-to-lay pullets only to a holding within the surveillance zone at which there are no other poultry. However, Member States in which the transport of such chicks and pullets to a holding situated within the surveillance zone is not possible are to be authorised, in accordance with the procedure laid down in Directive 92/66/EEC, to have the chicks and pullets transported to a holding outside the surveillance zone.
- (4) On 3 January 2011 France confirmed an outbreak of Newcastle disease in a holding of meat pigeons in the municipality of Langoat, in the department Côtes d'Armor. A protection and a surveillance zone had already been established around that holding on 30 December 2010.
- (5) On 4 January 2011 France informed the Commission about the confirmation of the outbreak and the control measures adopted, including the prohibition of the movement and transport of poultry outside the established protection and surveillance zones, as provided for in Directive 92/66/EEC.
- (6) The protection zone established by France comprises holdings with a considerable output of day-old chicks and ready-to-lay pullets and the holdings situated in the surveillance zone do not have sufficient capacity to receive that output. France has therefore informed the Commission that the transport of day-old chicks or ready-to-lay pullets to a holding situated within the surveillance zone is not possible.
- (7) As a consequence, France has requested an authorisation to transport such chicks and pullets to holdings located outside the surveillance zone. Day-old chicks and ready-to-lay pullets originating from the holdings situated in the protection zone would remain in France.
- (8) It is appropriate to provide for the requested authorisation subject to the condition that France takes strict control and precaution measures in accordance with Directive 92/66/EEC, that guarantee that there is no risk of spread of Newcastle disease.
- (9) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

⁽¹⁾ OJ L 260, 5.9.1992, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

France may authorise the transport of day-old chicks and ready-to-lay pullets originating from holdings located in the protection zone established on 30 December 2010 around a holding of meat pigeons located in the municipality of Langoat, in the department of Côtes d'Armor, to other poultry holdings located on its territory, subject to the following conditions:

- (a) the dispatch of day-old chicks or ready-to-lay pullets must be notified at least 24 hours in advance by the competent authority responsible for the holding of origin to the competent authority of the holding of destination;
- (b) vehicles transporting the day-old chicks or ready-to-lay pullets must be sealed by the competent authority before departure;
- (c) at the time of sealing of the vehicles as referred to in point (b), the competent authority must record the registration number of the vehicle and the number of the day-old chicks or ready-to-lay pullets transported;
- (d) on arrival to the holding of destination, the competent authority must:
 - (i) inspect and remove the seal on the vehicle;

- (ii) be present at the unloading of the day-old chicks or ready-to-lay pullets;

- (iii) record the registration number of the vehicle and the number of day-old chicks or ready-to-lay pullets transported;

- (e) any vehicle carrying day-old chicks or ready-to-lay pullets must undergo, immediately following unloading, cleaning and disinfection under official control and in accordance with the instructions of the competent authority;

- (f) the holding of destination must be placed under official control for at least 21 days.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 18 February 2011.

For the Commission

John DALLI

Member of the Commission

COMMISSION DECISION

of 18 February 2011

amending Decision 2008/620/EC establishing a specific control and inspection programme related to the cod stocks in the Kattegat, the North Sea, the Skagerrak, the eastern Channel, the waters west of Scotland and the Irish Sea

(notified under document C(2011) 899)

(2011/112/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 ⁽¹⁾, and in particular Article 95 thereof,

Whereas:

- (1) Commission Decision 2008/620/EC ⁽²⁾ establishes a specific control and inspection programme applicable for a period of 3 years to ensure the harmonised implementation of the measures laid down for the recovery of cod stocks in the Kattegat, the North Sea, the Skagerrak, the eastern Channel, the waters west of Scotland and the Irish Sea.
- (2) The specific control and inspection programme is necessary for the organisation of operational cooperation between Member States concerned and to allow the Community Fisheries Control Agency to organise joint deployment plans in accordance with Article 9 of Council Regulation (EC) No 768/2005 ⁽³⁾.

- (3) In order to ensure the continued harmonised implementation of the measures established for the recovery of the cod stocks, the specific control and inspection programme should be extended for a period of 1 year.

- (4) Decision 2008/620/EC should therefore be amended accordingly.

- (5) The measures provided for in this Decision are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS DECISION:

Article 1

In Article 2 of Decision 2008/620/EC, the introductory phrase is replaced by the following:

‘The specific control and inspection programme referred to in Article 1 shall apply for 4 years and cover:’

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 18 February 2011.

For the Commission

Maria DAMANAKI

Member of the Commission

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ OJ L 198, 26.7.2008, p. 66.

⁽³⁾ OJ L 128, 21.5.2005, p. 1.

COMMISSION DECISION

of 18 February 2011

on the clearance of the accounts of a paying agency in Italy concerning expenditure financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, for the 2006 financial year

*(notified under document C(2011) 911)***(Only the Italian text is authentic)**

(2011/113/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy ⁽¹⁾, and in particular Article 7(3) thereof,

Having regard to Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy ⁽²⁾, and in particular Articles 30 and 32(8) thereof,

After consulting the Committee on the Agricultural Funds,

Whereas:

- (1) Commission Decisions 2007/327/EC ⁽³⁾, 2008/394/EC ⁽⁴⁾ and 2010/61/EU ⁽⁵⁾ cleared, for the 2006 financial year, the accounts of all the paying agencies except for the Italian paying agency 'ARBEA'.
- (2) Following the transmission of new information and after additional checks, the Commission can now take a decision on the integrality, accuracy and veracity of the accounts submitted by the Italian paying agency 'ARBEA'.
- (3) The second subparagraph of Article 7(1) of Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section ⁽⁶⁾ lays down that the amounts that are recoverable from, or payable to, each Member State, in accordance with the accounts clearance decision referred to in the first subparagraph, shall be determined by deducting advances paid during the financial year in question, i.e. 2006, from expenditure recognised for

that year in accordance with the first subparagraph. Such amounts are to be deducted from, or added to advances against expenditure from the second month following that in which the accounts clearance decision is taken.

- (4) Pursuant to Article 32(5) of Regulation (EC) No 1290/2005, 50 % of the financial consequences of non-recovery of irregularities shall be borne by the Member State concerned and 50 % by the EU budget if the recovery of those irregularities has not taken place within 4 years of the primary administrative or judicial finding, or within 8 years if the recovery is taken to the national courts. Article 32(3) of the said Regulation obliges Member States to submit to the Commission, together with the annual accounts, a summary report on the recovery procedures undertaken in response to irregularities. Detailed rules on the application of the Member States' reporting obligation of the amounts to be recovered are laid down in Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD ⁽⁷⁾. Annex III to the said Regulation provides the model tables 1 and 2 that had to be provided in 2007 by the Member States. On the basis of the tables completed by the Member States, the Commission should decide on the financial consequences of non-recovery of irregularities older than 4 or 8 years respectively. This decision is without prejudice to future conformity decisions pursuant to Article 32(8) of Regulation (EC) No 1290/2005.
- (5) Pursuant to Article 32(6) of Regulation (EC) No 1290/2005, Member States may decide not to pursue recovery. Such a decision may only be taken if the costs already and likely to be incurred total more than the amount to be recovered or if the recovery proves impossible owing to the insolvency, recorded and recognised under national law, of the debtor or the persons legally responsible for the irregularity. If that decision has been taken within 4 years of the primary administrative or judicial finding, or within 8 years if the recovery is taken to the national courts, 100 % of the financial consequences of the non-recovery should be borne by the EU budget. In the summary report referred to in Article 32(3) of Regulation (EC) No 1290/2005 the amounts for which the Member State decided not to pursue recovery and the grounds for the decision are shown. These amounts are not charged

⁽¹⁾ OJ L 160, 26.6.1999, p. 103.

⁽²⁾ OJ L 209, 11.8.2005, p. 1.

⁽³⁾ OJ L 122, 11.5.2007, p. 51.

⁽⁴⁾ OJ L 139, 29.5.2008, p. 22.

⁽⁵⁾ OJ L 34, 5.2.2010, p. 33.

⁽⁶⁾ OJ L 158, 8.7.1995, p. 6.

⁽⁷⁾ OJ L 171, 23.6.2006, p. 90.

to the Member States concerned and are consequently to be borne by the EU budget. This decision is without prejudice to future conformity decisions pursuant to Article 32(8) of the said Regulation.

- (6) In clearing the accounts of the paying agencies concerned, the Commission must take account of the amounts already withheld from the Member States concerned on the basis of Decisions 2007/327/EC, 2008/394/EC and 2010/61/EU.
- (7) In accordance with the second subparagraph of Article 7(3) of Regulation (EC) No 1258/1999 and Article 7(1) of Regulation (EC) No 1663/95, this Decision does not prejudice decisions taken subsequently by the Commission excluding from EU financing expenditure not effected in accordance with EU rules,

HAS ADOPTED THIS DECISION:

Article 1

The accounts of the Italian paying agency 'ARBEA' concerning expenditure financed by the European Agricultural Guidance

and Guarantee Fund (EAGGF), Guarantee Section, in respect of the 2006 financial year, are hereby cleared.

The amounts which are recoverable from, or payable to, each Member State concerned pursuant to this Decision, including those resulting from the application of Article 32(5) of Regulation (EC) No 1290/2005, are set out in the Annex.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 18 February 2011.

For the Commission

Dacian CIOLOŞ
Member of the Commission

CLEARANCE OF THE PAYING AGENCIES' ACCOUNTS

FINANCIAL YEAR 2006

Amount to be recovered from or paid to the Member State

MS		2006 — Expenditure/Assigned Revenue for the Paying Agencies for which the accounts are		Total a + b	Reductions and suspensions for the whole financial year ⁽¹⁾	Reductions according to Article 32 of Regulation (EC) No 1290/2005	Total including reductions and suspensions	Payments made to the Member State for the financial year	Amount to be recovered from (–) or paid to (+) the Member State ⁽²⁾	Amount recovered from (–) or paid to (+) the Member State under Decision 2007/327/EC	Amount recovered from (–) or paid to (+) the Member State under Decision 2008/394/EC	Amount recovered from (–) or paid to (+) the Member State under Decision 2010/61/EU	Amount to be recovered from (–) or paid to (+) the Member State under this decision
		cleared	disjoined										
		= expenditure/assigned revenue declared in the annual declaration	= total of the expenditure/assigned revenue in the monthly declarations										
		a	b	c = a + b	d	e	f = c + d + e	g	h = f – g	i	i'	i'	j = h – i – i' – i'
IT	EUR	5 471 096 343,07	0,00	5 471 096 343,07	– 50 445 262,13	– 124 588 830,86	5 296 062 250,08	5 460 957 034,26	– 164 894 784,18	– 24 758 663,41	– 140 136 120,77	0,00	0,00

MS		Expenditure ⁽³⁾	Assigned revenue ⁽³⁾	Sugar Fund		Article 32 (= e)	Total (= j)
				Expenditure ⁽⁴⁾	Assigned revenue ⁽⁴⁾		
		05 07 01 06	6701	05 02 16 02	6803	6702	
		k	l	m	n	o	p = k + l + m + n + o
IT	EUR	0,00	0,00	0,00	0,00	0,00	0,00

⁽¹⁾ The reductions and suspensions are those taken into account in the payment system, to which are added in particular the corrections for the non-respect of payment deadlines established in August, September and October 2006.

⁽²⁾ For the calculation of the amount to be recovered from or paid to the Member State the amount taken into account is, the total of the annual declaration for the expenditure cleared (column a) or, the total of the monthly declarations for the expenditure disjoined (column b).

⁽³⁾ If the Assigned revenue part would be in advantage of Member State, it has to be declared under 05 07 01 06.

⁽⁴⁾ If the Assigned revenue part of the Sugar Fund, would be in the advantage of the Member State, it has to be declared under 05 02 16 02.

NB: Nomenclature 2011: 05 07 01 06, 05 02 16 02, 6701, 6702, 6803.

COMMISSION DECISION

of 18 February 2011

amending Decision 2008/589/EC establishing a specific control and inspection programme related to the cod stocks in the Baltic Sea

(notified under document C(2011) 938)

(2011/114/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 ⁽¹⁾, and in particular Article 95 thereof,

Whereas:

- (1) Commission Decision 2008/589/EC ⁽²⁾ establishes a specific control and inspection programme applicable for a period of 3 years to ensure the harmonised implementation of the multiannual plan set up by Council Regulation (EC) No 1098/2007 ⁽³⁾ for cod stocks in the Baltic Sea and the fisheries exploiting those stocks.
- (2) The specific control and inspection programme is necessary for the organisation of operational cooperation between Member States concerned and to allow the Community Fisheries Control Agency to organise joint deployment plans in accordance with Article 9 of Council Regulation (EC) No 768/2005 ⁽⁴⁾.

(3) In order to ensure the continued harmonised implementation of the multiannual plan set up by Regulation (EC) No 1098/2007, the specific control and inspection programme should be extended for a period of 1 year.

(4) Decision 2008/589/EC should therefore be amended accordingly.

(5) The measures provided for in this Decision are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS DECISION:

Article 1

In Article 2 of Decision 2008/589/EC, paragraph 2 is replaced by the following:

‘2. The specific control and inspection programme shall apply for 4 years.’

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 18 February 2011.

For the Commission

Maria DAMANAKI

Member of the Commission

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ OJ L 190, 18.7.2008, p. 11.

⁽³⁾ OJ L 248, 22.9.2007, p. 1.

⁽⁴⁾ OJ L 128, 21.5.2005, p. 1.

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2010 OF THE COMMITTEE ESTABLISHED UNDER THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE SWISS CONFEDERATION ON MUTUAL RECOGNITION IN RELATION TO CONFORMITY ASSESSMENT

of 18 October 2010

**on the amendment of Chapter 12 on Motor vehicles of Annex 1 and on the inclusion in Annex 1 of
a new Chapter 18 on Biocidal products**

(2011/115/EU)

THE COMMITTEE,

Having regard to the Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment ('the Agreement'), and in particular Articles 10(4), 10(5) and 18(2) thereof;

Whereas:

- (1) The European Union has adopted a new framework directive on motor vehicle type approval⁽¹⁾ and Switzerland has amended its legislative, regulatory and administrative provisions deemed equivalent pursuant to Article 1(2) of the Agreement to the abovementioned European Union legislation.
- (2) Chapter 12, Motor vehicles, of Annex 1 should be amended to reflect these developments.
- (3) Article 10(5) of the Agreement provides that the Committee may, on a proposal from one of the Parties, modify the Annexes to the Agreement,

HAS DECIDED AS FOLLOWS:

1. Chapter 12, Motor vehicles, of Annex 1 to the Agreement is amended in accordance with the provisions set out in Attachment A annexed to this Decision.
2. Annex 1 on Product Sectors to the Agreement is modified in order to include a new Chapter 18 on Biocidal products in accordance with the provisions set out in Attachment B annexed to this Decision.
3. This Decision, done in duplicate, shall be signed by representatives of the Committee who are authorised to act on behalf of the Parties. This Decision shall be effective from the date of the later of these signatures.

Signed at Bern, 18 October 2010.

On behalf of the Swiss Confederation

Heinz HERTIG

Signed at Brussels, 12 October 2010.

On behalf of the European Union

Fernando PERREAU DE PINNINCK

⁽¹⁾ Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (OJ L 263, 9.10.2007, p. 1).

ATTACHMENT A

In Annex 1, Product Sectors, Chapter 12, Motor vehicles, the text should be deleted and replaced by the following one:

‘CHAPTER 12

MOTOR VEHICLES

SECTION I

Legislative, regulatory and administrative provisions

Provisions covered by Article 1(2)

- | | |
|----------------|--|
| European Union | 1. Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ L 263, 9.10.2007, p. 1), as last amended by Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 (OJ L 200, 31.7.2009, p. 1), and taking into account the acts listed in Annex IV to Directive 2007/46/EC, as amended until 14 October 2009 and amendments to the aforementioned Annex respectively to acts listed therein, accepted according to the procedure described in Section V, paragraph 1 (hereinafter together referred to as “Framework Directive 2007/46/EC”) |
| Switzerland | 100. Ordinance of 19 June 1995 relating to the technical requirements for power-driven transportation vehicles and their trailers (RO 1995 4145), as amended until 14 October 2009 (RO 2009 5705) and taking into account amendments accepted according to the procedure described in Section V, paragraph 1

101. Ordinance of 19 June 1995 relating to the type approval of road vehicles (RO 1995 3997), as amended until 14 October 2009 (RO 2009 5805) and taking into account amendments accepted according to the procedure described in Section V, paragraph 1 |

SECTION II

Conformity assessment bodies

The Committee established pursuant to Article 10 of this Agreement shall draw up and keep up-to-date, according to the procedure described in Article 11 of the Agreement, a list of the conformity assessment bodies.

SECTION III

Designating authorities

The Committee established pursuant to Article 10 of this Agreement shall draw up and keep up-to-date a list of the designating authorities notified by the Parties.

SECTION IV

Special rules relating to the designation of conformity assessment bodies

For the designation of conformity assessment bodies, the designating authorities shall refer to their respective legislative, regulatory and administrative provisions as listed in Section I.

SECTION V

Supplementary provisions

The provisions of this Section shall apply exclusively to relations between Switzerland and the European Union.

1. *Amendments to Annex IV respectively to acts listed in Annex IV to Directive 2007/46/EC*

The legislation adopted in the European Union and listed in Annex IV to Directive 2007/46/EC after 14 October 2009 shall be considered to be part of the provisions covered by Article 1(2) of this Agreement after the accomplishment of the following procedure:

- (a) without prejudice to Article 12(2) of this Agreement, the European Union shall notify Switzerland of the changes to Annex IV to Directive 2007/46/EC respectively to acts listed therein without delay after their publication in the *Official Journal of the European Union*;

(b) Switzerland shall notify the European Union of the acceptance of the new provisions and of the adoption of the corresponding Swiss legislation before those changes apply in the European Union;

(c) the changes in the legislative provisions shall be deemed to be included in Section I on the date of the notification by Switzerland.

The Joint Committee will take regular note of the abovementioned changes. The introduction of these changes will be made publicly available.

2. *Information exchange*

The competent type-approval authorities in Switzerland and the Member States shall in particular exchange the information referred to in Article 8(5) to (8) of the Framework Directive 2007/46/EC.

In the event of refusal by Switzerland or a Member State to grant type-approval in accordance with Article 8(3) of the Framework Directive 2007/46/EC, it shall immediately send the other Member States, Switzerland and the Commission a detailed file explaining the reasons for its decision and setting out the evidence for its findings.

3. *Recognition of vehicle type-approval*

Switzerland shall also recognise vehicle type-approval granted before the entry into force of this Agreement in accordance with Council Directive 70/156/EEC of 6 February 1970 (OJ L 42, 23.2.1970, p. 1), as last amended by Commission Directive 2007/37/EC of 21 June 2007 (OJ L 161, 22.6.2007, p. 60), by the authorities responsible for type-approval where that approval is still valid in the European Union.

The European Union shall recognise Swiss type-approval where Switzerland's requirements are deemed to be equivalent to those of the Framework Directive 2007/46/EC.

Recognition of Swiss-issued type-approval shall be suspended should Switzerland fail to adapt its legislation to all the European Union type-approval legislation in force.

4. *Safeguard clauses*

1. *Vehicles, systems, components or separate technical units in compliance with the applicable legislation*

1. If a Member State or Switzerland finds that new vehicles, systems, components or separate technical units, albeit in compliance with the applicable requirements or properly marked, present a serious risk to road safety, or seriously harm the environment or public health, that State may, for a maximum period of 6 months, refuse to register such vehicles or to permit the sale or entry into service in its territory of such vehicles, components or separate technical units.

In such cases, the Member State concerned or Switzerland shall immediately notify the manufacturer, the other Member States, Switzerland and the Commission accordingly, stating the reasons on which its decision is based.

2. The Commission and Switzerland shall consult the Parties concerned as soon as possible and, in particular, their respective approval authorities that granted the type-approval. The Committee shall be kept informed and, where necessary, shall hold appropriate consultations with the view to reaching a settlement.

2. *Vehicles, systems, components or separate technical units not in conformity with the approved type*

1. If a Member State or Switzerland which has granted a type-approval finds that new vehicles, systems, components or separate technical units accompanied by a certificate of conformity or bearing an approval mark do not conform to the type it has approved, it shall take the necessary measures, including, where necessary, the withdrawal of type-approval, to ensure that production vehicles, systems, components or separate technical units, as the case may be, are brought into conformity with the approved type. The approval authority of that Member State or Switzerland shall advise the approval authorities of the other Member States and/or Switzerland of the measures taken.

2. For the purposes of paragraph 1, deviations from the particulars in the type-approval certificate or the information package shall be deemed to constitute failure to conform to the approved type.

A vehicle shall not be deemed to deviate from the approved type where tolerances are permitted by the relevant regulatory acts and those tolerances are respected.

3. If a Member State or Switzerland demonstrates that new vehicles, components or separate technical units accompanied by a certificate of conformity or bearing an approval mark do not conform to the approved type, it may ask the Member State or Switzerland which granted the type-approval to verify that vehicles, systems, components or separate technical units in production continue to conform to the approved type. On receipt of such a request, the Member State concerned or Switzerland shall take the requisite action as soon as possible and in any case within 6 months of the date of the request.
 4. The approval authority shall request the Member State or Switzerland which granted the system, component, separate technical unit or incomplete vehicle type-approval to take the necessary action to ensure that vehicles in production are brought back into conformity with the approved type in the following cases:
 - (a) in relation to a vehicle type-approval, where the non-conformity of a vehicle is attributable exclusively to the non-conformity of a system, component or separate technical unit;
 - (b) in relation to a multi-stage type-approval, where the non-conformity of a completed vehicle is attributable exclusively to the non-conformity of a system, component or separate technical unit being part of the incomplete vehicle, or of the incomplete vehicle itself.

On receipt of such a request, the Member State concerned or Switzerland shall take the requisite action, if necessary in conjunction with the Member State making the request or Switzerland, as soon as possible and in any case within 6 months of the date of the request. Where a failure to conform is established, the approval authority of the Member State or Switzerland which granted the system, component or separate technical unit type-approval or the approval of the incomplete vehicle shall take the measures set out in paragraph 1.
 5. The approval authorities shall inform each other within 20 working days of any withdrawal of type-approval and of the reasons therefor.
 6. If the Member State or Switzerland that granted type-approval disputes the failure to conform notified to it, the Member States concerned and Switzerland shall endeavour to settle the dispute. The Committee shall be kept informed and, where necessary, shall hold appropriate consultations with a view to reaching a settlement.'
-

ATTACHMENT B

In Annex 1, Product Sectors, the following Chapter 18 on Biocidal products shall be introduced:

‘CHAPTER 18
BIOCIDAL PRODUCTS
SCOPE AND COVERAGE

The provisions of this Sectoral Chapter apply to biocidal products as defined in Directive 98/8/EC, with the exemption of:

- biocidal products which are or which contain genetically modified or pathogenic micro-organisms, and
- avicides, piscicides and biocides for control of other vertebrates.

Commission Directives to include active substances to the Annex I, IA or IB are part of this Chapter.

Switzerland will be free to limit access to its market according to the requirements of its legislation existing at the date of entry into force of this Chapter concerning:

- biocidal products containing octylphenol or its ethoxylates, and
- aerosol dispensers containing substances stable in the air.

The Parties shall jointly review the situation in 2013.

SECTION I

Legislative, regulatory and administrative provisions

Provisions covered by Article 1(2)

- | | |
|----------------|--|
| European Union | <ol style="list-style-type: none"> 1. Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ L 123, 24.4.1998, p. 1), as last amended by Directive 2009/107/EC of the European Parliament and of the Council of 16 September 2009 (OJ L 262, 6.10.2009, p. 40), hereinafter referred to as “Directive 98/8/EC” 2. Commission Regulation (EC) No 1896/2000 of 7 September 2000 on the first phase of the programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council on biocidal products (OJ L 228, 8.9.2000, p. 6) 3. Commission Regulation (EC) No 1687/2002 of 25 September 2002 on an additional period for notification of certain active substances already on the market for biocidal use as established in Article 4(1) of Regulation (EC) No 1896/2000 (OJ L 258, 26.9.2002, p. 15) 4. Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market (OJ L 325, 11.12.2007, p. 3) |
| Switzerland | <ol style="list-style-type: none"> 100. Federal Law of 15 December 2000 for the Protection against Dangerous Substances and Preparations (RO 2004 4763), as last amended on 17 June 2005 (RO 2006 2197) 101. Federal Law of 7 October 1983 relating to the Protection of the Environment (RO 1984 1122), as last amended on 20 March 2008 (RO 2008 3437) 102. Ordinance of 18 May 2005 concerning the placing on the market and the use of biocidal products (Ordinance on Biocidal Products) (RO 2005 2821), as last amended on 2 November 2009 (RO 2009 5401) |

SECTION II

Conformity assessment bodies

For the purposes of this Chapter, "Conformity Assessment Bodies" means the competent authorities of the Member States of the European Union and Switzerland for placing biocidal products on the market.

The contact details of the competent authorities of the Member States and of Switzerland can be found on the websites indicated below.

Member States

Biocides: "Competent Authorities and other Contact Points" http://ec.europa.eu/environment/biocides/pdf/ca_contact.pdf

Switzerland

Federal Office of Public Health, Notification Authority for Chemicals www.bag.admin.ch/biocide

SECTION III

Supplementary provisions

For the purpose of paragraphs 2-5 of this Section, any reference to Directive 98/8/EC shall, as far as Switzerland is concerned, be understood to equally refer to the equivalent Swiss provisions.

1. Inclusion of active substances in Annex I, IA or IB

Article 11 of Directive 98/8/EC shall apply between the Parties with the following adaptations:

inclusion or subsequent changes to the inclusion, of an active substance in Annex I, IA or IB shall also be considered where an applicant has forwarded the required dossier to the competent authority of Switzerland, and where the receiving competent authority has sent the required evaluation to the Commission.

2. Mutual recognition of authorisations between Member States and Switzerland

1. Without prejudice to Article 12 of Directive 98/8/EC, a biocidal product that has already been authorised or registered in one Member State or in Switzerland shall be authorised or registered in another Member State or in Switzerland within 120 days, or 60 days respectively, of an application being received by the other Member State or by Switzerland, provided that the active substance of the biocidal product is included in Annex I or IA to Directive 98/8/EC and conforms to the requirements thereof. For the mutual recognition of authorisations, the application shall include a summary of the dossier as required in Article 8(2)(a) and Annex IIB, Section X of Directive 98/8/EC and a certified copy of the first authorisation granted. For mutual recognition of registration of low-risk biocidal products, the application shall include the data requirements of Article 8(3) of Directive 98/8/EC, except for the efficacy data for which a summary shall suffice.

The authorisation may be subject to provisions resulting from the implementation of other measures in accordance with the Parties' law, relating to the conditions for distribution and use of biocidal products intended to protect the health of the distributors, users and workers concerned.

This mutual recognition procedure shall be without prejudice to measures taken by Member States and by Switzerland pursuant to the Parties' law intended to protect the health of workers.

2. If, in accordance with Article 5 of Directive 98/8/EC, a Member State or Switzerland establishes that:

- (a) the target species is not present in harmful quantities;
- (b) unacceptable tolerance or resistance of the target organism to the biocidal product is demonstrated; or
- (c) the relevant circumstances of use, such as climate or breeding period of the target species, differ significantly from those in the Member State where the biocidal product was first authorised or in Switzerland, and an unchanged authorisation may therefore present unacceptable risks to humans or the environment,

the Member State or Switzerland may request that certain conditions referred to in Article 20(3)(e), (f), (h), (j) and (l) of Directive 98/8/EC be adjusted to the different circumstances, so that conditions for issue of an authorisation laid down in Article 5 of Directive 98/8/EC are satisfied.

3. Where a Member State or Switzerland believes that a low-risk biocidal product which has been registered by another Member State or by Switzerland does not comply with the definition provided for in Article 2(1)(b) of Directive 98/8/EC, it may provisionally refuse registration thereof and shall immediately communicate its concerns to the competent authority responsible for the verification of the dossier.

If, within a maximum period of 90 days, an agreement is not reached between the authorities concerned, the matter will be forwarded to the Commission for a decision in accordance with the procedure laid down in paragraph 4.

4. Notwithstanding paragraphs 2 and 3, where a Member State or Switzerland believes a biocidal product authorised by another Member State or Switzerland cannot meet the conditions set out pursuant to Article 5(1) of Directive 98/8/EC and consequently proposes to refuse the authorisation or the registration or to restrict the authorisation under certain conditions, it shall notify the Commission, other Member States, Switzerland and the applicant and shall provide them with an explanatory document containing the name of the product and its specification and setting out the grounds on which it proposes to refuse or to restrict the authorisation.

The Commission shall prepare a proposal on these matters in accordance with Article 27 of Directive 98/8/EC for a decision in accordance with the procedure laid down in Article 28(2) of Directive 98/8/EC.

5. If the procedure laid down in paragraph 4 leads to the confirmation of a refusal of a second or subsequent registration by a Member State or by Switzerland, the Member State that had previously registered the low-risk biocidal product or Switzerland shall, where deemed appropriate by the Standing Committee, take this refusal into consideration and review its registration according to Article 6 of Directive 98/8/EC.

If this procedure confirms the initial registration, the Member State or Switzerland having introduced the procedure shall register the low-risk biocidal product concerned.

6. By way of derogation from paragraph 1, Member States or Switzerland may refuse mutual recognition of authorisations granted for product types 15, 17 and 23 of Annex V to Directive 98/8/EC provided that such a limitation can be justified and does not jeopardise the purpose of this Chapter.

Member States and Switzerland shall inform each other and the Commission of any decision taken in this respect and indicate the reasons therefor.

3. *Market access*

The applicant shall indicate his name or trade name and address on the label of biocidal products. It will be sufficient, for the purposes of Article 8 of Directive 98/8/EC, if the applicant for an authorisation has a permanent office either within the European Union or Switzerland. The Parties agree that authorisations and other decisions relating to the application of this Chapter may be notified by the competent authorities directly to the applicant in the territory of the other Party.

4. *Information exchange*

In accordance with Article 9 of this Agreement, the Parties shall in particular exchange information referred to in Article 18 of Directive 98/8/EC. Confidential information shall be defined and treated in accordance with Article 19 of Directive 98/8/EC.

5. *Safeguard clause*

Where a Member State or Switzerland has valid reasons to consider that a biocidal product which it has authorised, registered or is bound to authorise or register pursuant to Article 3 or 4 of Directive 98/8/EC constitutes an unacceptable risk to human or animal health or the environment, it may provisionally restrict or prohibit the use or sale of that product on its territory. It shall immediately inform the Commission, the other Member States and Switzerland of such action and give reasons for its decisions. A decision shall be taken on the matter within 90 days in accordance with the procedure laid down in Article 28(3). If Switzerland disagrees with the Commission Decision, the case will be forwarded to the Joint Committee, which will decide on an appropriate course of action, including the possibility to call an expert meeting. If a settlement is not reached within 90 days, either party may suspend the Biocidal products Chapter in part or in full.

Recourse to this safeguard clause should be an exception.

6. *Transitional period*

Article 16(1) of Directive 98/8/EC shall apply between the Parties, with the transitional period up to 14 May 2014 for Switzerland.'

DECLARATION FROM THE EUROPEAN COMMISSION

In order to ensure the effective application and implementation of the Biocidal products Chapter to be included in Annex 1 to the Agreement and in so far as Switzerland has adopted the relevant *acquis communautaire* or equivalent measures under the Chapter on Biocidal products, the Commission will, in accordance with the Council Declaration on Swiss attendance of committees ⁽¹⁾ and Article 100 of the Agreement on the European Economic Area, consult Swiss experts in the preparatory stages of draft measures to be submitted subsequently to the Committee established by Article 28 of Directive 98/8/EC to assist the Commission in the exercise of its executive powers.

In addition, the Commission notes that Swiss experts are invited to participate in the expert group of Competent Authorities for Biocidal Products, which provides assistance to the Commission with the harmonised implementation of Directive 98/8/EC. The Commission also notes that the Chairman of the Committee established pursuant to Article 28 of Directive 98/8/EC may decide to invite Swiss experts to talk on particular matters, at the request of a member or on his or her own initiative, in particular in those cases where discussions on the application of Articles 4 and 11 of Directive 98/8/EC are of direct relevance to Switzerland.

⁽¹⁾ Declaration on Swiss attendance of committees (OJ L 114, 30.4.2002, p. 429).

IV

(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

EFTA SURVEILLANCE AUTHORITY DECISION

No 235/09/COL

of 20 May 2009

on the Temporary Small Aid Scheme

(Norway)

THE EFTA SURVEILLANCE AUTHORITY ⁽¹⁾

HAVING REGARD to the Authority's Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3 of the Surveillance and Court Agreement ⁽⁸⁾,

HAVING REGARD to the Agreement on the European Economic Area ⁽²⁾, in particular to Articles 61 to 63 and Protocol 26 thereof,

Whereas:

I. FACTS

1. Procedure

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,

The Norwegian authorities notified the Temporary Small Aid Scheme, pursuant to Article 1(3) of Part I of Protocol 3, by letter of 2 April 2009 (Event No 514308).

HAVING REGARD to Article 1(3) of Part I and Article 4(3) of Part II of Protocol 3 to the Surveillance and Court Agreement ⁽⁴⁾,

2. Description of the proposed measures

2.1. The objective of the aid measure

HAVING REGARD to the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement ⁽⁵⁾ and in particular Part VIII – Temporary rules regarding the financial crisis – Temporary Framework for State aid measures to support access to finance in the current financial and economic crisis ⁽⁶⁾, amended by the Authority's Decision No 190/09/COL of 22 April 2009 ⁽⁷⁾,

The Norwegian authorities have indicated that the financial crisis has started affecting the real economy. The notified measure is a part of a wider package of measures ⁽⁹⁾ aimed at remedying a serious disturbance in the Norwegian economy. The notified scheme provides for the possibility to grant small amounts of aid to companies finding themselves facing a sudden shortage, or even unavailability of credit, thus contributing to remedy a serious disturbance in the Norwegian economy.

The scheme is explicitly based on Article 61(3)(b) EEA, and relies on section 4.2 'Compatible limited amount of aid' of the Temporary Framework.

⁽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⁾ Hereinafter referred to as Protocol 3.

⁽⁵⁾ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19 January 1994, published in the *Official Journal of the European Union*, (OJ L 231, 3.9.1994, p. 1 and EEA Supplement No 32, 3.9.1994 p. 1, hereinafter referred to as the State Aid Guidelines). The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

⁽⁶⁾ Hereinafter referred to as the Temporary Framework.

⁽⁷⁾ OJ L 15, 20.1.2011, p. 26, and EEA Supplement No 3, 20.1.2011, p. 31.

⁽⁸⁾ OJ L 139, 25.5.2006, p. 37, and EEA Supplement No 26, 25.5.2006, p. 1, as amended by Decision No 319/05/COL of 14 December 2005 (OJ L 113, 27.4.2006, p. 24, and EEA Supplement No 21, 27.4.2006, p. 46).

⁽⁹⁾ Addressing the emerging problems in the Norwegian labour market the Norwegian Government amended the Fiscal Budget for 2009 with St.prp. nr. 37 (2008-2009) (a white paper). Although the Temporary Small Aid Scheme is not explicitly a part of St.prp. nr. 37 (2008-2009) it will be financed within the budget increase for Innovation Norway granted in this amendment.

2.2. The nature and form of the aid

The aid will be provided in the form of transparent forms of aid, as defined by the General Block Exemption Regulation⁽¹⁾ Article 5, and in particular in the form of direct grants, reimbursable grants, interest rate subsidies and subsidised public loans with an aid element which is calculated on the basis of the Authority's reference rate⁽²⁾ applicable on the date of granting the aid, and public guarantees.

The Guarantee scheme administered by Innovation Norway is normally employed in accordance with the Act referred to in Annex XV to the EEA Agreement on *de minimis* aid⁽³⁾. This implies *i.a.* that individual aid provided to undertakings which are not undertakings in difficulty are treated as transparent *de minimis* aid when the guaranteed part of the underlying loan provided under the scheme does not exceed EUR 1 500 000 per undertaking (EUR 750 000 in the transport sector). To calculate the aid element of public guarantees for loans exceeding EUR 1 500 000, and in line with the possibility foreseen by the last sentence of the footnote to point 4.3.2(a) of the Temporary Framework, the Norwegian authorities will use as a benchmark the safe-harbour premiums laid down in the Annex of the Temporary Framework. Irrespective of whether the guarantees are issued for the benefit of SMEs or large companies, the annual aid element resulting from the guarantee will be calculated as the difference between the safe harbour premium rates laid down in the Annex of the amended Temporary Framework and the annual premiums applied by the Norwegian authorities.

2.3. National legal basis for the aid measure

The legal basis for the scheme is St.prp. nr. 1 (2008–2009) for the Ministry of Trade and Industry, and a letter from the Ministry to Innovation Norway ('Oppdragsbrev Innovasjon Norge').

The scheme will enter into force upon its approval by the Authority.

2.4. The administration of the scheme

The notified scheme will be administered by Innovation Norway.

2.5. Budget and duration

The Norwegian authorities have indicated that it is not possible at this stage to provide an annual budget for the notified measure as the general budget for Innovation Norway was increased without identification of the appropriation dedicated to the notified scheme.

Aid under this scheme can be granted until 31 December 2010.

2.6. Recipient

The scheme applies to SMEs and large firms and covers the whole territory of Norway.

The Norwegian authorities confirm that no aid under this scheme will be granted to large firms which were, on 1 July 2008, firms in difficulty in the meaning of point 2.1 of the Authority's State Aid Guidelines on rescuing and restructuring of firms in difficulty, nor to SMEs which were on that date firms in difficulties in the meaning of Article 1(7) of the General Block Exemption Regulation.

The scheme may be applied to firms that were not in difficulty on 1 July 2008, but entered into difficulty thereafter as a result of the global financial and economic crisis.

2.7. Sectoral scope, exclusion of export aid and aid favouring domestic over imported products

The Temporary Small Aid Scheme applies to all sectors, with the sectoral exclusions laid down in section 4.2.2, point 38(g) of the Temporary Framework. Export aid and aid favouring domestic over imported goods and services are excluded (section 4.2.2(d) of the Temporary Framework).

2.8. Basic elements of the scheme

The Norwegian authorities confirm that the new scheme will comply fully with the conditions of section 4.2.2 of the Temporary Framework for granting small amounts of compatible aid. In particular;

- the aid shall not exceed EUR 500 000 gross (before any deduction of tax or other charge) per undertaking. Where aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid;
- prior to granting the aid, Innovation Norway shall obtain from the undertakings concerned a declaration, in written or electronic form, about any other *de minimis* aid and aid pursuant to this measure received during the current fiscal year. Innovation Norway will check that the aid will not raise the total amount of aid received by the undertaking during the period 1 January 2008 to 31 December 2010 to a level above the ceiling of EUR 500 000;

⁽¹⁾ Incorporated into Annex XV (State aid) to the EEA Agreement by Decision of the EEA Joint Committee No 120/2008 (OJ L 339, 18.12.2008, p. 111, and EEA Supplement No 79, 18.12.2008, p. 20).

⁽²⁾ The reference rate is calculated on the basis of the Chapter on the method for setting Reference and Discount rates of the Authority's State Aid Guidelines as amended by the Authority's Decision No 788/08/COL of 17 December 2008. To get the applicable reference rate appropriate margins have to be added to a base rate. The base rates in force are published on the Authority's webpage.

⁽³⁾ Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ L 379, 28.12.2006, p. 5) was incorporated into Annex XV (State aid) to the EEA Agreement by Decision of the EEA Joint Committee No 29/2007 (OJ L 209, 9.8.2007, p. 52, and EEA Supplement No 38, 9.8.2007, p. 34).

- the aid will not be granted later than 31 December 2010;
- export aid or aid favouring domestic over imported products will not be granted under the scheme;
- where the aid under this measure is to be combined with other compatible aid, the maximum aid intensities indicated in the relevant Guidelines or Block Exemption Regulations, will be respected;
- no aid under this scheme will be granted to large firms which were, on 1 July 2008, firms in difficulty within the meaning of point 2.1 of the Authority's State Aid Guidelines on State aid for rescuing and restructuring firms in difficulty, nor to SMEs which were on that date firms in difficulty within the meaning of Art 1(7) of the General Block Exemption Regulation, as incorporated into the EEA Agreement.

2.9. Monitoring and reporting

The Norwegian authorities confirm that the monitoring and reporting rules laid down in the Temporary Framework will be complied with.

II. ASSESSMENT

1. The presence of state aid

Article 61(1) of the EEA Agreement reads as follows:

'1. 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.'

State resources are involved as the notified scheme is funded through the Norwegian State Budget. The measure is selective as it will be granted to certain firms only. By making available limited amounts of aid which would not be made available to the beneficiaries without the measure, the measure involves the granting of an advantage to the beneficiaries. The measure affects trade between EEA States as the scheme is not limited to beneficiaries active in sectors where no intra-EEA trade exists.

In view of the above, the Authority has come to the conclusion that the scheme constitutes state aid within the meaning of Article 61(1) EEA.

2. Procedural requirements

Pursuant to Article 1(3) of Part I of Protocol 3, '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 submitting notification of the Temporary Small Aid Scheme with a letter dated 2 April 2009 (Event No 514308), the Norwegian authorities have complied with the notification requirement. They have furthermore indicated that they will not implement the scheme until it is approved by the Authority, thereby complying with the standstill obligation.

The Authority can therefore conclude that the Norwegian authorities have respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3. Compatibility of the aid

The Authority has assessed the compatibility of the notified measure with Article 61(3)(b) of the EEA Agreement in combination with the Temporary Framework.

By adopting the Temporary Framework, the Authority acknowledged (section 4.1(33)) that 'In the light of the seriousness of the current financial crisis and its impact on the overall economy of the EFTA States, the Authority considers that certain categories of state aid are justified, for a limited period, to remedy those difficulties and that they may be declared compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(b) thereof.'

The notified measure is intended to contribute to remedy a serious disturbance in the economy of a EFTA State and is designed to meet the requirements of the additional category of aid ('Compatible limited amount of aid') described in section 4.2.2 of the Temporary Framework.

The Authority considers that the notified measure meets all the conditions of the Temporary Framework. In particular:

- The maximum aid amount will not exceed the cash equivalent of EUR 500 000 per undertaking (in line with point 4.2.2(a) and (f) of the Temporary Framework).
- The aid is granted in the form of a scheme (in line with point 4.2.2(b) of the Temporary Framework).

- The aid is granted to firms which were not in difficulty ⁽¹⁾ on 1 July 2008; it may be granted to firms that were not in difficulty at that date but entered in difficulty thereafter as a result of the global financial and economic crisis (in line with point 4.2.2(c) of the Temporary Framework).
- Export aid and aid favouring domestic over imported goods and services are excluded (in line with point 4.2.2(d) of the Temporary Framework).
- Aid may be granted no later than 31 December 2010 (point 4.2.2(e) of the Temporary Framework).
- The monitoring and reporting rules laid down in the Temporary Framework will be respected (section 4.7(59) of the Temporary Framework).

The Authority therefore considers that the notified measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of an EFTA State, as defined in point 4.1 of the Temporary Framework.

4. Conclusion

On the basis of the foregoing assessment, the Authority considers that the Temporary Small Aid Scheme which the Norwegian authorities are planning to implement is in conformity with the Temporary Framework and is compatible with the functioning of the EEA Agreement within the meaning of Article 61 EEA.

The Norwegian authorities are reminded about the obligation resulting from Article 21 of Part II of Protocol 3 in conjunction with Article 6 of Decision No 195/04/COL to provide annual reports on the implementation of the scheme.

The Norwegian authorities are also reminded that all plans to modify this scheme must be notified to the Authority.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided not to raise objections to the Temporary Small Aid Scheme on the basis of Article 61(3)(b)(f) the EEA Agreement.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English version is authentic.

Done at Brussels, 20 May 2009.

For the EFTA Surveillance Authority

Per SANDERUD
President

Kurt JÄGER
College Member

⁽¹⁾ For large companies, see point 2.1 of the Guidelines on state aid for restructuring firms in difficulty. For SMEs, see Article 1(7) on the definition of the General Block Exemption Regulation.

CORRIGENDA**Corrigendum to Commission Regulation (EC) No 640/2009 of 22 July 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for electric motors**

(Official Journal of the European Union L 191 of 23 July 2009)

On page 27 Article 1, Subject matter and scope, point 2(c)(iv):

for: 'where ambient air temperatures are less than – 15 °C for any motor or less than 0 °C for a motor with air cooling';

read: 'where ambient air temperatures are less than – 15 °C for any motor or less than 0 °C for a motor with water cooling';

IV *Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty*

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