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Price: EUR 4

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⁽¹⁾ Text with EEA relevance

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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) No 204/2011

of 2 March 2011

concerning restrictive measures in view of the situation in Libya

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 thereof,

Having regard to Council Decision 2011/137/CFSP of 28 February 2011 concerning restrictive measures in view of the situation in Libya, ⁽¹⁾ adopted in accordance with Chapter 2 of Title V of the Treaty on European Union,

Having regard to the joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission,

Whereas:

- (1) In accordance with UN Council Security Resolution 1970 (2011) of 26 February 2011, Decision 2011/137/CFSP provides for an arms embargo, a ban on internal repression equipment, as well as restrictions on the admission and the freezing of funds and economic resources of certain persons and entities involved in serious human rights abuses against persons in Libya, including by being involved in attacks, in violation of international law, on civilian populations and facilities. Those natural or legal persons and entities are listed in the Annexes to the Decision.
- (2) Some of those measures fall within the scope of the Treaty on the Functioning of the European Union and regulatory action at the level of the Union is therefore necessary in order to implement them, in particular with a view to ensuring their uniform application by economic operators in all Member States.
- (3) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably the right to an effective remedy and to a fair

trial and the right to the protection of personal data. This Regulation should be applied in accordance with those rights.

- (4) This Regulation also fully respects the obligations of Member States under the Charter of the United Nations and the legally-binding nature of United Nations Security Council Resolutions.
- (5) The power to amend the lists in Annexes II and III to this Regulation should be exercised by the Council, in view of the specific threat to international peace and security posed by Libya, and to ensure consistency with the process for amending and reviewing Annexes III and IV to Decision 2011/137/CFSP.
- (6) The procedure for amending the lists in Annexes II and III to this Regulation should include providing designated natural or legal persons, entities or bodies with the grounds for listing, so as to give them an opportunity to submit observations. Where observations are submitted, or substantial new evidence is presented, the Council should review its decision in light of those observations and inform the person, entity or body concerned accordingly.
- (7) For the implementation of this Regulation, and in order to create maximum legal certainty within the Union, the names and other relevant data concerning natural and legal persons, entities and bodies whose funds and economic resources must be frozen in accordance with this Regulation, must be made public. Any processing of personal data should comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽²⁾ and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽³⁾.

⁽¹⁾ See page 53 of this Official Journal.

⁽²⁾ OJ L 8, 12.1.2001, p. 1.

⁽³⁾ OJ L 281, 23.11.1995, p. 31.

- (8) In order to ensure that the measures provided for in this Regulation are effective, it should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, the following definitions shall apply:

- (a) 'funds' means financial assets and benefits of every kind, including but not limited to:
- (i) cash, cheques, claims on money, drafts, money orders and other payment instruments;
 - (ii) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
 - (iii) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
 - (iv) interest, dividends or other income on or value accruing from or generated by assets;
 - (v) credit, right of set-off, guarantees, performance bonds or other financial commitments;
 - (vi) letters of credit, bills of lading, bills of sale;
 - (vii) documents evidencing an interest in funds or financial resources;
- (b) 'freezing of funds' means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management;
- (c) 'economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services;
- (d) 'freezing of economic resources' means preventing their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;
- (e) 'technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, the transmission of working knowledge or skills or consulting services, including verbal forms of assistance;

- (f) 'Sanctions Committee' means the Committee of the United Nations Security Council which was established pursuant to paragraph 24 of United Nations Security Council Resolution ('UNSCR') 1970 (2011);

- (g) 'territory of the Union' means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty, including their airspace.

Article 2

1. It shall be prohibited:

- (a) to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex I, whether or not originating in the Union, to any person, entity or body in Libya or for use in Libya;
- (b) to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in point (a).

2. It shall be prohibited to purchase, import or transport from Libya equipment which might be used for internal repression as listed in Annex I, whether or not the item concerned originates in Libya.

3. Paragraph 1 shall not apply to protective clothing, including flak jackets and helmets, temporarily exported to Libya by United Nations personnel, personnel of the European Union or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.

4. By way of derogation from paragraph 1, the competent authorities in the Member States as listed in Annex IV may authorise the sale, supply, transfer or export of equipment which might be used for internal repression, under such conditions as they deem appropriate, if they determine that such equipment is intended solely for humanitarian or protective use.

Article 3

1. It shall be prohibited:

- (a) to provide, directly or indirectly, technical assistance related to the goods and technology listed in the Common Military List of the European Union⁽¹⁾ (Common Military List) or related to the provision, manufacture, maintenance and use of goods included in that list, to any person, entity or body in Libya or for use in Libya;
- (b) to provide, directly or indirectly, technical assistance or brokering services related to equipment which might be used for internal repression as listed in Annex I, to any person, entity or body in Libya or for use in Libya;

⁽¹⁾ OJ C 69, 18.3.2010, p. 19.

(c) to provide, directly or indirectly, financing or financial assistance related to the goods and technology listed in the Common Military List or in Annex I, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items, or for any provision of related technical assistance to any person, entity or body in Libya or for use in Libya;

(d) to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in points (a) to (c).

2. By way of derogation from paragraph 1, the prohibitions referred to therein shall not apply to the provision of technical assistance, financing and financial assistance related to non-lethal military equipment intended solely for humanitarian purposes or protective use, or to other sales and supply of arms and related material, as approved in advance by the Sanctions Committee.

3. By way of derogation from paragraph 1, the competent authorities in the Member States, as listed in Annex IV, may authorise the provision of technical assistance, financing and financial assistance related to equipment which might be used for internal repression, under such conditions as they deem appropriate, if they determine that such equipment is intended solely for humanitarian or protective use.

Article 4

To prevent the transfer of goods and technology which are covered by the Common Military List or the supply, sale, transfer, export or import of which is prohibited by this Regulation, for all goods brought into or leaving the customs territory of the Union from or to Libya, in addition to the rules governing the obligation to provide pre-arrival and pre-departure information as determined in the relevant provisions concerning entry and exit summary declarations as well as customs declarations in Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽¹⁾, and in Regulation (EEC) No 2454/93 laying down provisions for the implementation thereof⁽²⁾, the person who provides that information shall declare whether the goods are covered by the Common Military List or by this Regulation and, where their export is subject to authorisation, specify the particulars of the export licence granted. These additional elements shall be submitted to the competent customs authorities of the Member State concerned either in written form or using a customs declaration, as appropriate.

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽²⁾ OJ L 253, 11.10.1993, p. 1.

Article 5

1. All funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies listed in Annexes II and III shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in Annexes II and III.

3. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs 1 and 2 shall be prohibited.

Article 6

1. Annex II shall include the natural or legal persons, entities and bodies designated by the United Nations Security Council or by the Sanctions Committee in accordance with paragraph 22 of UNSCR 1970 (2011).

2. Annex III shall consist of natural or legal persons, entities and bodies not covered by Annex II who, in accordance with Article 6(1) of Decision 2011/137/CFSP, have been identified by the Council as being persons and entities involved in or complicit in ordering, controlling, or otherwise directing, the commission of serious human rights abuses against persons in Libya, including by being involved in or complicit in planning, commanding, ordering or conducting attacks, in violation of international law, including aerial bombardments, on civilian populations and facilities, or individuals or entities acting on their behalf or at their direction, or entities owned or controlled by them.

3. Annexes II and III shall include the grounds for the listing of listed persons, entities and bodies, as provided by the Security Council, or by the Sanctions Committee for Annex II.

4. Annexes II and III shall also include, where available, information necessary to identify the natural or legal persons, entities and bodies concerned, as provided by the Security Council, or by the Sanctions Committee for Annex II. With regard to natural persons, such information may include names including aliases, date and place of birth, nationality, passport and ID card numbers, gender, address, if known, and function or profession. With regard to legal persons, entities and bodies, such information may include names, place and date of registration, registration number and place of business. Annex II shall also include the date of designation by the Security Council or by the Sanctions Committee.

Article 7

1. By way of derogation from Article 5, the competent authorities in the Member States, as identified on the websites listed in Annex IV, may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that the funds or economic resources are:

- (a) necessary to satisfy the basic needs of persons listed in Annex II or III, and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
- (b) intended exclusively for the payment of reasonable professional fees or the reimbursement of incurred expenses associated with the provision of legal services;
- (c) intended exclusively for the payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources;

provided that, where the authorisation concerns a person, entity or body listed in Annex II, the Member State concerned has notified the Sanctions Committee of that determination and its intention to grant an authorisation, and the Sanctions Committee has not objected to that course of action within five working days of notification.

2. By way of derogation from Article 5, the competent authorities of the Member States, as indicated on the websites listed in Annex IV, may authorise the release of certain frozen funds or economic resources, or the making available of certain frozen funds or economic resources, after having determined that the frozen funds or economic resources are necessary for extraordinary expenses provided that the following conditions are met:

- (a) where the authorisation concerns a person, entity or body listed in Annex II, the Sanctions Committee has been notified of that determination by the Member State concerned and the determination has been approved by that Committee; and
- (b) where the authorisation concerns a person, entity or body listed in Annex III, the competent authority has notified the grounds on which it considers that a specific authorisation should be granted to the other competent authorities of the Member States and to the Commission at least two weeks before the authorisation.

Article 8

By way of derogation from Article 5, the competent authorities in the Member States, as listed in Annex IV, may authorise the

release of certain frozen funds or economic resources, if the following conditions are met:

- (a) the funds or economic resources in question are the subject of a judicial, administrative or arbitral lien established prior to the date on which the person, entity or body referred to in Article 5 was included in Annex II or III, or of a judicial, administrative or arbitral judgment rendered prior to that date;
- (b) the funds or economic resources in question will be used exclusively to satisfy claims secured by such a lien or recognised as valid in such a judgment, within the limits set by applicable laws and regulations governing the rights of persons having such claims;
- (c) the lien or judgment is not for the benefit of a person, entity or body listed in Annex II or III;
- (d) recognising the lien or judgment is not contrary to public policy in the Member State concerned;
- (e) where the authorisation concerns a person, entity or body listed in Annex II, the Sanctions Committee has been notified by the Member State of the lien or judgment, and
- (f) where the authorisation concerns a person, entity or body listed in Annex III, the relevant Member State has informed the other Member States and the Commission of any authorisation granted.

Article 9

1. Article 5(2) shall not apply to the addition to frozen accounts of:

- (a) interest or other earnings on those accounts; or
- (b) payments due under contracts, agreements or obligations that were concluded or arose before the date on which the natural or legal person, entity or body referred to in Article 5 has been designated by the Sanctions Committee, the Security Council or by the Council,

provided that any such interest, other earnings and payments are frozen in accordance with Article 5(1).

2. Article 5(2) shall not prevent financial or credit institutions in the Union from crediting frozen accounts where they receive funds transferred to the account of a listed natural or legal person, entity or body, provided that any additions to such accounts will also be frozen. The financial or credit institution shall inform the relevant competent authority about any such transaction without delay.

Article 10

By way of derogation from Article 5, and provided that a payment by a person, entity or body listed in Annex II or III is due under a contract or agreement that was concluded by, or an obligation that arose for the person, entity or body concerned, before the date on which that person, entity or body had been designated, the competent authorities of the Member States, as indicated on the websites listed in Annex IV, may authorise, under such conditions as they deem appropriate, the release of certain frozen funds or economic resources, if the following conditions are met:

- (a) the competent authority concerned has determined that:
 - (i) the funds or economic resources shall be used for a payment by a person, entity or body listed in Annex II or III;
 - (ii) the payment is not in breach of Article 5(2);
- (b) where the authorisation concerns a person, entity or body listed in Annex II, the Sanctions Committee has been notified by the relevant Member State of the intention to grant an authorisation ten working days in advance;
- (c) where the authorisation concerns a person, entity or body listed in Annex III, the Member State concerned has, at least two weeks prior to the grant of the authorisation, notified the other Member States and the Commission of that determination and its intention to grant an authorisation.

Article 11

1. The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person or entity or body implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen or withheld as a result of negligence.

2. The prohibition set out in Article 5(2) shall not give rise to any liability of any kind on the part of the natural and legal persons, entities and bodies who made funds or economic resources available if they did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibition in question.

Article 12

No claims, including for compensation or any other claim of this kind, such as a claim of set-off or a claim under a guarantee, in connection with any contract or transaction the performance of which was affected, directly or indirectly, wholly or in part, by reason of measures decided upon pursuant to UNSCR 1970 (2011), including measures of the Union or any

Member State in accordance with, as required by or in any connection with, the implementation of the relevant decisions of the Security Council or measures covered by this Regulation, shall be granted to the Government of Libya, or any person or entity claiming through it or for its benefit.

Article 13

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies shall:

- (a) supply immediately any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 4, to the competent authority in the Member State where they are resident or located, as indicated on the websites listed in Annex IV, and shall transmit such information, either directly or through the Member States, to the Commission; and
 - (b) cooperate with that competent authority in any verification of this information.
2. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.

Article 14

Member States and the Commission shall immediately inform each other of the measures taken under this Regulation and shall supply each other with any other relevant information at their disposal in connection with this Regulation, in particular information in respect of violation and enforcement problems and judgments handed down by national courts.

Article 15

The Commission shall be empowered to amend Annex IV on the basis of information supplied by Member States.

Article 16

1. Where the Security Council or the Sanctions Committee lists a natural or legal person, entity or body, the Council shall include such natural or legal person, entity or body in Annex II.

2. Where the Council decides to subject a natural or legal person, entity or body to the measures referred to in Article 5(1), it shall amend Annex III accordingly.

3. The Council shall communicate its decision, including the grounds for listing, to the natural or legal person, entity or body referred to in paragraphs 1 and 2, either directly, if the address is known, or through the publication of a notice, providing such natural or legal person, entity or body with an opportunity to present observations.

4. Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the natural or legal person, entity or body accordingly.

5. Where the United Nations decides to delist a natural or legal person, entity or body, or to amend the identifying data of a listed natural or legal person, entity or body, the Council shall amend Annex II accordingly.

6. The list in Annex III shall be reviewed in regular intervals and at least every 12 months.

Article 17

1. Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

2. Member States shall notify the Commission of those rules without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

Article 18

Where there is, in this Regulation, a requirement to notify, inform or otherwise communicate with the Commission, the

address and other contact details to be used for such communication shall be those indicated in Annex IV.

Article 19

This Regulation shall apply:

- (a) within the territory of the Union, including its airspace;
- (b) on board any aircraft or any vessel under the jurisdiction of a Member State;
- (c) to any person inside or outside the territory of the Union who is a national of a Member State;
- (d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State;
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the Union.

Article 20

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

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

Done at Brussels, 2 March 2011.

For the Council
The President
MARTONYI J.

ANNEX I

List of equipment which might be used for internal repression as referred to in Articles 2, 3 and 4

1. Firearms, ammunition and related accessories therefor, as follows:
 - 1.1 Firearms not controlled by ML 1 and ML 2 of the Common Military List of the European Union ⁽¹⁾ (Common Military List);
 - 1.2 Ammunition specially designed for the firearms listed in item 1.1 and specially designed components therefor;
 - 1.3 Weapon-sights not controlled by the Common Military List.
2. Bombs and grenades not controlled by the Common Military List.
3. Vehicles as follows:
 - 3.1 Vehicles equipped with a water cannon, specially designed or modified for the purpose of riot control;
 - 3.2 Vehicles specially designed or modified to be electrified to repel borders;
 - 3.3 Vehicles specially designed or modified to remove barricades, including construction equipment with ballistic protection;
 - 3.4 Vehicles specially designed for the transport or transfer of prisoners and/or detainees;
 - 3.5 Vehicles specially designed to deploy mobile barriers;
 - 3.6 Components for the vehicles specified in items 3.1 to 3.5 specially designed for the purposes of riot control.

Note 1: This item does not control vehicles specially designed for the purposes of fire-fighting.

Note 2: For the purposes of item 3.5 the term 'vehicles' includes trailers.
4. Explosive substances and related equipment as follows:
 - 4.1 Equipment and devices specially designed to initiate explosions by electrical or non-electrical means, including firing sets, detonators, igniters, boosters and detonating cord, and specially designed components therefor; except those specially designed for a specific commercial use consisting of the actuation or operation by explosive means of other equipment or devices the function of which is not the creation of explosions (e.g., car air-bag inflators, electric-surge arresters of fire sprinkler actuators);
 - 4.2 Linear cutting explosive charges not controlled by the Common Military List;
 - 4.3 Other explosives not controlled by the Common Military List and related substances as follows:
 - (a) amatol;
 - (b) nitrocellulose (containing more than 12,5 % nitrogen);
 - (c) nitroglycol;
 - (d) pentaerythritol tetranitrate (PETN);
 - (e) picryl chloride;
 - (f) 2,4,6-trinitrotoluene (TNT).

⁽¹⁾ OJ C 69, 18.3.2010, p. 19.

5. Protective equipment not controlled by ML 13 of the Common Military List as follows:

5.1 Body armour providing ballistic and/or stabbing protection;

5.2 Helmets providing ballistic and/or fragmentation protection, anti-riot helmets, antiriot shields and ballistic shields.

Note: This item does not control:

— *equipment specially designed for sports activities;*

— *equipment specially designed for safety of work requirements.*

6. Simulators, other than those controlled by ML 14 of the Common Military List, for training in the use of firearms, and specially designed software therefor.

7. Night vision, thermal imaging equipment and image intensifier tubes, other than those controlled by the Common Military List.

8. Razor barbed wire.

9. Military knives, combat knives and bayonets with blade lengths in excess of 10 cm.

10. Production equipment specially designed for the items specified in this list.

11. Specific technology for the development, production or use of the items specified in this list.

ANNEX II

List of natural and legal persons, entities or bodies referred to in Article 6(1)**1. QADHAFI, Aisha Muammar**

Date of birth: 1978. Place of birth: Tripoli, Libya.

Daughter of Muammar QADHAFI. Closeness of association with regime.

Date of UN designation: 26.2.2011.

2. QADHAFI, Hannibal Muammar

Passport number: B/002210. Date of birth: 20.9.1975. Place of birth: Tripoli, Libya.

Son of Muammar QADHAFI. Closeness of association with regime.

Date of UN designation: 26.2.2011.

3. QADHAFI, Khamis Muammar

Date of birth: 1978. Place of birth: Tripoli, Libya.

Son of Muammar QADHAFI. Closeness of association with regime. Command of military units involved in repression of demonstrations.

Date of UN designation: 26.2.2011.

4. QADHAFI, Muammar Mohammed Abu Minyar

Date of birth: 1942. Place of birth: Sirte, Libya.

Leader of the Revolution, Supreme Commander of Armed Forces. Responsibility for ordering repression of demonstrations, human rights abuses.

Date of UN designation: 26.2.2011.

5. QADHAFI, Mutassim

Date of birth: 1976. Place of birth: Tripoli, Libya.

National Security Adviser. Son of Muammar QADHAFI. Closeness of association with regime.

Date of UN designation: 26.2.2011.

6. QADHAFI, Saif al-Islam

Director, Qadhafi Foundation. Passport number: B014995. Date of birth: 25.6.1972.

Place of birth: Tripoli, Libya.

Son of Muammar QADHAFI. Closeness of association with regime. Inflammatory public statements encouraging violence against demonstrators.

Date of UN designation: 26.2.2011.

ANNEX III

List of natural and legal persons, entities or bodies referred to in Article 6(2)

	Name	Identifying information	Reasons	Date of listing
1.	ABDULHAFIZ, Colonel Mas'ud	Position: Armed Forces Commander	3rd in command of Armed Forces. Significant role in Military Intelligence.	28.2.2011
2.	ABDUSSALAM, Abdussalam Mohammed	Position: Head Counter- Terrorism, External Security Organisation Date of Birth: 1952 Place of Birth: Tripoli, Libya	Prominent Revolutionary Committee member. Close associate of Muammar QADHAFI.	28.2.2011
3.	ABU SHAARIYA	Position: Deputy Head, External Security Organisation	Prominent member of regime. Brother- in-law of Muammar QADHAFI.	28.2.2011
4.	ASHKAL, Al-Barrani	Position: Deputy Director, Military Intelligence	Senior member of regime.	28.2.2011
5.	ASHKAL, Omar	Position: Head, Revolutionary Committees Movement Place of Birth: Sirte, Libya	Revolutionary Committees involved in violence against demonstrators.	28.2.2011
6.	AL-BAGHDADI, Dr Abdulqader Mohammed	Position: Head of the Liaison Office of the Revolutionary Committees Passport No: B010574 Date of Birth: 01/07/1950	Revolutionary Committees involved in violence against demonstrators.	28.2.2011
7.	DIBRI, Abdulqader Yusef	Position: Head of Muammar QADHAFI's personal security Date of Birth: 1946 Place of Birth: Houn, Libya	Responsibility for regime security. History of directing violence against dissidents.	28.2.2011
8.	DORDA, Abu Zayd Umar	Position: Director, External Security Organisation	Regime loyalist. Head of external intel- ligence agency.	28.2.2011
9.	JABIR, Major General Abu Bakr Yunis	Position: Defence Minister Date of Birth: 1952 Place of Birth: Jalo, Libya	Overall responsibility for actions of armed forces.	28.2.2011
10.	MATUQ, Matuq Mohammed	Position: Secretary for Utilities Date of Birth: 1956 Place of Birth: Khoms	Senior member of regime. Involvement with Revolutionary Committees. Past history of involvement in suppression of dissent and violence.	28.2.2011
11.	QADHAF AL-DAM, Ahmed Mohammed	Date of Birth: 1952 Place of Birth: Egypt	Cousin of Muammar QADHAFI. Since 1995, he is believed to have had command of an elite army battalion in charge of Qadhafi's personal security and to have a key role in External Security Organisation. He has been involved in planning operations against Libyan dissidents abroad and was directly involved in terrorist activity.	28.2.2011

	Name	Identifying information	Reasons	Date of listing
12.	QADHAF AL-DAM, Sayyid Mohammed	Date of Birth: 1948 Place of Birth: Sirte, Libya	Cousin of Muammar QADHAFI. In the 1980s, Sayyid was involved in the dissident assassination campaign and allegedly responsible for several deaths in Europe. He is also thought to have been involved in arms procurement.	28.2.2011
13.	QADHAFI, Mohammed Muammar	Position: Chairman of Libya's General Post and Telecommunications Company Date of Birth: 1970 Place of Birth: Tripoli, Libya	Son of Muammar QADHAFI. Closeness of association with regime.	28.2.2011
14.	QADHAFI, Saadi	Position: Commander Special Forces Passport No. 014797 Date of Birth: 25/05/1973 Place of Birth: Tripoli, Libya	Son of Muammar QADHAFI. Closeness of association with regime. Command of military units involved in repression of demonstrations.	28.2.2011
15.	QADHAFI, Saif al-Arab	Date of Birth: 1982 Place of Birth: Tripoli, Libya	Son of Muammar QADHAFI. Closeness of association with regime.	28.2.2011
16.	AL-SENUSSI, Colonel Abdullah (Al-Megrahi)	Position: Director Military Intelligence Date of Birth: 1949 Place of Birth: Sudan	Military Intelligence involvement in suppression of demonstrations. Past history includes suspicion of involvement in Abu Selim prison massacre. Convicted in absentia for bombing of UTA flight. Brother-in-law of Muammar QADHAFI.	28.2.2011
17.	AL-BARASSI, Safia Farkash	Date of birth: 1952 Place of birth: Al Bayda, Libya	Wife of Muammar QADHAFI. Closeness of association with regime.	28.2.2011
18.	SALEH, Bachir	Date of birth: 1946 Place of birth: Traghen	Head of Cabinet of the Leader. Closeness of association with regime.	28.2.2011
19.	General TOHAMI, Khaled	Date of birth: 1946 Place of birth: Genzur	Director of Internal Security Office. Closeness of association with regime.	28.2.2011
20.	FARKASH, Mohammed Boucharaya	Date of birth: 1 July 1949 Place of birth: Al-Bayda	Director of intelligence in External Security Office. Closeness of association with regime.	28.2.2011

ANNEX IV

List of competent authorities in the Member States referred to in Articles 7(1), 8(1), 10 and 13(1) and address for notifications to the European Commission

A. Competent authorities in each Member State:

BELGIUM

<http://www.diplomatie.be/eusanctions>

BULGARIA

<http://www.mfa.government.bg>

CZECH REPUBLIC

<http://www.mfcr.cz/mezinarodnisankce>

DENMARK

<http://www.um.dk/da/menu/Udenrigspolitik/FredSikkerhedOgInternationalRetsorden/Sanktioner/>

GERMANY

<http://www.bmwi.de/BMWi/Navigation/Aussenwirtschaft/Aussenwirtschaftsrecht/embargos.html>

ESTONIA

http://www.vm.ee/est/kat_622/

IRELAND

<http://www.dfa.ie/home/index.aspx?id=28519>

GREECE

<http://www.mfa.gr/www.mfa.gr/en-US/Policy/Multilateral+Diplomacy/Global+Issues/International+Sanctions/>

SPAIN

http://www.maec.es/es/MenuPpal/Asuntos/Sanciones%20Internacionales/Paginas/Sanciones_%20Internacionales.aspx

FRANCE

<http://www.diplomatie.gouv.fr/autorites-sanctions/>

ITALY

http://www.esteri.it/MAE/IT/Politica_Europea/Deroghe.htm

CYPRUS

<http://www.mfa.gov.cy/sanctions>

LATVIA

<http://www.mfa.gov.lv/en/security/4539>

LITHUANIA

<http://www.urm.lt>

LUXEMBOURG

<http://www.mae.lu/sanctions>

HUNGARY

http://www.kulugyminiszterium.hu/kum/hu/bal/Kulpolitikank/nemzetkozi_szankciok/

MALTA

http://www.doi.gov.mt/EN/bodies/boards/sanctions_monitoring.asp

NETHERLANDS

<http://www.minbuza.nl/sancties>

AUSTRIA

http://www.bmeia.gv.at/view.php?f_id=12750&LNG=en&version=

POLAND

<http://www.msz.gov.pl>

PORTUGAL

<http://www.min-nestrangeiros.pt>

ROMANIA

<http://www.mae.ro/node/1548>

SLOVENIA

http://www.mzz.gov.si/si/zunanja_politika/mednarodna_varnost/omejevalni_ukrepi/

SLOVAKIA

<http://www.foreign.gov.sk>

FINLAND

<http://formin.finland.fi/kvyhteisty/pakotteet>

SWEDEN

<http://www.ud.se/sanktioner>

UNITED KINGDOM

www.fco.gov.uk/competentauthorities

B. Address for notifications to or other communication with the European Commission:

European Commission
Foreign Policy Instruments Service
CHAR 12/106
B-1049 Bruxelles/Brussel
Belgium

E-mail: relex-sanctions@ec.europa.eu
Tel.: (32 2) 295 55 85
Fax: (32 2) 299 08 73

COUNCIL IMPLEMENTING REGULATION (EU) No 205/2011**of 28 February 2011****amending Regulation (EC) No 1292/2007 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community⁽¹⁾ (‘the basic anti-dumping Regulation’), and in particular Article 9(4) and Article 11(3), (5) and (6) thereof,

Having regard to the proposal submitted by the European Commission (‘the Commission’) after consulting the Advisory Committee,

Whereas:

A. PROCEDURE**1. Previous investigation and existing anti-dumping measures**

- (1) In August 2001, by Regulation (EC) No 1676/2001⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, inter alia, in India. The measures consisted of an *ad valorem* anti-dumping duty ranging between 0 % and 62,6 % imposed on imports from individually named exporting producers, with a residual duty rate of 53,3 % on imports from all other companies.
- (2) In March 2006, by Regulation (EC) No 366/2006⁽³⁾, the Council amended the measures imposed by Regulation (EC) No 1676/2001. The anti-dumping duty imposed ranged between 0 % and 18 %, taking into account the findings of the expiry review of the definitive countervailing duties which are detailed in Regulation (EC) No 367/2006⁽⁴⁾.
- (3) In August 2006, by Regulation (EC) No 1288/2006⁽⁵⁾, the Council, following an interim review concerning the subsidisation of an Indian PET film producer, amended the definitive anti-dumping duty imposed on that producer by Regulation (EC) No 1676/2001.

(4) In September 2006, by Regulation (EC) No 1424/2006⁽⁶⁾, the Council, following a new exporting producer request, amended Regulation (EC) No 1676/2001 in respect of an Indian PET film producer. The amended Regulation established a dumping margin of 15,5 % and an anti-dumping duty rate of 3,5 % for the company concerned taking into account the company’s export subsidy margin as ascertained in the anti-subsidy investigation which led to the adoption of Regulation (EC) No 367/2006. Since the company did not have an individual countervailing duty, the rate established for all other companies was applied.

(5) In November 2007, by Regulation (EC) No 1292/2007⁽⁷⁾, the Council imposed a definitive anti-dumping duty on imports of PET film originating in India following an expiry review pursuant to Article 11(2) of the basic anti-dumping Regulation. By the same Regulation a partial interim review, pursuant to Article 11(3) of the basic anti-dumping Regulation, limited to one Indian exporting producer was terminated.

(6) In January 2009, by Regulation (EC) No 15/2009⁽⁸⁾, the Council, following a partial interim review initiated by the Commission on its own initiative concerning the subsidisation of five Indian PET film producers, amended the definitive anti-dumping duty imposed on these companies by Regulation (EC) No 1292/2007 and the definitive countervailing duties imposed by Regulation (EC) No 367/2006.

(7) Regulation (EC) No 1292/2007 also maintained the extension of the measures to Brazil and Israel with certain companies being exempted. The last amendment to Regulation (EC) No 1292/2007 in this regard was made by Council Implementing Regulation (EU) No 806/2010 of 13 September 2010 amending Regulations (EC) No 1292/2007 and (EC) No 367/2006 as regards the granting of an exemption from the measures imposed under those Regulations to one Israeli exporter of polyethylene terephthalate (PET) film originating in India and terminating the registration of imports from that exporter⁽⁹⁾.

(8) It should be noted that Vacmet India Limited is subject to a residual anti-dumping duty of 17,3 % on the basis of Regulation (EC) No 1292/2007.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 227, 23.8.2001, p. 1.

⁽³⁾ OJ L 68, 8.3.2006, p. 6.

⁽⁴⁾ OJ L 68, 8.3.2006, p. 15.

⁽⁵⁾ OJ L 236, 31.8.2006, p. 1.

⁽⁶⁾ OJ L 270, 29.9.2006, p. 1.

⁽⁷⁾ OJ L 288, 6.11.2007, p. 1.

⁽⁸⁾ OJ L 6, 10.1.2009, p. 1.

⁽⁹⁾ OJ L 242, 15.9.2010, p. 6.

2. Existing countervailing measures

- (9) It should also be noted that Vacmet India Limited is subject to a countervailing duty of 19,1 % on the basis of Regulation (EC) No 367/2006.

3. Request for a partial interim review

- (10) On 7 August 2009, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation. The request, limited in scope to the examination of dumping, was lodged by Vacmet India Limited, an exporting producer from India ('the applicant'). In its request, the applicant claimed that the circumstances on the basis of which measures were imposed have changed and that these changes are of a lasting nature. The applicant provided prima facie evidence that the continued imposition of the measure at its current level is no longer necessary to offset dumping.

4. Initiation of a review

- (11) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced on 14 January 2010, by a notice published in the *Official Journal of the European Union* ⁽¹⁾ ('notice of initiation'), the initiation of a partial interim review, in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of dumping in respect of the applicant.
- (12) The partial interim review investigation was also to assess the need, depending on the review findings, to amend the rate of duty currently applicable to imports of the product concerned from exporting producers in the country concerned not individually mentioned in Article 2(2) of Regulation (EC) No 1292/2007, i.e. the anti-dumping duty rate as applying to 'all other companies' in India.
- (13) On 14 January 2010, the Commission also announced, by a notice of initiation published in the *Official Journal of the European Union* ⁽²⁾, the initiation of a partial interim review of the countervailing measures limited in scope to the examination of subsidisation as far as the applicant is concerned.

5. Investigation

- (14) The investigation of the level of dumping covered the period from 1 January to 31 December 2009 ('review investigation period' or 'RIP').
- (15) The Commission officially informed the applicant, and the authorities of the exporting country and the Union industry, of the initiation of the partial interim review investigation. Interested parties were given the opportunity to make their views known in writing and to be heard.

- (16) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to the applicant and received a reply within the deadline set for that purpose.

- (17) The Commission sought and verified all information it deemed necessary for the determination of dumping. A verification visit was carried out at the premises of the applicant.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (18) The product concerned by this review is the same as that defined in the Regulation imposing the measures in force (Regulation (EC) No 1292/2007), namely polyethylene terephthalate (PET) film, originating in India, currently falling within CN codes ex 3920 62 19 and ex 3920 62 90.

2. Like product

- (19) As in previous investigations, this investigation has shown that PET film produced in India and exported to the EU and the PET film produced and sold domestically on the Indian market, as well as the PET film produced and sold in the EU by the Union producers have the same basic physical and chemical characteristics and the same basic uses.
- (20) These products are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

(a) Normal Value

- (21) In order to establish normal value, it was first determined whether the total volume of domestic sales of the like product was representative in accordance of Article 2(2) of the basic Regulation, namely whether these sales represented 5 % of the sales volume of the product concerned exported to the EU. The Commission established that the like product was sold domestically by the applicant in overall representative volumes. This representativity test was then carried out on a type-by-type basis. It was found that two types were not sold domestically at all.
- (22) The Commission subsequently examined whether the domestic sales of the like product could be regarded as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing, for the like product sold on the Indian market, the proportion of profitable domestic sales to independent customers during the RIP. It was found that more than 90 % of the domestic sales were profitable.

⁽¹⁾ OJ C 8, 14.1.2010, p. 27.

⁽²⁾ OJ C 8, 14.1.2010, p. 29.

(23) For the product types sold domestically and which passed the representativity test mentioned in recital 21 above, it was established that for one product type, all domestic transactions were not profitable and thus were not made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation.

(24) For the product types which were sold in sufficient quantities and sold in the ordinary course of trade in India, normal value was established on the basis of prices paid or payable by unrelated customers pursuant to Article 2(1) of the basic Regulation. For the other types, namely the type mentioned in recital 23 above and the types not sold domestically, normal value was constructed on the basis of the costs of manufacturing incurred by the applicant for the exported model in question plus a reasonable amount for sales, general and administrative (SG&A) costs and for profit in accordance with Article 2(3) of the basic Regulation.

(25) Given the high level of profitable domestic sales made in the ordinary course of trade, the SG&A costs and the profit were based on all domestic sales of the like product on the domestic market.

(b) Export price

(26) In all cases where PET film was directly exported to independent customers in the EU, the export prices were established in accordance with Article 2(8) of the basic Regulation, namely on the basis of prices actually paid or payable.

(27) For the export sales to the EU made through a related company, the export price was established on the basis of prices at which the imported products were first resold to an independent buyer in accordance with Article 2(9) of the basic Regulation.

(28) For this purpose, adjustments were made for all costs incurred between importation and resale to the first independent customer in the Union market. A reasonable margin for SG&A costs and profit was also deducted for these sales. The percentages used to calculate the profit and the SG&A costs were in line with those reported in the Profit and Loss account of the related company.

(c) Comparison

(29) The comparison between the weighted average normal value and the weighted average export price was made on an ex-works basis and at the same level of trade. In order to ensure a fair comparison between normal value and the export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were demonstrated to affect prices and price comparability. For this purpose, due allowance in the form of adjustments was made for differences in transport, insurance, handling, loading and ancillary

costs, commissions, financial costs and packing costs paid by the applicant where applicable and justified.

(d) Dumping margin

(30) As provided for pursuant to Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned. This comparison did not show the existence of dumping.

D. LASTING NATURE OF CHANGED CIRCUMSTANCES

(31) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances alleged by the applicant could reasonably be considered to be of a lasting nature.

(32) The investigation showed that the indicative dumping margin calculated for the export sales of the applicant to third countries in the RIP was also negative. In terms of volume, these sales were several times higher than the export sales to the EU.

(33) It was also found that the applicant made significant investments as from 2007 to improve its production process and to produce the basic raw material which is necessary for the production of the product concerned. These changes have resulted in, in particular, a reduction of costs and have thus explained the direct impact on the Company dumping margin. This change in circumstances can be considered to be of a lasting nature.

(34) It was therefore considered that the circumstances that led to the initiation of this interim review are unlikely to change in the foreseeable future in a manner that would affect the findings of the present interim review. Hence, it was concluded that the changed circumstances are of a lasting nature and that the application of the anti-dumping measure at its current level is no longer justified.

E. ANTI-DUMPING MEASURES

(35) In the light of the results of this review investigation, it is considered appropriate to amend the anti-dumping duty applicable to imports of the product concerned from the applicant to 0 %.

(36) Pursuant to Article 14(1) of the basic Regulation and Article 24(1), second subparagraph, of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community⁽¹⁾, no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

situation arising from dumping or from export subsidisation. As mentioned in recital 9 above, the applicant is subject to a countervailing duty. Since the anti-dumping duty established for the applicant is 0 % with regard to the product concerned, this situation does not arise in the present case.

(37) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to propose to amend the duty rate applicable to the applicant and were given an opportunity to comment.

(38) The oral and written comments submitted by the parties were considered and, where appropriate, the definitive findings have been modified accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The table in Article 2(2) of Regulation (EC) No 1292/2007 is hereby amended by inserting the following:

Vacmet India Limited, Anant Plaza, IInd Floor, 4/117-2A, Civil Lines, Church Road, Agra-282002, Uttar Pradesh, India	0,0	A992'
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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, 28 February 2011.

For the Council

The President

FELLEGI T.

COUNCIL IMPLEMENTING REGULATION (EU) No 206/2011**of 28 February 2011****amending Regulation (EC) No 367/2006 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community⁽¹⁾ (the basic Regulation), and in particular Articles 15(1), 19(1) and 22(1) thereof,

Having regard to the proposal submitted by the European Commission (the Commission) after consulting the Advisory Committee,

Whereas:

A. PROCEDURE**1. Previous investigation and existing countervailing measures**

- (1) In December 1999, by Regulation (EC) No 2597/1999⁽²⁾, the Council imposed a definitive countervailing duty on imports of polyethylene terephthalate (PET) film (the product concerned) currently falling within CN codes ex 3920 62 19 and ex 3920 62 90, originating in India. The measures took the form of an *ad valorem* countervailing duty, ranging between 3,8 % and 19,1 % imposed on imports from individually named exporters, with a residual duty rate of 19,1 % imposed on imports of the product concerned from all other companies. The investigation period of the original investigation was 1 October 1997 to 30 September 1998.
- (2) In March 2006, by Regulation (EC) No 367/2006⁽³⁾ (Regulation (EC) No 367/2006), the Council, following an expiry review pursuant to Article 18 of the basic Regulation, maintained the definitive countervailing duty imposed by Regulation (EC) No 2597/1999 on imports of PET film originating in India. The review investigation period was 1 October 2003 to 30 September 2004.
- (3) In August 2006, by Regulation (EC) No 1288/2006⁽⁴⁾, the Council, following an interim review concerning the subsidisation of an Indian PET film producer, amended the definitive countervailing duty imposed on this company by Regulation (EC) No 367/2006.

(4) In September 2007, by Regulation (EC) No 1124/2007⁽⁵⁾, the Council, following a partial interim review concerning the subsidisation of another Indian PET film producer, amended the definitive countervailing duty imposed on this company by Regulation (EC) No 367/2006.

(5) In January 2009, by Regulation (EC) No 15/2009⁽⁶⁾, the Council, following a partial interim review initiated by the Commission on its own initiative concerning the subsidisation of five Indian PET film producers, amended the definitive countervailing duty imposed on these companies by Regulation (EC) No 367/2006 and the definitive anti-dumping duties imposed by Regulation (EC) No 1292/2007⁽⁷⁾.

(6) In June 2010, by implementing Regulation (EU) No 579/2010⁽⁸⁾, the Council, following a partial interim review concerning the subsidisation of an Indian PET film producer, amended the definitive countervailing duty imposed on this company by Regulation (EC) 367/2006.

(7) It should be noted that Vacmet India Limited is currently subject to a countervailing duty of 19,1 % on the basis of Regulation (EC) 367/2006.

2. Existing anti-dumping measures

(8) It should be noted that Vacmet India Limited is subject to a residual anti-dumping duty of 17,3 % on the basis of Regulation (EC) 1292/2007.

3. Initiation of a partial interim review

(9) On 7 August 2009, the Commission received a request for a partial interim review pursuant to Article 19 of the basic Regulation. The request, limited in scope to the examination of subsidisation, was lodged by Vacmet India Limited, an exporting producer from India (the applicant). In its request, the applicant claimed that the circumstances on the basis of which measures were imposed have changed and that these changes are of a lasting nature. The applicant provided *prima facie* evidence that the continued imposition of the measure at its current level is no longer necessary to offset subsidisation.

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ OJ L 316, 10.12.1999, p. 1.

⁽³⁾ OJ L 68, 8.3.2006, p. 15.

⁽⁴⁾ OJ L 236, 31.8.2006, p. 1.

⁽⁵⁾ OJ L 255, 29.9.2007, p. 1.

⁽⁶⁾ OJ L 6, 10.1.2009, p. 1.

⁽⁷⁾ OJ L 288, 6.11.2007, p. 1.

⁽⁸⁾ OJ L 168, 2.7.2010, p. 1.

- (10) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced on 14 January 2010, by a notice published in the *Official Journal of the European Union* ⁽¹⁾ (notice of initiation), the initiation of a partial interim review, in accordance with Article 19 of the basic Regulation, limited in scope to the examination of subsidisation in respect of the applicant.
- (11) The partial interim review investigation was also to assess the need, depending on the review findings, to amend the rate of duty currently applicable to imports of the product concerned from exporting producers in the country concerned not individually mentioned in Article 1(2) of Regulation (EC) No 367/2006, i.e. the duty rate as applying to 'all other companies' in India.
- (12) The Commission also announced on 14 January 2010, by a notice of initiation published in the *Official Journal of the European Union* ⁽²⁾, the initiation of a partial interim review of the anti-dumping measures limited in scope to the examination of dumping as far as the applicant is concerned.

4. Investigation

- (13) The investigation of the level of subsidisation covered the period from 1 January 2009 to 31 December 2009 ('review investigation period' or 'RIP').
- (14) The Commission officially informed the applicant, the Government of India (GOI) and the Union industry of the initiation of the partial interim investigation. Interested parties were given the opportunity to make their views known in writing and to be heard.
- (15) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to the applicant. In addition, a questionnaire was sent to the GOI.
- (16) While the applicant fully cooperated in the investigation, the relevant authorities of the GOI did not submit a questionnaire reply within the deadline. The Commission sought and verified all information it deemed necessary for the determination of subsidisation. A verification visit was carried out at the premises of the applicant.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (17) The product confirmed by this review is the same as that defined in the Regulation imposing the measures in force

(Regulation (EC) No 367/2006), namely polyethylene terephthalate (PET) film, originating in India, currently falling within CN codes ex 3920 62 19 and ex 3920 62 90.

2. Like product

- (18) As in previous investigations, this investigation has shown that PET film produced in India and exported to the Union and the PET film produced and sold domestically on the Indian market, as well as the PET film produced and sold in the EU by the Union producers have the same basic physical and chemical characteristics and the same basic uses.
- (19) These products are therefore considered to be alike within the meaning of Article 2(c) of the basic Regulation.

C. SUBSIDISATION

1. Introduction

Nationwide Schemes

- (20) On the basis of the information submitted by the applicant and the Union industry, the following schemes, which allegedly involve the granting of subsidies, were investigated:
- (a) Duty Entitlement Passbook Scheme;
 - (b) Export Promotion Capital Goods Scheme;
 - (c) Advance Authorisation Scheme (formerly known as Advance Licence Scheme);
 - (d) Capital Subsidies.

- (21) The schemes (a) to (c) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (Foreign Trade Act). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Foreign Trade Policy' documents, which are issued by the Ministry of Commerce every 5 years and updated regularly. Two Foreign Trade Policy documents are relevant to the RIP of this case, namely FT-policy 04-09 and FT-policy 09-14. In addition, the GOI also sets out the procedures governing the FT-policy 04-09 and FT-policy 09-14 in a 'Handbook of Procedures, Volume I' ('HOP I 04-09' and 'HOP I 09-14' respectively). The Handbook of Procedures is also updated on a regular basis.

⁽¹⁾ OJ C 8, 14.1.2010, p. 29.

⁽²⁾ OJ C 8, 14.1.2010, p. 27.

- (22) The scheme specified above under point (d) is managed by the authorities of the State of Uttar Pradesh.

2. Duty Entitlement Passbook Scheme (DEPBS)

(a) Legal Basis

- (23) The detailed description of the DEPBS is contained in paragraphs 4.3 of the FT-policy 04-09 and FT-policy 09-14 as well as in chapter 4 of the HOP I 04-09 and of the HOP I 09-14.

(b) Eligibility

- (24) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) Practical implementation of the DEPBS

- (25) An exporter can apply for DEPBS credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPBS rates have been established by the Indian authorities for most products, including the product concerned. They are determined on the basis of Standard Input Output Norms (SIONs) taking into account a presumed import content of inputs in the export product and the customs duty incidence on such presumed imports, regardless of whether import duties have actually been paid or not.
- (26) To be eligible for benefits under this scheme, a company must export. At the time of the export transaction, a declaration must be made by the exporter to the Indian authorities indicating that the export is taking place under the DEPBS. In order for the goods to be exported, the Indian customs authorities issue an export shipping bill during the dispatch procedure. This document shows, inter alia, the amount of DEPBS credit which is to be granted for that export transaction. At this point in time, the exporter knows the benefit it will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPBS credit.
- (27) It was found that in accordance with Indian accounting standards, DEPBS credits can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation. Such credits can be used for payment of customs duties on subsequent imports of any goods — except capital goods and goods where there are import restrictions. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise. DEPBS credits are freely transferable and valid for a period of 12 months from the date of issue.

- (28) Application for DEPBS credits are electronically filed and can cover an unlimited amount of export transactions. De facto no strict deadlines apply to DEPBS credits. The electronic system used to manage DEPBS does not automatically exclude export transactions exceeding the submission deadline mentioned in chapter 4.47 of the HOP I 04-09 and 09-14. Furthermore, as clearly provided in chapter 9.3 of the HOP I 04-09 and 09-14, applications received after the expiry of submission deadlines can always be considered subject to the imposition of a minor penalty fee (i.e. 10 % of the entitlement).

- (29) It was found that the applicant used this scheme during the RIP.

(d) Conclusions on the DEPBS

- (30) The DEPBS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A DEPBS credit is a financial contribution by the GOI since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would otherwise be due. In addition, the DEPBS credit confers a benefit upon the exporter because it improves its liquidity.
- (31) Furthermore, the DEPBS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.
- (32) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) to the basic Regulation. In particular, an exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I, and Annexes II and III to the basic Regulation. Lastly, an exporter is eligible for the DEPBS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from the DEPBS.

(e) *Calculation of the subsidy amount*

- (33) In accordance with Article 3(2) and Article 5 of the basic Regulation and the calculation methodology used for this scheme in Regulation (EC) No 367/2006, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient found to exist during the RIP. In this regard, it was considered that the benefit is conferred on the recipient at the point in time when an export transaction is made under this scheme. At that moment, the GOI is liable to forego the customs duties, which constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, inter alia, the amount of DEPBS credit which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, it is considered appropriate to assess the benefit under the DEPBS as being the sums of the credits earned on export transactions made under this scheme during the RIP.
- (34) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amount as numerator, pursuant to Article 7(1)(a) of the basic Regulation. In accordance with Article 7(2) of the basic Regulation this subsidy amount has been allocated over the total export turnover during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.
- (35) The subsidy rate established in respect of this scheme for the applicant during the RIP amounts to 7,9 %.

3. Export Promotion Capital Goods Scheme (EPCGS)

(a) *Legal basis*

- (36) The detailed description of the EPCGS is contained in chapter 5 of the FT-policy 04-09 and of the FT-policy 09-14 as well as in chapter 5 of the HOP I 04-09 and of the HOP I 09-14.

(b) *Eligibility*

- (37) Manufacturer-exporters, merchant-exporters 'tied to' supporting manufacturers and service providers are eligible for this scheme.

(c) *Practical implementation*

- (38) Under the condition of an export obligation, a company is allowed to import capital goods (new and — since April 2003 — second-hand capital goods up to 10 years old) at a reduced rate of customs duty. To this end, the GOI issues an EPCGS licence upon application

and payment of a fee. Since April 2000, the scheme provides for a reduced import duty rate of 5 % applicable to all capital goods imported under the scheme.

- (39) The EPCGS licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail himself of the benefit for duty free import of components required to manufacture such capital goods. Alternatively, the indigenous manufacturer can claim the benefit of deemed export in respect of supply of capital goods to an EPCGS licence holder.
- (40) It was found that the applicant used this scheme during the RIP.

(d) *Conclusion on EPCG Scheme*

- (41) The EPCGS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The duty reduction constitutes a financial contribution by the GOI since this concession decreases the GOI's duty revenue, which would otherwise be due. In addition, the duty reduction confers a benefit upon the exporter because the duties saved upon import improve its liquidity.
- (42) Furthermore, the EPCGS is contingent in law upon export performance, since such licences cannot be obtained without a commitment to export. Therefore, it is deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.
- (43) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in Annex I, item (i), to the basic Regulation because they are not consumed in the production of the exported products.

(e) *Calculation of the subsidy amount*

- (44) The subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in the industry concerned. In accordance with the established practice, the amount so calculated, which is attributable to the RIP, has been adjusted by adding interest during this period in order to reflect the full value of the benefit over time. The commercial interest rate during the review investigation period in India was considered appropriate for this purpose. Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation.

(45) In accordance with Article 7(2) and 7(3) of the basic Regulation, this subsidy amount has been allocated over the export turnover during the RIP as the appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(46) As regards imports made under this scheme, the investigation revealed that there were a number of items which could be used for both production of the product concerned as well as for the production of other products. However, it was noted that some items were used in a factory unit which is solely used for the production of PET film. Therefore, in terms of calculation of the benefit to the applicant, the denominator to be used for these items would be the export turnover of the product concerned and not the total export turnover.

(47) The subsidy rate established in respect of this scheme for the applicant for the RIP amounts to 2,4 %.

4. Advance Authorisation Scheme (AAS)

(a) Legal basis

(48) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the FT-policy 04-09 and FT-policy 09-14 and chapters 4.1 to 4.30 of the HOP I 04-09 and of the HOP I 09-14. This scheme was called Advance Licence Scheme during the previous investigation that led to the imposition, pursuant to Regulation (EC) No 367/2006, of the definitive countervailing duty currently in force.

(b) Eligibility

(49) The AAS consists of six sub-schemes, as described in more detail in recital 50. Those sub-schemes differ, inter alia, in the scope of eligibility. Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the AAS physical exports and for the AAS for annual requirement sub-schemes. Manufacturer-exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of the FT-policy 04-09, such as suppliers of an export oriented unit (EOU), are eligible for the AAS deemed export sub-scheme. Eventually, intermediate suppliers to manufacturer-exporters are eligible for 'deemed export' benefits under the sub-schemes Advance Release Order (ARO) and back to back inland letter of credit.

(c) Practical implementation

(50) Advance authorisations can be issued for:

(i) *Physical exports*: This is the main sub-scheme. It allows for duty-free import of input materials for the production of a specific resulting export

product. 'Physical' in this context means that the export product has to leave Indian territory. An import allowance and export obligation including the type of export product are specified in the licence;

(ii) *Annual requirement*: Such an authorisation is not linked to a specific export product, but to a wider product group (e.g. chemical and allied products). The licence holder can — up to a certain value threshold set by its past export performance — import duty-free any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resulting product falling under the product group using such duty-exempt material;

(iii) *Intermediate supplies*: This sub-scheme covers cases where two manufacturers intend to produce a single export product and divide the production process. The manufacturer-exporter who produces the intermediate product can import duty-free input materials and can obtain for this purpose an AAS for intermediate supplies. The ultimate exporter finalises the production and is obliged to export the finished product;

(iv) *Deemed exports*: This sub-scheme allows a main contractor to import inputs free of duty which are required in manufacturing goods to be sold as 'deemed exports' to the categories of customers mentioned in paragraph 8.2(b) to (f), (g), (i) and (j) of the FT-policy 04-09. Deemed exports refer to those transactions in which the goods supplied do not leave the country. A number of categories of supply is regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to an export-oriented unit (EOU) or to a company situated in a special economic zone (SEZ);

(v) *Advance Release Order (ARO)*: The AAS holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against AROs. In such cases the Advance Authorisations are validated as AROs and are endorsed to the indigenous supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the indigenous supplier to the benefits of deemed exports as set out in paragraph 8.3 of the FT-policy 04-09 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty). The ARO mechanism refunds taxes

and duties to the supplier instead of refunding the same to the ultimate exporter in the form of drawback/refund of duties. The refund of taxes/duties is available both for indigenous inputs as well as imported inputs;

- (vi) *Back to back inland letter of credit*: This sub-scheme again covers indigenous supplies to an Advance Authorisation holder. The holder of an Advance Authorisation can approach a bank for opening an inland letter of credit in favour of an indigenous supplier. The authorisation will be validated by the bank for direct import only in respect of the value and volume of items being sourced indigenously instead of importation. The indigenous supplier will be entitled to deemed export benefits as set out in paragraph 8.3 of the FT-policy 04-09 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).

- (51) The applicant received concessions under the AAS linked to the product concerned during the RIP. The applicant made use of one of the sub-schemes, i.e. AAS physical exports. It is therefore not necessary to establish the countervailability of the remaining unused sub-schemes.

- (52) For verification purposes by the Indian authorities, an Advance Authorisation holder is legally obliged to maintain 'a true and proper account of consumption and utilisation of duty-free imported/domestically procured goods' in a specified format (chapters 4.26, 4.30 and Appendix 23 HOP I 04-09 and HOP I 09-14), i.e. an actual consumption register. This register has to be verified by an external chartered accountant/cost and works accountant who issues a certificate stating that the prescribed registers and relevant records have been examined and the information furnished under Appendix 23 is true and correct in all respects.

- (53) With regard to the sub-scheme used during the RIP by the applicant, i.e. physical exports, the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the Authorisation. In addition, at the time of import and of export, the corresponding transactions are to be documented by Government officials on the Authorisation. The volume of imports allowed under the AAS is determined by the GOI on the basis of Standard Input Output Norms (SIONs) which exist for most products including the product concerned. Imported input materials are not transferable and have to be used to produce the resultant export product. The export obligation must be fulfilled within a prescribed time frame after issuance of the licence (24 months with two possible extensions of 6 months each).

- (54) The current interim review investigation established that the verification requirements stipulated by the Indian authorities were not honoured and not yet tested in practice. The applicant did not maintain a system whereby it could be verified which inputs were consumed in the production of the exported product and in what amounts, as stipulated by the FT-policy (Appendix 23) and in accordance with Annex II(II)(4) to the basic Regulation. In fact, there were no records of actual consumption.

- (55) Changes in the administration of the FT-policy 04 - 09, which became effective in autumn of 2005 (mandatory sending of the consumption register to the Indian authorities in the context of the redemption procedure) has not yet been applied in the case of the applicant. Thus, the de facto implementation of this provision could not be verified at this stage.

(d) *Conclusion on the AAS*

- (56) The exemption from import duties is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation, i.e. a financial contribution of the GOI which conferred a benefit upon the investigated exporter.

- (57) In addition, AAS physical exports is clearly contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation. Without an export commitment a company cannot obtain benefits under this scheme.

- (58) The sub-scheme used in the present case cannot be considered permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) to the basic Regulation. The GOI did not effectively apply either its new or its old verification system or procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) to the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) to the basic Regulation). The SIONs for the product concerned were not sufficiently precise. The SIONs themselves cannot be considered a verification system of actual consumption because the design of those standard norms does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation).

(59) The sub-scheme is therefore countervailable.

(e) *Calculation of the subsidy amount*

(60) In the absence of permitted duty drawback systems or substitution drawback systems, the countervailable benefit is the remission of total import duties normally due upon import of inputs. In this respect, it is noted that the basic Regulation does not only provide for the countervailing of an 'excess' remission of duties. According to Article 3(1)(a)(ii) and Annex I(i) to the basic Regulation, only when the conditions of Annexes II and III to the basic Regulation are met can the excess remission of duties be countervailed. However, these conditions were not fulfilled in the present case. Thus, if an adequate monitoring process is not demonstrated, the above exception for drawback schemes is not applicable and the normal rule of the countervailing of the amount of unpaid duties (revenue forgone) applies, rather than of any purported excess remission. As set out in Annexes II(II) and III(II) to the basic Regulation, the burden is not upon the investigating authority to calculate such excess remission. To the contrary, according to Article 3(1)(a)(ii) of the basic Regulation, the investigating authority only has to establish sufficient evidence to refute the appropriateness of an alleged verification system.

(61) The subsidy amount for the applicant which used the AAS was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the material imported under the sub-scheme during the RIP (numerator). In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted from the subsidy amount where justified claims were made. In accordance with Article 7(2) of the basic Regulation, this subsidy amount was allocated over the export turnover of the product concerned during the RIP as appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(62) The subsidy rate established in respect of this scheme for the applicant for the RIP amounts to 0,2 %.

5. Capital Subsidies (CS)

(a) *Legal basis*

(63) In previous investigations regarding PET film, including the investigation that led to the imposition by Regulation (EC) No 367/2006 of the definitive countervailing duty currently in force, several Indian State schemes involving incentives granted to local companies were investigated.

The State schemes fall under the heading 'Package Scheme of Incentives' as there can be different kinds of incentives involved. The previous investigation established that a company's entitlement to benefits could be stipulated in the 'Eligibility Certificate' or 'Entitlement Certificate'. However, as in the present investigation, there could also be ad hoc subsidies such as capital subsidies.

(b) *Eligibility*

(64) In order to be eligible, companies must, as a general rule, invest in less developed areas of a state either by setting up a new industrial establishment or by making a large scale capital investment or diversification of an existing industrial establishment.

(c) *Practical implementation*

(65) According to the response to the questionnaire, the applicant received in 2009 a significant amount as capital subsidy for setting up new production facilities by the Government of Uttar Pradesh (GUP). It was explained that this capital subsidy received is linked to the setting up of new production facilities, i.e. to cover expenses for investments made by the applicant. According to the applicant, it was a pure subsidy in the form of a grant to improve equity.

(66) The investigation also revealed that the applicant is eligible for refunds of VAT and Central Sales Tax (CST) from the Commercial Tax Department of Uttar Pradesh because of investments earlier made. In the 'Eligibility Certificate' there is a cap which the company is able to claim. The scheme was used by the company over 4 years. On a monthly basis, refunds of paid VAT and CST charged on intra-State and inter-State sales respectively were requested, including during the RIP.

(d) *Conclusion*

(67) The capital subsidy is a direct transfer of funds, i.e. a grant to the applicant. It is a subsidy within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation. It is a financial contribution by the State Government of Uttar Pradesh which confers a direct benefit upon the applicant.

(68) The refund of VAT and CST provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The refund constitutes a financial contribution by the State Government of Uttar Pradesh since this concession decreases the State Government's tax revenue which would be otherwise due. In addition, the tax refund confers a benefit upon the applicant because the tax saved improves its liquidity.

- (69) The subsidies are not contingent in law upon export performance. However, due to the lack of cooperation of the authorities of the State Government of Uttar Pradesh, the Commission was unable to make a firm conclusion on this scheme as regards the specificity and practical application of this law and the level of discretion the granting authority enjoys when deciding on the applications. Indeed, it cannot be determined with certainty whether Article 4(2), first subparagraph, point (b) is fulfilled, given that it could not be established that the State Government of Uttar Pradesh applied objective criteria or conditions for granting the subsidy. Therefore, even if the scheme was shown not to be specific in law, it is still not clear that it is not specific *de facto*. As a result it is deemed to be specific and countervailable under Article 4(2), first subparagraph, point (c) and Article 4(2), fourth subparagraph of the basic Regulation.

(e) *Calculation of the subsidy amount*

- (70) As regards the capital subsidy received for setting up new production facilities, the subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the capital subsidy spread across a period which reflects the normal depreciation period/useful life of capital goods in this industry because the subsidy can be linked to the acquisition of fixed assets. Interests were added to this amount in order to reflect the full value of the benefit over time. The commercial interest rate during the review investigation period in India was considered appropriate for this purpose. Pursuant to

Article 7(2) of the basic Regulation, the amount of subsidy has then been allocated over the total turnover of export and domestic sales during the RIP as the appropriate denominator because the subsidy is not export-contingent and was not granted by reference to the quantities manufactured, produced, exported or transported.

- (71) Regarding the refunds of VAT and Central Sales Tax, the subsidy amount was calculated on the basis of the amount of refunds during the RIP. Pursuant to Article 7(2) of the basic Regulation, the amount of subsidy (numerator) has then been allocated over the total turnover of export and domestic sales during the RIP as the appropriate denominator because the subsidy is not export-contingent and it was not granted by reference to the quantities manufactured, produced, exported or transported.

- (72) Based on the above, the subsidy rate established for the applicant in respect of these capital subsidies during the RIP amounts to 0,5 %.

6. Amount of countervailable subsidies

- (73) The applicant is currently subject to a countervailing duty of 19,1 %.
- (74) During the present partial interim review, the amount of countervailable subsidies for the applicant, expressed *ad valorem*, was found to be 11,0 %, as listed hereunder:

SCHEME →	DEPBS (*)	EPCGS (*)	AAS (*)	CS	Total
COMPANY ↓	%	%	%	%	%
Vacmet India Limited	7,9	2,4	0,2	0,5	11,0

(*) Subsidies marked with an asterisk are export subsidies.

- (75) Account taken of the above, it is concluded that the level of subsidisation with regard to the exporting producer concerned has decreased.

7. Countervailing measures

- (76) It was also examined whether the changed circumstances with regard to the examined schemes could be considered to be of a lasting nature.
- (77) The investigation confirmed that the subsidy amount for the applicant has decreased well below the duty rate currently applicable to it. This reduction in the overall subsidy level is mainly due to a significant drop of benefits which are available under the DEPBS. On the basis of the above, there seem to be indications that

the applicant will continue to receive subsidies in the future of an amount which is less than the one to which it is currently subject.

- (78) Since it has been demonstrated that the applicant is in receipt of a much lower subsidisation than before and that it is likely to continue to receive subsidies of an amount which is lower than that determined in the original investigation, the level of the measure should therefore be amended to reflect the new findings.

- (79) In view of the above, the amended countervailing duty rate should be established at the new rate of subsidisation found during the present partial interim review, as the injury margin calculated in the original anti-subsidy investigation remains higher.

(80) Pursuant to Article 24(1), second subparagraph of Regulation (EC) No 597/2009, no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation. However, since the anti-dumping duty established for the applicant as a result of the parallel anti-dumping interim review is 0 % with regard to the product concerned, this situation does not arise in the present case.

(81) With regard to the rate of duty currently applicable to imports of the product concerned from exporting producers not individually mentioned in Article 1(2) of Regulation (EC) No 367/2006, i.e. the duty specified as applying to 'all other companies' in India, it is noted that the actual modalities of the investigated schemes and their countervailability have not changed with respect to the previous investigation. Thus there is no reason to re-calculate the subsidy and duty rates of these companies. Consequently, the rates of the duty applicable to all companies other than the applicant remain unchanged.

(82) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to

propose to amend the duty rate applicable to the applicant and were given an opportunity to comment.

(83) The oral and written comments submitted by the parties were considered and, where appropriate, the definitive findings have been modified accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The table in Article 1(2) of Regulation (EC) No 367/2006 is hereby amended by inserting the following:

'Vacmet India Limited, Anant Plaza, IInd Floor, 4/117-2A, Civil Lines, Church Road, Agra-282002, Uttar Pradesh, India	11,0	A992'
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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, 28 February 2011.

For the Council
The President
FELLEGI T.

COMMISSION REGULATION (EU) No 207/2011**of 2 March 2011****amending Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards Annex XVII (Diphenylether, pentabromo derivative and PFOS)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC⁽¹⁾, and in particular Article 131 thereof,

Whereas:

- (1) Annex XVII to Regulation (EC) No 1907/2006 introduces restrictions to the placing on the market and use of Diphenylether, pentabromo derivative and perfluorooctane sulfonates (PFOS) under entries 44 and 53.
- (2) Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC⁽²⁾ implements in Union law the commitments set out in the Stockholm Convention on Persistent Organic Pollutants, hereinafter 'the Convention', approved by Council Decision 2006/507/EC⁽³⁾ and in the 1998 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants, hereinafter 'the Protocol', approved by Council Decision 2004/259/EC⁽⁴⁾.
- (3) Following nominations of substances received from the European Union and its Member States, Norway and Mexico, the Persistent Organic Pollutants Review Committee established under the Convention has

concluded its work on a group of substances that have been found to meet the criteria of the Convention. At the fourth meeting of the Conference of the Parties to the Convention on 4-8 May 2009, (hereinafter 'the COP 4'), it was agreed to add nine substances to the Annexes to the Convention including Pentabromodiphenyl ether and PFOS.

- (4) Commission Regulation (EU) No 757/2010 of 24 August 2010 amending Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants as regards Annexes I and III⁽⁵⁾ implements the Decisions of the COP 4, by including the substances listed in the Convention or the Protocol or in both in Annex I to Regulation (EC) No 850/2004. Those substances include Pentabromodiphenyl ether and PFOS. Regulation (EC) No 850/2004 prohibits the production and placing on the market of the substances listed in Annex I and regulates the management of waste containing these substances. In the case of PFOS, derogations applicable under REACH in Annex XVII are carried over and listed in Annex I to Regulation (EC) No 850/2004 with some amendments to reflect the COP 4 Decision.
- (5) As a consequence, restrictions on Diphenylether, pentabromo derivative and PFOS in Annex XVII to Regulation (EC) No 1907/2006 are superfluous and entries 44 and 53 should be deleted.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 133 of Regulation (EC) No 1907/2006,

HAS ADOPTED THIS REGULATION:

Article 1

In Annex XVII to Regulation (EC) No 1907/2006 entries 44 and 53 are deleted.

⁽¹⁾ OJ L 396, 30.12.2006, p. 1.

⁽²⁾ OJ L 158, 30.4.2004, p. 7.

⁽³⁾ OJ L 209, 31.7.2006, p. 1.

⁽⁴⁾ OJ L 81, 19.3.2004, p. 35.

⁽⁵⁾ OJ L 223, 25.8.2010, p. 29.

Article 2

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

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

Done at Brussels, 2 March 2011.

For the Commission
The President
José Manuel BARROSO

COMMISSION REGULATION (EU) No 208/2011**of 2 March 2011****amending Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council and Commission Regulations (EC) No 180/2008 and (EC) No 737/2008 as regards lists and names of EU reference laboratories****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 90/426/EEC of 26 June 1990 on animal health conditions governing the movement and import from third countries of equidae⁽¹⁾, and in particular Article 19(iv) thereof,

Having regard to Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules⁽²⁾, and in particular Article 32(5) thereof,

Having regard to Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals⁽³⁾, and in particular Article 55(1) thereof,

Whereas:

- (1) Regulation (EC) No 882/2004 lays down the general tasks, duties and requirements for Community reference laboratories for food and feed and for animal health and live animals. The Community reference laboratories for food and feed are listed in Part I and those for animal health and live animals in Part II of Annex VII to that Regulation.
- (2) By Commission Regulation (EC) No 180/2008 of 28 February 2008 concerning the Community reference laboratory for equine diseases other than African horse sickness and amending Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council⁽⁴⁾, the Agence Française de Sécurité Sanitaire des Aliments (AFSSA) with its research laboratories for animal pathology and zoonoses and for equine pathology and diseases, situated in France, was designated as the Community reference laboratory for equine diseases other than African horse sickness.
- (3) By Commission Regulation (EC) No 737/2008 of 28 July 2008 designating the Community reference laboratories for crustacean diseases, rabies and bovine tuberculosis, laying down additional responsibilities and tasks for the

Community reference laboratories for rabies and bovine tuberculosis and amending Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council⁽⁵⁾, the Laboratoire d'études sur la rage et la pathologie des animaux sauvages of the Agence Française de Sécurité Sanitaire des Aliments (AFSSA), Nancy, France, was designated as the Community reference laboratory for rabies.

- (4) France and Denmark have officially informed the Commission of changes relating to the name of laboratories referred to in those Regulations. In addition, after the entry into force of the Treaty of Lisbon, the laboratories listed in Annex VII to Regulation (EC) No 882/2004, previously referred to as 'Community reference laboratories' should now be referred to as 'European Union (EU) reference laboratories'.
- (5) It is important to keep the list of EU reference laboratories set out in Regulations (EC) No 882/2004, (EC) No 180/2008 and No 737/2008 updated. Those Regulations should therefore be amended accordingly.
- (6) 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 VII to Regulation (EC) No 882/2004 is replaced by the text in the Annex to this Regulation.

Article 2

In Regulation (EC) No 180/2008, Article 1 is replaced by the following:

'Article 1

1. Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail (ANSES) with its laboratories for animal health and equine diseases, France, is hereby designated as the EU Reference Laboratory for equine diseases other than African horse sickness from 1 July 2008 to 30 June 2013.

2. The functions, tasks and procedures regarding collaboration with laboratories responsible for diagnosing infectious diseases of equidae in the Member States of the EU Reference Laboratory referred to in paragraph 1 are set out in the Annex to this Regulation.'

⁽¹⁾ OJ L 224, 18.8.1990, p. 42.

⁽²⁾ OJ L 165, 30.4.2004, p. 1.

⁽³⁾ OJ L 328, 24.11.2006, p. 14.

⁽⁴⁾ OJ L 56, 29.2.2008, p. 4.

⁽⁵⁾ OJ L 201, 30.7.2008, p. 29.

Article 3

In Article 2 of Regulation (EC) No 737/2008, the first paragraph is replaced by the following:

‘The Laboratoire de la rage et de la faune sauvage de Nancy of the Agence nationale de sécurité sanitaire de l’alimentation,

de l’environnement et du travail (ANSES), France, is hereby designated as the EU reference laboratory for rabies from 1 July 2008 until 30 June 2013.’

Article 4

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, 2 March 2011.

For the Commission

The President

José Manuel BARROSO

ANNEX

Annex VII to Regulation (EC) No 882/2004 is replaced by the following:

‘ANNEX VII

EUROPEAN UNION (EU) REFERENCE LABORATORIES
(Previously referred to as “COMMUNITY REFERENCE LABORATORIES”)

I. EU REFERENCE LABORATORIES FOR FEED AND FOOD

1. EU reference laboratory for milk and milk products

ANSES — Laboratoire de sécurité des aliments
Maisons-Alfort
France

2. EU reference laboratories for the analysis and testing of zoonoses (*salmonella*)

Rijksinstituut voor Volksgezondheid en Milieu (RIVM)
Bilthoven
The Netherlands

3. EU reference laboratory for the monitoring of marine biotoxins

Agencia Española de Seguridad Alimentaria (AESA)
Vigo
Spain

4. EU reference laboratory for monitoring the viral and bacteriological contamination of bivalve molluscs

The laboratory of the Centre for Environment, Fisheries and Aquaculture Science (Cefas)
Weymouth
United Kingdom

5. EU reference laboratory for *Listeria monocytogenes*

ANSES — Laboratoire de sécurité des aliments
Maisons-Alfort
France

6. EU reference laboratory for Coagulase positive *Staphylococci*, including *Staphylococcus aureus*

ANSES — Laboratoire de sécurité des aliments
Maisons-Alfort
France

7. EU reference laboratory for *Escherichia coli*, including Verotoxigenic *E. coli* (VTEC)

Istituto Superiore di Sanità (ISS)
Roma
Italy

8. EU reference laboratory for *Campylobacter*

Statens Veterinärmedicinska Anstalt (SVA)
Uppsala
Sweden

9. EU reference laboratory for parasites (in particular *Trichinella*, *Echinococcus* and *Anisakis*)

Istituto Superiore di Sanità (ISS)
Roma
Italy

10. EU reference laboratory for antimicrobial resistance

Fødevareinstituttet
Danmarks Tekniske Universitet
København
Denmark

11. EU reference laboratory for animal proteins in feedingstuffs

Centre wallon de recherches agronomiques (CRA-W)
Gembloux
Belgium

12. EU reference laboratories for residues of veterinary medicines and contaminants in food of animal origin

- (a) For the residues listed in Annex I, Group A (1), (2), (3) and (4), Group B (2)(d) and Group B (3)(d) to Directive 96/23/EC

Rijksinstituut voor Volksgezondheid en Milieu (RIVM)
Bilthoven
The Netherlands

- (b) For the residues listed in Annex I, Group B (1) and B (3)(e) to Directive 96/23/EC and carbadox and olaquinox

ANSES – Laboratoire de Fougères
France

- (c) For the residues listed in Annex I, Group A (5) and Group B (2)(a), (b), (e) to Directive 96/23/EC

Bundesamt für Verbraucherschutz und Lebensmittelsicherheit (BVL)
Berlin
Germany

- (d) For the residues listed in Annex I, Group B(3)(c) to Directive 96/23/EC

Instituto Superiore di Sanità
Roma
Italy

13. EU reference laboratory for transmissible spongiform encephalopathies (TSEs)

The laboratory referred to in Annex X, Chapter B of Regulation (EC) No 999/2001

The Veterinary Laboratories Agency
Addlestone
United Kingdom

14. EU reference laboratory for additives for use in animal nutrition

The laboratory referred to in Annex II of Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽¹⁾:

The Joint Research Centre of the European Commission
Geel
Belgium

15. EU reference laboratory for genetically modified organisms (GMOs)

The laboratory referred to in the Annex to Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed ⁽²⁾:

The Joint Research Centre of the European Commission
Ispira
Italy

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ OJ L 268, 18.10.2003, p. 1.

16. EU reference laboratory for material intended to come into contact with foodstuffs

The Joint Research Centre of the European Commission
Ispra
Italy

17. EU reference laboratories for residues of pesticides**(a) Cereals and feedingstuffs**

Fødevareinstituttet
Danmarks Tekniske Universitet
København
Denmark

(b) Food of animal origin and commodities with high fat content

Chemisches und Veterinäruntersuchungsamt (CVUA) Freiburg
Freiburg
Germany

(c) Fruits and vegetables, including commodities with high water and high acid content

Laboratorio Agrario de la Generalitat Valenciana (LAGV)
Burjassot-Valencia
Spain

Grupo de Residuos de Plaguicidas de la Universidad de Almería (PRRG)
Almería
Spain

(d) Single residue methods

Chemisches und Veterinäruntersuchungsamt (CVUA) Stuttgart
Fellbach
Germany

18. EU reference laboratory for heavy metals in feed and food

The Joint Research Centre of the European Commission
Geel
Belgium

19. EU reference laboratory for Mycotoxins

The Joint Research Centre of the European Commission
Geel
Belgium

20. EU reference laboratory for Polycyclic Aromatic Hydrocarbons (PAH)

The Joint Research Centre of the European Commission
Geel
Belgium

21. EU reference laboratory for dioxins and PCBs in feed and food

Chemisches und Veterinäruntersuchungsamt (CVUA) Freiburg
Freiburg
Germany

II. EU REFERENCE LABORATORIES FOR ANIMAL HEALTH AND LIVE ANIMALS

1. EU reference laboratory for classical swine fever

The laboratory referred to in Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever ⁽¹⁾.

2. EU reference laboratory for African horse sickness

The laboratory referred to in Council Directive 92/35/EEC of 29 April 1992 laying down control rules and measures to combat African horse sickness ⁽²⁾.

3. EU reference laboratory for avian influenza

The laboratory referred to in Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC ⁽³⁾.

4. EU reference laboratory for Newcastle disease

The laboratory referred to in Council Directive 92/66/EEC of 14 July 1992 introducing Community measures for the control of Newcastle disease ⁽⁴⁾.

5. EU reference laboratory for swine vesicular disease

The laboratory referred to in Council Directive 92/119/EEC of 17 December 1992 introducing general Community measures for the control of certain animal diseases and specific measures relating to swine vesicular disease ⁽⁵⁾.

6. EU reference laboratory for fish diseases

Veterinærinstituttet
Afdeling for Fjerkræ, Fisk og Pelsdyr
Danmarks Tekniske Universitet
Aarhus
Denmark

7. EU reference laboratory for mollusc diseases

Ifremer — Institut français de recherche pour l'exploitation de la mer
La Tremblade
France

8. EU reference laboratory for monitoring the effectiveness of rabies vaccination

The laboratory referred to in Council Decision 2000/258/EC of 20 March 2000 designating a specific institute responsible for establishing the criteria necessary for standardising the serological tests to monitor the effectiveness of rabies vaccines ⁽⁶⁾.

9. EU reference laboratory for bluetongue

The laboratory referred to in Council Directive 2000/75/EC of 20 November 2000 laying down specific provisions for the control and eradication of bluetongue ⁽⁷⁾.

10. EU reference laboratory for African swine fever

The laboratory referred to in Council Directive 2002/60/EC of 27 June 2002 laying down specific provisions for the control of African swine fever and amending Directive 92/119/EEC as regards Teschen disease and African swine fever ⁽⁸⁾.

11. EU reference laboratory for zootechnics

The laboratory referred to in Council Decision 96/463/EC of 23 July 1996 designating the reference body responsible for collaborating in rendering uniform the testing methods and the assessment of the results for pure-bred breeding animals of the bovine species ⁽⁹⁾.

⁽¹⁾ OJ L 316, 1.12.2001, p. 5.

⁽²⁾ OJ L 157, 10.6.1992, p. 19.

⁽³⁾ OJ L 10, 14.1.2006, p. 16.

⁽⁴⁾ OJ L 260, 5.9.1992, p. 1.

⁽⁵⁾ OJ L 62, 15.3.1993, p. 69.

⁽⁶⁾ OJ L 79, 30.3.2000, p. 40.

⁽⁷⁾ OJ L 327, 22.12.2000, p. 74.

⁽⁸⁾ OJ L 192, 20.7.2002, p. 27.

⁽⁹⁾ OJ L 192, 2.8.1996, p. 19.

12. EU reference laboratory for foot-and-mouth disease

The laboratory referred to in Council Directive 2003/85/EC of 29 September 2003 on Community measures for the control of foot-and-mouth disease repealing Directive 85/511/EEC and Decisions 89/531/EEC and 91/665/EEC and amending Directive 92/46/EEC ⁽¹⁾.

13. EU reference laboratory for brucellosis

ANSES — Laboratoire de santé animale
Maisons-Alfort
France

14. EU reference laboratory for equine diseases other than African horse sickness

ANSES — Laboratoire de santé animale/Laboratoire de pathologie équine
Maisons-Alfort
France

15. EU reference laboratory for crustacean diseases

Centre for Environment, Fisheries & Aquaculture Science (Cefas)
Weymouth
United Kingdom

16. EU reference laboratory for rabies

ANSES — Laboratoire de la rage et de la faune sauvage de Nancy
Malzeville
France

17. EU reference laboratory for bovine tuberculosis

VISAVET — Laboratorio de vigilancia veterinaria, Facultad de Veterinaria, Universidad Complutense de Madrid
Madrid
Spain'

⁽¹⁾ OJ L 306, 22.11.2003, p. 1.

COMMISSION REGULATION (EU) No 209/2011

of 2 March 2011

terminating the anti-dumping and anti-subsidy proceedings concerning imports of wireless wide area networking (WWAN) modems originating in the People's Republic of China and terminating the registration of such imports imposed by Regulations (EU) No 570/2010 and (EU) No 811/2010

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('basic Regulation')⁽¹⁾, and in particular Articles 9 and 14 thereof,

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community⁽²⁾, and in particular Article 14 and 24 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. The anti-dumping proceeding and registration of imports

- (1) On 3 June 2010, the Commission received a complaint concerning alleged injurious dumping into the Union by imports of wireless wide area networking (WWAN) modems originating in the People's Republic of China ('the PRC'). The said complaint also contained a request for the registration of imports pursuant to Article 14(5) of Regulation (EC) No 1225/2009.
- (2) The complaint was lodged by Option NV ('the complainant'), the sole known producer of WWAN modems in the Union, representing 100 % of the total Union production.
- (3) The complaint contained *prima facie* evidence of dumping and of material injury resulting therefrom which was considered sufficient to justify the initiation of an anti-dumping proceeding.
- (4) The Commission, after consultation of the Advisory Committee, by a notice published in the *Official Journal of the European Union*⁽³⁾, accordingly initiated an anti-dumping proceeding concerning imports into the

Union of WWAN modems originating in the PRC and currently falling within CN codes ex 8471 80 00 and ex 8517 62 00.

- (5) On 1 July 2010, the Commission made imports of the same product originating in the PRC subject to registration under Commission Regulation (EU) No 570/2010⁽⁴⁾.
 - (6) The Commission officially advised the complainant, exporting producers in the PRC, importers and users known to be concerned, associations of importers or users known to be concerned, raw material suppliers and service providers, and the representatives of the PRC of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.
 - (7) In accordance with the provisions of Article 16 of the basic Regulation the Commission performed some of the verification visits normally required. As far as dumping is concerned and in particular for the purposes of Article 2(7) of the basic Regulation the Commission focused on issues mentioned in Article 2(7)(c) and in particular on distortions related to decision making, corporate governance, loans, financing of companies and export credits. Although some initial indications hinting at distortions were revealed, the termination of this anti-dumping proceeding meant that this issue was not pursued.
- 2. The anti-subsidy proceeding and registration of imports**
- (8) On 2 August 2010, the Commission received a complaint concerning the alleged injurious subsidisation into the Union of imports of WWAN modems originating in the PRC. The said complaint also contained a request for the registration of imports pursuant to Article 24(5) of Regulation (EC) No 597/2009.
 - (9) The complaint was lodged by Option NV ('the complainant'), the sole known producer of WWAN modems in the Union, representing 100 % of the total Union production.
 - (10) The complaint contained *prima facie* evidence of the existence of subsidisation and of material injury resulting therefrom which was considered sufficient to justify the initiation of an anti-subsidy proceeding.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 188, 18.7.2009, p. 93.

⁽³⁾ OJ C 171, 30.6.2010, p. 9.

⁽⁴⁾ OJ L 163, 30.6.2010, p. 34.

(11) The Commission, after consultation of the Advisory Committee, by a notice published in the *Official Journal of the European Union* ⁽¹⁾, accordingly initiated an anti-subsidy proceeding concerning imports into the Union of WWAN modems originating in the PRC and currently falling within CN codes ex 8471 80 00 and ex 8517 62 00.

(12) On 17 September 2010, the Commission made imports of the same product originating in the PRC subject to registration under Commission Regulation (EU) No 811/2010 ⁽²⁾.

(13) The Commission officially advised the complainant, exporting producers in the PRC, importers and users known to be concerned, associations of importers or users known to be concerned, raw material suppliers and service providers, and the representatives of the PRC of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

B. WITHDRAWAL OF THE COMPLAINTS AND TERMINATION OF THE PROCEEDINGS

(14) By two letters of 26 October 2010 to the Commission, Option NV withdrew its anti-dumping and anti-subsidy complaints concerning imports of WWAN modems originating in the PRC. The reason for the withdrawal of the complaints was that Option NV had entered into a cooperation agreement with an exporting producer in the PRC.

(15) In accordance with Article 9(1) of Regulation (EC) No 1225/2009 and with Article 14(1) of Regulation (EC) No 597/2009, when the complainant withdraws its complaint the proceeding may be terminated unless such termination would not be in the Union interest.

(16) The Commission considered that the present proceedings should be terminated since the respective anti-dumping and anti-subsidy investigations had not brought to light any considerations showing that such termination would not be in the Union interest. Interested parties were informed accordingly and were given an opportunity to comment.

(17) Subsequent to the withdrawal of the complaints, one company contacted the Commission claiming that it was a Union producer of WWAN modems. The company subsequently argued that the proceedings should be continued in spite of the withdrawal of the complaints. It should be noted that the company came forward for the first time after the procedural deadlines in both proceedings provided to interested parties to come forward and make their views known as a Union

producer and, as a consequence, failed to support the complaints lodged by Option before the latter were withdrawn.

(18) It should also be noted that the allegations and information put forward by this company were not such as to lead the Commission to conclude that it would be in the Union interest to pursue the present proceedings initiated further to Option's complaints following the withdrawal of the latter. In this context, due account needed to be taken — in respect of the company's claimed operations in relation to WWAN modems in the Union — concerning the company's ability in practice to (i) play a role in the Union market for WWAN modems and moreover; (ii) provide for a possible shortage in supply, were measures to be imposed. Based on the information provided in this regard within the context of the present proceedings, it was concluded that it would be disproportionate to continue with the investigation and impose measures following the withdrawal of the complaints.

(19) No other comments were received indicating that termination of the present proceedings would not be in the Union interest.

(20) In the circumstances, the Commission therefore concludes that the anti-dumping and the anti-subsidy proceedings concerning imports into the Union of WWAN modems originating in the PRC should be terminated without the imposition of measures.

(21) The registration of imports of WWAN modems originating in the PRC and declared under CN codes ex 8471 80 00 and ex 8517 62 00 in application of Regulations (EU) No 570/2010 and (EU) No 811/2010 should therefore be discontinued and the said Regulations repealed,

HAS ADOPTED THIS REGULATION:

Article 1

The anti-dumping and the anti-subsidy proceeding concerning imports into the Union of wireless wide area networking (WWAN) modems originating in the People's Republic of China and currently falling under CN codes ex 8471 80 00 and ex 8517 62 00 are hereby terminated.

Article 2

Customs authorities are hereby directed to discontinue the registration of imports established in application of Article 1 of Regulations (EU) No 570/2010 and (EU) No 811/2010.

Article 3

Regulations (EU) No 570/2010 and (EU) No 811/2010 are hereby repealed.

⁽¹⁾ OJ C 249, 16.9.2010, p. 7.

⁽²⁾ OJ L 243, 16.9.2010, p. 37.

Article 4

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, 2 March 2011.

For the Commission

The President

José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 210/2011**of 2 March 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 3 March 2011.

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

Done at Brussels, 2 March 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	122,2
	MA	43,9
	TN	113,1
	TR	107,4
	ZZ	96,7
0707 00 05	TR	171,7
	ZZ	171,7
0709 90 70	MA	32,3
	TR	127,5
	ZZ	79,9
0805 10 20	EG	54,7
	IL	78,1
	MA	53,8
	TN	48,8
	TR	66,6
	ZA	37,9
	ZZ	56,7
0805 50 10	MA	45,9
	TR	54,7
	ZZ	50,3
0808 10 80	BR	55,2
	CA	126,3
	CL	90,0
	CN	91,2
	MK	54,8
	US	106,6
	ZZ	87,4
0808 20 50	AR	89,7
	CL	110,5
	CN	40,4
	US	96,8
	ZA	105,2
	ZZ	88,5

⁽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'.

DIRECTIVES

COMMISSION DIRECTIVE 2011/19/EU

of 2 March 2011

amending Council Directive 91/414/EEC to include tau-fluvalinate as active substance and amending Decision 2008/934/EC

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽¹⁾, and in particular Article 6(1) thereof,

Whereas:

- (1) Commission Regulations (EC) No 451/2000 ⁽²⁾ and (EC) No 1490/2002 ⁽³⁾ lay down the detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed, with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list included tau-fluvalinate.
- (2) In accordance with Article 11e of Regulation (EC) No 1490/2002 the notifier withdrew its support of the inclusion of that active substance in Annex I to Directive 91/414/EEC within two months from receipt of the draft assessment report. Consequently, Commission Decision 2008/934/EC of 5 December 2008 concerning the non-inclusion of certain active substances in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing these substances ⁽⁴⁾ was adopted on the non-inclusion of tau-fluvalinate.
- (3) Pursuant to Article 6(2) of Directive 91/414/EEC the original notifier (hereinafter 'the applicant') submitted a

new application requesting the accelerated procedure to be applied, as provided for in Articles 14 to 19 of Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the application of Council Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included into its Annex I ⁽⁵⁾.

- (4) The application was submitted to Denmark, which had been designated rapporteur Member State by Regulation (EC) No 451/2000. The time period for the accelerated procedure was respected. The specification of the active substance and the supported uses are the same as were the subject of Decision 2008/934/EC. That application also complies with the remaining substantive and procedural requirements of Article 15 of Regulation (EC) No 33/2008.
- (5) Denmark evaluated the additional data submitted by the applicant and prepared an additional report. It communicated that report to the European Food Safety Authority (hereinafter 'the Authority') and to the Commission on 1 October 2009. The Authority communicated the additional report to the other Member States and the applicant for comments and forwarded the comments it had received to the Commission. In accordance with Article 20(1) of Regulation (EC) No 33/2008 and at the request of the Commission, the Authority presented its conclusion on tau-fluvalinate to the Commission on 17 June 2010 ⁽⁶⁾. The draft assessment report, the additional report and the conclusion of the Authority were reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 28 January 2011 in the format of the Commission review report for tau-fluvalinate.

⁽¹⁾ OJ L 230, 19.8.1991, p. 1.

⁽²⁾ OJ L 55, 29.2.2000, p. 25.

⁽³⁾ OJ L 224, 21.8.2002, p. 23.

⁽⁴⁾ OJ L 333, 11.12.2008, p. 11.

⁽⁵⁾ OJ L 15, 18.1.2008, p. 5.

⁽⁶⁾ European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance tau-fluvalinate. *EFSA Journal* 2010; 8(7):1645. [70 pp.]. doi:10.2903/j.efsa.2010.1645. Available online: www.efsa.europa.eu

- (6) It has appeared from the various examinations made that plant protection products containing tau-fluvalinate may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC, in particular with regard to the uses which have been examined and detailed in the Commission review report. It is therefore appropriate to include tau-fluvalinate in Annex I, in order to ensure that in all Member States the authorisations of plant protection products containing this active substance can be granted in accordance with the provisions of that Directive.
- (7) Without prejudice to that conclusion, it is appropriate to obtain further information on certain specific points. Article 6(1) of Directive 91/414/EEC provides that inclusion of a substance in Annex I may be subject to conditions. Therefore, it is appropriate to require that the applicant submit further information confirming the results of the risk assessment on the basis of most recent scientific knowledge, as regards the risk to aquatic organisms, the risk to non-target arthropods and on the possible impact on the environment of the potential enantio-selective degradation in environmental matrices.
- (8) A reasonable period should be allowed to elapse before an active substance is included in Annex I in order to permit Member States and the interested parties to prepare themselves to meet the new requirements which will result from the inclusion.
- (9) Without prejudice to the obligations defined by Directive 91/414/EEC as a consequence of including an active substance in Annex I, Member States should be allowed a period of six months after inclusion to review existing authorisations of plant protection products containing tau-fluvalinate to ensure that the requirements laid down by Directive 91/414/EEC, in particular in its Article 13 and the relevant conditions set out in Annex I, are satisfied. Member States should vary, replace or withdraw, as appropriate, existing authorisations, in accordance with the provisions of Directive 91/414/EEC. By derogation from the above deadline, a longer period should be provided for the submission and assessment of the complete Annex III dossier of each plant protection product for each intended use in accordance with the uniform principles laid down in Directive 91/414/EEC.
- (10) The experience gained from previous inclusions in Annex I to Directive 91/414/EEC of active substances assessed in the framework of Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market⁽¹⁾ has shown that difficulties can arise in interpreting the duties of holders of existing authorisations in relation to access to data. In order to avoid further difficulties it therefore appears necessary to clarify the duties of the Member States, especially the duty to verify that the holder of an authorisation demonstrates access to a dossier satisfying the requirements of Annex II to that Directive. However, this clarification does not impose any new obligations on Member States or holders of authorisations compared to the Directives which have been adopted until now amending Annex I.
- (11) It is therefore appropriate to amend Directive 91/414/EEC accordingly.
- (12) Decision 2008/934/EC provides for the non-inclusion of tau-fluvalinate and the withdrawal of authorisations for plant protection products containing that substance by 31 December 2011. It is necessary to delete the line concerning tau-fluvalinate in the Annex to that Decision.
- (13) It is therefore appropriate to amend Decision 2008/934/EC accordingly.
- (14) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,
- HAS ADOPTED THIS DIRECTIVE:
- Article 1*
- Annex I to Directive 91/414/EEC is amended as set out in the Annex to this Directive.
- Article 2*
- The line concerning tau-fluvalinate in the Annex to Decision 2008/934/EC is deleted.
- Article 3*
- Member States shall adopt and publish by 30 November 2011 at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.
- They shall apply those provisions from 1 December 2011.
- When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
- ⁽¹⁾ OJ L 366, 15.12.1992, p. 10.

Article 4

1. Member States shall in accordance with Directive 91/414/EEC, where necessary, amend or withdraw existing authorisations for plant protection products containing tau-fluvalinate as an active substance by 30 November 2011.

By that date they shall in particular verify that the conditions in Annex I to that Directive relating to tau-fluvalinate are met, with the exception of those identified in part B of the entry concerning that active substance, and that the holder of the authorisation has, or has access to, a dossier satisfying the requirements of Annex II to that Directive in accordance with the conditions of Article 13 of that Directive.

2. By way of derogation from paragraph 1, for each authorised plant protection product containing tau-fluvalinate as either the only active substance or as one of several active substances all of which were listed in Annex I to Directive 91/414/EEC by 31 May 2011 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles provided for in Annex VI to Directive 91/414/EEC, on the basis of a dossier satisfying the requirements of Annex III to that Directive and taking into account part B of the entry in Annex I to that Directive concerning tau-fluvalinate. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 4(1)(b), (c), (d) and (e) of Directive 91/414/EEC.

Following that determination Member States shall:

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

Article 5

This Directive shall enter into force on 1 June 2011.

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 2 March 2011.

For the Commission
The President

José Manuel BARROSO

ANNEX

The following entry shall be added at the end of the table in Annex I to Directive 91/414/EEC:

No	Common name, identification numbers	IUPAC name	Purity ⁽¹⁾	Entry into force	Expiration of inclusion	Specific provisions
'335	Tau-fluvalinate CAS No: 102851-06-9 CIPAC No: 786	(RS)- α -cyano-3-phenoxy-benzyl N-(2-chloro- α,α -trifluoro-p-tolyl)-D-valinate (Isomer ratio 1:1)	≥ 920 g/kg (1:1 ratio of R- α -cyano and S- α -cyano isomers) Impurities: Toluene: not more than 5 g/kg	1 June 2011	31 May 2021	PART A Only uses as insecticide and acaricide may be authorised. PART B For the implementation of the uniform principles of Annex VI, the conclusions of the review report on tau-fluvalinate, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 28 January 2011 shall be taken into account. In this overall assessment Member States shall pay particular attention to: (a) the risk to aquatic organisms and ensure that conditions of use prescribe the application of adequate risk mitigation measures; (b) the risk to non-target arthropods and ensure that conditions of use prescribe the application of adequate risk mitigation measures; (c) the test material used in the toxicity dossiers shall be compared and verified against the specification of the technical material commercially manufactured. The Member States concerned shall request the submission of confirmatory information as regards: — the risk of bioaccumulation/biomagnification in the aquatic environment, — the risk to non-target arthropods. The Member States concerned shall ensure that the applicant submits such confirmatory information to the Commission by 31 May 2013. The Member States concerned shall ensure that the applicant submits confirmatory information, two years after the adoption of specific guidance, as regards: the possible impact on the environment of the potential enantio-selective degradation in environmental matrices.'

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

COMMISSION DIRECTIVE 2011/20/EU**of 2 March 2011****amending Council Directive 91/414/EEC to include fenoxycarb as active substance and amending Decision 2008/934/EC****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included into its Annex I ⁽⁵⁾.

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

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽¹⁾, and in particular Article 6(1) thereof,

Whereas:

- (1) Commission Regulations (EC) No 451/2000 ⁽²⁾ and (EC) No 1490/2002 ⁽³⁾ lay down the detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed, with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list included fenoxycarb.
- (2) In accordance with Article 11e of Regulation (EC) No 1490/2002 the notifier withdrew its support of the inclusion of that active substance in Annex I to Directive 91/414/EEC within 2 months from receipt of the draft assessment report. Consequently, Commission Decision 2008/934/EC of 5 December 2008 concerning the non-inclusion of certain active substances in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing these substances ⁽⁴⁾ was adopted on the non-inclusion of fenoxycarb.
- (3) Pursuant to Article 6(2) of Directive 91/414/EEC the original notifier (hereinafter 'the applicant') submitted a new application requesting the accelerated procedure to be applied, as provided for in Articles 14 to 19 of Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the application of Council Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment

- (4) The application was submitted to the Netherlands, which had been designated rapporteur Member State by Regulation (EC) No 451/2000. The time period for the accelerated procedure was respected. The specification of the active substance and the supported uses are the same as were the subject of Decision 2008/934/EC. That application also complies with the remaining substantive and procedural requirements of Article 15 of Regulation (EC) No 33/2008.
- (5) The Netherlands evaluated the additional data submitted by the applicant and prepared an additional report. It communicated that report to the European Food Safety Authority (hereinafter 'the Authority') and to the Commission on 10 December 2009. The Authority communicated the additional report to the other Member States and the applicant for comments and forwarded the comments it had received to the Commission. In accordance with Article 20(1) of Regulation (EC) No 33/2008 and at the request of the Commission, the Authority presented its conclusion on fenoxycarb to the Commission on 13 September 2010 ⁽⁶⁾. The draft assessment report, the additional report and the conclusion of the Authority were reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 28 January 2011 in the format of the Commission review report for fenoxycarb.
- (6) It has appeared from the various examinations made that plant protection products containing fenoxycarb may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC, in particular with regard to the uses which have been examined and detailed in the Commission review report. It is therefore appropriate to include fenoxycarb in Annex I, in order to ensure that in all Member States the authorisations of plant protection products containing this active substance can be granted in accordance with the provisions of that Directive.

⁽¹⁾ OJ L 230, 19.8.1991, p. 1.

⁽²⁾ OJ L 55, 29.2.2000, p. 25.

⁽³⁾ OJ L 224, 21.8.2002, p. 23.

⁽⁴⁾ OJ L 333, 11.12.2008, p. 11.

⁽⁵⁾ OJ L 15, 18.1.2008, p. 5.

⁽⁶⁾ European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance fenoxycarb. EFSA Journal 2010; 8(12):1779. [75 pp.]. doi:10.2903/j.efsa.2010.1779. Available online: www.efsa.europa.eu

- (7) Without prejudice to that conclusion, it is appropriate to obtain further information on certain specific points. Article 6(1) of Directive 91/414/EEC provides that inclusion of a substance in Annex I may be subject to conditions. Therefore, it is appropriate to require that the applicant submit information confirming the risk assessment for non-target arthropods and for bee brood.
- (8) A reasonable period should be allowed to elapse before an active substance is included in Annex I in order to permit Member States and the interested parties to prepare themselves to meet the new requirements which will result from the inclusion.
- (9) Without prejudice to the obligations defined by Directive 91/414/EEC as a consequence of including an active substance in Annex I, Member States should be allowed a period of 6 months after inclusion to review existing authorisations of plant protection products containing fenoxycarb to ensure that the requirements laid down by Directive 91/414/EEC, in particular in its Article 13 and the relevant conditions set out in Annex I, are satisfied. Member States should vary, replace or withdraw, as appropriate, existing authorisations, in accordance with the provisions of Directive 91/414/EEC. By derogation from the above deadline, a longer period should be provided for the submission and assessment of the complete Annex III dossier of each plant protection product for each intended use in accordance with the uniform principles laid down in Directive 91/414/EEC.
- (10) The experience gained from previous inclusions in Annex I to Directive 91/414/EEC of active substances assessed in the framework of Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market⁽¹⁾ has shown that difficulties can arise in interpreting the duties of holders of existing authorisations in relation to access to data. In order to avoid further difficulties it therefore appears necessary to clarify the duties of the Member States, especially the duty to verify that the holder of an authorisation demonstrates access to a dossier satisfying the requirements of Annex II to that Directive. However, this clarification does not impose any new obligations on Member States or holders of authorisations compared to the Directives which have been adopted until now amending Annex I.
- (11) It is therefore appropriate to amend Directive 91/414/EEC accordingly.
- (12) Decision 2008/934/EC provides for the non-inclusion of fenoxycarb and the withdrawal of authorisations for plant protection products containing that substance by 31 December 2011. It is necessary to delete the line concerning fenoxycarb in the Annex to that Decision.
- (13) It is therefore appropriate to amend Decision 2008/934/EC accordingly.
- (14) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,
- HAS ADOPTED THIS DIRECTIVE:
- Article 1*
- Annex I to Directive 91/414/EEC is amended as set out in the Annex to this Directive.
- Article 2*
- The line concerning fenoxycarb in the Annex to Decision 2008/934/EC is deleted.
- Article 3*
- Member States shall adopt and publish by 30 November 2011 at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.
- They shall apply those provisions from 1 December 2011.
- When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
- Article 4*
1. Member States shall in accordance with Directive 91/414/EEC, where necessary, amend or withdraw existing authorisations for plant protection products containing fenoxycarb as an active substance by 30 November 2011.
- By that date they shall in particular verify that the conditions in Annex I to that Directive relating to fenoxycarb are met, with the exception of those identified in part B of the entry concerning that active substance, and that the holder of the authorisation has, or has access to, a dossier satisfying the requirements of Annex II to that Directive in accordance with the conditions of Article 13 of that Directive.

⁽¹⁾ OJ L 366, 15.12.1992, p. 10.

2. By way of derogation from paragraph 1, for each authorised plant protection product containing fenoxycarb as either the only active substance or as one of several active substances all of which were listed in Annex I to Directive 91/414/EEC by 31 May 2011 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles provided for in Annex VI to Directive 91/414/EEC, on the basis of a dossier satisfying the requirements of Annex III to that Directive and taking into account part B of the entry in Annex I to that Directive concerning fenoxycarb. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 4(1)(b), (c), (d) and (e) of Directive 91/414/EEC.

Following that determination Member States shall:

- (a) in the case of a product containing fenoxycarb as the only active substance, where necessary, amend or withdraw the authorisation by 31 May 2015 at the latest; or
- (b) in the case of a product containing fenoxycarb as one of several active substances, where necessary, amend or

withdraw the authorisation by 31 May 2015 or by the date fixed for such an amendment or withdrawal in the respective Directive or Directives which added the relevant substance or substances to Annex I to Directive 91/414/EEC, whichever is the latest.

Article 5

This Directive shall enter into force on 1 June 2011.

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 2 March 2011.

For the Commission

The President

José Manuel BARROSO

ANNEX

The following entry shall be added at the end of the table in Annex I to Directive 91/414/EEC:

No	Common name, identification numbers	IUPAC name	Purity ⁽¹⁾	Entry into force	Expiration of inclusion	Specific provisions
'339	Fenoxycarb CAS No: 79127-80-3 CIPAC No: 425	Ethyl 2-(4-phenoxyphenoxy)ethyl-carbamate	≥ 970 g/kg Impurities: Toluene: max. 1 g/kg	1 June 2011	31 May 2021	PART A Only uses as insecticide may be authorised. PART B For the implementation of the uniform principles of Annex VI, the conclusions of the review report on fenoxycarb, and in particular Appendices I and II thereto, as finalised in the Standing Committee on the Food Chain and Animal Health on 28 January 2011 shall be taken into account. In this overall assessment Member States shall pay particular attention to: — the protection of aquatic organisms. Conditions of authorisation shall include risk mitigation measures, where appropriate, — the risk to bees and non-target arthropods. Conditions of authorisation shall include risk mitigation measures, where appropriate. The Member States concerned shall request the submission of information confirming the risk assessment for non-target arthropods and for bee brood. The Member States concerned shall ensure that the applicant submits such information to the Commission by 31 May 2013.'

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

COMMISSION DIRECTIVE 2011/21/EU**of 2 March 2011****amending Council Directive 91/414/EEC to include clethodim as active substance and amending Decision 2008/934/EC****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽¹⁾, and in particular Article 6(1) thereof,

Whereas:

- (1) Commission Regulations (EC) No 451/2000 ⁽²⁾ and (EC) No 1490/2002 ⁽³⁾ lay down the detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed, with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list included clethodim.
- (2) In accordance with Article 11e of Regulation (EC) No 1490/2002 the notifier withdrew its support of the inclusion of that active substance in Annex I to Directive 91/414/EEC within 2 months from receipt of the draft assessment report. Consequently, Commission Decision 2008/934/EC of 5 December 2008 concerning the non-inclusion of certain active substances in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing these substances ⁽⁴⁾ was adopted on the non-inclusion of clethodim.
- (3) Pursuant to Article 6(2) of Directive 91/414/EEC the original notifier (hereinafter 'the applicant') submitted a new application requesting the accelerated procedure to be applied, as provided for in Articles 14 to 19 of Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the application of Council Directive 91/414/EEC as regards

a regular and an accelerated procedure for the assessment of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included into its Annex I ⁽⁵⁾.

- (4) The application was submitted to the Netherlands, which had been designated rapporteur Member State by Regulation (EC) No 1490/2002. The time period for the accelerated procedure was respected. The specification of the active substance and the supported uses are the same as were the subject of Decision 2008/934/EC. That application also complies with the remaining substantive and procedural requirements of Article 15 of Regulation (EC) No 33/2008.
- (5) The Netherlands evaluated the additional data submitted by the applicant and prepared an additional report. It communicated that report to the European Food Safety Authority (hereinafter 'the Authority') and to the Commission on 1 December 2009. The Authority communicated the additional report to the other Member States and the applicant for comments and forwarded the comments it had received to the Commission. In accordance with Article 20(1) of Regulation (EC) No 33/2008 and at the request of the Commission, the Authority presented its conclusion on clethodim to the Commission on 10 September 2010 ⁽⁶⁾. The draft assessment report, the additional report and the conclusion of the Authority were reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 28 January 2011 in the format of the Commission review report for clethodim.
- (6) It has appeared from the various examinations made that plant protection products containing clethodim may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC, in particular with regard to the uses which have been examined and detailed in the Commission review report. It is therefore appropriate to include clethodim in Annex I, in order to ensure that in all Member States the authorisations of plant protection products containing this active substance can be granted in accordance with the provisions of that Directive.

⁽¹⁾ OJ L 230, 19.8.1991, p. 1.

⁽²⁾ OJ L 55, 29.2.2000, p. 25.

⁽³⁾ OJ L 224, 21.8.2002, p. 23.

⁽⁴⁾ OJ L 333, 11.12.2008, p. 11.

⁽⁵⁾ OJ L 15, 18.1.2008, p. 5.

⁽⁶⁾ European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance clethodim. EFSA Journal 2010; 8(9):1771. [93 pp.]. doi:10.2903/j.efsa.2010.1771. Available online: www.efsa.europa.eu

- (7) Without prejudice to that conclusion, it is appropriate to obtain further information on certain specific points. Article 6(1) of Directive 91/414/EEC provides that inclusion of a substance in Annex I may be subject to conditions. Therefore, it is appropriate to require that the applicant submit further information to confirm the results of the risk assessment, on the basis of most recent scientific knowledge, as regards the soil and groundwater exposure assessments and the residue definition for risk assessment.
- (8) A reasonable period should be allowed to elapse before an active substance is included in Annex I in order to permit Member States and the interested parties to prepare themselves to meet the new requirements which will result from the inclusion.
- (9) Without prejudice to the obligations defined by Directive 91/414/EEC as a consequence of including an active substance in Annex I, Member States should be allowed a period of 6 months after inclusion to review existing authorisations of plant protection products containing clethodim to ensure that the requirements laid down by Directive 91/414/EEC, in particular in its Article 13 and the relevant conditions set out in Annex I, are satisfied. Member States should vary, replace or withdraw, as appropriate, existing authorisations, in accordance with the provisions of Directive 91/414/EEC. By derogation from the above deadline, a longer period should be provided for the submission and assessment of the complete Annex III dossier of each plant protection product for each intended use in accordance with the uniform principles laid down in Directive 91/414/EEC.
- (10) The experience gained from previous inclusions in Annex I to Directive 91/414/EEC of active substances assessed in the framework of Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market⁽¹⁾ has shown that difficulties can arise in interpreting the duties of holders of existing authorisations in relation to access to data. In order to avoid further difficulties it therefore appears necessary to clarify the duties of the Member States, especially the duty to verify that the holder of an authorisation demonstrates access to a dossier satisfying the requirements of Annex II to that Directive. However, this clarification does not impose any new obligations on Member States or holders of authorisations compared to the Directives which have been adopted until now amending Annex I.
- (11) It is therefore appropriate to amend Directive 91/414/EEC accordingly.
- (12) Decision 2008/934/EC provides for the non-inclusion of clethodim and the withdrawal of authorisations for plant protection products containing that substance by 31 December 2011. It is necessary to delete the line concerning clethodim in the Annex to that Decision.
- (13) It is therefore appropriate to amend Decision 2008/934/EC accordingly.
- (14) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 91/414/EEC is amended as set out in the Annex to this Directive.

Article 2

The line concerning clethodim in the Annex to Decision 2008/934/EC is deleted.

Article 3

Member States shall adopt and publish by 30 November 2011 at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 1 December 2011.

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

Article 4

1. Member States shall in accordance with Directive 91/414/EEC, where necessary, amend or withdraw existing authorisations for plant protection products containing clethodim as an active substance by 30 November 2011.

By that date they shall in particular verify that the conditions in Annex I to that Directive relating to clethodim are met, with the exception of those identified in part B of the entry concerning that active substance, and that the holder of the authorisation has, or has access to, a dossier satisfying the requirements of Annex II to that Directive in accordance with the conditions of Article 13 of that Directive.

⁽¹⁾ OJ L 366, 15.12.1992, p. 10.

2. By way of derogation from paragraph 1, for each authorised plant protection product containing clethodim as either the only active substance or as one of several active substances all of which were listed in Annex I to Directive 91/414/EEC by 31 May 2011 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles provided for in Annex VI to Directive 91/414/EEC, on the basis of a dossier satisfying the requirements of Annex III to that Directive and taking into account part B of the entry in Annex I to that Directive concerning clethodim. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 4(1)(b), (c), (d) and (e) of Directive 91/414/EEC.

Following that determination Member States shall:

- (a) in the case of a product containing clethodim as the only active substance, where necessary, amend or withdraw the authorisation by 31 May 2015 at the latest; or
- (b) in the case of a product containing clethodim as one of several active substances, where necessary, amend or

withdraw the authorisation by 31 May 2015 or by the date fixed for such an amendment or withdrawal in the respective Directive or Directives which added the relevant substance or substances to Annex I to Directive 91/414/EEC, whichever is the latest.

Article 5

This Directive shall enter into force on 1 June 2011.

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 2 March 2011.

For the Commission

The President

José Manuel BARROSO

ANNEX

The following entry shall be added at the end of the table in Annex I to Directive 91/414/EEC:

No	Common Name, Identification Numbers	IUPAC Name	Purity ⁽¹⁾	Entry into force	Expiration of inclusion	Specific provisions
'336	Clethodim CAS No: 99129-21-2 CIPAC No: 508	(5RS)-2-((1EZ)-1-[(2E)-3-chloroallyl-oxyimino]propyl)-5-[(2RS)-2-(ethylthio)propyl]-3-hydroxycyclohex-2-en-1-one	≥ 930 g/kg Impurities: toluene max. 4 g/kg	1 June 2011	31 May 2021	PART A Only uses as herbicide on sugar beet may be authorised. PART B For the implementation of the uniform principles of Annex VI the conclusions of the review report on clethodim, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 28 January 2011, shall be taken into account. In this overall assessment Member States shall pay particular attention to the protection to aquatic organisms, birds and mammals, and shall ensure that conditions of use include the application of adequate risk mitigation measures. The Member States concerned shall request the submission of confirmatory information, on the basis of most recent scientific knowledge, as regards: — the soil and groundwater exposure assessments, — the residue definition for risk assessment. The Member States concerned shall ensure that the applicant submits such confirmatory information to the Commission by 31 May 2013.'

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

DECISIONS

COUNCIL DECISION 2011/137/CFSP

of 28 February 2011

concerning restrictive measures in view of the situation in Libya

THE COUNCIL OF THE EUROPEAN UNION,

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

Whereas:

- (1) On 23 February 2011, the European Union expressed its grave concern regarding the situation unfolding in Libya. The EU strongly condemned the violence and use of force against civilians and deplored the repression against peaceful demonstrators.
- (2) The EU reiterated its call for an immediate end to the use of force and for steps to address the legitimate demands of the population.
- (3) On 26 February 2011, the United Nations Security Council ('the Security Council') adopted Resolution 1970 ('UNSCR 1970 (2011)') which introduced restrictive measures against Libya and against persons and entities involved in serious human rights abuses against persons in Libya, including by being involved in attacks, in violation of international law, on civilian populations and facilities.
- (4) In view of the seriousness of the situation in Libya, the EU considers it necessary to impose additional restrictive measures.
- (5) In addition, further Union action is needed in order to implement certain measures.

HAS ADOPTED THIS DECISION:

Article 1

1. The direct or indirect supply, sale or transfer of arms and related material of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, as well as equipment which might be used for internal repression, to Libya by nationals of Member States or from or through the terri-

ories of Member States or using their flag vessels or aircraft, shall be prohibited whether originating or not in their territories.

2. It shall be prohibited to:

- (a) provide, directly or indirectly, technical assistance, training or other assistance, including the provision of armed mercenary personnel, related to military activities or to the provision, maintenance and use of items referred to in paragraph 1, to any natural or legal person, entity or body in, or for use in, Libya;
- (b) provide, directly or indirectly, financial assistance related to military activities or to the provision, maintenance and use of items referred to in paragraph 1, to any natural or legal person, entity or body in, or for use in, Libya;
- (c) participate, knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibitions referred to in points (a) or (b).

Article 2

1. Article 1 shall not apply to:

- (a) the supply, sale or transfer of non-lethal military equipment or of equipment which might be used for internal repression, intended solely for humanitarian or protective use;
- (b) other supply, sale or transfer of arms and related material;
- (c) the provision of technical assistance, training or other assistance, including personnel, related to such equipment;
- (d) the provision of financial assistance related to such equipment;

as approved in advance, where appropriate, by the Committee established pursuant to paragraph 24 of UNSCR 1970 (2011) ('the Committee');

2. Article 1 shall not apply to the supply, sale or transfer of protective clothing, including flak jackets and military helmets, temporarily exported to Libya by UN personnel, personnel of the European Union or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.

Article 3

The procurement by nationals of Member States, either using their flag vessels or aircraft, of the items referred to in Article 1(1) from Libya shall be prohibited, whether or not originating in the territory of Libya.

Article 4

1. Member States shall inspect, in accordance with their national authorities and legislation and consistent with international law, in particular the law of the sea and relevant international civil aviation agreements, all cargo to and from Libya, in their territory, including their seaports and airports, if they have information that provides reasonable grounds to believe that the cargo contains items the supply, sale, transfer or export of which is prohibited under this Decision.

2. Member States shall, upon discovery, seize and dispose of (such as through destruction, rendering inoperable, storage or transferring to a State other than the originating or destination States for disposal) items whose supply, sale, transfer or export is prohibited under this Decision.

3. Member States shall cooperate, in accordance with their national legislation, with inspections and disposals undertaken pursuant to paragraphs 1 and 2.

4. Aircrafts and vessels transporting cargo to and from Libya shall be subject to the requirement of additional pre-arrival or pre-departure information for all goods brought into or out of a Member State.

Article 5

1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of:

- (a) persons listed in Annex I to UNSCR 1970 (2011), and additional persons designated by the Security Council or by the Committee in accordance with paragraph 22 of UNSCR 1970 (2011), as listed in Annex I;
- (b) persons not covered by Annex I involved in or complicit in ordering, controlling, or otherwise directing, the commission of serious human rights abuses against persons in Libya, including by being involved in or complicit in planning, commanding, ordering or conducting attacks, in violation of international law, including aerial

bombardments, on civilian populations and facilities, or acting for or on their behalf or at their direction, as listed in Annex II.

2. Paragraph 1 shall not oblige a Member State to refuse its own nationals entry into its territory.

3. Paragraph 1(a) shall not apply where the Committee determines that:

- (a) travel is justified on the grounds of humanitarian need, including religious obligation; or
- (b) an exemption would further the objectives of peace and national reconciliation in Libya and stability in the region;

4. Paragraph 1(a) shall not apply where:

- (a) entry or transit is necessary for the fulfilment of a judicial process; or
- (b) a Member State determines on a case-by-case basis that such entry or transit is required to advance peace and stability in Libya and the Member State subsequently notifies the Committee within forty-eight hours after making such a determination.

5. Paragraph 1(b) shall be without prejudice to the cases where a Member State is bound by an obligation of international law, namely:

- (a) as a host country to an international intergovernmental organisation;
- (b) as a host country to an international conference convened by, or under the auspices of, the UN;
- (c) under a multilateral agreement conferring privileges and immunities; or
- (d) under the 1929 Treaty of Conciliation (Lateran pact) concluded by the Holy See (State of the Vatican City) and Italy.

6. Paragraph 5 shall be considered as applying also in cases where a Member State is host country to the Organisation for Security and Cooperation in Europe (OSCE).

7. The Council shall be duly informed in all cases where a Member State grants an exemption pursuant to paragraphs 5 or 6.

8. Member States may grant exemptions from the measures imposed under paragraph 1(b) where travel is justified on the grounds of urgent humanitarian need, or on grounds of attending intergovernmental meetings, including those promoted by the Union, or hosted by a Member State holding the Chairmanship in office of the OSCE, where a political dialogue is conducted that directly promotes democracy, human rights and the rule of law in Libya.

9. A Member State wishing to grant exemptions referred to in paragraph 8 shall notify the Council in writing. The exemption shall be deemed to be granted unless one or more Council members raise an objection in writing within two working days of receiving notification of the proposed exemption. Should one or more Council members raise an objection, the Council, acting by a qualified majority, may decide to grant the proposed exemption.

10. In cases where, pursuant to paragraphs 5, 6, and 8, a Member State authorises the entry into, or transit through, its territory of persons listed in the Annex, the authorisation shall be limited to the purpose for which it is given and to the persons concerned thereby.

Article 6

1. All funds, other financial assets and economic resources, owned or controlled, directly or indirectly, by:

- (a) persons and entities listed in Annex II to UNSCR 1970 (2011), and additional persons and entities designated by the Security Council or by the Committee in accordance with paragraph 22 of UNSCR 1970 (2011), or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, as listed in Annex III;
- (b) persons and entities not covered by Annex III involved in or complicit in ordering, controlling, or otherwise directing, the commission of serious human rights abuses against persons in Libya, including by being involved in or complicit in planning, commanding, ordering or conducting attacks, in violation of international law, including aerial bombardments, on civilian populations and facilities, or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, as listed in Annex IV,

shall be frozen.

2. No funds, other financial assets or economic resources shall be made available, directly or indirectly, to or for the benefit of, natural or legal persons or entities referred to in paragraph 1.

3. Exemptions may be made for funds, financial assets and economic resources which are:

- (a) necessary for basic expenses, including payment of foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

- (b) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services in accordance with national laws; or

- (c) intended exclusively for payment of fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assistance and economic resources;

after notification by the Member State concerned to the Committee, where appropriate, of the intention to authorise access to such funds, other financial assets or economic resources and in the absence of a negative decision by the Committee within five working days of such notification.

4. Exemptions may also be made for funds and economic resources which are:

- (a) necessary for extraordinary expenses, after notification by the Member State concerned to the Committee, where appropriate, and approval by the Committee; or
- (b) the subject of a judicial, administrative or arbitral lien or judgement, in which case the funds, other financial assets and economic resources may be used to satisfy that lien or judgement provided that the lien or judgement was entered before the date of adoption of UNSCR 1970 (2011), and is not for the benefit of a person or entity referred to in paragraph 1, after notification by the Member State concerned to the Committee, where appropriate;

5. Paragraph 1 shall not prevent a designated person or entity from making payment due under a contract entered into before the listing of such a person or entity, provided that the relevant Member State has determined that the payment is not directly or indirectly received by a person or entity referred to in paragraph 1 and after notification by the relevant Member State to the Committee, where appropriate, of the intention to make or receive such payments or to authorise the unfreezing of funds, other financial assets or economic resources for this purpose, 10 working days prior to such authorisation.

6. Paragraph 2 shall not apply to the addition to frozen accounts of:

- (a) interest or other earnings due on those accounts; or
- (b) payments due under contracts, agreements or obligations that arose before the date on which those accounts became subject to restrictive measures;

provided that any such interest, other earnings and payments continue to be subject to paragraph 1.

Article 7

No claims, including for compensation or any other claim of this kind, such as a claim of set-off or a claim under a guarantee, in connection with any contract or transaction the performance of which was affected, directly or indirectly, wholly or in part, by reason of measures decided upon pursuant to UNSCR 1970 (2011), including measures of the Union or any Member State in accordance with, as required by or in any connection with, the implementation of the relevant decisions of the Security Council or measures covered by this Decision, shall be granted to the designated persons or entities listed in Annexes I, II, III or IV, or any other person or entity in Libya, including the Government of Libya, or any person or entity claiming through or for the benefit of any such person or entity.

Article 8

1. The Council shall implement modifications to Annexes I and III on the basis of the determinations made by the Security Council or by the Committee.

2. The Council, acting on a proposal from Member States or from the High Representative of the Union for Foreign Affairs and Security Policy, shall establish the lists in Annexes II and IV and adopt modifications thereto.

Article 9

1. Where the Security Council or the Committee lists a person or entity, the Council shall include such person or entity in Annexes I or III.

2. Where the Council decides to subject a person or entity to the measures referred to in Articles 5(1)(b) and 6(1)(b), it shall amend Annexes II and IV accordingly.

3. The Council shall communicate its decision to the person or entity referred to in paragraphs 1 and 2, including the grounds for listing, either directly, if the address is known, or through the publication of a notice, providing such person or entity an opportunity to present observations.

4. Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the person or entity accordingly.

Article 10

1. Annexes I, II, III and IV shall include the grounds for listing of listed persons and entities concerned, as provided by the Security Council or by the Committee with regard to Annexes I and III.

2. Annexes I, II, III and IV shall also contain, where available, the information necessary to identify the persons or entities concerned, as provided by the Security Council or by the Committee with regard to Annexes I and III. With regard to persons, such information may include names, including aliases, date and place of birth, nationality, passport and ID card numbers, gender, address if known, and function or profession. With regard to entities, such information may include names, place and date of registration, registration number and place of business. Annexes I and III shall also include the date of designation by the Security Council or by the Committee.

Article 11

In order to maximise the impact of the measures laid down in this Decision, the Union shall encourage third States to adopt similar restrictive measures.

Article 12

1. This Decision shall be reviewed, amended or repealed as appropriate, notably in the light of relevant decisions by the Security Council.

2. The measures referred to in Articles 5(1)(b) and 6(1)(b) shall be reviewed at regular intervals and at least every 12 months. They shall cease to apply in respect of the persons and entities concerned if the Council determines, in accordance with the procedure referred in Article 8(2), that the conditions for their application are no longer met.

Article 13

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

Done at Brussels, 28 February 2011.

For the Council
The President
FELLEGI T.

ANNEX I

List of persons referred to in Articles 5(1)(a)**1 AL-BAGHDADI, Dr Abdulqader Mohammed**

Passport number: B010574. Date of birth: 01.07.1950.

Head of the Liaison Office of the Revolutionary Committees. Revolutionary Committees involved in violence against demonstrators.

Date of UN designation: 26.2.2011.

2. DIBRI, Abdulqader Yusef

Date of birth: 1946. Place of birth: Houn, Libya.

Head of Muammar QADHAFI's personal security. Responsibility for regime security. History of directing violence against dissidents.

Date of UN designation: 26.2.2011.

3. DORDA, Abu Zayd Umar

Director, External Security Organisation. Regime loyalist. Head of external intelligence agency.

Date of UN designation: 26.2.2011.

4. JABIR, Major General Abu Bakr Yunis

Date of birth: 1952. Place of birth: Jalo, Libya.

Defence Minister. Overall responsibility for actions of armed forces.

Date of UN designation: 26.2.2011.

5. MATUQ, Matuq Mohammed

Date of birth: 1956. Place of birth: Khoms.

Secretary for Utilities. Senior member of regime. Involvement with Revolutionary Committees. Past history of involvement in suppression of dissent and violence.

Date of UN designation: 26.2.2011.

6. QADHAF AL-DAM, Sayyid Mohammed

Date of birth: 1948. Place of birth: Sirte, Libya.

Cousin of Muammar QADHAFI. In the 1980s, Sayyid was involved in the dissident assassination campaign and allegedly responsible for several deaths in Europe. He is also thought to have been involved in arms procurement.

Date of UN designation: 26.2.2011.

7. QADHAFI, Aisha Muammar

Date of birth: 1978. Place of birth: Tripoli, Libya.

Daughter of Muammar QADHAFI. Closeness of association with regime.

Date of UN designation: 26.2.2011.

8. QADHAFI, Hannibal Muammar

Passport number: B/002210. Date of birth: 20.09.1975. Place of birth: Tripoli, Libya.

Son of Muammar QADHAFI. Closeness of association with regime.

Date of UN designation: 26.2.2011.

9. QADHAFI, Khamis Muammar

Date of birth: 1978. Place of birth: Tripoli, Libya.

Son of Muammar QADHAFI. Closeness of association with regime. Command of military units involved in repression of demonstrations.

Date of UN designation: 26.2.2011.

10. QADHAFI, Mohammed Muammar

Date of birth: 1970. Place of birth: Tripoli, Libya.

Son of Muammar QADHAFI. Closeness of association with regime.

Date of UN designation: 26.2.2011.

11. QADHAFI, Muammar Mohammed Abu Minyar

Date of birth: 1942. Place of birth: Sirte, Libya.

Leader of the Revolution, Supreme Commander of Armed Forces. Responsibility for ordering repression of demonstrations, human rights abuses.

Date of UN designation: 26.2.2011.

12. QADHAFI, Mutassim

Date of birth: 1976. Place of birth: Tripoli, Libya.

National Security Adviser. Son of Muammar QADHAFI. Closeness of association with regime.

Date of UN designation: 26.2.2011.

13. QADHAFI, Saadi

Passport number: 014797. Date of birth: 25.05.1973. Place of birth: Tripoli, Libya.

Commander Special Forces. Son of Muammar QADHAFI. Closeness of association with regime. Command of military units involved in repression of demonstrations.

Date of UN designation: 26.2.2011.

14. QADHAFI, Saif al-Arab

Date of birth: 1982. Place of birth: Tripoli, Libya.

Son of Muammar QADHAFI. Closeness of association with regime.

Date of UN designation: 26.2.2011.

15. QADHAFI, Saif al-Islam

Passport number: B014995. Date of birth: 25.06.1972. Place of birth: Tripoli, Libya.

Director, Qadhafi Foundation. Son of Muammar QADHAFI. Closeness of association with regime. Inflammatory public statements encouraging violence against demonstrators.

Date of UN designation: 26.2.2011.

16. AL-SENUSSI, Colonel Abdullah

Date of birth: 1949. Place of birth: Sudan.

Director Military Intelligence. Military Intelligence involvement in suppression of demonstrations. Past history includes suspicion of involvement in Abu Selim prison massacre. Convicted in absentia for bombing of UTA flight. Brother-in-law of Muammar QADHAFI.

Date of UN designation: 26.2.2011.

ANNEX II

List of persons referred to in Articles 5(1)(b)

	Name	Identifying information	Reasons	Date of listing
1.	ABDULHAFIZ, Colonel Mas'ud	Position: Armed Forces Commander	3rd in command of Armed Forces. Significant role in Military Intelligence.	28.2.2011
2.	ABDUSSALAM, Abdussalam Mohammed	Position: Head Counter- Terrorism, External Security Organisation Date of Birth: 1952 Place of Birth: Tripoli, Libya	Prominent Revolutionary Committee member. Close associate of Muammar QADHAFI.	28.2.2011
3.	ABU SHAARIYA	Position: Deputy Head, External Security Organisation	Prominent member of regime. Brother- in-law of Muammar QADHAFI.	28.2.2011
4.	ASHKAL, Al-Barrani	Position: Deputy Director, Military Intelligence	Senior member of regime.	28.2.2011
5.	ASHKAL, Omar	Position: Head, Revolutionary Committees Movement Place of Birth: Sirte, Libya	Revolutionary Committees involved in violence against demonstrators.	28.2.2011
6.	QADHAF AL-DAM, Ahmed Mohammed	Date of Birth: 1952 Place of Birth: Egypt	Cousin of Muammar QADHAFI. Since 1995, he is believed to have had command of an elite army battalion in charge of Qadhafi's personal security and to have a key role in External Security Organisation. He has been involved in planning operations against Libyan dissidents abroad and was directly involved in terrorist activity.	28.2.2011
7.	AL-BARASSI, Safia Farkash	Date of birth: 1952 Place of birth: Al Bayda, Libya	Wife of Muammar QADHAFI. Closeness of association with regime.	28.2.2011
8.	SALEH, Bachir	Date of birth: 1946 Place of birth: Traghen	Head of Cabinet of the Leader. Closeness of association with regime.	28.2.2011
9.	General TOHAMI, Khaled	Date of birth: 1946 Place of birth: Genzur	Director of Internal Security Office. Closeness of association with regime.	28.2.2011
10.	FARKASH, Mohammed Boucharaya	Date of birth: 1 July 1949 Place of birth: Al-Bayda	Director of intelligence in External Security Office. Closeness of association with regime.	28.2.2011

ANNEX III

List of persons and entities referred to in Articles 6(1)(a)**1. QADHAFI, Aisha Muammar**

Date of birth: 1978. Place of birth: Tripoli, Libya.

Daughter of Muammar QADHAFI. Closeness of association with regime.

Date of UN designation: 26.2.2011.

2. QADHAFI, Hannibal Muammar

Passport number: B/002210. Date of birth: 20.9.1975. Place of birth: Tripoli, Libya.

Son of Muammar QADHAFI. Closeness of association with regime.

Date of UN designation: 26.2.2011.

3. QADHAFI, Khamis Muammar

Date of birth: 1978. Place of birth: Tripoli, Libya.

Son of Muammar QADHAFI. Closeness of association with regime. Command of military units involved in repression of demonstrations.

Date of UN designation: 26.2.2011.

4. QADHAFI, Muammar Mohammed Abu Minyar

Date of birth: 1942. Place of birth: Sirte, Libya.

Leader of the Revolution, Supreme Commander of Armed Forces. Responsibility for ordering repression of demonstrations, human rights abuses.

Date of UN designation: 26.2.2011.

5. QADHAFI, Mutassim

Date of birth: 1976. Place of birth: Tripoli, Libya.

National Security Adviser. Son of Muammar QADHAFI. Closeness of association with regime.

Date of UN designation: 26.2.2011.

6. QADHAFI, Saif al-Islam

Director, Qadhafi Foundation. Passport number: B014995. Date of birth: 25.6.1972. Place of birth: Tripoli, Libya.

Son of Muammar QADHAFI. Closeness of association with regime. Inflammatory public statements encouraging violence against demonstrators.

Date of UN designation: 26.2.2011.

ANNEX IV

List of persons and entities referred to in Articles 6(1)(b)

	Name	Identifying information	Reasons	Date of listing
1.	ABDULHAFIZ, Colonel Mas'ud	Position: Armed Forces Commander	3rd in command of Armed Forces. Significant role in Military Intelligence.	28.2.2011
2.	ABDUSSALAM, Abdussalam Mohammed	Position: Head Counter-Terrorism, External Security Organisation Date of Birth: 1952 Place of Birth: Tripoli, Libya	Prominent Revolutionary Committee member. Close associate of Muammar QADHAFI.	28.2.2011
3.	ABU SHAARIYA	Position: Deputy Head, External Security Organisation	Prominent member of regime. Brother-in-law of Muammar QADHAFI.	28.2.2011
4.	ASHKAL, Al-Barrani	Position: Deputy Director, Military Intelligence	Senior member of regime.	28.2.2011
5.	ASHKAL, Omar	Position: Head, Revolutionary Committees Movement Place of Birth: Sirte, Libya	Revolutionary Committees involved in violence against demonstrators.	28.2.2011
6.	AL-BAGHDADI, Dr Abdulqader Mohammed	Position: Head of the Liaison Office of the Revolutionary Committees Passport No: B010574 Date of Birth: 01/07/1950	Revolutionary Committees involved in violence against demonstrators.	28.2.2011
7.	DIBRI, Abdulqader Yusef	Position: Head of Muammar QADHAFI's personal security Date of Birth: 1946 Place of Birth: Houn, Libya	Responsibility for regime security. History of directing violence against dissidents.	28.2.2011
8.	DORDA, Abu Zayd Umar	Position: Director, External Security Organisation	Regime loyalist. Head of external intelligence agency.	28.2.2011
9.	JABIR, Major General Abu Bakr Yunis	Position: Defence Minister Date of Birth: 1952 Place of Birth: Jalo, Libya	Overall responsibility for actions of armed forces.	28.2.2011
10.	MATUQ, Matuq Mohammed	Position: Secretary for Utilities Date of Birth: 1956 Place of Birth: Khoms	Senior member of regime. Involvement with Revolutionary Committees. Past history of involvement in suppression of dissent and violence.	28.2.2011
11.	QADHAF AL-DAM, Ahmed Mohammed	Date of Birth: 1952 Place of Birth: Egypt	Cousin of Muammar QADHAFI. Since 1995, he is believed to have had command of an elite army battalion in charge of Qadhafi's personal security and to have a key role in External Security Organisation. He has been involved in planning operations against Libyan dissidents abroad and was directly involved in terrorist activity.	28.2.2011

	Name	Identifying information	Reasons	Date of listing
12.	QADHAF AL-DAM, Sayyid Mohammed	Date of Birth: 1948 Place of Birth: Sirte, Libya	Cousin of Muammar QADHAFI. In the 1980s, Sayyid was involved in the dissident assassination campaign and allegedly responsible for several deaths in Europe. He is also thought to have been involved in arms procurement.	28.2.2011
13.	QADHAFI, Mohammed Muammar	Position: Chairman of Libya's General Post and Telecommunications Company Date of Birth: 1970 Place of Birth: Tripoli, Libya	Son of Muammar QADHAFI. Closeness of association with regime.	28.2.2011
14.	QADHAFI, Saadi	Position: Commander Special Forces Passport No. 014797 Date of Birth: 25/05/1973 Place of Birth: Tripoli, Libya	Son of Muammar QADHAFI. Closeness of association with regime. Command of military units involved in repression of demonstrations.	28.2.2011
15.	QADHAFI, Saif al-Arab	Date of Birth: 1982 Place of Birth: Tripoli, Libya	Son of Muammar QADHAFI. Closeness of association with regime.	28.2.2011
16.	AL-SENUSSI, Colonel Abdullah (Al-Megrahi)	Position: Director Military Intelligence Date of Birth: 1949 Place of Birth: Sudan	Military Intelligence involvement in suppression of demonstrations. Past history includes suspicion of involvement in Abu Selim prison massacre. Convicted in absentia for bombing of UTA flight. Brother -in-law of Muammar QADHAFI.	28.2.2011
17.	AL-BARASSI, Safia Farkash	Date of birth: 1952 Place of birth: Al Bayda, Libya	Wife of Muammar QADHAFI. Closeness of association with regime.	28.2.2011
18.	SALEH, Bachir	Date of birth: 1946 Place of birth: Traghen	Head of Cabinet of the Leader. Closeness of association with regime.	28.2.2011
19.	General TOHAMI, Khaled	Date of birth: 1946 Place of birth: Genzur	Director of Internal Security Office. Closeness of association with regime.	28.2.2011
20.	FARKASH, Mohammed Boucharaya	Date of birth: 1 July 1949 Place of birth: Al-Bayda	Director of intelligence in External Security Office. Closeness of association with regime.	28.2.2011

III

(Other acts)

EUROPEAN ECONOMIC AREA

DECISION OF THE EEA JOINT COMMITTEE

No 114/2010

of 10 November 2010

amending Annex I (Veterinary and phytosanitary matters) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex I to the Agreement was amended by Decision of the EEA Joint Committee No 60/2010 of 11 June 2010 ⁽¹⁾.
- (2) Commission Regulation (EC) No 357/2008 of 22 April 2008 amending Annex V to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ⁽²⁾ is to be incorporated into the Agreement.
- (3) Commission Regulation (EC) No 571/2008 of 19 June 2008 amending Annex III to Regulation (EC) No 999/2001 of the European Parliament and of the Council as regards the criteria for revision of the annual monitoring programmes concerning BSE ⁽³⁾ is to be incorporated into the Agreement.
- (4) Commission Regulation (EC) No 584/2008 of 20 June 2008 implementing Regulation (EC) No 2160/2003 of the European Parliament and of the Council as regards a Community target for the reduction of the prevalence of *Salmonella enteritidis* and *Salmonella typhimurium* in turkeys ⁽⁴⁾ is to be incorporated into the Agreement.
- (5) Commission Regulation (EC) No 746/2008 of 17 June 2008 amending Annex VII to Regulation (EC) No

999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ⁽⁵⁾ is to be incorporated into the Agreement.

- (6) Commission Regulation (EC) No 933/2008 of 23 September 2008 amending the Annex to Council Regulation (EC) No 21/2004 as regards the means of identification of animals and the content of the movement documents ⁽⁶⁾ is to be incorporated into the Agreement.
- (7) Commission Regulation (EC) No 956/2008 of 29 September 2008 amending Annex IV to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ⁽⁷⁾ is to be incorporated into the Agreement.
- (8) Commission Regulation (EC) No 1251/2008 of 12 December 2008 implementing Council Directive 2006/88/EC as regards conditions and certification requirements for the placing on the market and the import into the Community of aquaculture animals and products thereof and laying down a list of vector species ⁽⁸⁾ is to be incorporated into the Agreement.
- (9) Commission Regulation (EC) No 103/2009 of 3 February 2009 amending Annexes VII and IX to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ⁽⁹⁾ is to be incorporated into the Agreement.

⁽¹⁾ OJ L 244, 16.9.2010, p. 3.

⁽²⁾ OJ L 111, 23.4.2008, p. 3.

⁽³⁾ OJ L 161, 20.6.2008, p. 4.

⁽⁴⁾ OJ L 162, 21.6.2008, p. 3.

⁽⁵⁾ OJ L 202, 31.7.2008, p. 11.

⁽⁶⁾ OJ L 256, 24.9.2008, p. 5.

⁽⁷⁾ OJ L 260, 30.9.2008, p. 8.

⁽⁸⁾ OJ L 337, 16.12.2008, p. 41.

⁽⁹⁾ OJ L 34, 4.2.2009, p. 11.

- (10) Commission Regulation (EC) No 129/2009 of 13 February 2009 amending Regulation (EC) No 197/2006 as regards the validity of the transitional measures relating to former foodstuffs ⁽¹⁾ is to be incorporated into the Agreement.
- (11) Commission Regulation (EC) No 162/2009 of 26 February 2009 amending Annexes III and X to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ⁽²⁾ is to be incorporated into the Agreement.
- (12) Commission Regulation (EC) No 163/2009 of 26 February 2009 amending Annex IV to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ⁽³⁾ is to be incorporated into the Agreement.
- (13) Commission Regulation (EC) No 199/2009 of 13 March 2009 laying down a transitional measure derogating from Regulation (EC) No 2160/2003 of the European Parliament and of the Council, as regards direct supply of small quantities of fresh meat derived from flocks of broilers and turkeys ⁽⁴⁾ is to be incorporated into the Agreement.
- (14) Commission Regulation (EC) No 213/2009 of 18 March 2009 amending Regulation (EC) No 2160/2003 of the European Parliament and of the Council and Regulation (EC) No 1003/2005 as regards the control and testing of *Salmonella* in breeding flocks of *Gallus gallus* and turkeys ⁽⁵⁾ is to be incorporated into the Agreement.
- (15) Commission Regulation (EC) No 759/2009 of 19 August 2009 amending the Annex to Council Regulation (EC) No 21/2004 establishing a system for the identification and registration of ovine and caprine animals ⁽⁶⁾ is to be incorporated into the Agreement.
- (16) Commission Directive 2008/53/EC of 30 April 2008 amending Annex IV to Council Directive 2006/88/EC as regards Spring viraemia of carp (SVC) ⁽⁷⁾ is to be incorporated into the Agreement.
- (17) Council Directive 2008/71/EC of 15 July 2008 on the identification and registration of pigs ⁽⁸⁾ is to be incorporated into the Agreement.
- (18) Commission Decision 2008/392/EC of 30 April 2008 implementing Council Directive 2006/88/EC as regards an Internet-based information page to make information on aquaculture production businesses and authorised processing establishments available by electronic means ⁽⁹⁾ is to be incorporated into the Agreement.
- (19) Commission Decision 2008/650/EC of 30 July 2008 amending Council Directive 82/894/EEC on the notification of animal diseases within the Community to include certain diseases in the list of notifiable diseases and to delete porcine enterovirus encephalomyelitis from that list ⁽¹⁰⁾ is to be incorporated into the Agreement.
- (20) Commission Decision 2008/815/EC of 20 October 2008 approving certain national programmes for the control of *Salmonella* in flocks of broilers of *Gallus gallus* ⁽¹¹⁾ is to be incorporated into the Agreement.
- (21) Commission Decision 2008/896/EC of 20 November 2008 on guidelines for the purpose of the risk-based animal health surveillance schemes provided for in Council Directive 2006/88/EC ⁽¹²⁾ is to be incorporated into the Agreement.
- (22) Commission Decision 2008/908/EC of 28 November 2008 authorising certain Member States to revise their annual BSE monitoring programme ⁽¹³⁾ is to be incorporated into the Agreement.
- (23) Commission Decision 2008/946/EC of 12 December 2008 implementing Council Directive 2006/88/EC as regards requirements for quarantine of aquaculture animals ⁽¹⁴⁾ is to be incorporated into the Agreement.
- (24) Commission Decision 2009/177/EC of 31 October 2008 implementing Council Directive 2006/88/EC as regards surveillance and eradication programmes and disease-free status of Member States, zones and compartments ⁽¹⁵⁾ is to be incorporated into the Agreement.
- (25) Commission Decision 2009/247/EC of 16 March 2009 amending Decision 2003/322/EC as regards the feeding of certain species of necrophagous birds in Bulgaria with certain category 1 material ⁽¹⁶⁾ is to be incorporated into the Agreement.

⁽¹⁾ OJ L 44, 14.2.2009, p. 3.

⁽²⁾ OJ L 55, 27.2.2009, p. 11.

⁽³⁾ OJ L 55, 27.2.2009, p. 17.

⁽⁴⁾ OJ L 70, 14.3.2009, p. 9.

⁽⁵⁾ OJ L 73, 19.3.2009, p. 5.

⁽⁶⁾ OJ L 215, 20.8.2009, p. 3.

⁽⁷⁾ OJ L 117, 1.5.2008, p. 27.

⁽⁸⁾ OJ L 213, 8.8.2008, p. 31.

⁽⁹⁾ OJ L 138, 28.5.2008, p. 12.

⁽¹⁰⁾ OJ L 213, 8.8.2008, p. 42.

⁽¹¹⁾ OJ L 283, 28.10.2008, p. 43.

⁽¹²⁾ OJ L 322, 2.12.2008, p. 30.

⁽¹³⁾ OJ L 327, 5.12.2008, p. 24.

⁽¹⁴⁾ OJ L 337, 16.12.2008, p. 94.

⁽¹⁵⁾ OJ L 63, 7.3.2009, p. 15.

⁽¹⁶⁾ OJ L 73, 19.3.2009, p. 20.

- (26) Commission Decision 2009/722/EC of 29 September 2009 amending Decision 2003/324/EC as regards a derogation from the intra-species recycling ban for the feeding of certain fur animals in Latvia ⁽¹⁾ is to be incorporated into the Agreement.
- (27) Commission Decision 2009/771/EC of 20 October 2009 approving certain national programmes for the control of salmonella in turkeys ⁽²⁾ is to be incorporated into the Agreement.
- (28) Regulation (EC) No 1251/2008 repeals Commission Decisions 1999/567/EC ⁽³⁾ and 2003/390/EC ⁽⁴⁾ which are incorporated into the Agreement and are therefore to be repealed under the Agreement.
- (29) Directive 2008/71/EC repeals Council Directive 92/102/EEC ⁽⁵⁾ which is incorporated into the Agreement and is therefore to be repealed under the Agreement.
- (30) Decision 2009/177/EC repeals Commission Decisions 2002/300/EC ⁽⁶⁾ and 2002/308/EC ⁽⁷⁾ which are incorporated into the Agreement and are therefore to be repealed under the Agreement.
- (31) Paragraph 2 of the Introductory Part of Chapter I of Annex I specifies that provisions concerning live animals, other than fish and aquaculture animals, shall not apply to Iceland, and that it shall be stated in relation to the specific act when it is not to apply or is to apply partially to Iceland. Therefore, it must be stated in relation to Council Directive 2005/94/EC ⁽⁸⁾, which is already incorporated into the Agreement, that it does not apply to Iceland.
- (32) This Decision shall apply to Iceland with the transitional period specified in paragraph 2 of the Introductory Part of Chapter I of Annex I for the areas which did not apply to Iceland prior to the review of this Chapter by Decision of the EEA Joint Committee No 133/2007 of 26 October 2007 ⁽⁹⁾.
- (33) This Decision is not to apply to Liechtenstein,

HAS DECIDED AS FOLLOWS:

Article 1

Chapter I of Annex I to the Agreement shall be amended as specified in the Annex to this Decision.

Article 2

The texts of Regulations (EC) No 357/2008, (EC) No 571/2008, (EC) No 584/2008, (EC) No 746/2008, (EC) No 933/2008, (EC) No 956/2008, (EC) No 1251/2008, (EC) No 103/2009, (EC) No 129/2009, (EC) No 162/2009, (EC) No 163/2009, (EC) No 199/2009, (EC) No 213/2009 and (EC) No 759/2009, Directives 2008/53/EC and 2008/71/EC and Decisions 2008/392/EC, 2008/650/EC, 2008/815/EC, 2008/896/EC, 2008/908/EC, 2008/946/EC, 2009/177/EC, 2009/247/EC, 2009/722/EC and 2009/771/EC in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 11 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee ^(*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 10 November 2010.

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 257, 30.9.2009, p. 38.

⁽²⁾ OJ L 275, 21.10.2009, p. 28.

⁽³⁾ OJ L 216, 14.8.1999, p. 13.

⁽⁴⁾ OJ L 135, 3.6.2003, p. 19.

⁽⁵⁾ OJ L 355, 5.12.1992, p. 32.

⁽⁶⁾ OJ L 103, 19.4.2002, p. 24.

⁽⁷⁾ OJ L 106, 23.4.2002, p. 28.

⁽⁸⁾ OJ L 10, 14.1.2006, p. 16.

⁽⁹⁾ OJ L 100, 10.4.2008, p. 27.

^(*) No constitutional requirements indicated.

ANNEX

Chapter I of Annex I to the Agreement shall be amended as follows:

1. The following shall be added in point 7b (Council Regulation (EC) No 21/2004) in Part 1.1:

— **32008 R 0933**: Commission Regulation (EC) No 933/2008 of 23 September 2008 (OJ L 256, 24.9.2008, p. 5),

— **32009 R 0759**: Commission Regulation (EC) No 759/2009 of 19 August 2009 (OJ L 215, 20.8.2009, p. 3),

The provisions of this Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

In the table of country codes in footnote 1 in the Annex the following shall be added:

Iceland	IS	352
Norway	NO	578'

2. The text of point 7 (Council Directive 92/102/EEC) in Part 1.1 shall be deleted.

3. The following point shall be inserted after point 7c (Regulation (EC) No 1760/2000 of the European Parliament and of the Council) in Part 1.1:

'7d. **32008 L 0071**: Council Directive 2008/71/EC of 15 July 2008 on the identification and registration of pigs (OJ L 213, 8.8.2008, p. 31).'

4. The following shall be added in point 8a (Council Directive 2006/88/EC) in Part 3.1, point 5a (Council Directive 2006/88/EC) in Part 4.1 and point 4a (Council Directive 2006/88/EC) in Part 8.1:

‘, as amended by:

— **32008 L 0053**: Commission Directive 2008/53/EC of 30 April 2008 (OJ L 117, 1.5.2008, p. 27).'

5. The following shall be added in point 5a (Council Directive 2005/94/EC) in Part 3.1:

'This act shall not apply to Iceland.'

6. The following indent shall be added in point 10 (Council Directive 82/894/EEC) in Part 3.1:

— **32008 D 0650**: Commission Decision 2008/650/EC of 30 July 2008 (OJ L 213, 8.8.2008, p. 42).'

7. The following point shall be inserted after point 41 (Commission Regulation (EC) No 737/2008) in Part 3.2:

'42. **32008 D 0896**: Commission Decision 2008/896/EC of 20 November 2008 on guidelines for the purpose of the risk-based animal health surveillance schemes provided for in Council Directive 2006/88/EC (OJ L 322, 2.12.2008, p. 30).'

8. The text of points 51 (Commission Decision 1999/567/EC), 65 (Commission Decision 2002/300/EC), 66 (Commission Decision 2002/308/EC) and 72 (Commission Decision 2003/390/EC) in Part 4.2 shall be deleted.

9. The following points shall be inserted after point 85 (Commission Regulation (EC) No 504/2008) in Part 4.2:

'86. **32008 R 1251**: Commission Regulation (EC) No 1251/2008 of 12 December 2008 implementing Council Directive 2006/88/EC as regards conditions and certification requirements for the placing on the market and the import into the Community of aquaculture animals and products thereof and laying down a list of vector species (OJ L 337, 16.12.2008, p. 41),

87. **32008 D 0392**: Commission Decision 2008/392/EC of 30 April 2008 implementing Council Directive 2006/88/EC as regards an Internet-based information page to make information on aquaculture production businesses and authorised processing establishments available by electronic means (OJ L 138, 28.5.2008, p. 12),

88. **32008 D 0946**: Commission Decision 2008/946/EC of 12 December 2008 implementing Council Directive 2006/88/EC as regards requirements for quarantine of aquaculture animals (OJ L 337, 16.12.2008, p. 94),

89. **32009 D 0177**: Commission Decision 2009/177/EC of 31 October 2008 implementing Council Directive 2006/88/EC as regards surveillance and eradication programmes and disease-free status of Member States, zones and compartments (OJ L 63, 7.3.2009, p. 15).'

10. The following indent shall be added in points 8b (Regulation (EC) No 2160/2003 of the European Parliament and of the Council) in Part 7.1 and 25 (Commission Regulation (EC) No 1003/2005) in Part 7.2:

‘— **32009 R 0213**: Commission Regulation (EC) No 213/2009 of 18 March 2009 (OJ L 73, 19.3.2009, p. 5).’

11. The following indents shall be added in point 12 (Regulation (EC) No 999/2001 of the European Parliament and of the Council) in Part 7.1:

‘— **32008 R 0357**: Commission Regulation (EC) No 357/2008 of 22 April 2008 (OJ L 111, 23.4.2008, p. 3),

— **32008 R 0571**: Commission Regulation (EC) No 571/2008 of 19 June 2008 (OJ L 161, 20.6.2008, p. 4),

— **32008 R 0746**: Commission Regulation (EC) No 746/2008 of 17 June 2008 (OJ L 202, 31.7.2008, p. 11),

— **32008 R 0956**: Commission Regulation (EC) No 956/2008 of 29 September 2008 (OJ L 260, 30.9.2008, p. 8),

— **32009 R 0103**: Commission Regulation (EC) No 103/2009 of 3 February 2009 (OJ L 34, 4.2.2009, p. 11),

— **32009 R 0162**: Commission Regulation (EC) No 162/2009 of 26 February 2009 (OJ L 55, 27.2.2009, p. 11),

— **32009 R 0163**: Commission Regulation (EC) No 163/2009 of 26 February 2009 (OJ L 55, 27.2.2009, p. 17).’

12. The following adaptation text shall be added in point 12 (Regulation (EC) No 999/2001 of the European Parliament and of the Council) in Part 7.1:

‘H. In Annex IX, Chapter D, Section B, point (c), the following shall be added after the words “destined to a Member State listed in the Annex to the Regulation (EC) No 546/2006,”:

“or destined for Norway,”’

13. The following indent shall be added in point 45 (Commission Regulation (EC) No 197/2006) in Part 7.2:

‘— **32009 R 0129**: Commission Regulation (EC) No 129/2009 of 13 February 2009 (OJ L 44, 14.2.2009, p. 3).’

14. The following shall be added in point 47 (Commission Regulation (EC) No 646/2007) in Part 7.2:

‘, as amended by:

— **32008 R 0584**: Commission Regulation (EC) No 584/2008 of 20 June 2008 (OJ L 162, 21.6.2008, p. 3).’

15. The following points shall be inserted after point 50 (Council Decision 2008/486/EC) in Part 7.2:

‘51. **32008 R 0584**: Commission Regulation (EC) No 584/2008 of 20 June 2008 implementing Regulation (EC) No 2160/2003 of the European Parliament and of the Council as regards a Community target for the reduction of the prevalence of *Salmonella enteritidis* and *Salmonella typhimurium* in turkeys (OJ L 162, 21.6.2008, p. 3),

52. **32009 R 0199**: Commission Regulation (EC) No 199/2009 of 13 March 2009 laying down a transitional measure derogating from Regulation (EC) No 2160/2003 of the European Parliament and of the Council, as regards direct supply of small quantities of fresh meat derived from flocks of broilers and turkeys (OJ L 70, 14.3.2009, p. 9).’

16. Under the heading ‘ACTS OF WHICH THE EFTA STATES AND THE EFTA SURVEILLANCE AUTHORITY SHALL TAKE DUE ACCOUNT’ the following points shall be inserted after point 4i (Commission Decision 2007/874/EC) in Part 7.2:

‘4j. **32008 D 0815**: Commission Decision 2008/815/EC of 20 October 2008 approving certain national programmes for the control of *Salmonella* in flocks of broilers of *Gallus gallus* (OJ L 283, 28.10.2008, p. 43).

4k. **32009 D 0771**: Commission Decision 2009/771/EC of 20 October 2009 approving certain national programmes for the control of *Salmonella* in turkeys (OJ L 275, 21.10.2009, p. 28).’

17. Under the heading ‘ACTS OF WHICH THE EFTA STATES AND THE EFTA SURVEILLANCE AUTHORITY SHALL TAKE DUE ACCOUNT’ the following point shall be inserted after point 41a (Commission Decision 2007/667/EC) in Part 7.2:

‘41b. **32008 D 0908**: Commission Decision 2008/908/EC of 28 November 2008 authorising certain Member States to revise their annual BSE monitoring programme (OJ L 327, 5.12.2008, p. 24).’

18. Under the heading '*ACTS OF WHICH THE EFTA STATES AND THE EFTA SURVEILLANCE AUTHORITY SHALL TAKE DUE ACCOUNT*' the following indent shall be added in point 42 (Commission Decision 2003/322/EC) in Part 7.2:

‘— **32009 D 0247**: Commission Decision 2009/247/EC of 16 March 2009 (OJ L 73, 19.3.2009, p. 20).’

19. Under the heading '*ACTS OF WHICH THE EFTA STATES AND THE EFTA SURVEILLANCE AUTHORITY SHALL TAKE DUE ACCOUNT*' the following indent shall be added in point 43 (Commission Decision 2003/324/EC) in Part 7.2:

‘— **32009 D 0722**: Commission Decision 2009/722/EC of 29 September 2009 (OJ L 257, 30.9.2009, p. 38).’

DECISION OF THE EEA JOINT COMMITTEE

No 115/2010

of 10 November 2010

amending Annex I (Veterinary and phytosanitary matters) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex I to the Agreement was amended by Decision of the EEA Joint Committee No 60/2010 of 11 June 2010 ⁽¹⁾.
- (2) Commission Regulation (EC) No 180/2008 of 28 February 2008 concerning the Community reference laboratory for equine diseases other than African horse sickness and amending Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council ⁽²⁾ is to be incorporated into the Agreement.
- (3) Commission Regulation (EC) No 616/2009 of 13 July 2009 implementing Council Directive 2005/94/EC as regards the approval of poultry compartments and other captive birds compartments with respect to avian influenza and additional preventive biosecurity measures in such compartments ⁽³⁾ is to be incorporated into the Agreement.
- (4) Commission Regulation (EC) No 789/2009 of 28 August 2009 amending Regulation (EC) No 1266/2007 as regards protection against attacks by vectors and minimum requirements for bluetongue monitoring and surveillance programmes ⁽⁴⁾ is to be incorporated into the Agreement.
- (5) Commission Regulation (EC) No 1156/2009 of 27 November 2009 amending Regulation (EC) No 1266/2007 as regards the conditions for exempting certain animals of susceptible species from the exit ban provided for in Council Directive 2000/75/EC ⁽⁵⁾ is to be incorporated into the Agreement.
- (6) Council Directive 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves ⁽⁶⁾ is to be incorporated into the Agreement.
- (7) Council Directive 2009/157/EC of 30 November 2009 on pure-bred breeding animals of the bovine species ⁽⁷⁾ is to be incorporated into the Agreement.
- (8) Commission Decision 2009/437/EC of 8 June 2009 amending Decision 2007/268/EC on the implementation of surveillance programmes for avian influenza in poultry and wild birds to be carried out in the Member States ⁽⁸⁾ is to be incorporated into the Agreement.
- (9) Commission Decision 2009/600/EC of 5 August 2009 amending Decision 2003/467/EC as regards the declaration that certain Member States and regions thereof are officially free of bovine brucellosis ⁽⁹⁾ is to be incorporated into the Agreement.
- (10) Commission Decision 2009/601/EC of 5 August 2009 amending Annex I to Decision 2004/233/EC as regards the entries for Germany in the list of laboratories authorised to check the effectiveness of vaccination against rabies in certain domestic carnivores ⁽¹⁰⁾ is to be incorporated into the Agreement.
- (11) Commission Decision 2009/621/EC of 20 August 2009 amending Decision 2008/185/EC as regards the inclusion of Northern Ireland in the list of regions where an approved national control programme for Aujeszky's disease is in place ⁽¹¹⁾ is to be incorporated into the Agreement.
- (12) Commission Decision 2009/761/EC of 15 October 2009 amending Decision 2003/467/EC as regards the declaration that Scotland is officially free of bovine tuberculosis ⁽¹²⁾ is to be incorporated into the Agreement.
- (13) Commission Decision 2009/779/EC of 22 October 2009 amending Annex I to Decision 2004/233/EC as regards the entry for Denmark in the list of laboratories authorised to check the effectiveness of vaccination against rabies in certain domestic carnivores ⁽¹³⁾ is to be incorporated into the Agreement.

⁽¹⁾ OJ L 244, 16.9.2010, p. 3.

⁽²⁾ OJ L 56, 29.2.2008, p. 4.

⁽³⁾ OJ L 181, 14.7.2009, p. 16.

⁽⁴⁾ OJ L 227, 29.8.2009, p. 3.

⁽⁵⁾ OJ L 313, 28.11.2009, p. 59.

⁽⁶⁾ OJ L 10, 15.1.2009, p. 7.

⁽⁷⁾ OJ L 323, 10.12.2009, p. 1.

⁽⁸⁾ OJ L 145, 10.6.2009, p. 45.

⁽⁹⁾ OJ L 204, 6.8.2009, p. 39.

⁽¹⁰⁾ OJ L 204, 6.8.2009, p. 43.

⁽¹¹⁾ OJ L 217, 21.8.2009, p. 5.

⁽¹²⁾ OJ L 271, 16.10.2009, p. 34.

⁽¹³⁾ OJ L 278, 23.10.2009, p. 58.

- (14) Commission Decision 2009/869/EC of 27 November 2009 amending Annexes XI, XII, XV and XVI to Council Directive 2003/85/EC as regards the list of and minimum security standards applicable to laboratories authorised to handle live foot-and-mouth disease virus ⁽¹⁾ is to be incorporated into the Agreement.
- (15) Commission Decision 2009/976/EU of 15 December 2009 amending Annex D to Council Directive 64/432/EEC as regards diagnostic tests for enzootic bovine leukosis ⁽²⁾ is to be incorporated into the Agreement.
- (16) Directive 2008/119/EC repeals Council Directive 91/629/EC ⁽³⁾ which is incorporated into the Agreement and is therefore to be repealed under the Agreement.
- (17) Directive 2009/157/EC repeals Council Directive 77/504/EC ⁽⁴⁾ which is incorporated into the Agreement and is therefore to be repealed under the Agreement.
- (18) This Decision concerns legislation regarding live animals other than fish and aquaculture animals. Legislation concerning these matters does not apply to Iceland, as specified in paragraph 2 of the Introductory Part of Chapter I of Annex I to the Agreement.
- (19) This Decision is not to apply to Iceland and Liechtenstein,

HAS DECIDED AS FOLLOWS:

Article 1

Chapter I of Annex I to the Agreement shall be amended as specified in the Annex to this Decision.

Article 2

The texts of Regulations (EC) No 180/2008, (EC) No 616/2009, (EC) No 789/2009 and (EC) No 1156/2009, Directives 2008/119/EC and 2009/157/EC and Decisions 2009/437/EC, 2009/600/EC, 2009/601/EC, 2009/621/EC, 2009/761/EC, 2009/779/EC, 2009/869/EC and 2009/976/EU in the Norwegian language, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 11 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 10 November 2010.

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 315, 2.12.2009, p. 8.

⁽²⁾ OJ L 336, 18.12.2009, p. 36.

⁽³⁾ OJ L 340, 11.12.1991, p. 28.

⁽⁴⁾ OJ L 206, 12.8.1977, p. 8.

(*) No constitutional requirements indicated.

ANNEX

Chapter I of Annex I to the Agreement shall be amended as follows:

1. the following indent shall be added in point 11 (Regulation (EC) No 882/2004 of the European Parliament and of the Council) in Part 1.1:

— **32008 R 0180**: Commission Regulation (EC) No 180/2008 of 28 February 2008 (OJ L 56, 29.2.2008, p. 4).;

2. the text of point 1 (Council Directive 77/504/EEC) in Part 2.1 shall be deleted;

3. the following point shall be inserted after point 1 (Council Directive 77/504/EEC, deleted) in Part 2.1:

‘1a. **32009 L 0157**: Council Directive 2009/157/EC of 30 November 2009 on pure-bred breeding animals of the bovine species (OJ L 323, 10.12.2009, p. 1).

This act shall not apply to Iceland.’;

4. the following indent shall be added in point 1a (Council Directive 2003/85/EC) in Part 3.1:

— **32009 D 0869**: Commission Decision 2009/869/EC of 27 November 2009 (OJ L 315, 2.12.2009, p. 8).;

5. the following shall be added in point 38 (Commission Decision 2007/268/EC) in Part 3.2:

‘, as amended by:

— **32009 D 0437**: Commission Decision 2009/437/EC of 8 June 2009 (OJ L 145, 10.6.2009, p. 45).;

6. the following indents shall be added in point 40 (Commission Regulation (EC) No 1266/2007) in Part 3.2:

— **32009 R 0789**: Commission Regulation (EC) No 789/2009 of 28 August 2009 (OJ L 227, 29.8.2009, p. 3),

— **32009 R 1156**: Commission Regulation (EC) No 1156/2009 of 27 November 2009 (OJ L 313, 28.11.2009, p. 59).;

7. the following point shall be inserted after point 42 (Commission Decision 2008/896/EC) in Part 3.2:

‘43. **32009 R 0616**: Commission Regulation (EC) No 616/2009 of 13 July 2009 implementing Council Directive 2005/94/EC as regards the approval of poultry compartments and other captive birds compartments with respect to avian influenza and additional preventive biosecurity measures in such compartments (OJ L 181, 14.7.2009, p. 16).

This act shall not apply to Iceland.’;

8. the following indent shall be added in point 1 (Council Directive 64/432/EEC) in Part 4.1:

— **32009 D 0976**: Commission Decision 2009/976/EU of 15 December 2009 (OJ L 336, 18.12.2009, p. 36).;

9. the following indents shall be added in point 70 (Commission Decision 2003/467/EC) in Part 4.2:

— **32009 D 0600**: Commission Decision 2009/600/EC of 5 August 2009 (OJ L 204, 6.8.2009, p. 39),

— **32009 D 0761**: Commission Decision 2009/761/EC of 15 October 2009 (OJ L 271, 16.10.2009, p. 34).;

10. the following indents shall be added in point 76 (Commission Decision 2004/233/EC) in Part 4.2:

‘— **32009 D 0601**: Commission Decision 2009/601/EC of 5 August 2009 (OJ L 204, 6.8.2009, p. 43),

— **32009 D 0779**: Commission Decision 2009/779/EC of 22 October 2009 (OJ L 278, 23.10.2009, p. 58).’;

11. the following indent shall be added in point 84 (Commission Decision 2008/185/EC) in Part 4.2:

‘— **32009 D 0621**: Commission Decision 2009/621/EC of 20 August 2009 (OJ L 217, 21.8.2009, p. 5).’;

12. the following point shall be inserted after point 89 (Commission Decision 2009/177/EC) in Part 4.2:

‘90. **32008 R 0180**: Commission Regulation (EC) No 180/2008 of 28 February 2008 concerning the Community reference laboratory for equine diseases other than African horse sickness and amending Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council (OJ L 56, 29.2.2008, p. 4).

This act shall not apply to Iceland.’;

13. the text of point 4 (Council Directive 91/629/EEC) in Part 9.1 shall be deleted;

14. the following point shall be inserted after point 11 (Council Directive 2008/120/EC) in Part 9.1:

‘12. **32008 L 0119**: Council Directive 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves (OJ L 10, 15.1.2009, p. 7).

This act shall not apply to Iceland.’.

DECISION OF THE EEA JOINT COMMITTEE

No 116/2010

of 10 November 2010

amending Annex I (Veterinary and phytosanitary matters) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex I to the Agreement was amended by Decision of the EEA Joint Committee No 81/2010 of 2 July 2010 ⁽¹⁾.
- (2) Commission Directive 2009/141/EC of 23 November 2009 amending Annex I to Directive 2002/32/EC of the European Parliament and of the Council as regards maximum levels for arsenic, theobromine, *Datura* sp., *Ricinus communis* L., *Croton tiglium* L. and *Abrus precatorius* L. ⁽²⁾ is to be incorporated into the Agreement.
- (3) This Decision is not to apply to Liechtenstein,

HAS DECIDED AS FOLLOWS:

Article 1

The following indent shall be added in point 33 (Directive 2002/32/EC of the European Parliament and of the Council) of Chapter II of Annex I to the Agreement:

‘— **32009 L 0141**: Commission Directive 2009/141/EC of 23 November 2009 (OJ L 308, 24.11.2009, p. 20).’

Article 2

The text of Directive 2009/141/EC in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 11 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 10 November 2010.

*For the EEA Joint Committee**The President*

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 277, 21.10.2010, p. 34.

⁽²⁾ OJ L 308, 24.11.2009, p. 20.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 117/2010

of 10 November 2010

amending Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement

THE EEA JOINT COMMITTEE,

HAS DECIDED AS FOLLOWS:

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex II to the Agreement was amended by Decision of the EEA Joint Committee No 138/2009 of 4 December 2009 ⁽¹⁾.
- (2) Commission Decision 2007/231/EC of 12 April 2007 amending Decision 2006/502/EC requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters ⁽²⁾ is to be incorporated into the Agreement.
- (3) Commission Decision 2008/322/EC of 18 April 2008 prolonging the validity of Decision 2006/502/EC requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters ⁽³⁾ is to be incorporated into the Agreement.
- (4) Commission Decision 2009/298/EC of 26 March 2009 prolonging the validity of Decision 2006/502/EC requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters ⁽⁴⁾ is to be incorporated into the Agreement.
- (5) Commission Decision 2010/157/EU of 12 March 2010 prolonging the validity of Decision 2006/502/EC requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters ⁽⁵⁾ is to be incorporated into the Agreement,

Article 1

The following shall be added in point 3k (Commission Decision 2006/502/EC) of Chapter XIX of Annex II to the Agreement:

‘, as amended by:

- **32007 D 0231**: Commission Decision 2007/231/EC of 12 April 2007 (OJ L 99, 14.4.2007, p. 16),
- **32008 D 0322**: Commission Decision 2008/322/EC of 18 April 2008 (OJ L 109, 19.4.2008, p. 40),
- **32009 D 0298**: Commission Decision 2009/298/EC of 26 March 2009 (OJ L 81, 27.3.2009, p. 23),
- **32010 D 0157**: Commission Decision 2010/157/EU of 12 March 2010 (OJ L 67, 17.3.2010, p. 9).’

Article 2

The texts of Decisions 2007/231/EC, 2008/322/EC, 2009/298/EC and 2010/157/EU in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 11 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 10 November 2010.

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 62, 11.3.2010, p. 31.

⁽²⁾ OJ L 99, 14.4.2007, p. 16.

⁽³⁾ OJ L 109, 19.4.2008, p. 40.

⁽⁴⁾ OJ L 81, 27.3.2009, p. 23.

⁽⁵⁾ OJ L 67, 17.3.2010, p. 9.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 118/2010

of 10 November 2010

amending Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex II to the Agreement was amended by Decision of the EEA Joint Committee No 138/2009 of 4 December 2009 ⁽¹⁾.
- (2) Commission Decision 2009/251/EC of 17 March 2009 requiring Member States to ensure that products containing the biocide dimethylfumarate are not placed or made available on the market ⁽²⁾ is to be incorporated into the Agreement.
- (3) Commission Decision 2010/153/EU of 11 March 2010 prolonging the validity of Decision 2009/251/EC requiring Member States to ensure that products containing the biocide dimethylfumarate are not placed or made available on the market ⁽³⁾ is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The following shall be inserted after point 3m (Commission Decision 2008/357/EC) of Chapter XIX of Annex II to the Agreement:

'3n. **32009 D 0251**: Commission Decision 2009/251/EC of 17 March 2009 requiring Member States to ensure that products containing the biocide dimethylfumarate are not placed or made available on the market (OJ L 74, 20.3.2009, p. 32), as amended by:

— **32010 D 0153**: Commission Decision 2010/153/EU of 11 March 2010 (OJ L 63, 12.3.2010, p. 21).'

Article 2

The texts of Decisions 2009/251/EC and 2010/153/EU in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 11 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 10 November 2010.

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 62, 11.3.2010, p. 31.

⁽²⁾ OJ L 74, 20.3.2009, p. 32.

⁽³⁾ OJ L 63, 12.3.2010, p. 21.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 119/2010

of 10 November 2010

amending Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex II to the Agreement was amended by Decision of the EEA Joint Committee No 8/2006 of 27 January 2006 ⁽¹⁾.
- (2) Directive 2007/23/EC of the European Parliament and of the Council of 23 May 2007 on the placing on the market of pyrotechnic articles ⁽²⁾ is to be incorporated into the Agreement.
- (3) Commission Directive 2008/43/EC of 4 April 2008 setting up, pursuant to Council Directive 93/15/EEC, a system for the identification and traceability of explosives for civil uses ⁽³⁾ is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The following points shall be inserted after point 3 (Commission Directive 2004/57/EC) of Chapter XXIX of Annex II to the Agreement:

- '4. **32007 L 0023**: Directive 2007/23/EC of the European Parliament and of the Council of 23 May 2007 on the placing on the market of pyrotechnic articles (OJ L 154, 14.6.2007, p. 1).

5. **32008 L 0043**: Commission Directive 2008/43/EC of 4 April 2008 setting up, pursuant to Council Directive 93/15/EEC, a system for the identification and traceability of explosives for civil uses (OJ L 94, 5.4.2008, p. 8).'

Article 2

The texts of Directives 2007/23/EC and 2008/43/EC in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 11 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 10 November 2010.

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 92, 30.3.2006, p. 29.

⁽²⁾ OJ L 154, 14.6.2007, p. 1.

⁽³⁾ OJ L 94, 5.4.2008, p. 8.

(*) Constitutional requirements indicated

DECISION OF THE EEA JOINT COMMITTEE

No 120/2010

of 10 November 2010

amending Annex IX (Financial services) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex IX to the Agreement was amended by Decision of the EEA Joint Committee No 85/2010 of 2 July 2010 ⁽¹⁾.
- (2) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast) ⁽²⁾ is to be incorporated into the Agreement.
- (3) Commission Directive 2009/83/EC of 27 July 2009 amending certain Annexes to Directive 2006/48/EC of the European Parliament and of the Council as regards technical provisions concerning risk management ⁽³⁾ is to be incorporated into the Agreement.
- (4) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC ⁽⁴⁾ is to be incorporated into the Agreement.
- (5) Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector ⁽⁵⁾ is to be incorporated into the Agreement.
- (6) Directive 2009/65/EC repeals, with effect from 1 July 2011, Council Directive 85/611/EEC ⁽⁶⁾, which is incorporated into the Agreement and which is consequently to be repealed under the Agreement with effect from 1 July 2011.
- (7) Directive 2009/110/EC repeals, with effect from 30 April 2011, Directive 2000/46/EC of the European Parliament and of the Council ⁽⁷⁾, which is incorporated into the

Agreement and which is consequently to be repealed under the Agreement with effect from 30 April 2011.

- (8) Directive 2002/92/EC of the European Parliament and of the Council ⁽⁸⁾, which was incorporated into the Agreement by Decision of the EEA Joint Committee No 115/2003 ⁽⁹⁾ of 26 September 2003, repealed Council Directive 77/92/EEC ⁽¹⁰⁾, which is incorporated into the Agreement and which is consequently to be repealed under the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

Annex IX to the Agreement shall be amended as follows:

- (1) points 30 (Council Directive 85/611/EEC) and 30a (Commission Directive 2007/16/EC) shall be renumbered as points 30a and 30b respectively;
- (2) the following point shall be inserted before new point 30a (Council Directive 85/611/EEC):

‘30. **32009 L 0065:** Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast) (OJ L 302, 17.11.2009, p. 32).’;
- (3) the text of new point 30a (Council Directive 85/611/EEC) shall be deleted with effect from 1 July 2011;
- (4) point 15 (Directive 2000/46/EC of the European Parliament and of the Council) shall be renumbered as point 15a;
- (5) the following point shall be inserted before new point 15a (Directive 2000/46/EC of the European Parliament and of the Council):

‘15. **32009 L 0110:** Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).’;

⁽¹⁾ OJ L 277, 21.10.2010, p. 39.

⁽²⁾ OJ L 302, 17.11.2009, p. 32.

⁽³⁾ OJ L 196, 28.7.2009, p. 14.

⁽⁴⁾ OJ L 267, 10.10.2009, p. 7.

⁽⁵⁾ OJ L 120, 15.5.2009, p. 22.

⁽⁶⁾ OJ L 375, 31.12.1985, p. 3.

⁽⁷⁾ OJ L 267, 10.10.2009, p. 7.

⁽⁸⁾ OJ L 9, 15.1.2003, p. 3.

⁽⁹⁾ OJ L 331, 18.12.2003, p. 34.

⁽¹⁰⁾ OJ L 26, 31.1.1977, p. 14.

- (6) the text of new point 15a (Directive 2000/46/EC of the European Parliament and of the Council) shall be deleted with effect from 30 April 2011;
- (7) the following indents shall be added in point 14 (Directive 2006/48/EC of the European Parliament and of the Council):
- **32009 L 0083:** Commission Directive 2009/83/EC of 27 July 2009 (OJ L 196, 28.7.2009, p. 14),
- **32009 L 0110:** Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 (OJ L 267, 10.10.2009, p. 7).;
- (8) the following indent shall be added in point 23b (Directive 2005/60/EC of the European Parliament and of the Council):
- **32009 L 0110:** Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 (OJ L 267, 10.10.2009, p. 7).;
- (9) the following point shall be inserted after point 43 (Commission Recommendation 2007/657/EC):
- ‘44. **32009 H 0384:** Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector (OJ L 120, 15.5.2009, p. 22).’;
- (10) the text of point 13 (Council Directive 77/92/EEC) shall be deleted;
- (11) points 29f (Commission Directive 2004/72/EC) and 29g (Directive 2004/109/EC of the European Parliament and of the Council) shall be renumbered as points 29c and 29d respectively;
- (12) point 29ga (Commission Directive 2007/14/EC) shall be renumbered as point 29da;
- (13) point 29h (Commission Regulation (EC) No 1569/2007) shall be renumbered as point 29e.
- Article 2*
- The texts of Directives 2009/65/EC, 2009/83/EC and 2009/110/EC and Recommendation 2009/384/EC in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.
- Article 3*
- This Decision shall enter into force on 11 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).
- Article 4*
- This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.
- Done at Brussels, 10 November 2010.
- For the EEA Joint Committee*
The President
Stefán Haukur JÓHANNESSON

(*) Constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE
No 121/2010
of 10 November 2010
amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

‘— **32010 D 0187**: Commission Decision 2010/187/EU of 25 March 2010 (OJ L 83, 30.3.2010, p. 24).’

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as ‘the Agreement’, and in particular Article 98 thereof,

Article 2

The text of Decision 2010/187/EU in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Whereas:

Article 3

(1) Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No 108/2010 of 1 October 2010 ⁽¹⁾.

This Decision shall enter into force on 11 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

(2) Commission Decision 2010/187/EU of 25 March 2010 authorising Member States to adopt certain derogations pursuant to Directive 2008/68/EC of the European Parliament and of the Council on the inland transport of dangerous goods ⁽²⁾ is to be incorporated into the Agreement,

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

HAS DECIDED AS FOLLOWS:

Done at Brussels, 10 November 2010.

Article 1

The following indent shall be added in point 13c (Directive 2008/68/EC of the European Parliament and of the Council) of Annex XIII to the Agreement:

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 332, 16.12.2010, p. 58.

⁽²⁾ OJ L 83, 30.3.2010, p. 24.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE
No 122/2010
of 10 November 2010
amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No 108/2010 of 1 October 2010 ⁽¹⁾.
- (2) Commission Recommendation 2010/19/EU of 13 January 2010 on the secure exchange of electronic data between Member States to check the uniqueness of driver cards that they issue ⁽²⁾ is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The following shall be inserted after point 36a (Directive 2003/59/EC of the European Parliament and of the Council) of Annex XIII to the Agreement:

'ACTS OF WHICH THE CONTRACTING PARTIES SHALL TAKE NOTE

The Contracting Parties take note of the content of the following acts:

36b. **32010 H 0019:** Commission Recommendation 2010/19/EU of 13 January 2010 on the secure exchange of electronic data between Member States to check the uniqueness of driver cards that they issue (OJ L 9, 14.1.2010, p. 10).'

Article 2

The text of Recommendation 2010/19/EU in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 11 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 10 November 2010.

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 332, 16.12.2010, p. 58.

⁽²⁾ OJ L 9, 14.1.2010, p. 10.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 123/2010

of 10 November 2010

amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

‘, as amended by:

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as ‘the Agreement’, and in particular Article 98 thereof,

— **32010 R 0285**: Commission Regulation (EU) No 285/2010 of 6 April 2010 (OJ L 87, 7.4.2010, p. 19).’

Article 2

Whereas:

The text of Regulation (EU) No 285/2010 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

(1) Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No 108/2010 of 1 October 2010 ⁽¹⁾.

This Decision shall enter into force on 11 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

(2) Commission Regulation (EU) No 285/2010 of 6 April 2010 amending Regulation (EC) No 785/2004 of the European Parliament and of the Council on insurance requirements for air carriers and aircraft operators ⁽²⁾ is to be incorporated into the Agreement,

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

HAS DECIDED AS FOLLOWS:

Done at Brussels, 10 November 2010.

Article 1

The following shall be added in point 66l (Regulation (EC) No 785/2004 of the European Parliament and of the Council) of Annex XIII to the Agreement:

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 332, 16.12.2010, p. 58.

⁽²⁾ OJ L 87, 7.4.2010, p. 19.

(*) Constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 124/2010

of 10 November 2010

amending Annex XX (Environment) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex XX to the Agreement was amended by Decision of the EEA Joint Committee No 93/2010 of 2 July 2010 ⁽¹⁾.
- (2) Commission Regulation (EC) No 1205/2008 of 3 December 2008 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards metadata ⁽²⁾, as corrected by OJ L 328, 15.12.2009, p. 83, is to be incorporated into the Agreement.
- (3) Commission Decision 2009/442/EC of 5 June 2009 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards monitoring and reporting ⁽³⁾, as corrected by OJ L 322, 9.12.2009, p. 40, is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The following points shall be inserted after point 1j (Directive 2007/2/EC of the European Parliament and of the Council) of Annex XX to the Agreement:

- '1ja. **32008 R 1205**: Commission Regulation (EC) No 1205/2008 of 3 December 2008 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards metadata (OJ L 326, 4.12.2008, p. 12), as corrected by OJ L 328, 15.12.2009, p. 83.

- 1jb. **32009 D 0442**: Commission Decision 2009/442/EC of 5 June 2009 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards monitoring and reporting (OJ L 148, 11.6.2009, p. 18), as corrected by OJ L 322, 9.12.2009, p. 40.'

Article 2

The texts of Regulation (EC) No 1205/2008, as corrected by OJ L 328, 15.12.2009, p. 83, and Decision 2009/442/EC, as corrected by OJ L 322, 9.12.2009, p. 40, in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 11 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*), or on the day of the entry into force of Decision of the EEA Joint Committee No 55/2010 of 30 April 2010 ⁽⁴⁾, whichever is the later.

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 10 November 2010.

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 277, 21.10.2010, p. 47.

⁽²⁾ OJ L 326, 4.12.2008, p. 12.

⁽³⁾ OJ L 148, 11.6.2009, p. 18.

(*) Constitutional requirements indicated.

⁽⁴⁾ OJ L 181, 15.7.2010, p. 23.

DECISION OF THE EEA JOINT COMMITTEE

No 125/2010

of 10 November 2010

amending Annex XX (Environment) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex XX to the Agreement was amended by Decision of the EEA Joint Committee No 93/2010 of 2 July 2010 ⁽¹⁾.
- (2) Commission Decision 2009/967/EC of 30 November 2009 on establishing the ecological criteria for the award of the Community Ecolabel for textile floor coverings ⁽²⁾ is to be incorporated into the Agreement.
- (3) Commission Decision 2010/18/EC of 26 November 2009 on establishing the ecological criteria for the award of the Community Ecolabel for wooden floor coverings ⁽³⁾ is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The following points shall be inserted after point 2z (Commission Decision 2009/543/EC) of Annex XX to the Agreement:

- '2za. **32009 D 0967**: Commission Decision 2009/967/EC of 30 November 2009 on establishing the ecological criteria for the award of the Community Ecolabel for textile floor coverings (OJ L 332, 17.12.2009, p. 1).

- 2zb. **32010 D 0018**: Commission Decision 2010/18/EC of 26 November 2009 on establishing the ecological criteria for the award of the Community Ecolabel for wooden floor coverings (OJ L 8, 13.1.2010, p. 32).'

Article 2

The texts of Decisions 2009/967/EC and 2010/18/EC in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 11 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 10 November 2010.

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 277, 21.10.2010, p. 47.

⁽²⁾ OJ L 332, 17.12.2009, p. 1.

⁽³⁾ OJ L 8, 13.1.2010, p. 32.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 126/2010

of 10 November 2010

amending Annex XX (Environment) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex XX to the Agreement was amended by Decision of the EEA Joint Committee No 93/2010 of 2 July 2010 ⁽¹⁾.
- (2) Commission Decision 2008/915/EC of 30 October 2008 establishing, pursuant to Directive 2000/60/EC of the European Parliament and of the Council, the values of the Member State monitoring system classifications as a result of the intercalibration exercise ⁽²⁾ is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The following point shall be inserted after point 13caa (Directive 2006/118/EC of the European Parliament and of the Council) of Annex XX to the Agreement:

'13cab. **32008 D 0915**: Commission Decision 2008/915/EC of 30 October 2008 establishing, pursuant to Directive 2000/60/EC of the European Parliament

and of the Council, the values of the Member State monitoring system classifications as a result of the intercalibration exercise (OJ L 332, 10.12.2008, p. 20).'

Article 2

The text of Decision 2008/915/EC in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 11 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 10 November 2010.

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

⁽¹⁾ OJ L 277, 21.10.2010, p. 47.

⁽²⁾ OJ L 332, 10.12.2008, p. 20.

(*) Constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 127/2010

of 10 November 2010

amending Annex XXII (Company law) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex XXII to the Agreement was amended by Decision of the EEA Joint Committee No 113/2010 of 1 October 2010 ⁽¹⁾.
- (2) Commission Decision 2010/64/EU of 5 February 2010 on the adequacy of the competent authorities of certain third countries pursuant to Directive 2006/43/EC of the European Parliament and of the Council ⁽²⁾ is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The following point shall be inserted after point 10fa (Commission Decision 2008/627/EC) of Annex XXII to the Agreement:

'10fb. **32010 D 0064**: Commission Decision 2010/64/EU of 5 February 2010 on the adequacy of the competent

authorities of certain third countries pursuant to Directive 2006/43/EC of the European Parliament and of the Council (OJ L 35, 6.2.2010, p. 15).'

Article 2

The text of Decision 2010/64/EU in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 11 November 2010, provided that all the notifications pursuant to Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 10 November 2010.

For the EEA Joint Committee

The President

Stefán Haukur JÓHANNESSON

Joint Declaration by the Contracting Parties to Decision No 127/2010 incorporating Commission Decision 2010/64/EU into the Agreement

'Commission Decision 2010/64/EU of 5 February 2010 on the adequacy of the competent authorities of certain third countries pursuant to Directive 2006/43/EC of the European Parliament and of the Council deals with the acknowledgement of adequacy of third country authorities. The incorporation of this Decision is without prejudice to the scope of the EEA Agreement.'

⁽¹⁾ OJ L 332, 16.12.2010, p. 63.

⁽²⁾ OJ L 35, 6.2.2010, p. 15.

(*) No constitutional requirements indicated.

IV

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

EFTA SURVEILLANCE AUTHORITY DECISION

No 167/09/COL

of 27 March 2009

on the lease and sale of Lista air base (Norway)

THE EFTA SURVEILLANCE AUTHORITY ⁽¹⁾,

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

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,

HAVING REGARD to Article 1(3) of Part I and Article 4(2) of Part II of Protocol 3 to the Surveillance and Court Agreement ⁽⁴⁾,

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 V thereof on State aid elements in sales of land and buildings by public authorities,

HAVING CALLED on interested parties to submit their comments pursuant to Article 6(1) of Part II of Protocol 3 ⁽⁶⁾,

HAVING REGARD to their comments,

Whereas:

I. FACTS

1. PROCEDURE

Decision No 183/07/COL to initiate the formal investigation procedure was published in the *Official Journal of the European Union* and in the EEA Supplement thereto. The Authority called

on interested parties to submit their comments. The Authority received comments from Lista Lufthavn AS. By letter dated 4 December 2007 (Event No 455712), the Authority forwarded these to the Norwegian authorities who were given the opportunity to respond. By letter dated 12 December 2007 (Event No 457245), the Norwegian authorities submitted their comments.

The Authority appointed an expert, Mr Geir Saastad, to carry out an independent expert evaluation of Lista air base. The appointment of the expert took effect on 14 April 2008. The scope of the expert's mission was to determine (i) the market value of the air base and (ii) the value that should be attached to the obligations relating to the land and buildings.

The final report of the independent expert was communicated to the Authority in May 2008.

By letter dated 18 July 2008 (Event No 486089), the Authority requested that additional information be provided by the Norwegian authorities.

The Norwegian authorities provided the information required by letter dated 28 August 2008 (Event No 489312).

2. DESCRIPTION OF THE MEASURES INVESTIGATED

Two distinct measures were investigated by the Authority: the lease and the sale of Lista air base.

2.1. DESCRIPTION OF LISTA AIR BASE

In Proposition No 50 (1994-1995) to the Parliament ⁽⁷⁾, the Ministry of Defence presented its proposal on the closing of the air base. The Ministry of Defence put forward a so-called 'development alternative'. Under that plan, the Norwegian Armed Forces would evaluate the conglomeration of buildings to decide on the buildings which could not or should not be used for industrial or commercial purposes. The buildings which

⁽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* (hereinafter referred to as 'OJ') L 231, 3.9.1994 p. 1 and the EEA Supplement No 32, 3.9.1994 p. 1. The Guidelines were last amended on 16 December 2008. 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/fieldsOfWork/fieldStateAid/state_aid_guidelines/

⁽⁶⁾ Published in OJ C 250, 25.10.2007, p. 28 and in the EEA Supplement No 50, 25.10.2007 p. 13.

⁽⁷⁾ St.prp. nr 50 (1994-1995) of 12 June 1995 was a follow up to a resolution in which the Parliament decided on the reorganisation of the Norwegian Armed Forces. As part of the reorganisation, Lista air base was to be closed down from 1 January 1996.

could be used for commercial/industrial purposes should be maintained for a period of maximum 10 years in order to review the possibilities of commercial development and arrange for the best possible commercial use of the air base.

To follow up on the resolution from the Parliament, several reports were drawn up to get an overview of the general condition of Lista air base (the Norwegian authorities have only submitted a fire safety report dated 24 January 2002 in which TekØk reported on standards at the time, recommended upgrades and calculated the costs of the recommended works).

Lista air base covers 5 000 000 m² of land. The conglomeration of buildings consists of storage buildings, barracks, mess halls and hangars representing in total approximately 28 000 m². The estate also includes an airstrip and a wetland area.

According to the municipal sector plan of Lista air base approved by the Municipal Council of Farsund, the property could be used for commercial activities including aviation services, public development, crafts and industry. The area around Slevdalsvannet, which encompasses the wetland area and an ammunition depot for the Norwegian Armed Forces, was reserved for the use of the Norwegian Armed Forces, airport services and nature conservation. Around 1 900 000 m² could be used for industrial purposes. Parts of the land and some buildings are protected in accordance with the national Protection Plan from the Norwegian Armed Forces, including:

- three hangars and the air defence simulator,
- a mess hall, and
- parts of the land, including runways, taxiways and some of the road network.

2.2. THE LEASE OF LISTA AIR BASE

In the context of the reorganisation of the estates owned by the Norwegian Armed Forces, it had been decided in 1994-1995 that the military air base activities at Lista air base should cease as from 1 July 1996.

On 27 June 1996, the Norwegian Defence Estates Agency (hereinafter 'the NDEA') entered into a 10 year lease agreement with Lista Airport Development AS (LAD) to enter into effect on 1 July 1996 until 30 June 2006 with the possibility for LAD to rent the air base for another 10 year period. The company was owned by the Municipality of Farsund (20 %) and by local investors (80 %). The agreement covered nine buildings, corresponding to approximately 12 500 m², and the runway, which accounts for 421 610 m².

The main objective of the agreement was to develop, as part of the implementation of the 'development alternative' and within a period of maximum 10 years, commercial air services on the air base.

On 1 July 1996, the lease agreement was transferred to Lista Lufthavn AS (LILAS) which, as such, was established on 3 May 1996.

The lease agreement provided that LILAS would rent a specified part of the buildings and the airstrip at an annual price of NOK 10 000 to be adjusted every fifth year. The NDEA would also be entitled to 15 % of LILAS' income from the sub-lease of the buildings. During the period from 1 July 1996 until September 2002, LILAS entered into several sub-lease contracts. The income from sub-leasing paid to the NDEA was NOK 245 405.

The lease agreement provided that the owner of the air base was responsible for external maintenance of buildings and maintenance of the airstrip. The liability was limited to NOK 1 500 000 annually. As consideration for this obligation, the owner was entitled to a split of the profits. Article 3 of the lease agreement provided that in case the profit generated as a result of the commercial use of the air base exceeded NOK 4 500 000, the owner of the air base would be entitled to 20 % of the profits in excess of that figure.

Commercial services were operated for some time. Braathen Safe and Air Stord ran commercial services until 1 November 1999. During 2000, LILAS continued to investigate the possibility of re-establishing scheduled flights and to develop the airport as a freight terminal with international air freight distributed to Europe. LILAS managed to re-establish a scheduled flight between Oslo and Lista run by Cost Air throughout 2001. There were no scheduled flights operating at Lista airport in 2002. As LILAS did not achieve its initial goal of creating commercial air services at the air base, the income during the years 1996-2002 never exceeded NOK 4 500 000 annually.

At the end of the initial 10 year period, LILAS had the possibility to prolong the lease for another 10 years. If that right was not exercised, LILAS could buy a specified area of the air base at a price of NOK 10 000 000. Moreover, the contract provided that LILAS had the possibility, should NDEA decide to sell LISTA air base en bloc during the lease period, to buy the entire air base at a price of NOK 25 000 000. By letter dated 13 December 2002, LILAS waived its pre-emptive right to buy Lista air base en bloc and the air base was sold to Lista Flypark AS.

In June 2006, in conformity with the terms of the lease agreement, LILAS exercised its pre-emptive right to purchase parts of the Lista air base for an amount of NOK 10 000 000 from Lista Flypark AS.

2.3. THE SALE OF LISTA AIR BASE

On 12 September 2002, the NDEA sold Lista air base to Lista Flypark AS. The sale resulted in a net disbursement from the Norwegian State to Lista Flypark AS of NOK 10 875 000. In order to analyse the terms and conditions of the sale, two successive steps must be distinguished: the assessment of the market value of the estate on the one hand, and of the obligations attached to the land and buildings on the other.

2.3.1. *Steps taken in order to find a purchaser for the air base*

In 1997, LILAS contacted the NDEA in order to negotiate the purchase of the air base. On 21 October 1998, the Municipality of Farsund and LILAS agreed on a strategy for buying the property. The negotiations between the NDEA, the Municipality of Farsund and LILAS were however interrupted on 22 February 1999 as the parties could not agree on a price.

During the course of 2000, the NDEA had put several advertisements in local (Farsund Avis) and regional newspapers (Fedrelandsvennen and Stavanger Aftenblad) for the sale of the property. The sale as it was envisaged at that time was of **parts** of the estate. The advertisements did not lead to any sale.

On 16 and 17 August 2001, the NDEA organised the Lista Conference to which 7 000- 8 000 potential investors were invited. The purpose of the conference was to present Lista air base, and the possible transformation of the air base from military to civilian commercial use, to interested parties. After the conference, a consultant, Mr Hjort, was appointed to assist with the sales process. He concluded that 'the air base was difficult to sell to real estate developers as there were no viable buyers, and the fact that the property's potential for utilisation was very limited due to the LILAS' agreement'.

In August 2001, the NDEA decided that the property should be sold en bloc in order to prevent that certain areas of the air base would become totally unattractive to potential purchasers.

In the context of negotiations in early 2002 with real estate developers Intervest Eiendom AS and Interconsult Prosjektutvikling AS, the NDEA ordered two value assessments by the real estate value assessors Verditakst and OPAK. Those negotiations failed, but on 12 September 2002, a sales agreement was reached between the NDEA and Lista Flypark AS.

2.3.2. *The purchase price*

The purchase price was based on three elements: (i) the actual price to be paid for the property, (ii) an additional payment corresponding to 50 % of the net resale and (iii) an amount corresponding to 30 % of the net income from the lease agreement.

(i) **Price of the property**

The OPAK report, dated 29 May 2002, distinguished between the three following scenarios: sale of the property to a new purchaser (NOK 32 000 000), sale of the property to the

lessee on the basis of its pre-emptive right to buy part of the leased building and land at the end of the 10 year lease (NOK 34 000 000) and sale of the property to the lessee on the basis of its pre-emptive right to buy the property en bloc during the lease period (NOK 25 000 000).

The Verditakst report, dated 7 June 2002, concluded that the market value of the property was NOK 11 000 000.

The sales price was actually agreed on the basis of the valuation carried out by Verditakst, i.e. NOK 11 000 000.

Based on the fire safety report referred to above, an amount of NOK 7 500 000 was deducted from the value of the property to take into account the works that needed to be carried out in order to comply with applicable fire safety standards. The sales price of the property was therefore reduced to NOK 3 500 000.

(ii) **50 % split of the net resale**

According to Article 3 of the sales agreement, the NDEA was entitled to 50 % of any income generated from sale of plots on the property. The sales of two plots has resulted in a transfer of NOK 795 263 to the NDEA. In addition, NOK 5 000 000 is outstanding pending disagreement as to the interpretation of that provision in relation to the purchase by LILAS of the area on which it had an option under the lease agreement.

(iii) **30 % of the net income from the lease agreement**

The NDEA was also entitled to 30 % of any profit after tax generated under the lease agreement. However, no income was generated from Lista Flypark AS in the period from 2003 until 2006.

2.3.3. *The value attached to the obligations relating to the land and buildings*

It was agreed that the purchaser would be compensated for obligations attached to the property which had not been taken into account in the valuation. Compensation covered the following:

- (i) compensation related to technical installations (such as electrical transmission lines): NOK 3 500 000

The NDEA took on the responsibility of contributing to the transformation of the air base from a military air base to a commercial business in compliance with the Parliament's decision: 'in accordance with the parliamentary resolution, the Armed Forces are obliged to prepare the area for civilian use. This obligation especially involves any commitment towards adjacent land owners when it comes to drainage, as well as facilitating new infrastructure in conjunction with the development of the area.';

- (ii) compensation related to the development of new infrastructure: NOK 5 500 000

The NDEA was again obliged to bear the costs of transforming the air base from military to civilian use.;

- (iii) compensation related to LILAS' lease agreement: NOK 5 375 000

The lease agreement provides that the owner of the air base is responsible for running expenses and external maintenance of the buildings and maintenance of the runway. These liabilities were however limited to NOK 1 500 000 per annum. As the NDEA was, at the time of the sale in 2002, obliged to pay LILAS a yearly amount of NOK 1 500 000 for approximately another 4 years, the amount of NOK 5 375 000 was credited to Lista Flypark AS in order to fulfil these obligations towards LILAS.

The total compensation, amounting to NOK 14 375 000, was set off against the purchase price of NOK 3 500 000. The Norwegian authorities thus paid the purchaser NOK 10 875 000.

3. COMMENTS BY THE NORWEGIAN AUTHORITIES

3.1. COMMENTS REGARDING LILAS' LEASE AGREEMENT

3.1.1. *No aid or advantage was granted to LILAS under the lease agreement*

The Norwegian authorities indicated that even though the rent as specified in the lease agreement was indeed NOK 10 000 per year, this value did not accurately reflect the actual amounts paid to NDEA. Indeed, NDEA was also entitled to 15 % of LILAS income from the sublease of the buildings. Furthermore, in case the gross income related to commercial aviation exceeded NOK 4 500 000 annually, the NDEA was also entitled to 20 % of the income in excess of that figure.

The income from subleasing paid to the NDEA was NOK 245 405. According to the Norwegian authorities, the income from subleasing of NOK 245 405 must be added to the yearly rent of NOK 10 000. The total rent during the lease until the sale in 2002 amounted to NOK 310 405.

The Norwegian authorities argue furthermore that LILAS was to develop, operate and maintain the property for commercial air

services on the air base, which amounted to a public service obligation. In this context, the amount of rent paid should be considered as somewhat immaterial for the assessment of the lease agreement. In case the project had been successful, LILAS' profits under the lease agreement could have been significant. On the other hand, if the more moderate forecasts were to be fulfilled, then the lease of the air base, due to the financial risk of the lease agreement based on substantial unavoidable costs, would not be profitable for LILAS.

3.1.2. *No effect on trade between EEA States*

The Norwegian authorities have argued that there was no indication that intra-EEA trade was affected and that competition was distorted by that aid. They referred to the State Aid Guidelines on financing of airports and start up aid to airlines departing from regional airports⁽⁸⁾ according to which Lista would be classified as a category D airport, i.e. a small airport with an annual passenger volume of less than 1 million. The total passenger basis of Lista airport is 32 000 people. The Airport Guidelines provide that 'funding granted to small regional airports (category D) is unlikely to distort competition or affect trade to an extent contrary to the common interest'⁽⁹⁾.

3.1.3. *No unlawful aid was granted*

The Norwegian authorities argue that the new Airport Guidelines⁽¹⁰⁾ should be referred to when reviewing the terms of the lease agreement. Indeed, even though they had not been adopted at the time the lease agreement was entered into, the Norwegian authorities argue that the new Airport Guidelines 'add to rather than replace' the prior guidelines and should therefore be referred to.

The Norwegian authorities argue that LILAS was entrusted with a public service obligation amounting to the 'operation of the infrastructure, comprising the maintenance and management of airport infrastructure'. They then refer to the new Airport Guidelines which provide: 'such funding does not constitute state aid if it is compensation for public services allocated for management of the airport in accordance with the conditions established in the Altmark judgment. (...) such aid may be declared compatible with the functioning of the EEA Agreement only on the basis of Articles 61(3) (a) or (c), under certain conditions, in disadvantaged regions, or on the basis of Article 59(2) if it meets certain conditions which ensure that it is necessary for the operation of a service of general economic interest and does not affect trade to an extent contrary to the interests of Contracting Parties'.

The Municipality of Farsund, in which the air base is located, is eligible for regional aid.

⁽⁸⁾ See http://www.eftasurv.int/fieldsOfWork/fieldStateAid/state_aid_guidelines/

⁽⁹⁾ See paragraph 29 of the State Aid Guidelines financing of airports and start up aid to airlines departing from regional airports.

⁽¹⁰⁾ The 'new Airport Guidelines' refer to the Guidelines adopted on 20 December 2005, i.e. after the LILAS lease agreement had been entered into.

The Norwegian authorities therefore conclude that any aid granted to LILAS corresponded to a compensation which did not exceed what was necessary to cover the costs incurred in discharging the public service obligations entrusted to it.

3.2. COMMENTS REGARDING THE SALES AGREEMENT

3.2.1. *No aid or advantage was granted to Lista Flypark AS in conjunction with the sale*

The Norwegian authorities argue that even though the conditions set out in Section 2.2 of the State Aid Guidelines on State aid elements in sales of land and buildings by public authorities were not strictly complied with, 'most potential purchasers were adequately informed of the NDEA's efforts to sell the air base'. Indeed, as indicated above in Section 2.3.1, many steps were taken in order to find a purchaser.

The Norwegian authorities furthermore stressed that the sales price accurately reflected the value of the property and the legal obligations related to it. They refer to the fact that the actual purchase price did not only correspond to the price of the estate but also to other components such as the 50 % profit sharing from resale and the 30 % split of possible net income at Lista Flypark AS (see above Section 2.3.2).

3.2.2. *No effect on trade between EEA States*

The Norwegian authorities reiterated the points referred to above under Section 3.1.2.

3.2.3. *No unlawful aid was granted*

The Norwegian authorities referred to their explanations concerning the lease agreement entered into with LILAS.

4. COMMENTS BY THIRD PARTIES

By letter dated 15 November 2007 (Event No 452517), the law firm representing Lista Lufthavn AS submitted comments to the Authority's decision to open a formal investigation ⁽¹¹⁾.

The comments were limited to the lease agreement and did not address the issue of the sale of the land.

⁽¹¹⁾ Decision No 183/07/COL, referred to at footnote 6.

4.1. NO AID OR ADVANTAGE WAS GRANTED TO LILAS UNDER THE LEASE AGREEMENT

The *de facto* annual rent was not of NOK 10 000 as NDEA received NOK 245 405 from subleasing. Furthermore, LILAS — through the lease agreement — was entrusted with the public service obligation to operate and manage Lista air base. This general service obligation entailed significant limitations on LILAS' possibility of exploiting the air base for other purposes. In 2001, the total cost of such operations was of approximately NOK 5 500 000 per year. In light of the significant costs, an annual cap of NOK 1 500 000 was included in the lease agreement on 9 May 2006. LILAS and their shareholders incurred substantial losses as a consequence of the lease agreement ⁽¹²⁾.

4.2. NO EFFECT ON TRADE BETWEEN EEA STATES

The LILAS agreement is strictly related to the lease of Lista air base for public service obligations of management and operation of the air base itself and not the operation of domestic scheduled flights and international air freight. In this respect any aid granted under the lease agreement would not affect trade within the meaning of Article 61(1) EEA.

4.3. ANY AID GRANTED TO LILAS WOULD BE LAWFUL AID

Should the Authority conclude that aid had been granted to LILAS, it would in any event be compatible with the EEA Agreement on the basis of the Guidelines on financing of airports and start up aid to airlines departing from regional airports.

4.4. NO BASIS FOR A RECOVERY DECISION

Finally, the lease agreement was entered into on 27 June 1996. The only information request sent during the 10 year period following that date addressed the potential grant of aid through the sale but not the lease agreement. The 10 year period was therefore not interrupted by an action of the Authority. Article 15 of Protocol 3 provides: 'the powers of the EFTA Surveillance Authority to recover aid shall be subject to a limitation period of ten years'.

II. ASSESSMENT

1. THE LEASING OUT OF PART OF LISTA AIR BASE

The lease agreement with LAD was signed on 27 June 1996 and entered into effect on 1 July 1996.

Article 15 of Protocol 3 provides:

'1. The powers of the EFTA Surveillance Authority to recover aid shall be subject to a limitation period of 10 years.

⁽¹²⁾ LILAS' accounts for the period 1997-2006 show an accumulated loss of approximately NOK 10 500 000.

2. The limitation period shall begin on the day on which the unlawful aid is awarded to the beneficiary either as individual aid or as aid under an aid scheme. Any action taken by the EFTA Surveillance Authority or by the EFTA State, acting at the request of the EFTA Surveillance Authority, with regard to the unlawful aid shall interrupt the limitation period. Each interruption shall start time running afresh. The limitation period shall be suspended for as long as the decision of the EFTA Surveillance Authority is the subject of proceedings pending before the EFTA Court.

3. Any aid with regard to which the limitation period has expired, shall be deemed to be existing aid.'

The first request for information that addressed the issue of the potential aid measure in the form of the lease agreement was sent on 28 March 2007. The Authority considers that, on that date, the 10 year limitation period had expired as the contract binding the parties had been entered into on 27 June 1996. No recovery would therefore be possible. Moreover, the lease agreement itself had also already expired on that date, since LILAS did not use the option to re-new the agreement for a further 10 years. The lease agreement therefore ceased to exist on 30 June 2006 and no further effects are created as a result of that agreement.

Under these circumstances, a decision by the Authority on the classification as aid of the measure in question and on its compatibility with the EEA Agreement would have no practical effect ⁽¹³⁾.

2. THE SALE OF LISTA AIR BASE

2.1. THE PRESENCE OF STATE AID

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

'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.'

The State Aid Guidelines on State aid elements in sales of land and buildings by public authorities give further information on how the Authority interprets and applies the provisions of the EEA Agreement governing State aid when it comes to assessing sales of public land and buildings. Section 2.1 describes a sale

through an unconditional bidding procedure, while Section 2.2 describes a sale without an unconditional procedure (by way of an independent expert valuation). These two procedures allow EFTA States to handle sales of land and buildings in a way that precludes the existence of State aid.

2.2. PRESENCE OF STATE RESOURCES

The measure must be granted by the State or through state resources. The NDEA being a State body, its resources are state resources.

Sale of publicly owned land and buildings below market value implies that state resources are involved. However, the State Aid Guidelines on State aid elements in sales of land and buildings provides for two cases where, if the applicable conditions are met, the price paid for the property will be held to correspond to fair market value thereby excluding the presence of state resources.

As noted above, two situations should be distinguished: cases where the sale has taken place through an unconditional bidding procedure (see (i) below) and those where the sale has taken place with reference to value assessments carried out by independent experts (see (ii) below).

(i) sale through an unconditional bidding procedure

The Norwegian authorities recognise that 'the process started out as an unconditional bidding procedure regarding the sale of parts of the air base. Advertisements listing possible uses of the air base were published in different newspapers such as Farsund avis, Fedrelandsvennen and Stavanger Aftenblad in 2000.'

Neither the advertisements nor the so-called 'Lista Conference' led to any sale. The process did not cover the case of a sale of the air base en bloc. This is confirmed by the Report from the Auditor General which concluded that neither a valuation of the entire property nor a public announcement of the intended sale had been made prior to the start of negotiations with Lista Flypark AS in March 2002. The Authority therefore considers that there was no unconditional bidding procedure in connection with the sale of the air base en bloc and that the possibility to preclude the existence of State aid on that basis, pursuant to Section 2.1 of the State Aid Guidelines on State aid elements in sales of land and buildings, is therefore excluded.

(ii) sale without an unconditional bidding procedure (expert valuation)

Section 2.2 of the State Aid Guidelines on State aid elements in sales of land and buildings by public authorities, regarding sale without an unconditional bidding procedure, provides that 'if public authorities intend not to use the procedure described under Section 2.1, an independent evaluation should be carried out by one or more independent asset valuers **prior to the sale negotiations** in order to establish the market

⁽¹³⁾ See, by analogy, Commission Decision of 25 September 2007 on the aid measures implemented by Spain for IZAR, Case C-47/2003, not yet published, and Commission Decision 2006/238/EC of 9 November 2005 on the measure implemented by France for *Mines de potasse d'Alsace* (OJ L 86, 24.3.2006, p. 20).

value on the basis of generally accepted market indicators and valuation standards. The market price thus established is **the minimum purchase price that can be agreed without granting state aid.**' (Emphasis added)

The Norwegian authorities have indicated that NDEA ordered two value assessments, by the real estate value assessor firms OPAK and Verditakst AS. These were carried out in May and June 2002, respectively. While it would appear that negotiations began already in March 2002, there is no indication that an agreement as to price was made before the conclusions of both reports were known. Both reports estimated a market value for the property, excluding obligations relating to fire safety standards, technical or infrastructure improvements or the lease agreement.

The price paid by the purchaser was determined by reference to the valuation report which was carried out by Verditakst, i.e. NOK 11 000 000.

However, OPAK had concluded that the value of the property on the date of the sale was NOK 32 000 000 and the sales price stated in the lease agreement was NOK 25 000 000 for the whole airport.

Faced with such a range of valuations, the Authority opened a formal investigation and appointed an independent expert, Mr Geir Saastad, whose assignment was to:

- compare all value assessments provided to the Authority,
- determine (i) the market value of the air base and (ii) the value of the obligations relating to the land and buildings.

The expert also appraised whether the behaviour of the State while selling this property corresponded to that of a private market investor or whether, on the contrary, a private market investor would have acted differently. In so doing, the expert took into account the particular nature of the property and the difficulty the Norwegian authorities argue they have been faced with due to the existing lease agreement entered into with LILAS and the possibility for the latter to purchase the property at the end of a 10 year period.

The expert assessed the methods used in the two existing valuations and concluded that the OPAK report, while it applies low rental prices probably reflecting the rates actually in force, does not take account of the fact that a part of the property is rented to LILAS for a fixed price (NOK 10 000 per year) which is considerably less than what was assumed to be a market rent. The allowance for vacancies and maintenance would also appear to be 'far too low'. In this regard the expert indicated that costs related to annual vacancy of 20 % would not be excessive given the nature of the property. In

addition, the expert indicated that significant operating and maintenance costs should be added. Together these expenses would reduce the value of the cash flow from NOK 26 million (as estimated by OPAK) to NOK 10 million. Finally, the value of the land itself should have been discounted to take account of the difficulty in selling plots on the site. The expert also noted, in the context of his comments on the OPAK report, that the sales price stated in the lease agreement of NOK 25 000 000 was entirely hypothetical.

The Verditakst report also failed to take into account the fact that part of the property is rented to LILAS at a rate which represents a considerable reduction in income relative to the assumption that the property should be let out at market rate. However, the market rates used correspond to what the expert himself had assumed (see Section 4 of the report). In addition, the expert notes that Verditakst had applied figures for operating and maintenance costs that correspond to the standard values applied by the industry. Finally, he notes that the estimation for the value of the land itself is more conservative than that of OPAK and expresses the opinion that this seems more appropriate than a higher valuation.

When comparing the two reports the expert found that: 'The chief difference between the valuations lies in their calculations of operating and maintenance costs. Verditakst's valuation reflects the standard figures applied by the property industry, whereas OPAK's valuation does not.'

The expert concluded that: 'the sales price applied in the transaction in 2002 would appear to be on a par with the estimated market value. Lista air base was sold at a time when there was **limited interest in this type of property**. The **property market and the financial markets had taken a downturn**, at the same time as which **the property can only be characterised as complicated and remote**. The criteria applied by Verditakst in their valuation were more correct than those applied in OPAK's valuation. The main objection to OPAK's valuation is that it failed to apply normal operating expenses when calculating the value of the property. **The compensation for the obligations transferred from NDEA to Lista Flypark AS in connection with the sale does not seem unreasonably high given the number of buildings on the site and the size of the land area involved.**' (Emphasis added)

The expert insisted on the fact that considerable uncertainty will attach to any valuation of an area such as Lista air base. This can be explained by the following factors:

- the site is remote when compared with built-up areas with a measurable property market. This affects not only land prices but also rental prices,

- the area comprises an air base on which military activities were conducted in the past. Few or no comparable reference properties exist, and
- the land and the buildings are in considerable need of repair and maintenance.

In light of the report of the independent expert, the Authority considers that the air base was sold at market value.

In the first place, the actual sale price matched the assessment of the market value given in the Verditakst report. The fact that OPAK's assessment of the market value was considerably higher does not as such provide grounds for concluding that there had been State aid ⁽¹⁴⁾.

Indeed, the expert appointed by the Authority points, as mentioned above, to several factors that indicate that OPAK's market value assessment was too high and that the criteria applied by Verditakst were more correct than those applied by OPAK. The Authority concurs with the view that the property market at Lista is atypical and difficult to assess and, as noted by Mr Saastad, that considerable uncertainty will attach to any valuation of an area such as the Lista air base. Indeed the variance in the two valuations made in 2002 would appear to support the uncertainty relating to the market there. It is also true that not only was the NDEA unable to sell plots of the land, also Lista Flypark AS has, since it bought the property in 2002, had limited success in selling plots of land to business start-ups. The low market value of the air base is further confirmed by the length and the difficulty of the sales process itself, which lasted from 1997 until 2002.

The final element in the price paid is the value attributed to certain costs, which was deducted from the value of the property to obtain the final price. Section 2.2 of the State Aid Guidelines on State aid elements in sales of land and buildings by public authorities specifically foresees that 'special obligations that relate to the land and buildings and not to the purchaser or his economic activities may be attached to the sale'. The economic disadvantage of such obligations may be set off against the purchase price.

In relation to these obligations, the expert notes that the amounts are not unreasonably high, given the area to which they relate, and that it is not unusual for the value of these obligations to exceed the value of the property itself. While the procedure for transfer of funds is characterised as 'highly

unusual', the Authority considers that this does not affect the assessment of the value of the obligations themselves.

In light of the foregoing considerations, and coupled with the fact that a property burdened with pre-emption rights or options to buy will be difficult to sell, the Authority takes the view that, as regards the sale of the air base, it is not established that state resources were involved and that State aid was present.

3. CONCLUSION

On the basis of the foregoing assessment, the Authority considers that the sale of the Lista air base does not constitute State aid within the meaning of Article 61(1) EEA,

HAS ADOPTED THIS DECISION:

Article 1

The procedure initiated pursuant to Article 4(4), read in conjunction with Article 13, of Part II of Protocol 3 concerning the lease of Lista air base is hereby closed.

Article 2

The EFTA Surveillance Authority considers that the sale of the Lista air base did not constitute State aid within the meaning of Article 61 EEA.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English version is authentic.

Done at Brussels, 27 March 2009.

For the EFTA Surveillance Authority

Per SANDERUD
President

Kurt JÄGER
College Member

⁽¹⁴⁾ See, by analogy, Joined Cases T-127/99, T-129/99 and T-148/99 *Diputación Foral de Álava* [2002] ECR II-1275, paragraph 85.

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