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II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 287/2011

of 21 March 2011

imposing a definitive anti-dumping duty on imports of tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

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 Regulation'), and in particular Articles 9(4) and 11(2), 5 and 6 thereof,

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

Whereas:

(3) By Regulation (EC) No 610/95⁽⁵⁾, the Council amended Regulation (EEC) No 2737/90 and imposed a definitive duty of 33 % on imports of tungsten carbide and fused tungsten carbide. Following a review which had been initiated pursuant to Article 11(2) of the basic Regulation ('the previous review investigation'), these measures were extended for another five-year period by Council Regulation (EC) No 771/98⁽⁶⁾.

(4) By Regulation (EC) No 2268/2004⁽⁷⁾, following an expiry review, the Council imposed an anti-dumping duty of 33 % on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China ('PRC').

(5) By Regulation (EC) No 1275/2005⁽⁸⁾, the Council amended the definition of the product scope to also cover tungsten carbide simply mixed with metallic powder.

A. PROCEDURE

1. Measures in force

- (1) By Regulation (EEC) No 2737/90⁽²⁾, the Council imposed a definitive anti-dumping duty of 33 % on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China ('PRC'). By Decision 90/480/EEC⁽³⁾ the Commission accepted undertakings given by two major exporters concerning the product subject to measures.
- (2) Following the withdrawal of the undertakings by the two Chinese exporters concerned, the Commission imposed by Regulation (EC) No 2286/94⁽⁴⁾ a provisional anti-dumping duty on imports of the product concerned.

2. Request for a review

- (6) Following the publication of a notice of impending expiry⁽⁹⁾ of the definitive anti-dumping measures in force, the Commission received on 30 September 2009 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by the European Association of Metals (Eurometaux) ('the applicants') on behalf of Union producers representing a major proportion, in this case more than 85 %, of the total Union production of tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 264, 27.9.1990, p. 7.

⁽³⁾ OJ L 264, 27.9.1990, p. 59.

⁽⁴⁾ OJ L 248, 23.9.1994, p. 8.

⁽⁵⁾ OJ L 64, 22.3.1995, p. 1.

⁽⁶⁾ OJ L 111, 9.4.1998, p. 1.

⁽⁷⁾ OJ L 395, 31.12.2004, p. 56.

⁽⁸⁾ OJ L 202, 3.8.2005, p. 1.

⁽⁹⁾ OJ C 115, 20.5.2009, p. 18.

- (7) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and recurrence of injury to the Union industry.

3. Initiation

- (8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 30 December 2009, by a notice published in the *Official Journal of the European Union* ⁽¹⁾ ('the notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

4. Investigation

4.1. Investigation period

- (9) The investigation of continuation or recurrence of dumping covered the period from 1 January 2009 to 31 December 2009 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a recurrence of injury covered the period from 1 January 2006 to the end of the RIP ('the period considered').

4.2. Parties concerned by the investigation

- (10) The Commission officially advised the applicant, other known Union producers, exporting producers, importers and users known to be concerned, producers in the analogue country and the representatives of the PRC of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.
- (11) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (12) The Commission sent questionnaires to all parties known to be concerned and to those who made themselves known within the deadlines set in the Notice of initiation. Replies were received from seven Union producers, one exporting producer in the PRC, one exporting producer in the analogue country and three users.
- (13) None of the importers replied to the sampling exercise nor supplied the Commission with any information or made themselves known in the course of the investigation. As only one exporting producer from the PRC came forward with the requested information, it was not necessary to select a sample.

- (14) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following companies:

(a) Union producers

- Wolfram Bergbau und Hütten-GmbH Nfg.KG., St Peter, Austria
- H. C. Starck GmbH & Co. KG, Goslar, Germany
- Eurotungstène poudres S.A., Grenoble, France
- Global Tungsten & Powders spol. s.r.o, Bruntál, Czech Republic
- Treibacher Industrie AG, Althofen, Austria

(b) Analogue Country

- Global Tungsten & Powders Corp., USA

(c) User

- Sandvik Hard Materials, Epinouze, France

B. PRODUCT CONCERNED AND LIKE PRODUCT

- (15) The product concerned by the present review is tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide originating in the PRC and currently falling within CN codes 2849 90 30 and ex 3824 30 00.
- (16) Tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide are compounds of carbon and tungsten produced by heat treatment (carburisation in the first case, fusion in the third). These products are intermediate products, used as input materials in the manufacture of hard metal components such as cemented carbide cutting tools and high-wear components, in abrasion-resistant coatings, in bits for oil drilling and mining tools as well as in dies and tips for the drawing and forging of metals.
- (17) The present investigation confirmed that the product concerned manufactured and sold by the exporting producer to the Union is identical in terms of physical and chemical characteristics and uses to the product produced by the Union producers and sold on the Union market or to the one produced and sold in the analogue country and are, therefore, considered to be like products within the meaning of Article 1(4) of the basic Regulation.

⁽¹⁾ OJ C 322, 30.12.2009, p. 23.

C. LIKELIHOOD OF A CONTINUATION OR A RECURRENCE OF DUMPING

1. Preliminary remarks

- (18) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and, if so, whether or not the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping. It is recalled that in the context of investigation under this Article, market economy treatment ('MET') is not reconsidered.
- (19) As explained above, it was not necessary to apply sampling in respect of exporting producers in the PRC.
- (20) At the sampling stage, the sole cooperating Chinese exporting producer appeared to represent less than 5 % of total Chinese exports to the Union. The Chinese authorities and the other interested parties were notified of the possibility that Article 18 of the basic Regulation might be applied due to a low level of cooperation by the exporting producers. The Commission did not receive any answer to this communication.
- (21) However, further in the investigation, in the reply to the questionnaire, the cooperating exporting producer corrected the error in reporting its export sales to the Union and revised upwards its export volume to the Union. In parallel, the volumes of the product concerned exported to the Union from the PRC were further analysed based on Eurostat figures. As a result, and after the verification of the questionnaire reply, it was established that the export volume of the cooperating exporting producer was very high⁽¹⁾. On the basis of these findings, it was concluded that cooperation was high.

2. Dumping of imports during the RIP

2.1. Analogue country

- (22) Since no exporting producer from PRC was granted MET in the previous investigations, the normal value for China was established in accordance with the provisions of Article 2(7)(a) of the basic Regulation.
- (23) In the notice of initiation, it was envisaged to use the USA as an appropriate analogue country for the purpose of establishing normal value for the PRC. Interested parties were invited to comment on the appropriateness of this choice. No comments or objections were received from any parties in that respect. The USA was used also as an analogue country in the original investigation and no new or changed circumstances which would justify a change appeared to exist nor were any such circumstances communicated to the Commission. It was

considered that the USA was representative as a reference market, especially in view of the openness and competitiveness of the US domestic market. In addition, one producer from the USA agreed to cooperate within the present review.

- (24) Therefore, the USA has been used as an analogue market economy country for the purpose of this review.

2.2. Normal value

- (25) Pursuant to Article 2(7) of the basic Regulation, normal value was established on the basis of the verified information received from the cooperating US producer in the analogue country, i.e. on the basis of prices paid or payable on the domestic market in the USA, for product types which were found to be sold in the ordinary course of trade.
- (26) As a result, normal value was established as the weighted average domestic sales price to unrelated customers by the cooperating producer in the USA.
- (27) It was first established whether the total domestic sales of the like product to independent customers of the US cooperating producer were representative in accordance with Article 2(2) of the basic Regulation, i.e. whether they accounted for 5 % or more of the total sales volume of the product concerned exported to the Union. The domestic sales of the cooperating US producer were found to be sufficiently representative during the review investigation period.

- (28) It was 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 US market the proportion of profitable domestic sales to independent customers during the RIP.

- (29) Since the volume of profitable sales of the like product represented less than 80 % of the total sales volume of the like product, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales.

2.3. Export price

- (30) As explained above, in view of the fact that the cooperating exporting producer represented more than 90 % of total Chinese imports to the Union, the export price was examined on the basis of data provided by that exporting producer, i.e. the duly adjusted price actually paid or payable for the product concerned when sold for export to the Union.

⁽¹⁾ The exact percentage cannot be disclosed due to confidentiality reasons.

2.4. Comparison

- (31) The weighted average normal value was compared with the weighted average export price for each type of product concerned, on an ex-works basis, at the same level of trade and the same level of taxation. In accordance with Article 2(10) of the basic Regulation, and for the purpose of ensuring a fair comparison, differences in factors which were claimed and demonstrated to affect price and price comparability were taken into account. Adjustments were made for ocean and domestic freight, insurance, bank charges and packaging costs. Further, a 5 % adjustment on the export price for the export tax was made and the adjustment for Value Added Tax (VAT) on the normal value.

2.5. Dumping margin

- (32) In accordance with Article 2(11) of the basic Regulation, the dumping margin was established per product type on the basis of a comparison of the weighted average normal value with the weighted average export price at the same level of trade. This comparison showed the existence of dumping during the RIP amounting to more than 80 %, hence at a significantly higher level than in the last review investigation (31 %). The precise dumping margin cannot be disclosed due to confidentiality reasons. The calculations have been based on data provided by one exporting producer in the PRC and one producer in the analogue country. Disclosure of the dumping margin would allow both the cooperating exporting producer in the PRC and the producer in the analogue country to deduce respectively the other's normal value and export price, which would amount to a clear breach of both parties right to confidentiality.

3. Development of imports should measures be repealed

3.1. Preliminary remark

- (33) The data included in this section were obtained through the analysis of the data provided by the cooperating exporting producer, by Eurostat and by the review request.

3.2. Spare capacity of the Chinese exporting producers

- (34) Data on spare capacity provided by the cooperating Chinese exporting producer were presented with a 20 % increase or decrease to respect confidentiality. The production capacity in the PRC amounted to around 21 000 tonnes in 2006 and 2007 and increased substantially to around 35 000 tonnes in 2008 and the RIP, an increase of more than 80 % over the period considered. These figures can be considered as conservative, as the review request reported a production capacity in the vicinity of 50 000 tonnes.

- (35) In addition the cooperating exporting producer reported a substantial increase in capacity during the period considered.

- (36) On the basis of the information collected during the investigation, the total Chinese production capacity exceeded considerably the actual Chinese production (by at least more than 20 000 tonnes in 2008 and in the RIP).

- (37) In the RIP the PRC had a spare capacity amounting to a six fold of the Union consumption (25 000 tonnes as related to 3 800 tonnes of Union consumption).

- (38) In view of the above, it is clear that a large part of the spare capacity available in the PRC could be used to increase exports to the Union in the absence of anti-dumping measures.

- (39) Moreover, information submitted during the investigation indicated important distortions in the raw materials market used to manufacture the product concerned. Firstly, raw materials are subject to quotas granted by the Chinese authorities. Secondly, the Chinese authorities limit the access to raw materials through the imposition of export taxes and VAT rebate policies, which as indicated in recital 31 also applied to the product concerned. These factors constitute additional elements pointing to the likelihood of continuation of dumping in the present case.

3.3. Attractiveness of the Union market and export prices to third countries

- (40) Price information provided by the cooperating exporter, which cannot be disclosed due to confidentiality reasons, shows that the Union constitutes indeed an interesting market for the Chinese exporting producers. Throughout the period considered the prices achieved on other third-country markets were below (except in 2007) those charged to the Union (roughly between 10 and 20 % lower in different years throughout the period considered).

- (41) On these grounds, it can be concluded that in terms of prices achievable, the EU market is definitely an attractive alternative for the Chinese exporters.

- (42) On that basis, Chinese exporting producers have an incentive to direct their exports to the Union market, should measures be repealed. The high prevailing prices in the Union market would allow the Chinese exporting producers to achieve better profit margins.

3.4. Circumvention of measures

- (43) In 2005 the measures have been extended to an additional CN code as it was found that Chinese exporters were circumventing the measures by adding small quantities of another metallic powder (mostly cobalt) to tungsten carbide powder⁽¹⁾. This confirmed circumvention practice is yet another element pointing to the conclusion of likelihood of continuation of dumping. It constitutes clear evidence that the European market continues to be attractive for the Chinese exporting producers who would likely direct higher volumes of tungsten carbide into the EU in the absence of anti-dumping measures.

3.5. Conclusion of the likelihood of continuation of dumping

- (44) The foregoing analysis demonstrates that Chinese imports continued to enter the Union market at dumped prices with very high dumping margins. Given most notably the analysis of price levels on the EU and other third-country markets as well as the capacities available in the PRC, it can be concluded there is a likelihood of continuation of dumping should measures be removed.

D. SITUATION ON THE UNION MARKET

1. Definition of the Union industry

- (45) Within the Union, the like product is manufactured by seven companies or groups of companies.
- (46) They are therefore deemed to constitute the Union industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will hereinafter be referred to as the 'Union industry'.

2. Preliminary remark

- (47) Data relating to imports of the product concerned into the Union originating in the PRC had to be indexed in order to preserve confidentiality pursuant to Article 19 of the basic Regulation.
- (48) Regarding import volumes under TARIC code 3824 30 00 10, due to the inclusion of products other than the product concerned in the import data available at CN code level from Eurostat (CN code 3824 30 00), the following analysis has been made on the basis of import data at TARIC code level, supplemented by information from data collected in accordance with Article 14(6) of the basic Regulation. TARIC data are

considered confidential as they provide a level of detail which allows for identification of the parties. For this reason some information was presented in ranges.

- (49) Union industry data were obtained from the questionnaire responses of the seven Union producers.

3. Consumption in the Union market

- (50) Union consumption was established on the basis of the sales volumes of the Union industry on the Union market, and import data from Eurostat.
- (51) Between 2006 and the RIP, Union consumption decreased by 62 %, with the main decrease occurring between 2008 and the RIP. In the RIP, consumption decreased by 63 % compared to 2008.

Table 1

Consumption

	2006	2007	2008	RIP
Volume (tonnes)				
+ Total imports	1 766	1 885	2 303	755
+ EU production sold on the EU market	8 281	8 334	7 981	3 024
= Consumption	10 047	10 218	10 284	3 779
year-on-year increase		2 %	1 %	- 63 %

4. Volume, market share and prices of dumped imports from the People's Republic of China

- (52) The volumes, market shares and average prices of dumped imports from the PRC developed as set out below. The following quantity and price trends are based on Eurostat data.

Table 2

Imports from PRC

	2006	2007	2008	RIP
Volume of imports from the country concerned (tonnes)	More than 700	More than 700	More than 400	More than 60
Index (2006 = 100)	100	104	60	11
Market share of imports from the country concerned	7,1 %	7,3 %	4,2 %	2,1 %
Price of imports from the country concerned (EUR/tonne)	25 622	21 883	22 434	22 110
Index (2006 = 100)	100	85	88	86

⁽¹⁾ Council Regulation (EC) No 1275/2005 of 26 July 2005 amending Regulation (EC) No 2268/2004 imposing a definitive anti-dumping duty on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China (OJ L 202, 3.8.2005, p. 1).

- (53) The volume of dumped imports of the product concerned originating in the PRC has decreased by 89 % over the period considered and reached a level of around 80 tonnes during the RIP. Their market share also dropped from 7,1 % in 2006 to 2,1 % in the RIP.
- (54) A possible explanation for this decrease is a substantial increase of PRC's domestic consumption during the period considered. In addition, through a system of export quotas and export tariffs Chinese authorities appear to pursue a policy of conserving PRC's tungsten resources.
- (55) Prices of Chinese imports decreased by 14 % during the period considered. This evolution reflects the general trend also observed with regard to the Union industry prices.
- (56) The comparison also showed that imports from the PRC were undercutting the prices of the Union industry by more than 10 %, after deduction of the anti-dumping duty in place. These results are the same as in the last review investigation ⁽¹⁾.

5. Imports from other countries

- (57) The volume of imports from other countries during the period considered are shown in the table below. The quantity and price trends are based on Eurostat data.

Table 3

Imports from other countries

	2006	2007	2008	RIP
Imports from other countries (tonnes)	1 050	1 138	1 873	675
Index (2006 = 100)	100	108	178	64
Market share of imports from other countries	10,5 %	11,1 %	18,2 %	17,9 %
Average price (EUR/tonne)	27 309,1	26 626,0	21 607,5	24 867,4
Index (2006 = 100)	100	97	79	91
US Market share	4,2 %	3,9 %	3,9 %	3,6 %
Average price (EUR/tonne)	32 948,1	32 356,0	29 353,3	32 054,4
South Korea Market share	2,2 %	2,4 %	2,6 %	4,4 %
Average price (EUR/tonne)	33 733,8	29 969,5	25 789,0	24 503,7

- (58) The imports from third countries decreased by 36 % over the period considered. They followed a general market trend triggered by the shrinking consumption (a drop by 62 %), but not at the same pace. Thereby the market share of these imports has increased from 10,5 % to 17,9 %. However, the impact of those imports on the Union industry cannot be considered negative as demonstrated in recitals 85 to 88 below.
- (59) It should be noted that the market share of the Republic of Korea ('Korea') doubled during the period considered, reaching 4,4 %. The Korean average import prices decreased during the period considered, however remaining consistently higher than the average selling price of Chinese export sales.

6. Economic situation of the Union industry

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

6.1. Production

- (61) The Union industry's production first increased by 5,8 % in 2007 and 11,6 % in 2008, compared to 2006, and then declined sharply during the RIP, by 56 % compared to 2008.

⁽¹⁾ See recital 65 of Regulation (EC) No 2268/2004.

Table 4

Total Union production

	2006	2007	2008	RIP
Volume (tonnes)				
Production	10 094	10 679	11 268	4 861
Index (2006 = 100)	100	106	112	48

6.2. Capacity and capacity utilisation rates

- (62) Production capacity increased by 10,8 % between 2006 and the RIP. As production decreased, in particular during the RIP, the resulting capacity utilisation showed an overall decrease of 57 % between 2006 and the RIP, reaching a 39 % capacity utilisation during the RIP.

Table 5

Production capacity and capacity utilisation

	2006	2007	2008	RIP
Volume (tonnes)				
Production capacity	11 110	11 610	12 230	12 310
Index (2006 = 100)	100	105	110	111
Capacity utilisation	91 %	92 %	92 %	39 %
Index (2006 = 100)	100	101	101	43

6.3. Stocks

- (63) The level of closing stocks of the Union industry increased by 20 % in 2008 compared to 2006 and then decreased by 26 % during the RIP.

Table 6

Stocks

	2006	2007	2008	RIP
Volume (tonnes)				
Closing stock	1 714	1 808	2 054	1 514
Index (2006 = 100)	100	106	120	88

6.4. Sales volume

- (64) The sales of the Union industry on the Union market to unrelated customers slightly increased between 2006 and 2008 and then decreased by 61 % between 2008 and the RIP. Sales volumes increased in 2007 and 2008 but

declined sharply, during the RIP. This development is in line with the general trend of decreasing consumption on the Union market.

Table 7

Sales to unrelated customers

	2006	2007	2008	RIP
Volume (tonnes)	5 594	5 630	5 874	2 292
Index (2006 = 100)	100	101	105	41

6.5. Market share

- (65) The market share held by the Union industry was rather stable between 2006 and 2008, to increase thereafter by 4 percentage points between 2008 and the RIP. Overall, there has been an increase of 5 percentage points during the period considered.

Table 8

EU Market share

	2006	2007	2008	RIP
EU Market share	56 %	55 %	57 %	61 %
Index (2006 = 100)	100	99	103	109

6.6. Growth

- (66) As the decrease in sales was slightly lower than the decrease in consumption, the Union industry was able to gain some market share.

6.7. Employment

- (67) The level of employment of the Union industry declined by 17 % between 2006 and the RIP. Employment decreased also in the period 2006-2008, when production slightly increased, showing the efforts made by Union industry to improve its productivity. During RIP however, the sharp decrease of the output lead to a strong deterioration of employment.

Table 9

Employment

	2006	2007	2008	RIP
Average (period considered)				
Total employment	674	667	653	557
Index (2006 = 100)	100	99	97	83

6.8. Productivity

- (68) Productivity of the Union industry's workforce, measured as output per person employed per year, increased in 2007 and 2008 by 7 % and 15 % respectively, compared to 2006, and then decreased by 49 % between 2008 and the RIP.

Table 10

Productivity

	2006	2007	2008	RIP
Productivity (tonnes per year/employee)	15	16	17	9
Index (2006 = 100)	100	107	115	58

6.9. Sales prices

- (69) Average ex-works sales price of the Union industry to unrelated customers in the Union followed a declining trend over the period considered. Overall, the Union industry had to decrease its prices by 15,4 % between 2006 and the RIP.
- (70) As explained in recitals 55 and 56, the prices of dumped imports from the PRC followed a similar trend to that of the Union industry, but were consistently lower than the prices of the Union industry. During the RIP, prices from the PRC were more than 10 % lower than the Union industry's prices.

Table 11

Unit price EU market

	2006	2007	2008	RIP
Unit prices of Union sales (EUR/tonne)	31 030	29 995	29 072	26 241
Index (2006 = 100)	100	97	94	85

6.10. Wages

- (71) Between 2006 and the RIP, the average wage per employee increased by 4,8 %.

Table 12

Labour cost

	2006	2007	2008	RIP
Annual labour cost per employee	53 614	54 613	56 564	56 221
Index (2006 = 100)	100	102	106	105

6.11. Investments and ability to raise capital

- (72) Between 2006 and 2008, the annual flow of investments in the product concerned made by the Union industry increased by 18 %. Investments between 2007 and 2008 increased by 103 %. However, during the RIP investments decreased by 65 % compared to 2008.
- (73) Investments were mainly made in the construction of new facilities to produce tungsten material from used materials and scrap. Investments had to be reduced due to: (i) the decrease on the general level of production in the Union market, (ii) the distortions in the raw materials (see recital 39), (iii) the economic crisis.
- (74) During the RIP, no significant investments were made. This can be explained in large part by the economic crisis which began in 2008 and reached its deepest point during the RIP when access to new capital was ever more difficult.

Table 13

Investments

	2006	2007	2008	RIP
Net investments ('000 EUR)	18 403	10 711	21 756	7 568
Index (2006 = 100)	100	58	118	41

6.12. Profitability and return on investments

- (75) Thanks in part to the anti-dumping measures in force and in part to the efforts made by the Union industry to diversify the raw material sources, between 2006 and 2008 the Union industry was able to maintain a positive level of profitability, even if it overall decreased by 26 % during this period. During the RIP, however, the Union industry had a much less favourable result, showing a certain fragility in this respect.
- (76) The return on investments ('ROI') broadly followed the profitability trend over the whole period considered.

Table 14

Profitability and ROI

	2006	2007	2008	RIP
Net Profit of EU sales to unrelated customers (% of net sales)	10,3 %	5,8 %	7,6 %	- 19,5 %
ROI (net profit in % of net book value of investments)	34,8 %	22,1 %	28,8 %	- 28,6 %

6.13. Cash flow

- (77) The trend of cash-flow, which is the ability of the industry to self-finance its activities, remained positive during the period under investigation. However, between 2006 and the RIP, it decreased by around 35 %.

Table 15

Cash flow

	2006	2007	2008	RIP
Cash flow ('000 EUR)	36 125	39 868	44 102	23 540
Index (2006 = 100)	100	110	122	65

6.14. Magnitude of dumping margin

- (78) Dumping from PRC continued during the RIP at a level which is significantly above the current level of measures. Furthermore, given the distortions on raw materials, the spare capacity and prices of the imports from the PRC, the impact on the Union industry of the actual margins of dumping cannot be considered to be negligible.

6.15. Recovery from past dumping

- (79) It was analysed whether the Union industry recovered from the effects of past dumping. It was concluded that it managed to recover to a large extent from such effects given that the anti-dumping measures in force proved to be effective. However, the economic crisis stopped that process and has accentuated the difficulties of the Union industry.

7. Impact of dumped imports and other factors

7.1. Impact of the dumped imports

- (80) In parallel to the shrinking consumption in the Union, the market share of Chinese imports decreased from 7,1 % to 2,1 % (see recital 52). The available information indicates that these imports were made at prices which were lower than those of the Union industry and also lower than those of the imports originating in other third countries. As mentioned in recital 56 above, based on a calculation excluding anti-dumping duty, the Chinese imports undercut the Union industry prices by 10,7 % during the RIP. It is recalled that the duty rate amounts to 33 %. Consequently, the level of undercutting demonstrates on one hand the effectiveness of the duties in place and on the other hand the necessity to continue the measures. This conclusion is reinforced by the fact that the undercutting found was at the same level as in the last review investigation. Hence, the price impact of dumped imports from the PRC on the Union industry remained unchanged and, in the absence of any evidence pointing to the contrary, it is likely to continue.

7.2. Impact of the economic crisis

- (81) Due to the very negative economic conditions prevailing during the RIP in the tungsten's downstream sector, in particular in the sector of steel and cemented carbides, which represents the majority of tungsten consumption in the Union, the Union industry drastically reduced production and sales of the product concerned.
- (82) Prior to the crisis, companies operating in the downstream sector had high level of tungsten' stocks that were not built up during the RIP, further affecting the production level of the Union industry.
- (83) As production decreased, and as the Union industry is a capital intensive one, thus needing to produce certain volumes to keep down the unit fixed cost, the profitability was seriously affected.
- (84) However, the analysis of the Union industry, before the crisis, proves the effectiveness of the anti-dumping measures in force. The investigation showed that the largest Union producers were making important investments in order to avoid the raw material distortions while at the same time they were able to compete in the market keeping a healthy position.

7.3. Imports from other countries

- (85) It is estimated that the volume of imports from other third countries decreased by 36 % from 1 500 tonnes in 2006 to 675 tonnes in the RIP. The market share of imports from other countries increased from 10,5 % in 2006 to 17,9 % in the RIP. Their average imports price decreased by 8,9 % between 2006 and the RIP. The main importing countries were South Korea and the USA.
- (86) The market share of imports from South Korea doubled over the period considered (from 2,2 % to 4,4 %). However, the available information indicates that during the RIP these imports were made at prices only slightly lower than those of the Union industry (by 6,6 %), but higher (by 9,8 %) than those of the imports originating in the PRC.
- (87) The market share of imports from the USA decreased by 15,1 percentage points over the period considered (from 4,2 % to 3,6 %). The available information indicates that during the RIP these imports were made at prices which were above those of the Union industry and thus also substantially higher (by 31 %) than those of the imports originating in the PRC.

- (88) In conclusion, among the biggest importers of tungsten carbide into the EU, the South Korean and US imports could not have a negative impact on the situation of the Union industry mainly because of their price levels (similar or even higher than the Union industry prices) and in the case of the US also because of the decreasing market share.

8. Conclusion

- (89) Due to the effective anti-dumping duties in place, the Union industry was able to recover to some extent from the effects of past injurious dumping.
- (90) Nevertheless, it cannot be concluded that the situation of the Union industry is secure. Although almost all injury indicators relating to the financial performance of the Union producers — such as profitability, return on investments and cash-flow — improved during the first years of the period considered, the investigation also showed that during the RIP all injury indicators deteriorated.
- (91) Notwithstanding the fact that the decrease in demand during the RIP could be partially attributed to the economic crisis, the investigation carefully analysed the impact of low dumped priced exports from the PRC on the situation of the Union industry.
- (92) As shown under recital 52, volumes of imports from the PRC indeed decreased between 2006 and the RIP. The prices of those imports decreased by 14 % over the same period, which when analysed from the perspective of the four-year period considered mirrors the development of the Union industry prices. It is notable, however, that the substantial price decrease of the Chinese dumped imports occurred between 2006 and 2007 (by 15 %), i.e. long before the economic crisis in the period when the Union industry was in the process of recovery. The prices of dumped imports from PRC stabilised thereafter and the financial-crisis related decrease appears to be limited. The timing of the substantial price decrease on the part of the Chinese exporters (before crisis) could indicate that they were setting off more concentrated and forceful price strategy in order to undercut the Union industry prices. Indeed the price differential between Chinese export prices and those of the Union industry amounted to 27 % and 22,8 % in 2007 and 2008 respectively.
- (93) In 2008, export prices from China were 22,8 % lower than those to the Union industry. During the RIP, the gap decreased to 15,7 %. With the sharp decline in consumption, Union producers had to reduce their prices in order to keep market share.
- (94) As shown under recital 57, the volume of imports from other third countries decreased by 36 %, in line with the decrease in consumption. Despite an increase in market

share the impact of those imports on the situation of the Union industry cannot be considered negative, as demonstrated in recital 88 above.

- (95) With regard to the viability of the Union industry it must be noted that the evidence collected during the investigation showed that the Union industry has been able to compete under normal market conditions against the imports from third countries and even when prices were lower than those of the Union producers the gap was not as significant as with the prices from China, as demonstrated in recitals 85 to 88 above.
- (96) As a result of the amelioration of the Union industry situation in the years previous to the RIP, the industry invested in new cutting edge technology to produce the product concerned from scrap and partially circumvent the distortions in place on the raw materials.
- (97) Taking into account the overall situation of the Union industry as well as the imports from PRC in the period from 2006 to RIP, in conclusion, in view of the positive developments of some indicators pertaining to the Union Industry, it is considered that the Union industry did not suffer material injury during the period considered. It was therefore examined whether there was a likelihood of recurrence of injury should the measures be allowed to lapse.

E. LIKELIHOOD OF RECURRENCE OF INJURY

1. Preliminary remarks

- (98) As described in recitals 89 to 97, the imposition of anti-dumping measures allowed the Union industry to recover from the injury suffered, but only to some extent. Indeed when the exceptional levels of Union consumption experienced during most of the period considered significantly decreased during the RIP, the Union industry appeared in a fragile and vulnerable situation, still exposed to the injurious effect of the dumped imports from the PRC.
- (99) In accordance with Article 11(2) of the basic Regulation, imports from the country concerned were assessed in order to establish if there was a likelihood of recurrence of injury.

2. Chinese export volumes and prices to third countries

- (100) It was found that export price of Chinese sales on other third-country markets were also lower to those charged to the EU (roughly between 10 and 20 % lower in different years throughout the period considered, except

in 2007). The Chinese exporter's sales to non-EU countries were made in significant quantities, accounting for over 80 % of its total export sales. Therefore, it was considered that, should measures lapse, Chinese exporting producers would have an incentive to shift significant quantities of exports from other third countries to the more attractive Union market.

3. Spare capacity in the PRC market

- (101) As described in recitals 34 to 42, data collected during the investigation showed that there is a significant spare capacity available in the PRC. Clear indications were found pointing to the conclusion that a large part of this spare capacity could be used to increase exports to the Union in the absence of anti-dumping measures. This is confirmed in particular because there are no indications that third-country markets or the domestic market could absorb any additional production in the PRC.

4. Conclusion

- (102) The Union industry had been suffering from the effects of the Chinese dumped imports for several years and is still currently in a fragile economic situation.
- (103) As shown above, the Union industry managed to recover from the Chinese dumping practice thanks to the anti-dumping measures in force. During the RIP, however, it found itself in a difficult economic situation mainly due to the economic crisis. In this context, should the Union industry be exposed to increased volumes of dumped low priced imports from the country concerned, this would be likely to result in a further deterioration of its sales, market share, sales prices, as well as a consequent deterioration of its financial situation.
- (104) In addition, as stated in recital 56 above, it was also found that the fact that the sales price of Chinese producers undercut those of the Union industry on average almost 11 % appears to indicate that in the absence of measures Chinese exporting producers are likely to export the product concerned to the Union market at prices considerably lower than those of the Union industry.
- (105) In view of the findings made during the investigation, namely the spare capacity in the PRC, the distortions found in the market for raw materials, the potential of the exporting producers in the country concerned to raise and/or redirect their export volumes to the Union market, the pricing behaviour of the Chinese in other third countries and the attractiveness of the more lucrative Union market, any repeal of the measures would point to a likelihood of recurrence of injury. The latter would be even more serious taking into account the present economic crisis.

F. UNION INTEREST

1. Introduction

- (106) In accordance with Article 21 of the basic Regulation, it was examined whether the maintenance of the existing anti-dumping measures would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, i.e. those of the Union industry, importers and users.
- (107) It should be recalled that, in the previous investigations, the adoption of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.
- (108) On this basis it was examined whether, despite the conclusions on the likelihood of a continuation of dumping and recurrence of injury, compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures in this particular case.

2. Interest of the Union industry

- (109) In view of the conclusions on the situation of the Union industry set out in recitals 89 to 97 above, and pursuant to the arguments relating to the analysis on the likelihood of recurrence of injury as explained in recitals 102 to 105, it can also be considered that the Union industry would be likely to experience a serious deterioration of its financial situation in case the anti-dumping duties were allowed to expire.
- (110) It is considered that the continuation of measures would benefit the Union industry which should then be able to increase sales volumes and, in all likelihood, sales prices thereby generating the necessary return level which would enable it to continue to invest in new technology for its production facilities. By contrast, the discontinuation of the measures would halt the recovery of the Union industry, seriously threatening its viability, and, as a consequence, putting its existence at risk, thus reducing supply and competition on the market.

3. Interest of importers/users

- (111) One user came forward and submitted a questionnaire reply. The cooperating user claimed that the continuation of measures would not have a negative impact on competition in the Union market, but that, on the contrary, it would allow the downstream industry to have a wider range of suppliers competing at market prices.

- (112) It is recalled that, in the previous investigations, it was found that the impact of the imposition of measures would not be significant for the users⁽¹⁾. Despite the existence of measures, importers/users in the Union were able to continue to source their supply, inter alia, from the PRC. No indications were brought forward whether there have been difficulties in finding other sources. It is therefore concluded that the maintenance of the anti-dumping measures is not likely to have a serious effect on importers/users in the Union.

4. Conclusion

- (113) The effects of the continuation of measures can be expected to assist the Union industry, with consequent beneficial effects on the competitive conditions on the Union market and the reduction of the threat of closures and reductions in employment.
- (114) Furthermore, the continuation of the measures can be expected to benefit the users/importers by maintaining a wide range of suppliers in the Union market.
- (115) Given the above analysis, it is concluded that the continuation of measures is not against the Union interest.

G. ANTI-DUMPING MEASURES

- (116) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to submit comments

subsequent to that disclosure. The submissions and comments were duly taken into consideration where warranted.

- (117) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten, originating in PRC should be maintained. It is recalled that these measures consist of *ad valorem* duties,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide currently falling within CN codes 2849 90 30 and ex 3824 30 00⁽²⁾ (TARIC code 3824 30 00 10) and originating in the People's Republic of China.

2. The rate of duty applicable to the net free-at-Union-frontier price, before duty, for the products described in paragraph 1, shall be 33 %.

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

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, 21 March 2011.

For the Council
The President
MARTONYI J.

⁽¹⁾ See recital 101 of Regulation (EC) No 2268/2004.

⁽²⁾ The particles are irregular and not free flowing in contrast to 'ready to press powder' particles, which are spherical or granular shaped, homogeneous and free flowing. The lack of flowability can be measured and established by using a calibrated funnel e.g. a HALL flow meter according to ISO standard 4490.

COUNCIL IMPLEMENTING REGULATION (EU) No 288/2011**of 23 March 2011****implementing Article 16(1) and (2) of Regulation (EU) No 204/2011 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,

Having regard to Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya ⁽¹⁾, and in particular Article 16(1) and (2) thereof,

Whereas:

- (1) On 2 March 2011, the Council adopted Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya.
- (2) On 17 March 2011, the United Nations Security Council adopted Resolution UNSCR 1973 (2011) which widened the scope of the restrictive measures imposed by

Resolution UNSCR 1970 (2011) and introduced additional restrictive measures against Libya.

- (3) The lists of persons and entities subject to restrictive measures as set out in Annexes II and III to Regulation (EU) No 204/2011 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes II and III to Regulation (EU) No 204/2011 shall be replaced by the text set out in Annexes I and II respectively to this Regulation.

Article 2

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

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

Done at Brussels, 23 March 2011.

For the Council
The President
MARTONYI J.

⁽¹⁾ OJ L 58, 3.3.2011, p. 1.

ANNEX I

‘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.

7. DORDA, Abu Zayd Umar

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

Date of UN designation: 17.3.2011 (EU designation: 28.2.2011).

8. 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: 17.3.2011 (EU designation: 28.2.2011).

9. 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: 17.3.2011 (EU designation: 28.2.2011).

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: 17.3.2011 (EU designation: 28.2.2011).

11. QADHAFI, Saadi

Passport number: 014797. Date of birth: 25.5.1973. 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: 17.3.2011 (EU designation: 28.2.2011).

12. 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: 17.3.2011 (EU designation: 28.2.2011).

13. 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: 17.3.2011 (EU designation: 28.2.2011).

Entities**1. Central Bank of Libya**

Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.

Date of UN designation: 17.3.2011 (EU designation: 10.3.2011).

2. Libyan Investment Authority

Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.

a.k.a.: Libyan Arab Foreign Investment Company (LAFICO) 1 Fateh Tower Office No 99, 22nd Floor, Borgaida Street, Tripoli, 1103 Libya

Date of UN designation: 17.3.2011 (EU designation: 10.3.2011).

3. Libyan Foreign Bank

Under control of Muammar Qadhafi and his family and a potential source of funding for his regime.

Date of UN designation: 17.3.2011 (EU designation: 10.3.2011).

4. Libya Africa Investment Portfolio

Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.

Jamahiriya Street, LAP Building, PO Box 91330, Tripoli, Libya

Date of UN designation: 17.3.2011 (EU designation: 10.3.2011).

5. Libyan National Oil Corporation

Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.

Bashir Saadwi Street, Tripoli, Tarabulus, Libya

Date of UN designation: 17.3.2011.

ANNEX II

‘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.	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
9.	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
10.	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
11.	SALEH, Bachir	Date of birth: 1946 Place of birth: Traghen	Head of Cabinet of the Leader. Closeness of association with regime.	28.2.2011
12.	TOHAMI, General Khaled	Date of birth: 1946 Place of birth: Genzur	Director of Internal Security Office. Closeness of association with regime.	28.2.2011

	Name	Identifying information	Reasons	Date of listing
13.	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
14.	ZARTI, Mustafa	born on 29 March 1970, Austrian citizen (passport no. P1362998, valid from 6 November 2006 until 5 November 2016)	Closeness of association with regime and vice chief executive of "Libyan Investment Authority", board member of the National Oil Corporation and vice chairman of First Energy Bank in Bahrain.	10.3.2011
15.	EL-KASSIM ZOUAI, Mohamed Abou		Secretary General of the General People's Congress; involved in violence against demonstrators.	21.3.2011
16.	AL-MAHMOUDI, Baghdadi		Prime Minister of Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
17.	HIJAZI, Mohamad Mahmoud		Minister for Health and Environment in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
18.	ZLITNI, Abdelhaziz	Date of birth: 1935	Minister for Planning and Finance in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
19.	HOUEJ, Mohamad Ali	Date of birth: 1949 Place of birth: Al-Azizia (near Tripoli)	Minister for Industry, Economy and Trade in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
20.	AL-GAOU, Abdelmajid		Minister for Agriculture, Animal and Maritime Resources in Colonel Qadhafi's Government.	21.3.2011
21.	AL-CHARIF, Ibrahim Zarroug		Minister for Social Affairs in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
22.	FAKHIRI, Abdelkebir Mohamad		Minister for Education, Higher Education and Research in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
23.	ZIDANE, Mohamad Ali		Minister for Transport in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
24.	KOUSSA, Moussa Mohamad		Minister for Foreign Affairs in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
25.	MANSOUR, Abdallah		Close collaborator of Colonel Qadhafi, senior role in security services and former director of radio and television; involved in violence against demonstrators.	21.3.2011

Entities

	Name	Identifying information	Reasons	Date of listing
1.	Libyan Housing and Infrastructure Board (HIB)	Tajora, Tripoli, Libya Legislation number: 60/2006 by Libyan General People's Committee Tel: +218 21 369 1840, Fax: +218 21 369 6447 http://www.hib.org.ly	Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.	10.3.2011
2.	Economic and Social Development Fund (ESDF)	Qaser Bin Ghasher road Salaheddine Cross - BP: 93599 Libya-Tripoli Telephone: +218 21 490 8893 – Fax: +218 21 491 8893 – email: info@esdf.ly	Controlled by Muammar Qadhafi's regime and potential source of funding for it	21.3.2011
3.	Libyan Arab African Investment Company - LAAICO	Site: http://www.laaico.com Company established in 1981 76351 Janzour-Libya. 81370 Tripoli-Libya Tel: 00 218 (21) 4890146 – 4890586 – 4892613 Fax: 00 218 (21) 4893800 - 4891867 email: info@laaico.com	Controlled by Muammar Qadhafi's regime and potential source of funding for it	21.3.2011
4.	Gaddafi International Charity and Development Foundation	Contact details of administration :Hay Alandalus – Jian St. – Tripoli – PoBox : 1101 – LIBYA Telephone: (+218) 214778301 – Fax: (+218) 214778766; email: info@gicdf.org	Controlled by Muammar Qadhafi's regime and potential source of funding for it.	21.3.2011
5.	Waatassimou Foundation	Based in Tripoli.	Controlled by Muammar Qadhafi's regime and potential source of funding for it	21.3.2011
6.	Libyan Jamahiriya Broadcasting Corporation	Contact details: tel: 00 218 21 444 59 26; 00 21 444 59 00; fax: 00 218 21 340 21 07 http://www.ljbc.net ; email: info@ljbc.net	Public incitement to hatred and violence through participation in disinformation campaigns concerning violence against demonstrators.	21.3.2011
7.	Revolutionary Guard Corps		Involved in violence against demonstrators.	21.3.2011
8.	National Commercial Bank	Orouba Street AlBayda, Libya Phone: +218 21-361-2429 Fax: +218 21-446-705 www.ncb.ly	National Commercial Bank is a commercial bank in Libya. The bank was founded in 1970 and is based in AlBayda, Libya. It has locations in Tripoli and AlBayda, as well as operates branches in Libya. It is 100 % government-owned and a potential source of funding for the regime.	21.3.2011

	Name	Identifying information	Reasons	Date of listing
9.	Gumhouria Bank	Gumhouria Bank Building Omar Al Mukhtar Avenue Giaddal Omer Al Moukhtar P.O. Box 685 Tarabulus Tripoli Libya Tel: +218 21-333-4035 +218 21-444-2541 +218 21-444-2544 +218 21-333-4031 Fax: +218 21-444-2476 +218 21-333-2505 Email: info@gumhouria-bank.com.ly Website: www.gumhouria-bank.com.ly	Gumhouria Bank is a commercial bank in Libya. The bank was created in 2008 through the merger of Al Ummah and Gumhouria banks. It is 100 % government-owned and a potential source of funding for the regime.	21.3.2011
10.	Sahara Bank	Sahara Bank Building First of September Street P.O. Box 270 Tarabulus Tripoli Libya Tel: +218 21-379-0022 Fax: +218 21-333-7922 Email: info@saharabank.com.ly Website: www.saharabank.com.ly	Sahara Bank is a commercial bank in Libya. It is 81 % government-owned and a potential source of funding for the regime.	21.3.2011
11.	Azzawia (Azawiya) Refining	P.O. Box 6451 Tripoli Libya +218 023 7976 26778 http://www.arc.com.ly	Under control of Muammar Qadhafi and potential source of funding for his regime.	23.3.2011
12.	Ras Lanuf Oil and Gas Processing Company (RASCO)	Ras Lanuf Oil and Gas Processing Company Building Ras Lanuf City P.O. Box 2323 Libya Tel: +218 21-360-5171 +218 21-360-5177 +218 21-360-5182 Fax: +218 21-360-5174 Email: info@raslanuf.ly Website: www.raslanuf.ly	Under control of Muammar Qadhafi and potential source of funding for his regime.	23.3.2011
13.	Brega	Head Office: Azzawia / coast road P.O. Box Azzawia 16649 Phone: 2 – 625021-023 / 3611222 Fax: 3610818 Telex: 30460 / 30461 / 30462	Under control of Muammar Qadhafi and potential source of funding for his regime.	23.3.2011
14.	Sirte Oil Company	Sirte Oil Company Building Marsa Al Brega Area P.O. Box 385 Tarabulus Tripoli Libya Tel: +218 21-361-0376 +218 21-361-0390 Fax: +218 21-361-0604 +218 21-360-5118 Email: info@soc.com.ly Website: www.soc.com.ly	Under control of Muammar Qadhafi and potential source of funding for his regime.	23.3.2011

	Name	Identifying information	Reasons	Date of listing
15.	Waha Oil Company	Waha Oil Company Office Location: Off Airport Road Tripoli Tarabulus Libya Postal Address: P.O. Box 395 Tripoli Libya Tel: +218 21-3331116 Fax: +218 21-3337169 Telex: 21058	Under control of Muammar Qadhafi and potential source of funding for his regime.	23.3.2011'

COMMISSION REGULATION (EU) No 289/2011**of 23 March 2011****correcting the Hungarian text of Regulation (EU) No 1272/2009 laying down common detailed rules for the implementation of Council Regulation (EC) No 1234/2007 as regards buying in and selling of agricultural products under public intervention**

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⁾, and in particular Article 43(a), (aa), (c), (d), (f), (j), (k), and (l) in conjunction with Article 4 thereof,

Whereas:

- (1) The Hungarian text of Commission Regulation (EU) No 1272/2009 ⁽²⁾ contains two errors which must be corrected with effect from the date of application of Regulation (EU) No 1272/2009.

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

HAS ADOPTED THIS REGULATION:

Article 1

(Concerns only the Hungarian language version.)

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

It shall apply from 1 March 2010.

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

Done at Brussels, 23 March 2011.

*For the Commission**The President*

José Manuel BARROSO

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 349, 29.12.2009, p. 1.

COMMISSION IMPLEMENTING REGULATION (EU) No 290/2011**of 23 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 24 March 2011.

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

Done at Brussels, 23 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	ET	73,9
	IL	82,8
	MA	53,7
	TN	115,9
	TR	81,7
	ZZ	81,6
0707 00 05	EG	170,1
	TR	147,0
	ZZ	158,6
0709 90 70	MA	39,2
	TR	109,9
	ZZ	74,6
0805 10 20	EG	54,1
	IL	78,1
	MA	53,8
	TN	51,1
	TR	74,0
	ZZ	62,2
0805 50 10	EG	66,4
	MA	45,2
	TR	53,6
	ZZ	55,1
0808 10 80	AR	91,7
	BR	88,0
	CA	88,7
	CL	99,7
	CN	84,0
	MK	50,2
	US	143,1
	UY	66,1
	ZA	98,4
	ZZ	90,0
0808 20 50	AR	92,8
	CL	83,9
	CN	56,3
	US	79,9
	ZA	97,0
	ZZ	82,0

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

DECISIONS

COUNCIL DECISION 2011/178/CFSP

of 23 March 2011

amending Decision 2011/137/CFSP 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 28 February 2011, the Council adopted Decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya ⁽¹⁾, implementing United Nations Security Council Resolution (UNSCR) 1970 (2011).
- (2) On 17 March 2011, the United Nations Security Council adopted UNSCR 1973 (2011), which widened the scope of the restrictive measures imposed by UNSCR 1970 (2011) and introduced additional restrictive measures against Libya.
- (3) Decision 2011/137/CFSP should be amended accordingly.
- (4) Further action by the Union is needed in order to implement certain measures,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2011/137/CFSP is hereby amended as follows:

- (1) the following Article is added:

'Article 3a

1. Member States shall take the necessary measures to prevent flights by aircraft under their jurisdiction in the airspace of Libya, in view of the need to help protect civilians.

2. Paragraph 1 shall not apply to flights the sole purpose of which is humanitarian, such as delivering or facilitating the delivery of assistance, including medical supplies, food, humanitarian workers and related assistance, or evacuating foreign nationals from Libya, nor shall it apply to flights authorised by paragraph 4 or 8 of UNSCR 1973 (2011),

nor to other flights which are deemed by Member States, acting under the authorisation conferred in paragraph 8 of UNSCR 1973 (2011), to be necessary for the benefit of the Libyan people.;

- (2) Article 4(1) is replaced by the following:

'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, vessels and aircraft bound to or from Libya, in their territory, including their seaports and airports, and on the high seas, if they have information that provides reasonable grounds to believe that the cargo of such vessels and aircraft contains items the supply, sale, transfer or export of which is prohibited under this Decision.;

- (3) the following Article is added:

'Article 4a

1. Member States shall deny permission to any aircraft registered in Libya or owned or operated by Libyan nationals or companies to take off from, land in or overfly their territory unless the particular flight has been approved in advance by the Sanctions Committee, or in the case of an emergency landing.

2. Member States shall deny permission to any aircraft to take off from, land in or overfly their territory, if they have information that provides reasonable grounds to believe that the aircraft contains items the supply, sale, transfer, or export of which is prohibited under this Decision, including the provision of armed mercenary personnel, except in the case of an emergency landing.;

- (4) Article 5(1) is replaced by the following:

'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) and paragraph 23 of UNSCR 1973 (2011), as listed in Annex I to this Decision;

⁽¹⁾ OJ L 58, 3.3.2011, p. 53.

(b) persons not covered by Annex I to this Decision 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 to this Decision.’;

(5) Article 6(1) is replaced by the following:

‘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) and paragraphs 19 and 23 of UNSCR 1973 (2011), as listed in Annex III to this Decision;

(b) persons and entities not covered by Annex III to this Decision 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 the Libyan authorities, or by persons and entities that have violated or have assisted in violating the provisions of UNSCR 1970 (2011) or of this Decision, or by persons or entities acting for or on their behalf or at their direction, or by entities owned or controlled by them or by persons and entities listed in Annex III, as listed in Annex IV to this Decision;

shall be frozen.’;

(6) in Article 6, the following paragraph is added:

‘4a. With regard to persons and entities listed in Annex IV to this Decision, exemptions may also be made for funds and economic resources which are necessary for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, the provision of electricity, humanitarian workers and related assistance, or evacuating foreign nationals from Libya.’;

(7) the following Article is added:

‘Article 6a

Member States shall require their nationals, persons subject to their jurisdiction and firms incorporated in their territories or subject to their jurisdiction to exercise vigilance when doing business with entities incorporated in Libya or subject to Libya’s jurisdiction, and any individuals and entities acting on their behalf or at their direction, and entities owned or controlled by them, with a view to preventing business that could contribute to violence and the use of force against civilians.’.

Article 2

Annexes I, II, III and IV to Decision 2011/137/CFSP are hereby replaced by the text set out in Annexes I, II, III and IV respectively to this Decision.

Article 3

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

Done at Brussels, 23 March 2011.

For the Council
The President
MARTONYI J.

ANNEX I

'ANNEX I

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

Passport number: B010574. Date of birth: 1.7.1950.

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: 20.9.1975. 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: 25.5.1973. 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: 25.6.1972. 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.

17. AL QADHAFI, Quren Salih Quren

Libyan Ambassador to Chad. Has left Chad for Sabha. Involved directly in recruiting and coordinating mercenaries for the regime.

Date of UN designation: 17.3.2011.

18. AL KUNI, Colonel Amid Husain

Governor of Ghat (South Libya). Directly involved in recruiting mercenaries.

Date of UN designation: 17.3.2011.'

ANNEX II

'ANNEX II

List of persons referred to in Article 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

	Name	Identifying information	Reasons	Date of listing
11.	EL-KASSIM ZOUAI, Mohamed Abou		Secretary General of the General People's Congress; involved in violence against demonstrators.	21.3.2011
12.	AL-MAHMOUDI, Baghdadi		Prime Minister of Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
13.	HIJAZI, Mohamad Mahmoud		Minister for Health and Environment in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
14.	ZLITNI, Abdelhaziz	Date of birth: 1935	Minister for Planning and Finance in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
15.	HOUEJ, Mohamad Ali	Date of birth: 1949 Place of birth: Al-Azizia (near Tripoli)	Minister for Industry, Economy and Trade in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
16.	AL-GAoud, Abdelmajid		Minister for Agriculture, Animal and Maritime Resources in Colonel Qadhafi's Government.	21.3.2011
17.	AL-CHARIF, Ibrahim Zarroug		Minister for Social Affairs in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
18.	FAKHIRI, Abdelkebir Mohamad		Minister for Education, Higher Education and Research in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
19.	ZIDANE, Mohamad Ali		Minister for Transport in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
20.	KOUSSA, Moussa Mohamad		Minister for Foreign Affairs in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
21.	MANSOUR, Abdallah		Close collaborator of Colonel Qadhafi, senior role in security services and former director of radio and television; involved in violence against demonstrators	21.3.2011'

ANNEX III

'ANNEX III

List of persons referred to in Article 5(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.

7. DORDA, Abu Zayd Umar

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

Date of UN designation: 17.3.2011 (EU designation: 28.2.2011).

8. 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: 17.3.2011 (EU designation: 28.2.2011).

9. 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: 17.3.2011 (EU designation: 28.2.2011).

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: 17.3.2011 (EU designation: 28.2.2011).

11. QADHAFI, Saadi

Position: Commander Special Forces

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

Date of birth: 25.5.1973. Place of birth: Tripoli, Libya. Passport number: 014797.

Date of UN designation: 17.3.2011 (EU designation: 28.2.2011).

12. QADHAFI, Saif al-Arab

Son of Muammar QADHAFI. Closeness of association with regime.

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

Date of UN designation: 17.3.2011 (EU designation: 28.2.2011).

13. 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: 17.3.2011 (EU designation: 28.2.2011).

Entities**1. Central Bank of Libya**

Under control of Muammar QADHAFI and his family, and potential source of funding for his regime.

Date of UN designation: 17.3.2011 (EU designation: 10.3.2011).

2. Libyan Investment Authority

Under control of Muammar QADHAFI and his family, and potential source of funding for his regime.

a.k.a.: Libyan Arab Foreign Investment Company (LAFICO) 1 Fateh Tower Office No. 99, 22nd Floor, Borgaida Street, Tripoli, 1103 Libya.

Date of UN designation: 17.3.2011 (EU designation: 10.3.2011).

3. Libyan Foreign Bank

Under control of Muammar QADHAFI and his family and a potential source of funding for his regime.

Date of UN designation: 17.3.2011 (EU designation: 10.3.2011).

4. Libya Africa Investment Portfolio

Under control of Muammar QADHAFI and his family, and potential source of funding for his regime.

Jamahiriya Street, LAP Building, PO Box 91330, Tripoli, Libya.

Date of UN designation: 17.3.2011 (EU designation: 10.3.2011).

5. Libyan National Oil Corporation

Under control of Muammar QADHAFI and his family, and potential source of funding for his regime.

Bashir Saadwi Street, Tripoli, Tarabulus, Libya.

Date of UN designation: 17.3.2011.'

ANNEX IV

'ANNEX IV

List of persons and entities referred to in Article 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.	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
9.	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
10.	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
11.	SALEH, Bachir	Date of birth: 1946 Place of birth: Traghan	Head of Cabinet of the Leader. Closeness of association with regime.	28.2.2011

	Name	Identifying information	Reasons	Date of listing
12.	TOHAMI, General Khaled	Date of birth: 1946 Place of birth: Genzur	Director of Internal Security Office. Closeness of association with regime.	28.2.2011
13.	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
14.	ZARTI, Mustafa	born on 29 March 1970, Austrian citizen (passport no. P1362998, valid from 6 November 2006 until 5 November 2016)	Closeness of association with regime and vice chief executive of "Libyan Investment Authority", board member of the National Oil Corporation and vice chairman of First Energy Bank in Bahrain.	10.3.2011
15.	EL-KASSIM ZOUAI, Mohamed Abou		Secretary General of the General People's Congress; involved in violence against demonstrators.	21.3.2011
16.	AL-MAHMOUDI, Baghdadi		Prime Minister of Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
17.	HIJAZI, Mohamad Mahmoud		Minister for Health and Environment in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
18.	ZLITNI, Abdelhaziz	Date of birth: 1935	Minister for Planning and Finance in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
19.	HOUEJ, Mohamad Ali	Date of birth: 1949 Place of birth: Al-Azizia (near Tripoli)	Minister for Industry, Economy and Trade in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
20.	AL-GAOUD, Abdelmajid		Minister for Agriculture, Animal and Maritime Resources in Colonel Qadhafi's Government.	21.3.2011
21.	AL-CHARIF, Ibrahim Zarroug		Minister for Social Affairs in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
22.	FAKHIRI, Abdelkebir Mohamad		Minister for Education, Higher Education and Research in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
23.	ZIDANE, Mohamad Ali		Minister for Transport in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011
24.	KOUSSA, Moussa Mohamad		Minister for Foreign Affairs in Colonel Qadhafi's Government; involved in violence against demonstrators.	21.3.2011

	Name	Identifying information	Reasons	Date of listing
25.	MANSOUR, Abdallah		Close collaborator of Colonel Qadhafi, senior role in security services and former director of radio and television; involved in violence against demonstrators.	21.3.2011

Entities

	Name	Identifying information	Reasons	Date of listing
1.	Libyan Housing and Infrastructure Board (HIB)	Tajora, Tripoli, Libya Legislation number: 60/2006 by Libyan General People's Committee Tel: +218 21 369 1840, Fax: +218 21 369 6447 http://www.hib.org.ly	Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.	10.3.2011
2.	Economic and Social Development Fund (ESDF)	Qaser Bin Ghasher road Salaheddine Cross - BP: 93599 Libya-Tripoli Telephone: +218 21 490 8893 – Fax: +218 21 491 8893 – email: info@esdf.ly	Controlled by Muammar Qadhafi's regime and potential source of funding for it	21.3.2011
3.	Libyan Arab African Investment Company - LAAICO	Site: http://www.laaico.com Company established in 1981 76351 Janzour-Libya. 81370 Tripoli-Libya Tel: 00 218 (21) 4890146 – 4890586 - 4892613 Fax: 00 218 (21) 4893800 - 4891867 email: info@laaico.com	Controlled by Muammar Qadhafi's regime and potential source of funding for it	21.3.2011
4.	Gaddafi International Charity and Development Foundation	Contact details of administration: Hay Alandalus – Jian St. – Tripoli – PoBox: 1101 – LIBYA Telephone: (+218) 214778301 – Fax: (+218) 214778766; email: info@gicdf.org	Controlled by Muammar Qadhafi's regime and potential source of funding for it.	21.3.2011
5.	Waatassimou Foundation	Based in Tripoli.	Controlled by Muammar Qadhafi's regime and potential source of funding for it	21.3.2011
6.	Libyan Jamahiriya Broadcasting Corporation	Contact details: tel: 00 218 21 444 59 26; 00 21 444 59 00; fax: 00 218 21 340 21 07 http://www.ljbc.net ; email: info@ljbc.net	Public incitement to hatred and violence through participation in disinformation campaigns concerning violence against demonstrators.	21.3.2011
7.	Revolutionary Guard Corps		Involved in violence against demonstrators.	21.3.2011
8.	National Commercial Bank	Orouba Street AlBayda, Libya Phone: +218 21-361-2429 Fax: +218 21-446-705 www.ncb.ly	National Commercial Bank is a commercial bank in Libya. The bank was founded in 1970 and is based in AlBayda, Libya. It has locations in Tripoli and AlBayda, as well as operates branches in Libya. It is 100 % government-owned and a potential source of funding for the regime.	21.3.2011

	Name	Identifying information	Reasons	Date of listing
9.	Gumhouria Bank	Gumhouria Bank Building Omar Al Mukhtar Avenue Giaddal Omer Al Moukhtar P.O. Box 685 Tarabulus Tripoli Libya Tel: +218 21-333-4035 +218 21-444-2541 +218 21-444-2544 +218 21-333-4031 Fax: +218 21-444-2476 +218 21-333-2505 Email: info@gumhouria-bank.com.ly Website: www.gumhouria-bank.com.ly	Gumhouria Bank is a commercial bank in Libya. The bank was created in 2008 through the merger of Al Ummah and Gumhouria banks. It is 100% government-owned and a potential source of funding for the regime.	21.3.2011
10.	Sahara Bank	Sahara Bank Building First of September Street P.O. Box 270 Tarabulus Tripoli Libya Tel: +218 21-379-0022 Fax: +218 21-333-7922 Email: info@saharabank.com.ly Website: www.saharabank.com.ly	Sahara Bank is a commercial bank in Libya. It is 81 % government-owned and a potential source of funding for the regime.	21.3.2011
11.	Azzawia (Azawiya) Refining	P.O. Box 6451 Tripoli Libya +218 023 7976 26778 http://www.arc.com.ly	Under control of Muammar Qadhafi and potential source of funding for his regime.	23.3.2011
12.	Ras Lanuf Oil and Gas Processing Company (RASCO)	Ras Lanuf Oil and Gas Processing Company Building Ras Lanuf City P.O. Box 2323 Libya Tel: +218 21-360-5171 +218 21-360-5177 +218 21-360-5182 Fax: +218 21-360-5174 Email: info@raslanuf.ly Website: www.raslanuf.ly	Under control of Muammar Qadhafi and potential source of funding for his regime.	23.3.2011
13.	Brega	Head Office: Azzawia / coast road P.O. Box Azzawia 16649 Tel: 2 – 625021-023 / 3611222 Fax: 3610818 Telex: 30460 / 30461 / 30462	Under control of Muammar Qadhafi and potential source of funding for his regime.	23.3.2011
14.	Sirte Oil Company	Sirte Oil Company Building Marsa Al Brega Area P.O. Box 385 Tarabulus Tripoli Libya Tel: +218 21-361-0376 +218 21-361-0390 Fax: +218 21-361-0604 +218 21-360-5118 Email: info@soc.com.ly Website: www.soc.com.ly	Under control of Muammar Qadhafi and potential source of funding for his regime.	23.3.2011

	Name	Identifying information	Reasons	Date of listing
15.	Waha Oil Company	Waha Oil Company Office Location: Off Airport Road Tripoli Tarabulus Libya Postal Address: P.O. Box 395 Tripoli Libya Tel: +218 21-3331116 Fax: +218 21-3337169 Telex: 21058	Under control of Muammar Qadhafi and potential source of funding for his regime.	23.3.2011'

COMMISSION DECISION

of 14 December 2010

concerning State aid C 39/96 (ex NN 127/92) implemented by France in favour of Coopérative d'exportation du livre français (CELF)

(notified under document C(2010) 8938)

(Only the French text is authentic)

(Text with EEA relevance)

(2011/179/EU)

THE EUROPEAN COMMISSION,

A. First stage

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof ⁽¹⁾,

- (4) By letter dated 20 March 1992, Société internationale de diffusion et d'édition (SIDE) drew the Commission's attention to aid measures for promotion, transport and marketing granted by the French authorities to CELF, aid which had not been notified to the Commission's services in advance.

Having called on interested parties to submit their comments in accordance with the above Article ⁽²⁾, and having regard to those comments,

- (5) By letter dated 2 April 1992, the Commission, having pointed out to the French authorities that any plans to grant or alter aid had to be notified to its services in advance, asked the said authorities to inform it as to the nature and purpose of the aid measures referred to by SIDE.

Whereas:

1. PROCEDURE

- (1) By judgment of 15 April 2008 ⁽³⁾ (hereinafter 'the judgment of the Court of First Instance'), the Court of First Instance of the European Union annulled Commission Decision 2005/262/EC of 20 April 2004 on the aid implemented by France in favour of the Coopérative d'exportation du livre français (CELF) ⁽⁴⁾ ⁽⁵⁾.

- (6) By letter dated 29 June 1992, the French authorities confirmed to the Commission the existence of grants to CELF. They explained that these measures were designed to make French language and literature known in non-French-speaking countries and that CELF had also been asked to manage three schemes of ad hoc aid which were also designed to facilitate access to French books by readers in far-distant places.

- (2) Following the judgment of the Court of First Instance, the Commission must adopt a new decision.

- (7) By letter dated 7 August 1992, the Commission confirmed to SIDE the existence of aid to CELF, explained its purpose and informed the company that the measures at issue had not been notified. It stated, however, that the disputed aid did not seem likely to adversely affect trade between Member States. SIDE was accordingly asked to submit its comments.

- (3) This judgment is the culmination of a procedure the principal stages of which are set out below.

- (8) By letter dated 7 September 1992, SIDE informed the Commission that it intended to submit a complaint with regard to the discriminatory nature of the measures and the consequences for intra-Community trade, without however disputing the cultural purpose of the Ministry of Culture, which was to see the spread of the French language and French literature.

⁽¹⁾ As of 1 December 2009, Articles 86, 87 and 88 of the EC Treaty became, respectively, Articles 106, 107 and 108 of the Treaty on the Functioning of the European Union (TFEU). In these three cases, the provisions are, in essence, the same. For the purposes of this Decision, references made to Articles 106, 107 and 108 of the TFEU are to be understood, as appropriate, as referring respectively to Articles 86, 87 and 88 of the EC Treaty.

⁽²⁾ OJ C 366, 5.12.1996, p. 7; OJ C 142, 23.6.2009, p. 6.

⁽³⁾ Case T-348/04 *Société internationale de diffusion et d'édition (SIDE) v Commission* [2008] ECR II-625.

⁽⁴⁾ OJ L 85, 2.4.2005, p. 27.

⁽⁵⁾ Coopérative d'exportation du livre français acts under the trading name of 'Centre d'exportation du livre français' (CELF).

(9) By Decision dated 18 May 1993 ⁽¹⁾, the Commission concluded that, given the special nature of competition in the book trade and the cultural purpose of the aid schemes at issue, the exemption provided for in former Article 92(3)(c) of the Treaty was applicable to them.

(10) By application dated 2 August 1993, SIDE filed an action for annulment of the Decision. By judgment of 18 September 1995 ⁽²⁾, the Court of First Instance (CFI) partially granted SIDE's request, annulling the Commission Decision of 18 May 1993 but only in relation to the measures granted to CELF with regard to small orders.

(11) The Court concluded that the Commission was in a position to adopt a favourable decision concerning the following three aid schemes administered by CELF on behalf of the State:

(a) subsidies for airfreight or airmail;

(b) the 'Page à Page' programme ⁽³⁾ (aid for the dissemination of French-language books in the countries of central and eastern Europe);

(c) the 'Programme Plus' (university textbooks in French for students in sub-Saharan Africa).

(12) The Court held that the Commission had obtained sufficient information on these three schemes to justify the finding that their impact on competition was negligible. The Court stated that 'as regards the cultural purpose of the aids at issue, it is common ground that the aim of the French Government is the spread of the French language and French literature'. The Court felt bound to conclude that determining the cultural purpose of the aid at issue did not pose any particular difficulties for the Commission and that it was not necessary for it to obtain further information in order to accept that its purpose was cultural.

(13) On the other hand, the Court found that, as regards the compensation granted exclusively to CELF for small

orders, the Commission should have thoroughly examined the conditions of competition in the sector concerned before expressing an opinion on the compatibility of the measures with the internal market.

(14) The Court therefore concluded (paragraph 76 of the judgment) that the Commission should have initiated the procedure provided by former Article 93(2) EC (now Article 108(2) TFEU), and it was therefore necessary to annul the Commission Decision of 18 May 1993 in so far as it concerned the aid granted exclusively to CELF for the purpose of offsetting the extra costs involved in handling small orders for French-language books placed by booksellers established abroad.

B. Second stage

(15) In accordance with the Court's judgment of 18 September 1995, the Commission decided, by Decision of 30 July 1996, to open a formal investigation procedure. Interested parties were invited to submit their comments to the Commission, and these were largely received during December 1996 and January 1997.

(16) Once its investigation was complete, on 10 June 1998 the Commission adopted Decision 1999/133/EC ⁽⁴⁾. It confirmed the cultural purpose of aid for small orders and considered that, on the basis of former Article 87(3)(d) of the Treaty, the said aid was not likely to affect trading conditions and competition in the Union to an extent that was contrary to the common interest with regard to the export market for French-language books.

(17) By a judgment dated 28 February 2002 ⁽⁵⁾, the Court of First Instance annulled the last sentence of Article 1 of the said Decision. The Court concluded that the Commission should have carried out the necessary verifications in order to obtain relevant data enabling it to distinguish the agency market from that of the export of French-language books in general.

(18) The Court found that, by failing to carry out such verification, the Commission had committed a manifest error of assessment in taking the export market for French-language books in general as the reference market when it was established that the contested aid was intended only for export agencies.

⁽¹⁾ Decision NN 127/92 'Aid to exporters of French books' (OJ C 174, 25.6.1993, p. 6).

⁽²⁾ Case T-49/93 *Société internationale de diffusion et d'édition (SIDE) v Commission* [1995] ECR II-2501.

⁽³⁾ Which subsequently became the 'A l'Est de l'Europe' programme.

⁽⁴⁾ OJ L 44, 18.2.1999, p. 37.

⁽⁵⁾ Case T-155/98 *Société internationale de diffusion et d'édition (SIDE) v Commission* [2002] ECR II-1179.

- (19) However, in its judgment of 22 June 2000 ⁽¹⁾, the Court of Justice rejected the appeal brought by the French authorities against the Commission Decision of 10 June 1998, without going into the substance of the case, and confirmed that, even if the aid could be considered compatible with the common market, this was irrelevant to the obligation to notify and that the obligation to give prior notification meant that the aid had to be suspended.

C. Third stage

- (20) Following the partial annulment of the Decision of 10 June 1998, the Commission asked the French authorities and SIDE, by letters dated 14 June 2002, to give their views on the grounds for the annulment of the Decision and, in particular, on the aspects relating to the relevant market.
- (21) The French authorities were asked to comment in particular on the special features of the CELF offer compared with those of other market operators, including SIDE. SIDE was asked to comment in particular on the notion of small orders and to indicate any special feature its offer might have compared with CELFs and those of the other market operators.
- (22) SIDE sent its reply to the Commission by letter dated 12 August 2002. The French authorities sent their reply by letter dated 17 September 2002.
- (23) Having asked SIDE, by letter dated 19 September 2002, to say whether its reply contained confidential information, and having obtained a negative reply on 30 September 2002, the Commission, by letter dated 17 October 2002, sent SIDE's reply together with its annexes to the French authorities for comment. It also asked them a series of further questions on this occasion.
- (24) By letter dated 30 October 2002, the Commission also asked SIDE some further questions, to which the company replied by letters dated 31 October 2002 and 9 December 2002. Following the Commission's request of 16 December 2002, SIDE informed it, by letter dated 23 December 2002, that its replies contained no confidential information and could be sent to the French authorities for comment.
- (25) Since the French authorities did not reply within the time limit, the Commission was obliged to send them a

reminder by letter dated 27 November 2002. By letter dated 19 December 2002, the French authorities sent a further request for an extension to the Commission.

- (26) On 9 January 2003, the Commission sent SIDE's reply of 23 December 2002 to the French authorities for comment. By letter dated 17 January 2003, the French authorities replied to the Commission's questions sent on 17 October 2002.
- (27) By letter dated 4 February 2003, the French authorities asked the Commission for a further extension in relation to the request for comments on SIDE's second reply, dated 23 December 2002. By letter dated 11 February 2003, the Commission granted the requested extensions in part. By letter dated 11 March 2003, the French authorities sent their reply to the Commission.
- (28) In the meantime, SIDE was received by the Commission's services at its request and was able to explain its view of the case from the beginning, at a meeting held on 4 March 2003.
- (29) At the end of this procedure, the Commission adopted Decision 2005/262/EC, concluding that the disputed aid was compatible on the basis of former Article 87(3)(d) of the Treaty, having established that the aid did not overcompensate for the costs of processing small orders.

D. Fourth stage

- (30) By its judgment of 15 April 2008, the Court of First Instance annulled the Commission Decision of 20 April 2004.
- (31) It concluded that, with regard to the part of the aid paid to CELF prior to 1 November 1993, the date of entry into force of the Treaty on European Union, the Commission had committed an error of law by considering that the aid at issue was compatible with the common market by virtue of former Article 87(3)(d) when the substantive law in force prior to 1 November 1993 should have been applied. In particular, the Court took into account the fact that the EU Treaty did not include any transitional provisions for the application of former Article 87(3)(d) and that the principle of legal certainty, barring exceptions, precluded a Community measure from taking effect from a point in time before its publication.

⁽¹⁾ Case C-332/98 *France v Commission, Aid for the Coopérative d'exportation du livre français* [2000] ECR I-4833.

(32) Moreover, the Court concluded that the Commission had committed a manifest error of assessment when examining the compatibility of the disputed aid by over-estimating the small order processing costs that were actually borne by CELF. In its Decision of 20 April 2004, the Commission did not take account of the actual costs of processing small orders but estimated these costs on the basis of the total costs borne by CELF (allocating a share of the total costs to the processing of small orders, using a different method of apportioning costs for each cost category). Multiplying factors were applied for certain categories of cost, bearing in mind the additional difficulties small order processing would entail in relation to CELF's other activities. The Court, however, considered that these difficulties would have been resolved through the use of tele-transmission, which related to two thirds of small orders. The Court therefore concluded that the Commission had made an error of judgment by applying multiplying factors to some costs (and, in any case, to the tele-transmitted orders) and concluded that, in the absence of the said multiplying factors, the costs related to small order processing would have been reduced and the trading results for the activity relating to small orders would have been positive (FRF 600 000, or EUR 91 469). According to the Court, the Commission had therefore not demonstrated the absence of overcompensation.

E. Fifth Phase

(33) Following the Court's judgment of 15 April 2008, the investigation procedure initiated by the Commission Decision of 30 July 1996 therefore remains open and the Commission has to adopt a new decision.

(34) Having regard to the grounds for the Court's judgment of 15 April 2008, and in view of the fact that the decision initiating the procedure dates back to 30 July 1996, the Commission wished to invite the French authorities and the parties concerned to submit their comments again.

(35) The Commission therefore adopted a decision extending the procedure dated 8 April 2009 ⁽¹⁾ (Decision C(2009) 2481, the 'decision extending the procedure'). By setting a new time limit for the submission of comments, this decision extending the procedure supplemented the decision initiating the procedure on 30 July 1996. It states that the two decisions should be regarded as forming an inseparable whole, that they will give rise to one and the same formal investigation procedure and that, should the description of facts and law or the Commission's preliminary assessment in the decision extending the procedure diverge from the decision

initiating the procedure on 30 July 1996, it would be appropriate to take into consideration only the decision extending the procedure.

(36) The Commission invited interested parties to submit their comments on the measure at issue.

(37) The Commission received comments from the French authorities on 9 June 2009 and from SIDE on 23 July 2009. It sent SIDE's comments to the French authorities on 24 August 2009, giving them the opportunity to comment on them, and received their comments on 24 September 2009.

(38) The French authorities did not, however, provide the detailed elements that were requested by the Commission in its decision extending the procedure and, in relation to the proportionality of the aid, merely referred back to information already provided on 17 September 2002, 17 January 2003 and 11 March 2003, which the Commission could not use as such due to the judgment of the Court of First Instance of 15 April 2008.

(39) By letter of 8 October 2009, the Commission's services therefore reminded the French authorities of their request for information on the specific points mentioned, indicating that if this information were not provided within ten working days, the Commission would have to take a final decision on the basis of the information at its disposal, in accordance with Article 13(1) of the procedural Regulation, after delivering, if appropriate, an information injunction in accordance with Article 10(3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽²⁾.

(40) By letter dated 21 October 2009, the French authorities informed the Commission that CELF had been put into receivership by judgment of the Paris Commercial Court dated 9 September 2009 and had ceased trading. Moreover, with regard to the elements requested in the Commission's letter of 8 October 2009, the French authorities indicated that they had no further information to provide and referred back to their comments sent on 9 June 2009.

(41) By decision dated 20 November 2009 (Decision C(2009) 9256, the 'injunction decision'), the Commission therefore decided to order France to present the information requested since, despite repeated requests, this information had not been provided.

⁽¹⁾ OJ C 142, 23.6.2009, p. 6.

⁽²⁾ OJ L 83, 27.3.1999, p. 1.

(42) By letter dated 2 December 2009, the French authorities indicated that they had no further information to give the Commission and referred back to their comments sent on 9 June 2009.

(43) It should be noted that, on 2 December 2009, the French authorities also sent a letter relating to the aid scheme known as the 'University and Scientific Books Programme' also called 'Programme Plus'. This aid scheme does not form the object of this Decision.

(44) By letter dated 22 December 2009, the Commission asked the French authorities for information on CELF's situation and applicable liquidation procedure. The French authorities replied on 27 January 2010. Clarifications were also provided on 9 March 2010 and 26 November 2010.

F. Proceedings before the national courts and preliminary questions

(45) It should, moreover, be noted that proceedings are under way in France before the national courts, and that they have given rise to referrals to the Court of Justice on the basis of Article 267 TFEU (former Article 234 EC). The main stages in these proceedings are briefly outlined below.

(46) SIDE referred the matter of the direct effect of former Article 88(3) EC to the French courts. By judgment of 5 October 2004, confirming a judgment of the Paris Administrative Court of 26 April 2001, the Paris Administrative Court of Appeal ordered the French State to recover the aid paid to CELF.

(47) After appealing to the Council of State, by judgment of 29 March 2006 this body confirmed certain aspects of the decision of the Administrative Court of Appeal, particularly the fact that the disputed aid was not of a purely compensatory nature for public service obligations ⁽¹⁾, that it could not be described as existing aid by the national judge and that CELF could not claim a legitimate expectation.

(48) Nevertheless, in its judgment of 29 March 2006, the Council of State also decided to stay proceedings on the appeal until the Court of Justice had issued its judgment on the preliminary questions it had raised

with it regarding the national judiciary's obligations in relation to State aid that had not been notified but was subsequently declared compatible with the common market by a decision of the Commission.

(49) In its judgment of 12 February 2008 ⁽²⁾, the Court of Justice ruled:

'The last sentence of Article 88(3) EC is to be interpreted as meaning that the national court is not bound to order the recovery of aid implemented contrary to that provision, where the Commission has adopted a final decision declaring that aid to be compatible with the common market, within the meaning of Article 87 EC. Applying Community law, the national court must order the aid recipient to pay interest in respect of the period of unlawfulness. Within the framework of its domestic law, it may, if appropriate, also order the recovery of the unlawful aid, without prejudice to the Member State's right to re-implement it, subsequently. It may also be required to uphold claims for compensation for damage caused by reason of the unlawful nature of the aid.

In a procedural situation such as that in the main proceedings, the obligation, arising from the last sentence of Article 88(3) EC, to remedy the consequences of the aid's unlawfulness extends also, for the purposes of calculating the sums to be paid by the recipient, and save for exceptional circumstances, to the period between a decision of the Commission of the European Communities declaring the aid to be compatible with the common market and the annulment of that decision by the Community court.'

(50) After considering the judgment of the Court of Justice of 12 February 2008, along with the previously mentioned judgment of the Court of First Instance of 15 April 2008, in its judgment of 19 December 2008, the Council of State annulled Articles 2, 3 and 4 of the above-stated judgment of 5 October 2004 of the Paris Administrative Court of Appeal and ruled as follows.

(51) Firstly, the Minister for Culture and Communication was ordered to recover the interest relating to the State aid paid to CELF since 1980 and up to the date of the Council of State judgment, calculated in accordance with Commission Regulation (EC) No 794/2004 ⁽³⁾. The Minister was then ordered to take the necessary steps to collect the interest due between the date of the Council of State's judgment and either the date when the compatibility of the aid with the common market was definitively noted or the date when the aid was finally returned.

⁽¹⁾ According to the Council of State, the Administrative Court of Appeal was able to legally ground its ruling on the fact that it was not established that the amount of aid did not exceed the costs resulting from the public service obligations imposed on CELF, and on the fact that no prior and transparent definition of the basis of the compensation had been given.

⁽²⁾ Case C-199/06 *Centre d'exportation du livre français (CELF), Ministry of Culture and Communication v Société internationale de diffusion et d'édition (SIDE)* [2008] ECR I-469.

⁽³⁾ OJ L 140, 30.4.2004, p. 1.

(52) In addition, the Council of State decided to stay proceedings until the Court of Justice had issued an opinion on the following preliminary questions:

‘1. May the national court stay proceedings concerning the obligation to recover State aid until the Commission of the European Communities has ruled, by way of a final decision, on the compatibility of the aid with the rules of the common market, where a first decision of the Commission declaring that aid to be compatible has been annulled by the Community judicature?’

2. Where the Commission has on three occasions declared the aid to be compatible with the common market, before those decisions were annulled by the Court of First Instance of the European Communities, is such a situation capable of being an exceptional circumstance which may lead the national court to limit the obligation to recover the aid?’

(53) On 11 March 2010 ⁽¹⁾, the Court of Justice deferred judgment on the said preliminary questions and ruled:

‘1. A national court before which an application has been brought, on the basis of Article 88(3) EC, for repayment of unlawful State aid may not stay the adoption of its decision on that application until the Commission of the European Communities has ruled on the compatibility of the aid with the common market following the annulment of a previous positive decision;

2. The adoption by the Commission of the European Communities of three successive decisions declaring aid to be compatible with the common market, which were subsequently annulled by the Community judicature, is not, in itself, capable of constituting an exceptional circumstance such as to justify a limitation of the recipient’s obligation to repay that aid, in the case where that aid was implemented contrary to Article 88(3) EC.’

2. DESCRIPTION OF THE DISPUTED MEASURE

(54) The French authorities informed the Commission that, in 1980, the Ministry of Culture had decided, in line with the French Government’s general policy guidelines on promoting French-language books and French literature, to grant aid to export agents accepting any kind of order, irrespective of its amount and profitability. These

measures were presumably introduced to alleviate the effects of market failure and to foster the continuation of activity relating to ‘small non-profitable orders’ in the export agency market.

(55) According to the French authorities, small bookshops, established in essentially non-French-speaking areas, sometimes with difficult access and/or remote, were experiencing serious supply difficulties, since their orders could not be met by the traditional distribution channels when the quantities of books ordered were insufficient or when the unit price of the books ordered was not high enough to make the service profitable.

(56) According to the French authorities, the aid at issue was therefore designed to allow export agencies to meet all orders from booksellers established abroad in essentially non-French-speaking areas, irrespective of amount, profitability or destination. The aim was to ensure, as part of France’s policy of supporting cultural diversity, the optimum distribution of books in the French language, thus promoting the dissemination of French literature throughout the world.

(57) The aid mechanism chosen by the French authorities, the Small Orders Programme, consisted of a grant intended to offset the extra costs of handling small orders, defined by the French authorities as being orders of FRF 500 (approximately EUR 76) or less.

(58) According to the French authorities, the company receiving the grants had to promise to provide the Ministry of Culture’s Book Directorate with all information concerning the general activity of the firm (overall turnover, financial accounts, provisional budgets, copies of the proceedings validating these figures, the auditor’s report where appropriate, and a summary salary scale), along with any documents relating to the activity to be subsidised, including in particular the grant utilisation account, substantiating that the services giving rise to the grant awarded the previous year had been carried out.

(59) In practice, only one firm, CELF, had qualified under the Small Orders Programme. According to the French authorities, the company had to justify the extra costs incurred each year by the small orders service in relation to its application for a grant for the following year. Specifically, one quarter of the grant awarded the previous year was paid at the start of the year, the balance being awarded in the autumn, after the authorities had examined the provisional budget of the recipient firm and the flows recorded in the first part of the financial year. It was agreed that if the amount of aid was not fully utilised, the balance would be deducted from the planned grants for the following year. In addition, the Ministry of Culture attended CELF’s board meetings and general meetings as an invited observer.

⁽¹⁾ Judgment of 11 March 2010 in Case C-1/09 *CELF, Ministry of Culture v SIDE*, not yet reported.

(60) After steadily declining from 1997 onwards, the aid at issue was abolished in 2002. Every year from 1980 to the end of 2001, CELF therefore received aid to reduce, according to the French authorities, the costs of processing small orders from abroad for books in French. In all, from 1980 until the end of 2001, CELF received approximately EUR 4,8 million by way of the aid at issue.

Table

Amounts of aid allocated to CELF since 1980 for processing 'small orders'

Information supplied by the French authorities

(amounts given in euro)

Year	Amount of aid	Year	Amount of aid
1980	91 469,41	1992	422 283,78
1981	91 469,41	1993	382 647,03
1982	205 806,17	1994	304 898,03
1983	164 644,94	1995	304 898,03
1984	137 204,12	1996	304 898,03
1985	141 777,59	1997	243 918,43
1986	248 491,90	1998	182 938,82
1987	214 953,11	1999	121 959,21
1988	213 428,62	2000	60 979,61
1989	259 163,33	2001	38 112,25
1990	304 898,03	2002	0
1991	373 500,09		

3. COMMENTS FROM FRANCE AND OBSERVATIONS FROM SIDE FOLLOWING THE EXTENSION OF THE PROCEDURE

(61) In their reply of 9 June 2009 to the decision extending the procedure, the French authorities made the following comments in particular.

(62) They first stated that they shared the Commission's analysis that the aid to CELF represented State aid and that the exemptions laid down in Article 107(2) and Article 107(3)(a) and (b) TFEU were not applicable.

(63) In terms of assessing the aid under Article 107(3)(c) and (d) TFEU, the French authorities did not provide any new information with regard to the proportionality of the aid.

(64) The French authorities also stated that they considered that the tasks allocated to CELF formed a public service within the meaning of Article 106(2) TFEU.

(65) The French authorities finally, and above all, pleaded the existence of exceptional circumstances that should lead the Commission not to recover the aid.

(66) As previously indicated, the French authorities did not therefore provide the detailed elements that were requested by the Commission in its decision extending the procedure, and merely referred back, with regard to the proportionality of the aid, to information already provided in 2002 and 2003, which the Commission could not use as such due to the Court judgment of 15 April 2008. After a reminder letter dated 8 October 2009, the Commission therefore decided, on 20 November 2009, to order the French authorities to submit the requested information, in application of Article 10(3) of Regulation (EC) No 659/1999. By letter dated 2 December 2009, the French authorities replied that they had no further information to give to the Commission.

(67) In its comments of 23 July 2009, SIDE made the following observations in particular.

(68) SIDE recalled that only CELF had benefited from the aid when, in its opinion, this activity was not specific to CELF since the act of honouring orders of all sizes, however small, coming from geographically dispersed bookshops, in order to group them together and issue larger orders to publishers, was specifically, in SIDE's opinion, the definition of the activity of an export agent. SIDE also stated that it was not due to an alleged lack of transparency that it had been refused the aid but because it was a private company and not a publishing cooperative.

(69) Moreover, SIDE contested in detail the fact that the aid was necessary. In this context, it considered, in particular, that the notion of 'small orders' was arbitrary and rejected the figures presented by the French authorities.

(70) In addition, SIDE considered that the aid could not be justified on the basis of Article 106(2) TFEU and based its opinion particularly on national rulings with regard to CELF's activity.

(71) Finally, SIDE indicated that it considered that, in this particular case, there were no exceptional circumstances that would enable the obligation to recover the aid to be limited.

4. ASSESSMENT OF THE AID

(72) It must be established whether the measure at issue constitutes State aid and whether it can, if appropriate, be considered compatible with the internal market. In the context of its assessment, the Commission must, in particular, take note of the judgment of the Court of First Instance of 15 April 2008.

A. Assessment of the measure pursuant to Article 107(1) TFEU

- (73) Article 107(1) TFEU provides that 'Save as otherwise provided by the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.
- (74) By way of introduction, as already stated in the decision extending the procedure, the Commission recalls that the Commission's conclusion that the measure at issue constitutes State aid within the meaning of the Treaty has never been challenged, either at the different stages of the procedure before the Commission or before the courts of the European Union ⁽¹⁾, nor even, moreover, before the national courts ⁽²⁾. Thus in their reply of 9 June 2009 to the decision extending the procedure, the French authorities indicated that they shared the Commission's analysis that the aid to CELF was State aid.
- (75) The Commission considers that the measure in question constitutes State aid within the meaning of Article 107(1) TFEU (former Article 87(1) EC), for the following reasons.
- (76) Firstly, the measure gives CELF an advantage, since it enables it to reduce the cost of its small orders. It is selective, given that in practice it has only benefited CELF.
- (77) Moreover, the measure is financed from the budgetary resources of the French State, i.e. from state resources. Its implementation was decided by the Ministry of Culture and the measure is therefore attributable to the French authorities.
- (78) Furthermore, the measure is likely to affect trade between Member States and distort competition. The aid is granted to French agents (in practice to CELF) who

export books in the French language principally to non-French-speaking countries. French agents are therefore competing, at least potentially, with other agents for the export of French-language books that may be established in other French-speaking countries of the EU (Belgium and Luxembourg). The fact that the impact on trade and the distortion of competition as a result of the measure seem to be small does not alter this conclusion. In line with the Court of Justice's established case law, the Commission is not required to determine the actual impact of aid on trade between Member States and the actual distortion of competition; it is sufficient that the aid is likely to have an impact on trade and distort competition.

- (79) Finally, the Commission considers that the conditions for application of the *Altmark* case law are not met. In its judgment of 24 July 2003 ⁽³⁾, the Court of Justice specified the conditions under which a grant to a company responsible for managing services of general economic interest does not constitute State aid: 'First, the recipient undertaking is actually required to discharge public service obligations and those obligations have been clearly defined; second, the parameters on the basis of which the compensation is calculated have been established beforehand in an objective and transparent manner; third, the compensation does not exceed what is necessary to cover all or part of the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations; fourth, where the undertaking which is to discharge public service obligations is not chosen in a public procurement procedure, the level of compensation needed has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.'
- (80) In this particular case, and without it being necessary to consider each of the conditions individually since they are cumulative, the Commission notes that the choice of CELF was not made in the context of a public procurement procedure and that the level of compensation was not determined on the basis of an analysis of the costs incurred by a typical undertaking, well run and adequately provided with production resources.
- (81) In these circumstances, the aid granted to CELF constitutes State aid within the meaning of Article 107(1) TFEU, since all the constituent elements of the concept of State aid are present.

⁽¹⁾ In its judgment of 15 April 2008, the CFI did not annul the first and second sentences of Article 1 of the Commission Decision of 20 April 2004, according to which 'The aid to the Coopérative d'exportation du livre français (CELFL) for processing small orders of French-language books, implemented by France between 1980 and 2001, is aid that is caught by Article 87(1) [EC]. Since France failed to notify the aid to the Commission before implementing it, the aid was granted unlawfully.'

⁽²⁾ For example, in its judgment of 19 December 2008, the Council of State considered that 'the way in which the sums paid to CELF are defined as State aid and the obligation to notify them as such cannot be separated'. In fact, in its interlocutory judgment of 29 March 2006, the Council of State had already, in particular, concluded that 'the Administrative Court of Appeal has neither misrepresented the file documents nor inaccurately defined the facts submitted to its appreciation by judging that the aid in question was not of a purely compensatory nature with regard to public service obligations and formed State aid subject to an obligation to notify the Commission in advance'.

⁽³⁾ Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark* [2003] ECR I-7747.

(82) And yet the French authorities did not notify the Commission of the measure in question. The aid was therefore granted in violation of Article 108(3) TFEU, which stipulates that the Commission must be informed of projects aimed at instituting or amending aid in sufficient time to be able to submit its comments. The aid was therefore granted unlawfully.

(83) As the measure in question thus constitutes State aid, it is necessary to assess its compatibility with the internal market.

B. Assessment of the measure pursuant to Article 107(2) and (3) TFEU

(84) The Commission considers that the exemptions listed in Article 107(2) TFEU are not applicable in this case, since the measures in question were clearly not intended to achieve the objectives defined therein.

(85) Nor does the aid satisfy the conditions for the exemption established in Article 107(3)(a) TFEU, since it was not intended to promote the development of the areas that were eligible for this provision. The exemption provided for in Article 107(3)(b) concerning the promotion of the execution of an important project of common European interest cannot be applied in this case either, since the aid in question was not intended to promote this kind of project. Since the aid was also not intended to remedy a serious disturbance in the French economy, the exemption in the second part of Article 107(3)(b) is not applicable in the case in point.

(86) The Commission must therefore look into the applicability of Article 107(3)(c) and (d) TFEU (former Article 87(3)(c) and (d) EC).

(87) Given the judgment of the Court of First Instance of 15 April 2008, a distinction must be made between the aid granted after the entry into force of the Treaty on European Union (1 November 1993) and that granted before its entry into force, to which the substantive rules in effect during the period in question must be applied.

(88) To this end, the Commission takes note of the fact that the grant awarded the previous year was paid to CELF at the start of the year, the balance being awarded in the following autumn, after the authorities had examined the provisional budget of the recipient firm and the flows recorded in the first part of the financial year. If the amount of aid was not fully utilised, the balance would be deducted from the planned grants for the following year. The grant paid for 1993 was therefore paid partly at the start of 1993 and the balance allocated in autumn 1993. The decision to grant aid for 1993 was taken by the French authorities at the end of 1992 or at the start of 1993, and in any case before the entry into force of the Treaty on European Union. The Commission

therefore considers that the aid paid in 1993 should be assessed according to the legal rules applicable prior to the entry into force of the Treaty on European Union.

(a) Assessment of the aid pursuant to Article 107(3)(d) TFEU

(89) Article 107(3)(d) TFEU (former Article 87(3)(d) EC) states that 'Aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest may be considered to be compatible with the internal market'.

(90) It is therefore necessary to verify whether the aid paid to CELF between 1994 and the end of 2001 did indeed have a cultural purpose and whether it affected trading conditions and competition in the European Union to an extent that was contrary to the common interest or not.

(i) Cultural purpose

(91) Firstly, the Commission recalls that the cultural purpose of the aid paid to CELF was admitted by the Court of First Instance in the above-cited judgment of 18 September 1995. Thus in paragraph 62 of its judgment, the Court stated that 'as regards the cultural purpose of the aids at issue, it is common ground that the aim of the French Government is the spread of the French language and French literature. In that connection, the Court finds also that the information available to the Commission when it adopted its decision, including the facts contained in the letter from the applicant's legal adviser of 7 September 1992, was capable of supporting its assessment that that aim was a real and proper one. Accordingly, the Court must conclude that determining the aim of the aids at issue did not pose any particular difficulties for the Commission and that it was not necessary for it to obtain further information in order to accept that their purpose was cultural.'

(92) The French authorities stated that the aid at issue had a cultural purpose consisting of encouraging the distribution of French-language books in non-French-speaking countries. It was thus a proactive policy aimed at safeguarding and encouraging cultural diversity at the international level.

(93) The preservation and promotion of cultural diversity are among the founding principles of the European model. They are set out in Article 167(1) TFEU (former Article 151(1) EC). 'The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore', and again in Article 167(4), which states that 'The Union shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures'.

- (94) The Commission considers, therefore, that the aid granted to CELF by the French authorities for marketing French-language works did indeed pursue a cultural purpose.
- (ii) The criterion of affecting trading conditions and competition in the Union to an extent that is contrary to the common interest
- (95) The Commission must verify whether the measures in question were really necessary and proportional in relation to the cultural policy objective pursued by the French authorities.
- (96) By way of introduction, it should be recalled that, in line with the above-cited judgment of the Court of First Instance of 28 February 2002, the measures at issue must be considered within the context of the export agency market for French-language books.
- (97) Firstly, the need for the aid must be questioned.
- (98) According to the French authorities, the measures were designed in 1980, by the Ministry of Culture, at a time when certain actors in the industry (Groupe Hachette and Messageries du livre) wanted to quit the export agency market. According to the French authorities, the disputed mechanism was introduced to encourage operators to become involved in the market, so that all orders for French-language books from bookshops in non French-speaking areas could be met. This ensured that French-language books could reach all bookshops, including the very smallest in far distant countries, even if they only needed a few books, and often, moreover, published by different publishers.
- (99) For its part, SIDE indicated that, particularly in the context of the comments it sent following the decision extending the procedure, the aid in question was not necessary. Whilst it is true that some actors had withdrawn from the export agency business in 1980, SIDE recalls that it was precisely at this time that it was itself created to intervene on the market. Moreover, SIDE contests the fact that CELF had the specific activity of processing small orders. In particular, SIDE questions the figures provided by the French authorities and considers that data for CELF and SIDE with regard to proportion, each company's respective turnover, number of invoices and number of order lines were, in fact, quite similar. More broadly, SIDE questions the notion of 'small orders' as defined by the French authorities. According to SIDE, this notion is arbitrary as the cost of processing an order does not depend on its amount but on the number of lines.
- (100) The Commission considers that there is no need to draw a definitive conclusion with regard to the need for the aid since the conditions of need and proportionality are cumulative and it will be concluded in recital (123) that the condition of proportionality is not shown to be fulfilled.
- (101) Secondly, the Commission considers that the impact on trade within the European Union and distortion of competition caused by the measure are very low, given in particular the amounts in question, the very low substitutability of books in the French language and those of another language, and the considerable gap existing between the volume of French-language books exported to non-French-speaking countries from France, on the one hand, and Belgium and Luxembourg, on the other.
- (102) More specifically, with regard to the export agency market for books in French, the Commission notes that, as part of their export agency activity, CELF and SIDE distribute books in non-French-speaking countries and territories. In French-speaking countries, the local market is covered by large publishers through their subsidiaries or representatives. The export agency has only a very marginal role, therefore, in the French-speaking markets, which are, however, the main outlets for books in French.
- (103) In the national export agency market for French-language books, there are general agents such as SIDE and CELF and, to a lesser extent, specialist agents who also sell, on a very small scale, directly to end users and who would therefore in some way be in competition with the two general agents, along with a certain number of bookshops servicing orders for foreign bookshops and online booksellers even on an occasional basis, whose activity was, however, relatively low at the time of the measures in question.
- (104) In the relevant market, the complainant was therefore the main operator affected by the disputed measures. On the one hand, the French authorities state that the Small Orders Programme was in principle accessible to any firm applying, provided it accepted the conditions on which the aid was granted. They state that the Ministry of Culture's rejection of SIDE in 1991 was justified by SIDE's refusal to submit to the required obligation of transparency in order to benefit from the said aid. On the other hand, SIDE indicated that the French authorities' rejection was linked to the fact that it was a private company and not a publishing cooperative. Moreover, in 1996, following the annulment of the Commission Decision of 18 May 1993, the Ministry of Culture, wishing to put an end to the proceedings, pointed out to SIDE that the aid scheme for small orders was not by nature reserved for CELF. By letter dated 3 September 1996, the Ministry offered the company a meeting to examine whether it was able to provide, under the same conditions of transparency, the same services as CELF. During a meeting on 26 September 1996, SIDE executives told the Ministry of Culture that they refused to benefit from a programme whose compatibility with Community law could be called into question by the Commission.

- (105) In any case, the elements mentioned above in recitals (103) *et seq.* seem to indicate that the impact on trading conditions and competition in the European Union on the part of the measures in question was relatively limited.
- (106) In order to establish if the measure is proportional, however, the Commission must also compare, thirdly, the amount of aid received with the costs borne by CELF in achieving the purpose pursued by the French authorities.
- (107) To this end, the different stages in the orders handling process must be recalled, and on which the different parties agree:
- (a) receipt of the bookseller's order form;
 - (b) encoding of the order;
 - (c) inputting of the order;
 - (d) dispatch of the order to the publisher;
 - (e) receipt of the books;
 - (f) allocation of space ('compartment') to each customer for storage of the books ordered;
 - (g) packaging.
- (108) According to the French authorities, CELF bore certain costs linked to the processing of 'small orders'. The French authorities consider that, within the export agency market, some orders generate extra costs such that the service cannot be profitable. The French authorities stated that they had taken the threshold of FRF 500 (EUR 76,22) as the definition of a 'small order' and that this threshold had been empirically determined. They explained that some orders of less than FRF 500 might be profitable, whereas others, above that amount, might not. The objective was to find an economically acceptable solution, so that CELF wanted to take on small orders even if they were not profitable enough.
- (109) As the Commission indicated in its decision extending the procedure, it is for the French authorities, in the context of analysing compatibility, to establish the amount and veracity of costs borne by CELF.
- (110) In this regard, in its decision extending the procedure, the Commission asked the French authorities to provide a certain number of elements in order to be able to
- draw conclusions from the judgment of the Court of First Instance and rule on the proportionality of the aid. The Commission asked, in particular, for the following information:
- sufficient justification of the reasons why the data relating to costs linked to small orders was not available for the different years in question and sufficient demonstration of the reasons why an extrapolation solely on the basis of 1994 was considered acceptable;
 - data enabling consideration of actual costs (and not mere estimates) for the processing of small orders in 1994 (at least for some cost categories) and possible sufficient justification of the reasons why an estimate of the costs on the basis of the total costs incurred by CELF was considered acceptable;
 - convincing methods for apportioning costs that would enable part of the total costs to be allocated to small order processing, and which could in particular be applied to each cost category during the whole period in question;
 - information on trends in the proportion of orders tele-transmitted over the years in question;
 - the costs related to small orders in the absence of unjustified multiplying factors;
 - calculations of the costs incurred by CELF for the processing of small orders without the application of multiplying factors, or with multiplying factors applied only in the case of orders which were not tele-transmitted;
 - the position of the French authorities on the calculation of the Court of First Instance by which, in the absence of the said multiplying factors, the costs linked to small order processing had been reduced by more than FRF 635 000 (EUR 96 805,13), even without taking into account cost categories other than those for which a multiplying factor of 'three' had been applied. It should be recalled that, according to the Court's calculation, the operating results from small order processing would consequently have been positive by more than FRF 600 000 (EUR 91 469,41);
 - the French authorities' position on the possibility of CELF obtaining a reasonable profit.

- (111) In particular, as already indicated in its decision extending the procedure, in the absence of additional explanations and updated data from the French authorities, the Commission is not in a position to use the grant utilisation statements for small order processing that the French authorities provided for the years 1994 to 2001 in their letter dated 17 January 2003, nor the explanations as to how the analytical compatibility analysis was conducted, provided in the letter dated 5 March 1998.
- (112) The French authorities did not, however, provide the detailed information that was requested by the Commission in its decision extending the procedure, and merely referred back, with regard to the proportionality of the aid, to elements already provided on 17 September 2002, 17 January 2003 and 11 March 2003, which the Commission could not use due to the judgment of the Court of First Instance of 15 April 2008.
- (113) By letter of 8 October 2009, the Commission's services therefore reminded the French authorities of their request for information on the specific points mentioned, indicating that if this information was not provided within a period of ten working days, the Commission would have to take a final decision on the basis of the information at its disposal, in accordance with Article 13(1) of Regulation (EC) No 659/1999, after issuing, if appropriate, an information injunction, in application of Article 10(3) of Regulation (EC) No 659/1999.
- (114) By letter dated 21 October 2009, the French authorities indicated that they had no further information to provide and referred back to their comments sent on 9 June 2009.
- (115) By a decision dated 20 November 2009 (the 'injunction decision'), the Commission therefore decided to order France to present the information requested since, despite repeated requests, this information had not been provided.
- (116) By letter dated 2 December 2009, the French authorities indicated that they had no further information to give the Commission and referred back to their comments sent on 9 June 2009.
- (117) Article 13 of Regulation (EC) No 659/1999 states that 'The examination of possible unlawful aid shall result in a decision ... If a Member State fails to comply with an information injunction, that decision shall be taken on the basis of the information available.'
- (118) As previously indicated, the French authorities did not provide the Commission with the information that it had requested on several occasions and, most recently, in its injunction decision of 20 November 2009.
- (119) In accordance with Article 13 of the procedural Regulation, the Commission is therefore taking a decision on the basis of the available information, recalling, in any case, that it is for the French authorities to demonstrate the compatibility of the aid in question with the internal market, and thus the proportionality of this aid.
- (120) In the light of the judgment of the Court of First Instance of 15 April 2008 and the elements available to the Commission, it does not seem justified to extrapolate on the basis of estimated costs for processing small orders in 1994. Nor does it appear possible to use measures for apportioning costs that are not justified and to base one's argument on data to which unjustified multiplying factors have been applied, particularly to tele-transmitted orders. In the light of the costs calculation linked to the processing of small orders that appears in the Court judgment, and given that the French authorities have failed to provide the Commission with information that would enable it to clarify the doubts it raised in its decision extending the procedure, with regard to the proportionality of the aid, the loss-making nature of the activity of small order processing has not been established.
- (121) The Commission therefore considers that it has not been demonstrated that the aid paid during the period 1994-2001 was in line with the criterion of proportionality.
- (122) This aid is therefore not compatible on the basis of Article 107(3)(d) TFEU.
- (b) *Assessment of the aid pursuant to Article 107(3)(c) TFEU*
- (123) Article 107(3)(c) TFEU (former Article 87(3)(c) EC) states that 'Aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest may be considered to be compatible with the internal market'.
- (124) In accordance with the judgment of the Court of First Instance of 15 April 2008, the exemption stipulated in Article 107(3)(d) TFEU (former Article 87(3)(d) EC) cannot be applied to the aid that was paid to CELF over the period 1980 to 1993. It is therefore necessary to establish whether the exemption stipulated in Article 107(3)(c) TFEU (former Article 87(3)(c) EC) could be applicable.

- (125) Such consideration should also be given to the aid paid between 1994 and the end of 2001, for which the Commission concluded in recital (124) above that the exemption stipulated in Article 107(3)(d) TFEU (former Article 87(3)(d) EC) was not applicable.
- (126) In order to determine whether Article 107(3)(c) TFEU could serve as a basis for compatibility, the Commission must verify whether the aid in question did indeed have a common interest purpose and whether it affected trading relations to an extent that was contrary to the common interest.
- (127) The Commission considers that the aid was in pursuit of a common interest, as previously identified. It should, in this regard, be recalled that the introduction, in the Treaty on European Union, of the exemption stipulated in former Article 87(3)(d) EC (now Article 107(3)(d) TFEU) confirmed the policy followed by the Commission on the basis of former Article 92(3)(c) prior to the entry into force of the Treaty on European Union. The Commission had in the past authorised aid with a cultural purpose on the basis of this Article. This practice was confirmed by the European Union courts, for example, in the above-cited judgment of the Court of First Instance of 18 September 1995 in which the Court concluded that the Commission was in a position to adopt, on the basis of former Article 92(3)(c) EC, a favourable decision with regard to three aid schemes managed by CELF (aid to air freight, the 'Page à Page' programme and 'Programme Plus').
- (128) On the other hand, the Commission considers that it has not been demonstrated that the aid was proportional to the intended purpose.
- (129) In its decision extending the procedure, and later in its injunction decision, the Commission asked the French authorities to present their comments on the proportionality of the aid pursuant to Article 107(3)(c) TFEU.
- (130) As previously indicated, the French authorities did not provide the Commission with the information that would enable the proportionality of the aid paid since 1980 to be demonstrated, a request most recently made to them in the Commission's injunction decision of 20 November 2009.
- (131) In accordance with Article 13 of Regulation (EC) No 659/1999, the Commission is therefore taking a decision on the basis of the available information, recalling, in any case, that it is for the French authorities to demonstrate the compatibility of the aid in question with the internal market, and thus the proportionality of this aid.
- (132) *Mutatis mutandis*, the reasoning stated previously with regard to the proportionality of the aid in the context of Article 107(3)(d) TFEU, is transposable here.
- (133) The Commission therefore considers that it has not been demonstrated that the aid paid was in line with the criterion of proportionality.
- (134) In conclusion, the Commission considers that the measure in question is not compatible with the internal market on the basis of Article 107(3)(c) TFEU.
- C. Assessment of the measure pursuant to Article 106(2) TFEU**
- (135) The French authorities have argued on many occasions that CELF was entrusted with a public service task and that, consequently, the disputed measures had to be assessed pursuant to Article 106(2) TFEU (former Article 86(2) EC).
- (136) This Article states that 'undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.'
- (137) Firstly, in this particular case, the question must be asked as to whether there was a service of general economic interest. It emerges from the Court of Justice's case law that, with the exception of sectors for which this issue already forms the object of EU regulations, the Member States have a wide margin of discretion regarding the nature of services that would be classified as being services of general economic interest. Consequently, it is the Commission's task to ensure that this margin of discretion is used without manifest error when it comes to defining services of general economic interest.
- (138) In this particular case, the French authorities indicated on several occasions that CELF had been given a specific public service task of a cultural nature, consisting of honouring all orders for French-language books coming from bookshops abroad, whatever the volume and nature of the order. The Commission considers that this task could, in fact, form a service of general economic interest.

- (139) Secondly, it should be verified whether CELF had actually been given responsibility for this service of general economic interest. In accordance with EU case law, the companies in question must have been entrusted with managing the service by the State by means of one or more official acts, the form of which may be determined by each Member State.
- (140) In this particular case, the French authorities produced a number of agreements signed between CELF and the Ministry of Culture which they consider demonstrate that CELF was indeed given responsibility for the service of general economic interest in question. According to the French authorities, the Book and Reading Directorate concluded annual agreements with CELF, up until 2001.
- (141) However, despite the Commission's requests, including in its injunction decision, the French authorities have not produced copies of the public service agreements for each of the years in question.
- (142) In addition, the precise nature of the public service obligations is not established in the agreements available to the Commission (and thus the amount at which orders are considered 'small orders' is not stated in the agreement). It emerges that, even for these years, there is no document indicating the public service obligations entrusted to CELF with sufficient clarity.
- (143) Consequently, the Commission considers that it has not been demonstrated that CELF was actually entrusted with the public service in question by means of an official act for each of the years in question.
- (144) Finally, and without it being necessary to conclude as to the condition of necessity, since the conditions are cumulative, the Commission considers that the condition of proportionality has not been met.
- (145) In the agreements available to the Commission, there is no explanation of the way in which the amount of aid was calculated. Moreover, CELF's obligation to provide grant utilisation statements for the aid was not accompanied by a clear definition of the parameters of the calculation or monitoring of the cost of the public service activity, which would enable verification that there was no overcompensation. In addition, while the agreements did anticipate a carry forward from 1 year to another if part of the grant was not used, they contained no clarity as to how this mechanism would operate. It would seem, moreover, that this mechanism was not applied. Finally, in more general terms and in the context of analysing the proportionality criterion with regard to Article 107(3) TFEU, the French authorities did not provide any new information demonstrating the proportionality of the aid with regard to the different points of the Court's judgment.
- (146) The French authorities thus did not provide the Commission with the information that would enable the proportionality of the aid in the context of Article 106(2) TFEU to be demonstrated, and this was last requested of them in its injunction decision of 20 November 2009.
- (147) In accordance with Article 13 of the procedural Regulation, the Commission is therefore taking a decision on the basis of the available information, recalling, in any case, that it is for the French authorities to demonstrate the compatibility of the aid in question with the internal market, and thus the proportionality of this aid.
- (148) For the same reasons as those mentioned in the context of the analysis of the proportionality of the aid pursuant to Article 107(3)(d) TFEU, the Commission therefore considers that it has not been demonstrated that the aid paid was in line with the criterion of proportionality.
- (149) The Commission therefore considers that the conditions for application of Article 106(2) TFEU are not met.
- (150) In conclusion, the Commission therefore considers that the aid mechanism known as the Small Orders Programme, implemented by France in favour of CELF between 1980 and the end of 2001, constitutes aid incompatible with the internal market.
- 5. LIMITATION PERIOD, EXCEPTIONAL CIRCUMSTANCE, LEGITIMATE EXPECTATION, PRINCIPLE OF LEGAL CERTAINTY, PRINCIPLE OF PROPORTIONALITY**
- (151) When a State aid is unlawful and incompatible, the Commission must first order the Member State in question to take all necessary measures to recover the aid from its recipient. Article 14 of Regulation (EC) No 659/1999 states that, 'Where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary.'
- (152) The Commission must, nevertheless, take the following elements into account.

- (153) Firstly, Article 15 of Regulation (EC) No 659/1999 stipulates that the powers of the Commission to recover aid are subject to a limitation period of 10 years. The limitation period commences on the day when the unlawful aid is granted to the beneficiary, and any measure taken by the Commission, or a Member State acting at the request of the Commission, with regard to the unlawful aid suspends the limitation period.
- (154) As already stated in its decision extending the procedure, without receiving specific comments on this point from the interested parties, the Commission considers that the limitation rule mentioned in the previous recital is applicable in this particular case. In its judgment of 5 October 2006 in the *Transalpine* case⁽¹⁾, the Court of Justice held that, in so far as Regulation (EC) No 659/1999 contains rules of a procedural nature, these are applicable to all administrative procedures in relation to State aid pending before the Commission at the time when Regulation (EC) No 659/1999 entered into force, namely on 16 April 1999. This case falls within the context of the formal investigation procedure opened on 30 June 1996.
- (155) In this particular case, the aid having been paid each year since 1980 and the Commission having asked for information from the French authorities in April 1992, the aid paid to CELF in 1980 and 1981 cannot be recovered because it is time barred.
- (156) Secondly, the Commission is not calling for recovery of the aid if, by so doing, it would run counter to a general principle of EU law. According to European Union case law, the Commission is required to take exceptional circumstances into consideration that might justify its waiving the order for recovery of the aid unlawfully granted when the said recovery runs counter to a general principle of EU law.
- (157) It was in this context that, in its decision extending the procedure, the Commission called on the French authorities, the beneficiary of the aid and any other interested parties to submit their comments on the application, in this case, of the principle of legitimate expectation, the principle of legal certainty, or any other principles which might lead the Commission not to require the recovery of the aid.
- (158) The Commission notes that, in their comments, the French authorities considered that exceptional circumstances did exist that would enable the obligation to recover the aid to be limited. In contrast, SIDE considered that such exceptional circumstances were not present.
- (159) In this regard, the Commission recalls that, in the context of the preliminary questions raised in the Court of Justice in the above-cited *CELF* case, the court that referred the case had asked, in essence, whether the Commission's adoption of three successive decisions declaring aid compatible, which were then annulled by the Community judicature, was not in itself likely to form an exceptional circumstance that might justify a limitation of the beneficiary's obligation to return this aid.
- (160) In its above-cited judgment of 11 March 2010, the Court of Justice first referred to its judgment of 12 February 2008, in which it indicated in paragraphs 65 et seq. that, after the annulment of a positive decision of the Commission, the recipient of unlawfully implemented aid is not precluded from relying on exceptional circumstances on the basis of which it had legitimately assumed the aid to be lawful and thus from declining to refund that aid⁽²⁾.
- (161) Nevertheless, the Court of Justice also stated that a legitimate expectation on the part of an aid recipient could not arise from a positive decision of the Commission either when that decision was challenged within the deadlines for judicial appeal then annulled by the EU Courts, or when the deadline for appeal had not passed or, in the case of an appeal, so long as the EU Courts have not delivered a definitive ruling⁽³⁾.
- (162) In this particular case, in its judgment of 11 March 2010, the Court of Justice indicated that the annulment of the Commission's third positive decision by judgment of the Court of First Instance on 15 April 2008 was not, in itself, liable to give rise to a legitimate expectation or to constitute an exceptional circumstance⁽⁴⁾.
- (163) The Court of Justice added that the unusual succession of three annulments demonstrated, *a priori*, the complexity of the case and, far from giving rise to a legitimate expectation, was more likely to increase the beneficiary's doubts as to the compatibility of the aid in question. It acknowledged that a succession of three actions leading to three annulments amounted to a very unusual situation. Such circumstances, however, arose as part of the normal operation of the judicial system, which granted individuals who believed that they had suffered as a result of the unlawfulness of aid the possibility of bringing proceedings for the annulment of successive decisions which they considered to be the cause of that situation.

⁽¹⁾ Case C-368/04 *Transalpine Ölleitung in Österreich* [2006] ECR I-9957, paragraph 34.

⁽²⁾ Paragraphs 42 et seq.

⁽³⁾ Paragraphs 66 to 68.

⁽⁴⁾ Paragraphs 50 et seq.

- (164) The Court of Justice considered, moreover, that in this particular case the existence of an exceptional circumstance could not be upheld in the light of the principle of legal certainty ⁽¹⁾. So long as the Commission had not taken a decision of approval and so long as the period for bringing an action against such a decision had not expired, the recipient could not be certain as to the lawfulness of the aid, with the result that neither the principle of the protection of legitimate expectations nor that of legal certainty could be relied upon.
- (165) In addition, as the Court of Justice indicated in its judgment of 11 March 2010, ⁽²⁾ the existence of an exceptional circumstance could not be upheld in the case in point in the light of the principle of proportionality. Abolishing unlawful aid by means of recovery was the logical consequence of a finding that it was unlawful. Accordingly, the recovery of such aid, for the purpose of restoring the previously existing situation, could not in principle be regarded as disproportionate to the objectives of the provisions of the Treaty relating to State aid.
- (166) Consequently, the Court of Justice concluded that the adoption by the Commission of three successive decisions declaring aid to be compatible, which were subsequently annulled by the Community judicature, was not in itself capable of constituting an exceptional circumstance such as to justify a limitation of the recipient's obligation to repay that unlawful and incompatible aid.
- (167) Given the above, and in the absence of any other fact capable of constituting an exceptional circumstance, the Commission therefore concludes that in this particular case there is no exceptional circumstance capable of limiting CELF's obligation to repay the aid in question (apart from the sums paid in 1980 and 1981, as previously explained).
- (170) In application of Article 14(2) of Regulation (EC) No 659/1999, the aid to be recovered must include compound interest from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its effective recovery.
- (171) Nevertheless, it follows from the judgment of the Court of Justice of 12 October 2000 in the *Magefesa* case ⁽⁴⁾ that, when a company is in liquidation, and the national legislation so provides, interest falling due after the company's declaration of insolvency on the amount of aid unlawfully received before such declaration is not due.
- (172) In this regard, it should be noted that, in their note sent on 27 January 2010, the French authorities informed the Commission of CELF's current situation.
- (173) Given CELF's financial situation, the company was placed in a solvency safeguard procedure on 25 February 2009. A receiver was appointed.
- (174) In the context of the dispute over State aid, the French State declared the following claims: EUR 11 885 785,02 (by way of interest payments, in accordance with the above-stated judgment of the Council of State of 19 December 2008) and EUR 4 814 339,9 (by way of possible reimbursement of the aid capital received over the period 1980-2001).
- (175) According to the French authorities, the debt statement showed that, out of total declared liabilities of EUR 21 254 232,29, the contested debts totalled EUR 17 045 039,50.
- (176) Noting that a recovery plan was clearly impossible, the insolvency administrator requested that the solvency safeguard procedure be replaced with an official ruling of bankruptcy, particularly in the light of the claims declared by the State.
- (177) By judgment of 9 September 2009 noting the existence of liabilities that ruled out the prospect of a continuation plan, the Paris Commercial Court ruled on the insolvency of CELF and appointed a receiver. The Court set a two-year period at the end of which the completion of the bankruptcy proceedings would be examined. The French authorities have indicated that disputes under way and/or to come could nonetheless justify delaying the date of completion of bankruptcy proceedings.

6. RECOVERY

- (168) In application of Article 14 of Regulation (EC) No 659/1999, the French authorities must therefore recover the amount of aid paid to CELF by way of the Small Orders Programme during the years 1982 to 2001.
- (169) As can be seen from Table ⁽³⁾, the total amount of aid to be recovered from CELF, received during the years 1982 to 2001, amounts to EUR 4 631 401, to which interest should be added.

⁽¹⁾ Paragraph 53.

⁽²⁾ Paragraph 54.

⁽³⁾ See Table in recital 60 of this Decision.

⁽⁴⁾ Case C-480/98 *Commission v Spain* ('*Magefesa*') [2000] ECR I-8717.

(178) The French authorities have indicated that all of CELF's staff were made redundant and that the liquidation unit was dissolved on 31 December 2009. The only operations under way were aimed at recovering the remaining debts due to clients.

(179) The French authorities indicated in an e-mail dated 9 March 2010 that the liquidation procedure implemented in respect of CELF was in line with the normal rules for company liquidation procedures.

(180) According to the information that the Commission has received from the French authorities, CELF is therefore no longer exercising any economic activity.

(181) Consequently, given the liquidation procedure under way for CELF, and given their obligation to recover the incompatible aid, the French authorities must ensure that the applicable case law is followed in the case of the liquidation of the beneficiary company⁽¹⁾. This assumes, in particular, that CELF's assets will be sold at their market price, that the State will register its claims with regard to recovering the incompatible and unlawful aid in the liabilities of the bankrupt company, and that it will fully enforce its creditor's claim at all stages of the procedure until the liquidation is complete.

(182) With regard to the calculation of interest, it should be noted that, in French law, Article L 622-28 of the Commercial Code stipulates that 'the issuance of the commencement order [of the safeguard procedure] shall stay the legal and contractual interest, as well as any interest due to late payment and surcharges.'

(183) Consequently, in this case, the sums paid to CELF give rise to interest from the date on which they were placed at its disposal until 25 February 2009, the date of the decision of the Paris Commercial Court opening the insolvency safeguard procedure which led to a ruling on its formal receivership on 9 September 2009.

7. CONCLUSION

(184) The Commission finds that France unlawfully implemented aid in favour of CELF, in violation of Article 108(3) TFEU.

⁽¹⁾ See paragraphs 63 *et seq.* of the Notice from the Commission — Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid (OJ C 272, 15.11.2007, p. 4).

(185) This aid is incompatible with the internal market and must be recovered by the French authorities, with the exception of sums paid in 1980 and 1981, which are time barred.

(186) The French authorities must therefore recover from CELF an amount of EUR 4 631 401, to which interest should be added for aid paid annually since 1982. The sums to be recovered give rise to interest from the date on which they were placed at the disposal of the beneficiary until 25 February 2009, the date of the decision of the Paris Commercial Court commencing the insolvency safeguard procedure,

HAS ADOPTED THIS DECISION:

Article 1

The State aid granted unlawfully by France, in violation of Article 108(3) of the Treaty on the Functioning of the European Union, in favour of Coopérative d'exportation du livre français (CELF) is incompatible with the internal market.

Article 2

1. France is required to obtain reimbursement of the sum of EUR 4 631 401, corresponding to sums received by CELF over the period 1982 to 2001 by way of the aid referred to in Article 1.

2. The sums to be recovered shall give rise to interest from the date on which they were placed at the disposal of the beneficiary, until 25 February 2009, the date of the decision of the Paris Commercial Court commencing the insolvency safeguard procedure.

3. Interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004.

Article 3

1. Recovery of the aid referred to in Article 2 shall be immediate and effective.

2. France shall ensure that this Decision is implemented within 4 months of the date of its notification.

Article 4

1. Within 2 months of notification of this Decision, France shall provide the following information:

(a) the total amount (principal and interest) to be recovered from the beneficiary;

(b) a detailed description of the measures already taken and planned in order to comply with this Decision;

well as detailed information concerning the amounts of aid and interest already recovered from the beneficiary.

(c) documents demonstrating that the beneficiary has been given formal notice to repay the aid.

Article 5

This Decision is addressed to France.

2. France shall keep the Commission informed of the progress of the national measures taken to implement this Decision until complete recovery of the aid referred to in Article 2. It shall immediately forward to the Commission, at the latter's request, any information on the measures already taken and planned in order to comply with this Decision, as

Done at Brussels, 14 December 2010.

For the Commission
Joaquín ALMUNIA
Vice-President

COMMISSION DECISION

of 23 March 2011

implementing Council Directive 2002/55/EC as regards conditions under which the placing on the market of small packages of mixtures of standard seed of different vegetable varieties belonging to the same species may be authorised

*(notified under document C(2011) 1760)***(Text with EEA relevance)**

(2011/180/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed,⁽¹⁾ and in particular Article 26(3) thereof,

Whereas:

- (1) Some Member States have informed the Commission that there is a demand on the market for small packages of mixtures of vegetable varieties of the same species. It is therefore necessary to establish detailed requirements as regards such small packages.
- (2) Taking into account the demand in the Member States concerned, this Decision should cover all species falling within the scope of Directive 2002/55/EC. The maximum size for such small packages should be expressed as maximum net weight of the contained seed, and as defined in Article 2(1)(g) of Directive 2002/55/EC.
- (3) Detailed rules should be established for the labelling of such small packages to ensure traceability and adequate information of users.
- (4) Member States should report to the Commission by the end of 2012 on the application of this Decision in order to allow the Commission to assess the effectiveness of this Decision and to identify possible issues that may need to be further addressed.
- (5) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry,

HAS ADOPTED THIS DECISION:

Article 1

Member States may authorise their own producers to place on the market small packages of mixtures of standard seed of

species listed in Article 2(1)(b) of Directive 2002/55/EC. Such small packages may only contain different varieties of the same species.

Article 2

The small packages referred to in Article 1 may contain seed up to a net weight as laid down in Article 2(1)(g) of Directive 2002/55/EC.

Article 3

Member States shall ensure that small packages, as referred to in Article 1, bear a supplier's label or a printed or stamped notice.

This label or that notice shall contain the following information:

- (a) the words 'EU rules and standards';
- (b) the name and address or the identification mark of the person responsible for affixing the label;
- (c) the year of sealing expressed as: 'sealed... [year]', or the year of the last sampling for the purposes of the last testing of germination expressed as: 'sampled... [year]'; the indication 'use before ... [date]' may be added;
- (d) the words 'mixture of varieties of ... [name of the species]';
- (e) the denomination of the varieties;
- (f) the proportion of the varieties, expressed as net weight or as number of seeds;
- (g) the reference number of the lot given by the person responsible for affixing the labels;
- (h) the net or gross weight or number of seeds;
- (i) where weight is indicated and granulated pesticides, pelleting substances or other solid additives are used, the nature of the chemical treatment or additive and the approximate ratio between the weight of clusters or pure seeds and the total weight.

Article 4

Member States shall report to the Commission on the application of this Decision by 31 December 2012.

⁽¹⁾ OJ L 193, 20.7.2002, p. 33.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 23 March 2011.

For the Commission

John DALLI

Member of the Commission

III

(Other acts)

EUROPEAN ECONOMIC AREA

DECISION OF THE STANDING COMMITTEE OF THE EFTA STATES

No 5/2010/SC

of 9 December 2010

amending Decision of the Standing Committee No 4/2004/SC establishing a Financial Mechanism Committee

THE STANDING COMMITTEE OF THE EFTA STATES,

HAS DECIDED AS FOLLOWS:

Having regard to the Agreement on the European Economic Area as adjusted by the Protocol Adjusting the Agreement on the European Economic Area, hereinafter referred to as the EEA Agreement,

Having regard to the Agreement between the European Union, Iceland, the Principality of Liechtenstein and the Kingdom of Norway on an EEA Financial Mechanism 2009-2014,

Having regard to Protocol 38b on the EEA Financial Mechanism inserted into the EEA Agreement by the aforementioned Agreement between the European Union, Iceland, the Principality of Liechtenstein and the Kingdom of Norway on an EEA Financial Mechanism 2009-2014,

Having regard to the Agreement between the Kingdom of Norway and the European Union on a Norwegian Financial Mechanism for the period 2009-2014,

Having regard to the Decision of the Standing Committee of the EFTA States No 4/2004/SC of 3 June 2004 establishing a Financial Mechanism Committee ⁽¹⁾,

Having regard to the Decision of the Standing Committee of the EFTA States No 1/2010/SC of 28 January 2010 establishing an EEA Financial Mechanism Interim Committee 2009-2014 ⁽²⁾,

Article 1

In Article 1 of Decision No 4/2004/SC the second sentence of paragraph 1 shall be replaced by the following wording:

‘The Committee shall manage the EEA Financial Mechanism 2004-2009 and the EEA Financial Mechanism 2009-2014.’

Article 2

This Decision shall take effect on the day of entering into force or on the day of provisional application of the legal act establishing the EEA Financial Mechanism for the period 2009-2014.

Article 3

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, 9 December 2010.

*For the Standing Committee**The Chairman*

Stefán Haukur JÓHANNESSON

The Secretary-General

Kåre BRYN

⁽¹⁾ OJ L 52, 23.2.2006, p. 54.

⁽²⁾ OJ L 53, 4.3.2010, p. 19.

DECISION OF THE STANDING COMMITTEE OF THE EFTA STATES**No 6/2010/SC****of 9 December 2010****extending the tasks of the Office for the EEA Financial Mechanism and the Norwegian Financial Mechanism**

THE STANDING COMMITTEE OF THE EFTA STATES,

HAS DECIDED AS FOLLOWS:

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol Adjusting the Agreement on the European Economic Area, hereinafter referred to as the EEA Agreement,

Having regard to the Decision of the Standing Committee of the EFTA States No 1/2004/SC of 5 February 2004 establishing an Office for the EEA Financial Mechanism and the Norwegian Financial Mechanism,

Having regard to the Agreement between the European Union, Iceland, the Principality of Liechtenstein and the Kingdom of Norway on an EEA Financial Mechanism 2009-2014,

Having regard to Protocol 38b on the EEA Financial Mechanism, inserted into the EEA Agreement by the aforementioned Agreement between the European Union, Iceland, the Principality of Liechtenstein and the Kingdom of Norway on an EEA Financial Mechanism 2009-2014,

Having regard to the Agreement between the Kingdom of Norway and the European Union on a Norwegian Financial Mechanism for the period 2009-2014,

Recalling that Article 1, paragraph 1 of the Decision of the Standing Committee of the EFTA States No 1/2004/SC only gives the Office for the EEA Financial Mechanism and the Norwegian Financial Mechanism a mandate to administer the 2004-2009 Financial Mechanisms,

Considering the need for a Secretariat to administer the EEA and Norwegian Financial Mechanisms 2009-2014,

Article 1

1. The Office for the EEA Financial Mechanism and the Norwegian Financial Mechanism, established by Standing Committee Decision No 1/2004/SC, is hereby additionally entrusted with the task of serving as a secretariat assisting in the management of the EEA Financial Mechanism 2009-2014 and the Norwegian Financial Mechanism 2009-2014.

2. Regarding the EEA Financial Mechanism 2009-2014, the Office shall report to the EEA Financial Mechanism Committee.

3. Regarding the Norwegian Financial Mechanism 2009-2014, the Office shall report to the Norwegian Ministry for Foreign Affairs.

Article 2

This Decision shall take effect on the day of entering into force or on the day of provisional application of the legal act establishing the EEA Financial Mechanism for the period 2009-2014.

Article 3

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, 9 December 2010.

For the Standing Committee

The Chairman

Stefán Haukur JÓHANNESSON

The Secretary-General

Kåre BRYN

IV

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

EFTA SURVEILLANCE AUTHORITY DECISION

No 290/09/COL

of 1 July 2009

on the aid granted in the airline pilot education sector in Troms County

(Norway)

THE EFTA SURVEILLANCE AUTHORITY ⁽¹⁾,

HAVING CALLED on interested parties to submit their comments ⁽⁷⁾ and having regard to the comments received,

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

Whereas:

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

I. FACTS

1. Procedure

HAVING REGARD to Article 1(2) of Part I and Articles 7(2), 7(5), 13 and 14 of Part II of Protocol 3 to the Surveillance and Court Agreement,

By letter dated 17 March 2006, North European Aviation Resources AS (hereinafter referred to as 'NEAR' or 'the complainant') filed a complaint against the granting of aid, through the Revised National Budget, to the Norwegian Aviation College (hereinafter referred to as 'NAC'). The letter was received and registered by the Authority on 20 March 2006 (Event No 366921). By letter dated 25 August 2006, received and registered by the Authority on 28 August (Event No 385471), NEAR filed an extension to their complaint concerning various monies granted to NAC by Troms County and the Municipality of Målselv.

HAVING REGARD to the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement ⁽⁴⁾, in particular the Chapters on public service compensation and on State guarantees,

HAVING REGARD to the Authority's Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3 of the Surveillance and Court Agreement ⁽⁵⁾,

By letters dated 11 April 2006 (Event No 369763) and 7 September 2006 (Event No 385794), the Authority informed the Norwegian authorities of the complaint and the extension thereto and invited them to comment upon the same.

HAVING REGARD to the Authority's Decision No 389/06/COL of 13 December 2006 to initiate the procedure provided for in Article 1(2) of Part I of Protocol 3 to the Surveillance and Court Agreement ⁽⁶⁾,

After having examined those comments, the Authority informed the Norwegian authorities, by letter dated 13 December 2006 (Event No 401508), that it had decided to initiate the procedure laid down in Article 1(2) of Part I of Protocol 3 to the Surveillance and Court Agreement in respect of aid granted in the airline pilot education sector in Troms County ⁽⁸⁾. The Government of Norway was invited to comment on the decision. By letter dated 15 February 2007, received and registered by the Authority on 19 February 2007 (Event No 410248), the Norwegian authorities submitted their comments.

⁽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⁾ 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 EFTA Surveillance 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 EEA Supplement No 32, 3.9.1994. The Guidelines were last amended on 25 April 2007. Hereinafter referred to as the State Aid Guidelines.

⁽⁵⁾ OJ L 139, 25.5.2006, p. 37 and EEA Supplement No 26, 25.5.2006, p. 1.

⁽⁶⁾ Hereinafter referred to as the Decision to open the formal investigation.

⁽⁷⁾ OJ C 77, 5.4.2007, p. 35, and EEA Supplement No 17, 5.4.2007, p. 16.

⁽⁸⁾ For more detailed information on the correspondence between the Norwegian authorities and the Authority, reference is made to the Decision to open the formal investigation procedure.

Decision No 389/06/COL to initiate the formal investigation procedure was published in the *Official Journal of the European Union* and the EEA Supplement thereto. The Authority called on interested parties to submit their comments ⁽⁹⁾.

The Authority received two sets of comments from interested parties. By letter dated 10 October 2007 (Event No 446322), the Authority forwarded these to the Norwegian authorities, and gave them the opportunity to react. By letter dated 13 November 2007 (Event No 451773), the Norwegian authorities submitted comments.

2. Description of the proposed measure

2.1. Measures under examination

(a) Grant in favour of NAC

According to the Norwegian Government, Parliament introduced a grant of NOK 4,5 million for 'airline pilot education located in Tromsø/Bardufoss' in June 2005. The Ministry of Education and Research allocated this grant directly to NAC on 8 July 2005.

A further NOK 4,5 million was written into the 2006 State Budget and was proposed again in the draft budget for 2007. However, according to the Norwegian Government, Parliament was notified of the complaint and further allocations to NAC were suspended pending resolution of the matter.

(b) Project Funding for Norsk Luftfartshøgskole

Troms County confirmed that, by decision of 6 July 2006, it granted project funding of NOK 1,9 million to the Norsk Luftfartshøgskole (NLH), a body which the Norwegian authorities describe as a non-commercial foundation established for the purposes of facilitating pilot education in the north of Norway.

(c) Loan to NAC from Troms County and subsequent remission thereof

According to Troms County, it granted a loan of NOK 400 000 to NAC in 1999 in accordance with the Regional Loan Scheme notified to and authorised by the Authority. The original loan foresaw repayment at prevailing interest rates after an initial 3-year period. Following extensions to the repayment period, Troms County granted remission of the loan by decision of 6 July 2006 on the condition that all other creditors participate in the sanitation of NAC debts.

(d) Loan guarantee

Troms County confirmed that it has guaranteed NOK 500 000 of NAC debt for the period from 1 September 2002 until

1 September 2012 without asking NAC to pay a guarantee premium.

(e) Loan to NLH from the Municipality of Målselv

The Municipality of Målselv stated that, by decision of 19 July 2006, it granted a subordinate loan of NOK 1,3 million to NAC at an interest rate of 8,5 % per annum, the full amount plus interest falling due no later than end 2007. By decision of 24 April 2008, the Municipality of Målselv extended the repayment deadline until 31 December 2008. The Norwegian authorities have since confirmed that the loan was in favour of and paid out to NLH.

2.2. The objective of the measures under examination

(a) Grant

According to the Norwegian Government, both the capacity of the Air Force to train pilots for service outwith the armed forces and the financial support for airline pilot education provided by the SAS airline have been declining in recent years. The contested funding may be seen as a consequence of these changes. The grant may be used only to ensure the continuance of existing airline pilot education at NAC, the concern being to maintain the existing capacity for educating airline pilots in Norway and to avoid a crisis in pilot recruitment.

(b) Project Funding for NLH

According to Troms County, the project funding aims to ensure that the existing aviation competence in the County is developed and strengthened.

(c) Loan to NAC from Troms County and subsequent remission thereof

According to Troms County, the financial situation of NAC made it necessary to grant extensions to the deadline for repayment of the loan and eventually to write it off completely.

(d) Loan guarantee

The guarantee was required of the owners of NAC in proportion to their ownership share and in respect of a loan to finance a flight simulator.

(e) Loan to NLH from the Municipality of Målselv

No objectives specified.

⁽⁹⁾ See footnote 7.

2.3. National legal basis for the aid measure

The direct grant, amounting to NOK 4,5 million, is provided for in the context of the Revised National Budget for 2005 (Kap. 281, post 1). This budget line also includes NOK 574 000 for other purposes not related to the measures under examination.

The other measures are a result of decisions of either Troms County Council or the Executive Committee of the Municipality of Målselv.

2.4. Recipients

NAC is a limited liability company registered in Norway since 1993. It was owned by SAS (60 %), Norsk Luftfartshøgskole (29 %), and other smaller shareholders. In November 2006, NLH increased its participation in NAC to 95,65 %. The remaining 4,35 % of the shares are held by Hurtigruten AS.

NAC, which runs the only airline pilot education in the Tromsø/Bardufoss region, was found to be the only possible beneficiary for the parliamentary grant.

NAC is also the specific beneficiary of the (subsequently remitted) loan and loan guarantee from Troms County. The project funding was granted by Troms County to Norsk Luftfartshøgskole, as was the loan from the Municipality of Målselv.

Norsk Luftfartshøgskole is a foundation registered in Norway since 1997. Its founding members are Troms fylkeskommune, SAS Flight Academy and the Municipalities of Bardu and Målselv. The purpose of this non-profit-making foundation is registered as the renting of property and its objective is stated as facilitating the operation of airline pilot education in the north of Norway by developing, initiating and coordinating educational offers and securing the necessary premises.

3. The decision to open the formal investigation procedure

In the Decision to open the formal investigation procedure, the Authority came to the preliminary conclusion that the existence of State aid could not be excluded and that, based on the information available, doubts subsisted as to the compatibility of that aid with the functioning of the EEA Agreement.

4. Comments by the Norwegian authorities to that Decision

The Norwegian authorities submitted that the contested funding does not constitute State aid because the education offered by

NAC is not an economic activity and therefore does not fall to be assessed under Article 61 EEA. The Norwegian authorities also argued that, even if the activity fell within the scope of that provision, the contested funding would be compensation for the provision of a service of general economic interest within the meaning of Article 59(2) EEA.

The Norwegian authorities submit that education, even when it falls outside the scope of the national education system, may be viewed as a non-economic activity. The content and standard of the course offered by NAC is set out in a public act, the Norwegian Aviation Act. Moreover, the possibility is currently being explored of integrating pilot education into the national education system. The Norwegian authorities identify a potential recruiting problem in the current trend to place the burden of the costs of the education on the students (traditionally costs were shared between aviation companies and the students). The cost of offering such education is high and, although the education is provided by private operators, it does not appear to involve gainful economic activity⁽¹⁰⁾. The Norwegian authorities therefore submit that, in line with the case law of the ECJ, the contested funding simply represented the State fulfilling its duty towards its population in the educational field.

In the alternative, the Norwegian authorities are of the view that the contested funding, when examined in the light of Article 59(2) EEA, is lawful. They highlight the discretion left to the State when defining what constitutes a 'service of general economic interest' and submit that this concept applies to the pilot education provided by NAC. They highlight, in this respect, that the specific education offered by NAC, being the only integrated Airline Traffic Pilot Programme for which the training takes place in Norway, has played a key role in the recruitment of pilots to serve the Norwegian market. Thus the support of pilot training at NAC is a matter of national education policy directly linked to the long-term benefit to the public and does not discriminate, there being no other providers of integrated education in Norway.

The Norwegian authorities submit that the first condition in Article 59(2) EEA, that of entrustment, is achieved by way of the specific budget allocation 'for airline transport pilot education in Troms County/Bardufoss' together with the Norwegian Aviation Act. The Norwegian authorities submit that the second condition involves a check for 'manifest error' as opposed to a 'reasonable relationship between the aim and the means employed'. They submit that the derogation applies if it is necessary in order to allow the undertaking to perform its tasks on acceptable financial terms⁽¹¹⁾. The Norwegian authorities exclude the possibility of overcompensation, noting that the allocation of NOK 4,5 million covers only 20 % of the costs of the airline pilot programme.

⁽¹⁰⁾ The Norwegian authorities appear to refer to the winding up proceedings initiated by the board of NAC as support for this proposition.

⁽¹¹⁾ The fact that NAC is currently the subject of bankruptcy proceedings is used to support this statement.

The Norwegian authorities highlight that the requirement in Article 59(2) EEA that trade is not affected 'to such an extent as would be contrary to the interests of the Contracting Parties' is less strict than the criterion of effect on trade for the purposes of establishing the presence of aid under Article 61(1) EEA. They cite the balancing exercise referred to by the Court of Justice in its case law⁽¹²⁾, and consider that the burden of proof in this matter lies with the Authority⁽¹³⁾.

Specific comments by Troms County

Troms County is of the opinion that securing a proper airline pilot education is a vital task of national importance. It views its participation, both direct (loan guarantee and remission of loan) and indirect (as owner of NLH), in the financial restructuring of NAC as normal market practice and underlines that its contribution was based on the condition that other creditors participated in the debt restructuring⁽¹⁴⁾.

Troms County explained that the guarantee secures a loan to finance a flight simulator. The ultimate owners of NAC were required, in order to avoid upfront payment, to guarantee the loan. The guarantee by Troms County represents 12,27 % of the loan amount. Troms County highlights the parent-subsidiary nature of the relationship between NAC and the County. It also states that any premium, had one been demanded, would not have exceeded the *de minimis* threshold for aid.

Specific comments by the Municipality of Målselv

The Municipality of Målselv underlines that the financial difficulties experienced by NAC at the time of the loan were perceived to be temporary and, as an interested party, the Municipality participated in the ongoing refinancing process. The Municipality submits that, as long as the risks are adequately and objectively assessed at the time the decision to grant a loan was made, the Authority should desist from reviewing the level of interest set unless it appears that there were no objective bona fide grounds for reasonably expecting that a private investor would have lent money in the circumstances of the case.

5. Comments submitted by interested third parties

By letter dated 3 May 2007, received and registered by the Authority on the same day (Event No 420011), Rørosfly AS submitted comments to the Decision to open the formal investigation. They support the complainant and underline the competitive advantage public support of only one flight school entails.

By letter dated 4 May 2007, received and registered by the Authority on the same day (Event No 420422), the complainant submitted comments to the decision to open the formal investigation. As a preliminary remark, the complainant refutes the description of the pilot education system given by the Norwegian authorities and maintains that both it and NAC have the same licence (granted by the Norwegian Civil Aviation Authority) and both offer integrated education in Norway to become an Airline Transport Pilot⁽¹⁵⁾.

With reference to the argument that NAC does not perform an economic activity, the complainant recalls the breadth of the term 'undertaking', suggesting that the test is whether the entity is engaged in an activity that is an economic one, involving the offering of goods or services on the market which could, at least in principle, be carried on by a private undertaking in order to make profits⁽¹⁶⁾. In the view of the complainant, NAC conducts a typical commercial business with an evident economic purpose. In support of this position, the complainant refers to NAC's extensive advertising as characteristic of market participants. NEAR also refers to the increase in its own intake of students since the winding-up of NAC as illustrative of the competitive relationship between the various flight schools.

With regard to the application of Article 59(2) EEA, the complainant queries the precise content of the SGEI invoked by the Norwegian authorities. All flight schools in Norway must comply with the same national and international rules. Consequently, the activities of NAC as a whole cannot be regarded as an SGEI; NAC must provide something 'extra' compared to the other schools. The complainant identifies the provision of the entire training in Norway as the only possible 'extra' element offered by NAC. And yet, while the characteristic of a SGEI is that it will not be provided without public intervention, NEAR offers integrated pilot education with training exclusively in Norway (at a lower price than that offered at NAC). The complainant therefore concludes that classifying the service in question as a SGEI amounts to manifest error. In any event, the complainant argues that the conditions provided for in Article 59(2) EEA are not satisfied. The complainant contests the statement by the Norwegian authorities that entrustment in an official act took place via the Norwegian Aviation Act and the budget allocation. Moreover, with reference to the State Aid Guidelines on public service compensation, neither the precise nature of the SGEI nor the parameters for calculating, controlling and reviewing the compensation are specified in any official act. In this respect, the complainant notes that the Norwegian authorities have not documented the costs related to any

⁽¹²⁾ Case 202/88 *Commission v France (Telecommunications Terminal Equipment)* [1991] ECR I-1223, paragraph 12.

⁽¹³⁾ The Norwegian authorities cite Case C-159/94 *Commission v France* [1997] ECR I-5815, paragraphs 112 and 113, in support of this statement.

⁽¹⁴⁾ Troms County submitted evidence that two other, privately owned companies with outstanding loans of NOK 200 000 each also granted remission of the debt to NAC as part of the restructuring exercise.

⁽¹⁵⁾ The complainant notes that students at NEAR are offered the possibility to carry out their entire training in Norway but that most choose to take up the opportunities offered abroad. The difference is that NAC does not offer these foreign placements and so all students carry out their training only in Norway.

⁽¹⁶⁾ The complainant refers, in this respect, to Cases C-41/90 *Höfner* [1991] ECR I-1979 and C-244/94 *Fédération Française des Sociétés d'Assurance* [1995] ECR I-4013. On the other hand, the purely social function of the entity in Case C-159/91 *Poucet et Pistre* [1993] ECR I-637 is used as an example of classification as other than an undertaking.

SGEI (i.e. the costs related to a potential 'obligation' to carry out all flying lessons in Norway). Indeed, the complainant submits that the same education could be offered by NEAR for a lower price ⁽¹⁷⁾.

Finally, the complainant comments on the 'market investor principle'. It is submitted that NAC has been in financial difficulty at least since SAS decided to withdraw its support in 2005 and that, at the time of the 'investments', the Norwegian authorities had no basis for expecting a reasonable return on the capital invested. With respect to the fact that the authorities had an ownership stake in NAC, the complainant refers to case law of the ECJ and submits that, contrary to that case law, the 'investments' were not made in the abstract but that social, regional and sectoral considerations came into play. More specifically, the complainant submits that Norsk Luftfartshøgskole must be regarded as an undertaking within the meaning of Article 61(1) EEA and that the grant of NOK 1,9 million to that entity constitutes an economic advantage which threatens to distort competition. Moreover, the fact that the foundation is non-profit-making, investments can hardly be said to comply with the market investor principle. The complainant reiterates the points made above and concludes that Norsk Luftfartshøgskole is not entrusted with a public service obligation under Article 59(2) EEA, nor does the amount granted bear any relation to the cost of any alleged SGEI.

The complainant also identifies, from the comments of the Norwegian authorities to the Decision to open the formal investigation, two further potential elements of aid: NLH relieved NAC of its rent obligations in relation to the dormitory for students for a period of time and it reduced the level of payments due for the lease of the hangar and administration facilities. The complainant considers that these actions could not have been undertaken in line with the market investor principle and that they therefore constitute State aid from NLH to NAC.

With regard to the remission of the loan ⁽¹⁸⁾, the complainant submits that it is not sufficient to demonstrate that private investors also granted remission and maintains its claim that the loan remission amounts to State aid which is not in line with the market investor principle. In particular, the complainant notes that no evidence documenting a restructuring plan which would lead to an adequate return on investment has been submitted by the County.

With regard to the loan guarantee, the complainant contests the statement by the Norwegian authorities that parent companies

do not tend to charge a guarantee premium on loans to subsidiaries and refers to sections 3-8 and 3-9 of the Norwegian Act relating to limited liability companies in support of its claim that the opposite is true.

Finally, with regard to the interest rate of 8,5 % charged on the loan from the Municipality of Målselv, the complainant reiterates the considerations underlying the market investor principle and concludes that, given the financial situation of NAC, the interest rate does not reflect the risk attached to the loan and should be classified as a grant/subsidy which a private investor would not have made.

6. Comments by the Norwegian authorities to those submissions

The Norwegian authorities responded to the comments submitted by Rørosfly and the complainant by stressing, firstly, that NAC no longer exists as a legal entity and, secondly, that since NEAR does not actively encourage students to take their entire training in Norway, support to NAC was perceived to be the best way to contribute to the aviation learning environment in Norway.

II. ASSESSMENT

1. Scope of the present decision

In their comments to the Decision to open the formal investigation, the Norwegian authorities describe the relationship between NLH and NAC and mention that, in light of the financial difficulties faced by the latter, NLH temporarily suspended rent obligations in relation to the dormitory it rented to NAC and reduced the payments due as a result of the lease of hangar and administration facilities.

The complainant highlights this action as two further instances of aid to NAC while the authorities maintain that such action was normal in the circumstances. These measures were not part of the Decision to open the formal investigation.

Moreover, in light of the information provided by the Norwegian authorities regarding the recipient of the loan from the Municipality of Målselv, that measure no longer corresponds to the description in the Decision to open the formal investigation. The Norwegian authorities have also confirmed that both this loan and the project funding allocated to NLH from Troms County were transferred to NAC 'for services necessary to carry out a development project'. Again, this transfer of funds was not mentioned in the Decision to open the formal investigation.

⁽¹⁷⁾ Based on an estimated cost of education per student at NAC of NOK 937 500, the complainant submits that NAC is over-compensated, the cost of education at NEAR and exclusively in Norway being NOK 512 000.

⁽¹⁸⁾ The complainant notes that the County did not comment on the initial granting of the loan, nor on the postponement of repayment in 2003. It maintains its claim that these elements also amount to State aid.

In relation to the change in recipient of the loan from the Municipality of Målselv, the Authority considers that the contested measure, funds from the municipality at a preferential rate, remains identifiable with that described in the Decision to open the formal investigation and will therefore assess that measure in relation to the new beneficiary rather than NAC. However, concerning the other points raised, it does not appear clear to the Authority that no doubts can be raised as to the conformity of these various measures with the State aid rules. As a result, these measures cannot be concluded upon and will not be considered further in the present decision. The scope of this decision therefore extends only to the measures described at I-2.1(a) to (e) above.

2. The presence of State aid within the meaning of Article 61(1) EEA

Article 61(1) EEA 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.’

Before looking at these criteria in turn, a preliminary point should be made regarding the nature of the activity carried out by NAC, namely the provision of airline pilot education.

It would appear that a competitive market exists for the provision of such services, the cost of which is not insubstantial. The fact that the service presents an educational aspect does not, of itself, alter the economic nature of the activity. On the contrary, the case law invoked by the Norwegian Government would appear to support the view that while courses provided under the national education system do not constitute services within the meaning of Article 50 EC⁽¹⁹⁾, courses which are financed essentially from private funds, in particular by students or their parents, do fall within the scope of that Article⁽²⁰⁾. Moreover, this reasoning, which relates to the notion of ‘service’ within the meaning of Articles 49 EC and 36 EEA, can be transposed to the field of State aid and the question of whether an activity is economic and thus performed by an undertaking within the meaning of Article 61(1) EEA⁽²¹⁾. It has not been argued, nor does the information on the file support a conclusion that the course at NAC is not funded essentially from private funds. The Authority therefore concludes that the airline pilot education provided by NAC before it went bankrupt was an economic activity and that NAC is an undertaking for the purposes of Article 61 EEA.

⁽¹⁹⁾ Article 37 EEA is framed in identical terms.

⁽²⁰⁾ See Case C-109/92 *Wirth* [1993] ECR I-6447, paragraphs 14-17. The EFTA Court has recently confirmed this view in Case E-5/07 *Private Barnehagers Landsforbund*, judgment of 21 February 2008 not yet reported, at paragraphs 80 *et seq.*

⁽²¹⁾ Case E-5/07 *Private Barnehagers Landsforbund*, cited above, at paragraph 80.

2.1. Presence of state resources

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

The contested funding consists of a direct grant allocated in the context of the Revised National Budget, or of monies disbursed or advantages granted by the local authorities. It is therefore clear that all the contested funding was granted by the State or through State resources.

2.2. Favouring certain undertakings or the production of certain goods

First, the aid measure must confer on the recipients advantages that relieve it of charges that are normally borne from its budget. However, only transfers of resources which favour undertakings fall to be assessed under Article 61(1) EEA. Thus, before turning to the specific measures under examination, it must first be considered whether the recipients of the funding are undertakings within the meaning of that provision.

As noted above, NAC is clearly an undertaking and the fact that it performs an educational function does not, in the present case, alter that conclusion.

However, it would appear that NLH does not carry out any form of economic activity in relation to which it receives funding. According to settled case law, it is the activity consisting in offering goods and services on a given market that is the characteristic feature of an economic activity⁽²²⁾. The Authority has not been presented with any information indicating that facilitating the operation of airline pilot education in the north of Norway may be defined in those terms. Indeed, again in line with settled case law, only services normally provided for remuneration are to be considered as services within the meaning of the EEA Agreement⁽²³⁾. Not only is the NLH not paid for what it does, but the funding which it disburses in line with its aim to facilitate the operation of airline pilot education in the north of Norway is more akin to the social objectives identified by the EFTA Court in the *Private Barnehagers* case, when it held that the Norwegian State was not seeking to engage in gainful activity but was fulfilling its duties towards its own population in the social, cultural and educational fields⁽²⁴⁾. Indeed, the funding granted to NLH from Troms County resembles more an internal transfer of resources, thereby earmarking the funding for use in the promotion of airline pilot education in the geographical area for which the County is responsible, than a payment for services rendered. Further disbursement of these funds to undertakings such as NAC, engaged in the economic activity of providing airline pilot education, may indeed amount to State

⁽²²⁾ Case C-205/03 P *FENIN* [2006] ECR I-6295, paragraph 25.

⁽²³⁾ Case E-5/07 *Private Barnehagers Landsforbund*, cited above, at paragraph 81.

⁽²⁴⁾ Case E-5/07 *Private Barnehagers Landsforbund*, cited above, at paragraph 83.

aid but, as noted above at II-1, fall outside the scope of this decision. As regards the initial disbursements to NLH, the Authority concludes that, at least at the time the disbursements were made, the NLH itself could not be considered to be a recipient of aid and the two measures in relation to which NLH was the beneficiary need not be assessed further. The Authority will therefore only consider the existence of an advantage in relation to the measures of which NAC was the beneficiary, namely:

- direct grant of NOK 4,5 million from the State budget,
- loan from Troms County and subsequent remission thereof,
- loan guarantee granted by Troms County without payment of a premium.

A direct grant aimed at alleviating operational costs clearly satisfies this condition.

According to the Norwegian authorities, the loan from Troms County was granted under the Regional Loan Scheme notified to and authorised by the Authority in 1999. Remission of a loan also lessens the financial burden which the recipient would otherwise have to bear. However, no advantage, within the meaning of Article 61(1) EEA, can be said to accrue to the beneficiary if normal market principles govern that action. According to the information provided by the Norwegian authorities, in late 2005, the following entities were long-term unsecured creditors of NAC: Sparebanken Finans Nord-Norge AS (NOK 2 877 000), Troms County (NOK 400 000), Indre Troms Samvirkelag BA (NOK 200 000) and Eriksen Eiendom (NOK 200 000). The Norwegian authorities confirmed that the latter two, both of which are to be considered as private investors, authorised remission of the loans they had granted to NAC, while Sparebanken Finans Nord-Norge granted postponement of instalments for the second half of 2006, but not exemption from interest payments. Thus, while public authorities must pursue their debtors with the same vigour as a private creditor, the Authority considers that since private market players also granted remission of outstanding loans to NAC, the same action by Troms County does not amount to State aid.

Section 2.1 of the State Aid Guidelines on State guarantees stipulates that State guarantees constitute a benefit to the borrower and a drain on State resources when no premium is paid in return for the guarantee. It would therefore appear that the guarantee granted to NAC by Troms County conferred an advantage on NAC, thus favouring that undertaking within the meaning of Article 61(1) EEA.

Second, the aid measure must be selective in that it favours 'certain undertakings or the production of certain goods'. The measures under examination were directed specifically at NAC and are therefore clearly selective.

2.3. *Distortion of competition and effect on trade between Contracting Parties*

For the measures to constitute State aid, they must distort competition and affect trade between the Contracting Parties. On the basis that NAC is in direct competition with other institutions in Norway and around Europe which offer airline pilot education according to common European rules (Joint Aviation Authorities Flight Crew Licence, or JAA-FCL), it would appear that the funding strengthens the position of the recipient and thus has the potential to distort competition between these various schools and affect trade between the States in which they are established.

2.4. *Conclusion*

On the basis of the foregoing considerations, the Authority concludes that the following measures do not amount to State aid within the meaning of Article 61(1) EEA:

- project funding to NLH from Troms County (I-2.1(b) above),
- the grant of remission of a loan from Troms County in favour of NAC (I-2.1(c) above), and
- loan to NLH from the Municipality of Målselv (I-2.1(e) above),

and that the following measures, granted in favour of NAC, do amount to State aid within the meaning of Article 61(1) EEA:

- direct grant of NOK 4,5 million from the State budget (I-2.1(a) above), and
- loan guarantee granted by Troms County without payment of a premium (I-2.1(d) above).

3. **Procedural requirements**

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

The Norwegian authorities did not notify the aid measures described above to the Authority. The Authority therefore concludes that, in relation to the measures identified as aid (namely the direct grant and the loan guarantee described, respectively, at I-2.1(a) and (d) above), the Norwegian authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement. The support granted therefore amounts to 'unlawful aid' within the meaning of Article 1(f) of Part II of Protocol 3 to the Surveillance and Court Agreement.

4. Compatibility of the aid

4.1. Assessment under Article 61 EEA

None of the situations described in Article 61(2) EEA can be applied to the present case.

The region in question does not fall within the scope of Article 61(3)(a) EEA and paragraph (b) of Article 61(3) EEA does not apply to the present case.

The contested funding does not appear to promote horizontal Community objectives within the meaning of Article 61(3)(c) EEA directly, such as research and development, employment, the environment etc. Indeed, the Norwegian authorities have not invoked this derogation. The Authority therefore considers that the contested funding cannot be considered to be compatible with the functioning of the EEA Agreement within the meaning of that paragraph.

4.2. Assessment under Article 59(2) EEA

Pursuant to Article 59(2) EEA, 'undertakings entrusted with the operation of services of general economic interest ... shall be subject to the rules contained in this Agreement, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them, The development of trade must not be affected to such an extent as would be contrary to the interests of the Contracting Parties'.

The application of that provision has been developed in the State Aid Guidelines on public service compensation, paragraph 25 of which stipulates that the Guidelines will be applied to the assessment of non-notified aid which was granted after the adoption of those Guidelines. In all other cases, the provisions in force at the time the aid was granted will be applied. The two measures under examination pre-date the adoption of the Guidelines (20 December 2005).

No specific rules on public service compensation existed prior to the introduction of what was then Chapter 18C of the State Aid Guidelines (now simply called the Chapter on public service compensation). The Authority nevertheless finds it appropriate

to base the assessment of earlier measures on the Commission Communication on services of general economic interest in Europe ⁽²⁵⁾ read together with case law of the Court of Justice rendered prior to the granting of the aid.

Moreover, the Authority finds that the content of Chapter 18C of the State Aid Guidelines did not fundamentally alter the basis for assessment, but simply clarified what is required in order to fulfil the various criteria contained in Article 59(2) EEA.

Compatibility of the two measures under examination will therefore be assessed on the basis of the following (cumulative) principles, taking due account of the timing of the measures and with due regard to the fact that Article 59(2) EEA constitutes a derogation and as such must be interpreted restrictively:

- the service in question must be a 'service of general economic interest' and must be clearly defined as such,
- the undertaking in question must be officially entrusted with the provision of that service,
- the application of the competition rules would obstruct the performance of the particular tasks assigned to the undertaking in question, and
- development of trade must not be affected to an extent contrary to the interests of the Contracting Parties.

Service of general economic interest

EFTA States have a wide discretion in determining the level of services in the general economic interest and may, where necessary, impose public service obligations in order to ensure that level. The definition by a State of what it regards as a service of general economic interest is subject only to control for manifest error. However, in all cases, for the derogation in Article 59(2) EEA to apply, the public service mission must be clearly defined.

In this respect, it follows from case law that the concept of 'service of general economic interest' covers services that exhibit special characteristics as compared to the economic interest of economic activity in general ⁽²⁶⁾. One such special feature may be the fact that the public authorities consider that the service needs to be provided even where the market may not have sufficient incentive to do so ⁽²⁷⁾. Thus, where certain services are deemed to be in the general interest and market forces do not result in satisfactory provision of such services, the State concerned can lay down specific public service obligations to secure the level of service provided.

⁽²⁵⁾ OJ C 17, 19.1.2001, p. 4.

⁽²⁶⁾ See, for example, Case C-179/90 *Merci convenzionali porto di Genova* [1991] ECR I-5889, paragraph 28.

⁽²⁷⁾ See, for example, Commission Communication on services of general economic interest in Europe, cited above at footnote 25, paragraph 14.

In relation to the direct grant of NOK 4,5 million, the Authority notes that the relevant post in the State budget for 2005 allocates funding to 'airline pilot education located in Tromsø/Bardufoss'. The Authority is of the view that this cannot amount to a clear definition of a public service mission. Moreover, even if it were to be argued that the special characteristic is the fact that the entire course takes place in Norway and that this is the 'general interest' element of the service, the Authority notes that nothing in the budget or in other documents submitted to the Authority makes the grant conditional on such a feature.

The Authority is therefore of the opinion that in the present case the definition of a service of general economic interest amounts to manifest error. Thus, the condition for Article 59(2) EEA to apply (i.e. that an undertaking performs a service of general economic interest) is not fulfilled in the case at hand.

Finally, in relation to the measure identified at I-2.1(d) above, the Authority is of the view that a guarantee for a certain amount of debt, defined in general, cannot amount to ensuring the fulfilment of a particular task of general economic interest and that this measure therefore does not fall to be assessed under Article 59(2) EEA.

Entrustment

Even assuming that the service in question had been properly defined, in order for the exception in Article 59(2) EEA to apply the public service mission must be specifically entrusted through an act of public authority. The Authority notes that both measures under examination would appear to grant a financial advantage to NAC without entrusting them with any public service mission in return for the funding. With reference to the argument of the Norwegian authorities based on Commission practice, the Authority is of the opinion that it does not follow from the decisions of that body that simply receiving funding from the State amounts to entrustment, when no description of the public service mission or the conditions under which it must be ensured is given ⁽²⁸⁾. In this respect, the Authority again refers to the fact that, if the special characteristic of the training provided at NAC is the fact that the entire course takes place in Norway and that this is the 'general interest' element of the service, nothing in the budget or in other documents submitted to the Authority makes the grant conditional on such a feature.

Thus, even if it were clear that the Norwegian authorities had a specific public service mission in mind when they decided to grant funding to the airline pilot education sector, the Authority

cannot see any evidence of that mission having been specifically entrusted to NAC. As a result, Article 59(2) EEA cannot be applied to the situation at hand.

Proportionality

The final two elements of Article 59(2) EEA amount, together, to a proportionality assessment. In considering whether the measures adopted exceed what is necessary to guarantee effective fulfilment of the public service mission, the Authority notes, first, that the necessity of the funding is questionable in the absence of any conditions attaching thereto and, second, that no objective evaluation of how much funding would be required appears to have been undertaken. The Authority therefore concludes that, even if the other criteria had been satisfied, this element of Article 59(2) EEA is not fulfilled in the present case.

4.3. Conclusion

The Authority concludes that neither the direct grant (I-2.1(a) above) nor the loan guarantee (I-2.1(d) above) fulfil the conditions for Article 59(2) EEA to apply and that both measures are therefore incompatible with the functioning of the EEA Agreement.

5. Conclusion

The Authority finds that the following measures do not amount to State aid within the meaning of Article 61(1) EEA:

- project funding from Troms County (I-2.1(b) above),
- remission of a loan from Troms County (I-2.1(c) above), and
- loan from the Municipality of Målselv (I-2.1(e) above).

However, the Authority concludes that the Norwegian authorities have unlawfully implemented the following aid measures:

- direct grant of NOK 4,5 million from the State budget (I-2.1(a) above), and
- loan guarantee granted by Troms County without payment of a premium (I-2.1(d) above),

in breach of Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement.

The aid measures described do not satisfy the conditions for applying Article 59(2) EEA and are therefore not compatible with the functioning of the EEA Agreement.

⁽²⁸⁾ Commission Decision 2006/225/EC of 2 March 2005 on the aid scheme implemented by Italy for the reform of the training institutions (OJ L 81, 18.3.2006, p. 25) expressly acknowledges that the institutions in question 'assured institutional, social targeted vocational training ... delivered in the framework of the public education system' (paragraph 48) and that they were therefore 'entrusted with a public service mission, within the framework of the relevant national and regional rules, by means of binding acts' (paragraph 57).

It follows from Article 14 of Part II of Protocol 3 to the Surveillance and Court Agreement that the Authority shall decide that unlawful aid which is incompatible with the State aid rules under the EEA Agreement must be recovered from the beneficiaries,

HAS ADOPTED THIS DECISION:

Article 1

The project funding granted to NLH by Troms County and the loan to that entity by the Municipality of Målselv, together with the remission by Troms County of a loan granted by it to NAC do not constitute State aid within the meaning of Article 61(1) EEA.

Article 2

The direct grant of NOK 4,5 million from the State budget and the loan guarantee granted by Troms County constitute State aid in favour of NAC which is not compatible with the functioning of the EEA Agreement within the meaning of Article 61(1) EEA.

Article 3

The Norwegian authorities shall take all necessary measures to recover the aid referred to in Article 2 and unlawfully made available to NAC.

Article 4

Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest and compound interest from the date on which it was at the disposal of NAC until the date of its recovery. Interest shall be calculated on the basis of Article 9 in Decision No 195/04/COL.

Article 5

The Norwegian authorities shall inform the EFTA Surveillance Authority, within 2 months of notification of this Decision, of the measures taken to comply with it.

Article 6

This Decision is addressed to the Kingdom of Norway.

Article 7

Only the English version is authentic.

Done at Brussels, 1 July 2009.

For the EFTA Surveillance Authority

Per SANDERUD
President

Kristján A. STEFÁNSSON
College Member

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

★ EFTA Surveillance Authority Decision No 290/09/COL of 1 July 2009 on the aid granted in the airline pilot education sector in Troms County (Norway)	59
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