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II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 1027/2011

of 13 October 2011

establishing a prohibition of fishing for white marlin in the Atlantic Ocean by vessels flying the flag of Portugal

THE EUROPEAN COMMISSION,

HAS ADOPTED THIS REGULATION:

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

*Article 1***Quota exhaustion**

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2011 shall be deemed to be exhausted from the date set out in that Annex.

Whereas:

*Article 2***Prohibitions**

(1) Council Regulation (EU) No 57/2011 of 18 January 2011 fixing for 2011 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in certain non-EU waters ⁽²⁾, lays down quotas for 2011.

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

(2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2011.

*Article 3***Entry into force**

(3) It is therefore necessary to prohibit fishing activities for that stock,

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

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

Done at Brussels, 13 October 2011.

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

Lowri EVANS

Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ OJ L 24, 27.01.2011, p. 1.

ANNEX

No	50/T&Q
Member State	Portugal
Stock	WHM/ATLANT
Species	White marlin (<i>Tetrapturus albidus</i>)
Zone	Atlantic Ocean
Date	5.9.2011

COMMISSION REGULATION (EU) No 1028/2011**of 13 October 2011****establishing a prohibition of fishing for alfonsoinos in EU and international waters of III, IV, V, VI, VII, VIII, IX, X, XII and XIV by vessels flying the flag of Portugal**

THE EUROPEAN COMMISSION,

HAS ADOPTED THIS REGULATION:

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

*Article 1***Quota exhaustion**

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2011 shall be deemed to be exhausted from the date set out in that Annex.

Whereas:

*Article 2***Prohibitions**

(1) Council Regulation (EU) No 1225/2010 of 13 December 2010 fixing for 2011 and 2012 the fishing opportunities for EU vessels for fish stocks of certain deep-sea fish species ⁽²⁾, lays down quotas for 2011 and 2012.

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

(2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2011.

*Article 3***Entry into force**

(3) It is therefore necessary to prohibit fishing activities for that stock,

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

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

Done at Brussels, 13 October 2011.

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

Lowri EVANS

Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ OJ L 336, 21.12.2010, p. 1.

ANNEX

No	51/DSS
Member State	Portugal
Stock	ALF/3X14-
Species	Alfonsinos (<i>Beryx spp.</i>)
Zone	EU and international waters of III, IV, V, VI, VII, VIII, IX, X, XII and XIV
Date	5.9.2011

COMMISSION REGULATION (EU) No 1029/2011**of 13 October 2011****establishing a prohibition of fishing for anglerfish in VIIIa, VIIIb, VIIIc and VIId by vessels flying the flag of Belgium**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

Whereas:

(1) Council Regulation (EU) No 57/2011 of 18 January 2011 fixing for 2011 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in certain non-EU waters ⁽²⁾, lays down quotas for 2011.

(2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2011.

(3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2011 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

*Article 3***Entry into force**

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

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

Done at Brussels, 13 October 2011.

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

Lowri EVANS

Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ OJ L 24, 27.01.2011, p. 1.

ANNEX

No	40/T&Q
Member State	Belgium
Stock	ANF/8ABDE.
Species	Anglerfish (<i>Lophiidae</i>)
Zone	VIIIa, VIIIb, VIId and VIIf
Date	13.8.2011

COMMISSION REGULATION (EU) No 1030/2011**of 13 October 2011****establishing a prohibition of fishing for forkbeards in EU and international waters of VIII and IX by vessels flying the flag of Spain**

THE EUROPEAN COMMISSION,

HAS ADOPTED THIS REGULATION:

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

*Article 1***Quota exhaustion**

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2011 shall be deemed to be exhausted from the date set out in that Annex.

Whereas:

*Article 2***Prohibitions**

(1) Council Regulation (EU) No 1225/2010 of 13 December 2010 fixing for 2011 and 2012 the fishing opportunities for EU vessels for fish stocks of certain deep-sea fish species ⁽²⁾, lays down quotas for 2011 and 2012.

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

(2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2011.

*Article 3***Entry into force**

(3) It is therefore necessary to prohibit fishing activities for that stock,

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

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

Done at Brussels, 13 October 2011.

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

Lowri EVANS
Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ OJ L 336, 21.12.2010, p. 1.

ANNEX

No	53/DSS
Member State	Spain
Stock	GFB/89-
Species	Forkbeards (<i>Phycis blennoides</i>)
Zone	EU and international waters of VIII and IX
Date	25.6.2011

COMMISSION REGULATION (EU) No 1031/2011**of 13 October 2011****establishing a prohibition of fishing for black scabbardfish in EU and international waters of VIII, IX and X by vessels flying the flag of Spain**

THE EUROPEAN COMMISSION,

HAS ADOPTED THIS REGULATION:

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

*Article 1***Quota exhaustion**Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2011 shall be deemed to be exhausted from the date set out in that Annex.

Whereas:

*Article 2***Prohibitions**(1) Council Regulation (EU) No 1225/2010 of 13 December 2010 fixing for 2011 and 2012 the fishing opportunities for EU vessels for fish stocks of certain deep-sea fish species ⁽²⁾, lays down quotas for 2011 and 2012.

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

(2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2011.

*Article 3***Entry into force**

(3) It is therefore necessary to prohibit fishing activities for that stock,

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

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

Done at Brussels, 13 October 2011.

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

Lowri EVANS

Director-General for Maritime Affairs and Fisheries⁽¹⁾ OJ L 343, 22.12.2009, p. 1.⁽²⁾ OJ L 336, 21.12.2010, p. 1.

ANNEX

No	52/DSS
Member State	Spain
Stock	BSF/8910-
Species	Black scabbardfish (<i>Aphanopus carbo</i>)
Zone	EU and international waters of VIII, IX and X
Date	12.7.2011

COMMISSION REGULATION (EU) No 1032/2011
of 13 October 2011
establishing a prohibition of fishing for whiting in VIII by vessels flying the flag of Belgium

THE EUROPEAN COMMISSION,

HAS ADOPTED THIS REGULATION:

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

Article 1

Quota exhaustion

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2011 shall be deemed to be exhausted from the date set out in that Annex.

Whereas:

Article 2

Prohibitions

(1) Council Regulation (EU) No 57/2011 of 18 January 2011 fixing for 2011 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in certain non-EU waters ⁽²⁾, lays down quotas for 2011.

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

(2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2011.

Article 3

Entry into force

(3) It is therefore necessary to prohibit fishing activities for that stock,

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

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

Done at Brussels, 13 October 2011.

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

Lowri EVANS

Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ OJ L 24, 27.01.2011, p. 1.

ANNEX

No	41/T&Q
Member State	Belgium
Stock	WHG/08.
Species	Whiting (<i>Merlangius merlangus</i>)
Zone	VIII
Date	13.8.2011

COMMISSION REGULATION (EU) No 1033/2011**of 13 October 2011****establishing a prohibition of fishing for megrims in VIIIa, VIIIb, VIIIc and VIId by vessels flying the flag of Belgium**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) No 57/2011 of 18 January 2011 fixing for 2011 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in certain non-EU waters ⁽²⁾, lays down quotas for 2011.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2011.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2011 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

*Article 3***Entry into force**

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

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

Done at Brussels, 13 October 2011.

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

Lowri EVANS

Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ OJ L 24, 27.01.2011, p. 1.

ANNEX

No	46/T&Q
Member State	Belgium
Stock	LEZ/8ABDE.
Species	Megrimms (<i>Lepidorhombus spp.</i>)
Zone	VIIIa, VIIIb, VIId and VIIf
Date	13.8.2011

COMMISSION IMPLEMENTING REGULATION (EU) No 1034/2011**of 17 October 2011****on safety oversight in air traffic management and air navigation services and amending Regulation (EU) No 691/2010****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky ('the service provision Regulation') ⁽¹⁾, and in particular Article 4 thereof,

Having regard to Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky ('the airspace Regulation') ⁽²⁾, and in particular Article 6 thereof,

Having regard to Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC ⁽³⁾, and in particular Article 8b thereof,

Whereas:

(1) Pursuant to Regulation (EC) No 216/2008, the Commission, assisted by the European Aviation Safety Agency ('the Agency'), is required to adopt the relevant implementing rules to provide a set of safety regulatory requirements for the implementation of an effective air traffic management (ATM) safety oversight function. Article 8b of Regulation (EC) No 216/2008 requires these implementing rules to be developed based on the regulations adopted pursuant to Article 5(3) of Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky ('the framework Regulation') ⁽⁴⁾. This Regulation is based on Commission Regulation (EC) No 1315/2007 of 8 November 2007 on safety oversight in air traffic management and amending Regulation (EC) No 2096/2005 ⁽⁵⁾.

(2) There is a need to further define the role and functions of competent authorities based on the provisions of Regulations (EC) No 216/2008, (EC) No 549/2004, (EC) No

550/2004, and (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network ('the interoperability Regulation') ⁽⁶⁾. These regulations include requirements on the safety of air navigation services. While providers are responsible for the safe provision of air navigation services, Member States should ensure effective supervision through competent authorities.

(3) This Regulation should not cover military operations and training, as provided for in Article 1(2) of Regulation (EC) No 549/2004 and Article 1(2)(c) of Regulation (EC) No 216/2008.

(4) Competent authorities should conduct safety regulatory audits and reviews in accordance with this Regulation as part of the proper inspections and surveys required by Regulations (EC) No 216/2008 and (EC) No 550/2004.

(5) Competent authorities should consider using the safety oversight approach of this Regulation in other areas of oversight as appropriate in order to deliver efficient and coherent supervision.

(6) Air navigation services, as well as air traffic flow management (ATFM) and airspace management (ASM), use functional systems that enable the management of air traffic. Therefore any changes to functional systems should be subject to a safety oversight.

(7) Competent authorities should take all necessary measures in case a system or a constituent of a system does not comply with the relevant requirements. In this context, and in particular when a safety directive has to be issued, the competent authority should consider instructing the notified bodies involved in issuing the Declaration referred to in Article 5 or 6 of Regulation (EC) No 552/2004 to conduct specific investigations with regard to that technical system.

(8) Annual safety oversight reporting by competent authorities should contribute to the transparency and accountability of safety oversight. Such reports should be addressed to the Commission, the Agency and the Member State nominating or establishing the

⁽¹⁾ OJ L 96, 31.3.2004, p. 10.

⁽²⁾ OJ L 96, 31.3.2004, p. 20.

⁽³⁾ OJ L 79, 19.3.2008, p. 1.

⁽⁴⁾ OJ L 96, 31.3.2004, p. 1.

⁽⁵⁾ OJ L 291, 9.11.2007, p. 16.

⁽⁶⁾ OJ L 96, 31.3.2004, p. 26.

competent authority. Furthermore, annual safety oversight reports should be used in the context of regional cooperation, standardisation inspections under Regulation (EC) No 216/2008 and international safety oversight monitoring. The content of the reports should include relevant information with regard to the monitoring of safety performance, compliance with applicable safety regulatory requirements by supervised organisations, the programme of safety regulatory audits, the review of the safety arguments, changes to functional systems implemented by supervised organisations in accordance with procedures accepted by the competent authority and safety directives issued by such authority.

- (9) Pursuant to Article 10(1) of Regulation (EC) No 216/2008 and Article 2(4) of Regulation (EC) No 550/2004, competent authorities should make appropriate arrangements for close cooperation with each other to ensure adequate supervision of air navigation service providers which provide services relating to the airspace falling under the responsibility of a Member State different from the Member State which issued the certificate. Pursuant to Article 15 of Regulation (EC) No 216/2008, competent authorities should exchange in particular appropriate information about the safety oversight of organisations.
- (10) The Agency should further evaluate the provisions of this Regulation, in particular those related to the safety oversight of changes, and issue an opinion to adapt such changes towards a total system approach, taking into account the integration of these provisions into the future common regulatory structure for civil aviation safety and the experience gained by stakeholders and competent authorities. The Agency's opinion should further aim at facilitating the implementation of the State Safety Programme (SSP) of the International Civil Aviation Organisation (ICAO) within the Union as part of this total system approach.
- (11) The safe execution of some of the network functions set up according to Regulation (EC) No 551/2004 requires that the entity involved should be subject to certain safety requirements. These requirements, which aim to ensure that such entity or organisation operates in a safe manner, are laid down in Commission Regulation (EU) No 677/2011 of 7 July 2011 laying down detailed rules for the implementation of air traffic management (ATM) network functions and amending Regulation (EU) No 691/2010⁽¹⁾. These are organisation safety requirements which are very similar to those general requirements laid down in Commission Implementing Regulation (EU) No 1035/2011⁽²⁾, but adapted to the safety responsibilities of the network functions. In order to support a total system approach for safety regulation in the field of civil aviation, the execution of these requirements needs to be overseen in the same manner as air navigation service providers are overseen.
- (12) In its recommendations of July 2007, the High Level Group for the Future European Aviation Regulatory Framework highlighted the need to separate regulatory oversight from the provision of services or functions. In line with this principle, Article 6 of Regulation (EC) No 551/2004 provides that the entity nominated to perform the network functions needs to be subject to appropriate oversight arrangements. Since the Agency already carries out the independent safety oversight function of the pan-European ATM/ANS providers in accordance with Article 22a of Regulation (EC) No 216/2008, it would be fully in line with the European aviation safety policy to entrust it with supporting the Commission in performing the same tasks concerning the European network functions.
- (13) Regulation (EC) No 1315/2007 should therefore be repealed.
- (14) Commission Regulation (EU) No 691/2010 of 29 July 2010 laying down a performance scheme for air navigation services and network functions and amending Regulation (EC) No 2096/2005⁽³⁾ should be amended in order to be adapted to this Regulation.
- (15) The measures provided for in this Regulation are in accordance with the opinion of the Single Sky Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation establishes requirements to be applied to the exercise of the safety oversight function by competent authorities concerning air navigation services, air traffic flow management (ATFM), airspace management (ASM) for general air traffic and other network functions.

2. This Regulation shall apply to the activities of competent authorities and qualified entities acting on their behalf regarding the safety oversight of air navigation services, ATFM, ASM and other network functions.

Article 2

Definitions

For the purposes of this Regulation, the definitions in Article 2 of Regulation (EC) No 549/2004 and Article 3 of Regulation (EC) No 216/2008 apply. However, the definition of 'certificate' in Article 2(15) of Regulation (EC) No 549/2004 does not apply.

The following definitions also apply:

- (1) 'corrective action' means an action to eliminate the cause of a detected non-conformity;

⁽¹⁾ OJ L 185, 15.7.2011, p. 1.

⁽²⁾ See page 23 of this Official Journal.

⁽³⁾ OJ L 201, 3.8.2010, p. 1.

- (2) 'functional system' means a combination of systems, procedures and human resources organised to perform a function within the context of ATM;
- (3) 'Network Manager' means the impartial and competent body entrusted pursuant to Article 6(2) or (6) of Regulation (EC) No 551/2004 to perform the duties described in that Article and this Regulation;
- (4) 'network functions' means the specific functions described in Article 6 of Regulation (EC) No 551/2004;
- (5) 'organisation' means either an air navigation service provider or an entity providing ATFM or ASM or other network functions;
- (6) 'process' means a set of interrelated or interacting activities which transforms inputs into outputs;
- (7) 'safety argument' means the demonstration and evidence that a proposed change to a functional system can be implemented within the targets or standards established through the existing regulatory framework consistently with the safety regulatory requirements;
- (8) 'safety directive' means a document issued or adopted by a competent authority which mandates actions to be performed on a functional system to restore safety, when evidence shows that aviation safety may otherwise be compromised;
- (9) 'safety objective' means a qualitative or quantitative statement that defines the maximum frequency or probability at which a hazard can be expected to occur;
- (10) 'safety regulatory audit' means a systematic and independent examination conducted by, or on behalf of, a competent authority to determine whether complete safety-related arrangements or elements thereof, related to processes and their results, products or services, comply with required safety-related arrangements and whether they are implemented effectively and are suitable to achieve expected results;
- (11) 'safety regulatory requirements' means the requirements established by the Union or national regulations for the provision of air navigation services or ATFM and ASM functions or other network functions as well as concerning the technical and operational competence and suitability to provide these services and functions, their safety management, as well as systems, their constituents and associated procedures;
- (12) 'safety requirement' means a risk mitigation, defined from the risk mitigation strategy that achieves a particular safety objective, including organisational, operational, procedural, functional, performance and interoperability requirements or environmental characteristics;
- (13) 'verification' means confirmation through the provision of objective evidence that specified requirements have been fulfilled;
- (14) 'pan-European ATM/ANS' means an activity which is designed and established for users within most or all Member States and which may also extend beyond the airspace of the territory to which the Treaty applies.

Article 3

Competent authorities for oversight

For the purpose of this Regulation and without prejudice to the mutual recognition of air navigation service providers certificates in accordance with Article 7(8) of Regulation (EC) No 550/2004 and Article 11 of Regulation (EC) No 216/2008, competent authorities for oversight shall be:

- (a) for organisations having their principal place of operation and, if any, their registered office located in a Member State while providing air navigation services in the territory of that Member State, the national supervisory authority nominated or established by that Member State;
- (b) for organisations for which under the agreements concluded among Member States in accordance with Article 2 of Regulation (EC) No 550/2004, the responsibilities for safety oversight have been allocated differently from point (a), the competent authorities nominated or established under those agreements. These agreements shall comply with the requirements of Article 2(3) to (6) of Regulation (EC) No 550/2004;
- (c) for organisations providing ATM/air navigation services in the airspace of the territory to which the Treaty applies and having their principal place of operation and, if any, their registered office located outside the territory subject to the provisions of the Treaty, the European Aviation Safety Agency ('the Agency');
- (d) for organisations providing pan-European ATM/ANS as well as for all other network functions in the airspace of the territory to which the Treaty applies, the Agency.

Article 4

Safety oversight function

1. Competent authorities shall exercise safety oversight as part of their supervision of requirements applicable to air navigation services as well as to ATFM, ASM and other network functions, in order to monitor the safe provision of these activities and to verify that the applicable safety regulatory requirements and their implementing arrangements are met.
2. When concluding an agreement on the supervision of organisations active in functional airspace blocks which extend across the airspace falling under the responsibility of more than one Member State or in cases of cross-border provision, Member States concerned shall identify and allocate the responsibilities for safety oversight in a manner which ensures that:

- (a) specific points of responsibility exist to implement each provision of this Regulation;
- (b) Member States have visibility of the safety oversight mechanisms and their results;
- (c) relevant information exchange is ensured between the overseeing authorities and the certifying authority.

Member States shall regularly review the agreement and its practical implementation in particular in the light of achieved safety performance.

3. When concluding an agreement on the supervision of organisations active in functional airspace blocks or in cross-border activities in which the Agency is the competent authority for at least one of the organisations in accordance with Article 3(b), the Member States concerned shall coordinate with the Agency so as to ensure that points (a), (b) and (c) of paragraph 2 are met.

Article 5

Monitoring of safety performance

1. Competent authorities shall provide regular monitoring and assessment of the levels of safety achieved in order to determine whether they comply with the safety regulatory requirements applicable in the airspace blocks under their responsibility.
2. Competent authorities shall use the results of the monitoring of safety in particular to determine areas in which the verification of compliance with safety regulatory requirements is necessary as a matter of priority.

Article 6

Verification of compliance with safety regulatory requirements

1. Competent authorities shall establish a process in order to verify:
 - (a) compliance with applicable safety regulatory requirements prior to the issue or renewal of a certificate necessary to provide air navigation services including safety-related conditions attached to it;
 - (b) compliance with any safety-related obligations in the designation act issued in accordance with Article 8 of Regulation (EC) No 550/2004;
 - (c) ongoing compliance of the organisations with applicable safety regulatory requirements;
 - (d) implementation of safety objectives, safety requirements and other safety-related conditions identified in:
 - (i) declarations of verification of systems, including any relevant declaration of conformity or suitability for use of constituents of systems issued in accordance with Regulation (EC) No 552/2004;

- (ii) risk assessment and mitigation procedures required by safety regulatory requirements applicable to air navigation services, ATFM, ASM and the Network Manager;

- (e) the implementation of safety directives.

2. The process referred to in paragraph 1 shall:

- (a) be based on documented procedures;
- (b) be supported by documentation specifically intended to provide safety oversight personnel with guidance to perform their functions;
- (c) provide the organisations concerned with an indication of the results of the safety oversight activity;
- (d) be based on safety regulatory audits and reviews conducted in accordance with Articles 7, 9 and 10;
- (e) provide competent authorities with the evidence needed to support further action, including measures foreseen by Article 9 of Regulation (EC) No 549/2004, Article 7(7) of Regulation (EC) No 550/2004 and by Articles 10, 25 and 68 of Regulation (EC) No 216/2008 in situations where safety regulatory requirements are not being complied with.

Article 7

Safety regulatory audits

1. Competent authorities, or qualified entities as delegated by them shall conduct safety regulatory audits.
2. The safety regulatory audits referred to in paragraph 1 shall:
 - (a) provide competent authorities with evidence of compliance with applicable safety regulatory requirements and with implementing arrangements by evaluating the need for improvement or corrective action;
 - (b) be independent of internal auditing activities undertaken by the organisation concerned as part of its safety or quality management systems;
 - (c) be conducted by auditors qualified in accordance with the requirements of Article 12;
 - (d) apply to complete implementing arrangements or elements thereof, and to processes, products or services;
 - (e) determine whether:
 - (i) implementing arrangements comply with safety regulatory requirements;
 - (ii) actions taken comply with the implementing arrangements;
 - (iii) the results of actions taken match the results expected from the implementing arrangements;
 - (f) lead to the correction of any identified non-conformities in accordance with Article 8.

3. Within the inspection programme required by Article 8 of Implementing Regulation (EU) No 1035/2011, competent authorities shall establish and update at least annually a programme of safety regulatory audits in order to:

- (a) cover all the areas of potential safety concern, with a focus on those areas where problems have been identified;
- (b) cover all the organisations, services and network functions operating under the supervision of the competent authority;
- (c) ensure that audits are conducted in a manner commensurate to the level of risk posed by the organisations' activities;
- (d) ensure that sufficient audits are conducted over a period of 2 years to check the compliance of all these organisations with applicable safety regulatory requirements in all the relevant areas of the functional system;
- (e) ensure follow up of the implementation of corrective actions.

4. Competent authorities may decide to modify the scope of pre-planned audits and to include additional audits, wherever that need arises.

5. Competent authorities shall decide which arrangements, elements, services, functions, products, physical locations and activities are to be audited within a specified time frame.

6. Audit observations and identified non-conformities shall be documented. The latter shall be supported by evidence, and identified in terms of the applicable safety regulatory requirements and their implementing arrangements against which the audit has been conducted.

7. An audit report, including the details of the non-conformities, shall be drawn up.

Article 8

Corrective actions

1. Competent authorities shall communicate the audit findings to audited organisations and shall simultaneously request corrective actions to address the non-conformities identified without prejudice to any additional action required by the applicable safety regulatory requirements.

2. Audited organisations shall determine the corrective actions deemed necessary to correct non-conformities and the time frame for their implementation.

3. Competent authorities shall assess the corrective actions as well as their implementation as determined by audited organisations and accept them if the assessment concludes that they are sufficient to address the non-conformities.

4. Audited organisations shall initiate the corrective actions accepted by competent authorities. These corrective actions and the subsequent follow-up process shall be completed within the time period accepted by competent authorities.

Article 9

Safety oversight of changes to functional systems

1. Organisations shall only use procedures accepted by the relevant competent authority when deciding whether to introduce a safety-related change to their functional systems. In case of air traffic service providers and communication, navigation or surveillance service providers, the relevant competent authority shall accept these procedures in the framework of Implementing Regulation (EU) No 1035/2011.

2. Organisations shall notify the relevant competent authority of all planned safety-related changes. To this effect, competent authorities shall establish appropriate administrative procedures in accordance with national law.

3. Unless Article 10 applies, organisations may implement notified changes following the procedures referred to in paragraph 1 of this Article.

Article 10

Review procedure of the proposed changes

1. Competent authorities shall review the safety arguments associated with new functional systems or changes to existing functional systems proposed by an organisation when:

- (a) the severity assessment conducted in accordance with Annex II, point 3.2.4 of Implementing Regulation (EU) No 1035/2011 determines a severity class 1 or a severity class 2 for the potential effects of the hazards identified; or
- (b) the implementation of the changes requires the introduction of new aviation standards.

When competent authorities determine the need for a review in situations other than those referred to in points (a) and (b), they shall notify the organisation that they will undertake a safety review of the notified changes.

2. Reviews shall be conducted in a manner commensurate with the level of risk posed by the new functional systems or by the proposed changes to existing functional systems.

Reviews shall:

- (a) use documented procedures;
- (b) be supported by documentation specifically intended to provide safety oversight personnel with guidance to perform their functions;

(c) consider the safety objectives, safety requirements and other safety-related conditions that are related to the changes under consideration identified in:

- (i) declarations of verification of systems referred to in Article 6 of Regulation (EC) No 552/2004;
- (ii) declarations of conformity or suitability for use of constituents of systems referred to in Article 5 of Regulation (EC) No 552/2004; or
- (iii) risk assessment and mitigation documentation established in accordance with applicable safety regulatory requirements;

(d) identify additional safety-related conditions associated to the implementation of the changes, wherever needed;

(e) assess the acceptability of safety arguments presented, taking account of:

- (i) the identification of hazards;
- (ii) the consistency of the allocation of severity classes;
- (iii) the validity of the safety objectives;
- (iv) the validity, effectiveness and feasibility of safety requirements and any other safety-related conditions identified;
- (v) the demonstration that the safety objectives, safety requirements and other safety-related conditions are continuously met;
- (vi) the demonstration that the process used to produce the safety arguments meets the applicable safety regulatory requirements;

(f) verify the processes used by organisations to produce the safety arguments in relation to the new functional system or changes to existing functional systems under consideration;

(g) identify the need for the verification of ongoing compliance;

(h) include any necessary coordination activities with the authorities responsible for the safety oversight of airworthiness and flight operations;

(i) provide notification of the acceptance, with conditions where applicable, or the non-acceptance, with supporting reasons, of the change under consideration.

3. The introduction into service of the changes under consideration in the review shall be subject to acceptance by competent authorities.

Article 11

Qualified entities

1. When a competent authority decides to delegate to a qualified entity the conduct of safety regulatory audits or

reviews in accordance with this Regulation, it shall ensure that the criteria used to select an entity amongst those qualified in accordance with Article 3 of Regulation (EC) No 550/2004 and Article 13 of Regulation (EC) No 216/2008 include the following:

- (a) the qualified entity has prior experience in assessing safety in aviation entities;
- (b) the qualified entity is not simultaneously involved in internal activities within the safety or quality management systems of the organisation concerned;
- (c) all personnel concerned with the conduct of safety regulatory audits or reviews are adequately trained and qualified and meet the qualification criteria of Article 12(3) of this Regulation.

2. The qualified entity shall accept the possibility of being audited by the competent authority or any body acting on its behalf.

3. Competent authorities shall maintain a record of the qualified entities commissioned to conduct safety regulatory audits or reviews on their behalf. Such records shall document compliance with the requirements contained in paragraph 1.

Article 12

Safety Oversight capabilities

1. Member States and the Commission shall ensure that competent authorities have the necessary capability to ensure the safety oversight of all organisations operating under their supervision, including sufficient resources to carry out the actions identified in this Regulation.

2. Competent authorities shall produce and update every 2 years, an assessment of the human resources needed to perform their safety oversight functions, based on the analysis of the processes required by this Regulation and their application.

3. Competent authorities shall ensure that all persons involved in safety oversight activities are competent to perform the required function. In that regard they shall:

- (a) define and document the education, training, technical and operational knowledge, experience and qualifications relevant to the duties of each position involved in safety oversight activities within their structure;
- (b) ensure specific training for those involved in safety oversight activities within their structure;

(c) ensure that personnel designated to conduct safety regulatory audits, including auditing personnel from qualified entities, meet specific qualification criteria defined by the competent authority. The criteria shall address:

- (i) the knowledge and understanding of the requirements related to air navigation services, ATFM, ASM and other network functions against which safety regulatory audits may be performed;
- (ii) the use of assessment techniques;
- (iii) the skills required for managing an audit;
- (iv) the demonstration of competence of auditors through evaluation or other acceptable means.

Article 13

Safety directives

1. Competent authorities shall issue a safety directive when they have determined the existence of an unsafe condition in a functional system requiring immediate action.

2. Safety directives shall be forwarded to the organisations concerned and contain, as a minimum, the following information:

- (a) the identification of the unsafe condition;
- (b) the identification of the affected functional system;
- (c) the actions required and their rationale;
- (d) the time limit for compliance of the required actions with the safety directive;
- (e) its date of entry into force.

3. Competent authorities shall forward a copy of the safety directive to the Agency and any other competent authorities concerned, in particular those involved in the safety oversight of the functional system, and to the Commission.

4. Competent authorities shall verify the compliance with applicable safety directives.

Article 14

Safety oversight records

Competent authorities shall keep and maintain access to the appropriate records related to their safety oversight processes, including the reports of all safety regulatory audits and other safety-related records related to certificates, designations, the safety oversight of changes, safety directives and the use of qualified entities.

Article 15

Safety oversight reporting

1. Competent authorities shall report annually on safety oversight actions pursuant to this Regulation. The annual safety oversight report shall also include information on the following:

- (a) organisational structure and procedures of the competent authority;
- (b) airspace falling under the responsibility of Member States which established or nominated the competent authority, if applicable, and organisations falling under the supervision of that competent authority;
- (c) qualified entities commissioned to conduct safety regulatory audits;
- (d) existing levels of resources of the competent authority;
- (e) any safety issues identified through the safety oversight processes operated by the competent authority.

2. Member States shall use the reports produced by their competent authorities when submitting their annual reports to the Commission as required by Article 12 of Regulation (EC) No 549/2004.

The annual safety oversight reports shall be made available to the Member States concerned in the case of functional airspace blocks, to the Agency and to the programmes or activities conducted under agreed international arrangements to monitor or audit the implementation of the safety oversight of air navigation services, ATFM, ASM and other network functions.

Article 16

Information exchange between competent authorities

Competent authorities shall make arrangements for close cooperation in accordance with Articles 10 and 15 of Regulation (EC) No 216/2008 and Article 2(4) of Regulation (EC) No 550/2004 and exchange any appropriate information to ensure the safety oversight of all organisations providing cross-border services or functions.

Article 17

Transitional provisions

1. Actions initiated before the entry into force of this Regulation on the basis of Regulation (EC) No 1315/2007 shall be managed in accordance with this Regulation.

2. The authority of a Member State which has had the responsibility for the safety oversight of organisations for which the Agency is the competent authority in accordance with Article 3 shall transfer to the Agency the safety oversight function of these organisations 12 months after the date of entry into force of this Regulation, except in the case of the safety oversight of the Network Manager where the transfer, if any, to the Commission, assisted by the Agency, shall be made on the date of entry into force of this Regulation.

Article 18

Repeal

Regulation (EC) No 1315/2007 is repealed.

*Article 19***Amendment to Regulation (EU) No 691/2010**

In Annex IV to Regulation (EU) No 691/2010, point 1.1(e) is replaced by the following:

‘(e) NSA safety reports as referred to in Articles 7, 8 and 14 of Commission Implementing Regulation (EU) No 1034/2011 (*) as well as NSA reports on resolution of safety deficiencies identified that are subject to corrective action plans;

(*) OJ L 271, 18.10.2011, p. 15.’

*Article 20***Entry into force**

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

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

Done at Brussels, 17 October 2011.

For the Commission

The President

José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 1035/2011**of 17 October 2011****laying down common requirements for the provision of air navigation services and amending Regulations (EC) No 482/2008 and (EU) No 691/2010****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation) ⁽¹⁾, and in particular Articles 4, 6 and 7 thereof,

Having regard to Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC ⁽²⁾, and in particular Article 8b(6) thereof,

Whereas:

- (1) Pursuant to Regulation (EC) No 216/2008, the Commission, assisted by the European Aviation Safety Agency (the Agency), is required to adopt implementing rules for the provision of air traffic management and air navigation services (ATM/ANS) throughout the Union. Article 8b(6) of that Regulation requires those implementing rules to be based on the regulations adopted under Article 5(3) of Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) ⁽³⁾.
- (2) The provision of air navigation services within the Union should be subject to certification by Member States or the Agency. Air navigation service providers which comply with the common requirements should be granted a certificate in accordance with Article 7 of Regulation (EC) No 550/2004 and Article 8b(2) of Regulation (EC) No 216/2008.
- (3) The application of the common requirements laid down pursuant to Article 6 of Regulation (EC) No 550/2004 and Article 8b of Regulation (EC) No 216/2008 should be without prejudice to Member States' sovereignty over their airspace and to the requirements of the Member States relating to public order, public security and defence matters, as set out in Article 13 of Regulation

(EC) No 549/2004. The common requirements should not cover military operations and training, as provided for in Article 1(2) of Regulation (EC) No 549/2004 and Article 1(2) of Regulation (EC) No 216/2008.

- (4) The definition of common requirements for the provision of air navigation services should take due account of the legal status of air navigation service providers in the Member States. Furthermore, when an organisation pursues activities other than the provision of air navigation services, the common requirements should not apply to such other activities or to resources allocated to activities outside the provision of air navigation services, unless provision is made to the contrary.
- (5) The application of the common requirements to air navigation service providers should be proportionate to the risks linked with the specific features of each activity such as the number and/or the nature and characteristics of processed movements. Should certain air navigation service providers elect not to avail themselves of the opportunity to provide cross-border services within the single European sky, a competent authority should be entitled to allow those providers to comply commensurately with, respectively, certain general requirements for the provision of air navigation services and certain specific requirements for the provision of air traffic services. Consequently, the conditions attached to the certificate should reflect the nature and the scope of the derogation.
- (6) In order to ensure the proper functioning of the certification scheme, Member States should provide the Commission and the Agency with all relevant information on the derogations granted by their competent authority in the context of their annual reports.
- (7) The different types of air navigation service activities are not necessarily subject to the same requirements. It is therefore necessary to adjust common requirements to the special features of each type of activity.
- (8) The onus of proving compliance with the applicable common requirements should lie with the air navigation service provider, for the period of validity of the certificate and for all the services covered by it.
- (9) In order to ensure the effective application of the common requirements, a system of regular supervision and inspection of compliance with those common requirements and with the conditions specified in the certificate should be established. The competent

⁽¹⁾ OJ L 96, 31.3.2004, p. 10.

⁽²⁾ OJ L 79, 19.3.2008, p. 1.

⁽³⁾ OJ L 96, 31.3.2004, p. 1.

authority should examine the suitability of a provider prior to issuing a certificate and should assess the ongoing compliance of the air navigation service providers it has certified on a yearly basis. Consequently, it should establish and update annually an indicative inspection programme covering all the providers it has certified, on the basis of an assessment of the risks. That programme should allow the inspection of all relevant parts of the air navigation service providers within a reasonable time frame. When assessing the compliance of designated providers of air traffic services and meteorological services, the competent authority should be entitled to check relevant requirements stemming from the international obligations on the Member State in question.

- (10) Peer reviews of national supervisory authorities could further a common approach to the supervision of air navigation service providers throughout the Union. The Commission, in cooperation with the Member States and the Agency, may arrange these peer reviews, which should be coordinated with the activities undertaken within the framework of Articles 24 and 54 of Regulation (EC) No 216/2008 and any other international monitoring and oversight programmes. This would avoid duplication of work. In order to allow the exchange of experience and best practice during a peer review, the experts should preferably be from a competent authority.
- (11) Eurocontrol has developed Safety Regulatory Requirements (ESARRs) which have been of the highest importance for the safe provision of air traffic services. In accordance with Regulation (EC) No 550/2004, the Commission should identify and adopt the relevant provisions of ESARRs in Union regulations. The ESARRs incorporated in Commission Regulation (EC) No 2096/2005 of 20 December 2005 laying down common requirements for the provision of air navigation services⁽¹⁾ form the basis of these implementing rules.
- (12) When adopting Regulation (EC) No 2096/2005, the Commission concluded that it was not appropriate to repeat the ESARR 2 provisions on reporting and assessment of safety occurrences in ATM, which are covered by Regulation (EU) No 996/2010 of the European Parliament and the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC⁽²⁾ and by Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation⁽³⁾. However, new provisions on safety occurrences should be introduced in order to require a competent authority, as defined by this Regulation, to check whether providers

of air traffic services, and also providers of communication, navigation or surveillance services, meet the arrangements required to cover the reporting and assessment of such occurrences.

- (13) It should be recognised in particular that, firstly, safety management is that function of air navigation services which ensures that all safety risks have been identified, assessed and satisfactorily mitigated, and that, secondly, a formal and systematic approach to safety management and management systems, towards a total system approach, will maximise safety benefits in a visible and traceable way. The Agency should further evaluate the safety requirements of this Regulation and integrate them into a common regulatory structure for civil aviation safety.
- (14) Until the Agency has drawn up the implementing measures transposing the relevant standards of the International Civil Aviation Organisation (ICAO) into Union implementing measures, acceptable means of compliance, certification specifications and guidance material, air navigation service providers should operate in compliance with the relevant ICAO standards. With a view to facilitating the cross-border provision of air navigation services, and until the finalisation of the work of the Agency to draw up the relevant measures transposing the ICAO standards, the Member States, the Commission and the Agency, acting in close cooperation with Eurocontrol where relevant, should work towards minimising the differences notified by Member States in the application of ICAO standards in the field of air navigation services in order to reach a common set of standards between Member States within the single European sky.
- (15) Different national arrangements as to liability should not prevent air navigation service providers from entering into agreements on the cross-border provision of services, once the air navigation service providers have set up arrangements to cover losses for damages arising from liabilities under the applicable law. The method employed should comply with the requirements of national law. Member States which allow the provision of air navigation services in all or part of the airspace under their responsibility without certification in accordance with Regulation (EC) No 550/2004 should cover the liabilities of those air navigation service providers.
- (16) The Agency should further evaluate the provisions of this Regulation, in particular those related to the safety assessment of changes to the provision of air navigation services by the certified organisation and engineering and technical personnel, and issue an opinion to adapt them towards a total system approach, taking into account the integration of these provisions into a future common regulatory structure for civil aviation safety and the experience gained by stakeholders and competent authorities in the field of safety oversight.

⁽¹⁾ OJ L 335, 21.12.2005, p. 13.

⁽²⁾ OJ L 295, 12.11.2010, p. 35.

⁽³⁾ OJ L 167, 4.7.2003, p. 23.

- (17) Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation) ⁽¹⁾ requires that specific functions called network functions are to be set up to allow optimum use of airspace and scarce resources, while allowing users maximum access to airspace as well as the ability to operate preferred trajectories. As provided for in Regulation (EC) No 551/2004, Commission Regulation (EU) No 677/2011 of 7 July 2011 laying down detailed rules for the implementation of air traffic management (ATM) network functions and amending Regulation (EU) No 691/2010 ⁽²⁾ lays down the rights, obligations and responsibilities of the entity involved in the provision of those functions.
- (18) For the safe execution of certain network functions, the entity involved is subject to certain requirements. These requirements aim to ensure that the entity or organisation operates in a safe manner and they are laid down in Annex VI Regulation (EU) No 677/2011. These are organisation safety requirements which are very similar to the general requirements for the provision of air navigation services laid down in Annex I to this Regulation but adapted to the safety responsibilities of the network functions.
- (19) Regulation (EC) No 2096/2005 should therefore be repealed.
- (20) Commission Regulation (EC) No 482/2008 of 30 May 2008 establishing a software safety assurance system to be implemented by air navigation service providers and amending Annex II to Regulation (EC) No 2096/2005 ⁽³⁾ and Commission Regulation (EU) No 691/2010 of 29 July 2010 laying down a performance scheme for air navigation services and network functions and amending Regulation (EC) No 2096/2005 laying down common requirements for the provision of air navigation services ⁽⁴⁾ should be amended in order to be adapted to this Regulation.
- (21) The measures provided for in this Regulation are in accordance with the opinion of the Single Sky Committee established by Article 5 of Regulation (EC) No 549/2004,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation lays down the common requirements for the provision of air navigation services.

However, unless Annex I or II makes provision to the contrary, those common requirements shall not apply to:

- (a) activities other than the provision of air navigation services by a provider of such services;
- (b) resources allocated to activities outside the provision of air navigation services.

Article 2

Definitions

For the purposes of this Regulation, the definitions in Article 2 of Regulation (EC) No 549/2004 and Article 3 of Regulation (EC) No 216/2008 apply. However, the definition of 'certificate' in Article 2(15) of Regulation (EC) No 549/2004 does not apply.

The following definitions also apply:

- (1) 'aerial work' means an aircraft operation in which an aircraft is used for specialised services such as agriculture, construction, photography, surveying, observation and patrol, search and rescue or aerial advertisement;
- (2) 'commercial air transport' means any aircraft operation involving the transport of passengers, cargo or mail for remuneration or hire;
- (3) 'functional system' means a combination of systems, procedures and human resources organised to perform a function within the context of ATM;
- (4) 'general aviation' means any civil aircraft operation other than aerial work or commercial air transport;
- (5) 'national supervisory authority' means the body or bodies nominated or established by Member States as their national supervisory authority pursuant to Article 4(1) of Regulation (EC) No 549/2004;
- (6) 'hazard' means any condition, event, or circumstance which could induce an accident;
- (7) 'organisation' means an entity providing air navigation services;
- (8) 'operating organisation' means an organisation responsible for the provision of engineering and technical services supporting air traffic, communication, navigation or surveillance services;
- (9) 'risk' means the combination of the overall probability, or frequency of occurrence of a harmful effect induced by a hazard and the severity of that effect;

⁽¹⁾ OJ L 96, 31.3.2004, p. 20.

⁽²⁾ OJ L 185, 15.7.2011, p. 1.

⁽³⁾ OJ L 141, 31.5.2008, p. 5.

⁽⁴⁾ OJ L 201, 3.8.2010, p. 1.

- (10) 'safety assurance' means all planned and systematic actions necessary to provide adequate confidence that a product, a service, an organisation or a functional system achieves acceptable or tolerable safety;
- (11) 'safety objective' means a qualitative or quantitative statement that defines the maximum frequency or probability at which a hazard can be expected to occur;
- (12) 'safety requirement' means a risk-mitigation means, defined from the risk-mitigation strategy that achieves a particular safety objective, including organisational, operational, procedural, functional, performance, and interoperability requirements or environment characteristics;
- (13) 'services' means either an air navigation service or a bundle of such services;
- (14) 'pan-European air navigation service' means an air navigation service which is designed and established for users within most or all Member States and which may also extend beyond the airspace of the territory to which the Treaty applies.
- (15) 'air navigation service provider' means any public or private entity providing ANS for general air traffic, including an organisation having applied for a certificate to provide such services.

Article 3

Competent authority for certification

1. For the purpose of this Regulation, the competent authority for the certification of air navigation service providers shall be:
- (a) for organisations having their principal place of operation and, if any, their registered office located in a Member State, the national supervisory authority nominated or established by that Member State;
- (b) for organisations providing air navigation services in the airspace of the territory to which the Treaty applies and having their principal place of operation and, if any, their registered office located outside the territory subject to the provisions of the Treaty, the Agency;
- (c) for organisations providing pan-European air navigation services in the airspace of the territory to which the Treaty applies, the Agency.
2. The competent authority for safety oversight shall be the authority determined in accordance with Article 3 of Commission Implementing Regulation (EU) No 1034/2011 ⁽¹⁾.

⁽¹⁾ See page 15 of this Official Journal.

Article 4

Granting of certificates

1. In order to obtain the certificate necessary to provide air navigation services, and without prejudice to Article 7(5) of Regulation (EC) No 550/2004, organisations shall comply with:
- (a) the general requirements for the provision of air navigation services set out in Annex I;
- (b) the additional specific requirements set out in Annexes II to V according to the type of service they provide.
2. A competent authority shall verify an organisation's compliance with the common requirements before issuing a certificate to it.
3. An organisation shall comply with the common requirements no later than at the time at which the certificate is issued pursuant to:
- (a) Article 7 of Regulation (EC) No 550/2004;
- (b) Article 8b(2) and Article 22a(b) and (c) of Regulation (EC) No 216/2008.

Article 5

Derogations

1. By way of derogation from Article 4(1), certain air navigation service providers may elect not to avail themselves of the opportunity to provide cross-border services and may waive the right to mutual recognition within the single European sky.
- They may, in those circumstances, apply for a certificate which is limited to the airspace under the responsibility of the Member State referred to in Article 7(2) of Regulation (EC) No 550/2004.
2. In order to make an application as referred to in paragraph 1, a provider of air traffic services shall provide services or plan to provide them only with respect to one or more of the following categories:
- (a) aerial work;
- (b) general aviation;
- (c) commercial air transport limited to aircraft with less than 10 tonnes of maximum take-off mass or less than 20 passenger seats;

(d) commercial air transport with less than 10 000 movements per year, regardless of the maximum take-off mass and the number of passenger seats; 'movements' being counted as the sum of take-offs and landings and calculated as an average over the previous three years.

In order to make such an application, an air navigation service provider other than a provider of air traffic services shall have a gross annual turnover of EUR 1 000 000 or less in relation to the services it provides or plans to provide.

Where, owing to objective practical reasons, an air navigation service provider is unable to provide evidence that it meets those qualifying criteria, the competent authority may accept analogous figures or forecasts in relation to the ceilings defined in the first and the second subparagraphs.

When submitting such an application, the air navigation service provider shall submit to the competent authority, at the same time the relevant evidence regarding the qualifying criteria.

3. The competent authority may grant specific derogations to applicants who fulfil the qualifying criteria of paragraph 1, commensurately with their contribution to ATM in the airspace under the responsibility of the Member State concerned.

Those derogations may relate only to the requirements set out in Annex I.

However, no derogation shall be granted for the following requirements:

- (a) technical and operational competence and capability (point 1);
- (b) safety management (point 3.1);
- (c) human resources (point 5);
- (d) open and transparent provision of air navigation services (point 8.1).

4. In addition to the derogations provided for in paragraph 3, the competent authority may grant derogations to applicants who provide aerodrome flight information services by operating regularly not more than one working position at any aerodrome. It shall do so commensurately with the applicants' contribution to ATM in the airspace under the responsibility of the Member State concerned.

Those derogations may relate only to the following requirements of point 3 of Annex II:

- (a) safety management responsibility and external services and supplies (point 3.1.2(b) and (e));
- (b) safety surveys (point 3.1.3(a));

(c) safety requirements for risk assessment and mitigation with regard to changes (point 3.2).

5. No derogations shall be granted from the requirements in Annexes III, IV or V.

6. In accordance with Annex II of Regulation (EC) No 550/2004, the competent authority shall:

- (a) specify the nature and the scope of the derogation in the conditions attached to the certificate by indicating its legal basis;
- (b) limit the validity of the certificate in time, where considered necessary for oversight purposes;
- (c) monitor whether the air navigation service providers continue to qualify for the derogation.

Article 6

Demonstration of compliance

1. Organisations shall provide all the relevant evidence to demonstrate compliance with the applicable common requirements at the request of the competent authority. Organisations may make full use of existing data.

2. A certified organisation shall notify the competent authority of planned changes to its provision of air navigation services which may affect its compliance with the applicable common requirements or with the conditions attached to the certificate, where applicable.

3. Where a certified organisation no longer complies with the applicable common requirements or, where applicable, with the conditions attached to the certificate, the competent authority shall, within one month of the date of discovering the non-compliance, require the organisation to take corrective action.

That decision shall immediately be notified to the relevant organisation.

The competent authority shall check that the corrective action has been implemented before notifying its approval to the relevant organisation.

Where the competent authority considers that corrective action has not been properly implemented within the timetable agreed with the organisation, it shall take appropriate enforcement measures as provided for in Article 7(7) of Regulation (EC) No 550/2004 and Article 10, Article 22a(d), and Articles 25 and 68 of Regulation (EC) No 216/2008, while taking into account the need to ensure the continuity of air navigation services.

*Article 7***Facilitation of compliance monitoring**

Organisations shall facilitate inspections and surveys by the competent authority or by a qualified entity acting on the latter's behalf, including site visits and visits without prior notice.

The authorised persons shall be empowered to perform the following acts:

- (a) to examine the relevant records, data, procedures and any other material relevant to the provision of air navigation services;
- (b) to take copies of or extracts from such records, data, procedures and other material;
- (c) to ask for an oral explanation on site;
- (d) to enter relevant premises, lands or means of transport.

Such inspections and surveys, when conducted by a competent authority or by a qualified entity acting on their behalf, shall be carried out in compliance with the legal provisions of the Member State in which they are to be undertaken.

*Article 8***Ongoing compliance**

The competent authority shall, on the basis of the evidence at its disposal, monitor annually the ongoing compliance of the organisations which it has certified.

To that end, the competent authority shall establish and update annually an indicative inspection programme which covers all the providers it has certified and which is based on an assessment of the risks associated with the different operations constituting the air navigation services provided. It shall consult the organisation concerned as well as any other competent authority concerned, if appropriate, before establishing such a programme.

The programme shall indicate the envisaged interval of the inspections of the different sites.

*Article 9***Safety regulation of engineering and technical personnel**

With regard to the provision of air traffic, communication, navigation or surveillance services, the competent authority or any other authority designated by a Member State to fulfil this task shall:

- (a) issue appropriate safety rules for engineering and technical personnel who undertake operational safety-related tasks;
- (b) ensure adequate and appropriate safety oversight of the engineering and technical personnel assigned by any operating organisation to undertake operational safety-related tasks;
- (c) on reasonable grounds and after due enquiry, take appropriate action in respect of the operating organisation and/or its technical and engineering personnel who do not comply with the requirements of point 3.3 of Annex II;
- (d) verify that appropriate methods are in place to ensure that third parties assigned to operational safety-related tasks comply with the requirements of point 3.3 of Annex II.

*Article 10***Peer review procedure**

1. The Commission, acting in cooperation with the Member States and the Agency may arrange peer reviews of national supervisory authorities in accordance with paragraphs 2 to 6.

2. A peer review shall be carried out by a team of national experts and, where appropriate, observers from the Agency.

A team shall be comprised of experts coming from at least three different Member States and the Agency.

Experts shall not participate in peer reviews in the Member State where they are employed.

The Commission shall establish and maintain a pool of national experts, designated by Member States, which shall cover all aspects of the common requirements as listed in Article 6 of Regulation (EC) No 550/2004.

3. Not less than three months before a peer review, the Commission shall inform the Member State and the national supervisory authority concerned of the peer review, the date on which it is scheduled to take place and the identity of the experts taking part in it.

The Member State whose national supervisory authority is subject to review shall approve the team of experts before it may carry out the review.

4. Within a period of three months from the date of the review, the review team shall draw up, by consensus, a report which may contain recommendations.

The Commission shall convene a meeting with the Agency, the experts and the national supervisory authority to discuss that report.

5. The Commission shall forward the report to the Member State concerned.

The Member State may, within three months from the date of receipt of the report, present its observations.

Those observations shall include, where relevant, the measures which the Member State has taken or intends to take to respond to the review within a given timescale.

Unless otherwise agreed with the Member State concerned, the report and the follow-up shall not be published.

6. The Commission shall inform the Member States through the Single Sky Committee of the main findings of these reviews on an annual basis.

Article 11

Transitional provisions

1. Air navigation service providers holding a certificate issued in accordance with Regulation (EC) No 2096/2005 on the date of entry into force of this Regulation shall be deemed to hold a certificate issued in accordance with this Regulation.

2. Applicants for an air navigation service providers' certificate which submitted their application before the date of entry into force of this Regulation and were not already issued with a certificate on that date shall show compliance with the provisions of this Regulation before the certificate is issued.

3. Where organisations, for which the competent authority will be the Agency in accordance with Article 3, have applied to a national supervisory authority of a Member State for the issue of a certificate before the date entry into force of this Regulation, the national supervisory authority shall finalise the certification process in coordination with the Agency and transfer the file to the Agency upon the issue of the certificate.

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

Done at Brussels, 17 October 2011.

Article 12

Repeal

Regulation (EC) No 2096/2005 is repealed.

Article 13

Amendment to Regulation (EC) No 482/2008

Regulation (EC) No 482/2008 is amended as follows:

- (1) in Article 4(5), the reference to 'Regulation (EC) No 2096/2005' is replaced by a reference to 'Commission Implementing Regulation (EU) No 1035/2011 (*)'.

(*) OJ L 271, 18.10.2011, p. 23';

- (2) Article 6 is deleted;

- (3) in Annex I, in points 1 and 2, the reference to 'Regulation (EC) No 2096/2005' is replaced by a reference to 'Implementing Regulation (EU) No 1035/2011'.

Article 14

Amendment to Regulation (EU) No 691/2010

In Regulation (EU) No 691/2010, Article 25 is deleted.

Article 15

Entry into force

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

For the Commission

The President

José Manuel BARROSO

ANNEX I

General requirements for the provision of air navigation services**1. TECHNICAL AND OPERATIONAL COMPETENCE AND CAPABILITY**

Air navigation service providers shall be able to provide their services in a safe, efficient, continuous and sustainable manner consistent with any reasonable level of overall demand for a given airspace. To this end, they shall maintain adequate technical and operational capacity and expertise.

2. ORGANISATIONAL STRUCTURE AND MANAGEMENT**2.1. Organisational structure**

Air navigation service providers shall set up and manage their organisation according to a structure that supports the safe, efficient and continuous provision of air navigation services.

The organisational structure shall define:

- (a) the authority, duties and responsibilities of the nominated post holders, in particular of the management personnel in charge of safety, quality, security, finance and human resources related functions;
- (b) the relationship and reporting lines between different parts and processes of the organisation.

2.2. Organisational management**2.2.1. Business plan**

Air navigation service providers shall produce a business plan covering a minimum period of five years. The business plan shall:

- (a) set out the overall aims and goals of the air navigation service provider and its strategy towards achieving them in consistency with any overall longer term plan of the air navigation service provider and with relevant Union requirements for the development of infrastructure or other technology;
- (b) contain appropriate performance targets in terms of safety, capacity, environment and cost-efficiency, as may be applicable.

The information listed in points (a) and (b) shall be consistent with the national or functional airspace block performance plan referred to in Article 11 of Regulation (EC) No 549/2004 and, as far as safety data is concerned, consistent with the State Safety Programme referred to in Standard 2.27.1 of Annex 11 to the Convention on International Civil Aviation, Amendment 47B from 20 July 2009 as applicable.

Air navigation service providers shall produce safety and business justifications for major investment projects including, where relevant, the estimated impact on the appropriate performance targets referred to in point (b) and identifying investments stemming from the legal requirements associated with the implementation of the Single European Sky ATM Research Programme (SESAR).

2.2.2. Annual plan

Air navigation service providers shall produce an annual plan covering the forthcoming year which shall specify further the features of the business plan and describe any changes to it.

The annual plan shall cover the following provisions on the level and quality of service, such as the expected level of capacity, safety, environment and cost-efficiency, as may be applicable:

- (a) information on the implementation of new infrastructure or other developments and a statement how they will contribute to improving the performance of the air navigation service provider, including level and quality of services;

- (b) performance indicators consistent with the national or functional airspace block performance plan referred to in Article 11 of Regulation (EC) No 549/2004 against which the performance level and quality of service may be reasonably assessed;
- (c) information on the measures foreseen to mitigate the safety risks identified in the safety plan of the air navigation service provider, including safety indicators to monitor safety risk and, where appropriate, the estimated cost of mitigation measures;
- (d) the air navigation service provider's expected short-term financial position as well as any changes to or impacts on the business plan.

2.2.3. *Performance part of the plans*

The air navigation service provider shall make the content of the performance part of the business plan and of the annual plan available to the Commission on request under the conditions set by the competent authority in accordance with national law.

3. SAFETY AND QUALITY MANAGEMENT

3.1. **Safety management**

Air navigation service providers shall manage the safety of all their services. In doing so, they shall establish formal interfaces with all stakeholders which may influence directly the safety of their services.

Air navigation service providers shall develop procedures for managing safety when introducing new functional systems or changing the existing functional systems.

3.2. **Quality management system**

Air navigation service providers shall have in place a quality management system which covers all air navigation services that they provide, according to the following principles.

The quality management system shall:

- (a) define the quality policy in such a way as to meet the needs of different users as closely as possible;
- (b) set up a quality assurance programme that contains procedures designed to verify that all operations are being conducted in accordance with applicable requirements, standards and procedures;
- (c) provide evidence of the functioning of the quality management system by means of manuals and monitoring documents;
- (d) appoint management representatives to monitor compliance with, and adequacy of, procedures to ensure safe and efficient operational practices;
- (e) perform reviews of the quality management system in place and take remedial actions, as appropriate.

An EN ISO 9001 certificate, issued by an appropriately accredited organisation, covering the air navigation services of the provider shall be considered as a sufficient means of compliance. The air navigation service provider shall accept the disclosure of the documentation related to the certification to the competent authority upon the latter's request.

Air navigation service providers may integrate safety, security and quality management systems into their management system.

3.3. **Operations manuals**

Air navigation service providers shall provide and keep up-to-date operations manuals relating to the provision of their services for the use and guidance of operations personnel.

They shall ensure that:

- (a) operations manuals contain the instructions and information required by the operations personnel to perform their duties;
- (b) relevant parts of the operations manuals are accessible to the personnel concerned;
- (c) the operations personnel are expeditiously informed of amendments to the operations manual applying to their duties as well as of their entry into force.

4. SECURITY

Air navigation service providers shall establish a security management system to ensure:

- (a) the security of their facilities and personnel so as to prevent unlawful interference with the provision of air navigation services;
- (b) the security of operational data they receive or produce or otherwise employ, so that access to it is restricted only to those authorised.

The security management system shall define:

- (a) the procedures relating to security risk assessment and mitigation, security monitoring and improvement, security reviews and lesson dissemination;
- (b) the means designed to detect security breaches and to alert personnel with appropriate security warnings;
- (c) the means of containing the effects of security breaches and to identify recovery action and mitigation procedures to prevent reoccurrence.

Air navigation service providers shall ensure the security clearance of their personnel, if appropriate, and coordinate with the relevant civil and military authorities to ensure the security of their facilities, personnel and data.

The safety, quality and security management systems may be designed and operated as an integrated management system.

5. HUMAN RESOURCES

Air navigation service providers shall employ appropriately skilled personnel to ensure the provision of air navigation services in a safe, efficient, continuous and sustainable manner. In this context, they shall establish policies for the recruitment and training of personnel.

6. FINANCIAL STRENGTH

6.1. **Economic and financial capacity**

Air navigation service providers shall be able to meet their financial obligations, such as fixed and variable costs of operation or capital investment costs. They shall use an appropriate cost accounting system. They shall demonstrate their abilities through the annual plan as referred to in point 2.2.2 as well as through balance sheets and accounts as practicable under their legal statute.

6.2. **Financial audit**

In accordance with Article 12(2) of Regulation (EC) No 550/2004, air navigation service providers shall demonstrate that they are undergoing an independent audit on a regular basis.

7. LIABILITY AND INSURANCE COVER

Air navigation service providers shall have in place arrangements to cover their liabilities arising from applicable law.

The method employed to provide the cover shall be appropriate to the potential loss and damage in question, taking into account the legal status of the organisation and the level of commercial insurance cover available.

An air navigation service provider which avails itself of the services of another air navigation service provider shall ensure that the agreements cover the allocation of liability between them.

8. QUALITY OF SERVICES

8.1. **Open and transparent provision of air navigation services**

Air navigation service providers shall provide air navigation services in an open and transparent manner. They shall publish the conditions of access to their services and establish a formal consultation process with the users of air navigation services on a regular basis, either individually or collectively, and at least once a year.

Air navigation service providers shall not discriminate on the grounds of the nationality or identity of the user or the class of users in accordance with applicable Union law.

8.2. **Contingency plans**

Air navigation service providers shall have in place contingency plans for all the air navigation services they provide in the case of events which result in significant degradation or interruption of their operations.

9. REPORTING REQUIREMENTS

Air navigation service providers shall be able to provide an annual report of their activities to the relevant competent authority.

That annual report shall cover their financial results without prejudice to Article 12 of Regulation (EC) No 550/2004, as well as their operational performance and any other significant activities and developments in particular in the area of safety.

The annual report shall include as a minimum:

- (a) an assessment of the level of performance of air navigation services generated;
- (b) the performance of the air navigation service provider compared to the performance targets established in the business plan referred to in point 2.2.1, reconciling actual performance against the annual plan by using the indicators of performance established in the annual plan;
- (c) provide an explanation for differences with the targets, and identify measures for closing any gaps during the reference period referred to in Article 11 of Regulation (EC) No 549/2004;
- (d) developments in operations and infrastructure;
- (e) the financial results, as long as they are not published separately in accordance with Article 12(1) of Regulation (EC) No 550/2004;
- (f) information about the formal consultation process with the users of its services;
- (g) information about the human resources policy.

Air navigation service providers shall make the content of the annual report available to the Commission and the Agency on request and to the public under the conditions set by the competent authority in accordance with national law.

ANNEX II

Specific requirements for the provision of air traffic services**1. OWNERSHIP**

Providers of air traffic services shall notify to the competent authorities referred to in Article 7(2) of Regulation (EC) No 550/2004:

- (a) their legal status, their ownership structure and any arrangements having a significant impact on control over their assets;
- (b) any links with organisations not involved in the provision of air navigation services, including commercial activities in which they are engaged either directly or through related undertakings, which account for more than 1 % of their expected revenue; furthermore, they shall notify any change of any single shareholding which represents 10 % or more of their total shareholding.

Providers of air traffic services shall take all necessary measures to prevent any situation of conflict of interests that could compromise the impartial and objective provision of their services.

2. OPEN AND TRANSPARENT PROVISION OF SERVICES

In addition to point 8.1 of Annex I and where a Member State decides to organise the provision of specific air traffic services in a competitive environment, that Member State may take all appropriate measures to ensure that the providers of these specific air traffic services shall neither engage in conduct that would have as its object or effect the prevention, restriction or distortion of competition, nor shall they engage in conduct that amounts to an abuse of a dominant position in accordance with applicable national and Union law.

3. SAFETY OF SERVICES**3.1. Safety management system (SMS)****3.1.1. General safety requirements**

Providers of air traffic services shall, as an integral part of the management of their services, have in place a safety management system (SMS) which:

- (a) ensures a formalised, explicit and proactive approach to systematic safety management in meeting their safety responsibilities within the provision of their services; operates in respect of all their services and the supporting arrangements under its managerial control; and includes, as its foundation, a statement of safety policy defining the organisation's fundamental approach to managing safety (safety management);
- (b) ensures that everyone involved in the safety aspects of the provision of air traffic services has an individual safety responsibility for their own actions; that managers are responsible for the safety performance of their respective departments or divisions and that the top management of the provider carries an overall safety responsibility (safety responsibility);
- (c) ensures that the achievement of satisfactory safety in air traffic services shall be afforded the highest priority (safety priority);
- (d) ensures that while providing air traffic services, the principal safety objective is to minimise its contribution to the risk of an aircraft accident as far as reasonably practicable (safety objective).

3.1.2. Requirements for safety achievement

Within the operation of the SMS, providers of air traffic services shall:

- (a) ensure that personnel are adequately trained and competent for the job they are required to do, in addition to being properly licensed if so required and satisfying applicable medical fitness requirements (competency);
- (b) ensure that a safety management function is identified with organisational responsibility for development and maintenance of the SMS; ensure that this point of responsibility is independent of line management, and accountable directly to the highest organisational level. However, in the case of small organisations where a combination of responsibilities may prevent sufficient independence in this regard, the arrangements for safety assurance shall be supplemented by additional independent means; and ensure that the top management of the service provider organisation is actively involved in ensuring safety management (safety management responsibility);

- (c) ensure that, wherever practicable, quantitative safety levels are derived and are maintained for all functional systems (quantitative safety levels);
- (d) ensure that the SMS is systematically documented in a manner which provides a clear linkage to the organisation's safety policy (SMS documentation);
- (e) ensure adequate justification of the safety of the externally provided services and supplies, having regard to their safety significance within the provision of its services (external services and supplies);
- (f) ensure that risk assessment and mitigation is conducted to an appropriate level to ensure that due consideration is given to all aspects of the provision of ATM (risk assessment and mitigation). As far as changes to the ATM functional system are concerned, point 3.2 shall apply;
- (g) ensure that ATM operational or technical occurrences which are considered to have significant safety implications are investigated immediately, and any necessary corrective action is taken (safety occurrences). They shall also demonstrate that they have implemented the requirements on the reporting and assessment of safety occurrences in accordance with applicable national and Union law.

3.1.3. *Requirements for safety assurance*

Within the operation of the SMS, providers of air traffic services shall ensure that:

- (a) safety surveys are carried out as a matter of routine, to recommend improvements where needed, to provide assurance to managers of the safety of activities within their areas and to confirm compliance with the relevant parts of the SMS (safety surveys);
- (b) methods are in place to detect changes in functional systems or operations which may suggest any element is approaching a point at which acceptable standards of safety can no longer be met, and that corrective action is taken (safety monitoring);
- (c) safety records are maintained throughout the SMS operation as a basis for providing safety assurance to all associated with, responsible for or dependent upon the services provided, and to the competent authority (safety records).

3.1.4. *Requirements for safety promotion*

Within the operation of the SMS, providers of air traffic services shall ensure that:

- (a) all personnel are aware of the potential safety hazards connected with their duties (safety awareness);
- (b) the lessons arising from safety occurrence investigations and other safety activities are disseminated within the organisation at management and operational levels (lesson dissemination);
- (c) all personnel are actively encouraged to propose solutions to identified hazards, and changes are made to improve safety where they appear needed (safety improvement).

3.2. **Safety requirements for risk assessment and mitigation with regard to changes**

3.2.1. *Section 1*

Within the operation of the SMS, providers of air traffic services shall ensure that hazard identification as well as risk assessment and mitigation are systematically conducted for any changes to those parts of the ATM functional system and supporting arrangements within their managerial control, in a manner which addresses:

- (a) the complete life cycle of the constituent part of the ATM functional system under consideration, from initial planning and definition to post-implementation operations, maintenance and decommissioning;
- (b) the airborne, ground and, if appropriate, spatial components of the ATM functional system, through cooperation with responsible parties;

- (c) the equipment, procedures and human resources of the ATM functional system, the interactions between these elements and the interactions between the constituent part under consideration and the remainder of the ATM functional system.

3.2.2. Section 2

The hazard identification, risk assessment and mitigation processes shall include:

- (a) a determination of the scope, boundaries and interfaces of the constituent part being considered, as well as the identification of the functions that the constituent part is to perform and the environment of operations in which it is intended to operate;
- (b) a determination of the safety objectives to be placed on the constituent part, incorporating:
 - (i) an identification of ATM-related credible hazards and failure conditions, together with their combined effects;
 - (ii) an assessment of the effects they may have on the safety of aircraft, as well as an assessment of the severity of those effects, using the severity classification scheme set out in Section 4;
 - (iii) a determination of their tolerability, in terms of the hazard's maximum probability of occurrence, derived from the severity and the maximum probability of the hazard's effects, in a manner consistent with Section 4;
- (c) the derivation, as appropriate, of a risk mitigation strategy which:
 - (i) specifies the defences to be implemented to protect against the risk-bearing hazards;
 - (ii) includes, as necessary, the development of safety requirements potentially bearing on the constituent part under consideration, or other parts of the ATM functional system, or environment of operations;
 - (iii) presents an assurance of its feasibility and effectiveness;
- (d) verification that all identified safety objectives and safety requirements have been met:
 - (i) prior to its implementation of the change;
 - (ii) during any transition phase into operational service;
 - (iii) during its operational life;
 - (iv) during any transition phase until decommissioning.

3.2.3. Section 3

The results, associated rationales and evidence of the risk assessment and mitigation processes, including hazard identification, shall be collated and documented in a manner which ensures that:

- (a) complete arguments are established to demonstrate that the constituent part under consideration, as well as the overall ATM functional system are, and will remain tolerably safe by meeting allocated safety objectives and requirements. This shall include, as appropriate, specifications of any predictive, monitoring or survey techniques being used;
- (b) all safety requirements related to the implementation of a change are traceable to the intended operations/functions.

3.2.4. Section 4

Hazard identification and severity assessment

A systematic identification of the hazards shall be conducted. The severity of the effects of hazards in a given environment of operations shall be determined using the classification scheme set out in the following table, while the severity classification shall rely on a specific argument demonstrating the most probable effect of hazards, under the worst-case scenario.

Severity class	Effect on operations
1 (Most severe)	Accident as defined in Article 2 of Regulation (EU) No 996/2010 of the European Parliament and of the Council ⁽¹⁾ .
2	Serious incident as defined in Article 2 of Regulation (EU) No 996/2010.
3	Major incident associated with the operation of an aircraft, in which the safety of the aircraft may have been compromised, having led to a near collision between aircrafts, with ground or obstacles.
4	Significant incident involving circumstances indicating that an accident, a serious or major incident could have occurred, if the risk had not been managed within safety margins, or if another aircraft had been in the vicinity.
5 (Least severe)	No immediate effect on safety.

⁽¹⁾ OJ L 295, 12.11.2010, p. 35.

In order to deduce the effect of a hazard on operations and to determine its severity, the systematic approach/process shall include the effects of hazards on the various elements of the ATM functional system, such as the air crew, the air traffic controllers, the aircraft functional capabilities, the functional capabilities of the ground part of the ATM functional system, and the ability to provide safe air traffic services.

Risk classification scheme

Safety objectives based on risk shall be established in terms of the hazard's maximum probability of occurrence, derived both from the severity of its effect, and from the maximum probability of the hazard's effect.

As a necessary complement to the demonstration that established quantitative objectives are met, additional safety management considerations shall be applied so that more safety is added to the ATM system, whenever reasonable.

3.2.5. Section 5

Software safety assurance system

Within the operation of the SMS, a provider of air traffic services shall implement a software safety assurance system in accordance with Regulation (EC) No 482/2008.

3.3. Safety requirements for engineering and technical personnel undertaking operational safety related tasks

Providers of air traffic services shall ensure that technical and engineering personnel including personnel of subcontracted operating organisations who operate and maintain ATM equipment approved for their operational use have and maintain sufficient knowledge and understanding of the services they are supporting, of the actual and potential effects of their work on the safety of those services, and of the appropriate working limits to be applied.

With regard to the personnel involved in safety-related tasks including personnel of subcontracted operating organisations, providers of air traffic services shall document the adequacy of the competence of the personnel; the rostering arrangements in place to ensure sufficient capacity and continuity of service; the personnel qualification schemes and policy, the personnel training policy, training plans and records as well as arrangements for the supervision of non-qualified personnel. They shall have procedures in place for cases where the physical or mental condition of the personnel is in doubt.

Providers of air traffic services shall maintain a register of information on the numbers, status and deployment of the personnel involved in safety related tasks.

That register shall:

- (a) identify the accountable managers for safety-related functions;
- (b) record the relevant qualifications of technical and operational personnel, against required skills and competence requirements;
- (c) specify the locations and duties to which technical and operational personnel are assigned, including any rostering methodology.

4. WORKING METHODS AND OPERATING PROCEDURES

Providers of air traffic services shall be able to demonstrate that their working methods and operating procedures are compliant with the standards in the following annexes to the Convention on International Civil Aviation as far as they are relevant for the provision of air traffic services in the airspace concerned:

- (a) Annex 2 on rules of the air in its 10th edition of July 2005, including all amendments up to No 42;
 - (b) Annex 10 on aeronautical telecommunications, Volume II on communication procedures including those with PANS Status in its sixth edition of October 2001, including all amendments up to No 85;
 - (c) Annex 11 on air traffic services in its 13th edition of July 2001, including all amendments up to No 47-B.
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ANNEX III

Specific requirements for the provision of meteorological services**1. TECHNICAL AND OPERATIONAL COMPETENCE AND CAPABILITY**

Providers of meteorological services shall ensure that the meteorological information, necessary for the performance of their respective functions and in a form suitable for users, is made available to:

- (a) operators and flight crew members for pre-flight and in-flight planning;
- (b) providers of air traffic services and flight information services;
- (c) search and rescue services units;
- (d) aerodromes.

Providers of meteorological services shall confirm the level of attainable accuracy of the information distributed for operations, including the source of such information, whilst also ensuring that such information is distributed in a sufficiently timely manner, and updated as required.

2. WORKING METHODS AND OPERATING PROCEDURES

Providers of meteorological services shall be able to demonstrate that their working methods and operating procedures are compliant with the standards in the following annexes to the Convention on International Civil Aviation as far as they are relevant for the provision of meteorological services in the airspace concerned:

- (a) Annex 3 on meteorological service for international air navigation in its 17th edition of July 2010, including all amendments up to No 75;
 - (b) Annex 11 on air traffic services in its 13th edition of July 2001, including all amendments up to No 47-B;
 - (c) Annex 14 on aerodromes in the following versions:
 - (i) Volume I on aerodrome design and operations in its 5th edition of July 2009, including all amendments up to No 10-B;
 - (ii) Volume II on heliports in its 3rd edition of July 2009, including all amendments up to No 4.
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ANNEX IV

Specific requirements for the provision of aeronautical information services**1. TECHNICAL AND OPERATIONAL COMPETENCE AND CAPABILITY**

Providers of aeronautical information services shall ensure that information and data is available for operations in a form suitable for:

- (a) flight operating personnel, including flight crew, as well as flight planning, flight management systems and flight simulators;
- (b) providers of air traffic services which are responsible for flight information services, aerodrome flight information services and the provision of pre-flight information.

Providers of aeronautical information services shall ensure the integrity of data and confirm the level of accuracy of the information distributed for operations, including the source of such information, before such information is distributed.

2. WORKING METHODS AND OPERATING PROCEDURES

Providers of aeronautical information services shall be able to demonstrate that their working methods and operating procedures are compliant with the standards in:

- (a) Commission Regulation (EU) No 73/2010 ⁽¹⁾;
- (b) the following Annexes to the Convention on International Civil Aviation as far as they are relevant for the provision of aeronautical information services in the airspace concerned:
 - (i) Annex 3 on meteorological service for international air navigation in its 17th edition of July 2010, including all amendments up to No 75;
 - (ii) Annex 4 on aeronautical charts in its 11th edition of July 2009, including all amendments up to No 56;
 - (iii) without prejudice to Regulation (EU) No 73/2010, Annex 15 on aeronautical information services in its 13th edition of July 2010, including all amendments up to No 36.

⁽¹⁾ OJ L 23, 27.1.2010, p. 6.

ANNEX V

Specific requirements for the provision of communication, navigation or surveillance services**1. TECHNICAL AND OPERATIONAL COMPETENCE AND CAPABILITY**

Providers of communication, navigation or surveillance services shall ensure the availability, continuity, accuracy and integrity of their services.

Providers of communication, navigation or surveillance services shall confirm the quality level of the services they are providing and shall demonstrate that their equipment is regularly maintained and where required calibrated.

2. SAFETY OF SERVICES

Providers of communication, navigation or surveillance services shall comply with the requirements of point 3 of Annex II on the safety of services.

3. WORKING METHODS AND OPERATING PROCEDURES

Providers of communication, navigation or surveillance services shall be able to demonstrate that their working methods and operating procedures are compliant with the standards of Annex 10 on aeronautical telecommunications to the Convention on International Civil Aviation in the following versions as far as they are relevant for the provision of communication, navigation or surveillance services in the airspace concerned:

- (a) Volume I on radio navigation aids in its sixth edition of July 2006, including all amendments up to No 85;
 - (b) Volume II on communication procedures including those with PANS status in its sixth edition of October 2001, including all amendments up to No 85;
 - (c) Volume III on communications systems in its second edition of July 2007 including all amendments up to No 85;
 - (d) Volume IV on surveillance radar and collision avoidance systems in its fourth edition of July 2007, including all amendments up to No 85;
 - (e) Volume V on aeronautical radio frequency spectrum utilisation in its second edition of July 2001, including all amendments up to No 85.
-

COMMISSION IMPLEMENTING REGULATION (EU) No 1036/2011**of 17 October 2011****fixing the interest rates to be used for calculating the costs of financing intervention measures comprising buying-in, storage and disposal for the 2012 EAGF accounting year**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy ⁽¹⁾, and in particular Article 3(3) thereof,

Whereas:

(1) Article 4(1)(a) of Commission Regulation (EC) No 884/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the financing by the European Agricultural Guarantee Fund (EAGF) of intervention measures in the form of public storage operations and the accounting of public storage operations by the paying agencies of the Member States ⁽²⁾ provides that expenditure relating to the financial costs incurred by Member States in mobilising funds to buy in products is to be determined in accordance with the methods set out in Annex IV to that Regulation.

(2) The first paragraph of point I.1 of Annex IV to Regulation (EC) No 884/2006 provides that the financial costs in question are to be calculated on the basis of a uniform interest rate for the Union fixed by the Commission at the beginning of every accounting year. This interest rate corresponds to the average of the three-month and 12-month forward Euribor rates, recorded in the six months preceding the notification from the Member States provided for in the first paragraph of point I.2 of the aforementioned Annex IV, with a weighting of one third and two thirds respectively. That rate must be fixed at the beginning of each accounting year of the EAGF.

(3) However, if the interest rate notified by a Member State is lower than the uniform interest rate fixed for the Union, in accordance with the second paragraph of point I.2 of Annex IV to Regulation (EC) No 884/2006, the interest rate is to be fixed at the level of the rate notified.

(4) Furthermore, in accordance with the third paragraph of point I.2 of Annex IV to Regulation (EC) No 884/2006, in the absence of any notification from a Member State, in the form and by the deadline referred to in the first paragraph of point I.2 of the aforementioned Annex IV, the interest rate borne by that Member State is to be

considered as being 0 %. Where a Member State declares that it did not bear any interest costs because it did not have agricultural products in public storage during the reference period, the uniform interest rate fixed by the Commission applies to that Member State. Denmark, Italy, Luxembourg, Malta, Portugal and Slovenia have declared that they did not bear any interest costs as they did not have any agricultural products in public storage during the reference period.

(5) Given the Member States' notifications to the Commission, the interest rates applicable for the 2012 EAGF accounting year should be fixed taking the various factors into account.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Committee on the Agricultural Funds,

HAS ADOPTED THIS REGULATION:

Article 1

For expenditure relating to the financial costs incurred by Member States in mobilising funds to buy in products chargeable to the 2012 accounting year of the European Agricultural Guarantee Fund (EAGF), the interest rates provided for in Annex IV to Regulation (EC) No 884/2006 in accordance with Article 4(1)(a) of that Regulation shall be fixed at:

- (a) 0,0 % in the case of the specific interest rate applicable in Cyprus, Estonia and Latvia;
- (b) 0,5 % in the case of the specific interest rate applicable in Finland;
- (c) 0,6 % in the case of the specific interest rate applicable in the United Kingdom;
- (d) 0,9 % in the case of the specific interest rate applicable in Germany;
- (e) 1,0 % in the case of the specific interest rate applicable in Ireland;
- (f) 1,2 % in the case of the specific interest rate applicable in Belgium;
- (g) 1,3 % in the case of the specific interest rate applicable in Austria;

⁽¹⁾ OJ L 209, 11.8.2005, p. 1.

⁽²⁾ OJ L 171, 23.6.2006, p. 35.

- (h) 1,4 % in the case of the specific interest rate applicable in the Czech Republic;
- (i) 1,8 % in the case of the specific interest rate applicable in Sweden;
- (j) 1,9 % in the case of the uniform interest rate for the Union applicable to the other Member States.

Article 2

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

It shall apply from 1 October 2011.

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

Done at Brussels, 17 October 2011.

For the Commission

The President

José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 1037/2011**of 17 October 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 Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

Implementing Regulation (EU) No 543/2011 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 XVI, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 October 2011.

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

Done at Brussels, 17 October 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 157, 15.6.2011, 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	EC	31,1
	MA	42,0
	MK	55,2
	ZA	35,6
	ZZ	41,0
0707 00 05	TR	132,0
	ZZ	132,0
0709 90 70	EC	33,4
	TR	116,3
	ZZ	74,9
0805 50 10	AR	65,1
	BR	38,2
	CL	60,5
	TR	65,3
	UY	56,8
	ZA	76,2
	ZZ	60,4
0806 10 10	BR	182,7
	CL	79,6
	TR	119,8
	ZA	64,2
	ZZ	111,6
0808 10 80	AR	61,9
	BR	62,6
	CA	105,2
	CL	69,3
	CN	66,1
	NZ	115,4
	US	96,0
	ZA	101,5
	ZZ	84,8
0808 20 50	AR	50,6
	CL	85,4
	CN	104,3
	TR	133,7
	ZZ	93,5

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

COMMISSION IMPLEMENTING REGULATION (EU) No 1038/2011**of 17 October 2011****amending the representative prices and additional import duties for certain products in the sugar sector fixed by Implementing Regulation (EU) No 971/2011 for the 2011/12 marketing year**

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

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

for the 2011/12 marketing year are fixed by Commission Implementing Regulation (EU) No 971/2011 ⁽³⁾. These prices and duties have been last amended by Commission Implementing Regulation (EU) No 1004/2011 ⁽⁴⁾.

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

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Implementing Regulation (EU) No 971/2011 for the 2011/12 marketing year, are hereby amended as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 October 2011.

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

Done at Brussels, 17 October 2011.

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 178, 1.7.2006, p. 24.

⁽³⁾ OJ L 254, 30.9.2011, p. 12.

⁽⁴⁾ OJ L 267, 12.10.2011, p. 9.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 18 October 2011

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 11 10 ⁽¹⁾	49,78	0,00
1701 11 90 ⁽¹⁾	49,78	0,00
1701 12 10 ⁽¹⁾	49,78	0,00
1701 12 90 ⁽¹⁾	49,78	0,00
1701 91 00 ⁽²⁾	51,45	2,03
1701 99 10 ⁽²⁾	51,45	0,00
1701 99 90 ⁽²⁾	51,45	0,00
1702 90 95 ⁽³⁾	0,51	0,21

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

DECISIONS

COUNCIL DECISION 2011/691/CFSP

of 17 October 2011

extending the mandate of the European Union Special Representative in Kosovo ⁽¹⁾

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and, in particular Articles 28, 31(2) and 33 thereof,

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

Whereas:

- (1) On 4 February 2008, the Council adopted Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO ⁽²⁾, and Joint Action 2008/123/CFSP ⁽³⁾ appointing Mr Pieter FEITH European Union Special Representative (EUSR) in Kosovo.
- (2) On 5 May 2011, the Council adopted Decision 2011/270/CFSP ⁽⁴⁾ appointing Mr Fernando GENTILINI EUSR in Kosovo until 31 July 2011.
- (3) On 28 July 2011, the Council adopted Decision 2011/478/CFSP ⁽⁵⁾ extending the mandate of the EUSR until 30 September 2011.
- (4) The mandate of the EUSR should be extended until 31 January 2012.
- (5) The EUSR will implement his mandate in the context of a situation which may deteriorate and could impede the achievement of the objectives of the Union's external action as set out in Article 21 of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2011/270/CFSP is hereby amended as follows:

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

*'Article 1***European Union Special Representative**

Mr Fernando GENTILINI is hereby appointed as the European Union Special Representative (EUSR) in Kosovo from 1 May 2011 until 31 January 2012. The mandate of the EUSR may be terminated earlier, if the Council so decides, on a proposal of the High Representative of the Union for Foreign Affairs and Security Policy (HR).';

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

'1. The financial reference amount intended to cover the expenditure related to the mandate of the EUSR in the period from 1 May 2011 to 30 September 2011 shall be EUR 690 000.

The financial reference amount intended to cover the expenditure related to the mandate of the EUSR in the period from 1 October 2011 to 31 January 2012 shall be EUR 770 000.'.

*Article 2***Entry into force**

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

It shall apply from 1 October 2011.

Done at Brussels, 17 October 2011.

*For the Council**The President*

M. DOWGIELEWICZ

⁽¹⁾ Under United Nations Security Council Resolution 1244 (1999).

⁽²⁾ OJ L 42, 16.2.2008, p. 92.

⁽³⁾ OJ L 42, 16.2.2008, p. 88.

⁽⁴⁾ OJ L 119, 7.5.2011, p. 12.

⁽⁵⁾ OJ L 197, 29.7.2011, p. 12.

COMMISSION DECISION**of 14 October 2011****on the request by the United Kingdom to accept Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA***(notified under document C(2011) 7228)***(Only the English text is authentic)****(2011/692/EU)**

THE EUROPEAN COMMISSION,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 331(1) thereof,

Article 1

Directive 2011/36/EU shall apply to the United Kingdom.

Whereas:

Article 2

- (1) The European Parliament and the Council adopted on 5 April 2011 Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA ⁽¹⁾.

Directive 2011/36/EU shall come into force for the United Kingdom from the date of notification of this Decision.

Article 3

- (2) Pursuant to Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom did not take part in the adoption of the Directive and is not bound by it or subject to its application.

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 14 October 2011.

- (3) In accordance with Article 4 of the said Protocol, the United Kingdom notified the Commission by letter of 14 July 2011 of its intention to accept the Directive,

For the Commission
Cecilia MALMSTRÖM
Member of the Commission

⁽¹⁾ OJ L 101, 15.4.2011, p. 1.

IV

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

COMMISSION DECISION

of 21 December 2005

concerning a restructuring plan for the Spanish coal industry and State aid for the years 2003-2005,
implemented by Spain for 2003 and 2004

(notified under document C(2005) 5410)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2011/693/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having called on interested parties to submit their comments pursuant to the aforementioned Article ⁽¹⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter of 19 December 2002, Spain notified the Commission, in accordance with Article 88(3) of the Treaty, under the terms of Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry ⁽²⁾, of a restructuring plan concerning the Spanish coal industry.

(2) By letters of 19 February 2003, and 31 July 2003, the Commission requested additional information. Spain submitted additional information by letters of 18 April 2003 and 3 October 2003.

(3) By letter of 16 June 2003, Spain submitted the Ministerial Order ECO 768/2003 of 17 March 2003 concerning the granting of financial support to the coal undertakings for 2003.

(4) By letter of 8 August 2003, Spain submitted, under the terms of Regulation (EC) No 1407/2002, the amounts of aid per coal-mining company to be granted for 2003.

(5) By letters of 18 August 2003 and 18 September 2003 Spain submitted information concerning the production cost of the production units, under the terms of the Commission Decision 2002/871/EC of 17 October 2002 establishing a joint framework for the communication of information needed for the application of Council Regulation (EC) No 1407/2002 on State aid to the coal industry ⁽³⁾.

(6) By letter of 10 February 2004 Spain submitted the Ministerial Order concerning the granting of financial support to the coal undertakings for the year 2004.

(7) By letter of 30 March 2004 the Commission informed Spain that, having examined the information supplied by the Spanish authorities, it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty. The decision was published in the *Official Journal of the European Union* ⁽⁴⁾.

(8) By letters of 30 June 2004 and 16 July 2004 Spain provided additional information about the restructuring plan.

(9) By letter of 19 February 2005 Spain submitted the Ministerial Order concerning the granting of financial support to the coal undertakings for the year 2005.

(10) By letter of 7 September 2005 the Commission requested additional information. Spain replied by letter of 20 October 2005 and provided additional information about the restructuring plan.

⁽¹⁾ OJ C 182, 15.7.2004, p. 3.

⁽²⁾ OJ L 205, 2.8.2002, p. 1. Regulation as amended by the 2003 Act of Accession.

⁽³⁾ OJ L 300, 5.11.2002, p. 42.

⁽⁴⁾ See footnote 1.

- (11) In the light of the information submitted by Spain, the Commission is required to take a decision on the restructuring plan for the Spanish coal industry and, should the Commission deliver a favourable opinion on the plan, on the annual aid concerning the years 2003, 2004 and 2005.
- (12) The restructuring plan and the financial measures are covered by Regulation (EC) No 1407/2002. The Commission must take a decision on the restructuring plan pursuant to Article 10 of the Regulation, to determine whether it is in conformity with the conditions and criteria set out in Articles 4-8, and whether it complies with the objectives of this Regulation. In addition, should the Commission deliver a favourable opinion on this plan, it is also required to verify, in accordance with Article 10(2) of the Regulation, whether the measures notified for the years 2003-2005 are in conformity with the restructuring plan and, more generally, on the compatibility of the aid with the proper functioning of the common market.

2. DETAILED DESCRIPTION OF THE MEASURE

- (13) On 3 June 1998, by Commission Decision 98/637/ECSC of 3 June 1998 on the granting by Spain of aid to the coal industry in 1998⁽⁵⁾, the Commission approved a restructuring plan for the Spanish coal industry for the period 1998-2002. This plan was based on the Plan for the Restructuring of the Coal-Mining Industry and the Alternative Development of Mining Areas 1998-2005 which was signed on 15 July 1997. This Plan was the result of an agreement between the Spanish authorities and the interested parties in the coal sector and contained provisions for undertakings that received aid. The Commission gave a favourable opinion on the 1998-2002 restructuring plan after analysing its conformity with the general and specific objectives of Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry⁽⁶⁾.
- (14) In view of the Spanish government's intention to grant aid to the coal industry after the expiry of the ECSC Treaty on 23 July 2002, and in accordance with Regulation (EC) No 1407/2002, in particular Article 9(10) thereof, on 19 December 2002 the Spanish authorities notified to the Commission a provisional plan for accessing coal reserves and for the closure of production units for the period 2003-2005.
- (15) This restructuring plan concerns the intention of the Spanish authorities to continue supporting the coal industry for the period 2003-2005 by means of granting production aid and aid to cover the exceptional costs of the restructuring process. This proposal for the period until 2005 assumes that the effort made by firms and workers to restructure the sector during the period 1998-2002 will continue on the grounds of the 1998-2005 Spanish plan for the restructuring of the coal-mining industry, taking account of the objectives of Regulation (EC) No 1407/2002, i.e. a smaller volume produced with less aid and smaller workforces, permitting a reduction in production costs.
- (16) The Spanish authorities have indicated that the social reality must be one of the criteria to be taken into account when deciding which production units will be maintained at a minimum level of activity guaranteeing access to coal resources. Other criteria will be the existing coal market and the implementation of environmental legislation. These will determine which power stations will be able to continue in operation.
- (17) In addition to these criteria, the Spanish authorities considered that the overall reduction in aid proposed in its 2003-2005 plan will lead to firms requesting voluntary capacity reductions. The possibility of granting aid for production unit closures will automatically mean a reduction in capacity. Consequently, by the end of 2005 this reduction will be around the 12 million tonnes proposed as the target. The Spanish authorities guaranteed to the Commission that aid for capacity closures under the terms of Article 7 of Regulation (EC) No 1407/2002 will be used solely for covering the costs of such unit closures.
- (18) The economy and employment in the mining districts are still far below the level that existed before the restructuring of the industry. For this reason, the Spanish authorities have indicated that they need more time to apply economic development and alternative employment policies to coal mining. It is not possible to speed up the processes for the reconversion of the coal industry beyond what is proposed in the plans. The Spanish authorities argue that the process of restructuring has been going on for only 5 years, much less than in other countries which had a substantial coal industry.
- (19) The Spanish authorities have made use of the right provided for in Article 9(8) of Regulation (EC) No 1407/2002, which states that Member States may, on duly substantiated grounds, notify the Commission of the identity of each of the production units forming part of the plans referred to in paragraphs 4 and 6 of the aforementioned Article by June 2004 at the latest.
- (20) The Spanish authorities have also informed the Commission, on the basis of Decision 2002/871/EC, of the production costs of the production units with regard to the reference year 2001/2002 and the period 2003-2005.

⁽⁵⁾ OJ L 303, 13.11.1998, p. 57.

⁽⁶⁾ OJ L 329, 30.12.1993, p. 12.

- (21) Under the terms of the definition of 'production unit' in Article 2 of Decision 2002/871/EC, all the coal-mining companies, except Hunosa, have defined their underground workings and related infrastructure as a single 'underground production unit', and all their opencast workings and related infrastructure on a single 'opencast production unit'.

The notified production units and the production of the reference year (2001/2002) are the following:

Production Unit	U: Underground O: Opencast	Production capacity of the reference year (tce: ton coal equivalent)
Alto Bierzo, S.A.	U	104 405
Antracitasde Arlanza, S.L.	U	10 360
Antracitas de Gillon, S.A.	U	57 100
Antracitas la Granja, S.A.	U O	51 550 8 930
Antracitas de Tineo, S.A.	S	50 100
Campomanes Hermanos, S.A.	S	43 320
CARBONAR, S.A.	U	320 000
Carbones de Arlanza, S.A.	U	25 332
Carbones de Linares, S.L.	U	12 817
Carbones del Puerto. S.A.	U	3 400
Carbones el Tunel, S.L.	U	17 420
Carbones de Pedraforca, S.A.	U	75 110
Carbones San Isidro y María, S.L.	U	31 920
Compañía General Minera de Teruel, S.A.	U O	21 000 71 000
Coto Minero del Narcea, S.A.		
— Monasterio	U	9 000
— Brañas	U	69 000
Coto Minero Jove, S.A.	U	82 334
E.N. Carbonifera del Sur, S.A.		
— Pozo María	U	18 210
— Peñarroya	O	381 240
— Emma, Puerto llano	O	464 040
ENDESA, S.A. (TERUEL)		
— Andorra	U	55 070
— Andorra	O	354 310
Gonzalez y Diez, S.A.		
— Tineo	U	113 098
— Buseiro	O	16 605

Production Unit	U: Underground O: Opencast	Production capacity of the reference year (tce: ton coal equivalent)
Hijos de Baldomero Garcia, S.A.	U	60 340
Hullas de Coto Cortes, S.A.	U	282 120
	O	48 340
Hueller Vasco-Leonesa, S.A.	U	713 533
	O	320 882
INCOMISA, S.A.	U	9 370
La Carbonifera del Ebro, S.A.	U	38 426
MALABA, S.A.	U	26 310
Mina Adelina, S.A.	U	8 200
Mina Escobal, S.L.	U	3 079
Mina la Sierra, S.A.	U	5 560
Mina los Compadres, S.L.	U	5 610
Minas de Navaleo, S.L.	U	19 636
Minas de Valdeloso, S.L.	U	9 870
Minas del Principado, S.A.	U	16 903
MINEX, S.A.	U	59 520
Minera del Bajo Segre, S.A.	U	25 164
Minero Siderurgia de. Ponferrrada S.A.	U	643 000
	O	154 000
Munoz Solé Hermanos, S.A.	U	23 141
Promotora de Minas del Carbon	O	50 580
S.A. Catalano-Aragonesa	U	324 550
	O	504 800
Union Minera del Norte, S.A. (UMINSA)	U	736 430
	O	86 850
Union Minera Ebro-Segre, S.A. (UMESA)	U	14 090
Viloria Hermanos, SA.	U	73 964
	O	29 844
Virgilio Riesco S.A.	U	24 680
Mina La Camocha	U	
HUNOSA — Aller	U	314 000
HUNOSA — Figaredo	U	89 000

Production Unit	U: Underground O: Opencast	Production capacity of the reference year (tce: ton coal equivalent)
HUNOSA — San Nicolas	U	110 000
HUNOSA — Montsacro	U	107 000
HUNOSA — Carrio	U	105 000
HUNOSA — Sotón	U	86 000
HUNOSA — Maria Luisa	U	172 000
HUNOSA — Candil	U	94 000
HUNOSA — Pumarabule	U	73 000
Total (Tec)		8 023 203

- (22) By letter of 3 October 2003 the Spanish authorities notified the Commission that the underground production units of Endesa, Encasur and Antracitas de Gillon S.A. would close in 2005 and that the company Promotora de Minas de Carbon S.A. (PMC) would close its opencast unit.

2.1. Reduction in operating aid

- (23) For the coal-mining companies, the proposed reduction in aid to cover operating deficits is 4 % annually for the years 2003, 2004 and 2005, except for HUNOSA, for which the reduction will be 5,75 % annually on average.

2.2. Production capacity

- (24) With regard to the production capacity, the Spanish government proposed granting aid to a production capacity of approximately 12 million tonnes in 2005. In 2002 production was approximately 13 400 000 tonnes.

2.3. Budget

- (25) The total amounts of operating aid, technical and social costs that are notified are the following:

(in EUR)

Year	Operating aid ⁽¹⁾	Technical costs ⁽²⁾	Social costs ⁽³⁾
2003	568 647 000	81 299 000	469 072 000
2004	539 854 000	82 987 000	490 112 000
2005	513 046 000	96 739 000	484 866 000

⁽¹⁾ Articles 4 and 5(3) of Regulation (EC) No 1407/2002.

⁽²⁾ Article 7 of Regulation (EC) No 1407/2002.

⁽³⁾ Article 7 of Regulation (EC) No 1407/2002.

- (26) With regard to the years 2006-2007, the Spanish authorities have notified that it is not possible at present to set specific objectives for this period. The Spanish authorities are proposing to continue to reduce the aid by 4 % annually. Once the Plan for accessing coal reserves has been agreed, the details of the allocation of the aid and of the distribution of production (in tonnes) will be communicated to the Commission.

2.4. Plan concerning the coal-mining company Hunosa

- (27) The Spanish authorities have notified in greater detail the plan for the publicly-owned coal-mining company Hunosa. Over the 2002-2005 period the capacity is forecast to fall from 1 800 000 tonnes in 2001 to 1 340 000 tonnes in 2005. Aid to cover operating deficits is being cut from EUR 321 091 000 in 2001 to EUR 239 281 000 in 2005.
- (28) The basic aims of the 2002-2005 Hunosa Plan were, firstly, to restructure the undertaking and to reduce losses in such a way that the activity-reduction measures required under the national mining plan and Community legislation took due account of Hunosa's social and economic importance in the central Asturian coalfield. Furthermore, the aim was to lay the foundations for the future development of the area in which the central Asturian coalfield is located by creating the conditions needed to create alternative employment to coal mining. Lastly, the plan entails cutting Hunosa's operating losses by over 30 % and a 33,6 % reduction in its workforce, thus increasing its productivity by 21,4 %.
- (29) The Hunosa Plan envisaged the implementation of a set of measures designed to ensure that production levels were scaled down. First, two of the existing nine

production units were closed. Added to this was the closure of the washery. The closure of these three sites represents a 25 % reduction in productive capacity. Secondly, action was taken to optimise productivity, the focus being on measures concerning the selection of deposits, the degree of modernisation and washing processes. Efforts were concentrated on those pits which offered the highest productivity, the lowest overall costs and the best quality. In principle, part of the production was to be reserved for the nearby power plant and Hunosa had to deliver annually coal for 100 days' consumption. Thirdly, the planned reduction in activity makes it necessary to reduce the undertaking's workforce. Lastly, as a result of the measures taken, production during the lifetime of the plan will fall by 26,1 % overall from 1 800 000 tonnes in 2001 to 1 340 000 tonnes in 2005.

- (30) The Hunosa Plan envisaged the hiring of 550 new workers during the period 2002-2005. The Spanish authorities guaranteed that these new workers should they have to be hired, would be selected from among workers from other mining undertakings who had lost their jobs following mine closures, with two very specific exceptions, the hiring of specialised technicians and of lineal descendants of workers who had died in accidents at work.
- (31) The Spanish authorities have communicated that the costs per tce of the production units of HUNOSA that they propose to keep open during the restructuring period are the following:

Production Unit	Average cost (EUR/tce)		Reduction (%)
	2001	2005	
Aller	271	237	12,5
San Nicolás	429	317	26,1
Montsacro	342	251	26,6
Carrio	261	223	14,5
Sotón	376	304	19,1
M ^o Luisa	371	331	10,8
Candil	411	340	17,3
Average	344	278	19,2

- (32) The Spanish authorities considered that this reduction in production costs of approximately 20 % in the period 2002-2005 demonstrates the possibilities of a reduction in Hunosa's production costs and that this

trend could be reinforced in the future. According to the Spanish authorities, this reduction of production costs means a 25 % reduction of aid to the company and that this trend could be reinforced in the future.

- (33) In accordance with the objectives set out in the plan, it is proposed to launch a set of measures to encourage the creation of an economic structure providing an alternative to coal mining in the geographical area in which Hunosa operates. A commitment has therefore been made, by the Spanish authorities and the trade unions, to encourage the creation of 650 jobs during the 2002-2005 period in the central Asturian coalfield with the aid of the various measures under this Plan.
- (34) Concerning the aid to cover the exceptional costs of the restructuring process and inherited liabilities, which accompany the application of the technical measures regarding concentration and selection of deposits and the corresponding capacity adjustments, the Spanish authorities explained that social measures are needed, in particular to finance the early-retirement scheme. The aid that will cover these measures and other proposed measures will decrease gradually.
- (35) The following table shows the reduction in workforce and the total amounts of aid to be granted according to the Hunosa Plan, as proposed in the restructuring plan.

Year	Workforce at year end	Aid reduction activity ⁽¹⁾ (in EUR)	Aid for exceptional costs ⁽²⁾ (in EUR)
2003	4 902	271 593 000	302 557 000
2004	4 437	254 682 000	298 983 000
2005	4 079	239 281 000	286 203 000

⁽¹⁾ Article 4 of Regulation (EC) No 1407/2002.

⁽²⁾ Article 7 of Regulation (EC) No 1407/2002.

- (36) By letter of 22 April 2003, the Spanish authorities notified the Commission that the aim of the Hunosa Plan, among other objectives, as a precautionary measure, was the maintenance of a minimum quantity of coal production in order to guarantee access to reserves.
- (37) In the same letter the Spanish authorities explained that the minimum production of Hunosa for 2005 would be 1 340 000 tonnes, in order to guarantee that 30 % of the needs (100 days) of the power plants near Hunosa's mines could be met by this company. The Spanish authorities proposed applying the same criterion after 2005. The Spanish authorities considered that the maintenance of strategic production close to the power plants was a priority objective of the plan for accessing reserves.

2.5. Duration of the scheme

- (38) The aid will be available in the period 2003-2005.

2.6. Form of the aid

- (39) The aid will take the form of grants.

2.7. Beneficiaries

- (40) Production units of Spanish coal-mining companies referred to in paragraph 21.

2.8. Legal basis

- (41) Orden ministerial ECO/2731/2003, Orden ministerial ECO/768/2003, Orden ministerial ECO/180/2004 and Orden ministerial ITC/626/2005.

2.9. Energy and environmental situation in Spain

- (42) According to electricity production forecasts prepared by Spain for the period 2000-2011, the share of coal in electricity production will be reduced from 35,9 % in 2000 to 15 % in 2011. Electricity produced from natural gas will increase from 9,7 % to 33,1 % over the same period. Renewable energies will increase from 16,9 % of electricity production in 2000 to 28,4 % in 2011. Electricity generation is responsible for only 28 % of total CO₂ emissions. Spain does not consider it logical to make the link between aid given to national coal production and CO₂ emissions. The correlation should instead be between power generation and emissions. Power stations will operate as long as technically and economically viable irrespective of the fact whether the coal consumed is nationally produced or imported.

2.10. Grounds for initiating the procedure

- (43) On 30 March 2004, the Commission initiated the formal investigation procedure. The Commission expressed doubts whether the notified plan is in conformity with the conditions and criteria set out in Regulation (EC) No 1407/2002 and whether it complies with the objectives of this Regulation. The Commission considered that the plan had not been explained in sufficient detail. Therefore, in a letter of 30 March 2004 the Commission asked the Spanish authorities:

- (a) To submit the total amount of the estimated coal production per coal year and the estimated amount of aid for the reduction of activity per coal year as required by Article 9(4) of Regulation (EC) No 1407/2002.
- (b) To clarify the selection criteria to be met by the production units in order to be included in the

plan for accessing coal reserves and to submit the total amounts of the estimated coal production per coal year and the estimated amount of aid for accessing coal reserves as required by Article 9(6) of Regulation (EC) No 1407/2002.

- (c) To clarify whether the aid for the reduction of activity per coal year as required by Article 9(4) of Regulation (EC) No 1407/2002 should be as a minimum the aid that Spain intended to grant to the companies/production units referred to in paragraph 18 of Commission Decision 2002/826/ECSC of 2 July 2002 on financial measures by Spain in respect of the coal industry in 2001 and in the period 1 January 2002 to 23 July 2002 (7).
- (d) To submit all the available information on the application of the principle of degressivity of aid and to answer the questions of whether competitiveness factors such as the evolution of the production costs would be taken into account and whether the inclusion of the production unit in a closure plan would be considered a factor for higher reduction of aid.
- (e) To clarify whether production units amounting to a capacity of 1 660 000 tonnes will be closed before 31 December 2005.
- (f) To clarify whether the production units Antracitas de Gillon, ENDESA (underground) and ENCASUR (underground) received operating aid in 2003; to report whether the aid received by these production units from 1998 to 2002 to cover exceptional costs under Article 5 of Decision No 3632/93/ECSC did not exceed such costs; to clarify whether, in the event the aid exceeded the costs, Spain would recover the difference.
- (g) To submit the total amount of the aid to Hunosa in 2003, 2004 and 2005, taking into account the reductions of production costs notified by the company.
- (h) To clarify the maximum number of jobs at Hunosa that are necessary for workers with a specific technical background.
- (i) To explain in detail the amendments to the Ministerial Order ECO/2771/2003 to guarantee the correct application of Article 7 of Regulation (EC) No 1407/2002, and to confirm that only production units notified under the terms of Decision 2002/871/EC will be eligible for aid.

(7) OJ L 296, 30.10.2002, p. 73.

3. COMMENTS FROM SPAIN

- (44) The comments sent by the Spanish authorities after the Commission opened the procedure are the following. Third parties did not submit comments of Regulation (EC) No 1407/2002.

3.1. Aid for the reduction of activity (Article 4 of Regulation (EC) No 1407/2002) and aid for accessing coal reserves (Article 5(3) of the aforementioned Regulation)

- (45) The Spanish authorities submitted reports of the aid paid in 2003 and 2004 and the payment forecast for 2005, which classify the aid according to whether it was granted under Articles 4 and 5 of Regulation (EC) No 1407/2002. The aid granted and to be granted to Hunosa is classified according to whether it is financed out of the State general budgets or SEPI⁽⁸⁾.

3.1.1. Production in the period 2003-2005

- (46) The production trend resulting from the production capacity closures which the industry undertook to carry out is as follows:

	2001	2002	2003	2004	2005
Production	13 993	13 372	12 576	12 400	12 000

(Kilotonnes)

3.1.2. Criteria

- (47) The Spanish authorities submitted the criteria which have been used when categorising production units as aid beneficiaries under Article 4 or Article 5(3) of Regulation (EC) No 1407/2002. As the main criterion, the cost of production per ton coal equivalent (tce) was fixed, and the following were established as secondary criteria:

- (a) existence of a market, i.e. there should be an operating power station within a 100 kilometre radius;
- (b) solvency of the undertaking which owns the production unit; in this regard, there should be a minimum proportion between the undertaking's capital and liabilities.

- (48) Finally, the social and regional conditions in the area where the production unit is located must be taken into consideration. The Spanish government feels that these social and regional criteria cannot be ignored. However, it is willing to consider any terms which the Commission might suggest.

⁽⁸⁾ Sociedad Estatal de Economía y Hacienda, created in 1996 under the responsibility of the Ministry for Economic Affairs and Finance.

- (49) The definition of 'production unit' has been checked with those undertakings which have the largest production capacity and which might therefore have more than one production unit. Up until now, except in respect of Hunosa, analysis of the aid was carried out at undertaking level and underground coal workings were calculated together with opencast workings.

3.1.3. Aid for the reduction of activity

- (50) The Spanish authorities explained that, as may be seen from the report, all the undertakings which in 2002 were classified as being in receipt of aid under Article 4 of Decision No 3632/93/ECSC are currently classified as undertakings receiving aid under Article 4 of Regulation (EC) No 1407/2002.

3.1.4. Degression of aid

- (51) The Spanish authorities have explained that, until the end of 2005, aid reduction should be global and at a rate of 4 % per year.

3.2. Aid to cover exceptional costs

- (52) The Spanish authorities have informed the Commission that Order ECO/2731/2003 has been amended in order to bring it into line with the requirements of Article 7 of Regulation (EC) No 1407/2002. The order will only apply to production units which actually close before 31 December 2005 and it will not be applied to closure programmes which expire after that date. Furthermore, the compensation of EUR 13 per 1 000 therms for coal contracts cancelled as a result of closure of the production unit which supplied the fuel has been fixed as the maximum aid to provide financial support for the types of cost contained in Annex to Regulation (EC) No 1407/2002. Only duly substantiated actual costs of closure will be paid for.

3.3. Previous Commission decisions

3.3.1. Closures until 31 December 2005

- (53) The Spanish Government will comply with paragraph 18 of Decision 2002/826/ECSC by definitively closing production capacity of 1 660 000 tonnes at the undertakings mentioned in the aforementioned paragraph by 31 December 2005. Some of those undertakings already began to reduce production capacities in 2002.

3.3.2. Production units which received aid to cover exceptional costs of closure

- (54) As stated in the 2003, 2004 and 2005 aid reports, the aid granted in 2003 to Antracitas de Gillón, ENCASUR, ENDESA and PMC (before closure in 2004) and that planned for 2004 and 2005 is aid for reduction of activity. The aid granted to provide financial support

for exceptional closure costs between 1998 and 2002 to ENDESA and ENCASUR was justified at the time as aid to cover differences between general early retirement payments and the 100 % paid by those undertakings. The Spanish authorities provided letters of commitment to confirm the closure of the production units committed for closure by the undertakings at the end of 2005.

3.4. The Hunosa plan

3.4.1. Observations on the HUNOSA restructuring effort

- (55) The Spanish authorities provided details of the significant level of restructuring undertaken in recent years and the degree of compliance with the 2002-2005 plan. The plan involves the closure of two production units, which entails a reduction of 700 000 tonnes in terms of extraction capacity.

3.4.2. Aid granted to HUNOSA in 2003-2005

- (56) The Spanish authorities explained that the volume of restructuring aid will be kept strictly within the limits of the costs arising from the outsourcing of social obligations and provided the appropriate explanations.
- (57) The apparent contradiction between the significant effort made in reduction of costs and the less significant depression in production aid basically arose from changes in revenues as a result of international prices for imported coal and the US dollar/euro exchange rate. The Spanish authorities provided detailed information with regard to the calculations of the revenues and explained why the revenues are in general lower than the international price of imported coal.
- (58) The Spanish authorities also provided detailed explanations on aid to cover exceptional costs arising from the restructuring process.

3.4.3. Information on the recruitment of specialist technical staff

- (59) The Spanish authorities pointed out that hiring of such staff is strictly subject to the need to cover essential posts, particularly for safety reasons. However, it should be noted that so far, during the first 2 years of implementation of the plan, no new recruitment has taken place. Nevertheless the Spanish authorities have, as a precautionary measure, put forward as a maximum estimated number of such recruitments no more than 100 employees.

4. ASSESSMENT OF THE AID

4.1. Application of Article 87(1) of the Treaty

- (60) To determine whether the scheme's measures constitute aid within the meaning of Article 87(1) of the Treaty, it

must be determined whether the measures are granted by Member States or through state resources, whether they favour certain undertakings, whether they distort or threaten to distort competition and whether they are liable to affect trade between Member States.

- (61) The first condition of Article 87 refers to aid granted by States or through state resources. In this particular case, the existence of state resources is demonstrated by the fact that the measure is effectively financed by the public budget of the State and to a lesser extent, by SEPI, a publicly owned company fully controlled by the State.
- (62) The second condition of Article 87(1) relates to the possibility of the measures favouring specific beneficiaries. It needs to be determined, firstly, whether the beneficiary companies derive an economic benefit and, secondly, whether this benefit is granted to a specific type of company. The aid clearly provides economic benefits for coalmining companies in that there is a direct subsidisation which covers current expenses that these companies would normally have to bear themselves. These expenses consist of the difference between the production costs and the foreseeable revenue plus the costs arising from the restructuring, and the coalmining companies benefit from the fact that they are partly compensated for these costs. Moreover, the measures in question are aimed solely at coalmining companies in Spain. They therefore favour certain companies over their competitors, i.e. they are selective.
- (63) Pursuant to the third and fourth conditions of Article 87(1), the aid must not distort or threaten to distort competition or affect or be liable to affect trade between Member States. In the case in hand, the measures do threaten to distort competition as they reinforce the financial position and scope for action of the beneficiary companies compared with their non-beneficiary competitors. Even if intra-Community trade in coal is very limited and the companies in question do not export, companies established in other Member States have less scope for exporting their products to the Spanish market.
- (64) For these reasons, the measures in question fall within the scope of Article 87(1) of the Treaty and may be considered compatible with the common market only if they meet the conditions for qualifying for one of the derogations provided for in the Treaty.

4.2. Application of Regulation (EC) No 1407/2002

- (65) Given that the ECSC Treaty and Decision No 3632/1993/ECSC both expired on 23 July 2002 and having regard to Article 87(3)(e) of the Treaty, the compatibility of the notified measures has to be assessed on the basis of Regulation (EC) No 1407/2002.

- (66) Regulation (EC) No 1407/2002 lays down the rules for the granting of State aid to the coal industry with the aim of contributing to the restructuring of the industry. These rules take account of the social and regional aspects of the sector's restructuring and the need for maintaining a minimum quantity of coal production to guarantee access to coal reserves. The process of restructuring of the coal industry must be continued, given the competitive imbalance between Community coal and imported coal.
- (67) In accordance with the principle of proportionality, the production of subsidised coal must be limited to what is strictly necessary to make an effective contribution to the objective of security of supply of energy. In this context the Commission refers also to its Communication 'A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development', also known as the Gothenburg Sustainable Development Strategy, which aims to 'limit climate change and increase the use of clean energy' ⁽⁹⁾.
- (68) Member States may, in accordance with Article 4 of Regulation (EC) No 1407/2002, grant aid for the reduction of activity. One of the conditions that have to be fulfilled is that the operation of the production units concerned shall form part of a closure plan.
- (69) Member States may, in accordance with Article 5(3) of Regulation (EC) No 1407/2002, grant production aid to an undertaking, intended specifically for production units or to a group of production units. One of the conditions that have to be fulfilled is that the operation of the production units concerned or of the group of the group of production units in the same undertaking forms part of a plan for accessing coal reserves.
- (70) Member States may, in accordance with Article 7 of Regulation (EC) No 1407/2002, grant aid to cover exceptional costs arising from the rationalisation and restructuring of the coal industry that are not related to current production, provided that the amount paid does not exceed such costs. The categories of costs resulting from the rationalisation and restructuring of the coal industry are defined in the Annex to the Regulation.
- (71) In its letter of 30 March 2004 the Commission expressed its doubts as to whether the notified restructuring plan was in conformity with the conditions and criteria set out in Regulation (EC) No 1407/2002 and whether it complied with the objectives of this Regulation. The Commission considered that it needed a more detailed plan. Following this letter Spain provided the Commission on several occasions with detailed information concerning the restructuring plan. On the basis of this new information the Commission will hereinafter assess the restructuring plan and the aid for the years 2003, 2004 and 2005 granted on the basis of the restructuring plan.

4.3. Previous Commission decisions

- (72) In its letter of 30 March 2004 the Commission considered that the Spanish authorities had not clearly stated that the conditions laid down in previous Commission decisions, in particular Decision 2002/826/ECSC, which have been taken on the basis of the ECSC Treaty, would be respected. This Decision authorises the granting of aid on condition that the production units in question are included in a closure plan and that by 2005 they reduce the production capacity by 1 660 000 tonnes. Spain has to respect these conditions. The fact that the ECSC Treaty has expired and Regulation (EC) No 1407/2002 has entered into force does not affect commitments made in the past. These commitments have to be fully respected and the Commission has to ensure the fulfilment of the conditions laid down in decisions taken on the basis of the ECSC Treaty.
- (73) The previous closure/activity-reduction plan based on Decision No 3632/93/ECSC was approved by Decision 2002/826/ECSC. On several occasions, in several letters to the Commission, the Spanish authorities have accepted that past commitments must be fully respected and have explicitly confirmed that the decisions on the closure of the production units listed in paragraph 18 of Decision 2002/826/ECSC will be implemented in accordance with the rules in force. This means the closure, by 2005 at the latest, of a production capacity of 1 660 000 tonnes. Based on the information provided by the Spanish authorities, the Commission has been able to check that the reduction of this production capacity has indeed been achieved.
- (74) The Commission considers that the production units that have reduced their production capacity are the same as those already included in the closure/activity-reduction plan based on Decision No 3632/93/ECSC. These are the production units which are mentioned in paragraph 18 of Decision 2002/826/ECSC.
- (75) According to the previous Spanish closure/activity-reduction plan, the production units Antracitas de Gillon SA, ENDESA underground and ENCASUR underground should have been closed by the end of 2002. However, in 2003 and partially in 2004, these production units were still operating.
- (76) Following several requests by the Commission, the underground units of ENDESA and ENCASUR and the production unit of Antracitas de Gillon were closed down. The opencast production unit of Promotora de Minas de Carbon was also closed, on 31 March 2004. The Commission has received letters of commitment confirming the closure of the production units committed for closure by these undertakings in 2005.

⁽⁹⁾ COM(2001)264 final, p. 11.

(77) On the basis of the information provided by Spain, the Commission has verified that the aid granted to these companies under Article 5 of Decision No 3632/93/ECSC in order to cover the exceptional costs of closure of these production units does not exceed the costs.

(78) Since the required reduction of production capacity has been achieved by the production units listed in paragraph 18 of Decision 2002/826/ECSC and since the production units that were supposed to close down according to that Decision, have finally been closed down, the Commission concludes that Spain has respected the previous Commission decisions.

4.4. Aid for reduction of activity (Article 4) of Regulation (EC) No 1407/2002 and aid for accessing coal reserves (Article 5(3) of the Regulation)

(79) In its letter of 30 March 2004 the Commission stated that the Spanish authorities had notified the overall amount of operating aid to be granted. However, the Spanish authorities have neither notified the total amount of aid to the reduction of activity as referred to in Article 4 of Regulation (EC) No 1407/2002 nor the total amount of aid for accessing coal reserves as referred to in Article 5(3) of that Regulation. In addition the Spanish authorities did not shed any light on the criteria to be fulfilled by the production units in order to be able to apply for aid.

(80) Another of the Commission's doubts concerned the fact that the Spanish authorities had not defined the total production capacity that should be closed neither by 31 December 2005 or by 31 December 2007 as a result of the closure plan, as required by Articles 4(a) and 9(4) of Regulation (EC) No 1407/2002 as one of the conditions to be fulfilled in order to qualify for aid to the reduction of activity. The estimated amount of aid can only be granted if the total reduction of capacity is notified.

(81) With respect to the production capacity and minimum production level to guarantee access to coal resources, in its letter to Spain of 30 March 2004, the Commission considered that the justification did not seem to comply with the purpose of Article 1 of Regulation (EC) No 1407/2002. The plan for accessing coal reserves and aid for accession coal reserves should be justified on the grounds of the need to maintain a minimum quantity of coal production to guarantee access to reserves. The social and regional aspects of the restructuring of the sector can only be used as justification for the closure plan and for the aid for the reduction of activity.

(82) The Spanish authorities have provided information concerning the costs of production units. For each company, except Hunosa, Spain has defined the underground workings and related infrastructure of each

company as a single underground production unit, and followed a similar approach with regard to opencast workings. The application of Regulation (EC) No 1407/2002 is based on the concept of 'production unit'. On 30 March 2004 the Commission expressed doubts as to whether this information was detailed enough in view of the conditions laid down in Article 9 of Regulation (EC) No 1407/2002.

4.4.1. Distinction between aid for the reduction of activity and aid for accessing coal reserves

(83) Following the opening of the procedure, Spain has classified the aid according to whether it was granted under Articles 4 or 5(3) of Regulation (EC) No 1407/2002. During the period 2003-2005, the following production units received aid under Article 4: Antracitas de Gillon S.A., Coto Minera Jove S.A., the underground production unit of Endesa, the underground production unit of Encasur, González y Díez S.A., Industria y Comercial Minera S.A. (INCOMISA), Mina Escobal S.L., Mina la Camocha, Minas de Valdeloso S.L., Promotora de Minas de Carbón S.A. and Virgilio Riesco S.A. Mina Escobal S.L. closed down in 2004 and Promotora de Minas de Carbón S.A. closed down in 2005. Other production units that received aid for the reduction of activity are the two production units of the publicly owned coal-mining company Hunosa that have been closed down, i.e. Pumarabule and Figaredo. Other production units received aid for accessing coal reserves. These production units are mentioned in paragraph 21.

(84) On the basis of the latest information received, the Commission therefore comes to the conclusion that the Spanish authorities have correctly divided the production aid in aid for the reduction of activity and aid for accessing coal reserves. In addition, the Spanish authorities have confirmed that the condition laid down in Article 4(a) of Regulation (EC) No 1407/2002, which states that production units that receive aid for the reduction of activity will close down by 2007 at the latest, will be fulfilled.

4.4.2. Criteria to be applied

(85) The Commission takes note of the fact that concerning the criteria for eligibility for production aid, the Spanish authorities have informed the Commission that the main criterion that they will apply is the cost of production per tce. This criterion is in line with Article 5 of Regulation (EC) No 1407/2002, as it can be considered as a clear indication that the aid will be granted to the units with the best economic prospects.

(86) As supplementary criteria, the Spanish authorities apply the criterion of the existence of a market, i.e. that there should be a functioning power station within a 100 km radius, and the solvency of the undertaking which owns the production unit. In this regard, a minimum proportion between the undertaking's capital and total liabilities could be required. The latter criterion will

contribute to the granting of aid to the units with the best economic prospects. The former has to be used purely as a supplementary criterion. Because of considerations of security of energy supply and also for financial reasons, as there is a link with the transport costs, the location can be taken into account, but must not be the main factor to be taken into consideration. Overall, the Commission considers that the criteria being applied by the Spanish authorities are in line with Regulation (EC) No 1407/2002.

- (87) Based on the information provided by the Spanish authorities, the Commission has checked the definition of 'production unit' as used in the restructuring plan. In the past, Spain carried out the analysis of the aid at undertaking level, and underground coal workings were calculated together with opencast workings. Spain has now changed this analysis and it checked the aid per production unit as defined in Regulation (EC) No 1407/2002. Furthermore, in this respect, Spain has provided the Commission in this respect with the information required by Decision 2002/871/EC. Therefore, the Commission considers that the definition of 'production unit' which Spain has used in its restructuring plan is in accordance with the Regulation.
- (88) The Commission takes note of the fact that the restructuring plan will result in a production capacity of 12 million tonnes. In view of the overall energy situation in Spain, in particular the intention of the Spanish authorities to reduce the share of coal in electricity production from 35,9 % to 15 % in 2011, the reduction of capacity to 12 million tonnes appears to be an appropriate measure which will help to reach that target. Therefore, this level of production capacity, to be achieved by the end of 2005, can be considered as a strategic reserve in accordance with Regulation (EC) No 1407/2002. Consequently, the production units that fall under the part of the restructuring plan that concerns access to coal reserves are presumably eligible for aid for accessing coal reserves, provided that the conditions in Article 4 and 5 of the Regulation are fulfilled.
- (89) Furthermore, the main criterion and the cornerstone of the Regulation, that the aid has to be digressive, has been complied with. The aid, granted under Articles 4 and 5 of Regulation (EC) No 1407/2002, has been reduced by 4 % annually. The Commission considers that such a reduction can be accepted. The Commission has taken into account that the Spanish authorities have announced that it is intended to continue reducing the aid by 4 % annually for the years 2006 and 2007.
- (90) In view of the above, the Commission considers that the Spanish authorities have sufficiently clarified the criteria applicable to the production units for them to be eligible either for aid for the reduction of activity or aid for

accessing coal reserves. These criteria are in accordance with Regulation (EC) No 1407/2002, in particular with Articles 4(a) and 9(6)(a) thereof.

- (91) In this respect, the Commission would remind the Spanish authorities that the social and regional situation cannot be taken into account when deciding on the strategic reserve to be maintained. Social and region conditions can only be taken into account when applying the conditions linked to the granting of aid for the reduction of activity and aid to cover the exceptional costs of the restructuring process.

4.4.3. Calculation of the revenues

- (92) The Spanish authorities have provided detailed information on coal prices. In the additional information provided by the Spanish government, it was explained that the State aid paid by the Spanish government was in fact the difference between the production costs and the average sales price of Spanish coal, which was lower than the average price of coal imported from third countries. This is mainly due to the lower quality of Spanish coal and to a lesser extent also to the fact that the prices are determined in long-term contracts while the price of imported coal is a spot price of coal on a given day.
- (93) The Spanish authorities have explained that in practice the influence of the variation between the international price and the price of national coal is delayed by approximately 9 months. On the other hand, the quality of the coal appears to be substantially lower than that of the coal being traded on the international market. This results in a much lower price for national coal. The price paid differs per power plant, because coal mined at different units differs in quality. For example, the calorific value of coal can vary between 7 % and 35 % depending on the site where it has been extracted.
- (94) In general Spanish coal is of inferior quality, because of high ash and water contents and/or due to a low volatile content. There is no world market for low-quality coal, as all coal-producing countries use their low-quality coal close to the mining site. The use of these types of coal in power plants generates higher investment and maintenance costs for the power plant owners, as not only do they have to install special burners, which are more expensive to maintain and use, but the efficiency of these power plants is also lower than the efficiency of plants using normal coal.
- (95) The Spanish authorities have explained that it is not economically viable to improve the quality of the coal so much that it would become comparable to imported coal, as the production process would become much more expensive and less competitive.

- (96) Since 1998, the selling price of coal has been determined via direct negotiations between the coal-producing production units and the coal-fired power plants, without any intervention by the administration. The administration can intervene only in case of serious conflicts. As evidence of the price paid to the coalmining companies, the Spanish authorities have provided the contracts between some electricity companies that have power plants fuelled with coal. The calculation of the price of coal includes a formula with regard to the quality of coal in which, among others factors, content of volatile materials, ash, moisture and sulphur and the calorific value are taken into account.
- (97) Coal prices in Spain are based on long-term contracts between the coalmining companies and their clients. The contracts currently in force are valid up to 31 December 2005. Prices are based on the following parameters:
- Prices CIF⁽¹⁰⁾ in US dollars for each period of coal imports from third countries to the EU, expressed in US dollars/tce and published by the EU.
 - The exchange rate between the US dollar and the euro in the same period in order to establish the price CIF in US dollars in its equivalent in euro. The dollar/euro exchange rate rose from 0,8955 in 2001 to 1,25 in 2005.
 - In order to determine the price at the power plant, the costs of transport between port and power plant is deducted from the resulting price in euro since the CIF price is the price to be paid for delivery in ports.
 - Finally, a quality correction, which is explained below, is applied.
- (98) Spain calculates the average prices for imports of hard coal to Spain. The calculation of these average import prices is based on statistic data provided by coal-importing companies in Spain and coal exporting companies from third countries.
- (99) In order for this system to function properly, it is crucial that the prices calculated for hard coal do indeed reflect the world market price for coal. In order to verify this, the Commission compared this price to the MCIS Steam Coal Marker Prices, which is the standard reference index for the spot market prices for coal.
- (100) The Spanish authorities explained the differences between the MCIS Steam Coal Marker Price and the average price as calculated by them by pointing out that the former is based solely on the contracts concluded on a given day in the spot market, whereas the price calculated by the authorities is based on all the contracts that are in force on a given day, including long-term contracts. As a result, the Spanish price tends to be lower than the spot price in periods of increasing spot prices and higher than the spot market price in periods of decreasing spot market prices. The long-term average of the two indices is roughly equal: for the years 1996 to 2004, the average MCIS Steam Coal Marker Price was 43,3 euro/tce. The Commission thus considers that the Spanish calculation of the price of hard coal does indeed accurately reflect the world market price for steam coal.
- (101) Based on the above-mentioned parameters, in 2001 the average price was EUR 45,85 and the forecast for 2005 was EUR 36. Revenues in 2001 were exceptionally high, mainly due to the gross accounting of some exceptional and atypical revenues for that year. As a consequence, a reduction of 20 % in production costs has not resulted in an equal reduction of the total amount of production aid to be granted for the period 2003-2005.
- (102) The total aid is established after presentation by each production unit of its audit report, which contains the figures of the production costs and the revenues. When afterwards at the end of a coal year it appears that the difference between production costs and revenues has been lower than forecasted, the total amount of aid will be reduced and the excessive aid will have to be reimbursed.
- (103) In the light of the foregoing, the Commission considers that Spain has explained in a detailed way how the revenues of the coalmining companies have been calculated. The information provided has convinced the Commission that the right prices of coal have been used in the calculation of the revenues. On the basis of the information provided, in particular the contracts between power plants and coalmining companies, the Commission has come to the conclusion that Article 4(b) and (c) of Regulation (EC) No 1407/2002 have been respected in the sense that the production aid has not exceeded the difference between the production costs and the revenue for the respective years and the aid will not cause the prices of Community coal delivered to be lower than those for coal of a similar quality from third countries. The Commission will monitor closely to ensure that in the new contracts to be negotiated between power plants and coal-mining companies from 1 January 2006, the currently high world market price of coal will be duly taken into account in the calculation. Finally, the Commission notes that the conditions laid down in Article 4(d) and (e) have also been respected.
- 4.5. Aid to cover exceptional costs (Article 7 of Regulation (EC) No 1407/2002)**
- (104) In its letter of 30 March 2004, the Commission considered that the Spanish authorities had not clarified the criteria to be taken into account when granting aid on the basis of Article 7 of Regulation (EC) No 1407/2002 to cover exceptional costs that are not

⁽¹⁰⁾ Cost, insurance and freight.

related to current production (inherited liabilities). By letter of 3 October 2003 Spain notified the Commission that these aids would be granted exclusively to production units which were to close in the period 2003-2005 and that the amount of aid would not exceed the costs. However, Ministerial Order ECO/2731/2003 of 24 September 2003 did not explicitly contain these conditions. The aforementioned Order did not contain sufficient guarantees to ensure that the aid to cover the costs of the closure of production units would not exceed these costs and that the production units concerned would be closed before 31 December 2005. The Commission considered that the criteria laid down by Spain to calculate the aid to cover the costs of closure of production units, based on the reduction of the provisioning of coal as laid down in the contracts with the power plants and on aid of EUR 13 for each thousand therms reduced, was not a sufficient guarantee for compliance with the conditions of Article 7 of Regulation (EC) No 1407/2002. The Commission also noted that the amounts of aid based on this Article seemed to be very high and the question arose whether the proposed aid in this respect was not too high in relation to the intensity of the restructuring process.

(105) On the basis of the newly received information, the Commission notes that Ministerial Order ECO/2731/2003 has been amended in order to bring it into line with the requirements of Article 7 of Regulation (EC) No 1407/2002. Now the order only applies to production units which close before 31 December 2005. Concerning the compensation of EUR 13 per thousand therms for coal contracts cancelled as a result of closure of the production units, the order has made it clear that that amount is a maximum and that only duly substantiated actual costs of closure will be paid for. In this respect, the Spanish authorities have declared that over 2004 they have granted less aid. Concerning 2004, the aid to cover exceptional costs actually granted amounted to EUR 518 986 instead of the forecasted EUR 555 227.

(106) The Commission considers that Spain has given a sufficient explanation of the exceptional costs linked to the restructuring process to be covered. Spain has specified the amounts to be granted per category as mentioned in the Annex to Regulation (EC) No 1407/2002. Therefore, the Commission has been able to check that the amounts, which are mainly linked to pre-retirement schemes, do not exceed the costs and the aid to cover the exceptional costs of the restructuring can be approved. Seen against the background of the reduction in workforce, the closure of mining capacity and the digressive trend of granting of production aid, the information provided by the Spanish authorities has convinced the Commission that the costs to be covered are not too high in relation to the intensity of the restructuring process. In the following chapter, a separate assessment will be made of the aid to cover the exceptional costs of the restructuring process granted to the publicly owned company Hunosa.

4.6. Hunosa plan

(107) With regard to Hunosa the Commission underlined in its letter of 30 March 2004 that this company formed part of the closure plan that was based on Decision No 3632/93/ECSC. Due to social and regional reasons, however, the closure would take place after 2002. The production costs of this company are very high compared with those of other coalmining companies in the Community. The Commission considered that the reduction in workforce and in production were below the European average. The Plan provides for the closure of two of the nine production units. In its letter of 3 October 2003, Spain announced a further reduction in production costs of 20 % amounting to a 25 % reduction of aid in 2005. The reduction of production costs announced by Spain in its letter of 3 October 2003 would result in a further reduction of aid to Hunosa of EUR 179 460 750 in 2005.

(108) In its letter of 30 March 2004, the Commission considered that the proposal to reserve 30 % of the coal consumption (equivalent to approximately 100 days of consumption) for the power plants in the region, might be considered as incompatible with the common market with regard to Hunosa.

4.6.1. The restructuring process of Hunosa

(109) The Spanish authorities have confirmed their intention of continuing the restructuring process of Hunosa in line with Regulation (EC) No 1407/2002 in order to reduce significantly the aid amounts, the production capacity and the workforce as required. These restructuring measures have to be assessed against the background of the social and regional importance of Hunosa in the Autonomous Community of Asturias.

(110) The Spanish authorities have provided the Commission with detailed information concerning the restructuring process of Hunosa, the costs and revenues, the prospects and the amounts of aid to be granted.

(111) The plan contains the following elements:

- reduction of the workforce by 33,6 %;
- reduction of the production capacity by 25 % and the closure of two production units; Pumarabule and Figaredo (a reduction of 700 000 tonnes);
- closing of a washery;
- increase of productivity by 21,4 %;
- reduction of production by 26,1 %;
- reduction of the production costs by 20 %;

- reduction of total aid by 25 % during the period 2003-2005, compared to a reduction of 12 % in the 4 previous years.
- (112) Since 1986, the date of accession of Spain to the Community, the data concerning the restructuring process are as follows:
- 71,9 % reduction in the workforce of the companies Hunosa and Minas de Figaredo, from 21 911 workers in 1986 to 6 151 in 2001;
 - 47,3 % reduction in production capacity with regard to underground mines;
 - 53,3 % reduction in production;
 - 40 % reduction of the total amount of production aid since 1992 in current terms and 56 % in constant value;
- (113) During the period 1998-2004, the aid to Hunosa was reduced by 32 % (adjusted value), which is above average in the Spanish mining sector, where the overall reduction was 25,7 %. Since 1992, the total amounts of aid to Hunosa have been reduced by 54 % in adjusted value and 69 % in constant value.
- (114) Furthermore, it appears that the Spanish authorities have continued the restructuring process of Hunosa beyond the restructuring plan for 2003-2005. In 2003, the production aid actually granted was EUR 264 480 000, while that forecast was EUR 271 593 000, which means an additional reduction of 2,6 %. The aid to cover exceptional costs of restructuring amounted to EUR 240 689 000, while the forecast was EUR 302 557 000, which means a reduction of 20,4 %.
- (115) With regard to the year 2004, production fell to 1 070 000 million tonnes, which is a further reduction of 20 % with respect to the plan. By the end of 2004, the number of workers had fallen to 4 137. The total amount of production aid actually granted in 2004 was EUR 254 682, instead of the forecasted EUR 247 483, a further reduction of 2,8 %.
- (116) At the end of 2005, a workforce of 3 500 is expected. This is a reduction of 14 %, which goes beyond the plan.
- (117) The fact that the production costs for Hunosa are so high is mainly due to the physical characteristics of the mines. The density of coal is very low, so for mining a large area has to be covered which requires a high level of infrastructure. Because of this low density, which is also irregular, mechanisation is difficult. Moreover, the restructuring process, in particular the significant reduction of the workforce and the large number of workers being retired early does not contribute to the optimisation of production costs. Nevertheless, Hunosa has achieved a reduction in production costs by improving management and focusing production in the units where mechanisation and technical mining were easiest to achieve with the lowest costs. Thanks to the use of other tools, the mechanisation and computerisation currently under way and the modernisation of installations and production processes, productivity has improved. This approach will lead to a further reduction of production costs in the future.
- (118) The Commission however notes that the 20 % reduction in production costs during the period 2001-2005 has not resulted in a 20 % reduction in production aid. According to the Spanish authorities, this is due to the differences in revenue between 2001 and 2005. In 2001 the average revenue was much higher than the average revenue in 2005, which was EUR 37/tec.
- (119) The Spanish authorities have provided detailed explanations with regard to these revenues of Hunosa. The price is established in long-term contracts, to a large extent freely negotiated between Hunosa and its clients, in a liberalised market.
- (120) On the basis of the newly-received information, the Commission considers that the apparent contradiction between the significant efforts made to reduce costs and the less significant degression in production aid basically arose from changes in income as a result of international prices for imported coal and the dollar/euro exchange rate. As explained in Chapter 4.4.3 on the calculation of the revenues, the revenues for the period 2003-2005 were lower than for 2001. Based on the information provided in this respect by the Spanish authorities, in particular in the contracts between Hunosa and the five power plants that are fuelled with coal from Hunosa, the Commission has been able to check that the right figures have been used in the calculation of Hunosa's revenues.
- 4.6.2. Aid to Hunosa for reduction of activity*
- (121) The aid granted in the past for the reduction of activity concerns the production units of Hunosa that have been closed. In this respect, the Commission considers that, also as regards Hunosa, previous Commission decisions have been respected.
- 4.6.3. Aid to Hunosa for accessing coal reserves*
- (122) The Hunosa Plan provides for the closure of the Pumarabule and Figaredo mines, which means an irreversible reduction of capacity by 700 000 tonnes. The Commission understands that the other production plans can be assumed to form part of the plan for accessing coal reserves. However, the Spanish authorities

have indicated that this might be subject to changes in the period after 2005. The Commission can accept this view, because this leaves a margin for a further reduction in the total amounts of aid granted in the years after 2005.

- (123) In order to explain why the production of Hunosa forms part of the plan for accessing coal reserves, the Spanish authorities refer to the accessibility of the reserves from a technical viewpoint, the demand of the power plants located nearby, the quality of the coal and the needs of power plants equipped with technical installations suited to the quality of the coal produced at Hunosa. The Commission notes that Spain has abandoned the criterion of a 100-day supply for the nearest power plant. As explained by the Spanish authorities, this was merely a hypothetical example and was never meant to be used as a criterion. However, the fact that it is an example does not detract from the fact that the Spanish authorities have taken the decision that Hunosa's reserves should cover a certain percentage of the demand of the power plants located in the same area. In view of the flexibility of this criterion, the Commission notes that the Spanish authorities can be expected not to infringe the free movement of goods.

- (124) Following the reasoning of the Spanish authorities, the Commission considers that the production of approximately 1 million tonnes in 2005 can be considered to form part of the strategic reserve of coal production the Spanish authorities would like to maintain. The Commission agrees with the Spanish analysis that the 2003-2005 Hunosa Plan constitutes a transitional but essential means of determining at a later stage the production units which will be included in the new plan for the period 2006-2010 concerning accessing coal reserves. In view of the significant reduction of both production and amount of aid, the plan is in accordance with the conditions laid down in Regulation (EC) No 1407/2002 and constitutes a useful basis for continuing the restructuring process. As Hunosa's reserves are needed to achieve a total coal production of 12 million tonnes in 2005, the Commission can accept that the reserves from Hunosa will, during the period 2003-2005, form part of the plan for accessing coal reserves. However, the Commission reminds the Spanish authorities that the plan for accessing coal reserves, in particular Hunosa's place in this plan in view of its high production costs, will have to be reviewed for the period 2006-2010. Hunosa's production and possible subsidies will have to be reduced substantially during this period.

4.6.4. Aid to cover exceptional costs of the restructuring process to Hunosa

- (125) The Spanish authorities have provided detailed information concerning the aid to cover the exceptional costs of the restructuring process, referred to Article 7 of Regulation (EC) No 1407/2002, and have broken down the costs into technical and social costs as shown in the table below.

(EUR thousand)

	2003	2004	2005
Safety work, costs related to the rehabilitation of former coal mining sites	11 684	11 984	13 766
Exceptional intrinsic depreciation	9 514	10 902	22 905
Total technical costs	21 198	22 886	36 638
Costs of pre-retirement	277 969	273 019	247 300
Indemnities	3 005	2 705	2 404
Supply of coal	385	373	361
Total social costs	281 359	276 097	250 065
Total	302 557	298 983	286 203

- (126) Hunosa's forecasts concerning pre-retirements for the period 2002-2005 are for 2 622 workers with a cost of approximately EUR 417 000 each. These costs can vary, as has been shown with regard to the year 2003. The aid actually granted was 20 % less than that forecasted.
- (127) In accordance with Article 1 of Regulation (EC) No 1407/2002, the Commission has taken account of the fact that in the affected area, Hunosa provides 20 % of direct employment and that it is difficult to create alternative employment as 18 000 jobs have already been created since 1986. Hunosa is economically and socially very important for the Autonomous Community of Asturias. The Commission understands that Spain needs time to develop other alternative economic activities in the region.
- (128) On the basis of the information provided by the Spanish authorities, the Commission considers that this aid fulfils the conditions of Article 7 of Regulation (EC) No 1407/2002. The aid covers the measures mentioned in the Annex to the Regulation and does not exceed the costs.

4.6.5. Hiring new employees

- (129) According to the information provided by Spain, it appears that in the period 2003-2005 no new recruitment of miners took place. The Commission is satisfied with this approach and reminds the Spanish authorities that this is an important factor when assessing the compatibility of the restructuring measures, both now and in the future.

4.6.6. Conclusion on Hunosa's restructuring plan

- (130) The Commission considers that Hunosa has made significant efforts to restructure and that, in this stage, in view of its social and regional importance, it would not be reasonable to ask for stricter measures. Therefore, the Commission concludes that the restructuring plan for Hunosa is in accordance with the purpose and provisions of Regulation (EC) No 1407/2002. The aid was granted with a view to contributing to the restructuring process and took account of the social and regional aspects of Hunosa's position in the Autonomous Community of Asturias. The doubts expressed by the Commission when the procedure was opened, in particular concerning the calculation of the amounts of aid granted and the criteria to be taken into account, were dispelled by the Spanish authorities, since the authorities provided additional detailed information and took additional restructuring measures which go beyond the restructuring plan initially notified. However, the Commission would remind the Spanish authorities that Hunosa's position in the light of the new restructuring measures and the plan for accessing coal reserves for the period 2006-2010 should be reconsidered and that new restructuring measures are necessary.

4.7. General assessment of 2003-2005 restructuring plan

- (131) The restructuring plan contains the elements of the plan for accessing coal reserves referred to in Article 9(6) of Regulation (EC) No 1407/2002 and the closure plan referred to in Article 9(4) of that Regulation. The Commission can therefore take a favourable decision on the proposed plans pursuant to Article 10(1) of the Regulation. At the same time, on the basis of Article 10(2) of the Regulation, the Commission can take decisions on the annual aid which the Spanish authorities have granted or intend to grant to the coal industry for the years 2003, 2004 and 2005. When deciding on the conformity of this aid, the Commission has to take into account the conditions and criteria set out in Articles 4 to 8 and the compliance with the objectives of this Regulation.
- (132) The Commission considers that, in accordance with the restructuring measures notified by Spain, the reduction in State aid will lead to a further permanent reduction in coal production. In accordance with Article 6 of Regulation (EC) No 1407/2002, the overall amount of aid is following a downward trend and does not exceed, for any year after 2003, the amount of aid authorised by the Commission for the year 2001. Regarding the access to coal reserves, as laid down in Article 5(3) of the Regulation, Spain proposes that, in 2005, access to coal reserves should be guaranteed with a total capacity of 12 million tce. To achieve this goal, the production capacity has been reduced by 1 600 000 tonnes.
- (133) Although the average production costs in the Spanish coal industry have fallen slightly, production costs

remain very high. Even though world market prices have risen, the unfavourable economic position of Spanish coal compared to imported coal will not significantly change over the coming years.

- (134) The Commission considers that the data submitted and framework outlined for 2006 and 2007 constitute a good approach containing all the necessary conditions. Spain has guaranteed that it will continue to reduce both production and the total amount of aid for these years at the same pace as for the years 2003-2005. The Commission therefore accepts the current level and relevance of the information provided by Spain for 2006 and 2007. The detailed data concerning the total volume of aid in accordance with Articles 4 and 5 of Regulation (EC) No 1407/2002 for the period from 2006 to 2007 will be submitted by Spain at a later stage, together with the restructuring measures for the period up to 2010. The Commission considers that this timetable is justified in view of the social and regional implications of the closure of the production units, taking into account the fact that Spain has explicitly stated that it will meet the condition that the aid must also follow a downward trend in the period after 2005. This last element is crucial to the Commission's assessment, since the ultimate purpose of the framework established by the aforementioned Regulation is to guarantee a final significant reduction of the aid granted to the coal industry.
- (135) Spain has chosen to continue the system of granting aid used in the past. On the one hand, the restructuring measures are in the interest of the security of supply of energy and on the other hand these measures allow a continuation of the restructuring process. The notified amount of the aid is necessary, because it ensures access to coal reserves and the reduction of the coal-mining activity, which is considered essential. Without aid, production would have to be stopped in Spain as coal mining is not competitive.
- (136) The Commission considers that the estimated volume of production capacity, fixed at 12 million tce for 2005 in Spanish energy supply, can be justified in the light of its security of supply policy and its overall energy policy. In this assessment, the Commission has taken account of the fact that Spain will increase the percentage of renewable energies in its energy mix for the period up to 2010.
- (137) Given that the restructuring measures notified will have important consequences for the job market, in assessing the plan the Commission has taken into account the need to minimise, as far as possible, the social and regional effects of the restructuring of the Spanish coal industry.

(138) On the basis of the notification, the Commission considers that the planning for the Spanish coal industry is based on the following objectives: degressivity of the financial aid required, reduction of production and production costs, ensuring supplies to customers of appropriate quality and in good time, a socially acceptable reduction in employment and consideration of the regional effect of the measures.

(139) The Commission therefore concludes that the Spanish restructuring plan for 2003-2005 is detailed and offers a good approach, with the necessary conditions in place, for 2006 and 2007. In addition, the plan offers an accurate overview of the role of coal in energy policy and environmental policy in the context of the supply of primary energy until 2010.

(140) In the light of the above and taking into account that measures have been taken which go beyond the restructuring plan as initially notified, the Commission takes the view that the plan submitted by Spain is compatible with the objectives and criteria of Regulation (EC) No 1407/2002, in particular with the criteria laid down in Article 9(4) and (6) thereof. As the aid for the years 2003, 2004 and 2005 has been granted or will be granted on the basis of and in line with the restructuring plan, the Commission concludes on the basis of Article 10(2) of the aforementioned Regulation that this aid has been granted in accordance with the Regulation.

5. CONCLUSION

(141) The Commission finds that Spain has unlawfully granted State aid to the coal industry for the years 2003 and

2004 in breach of Article 88(3) of the Treaty. However, after analysing the measures and the information submitted by Spain on the basis of Article 10 of Regulation (EC) No 1407/2002, the Commission finds the restructuring plan for the coal industry for the period 2003-2005 and the State aid for the years 2003-2005 based on the restructuring plan to be compatible with the common market. Spain is therefore authorised to pay the aid,

HAS ADOPTED THIS DECISION:

Article 1

The restructuring plan for the coal industry and the State aid for the years 2003-2005 applied by Spain for the years 2003 and 2004 are compatible with the common market within the meaning of Article 87(3) of the EC Treaty. Spain is therefore hereby authorised to pay the aid.

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 21 December 2005.

For the Commission

Andris PIEBALGS

Member of the Commission

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