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Price: EUR 3

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⁽¹⁾ Text with EEA relevance

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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 8 March 2012

on the conclusion of a Protocol to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, on a framework agreement between the European Union and the Kingdom of Morocco on the general principles for the participation of the Kingdom of Morocco in Union programmes

(2012/176/EU)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217, in conjunction with point (a)(i) of Article 218(6) and the second subparagraph of Article 218(8), thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) The Protocol to the Euro-Mediterranean Agreement establishing an association between the European Communities and its Member States, of the one part, and the Kingdom of Morocco, of the other part, on a framework agreement between the European Union and the Kingdom of Morocco on the general principles for the participation of the Kingdom of Morocco in Union programmes (hereinafter 'the Protocol') was signed on behalf of the Union on 7 October 2010.
- (2) As a result of the entry into force of the Treaty of Lisbon on 1 December 2009, the European Union has replaced and succeeded the European Community.
- (3) The Protocol should be concluded,

Article 1

The Protocol to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, on a framework agreement between the European Union and the Kingdom of Morocco on the general principles for the participation of the Kingdom of Morocco in Union programmes is hereby approved on behalf of the Union.

The text of the Protocol is attached to this Decision.

Article 2

The President of the Council shall give, on behalf of the Union, the notification provided for in Article 10 of the Protocol.

Article 3

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

Done at Brussels, 8 March 2012.

For the Council
The President
M. BØDSKOV

PROTOCOL

to the Euro-Mediterranean Agreement between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, on a framework agreement between the European Union and the Kingdom of Morocco on the general principles for the participation of the Kingdom of Morocco in Union programmes

THE EUROPEAN UNION, hereinafter referred to as 'the Union',

of the one part, and

THE KINGDOM OF MOROCCO, hereinafter referred to as 'Morocco',

of the other part,

hereinafter jointly referred to as 'the Parties',

WHEREAS:

- (1) On 26 February 1996, Morocco concluded a Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and Morocco, of the other part ⁽¹⁾ (hereinafter referred to as 'the Agreement').
- (2) The Brussels European Council of 17 and 18 June 2004 welcomed the Commission's proposals for a European Neighbourhood Policy (ENP) and endorsed the Council conclusions of 14 June 2004.
- (3) The Council has on numerous later occasions adopted conclusions supporting that policy.
- (4) On 5 March 2007, the Council expressed support for the general and global approach outlined in the Commission's communication of 4 December 2006 to enable ENP partners to participate in Community agencies and Community programmes on their merits and where authorised by the relevant legal bases.
- (5) Morocco has expressed its desire to participate in a number of Union programmes.
- (6) The detailed arrangements, in particular the financial contribution and the reporting and evaluation procedures, applicable to Morocco's participation in any particular programme should be determined by a protocol between the Commission and the competent Moroccan authorities,

HAVE AGREED AS FOLLOWS:

Article 1

Morocco is hereby authorised to participate in all current and future Union programmes opened to its participation, in accordance with the relevant provisions adopting those programmes.

Article 2

Morocco shall make a financial contribution to the general budget of the Union corresponding to its participation in specific programmes.

Article 3

The representatives of Morocco shall be allowed to take part, as observers and for the points which concern Morocco, in the management committees responsible for monitoring the programmes to which Morocco contributes financially.

Article 4

Projects and initiatives submitted by participants from Morocco shall, wherever possible, be subject to the same conditions, rules and procedures for the programmes concerned as those applicable to the Member States.

Article 5

The detailed arrangements governing Morocco's participation in each programme, in particular the financial contribution

payable and the reporting and evaluation procedures, shall be determined by a Memorandum of Understanding between the Commission and the competent Moroccan authorities, on the basis of the criteria established in the relevant programmes.

If Morocco applies for Union external assistance to participate in a given Union programme on the basis of Article 3 of Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument ⁽²⁾ or under any similar regulation providing for Union external assistance to Morocco that may be adopted in the future, the conditions governing the use by Morocco of Union external assistance shall be set out in a financing agreement in accordance with, in particular, Article 20 of Regulation (EC) No 1638/2006.

Article 6

In accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽³⁾, each Memorandum of Understanding concluded under Article 5 of this Protocol must stipulate 'that financial controls or audits, or other checks, including administrative

⁽¹⁾ OJ L 70, 18.3.2000, p. 2.

⁽²⁾ OJ L 310, 9.11.2006, p. 1.

⁽³⁾ OJ L 248, 16.9.2002, p. 1.

investigations, will be carried out by, or under the authority of, the Commission, the European Anti-Fraud Office and the Court of Auditors'.

Detailed provisions should be adopted for financial controls and audits, administrative measures, penalties and recoveries that accord the Commission, the European Anti-Fraud Office and the Court of Auditors powers equivalent to their powers with regard to beneficiaries or contractors established in the Union.

Article 7

This Protocol shall apply for the period during which the Agreement is in force.

This Protocol shall be signed and approved by the Parties in accordance with their respective procedures.

Either Party may denounce this Protocol by written notification to the other Party. This Protocol shall cease to apply six months after the date of such notification.

The denunciation of this Protocol by either of the Parties shall not affect the checks and controls to be carried out, where necessary, under the provisions of Article 5 or 6.

Article 8

No later than three years after the date of entry into force of this Protocol, and every three years thereafter, the Parties may

review the implementation of this Protocol on the basis of the Kingdom of Morocco's actual participation in Union programmes.

Article 9

This Protocol shall apply, on the one hand, to the territories in which the Treaty on the Functioning of the European Union applies and under the conditions laid down in that Treaty, and, on the other hand, to the territory of the Kingdom of Morocco.

Article 10

This Protocol shall enter into force on the first day of the month following the date on which the Parties notify each other, through diplomatic channels, of the completion of their respective procedures necessary for its entry into force.

Article 11

This Protocol shall form an integral part of the Agreement.

Article 12

This Protocol shall be drawn up in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, French, Finnish, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, Swedish and Arabic languages, each text being equally authentic.

Съставено в Брюксел на тринадесети декември две хиляди и десета година.
Hecho en Bruselas, el trece de diciembre de dos mil diez.
V Bruselu dne třináctého prosince dva tisíce deset
Udfærdiget i Bruxelles den trettende december to tusind og ti.
Geschehen zu Brüssel am dreizehnten Dezember zweitausendzehn.
Kahe tuhande kümnenda aasta detsembrikuu kolmeteistkümnendal päeval Brüsselis.
Έγινε στις Βρυξέλλες στις δεκατρείς Δεκεμβρίου δύο χιλιάδες δέκα.
Done at Brussels on the thirteenth day of December in the year two thousand and ten.
Fait à Bruxelles, le treize décembre deux mille dix.
Fatto a Bruxelles, addì tredici dicembre duemiladieci.
Briselē, divi tūkstoši desmitā gada trīspadsmitajā decembrī.
Priimta du tūkstančiai dešimtų metų gruodžio tryliką dieną Briuselyje.
Kelt Brüsszelben, a kétezer-tizedik év december tizenharmadik napján.
Magħmul fi Brussell, fit-tlettax-il jum ta' Dicembru tas-sena elfejn u għaxra.
Gedaan te Brussel, de dertiende december tweeduizend tien.
Sporządzono w Brukseli dnia trzynastego grudnia roku dwa tysiące dziesiątego.
Feito em Bruxelas, em treze de Dezembro de dois mil e dez.
Întocmit la Bruxelles, la treisprezece decembrie două mii zece.
V Bruseli dňa trinásteho decembra dvetisícdesať.
V Bruslju, dne trinajstega decembra leta dva tisoč deset.
Tehty Brysselissä kolmantentoista päivänä joulukuuta vuonna kaksituhattakymmenen.
Som skedde i Bryssel den trettonde december tjugohundratio.

حرر في بروكسيل بتاريخ 13 دجنبر 2010

За Европейския съюз
 Por la Unión Europea
 Za Evropskou unii
 For Den Europæiske Union
 Für die Europäische Union
 Euroopa Liidu nimel
 Για την Ευρωπαϊκή Ένωση
 For the European Union
 Pour l'Union européenne
 Per l'Unione europea
 Eiropas Savienības vārdā –
 Europos Sąjungos vardu
 Az Európai Unió részéről
 Ghall-Unjoni Ewropea
 Voor de Europese Unie
 W imieniu Unii Europejskiej
 Pela União Europeia
 Pentru Uniunea Europeană
 Za Európsku úniu
 Za Evropsko unijo
 Euroopan unionin puolesta
 För Europeiska unionen



عن الاتحاد الأوروبي

За Кралство Мароко
 Por el Reino de Marruecos
 Za Marocké království
 For Kongeriget Marokko
 Für das Königreich Marokko
 Maroko Kuningriigi nimel
 Για το Βασίλειο του Μαρόκου
 For the Kingdom of Morocco
 Pour le Royaume du Maroc
 Per il Regno del Marocco
 Marokas Karalistes vārdā –
 Maroko Karalystės vardu,
 A Marokkói Királyság részéről
 Ghar-Renju tal-Marokk
 Voor het Koninkrijk Marokko
 W imieniu Królestwa Maroka
 Pelo Reino de Marrocos
 Pentru Regatul Maroc
 Za Marocké královstvo
 Za Kraljevino Maroko
 Marokon kuningaskunnan puolesta
 För Konungariket Marocko



عن المملكة المغربية

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) No 272/2012

of 7 February 2012

supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to credit rating agencies

(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 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies ⁽¹⁾, and in particular Article 19(2) thereof,

Whereas:

- (1) Article 62 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) ⁽²⁾ provides that the revenues of the European Securities and Markets Authority (ESMA) should also consist of fees paid to ESMA in cases specified in Union legislation alongside contributions from national public authorities and a subsidy from the Union.
- (2) To ensure an efficient use of ESMA's budget and, at the same time, alleviate the financial burden for Member States and the Union, it is necessary to ensure that credit rating agencies pay at least all the costs related to their supervision. Any deficit that may occur during 1 financial year should be recovered from credit rating agencies in the following year.
- (3) An annual supervisory fee should be charged to credit rating agencies exceeding a certain threshold of turnover in order to provide for budgetary certainty for both ESMA and the credit rating agencies concerned. Annual supervisory fees should not become a burden for new entrants to the credit rating market. Moreover, small credit rating agencies are expected to engender significantly less supervisory costs than larger ones. It would be therefore proportionate to fully exempt small credit rating agencies from paying the annual supervisory fee

where the credit rating agency or the group of credit rating agencies to which it belong do not exceed a certain threshold of turnover.

- (4) In order to ensure a fair and clear allocation of fees which, at the same time, reflects the actual administrative burden per supervised entity, the supervisory fee should be calculated according to the credit rating agencies' turnover, generated from rating activities and ancillary services, since the cost of supervision is higher for larger credit rating agencies than for smaller ones. Moreover, the provision of ancillary services requires additional supervisory effort as possible conflicts of interests resulting from the provision of ancillary services need monitoring. Credit rating agencies should not circumvent the fair allocation of fees according to this Regulation by reallocating revenue to other entities within their group in order to reduce their fee contributions. ESMA should monitor and report any critical developments in this respect.
- (5) A registration fee should be charged to credit rating agencies established in the Union to reflect ESMA's costs for processing the application for registration. The complexity of an application and costs associated to assessing the application increase where a credit rating agency applies for issuing ratings for structured finance instruments or plans to endorse ratings from third country agencies or has branches. Therefore the registration fee should be calculated according to those factors. The processing costs also depend to a large extent on the size of the applicant credit rating agency. As the future turnover of a new credit rating agency would not be known at the moment of its application for registration, the number of employees should replace turnover as a common basis for calculation of all credit rating agencies.
- (6) This Regulation should provide for fees to be charged to third country credit rating agencies that apply for certification in the Union according to Article 5(2) of Regulation (EC) No 1060/2009 in order to cover their certification and annual supervisory costs. In this regard, ESMA's necessary expenditure relates to the certification

⁽¹⁾ OJ L 302, 17.11.2009, p. 1.

⁽²⁾ OJ L 331, 15.12.2010, p. 84.

of such third country credit rating agencies according to Article 5(3) of Regulation (EC) No 1060/2009 which follows a similar procedure as the one applicable to the registration of credit rating agencies established in the Union, as well as ESMA's expenditure necessary for the supervision of certified credit rating agencies.

- (7) Credit rating agencies should be reimbursed a percentage of the fee initially charged for their registration or certification when withdrawing their application during the registration or certification process as ESMA's costs for processing the application would be lower in such cases.
- (8) In view of possible future developments, it is appropriate for the thresholds for exempting credit rating agencies from paying annual supervisory fees and the amounts of registration and certification fees to be reviewed and updated as necessary. The Commission should assess the correct application of these measures within 4 years from the entry into force of this Regulation and report to the European Parliament and the Council on the possible need to review it.
- (9) National competent authorities incur costs when carrying out tasks delegated to them by ESMA in accordance with Article 30 of Regulation (EC) No 1060/2009 and when providing assistance to ESMA in the other cases specified in that Regulation. The fees to be charged by ESMA to credit rating agencies should also cover those costs. In order to avoid that competent authorities incur loss or realise profit from carrying out delegated tasks or from assisting ESMA, ESMA should reimburse the actual costs incurred by that national competent authority.
- (10) This Regulation should form the basis for ESMA's right to charge fees to credit rating agencies. In order to immediately facilitate effective and efficient supervisory and enforcement activity, it should enter into force on the third day following its publication,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down rules regarding the fees that the European Securities and Markets Authority (ESMA) shall charge to credit rating agencies for supervision, registration and certification.

Article 2

Recovery of supervisory costs in full

The fees charged to credit rating agencies shall cover:

- (a) all costs relating to the supervision of credit rating agencies by ESMA in accordance with Regulation (EC) No

1060/2009, including costs resulting from the registration and certification of credit rating agencies;

- (b) all costs for the reimbursement of competent authorities to which ESMA has delegated tasks in accordance with Article 30 of Regulation (EC) No 1060/2009;
- (c) all costs for the reimbursement of competent authorities that have provided assistance to ESMA in accordance to Article 23c(4) and Article 23d(5) of Regulation (EC) No 1060/2009.

Article 3

Applicable turnover

1. For the purposes of calculating the fees referred to in Article 5, Article 7(1) and Article 11(1) and (2), the applicable turnover for a given financial year (n) shall be the revenues of a credit rating agency as published in its audited accounts of the previous year (n-1) generated from rating activities and ancillary services.

2. Where the credit rating agency did not operate during the full year (n-1), the applicable revenue shall be estimated by extrapolating that amount for the whole financial year.

CHAPTER II

FEES

Article 4

Types of fees and general payment modalities

1. Credit rating agencies established in the Union that apply for registration in accordance with Article 14(1) of Regulation (EC) No 1060/2009 shall be charged the following types of fees

- (a) annual supervisory fees according to Article 5;
- (b) registration fees according to Article 6.

2. Credit rating agencies established in third countries that apply for certification in accordance with Article 5(2) of Regulation (EC) No 1060/2009 shall be charged the following types of fees:

- (a) flat annual supervisory fees according to Article 7;
- (b) certification fees according to Article 8.

3. The fees shall be payable in Euro. They shall be payable as specified in Articles 5(3), 6(6), 7(2) and 8(2).

Any late payments shall incur a daily penalty equal to 0,1 % of the amount due.

Article 5

Annual supervisory fee for registered credit rating agencies

1. A registered credit rating agency shall be charged an annual supervisory fee.

By way of derogation from the first subparagraph, a registered credit rating agency shall be exempted from paying an annual supervisory fee where its total revenues as published in its most recent audited accounts is less than EUR 10 million, or in case it belongs to a group of credit rating agencies, where the group of credit rating agencies has aggregate total revenues of less than EUR 10 million.

2. The annual supervisory fee for a given financial year shall be calculated as follows:

- (a) the basis for the calculation of the annual supervisory fee for a given financial year shall be the estimate of expenditure relating to the supervision of credit rating agencies as included in the ESMA budget for that year, set out and approved in accordance with Article 63 of Regulation (EU) No 1095/2010;
- (b) the relevant amount for the calculation of the annual supervisory fee for a given financial year shall be the estimate of expenditure according to point (a) reduced by any annual supervisory fees to be charged to certified credit rating agencies for a given financial year according to Article 7 and increased by any deficit from the previous financial year;
- (c) a registered credit rating agency as referred to in paragraph 1 shall pay as an annual supervisory fee a part of the relevant amount which corresponds to the ratio of the credit rating agency's applicable turnover to the total applicable turnover of all registered credit rating agencies required to pay an annual supervisory fee in accordance with paragraph 1.

3. The annual supervisory fee for a given financial year shall be paid in two instalments.

The first instalment shall be due by the end of February of that year and shall amount to two thirds of the estimated annual supervisory fee. If the applicable turnover is not yet available at that time, ESMA shall base the calculation on the turnover included in the most recent audited accounts available.

The second instalment shall be due by the end of August. The amount of the second instalment shall be the annual supervisory fee calculated according to paragraph 2 reduced by the amount of the first instalment.

ESMA shall send the invoices for the instalments to the credit rating agencies at least 30 days before the respective payment date.

Article 6

Registration fee

1. The amount of the registration fee to be paid by individual credit rating agencies applying for registration shall be proportionate to the complexity of the application and the size of the credit rating agency as specified in paragraphs 2 to 5.

2. For the purposes of calculating the amount of the registration fee, the following criteria shall be taken into consideration:

- (a) whether a credit rating agency intends to issue ratings for structured finance instruments;
- (b) whether a credit rating agency has a branch in another Member State or in a third country;
- (c) whether a credit rating agency intends to endorse ratings.

3. Where none of the criteria set out in paragraph 2 apply, the registration fees shall be calculated according to the number of employees, as follows:

- (a) credit rating agencies with fewer than 15 employees shall pay EUR 2 000;
- (b) credit rating agencies with 15 to 49 employees shall pay EUR 15 000;
- (c) credit rating agencies with at least 50 employees shall pay EUR 40 000.

4. Credit rating agencies that only meet one of the criteria set out in paragraph 2 shall pay the following registration fees according to the number of their employees, as follows:

- (a) credit rating agencies with fewer than 15 employees shall pay EUR 10 000;
- (b) credit rating agencies with 15 to 49 employees shall pay EUR 40 000;
- (c) credit rating agencies with at least 50 employees shall pay EUR 100 000.

5. Credit rating agencies that meet at least two of the criteria set out in paragraph 2 shall pay the following registration fees according to the number of their employees, as follows:

- (a) credit rating agencies with fewer than 15 employees shall pay EUR 30 000;
- (b) credit rating agencies with 15 to 49 employees shall pay EUR 85 000;
- (c) credit rating agencies with at least 50 employees shall pay EUR 125 000.

6. The registration fee shall be payable in full at the time the credit rating agency applies for registration.

7. If a credit rating agency withdraws its application for registration before ESMA has notified it that the application is

complete in accordance with the second subparagraph of Article 15(4) of Regulation (EC) No 1060/2009, ESMA shall reimburse three quarters of the registration fee paid. If the application is withdrawn after this date, but before ESMA adopts the reasoned decision to register or refuse registration, ESMA shall reimburse one quarter of the registration fee paid.

8. By way of derogation from Article 5, a registered credit rating agency that is required to pay an annual supervisory fee in accordance with Article 5(1) shall pay in the year of its registration an initial supervisory fee of EUR 500 for each complete month in the time period between the date of registration and the end of the financial year. This fee shall be payable in full once the registration is notified to the credit rating agency.

Article 7

Flat annual supervisory fee for certified credit rating agencies

1. A credit rating agency certified in accordance with Regulation (EC) No 1060/2009 shall pay an annual supervisory fee of EUR 6 000.

By way of derogation from the first subparagraph, a certified credit rating agency shall be exempted from paying an annual supervisory fee where its total revenues as published in its most recent audited accounts is less than EUR 10 million, or in case it belongs to a group of credit rating agencies, where the group of credit rating agencies has aggregate total revenues of less than EUR 10 million.

2. The annual supervisory fee for a certified credit rating agency shall be due by the end of February. ESMA shall send a payment invoice to a certified credit rating agency at least 30 days before that date.

Article 8

Certification fee

1. A credit rating agency applying for certification shall pay a certification fee of EUR 10 000.

2. The certification fee shall be payable in full at the time the credit rating agency applies for certification.

3. If a credit rating agency withdraws its application for certification before ESMA has notified it that the application is complete in accordance with the second subparagraph of Article 15(4) of Regulation (EC) No 1060/2009, ESMA shall reimburse three quarters of the certification fee. If the application is withdrawn after that date, but before ESMA adopts the reasoned decision to certify or refuse certification, ESMA shall reimburse one quarter of the certification fee.

4. By way of derogation from Article 7, a certified credit rating agency that is required to pay an annual supervisory fee according to Article 7(1) shall pay in the year of its certification an initial supervisory fee of EUR 500 for each complete month in the time period between the date of certification and

the end of the financial year. This fee shall be payable in full once the certification is notified to the credit rating agency.

Article 9

Reimbursement of competent authorities

1. Only ESMA shall charge fees to credit rating agencies for their registration, certification and supervision. Competent authorities shall not charge fees to credit rating agencies, including cases where those authorities carry out tasks on behalf of ESMA according to Article 30 of Regulation (EC) No 1060/2009.

2. ESMA shall reimburse a competent authority for the actual costs incurred as a result of carrying out delegated tasks in accordance with Article 30 of Regulation (EC) No 1060/2009 or as a result of assisting ESMA in accordance with Article 23c(4) or 23d(5) of that Regulation. Costs to be reimbursed shall comprise all fixed costs and variable costs related to the performance of the delegated tasks or the assistance provided to ESMA.

CHAPTER III

TRANSITIONAL AND FINAL PROVISIONS

Article 10

Fees in 2011

1. Credit rating agencies registered in 2011 shall pay, for 2011, an initial supervisory fee of EUR 500 for each complete month in the period between the date of registration, but not earlier than 1 July 2011, and 31 December 2011. This fee shall be payable in full by end of April 2012.

By way of derogation from the first subparagraph a registered credit rating agency shall be exempted from paying a supervisory fee in 2011 where its total revenues as published in its most recent audited accounts is less than EUR 10 million, or in case it belongs to a group of credit rating agencies, where the group of credit rating agencies has aggregate total revenues of less than EUR 10 million.

2. Credit rating agencies certified in 2011 shall pay, for 2011, an initial supervisory fee of EUR 500 for each complete month between the date of certification, but not earlier than 1 July 2011, and 31 December 2011. This fee shall be payable in full by end of April 2012.

By way of derogation from the first subparagraph, a certified credit rating agency shall be exempted from paying a supervisory fee in 2011 where it has an applicable turnover of less than EUR 10 million, or in case it belongs to a group of credit rating agencies, where the group of credit rating agencies has an aggregate applicable turnover of less than EUR 10 million.

Article 11

Entry into force

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

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

Done at Brussels, 7 February 2012.

For the Commission

The President

José Manuel BARROSO

COMMISSION REGULATION (EU) No 273/2012**of 27 March 2012****amending Council Regulation (EC) No 297/95 as regards the adjustment of the fees of the European Medicines Agency to the inflation rate****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 297/95 of 10 February 1995 on fees payable to the European Agency for the Evaluation of Medicinal Products ⁽¹⁾, and in particular Article 12 thereof,

Whereas:

- (1) According to Article 67(3) of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency ⁽²⁾, the revenue of the European Medicines Agency (hereinafter 'the Agency') consists of a contribution from the Union and fees paid by undertakings to the Agency. Regulation (EC) No 297/95 lays down the categories and levels of such fees.
- (2) Those fees should be updated by reference to the inflation rate of 2011. The inflation rate in the Union, as published by the Statistical Office of the European Union (Eurostat), was 3,1 % in 2011.
- (3) For the sake of simplicity, the adjusted levels of the fees should be rounded to the nearest EUR 100.
- (4) Regulation (EC) No 297/95 should therefore be amended accordingly.
- (5) For reasons of legal certainty, this Regulation should not apply to valid applications which are pending on 1 April 2012.
- (6) Pursuant to Article 12 of Regulation (EC) No 297/95, the update has to be made with effect from 1 April 2012. It is therefore appropriate that this Regulation enters into force as a matter of urgency and applies from that date,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 297/95 is amended as follows:

- (1) Article 3 is amended as follows:

- (a) paragraph 1 is amended as follows:

- (i) point (a) is amended as follows:

- in the first subparagraph, 'EUR 259 400' is replaced by 'EUR 267 400',
- in the second subparagraph, 'EUR 26 000' is replaced by 'EUR 26 800',
- in the third subparagraph, 'EUR 6 500' is replaced by 'EUR 6 700';

- (ii) point (b) is amended as follows:

- in the first subparagraph, 'EUR 100 700' is replaced by 'EUR 103 800',
- in the second subparagraph, 'EUR 167 600' is replaced by 'EUR 172 800',
- in the third subparagraph, 'EUR 10 000' is replaced by 'EUR 10 300',
- in the fourth subparagraph, 'EUR 6 500' is replaced by 'EUR 6 700';

- (iii) point (c) is amended as follows:

- in the first subparagraph, 'EUR 77 900' is replaced by 'EUR 80 300',
- in the second subparagraph, 'EUR 19 500 to EUR 58 400' is replaced by 'EUR 20 100 to EUR 60 200',
- in the third subparagraph, 'EUR 6 500' is replaced by 'EUR 6 700';

- (b) paragraph 2 is amended as follows:

- (i) the first subparagraph of point (a) is amended as follows:

- 'EUR 2 800' is replaced by 'EUR 2 900',
- 'EUR 6 500' is replaced by 'EUR 6 700';

- (ii) point (b) is amended as follows:

- in the first subparagraph, 'EUR 77 900' is replaced by 'EUR 80 300',
- in the second subparagraph, 'EUR 19 500 to EUR 58 400' is replaced by 'EUR 20 100 to EUR 60 200';

⁽¹⁾ OJ L 35, 15.2.1995, p. 1.

⁽²⁾ OJ L 136, 30.4.2004, p. 1.

- (c) in paragraph 3, 'EUR 12 900' is replaced by 'EUR 13 300';
 - (d) in paragraph 4, 'EUR 19 500' is replaced by 'EUR 20 100';
 - (e) in paragraph 5, 'EUR 6 500' is replaced by 'EUR 6 700';
 - (f) paragraph 6 is amended as follows:
 - (i) in the first subparagraph, 'EUR 93 000' is replaced by 'EUR 95 900';
 - (ii) in the second subparagraph, 'EUR 23 200 to EUR 69 700' is replaced by 'EUR 23 900 to EUR 71 900';
- (2) in Article 4, 'EUR 64 700' is replaced by 'EUR 66 700';
- (3) Article 5 is amended as follows:
- (a) paragraph 1 is amended as follows:
 - (i) point (a) is amended as follows:
 - in the first subparagraph, 'EUR 129 800' is replaced by 'EUR 133 800';
 - in the second subparagraph, 'EUR 12 900' is replaced by 'EUR 13 300';
 - in the third subparagraph, 'EUR 6 500' is replaced by 'EUR 6 700';
 - the fourth subparagraph is amended as follows:
 - 'EUR 64 700' is replaced by 'EUR 66 700';
 - 'EUR 6 500' is replaced by 'EUR 6 700';
 - (ii) point (b) is amended as follows:
 - in the first subparagraph, 'EUR 64 700' is replaced by 'EUR 66 700';
 - in the second subparagraph, 'EUR 109 700' is replaced by 'EUR 113 100';
 - in the third subparagraph, 'EUR 12 900' is replaced by 'EUR 13 300';
 - in the fourth subparagraph, 'EUR 6 500' is replaced by 'EUR 6 700';
 - the fifth subparagraph is amended as follows:
 - 'EUR 32 400' is replaced by 'EUR 33 400';
 - 'EUR 6 500' is replaced by 'EUR 6 700';
 - (iii) point (c) is amended as follows:
 - in the first subparagraph, 'EUR 32 400' is replaced by 'EUR 33 400';
 - (b) paragraph 2 is amended as follows:
 - (i) point (a) is amended as follows:
 - 'EUR 2 800' is replaced by 'EUR 2 900';
 - 'EUR 6 500' is replaced by 'EUR 6 700';
 - (ii) point (b) is amended as follows:
 - in the first subparagraph, 'EUR 38 900' is replaced by 'EUR 40 100';
 - in the second subparagraph, 'EUR 9 700 to EUR 29 200' is replaced by 'EUR 10 000 to EUR 30 100';
 - in the third subparagraph, 'EUR 6 500' is replaced by 'EUR 6 700';
- (c) in paragraph 3, 'EUR 6 500' is replaced by 'EUR 6 700';
- (d) in paragraph 4, 'EUR 19 500' is replaced by 'EUR 20 100';
- (e) in paragraph 5, 'EUR 6 500' is replaced by 'EUR 6 700';
- (f) paragraph 6 is amended as follows:
 - (i) in the first subparagraph, 'EUR 31 000' is replaced by 'EUR 32 000';
 - (ii) in the second subparagraph, 'EUR 7 800 to EUR 23 200' is replaced by 'EUR 8 000 to EUR 23 900';
- (4) in Article 6, 'EUR 38 900' is replaced by 'EUR 40 100';
- (5) Article 7 is amended as follows:
- (a) in the first paragraph, 'EUR 64 700' is replaced by 'EUR 66 700';
 - (b) in the second paragraph, 'EUR 19 500' is replaced by 'EUR 20 100';
- (6) Article 8 is amended as follows:
- (a) paragraph 1 is amended as follows:
 - (i) in the second subparagraph, 'EUR 77 900' is replaced by 'EUR 80 300';
 - (ii) in the third subparagraph, 'EUR 38 900' is replaced by 'EUR 40 100';

(iii) in the fourth subparagraph, 'EUR 19 500 to EUR 58 400' is replaced by 'EUR 20 100 to EUR 60 200';

(iv) in the fifth subparagraph, 'EUR 9 700 to EUR 29 200' is replaced by 'EUR 10 000 to EUR 30 100';

(b) paragraph 2 is amended as follows:

(i) in the second subparagraph, 'EUR 259 400' is replaced by 'EUR 267 400';

(ii) in the third subparagraph, 'EUR 129 800' is replaced by 'EUR 133 800';

(iii) in the fifth subparagraph, 'EUR 2 800 to EUR 223 600' is replaced by 'EUR 2 900 to EUR 230 500';

(iv) in the sixth subparagraph, 'EUR 2 800 to EUR 111 900' is replaced by 'EUR 2 900 to EUR 115 400';

(c) in paragraph 3, 'EUR 6 500' is replaced by 'EUR 6 700'.

Article 2

This Regulation shall not apply to valid applications pending on 1 April 2012.

Article 3

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

It shall apply from 1 April 2012.

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

Done at Brussels, 27 March 2012.

For the Commission

The President

José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 274/2012**of 27 March 2012****amending Regulation (EC) No 1152/2009 imposing special conditions governing the import of certain foodstuffs from certain third countries due to contamination risk by aflatoxins****(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 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety ⁽¹⁾, and in particular Article 53(1)(b)(ii) thereof,

Whereas:

- (1) Article 53 of Regulation (EC) No 178/2002 provides the Commission with the possibility to adopt emergency measures, where it is evident that food and feed imported from a third country is likely to constitute a serious risk to human health, animal health or the environment, and that such risk cannot be contained satisfactorily by means of measures taken by the Member States individually.
- (2) By Commission Regulation (EC) No 1152/2009 ⁽²⁾ the Commission has imposed special conditions on the import from certain third countries of certain foodstuffs in which the maximum levels of aflatoxins set by Commission Regulation (EC) No 1881/2006 ⁽³⁾ appeared to be frequently exceeded.
- (3) Since the Combined Nomenclature (CN) code has changed for certain food categories covered by Regulation (EC) No 1152/2009, it is appropriate to change the CN codes in that Regulation accordingly.
- (4) It is appropriate to repeal the transitional provision for foodstuffs imported from the United States of America, which are not covered by the Voluntary Aflatoxin Sampling Plan, as sufficient time has been provided to operators in the United States of America to implement the Voluntary Aflatoxin Sampling Plan.
- (5) In the light of the number and nature of notifications in the Rapid Alert System for Food and Feed, trade volumes, the outcome of inspections of the Food and Veterinary Office and the outcome of controls, the frequency of sampling for analysis should be reduced in some cases. For hazelnuts from Turkey and Brazil nuts from Brazil only a very low number of non-compliance has been observed at import. It is therefore appropriate to

reduce the frequency of controls for these foodstuffs. For reasons of clarity and to ensure consistency with other EU legislation, it is appropriate to explicitly mention that the identity checks are to be performed at the same frequency as the physical control (sampling and analysis).

- (6) Therefore, Regulation (EC) No 1152/2009 should be amended accordingly.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

*Article 1***Amending provisions**

Regulation (EC) No 1152/2009 is amended as follows:

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

*'Article 1***Scope**

1. This Regulation shall apply to the import of the following foodstuffs and of the foodstuffs processed and compound thereof:

- (a) the following foodstuffs originating in or consigned from Brazil:
 - (i) Brazil nuts in shell falling within category CN code 0801 21 00;
 - (ii) mixtures of nuts or dried fruits falling within CN code 0813 50 and containing Brazil nuts in shell;
- (b) the following foodstuffs originating in or consigned from China:
 - (i) groundnuts falling within CN code 1202 41 00 or 1202 42 00;
 - (ii) groundnuts falling within CN code 2008 11 91 (in immediate packings of a net content exceeding 1 kg) or 2008 11 98 (in immediate packings of a net content not exceeding 1 kg);
 - (iii) roasted groundnuts falling within CN code 2008 11 96 (in immediate packings of a net content not exceeding 1 kg);

⁽¹⁾ OJ L 31, 1.2.2002, p. 1.

⁽²⁾ OJ L 313, 28.11.2009, p. 40.

⁽³⁾ OJ L 364, 20.12.2006, p. 5.

(c) the following foodstuffs originating in or consigned from Egypt:

- (i) groundnuts falling within CN code 1202 41 00 or 1202 42 00;
- (ii) groundnuts falling within CN code 2008 11 91 (in immediate packings of a net content exceeding 1 kg) or 2008 11 98 (in immediate packings of a net content not exceeding 1 kg);
- (iii) roasted groundnuts falling within CN code 2008 11 96 (in immediate packings of a net content not exceeding 1 kg);

(d) the following foodstuffs originating in or consigned from Iran:

- (i) pistachios falling within CN code 0802 51 00 or 0802 52 00;
- (ii) roasted pistachios falling within CN codes 2008 19 13 (in immediate packings of a net content exceeding 1 kg) and 2008 19 93 (in immediate packings of a net content not exceeding 1 kg);

(e) the following foodstuffs originating in or consigned from Turkey:

- (i) dried figs falling within CN code 0804 20 90;
- (ii) hazelnuts (*Corylus* spp.) in shell or shelled falling within CN code 0802 21 00 or 0802 22 00;
- (iii) pistachios falling within CN code 0802 51 00 or 0802 52 00;
- (iv) mixtures of nuts or dried fruits falling within CN code 0813 50 and containing figs, hazelnuts or pistachios;
- (v) fig paste, pistachio paste and hazelnut paste falling within CN codes 2007 10 or 2007 99;
- (vi) hazelnuts and pistachios, prepared or preserved, including mixtures falling within CN code 2008 19 and figs, prepared or preserved, falling within CN code 2008 99, including mixtures falling within CN code 2008 97;
- (vii) flour, meal and powder of hazelnuts, figs and pistachios falling within CN code 1106 30 90;
- (viii) cut, sliced and broken hazelnuts falling within CN 0802 22 00 and 2008 19;

(f) the following foodstuffs originating in or consigned from the United States of America:

- (i) almonds in shell or shelled falling within CN code 0802 11 or 0802 12;
- (ii) roasted almonds falling within CN codes 2008 19 13 (in immediate packings of a net

content exceeding 1 kg) and 2008 19 93 (in immediate packings of a net content not exceeding 1 kg);

- (iii) mixtures of nuts or dried fruits falling within CN code 0813 50 and containing almonds.

2. Paragraph 1 shall not apply to consignments of foodstuffs of a gross weight not exceeding 20 kg, or to processed or compound foodstuffs containing the foodstuffs referred to in points (b) to (f) of paragraph 1 in a quantity below 20 %;

(2) in Article 4, paragraph 6 is deleted;

(3) in Article 7, paragraphs 4 and 5 are replaced by the following:

‘4. The competent authority at the designated point of import shall carry out an identity check and shall take a sample for analysis of aflatoxin B1 and total aflatoxin contamination on certain consignments with a frequency indicated in paragraph 5 and in accordance with Annex I to Regulation (EC) No 401/2006 before release for free circulation into the Union.

5. The identity check and the sampling for analysis referred to in paragraph 4 shall be carried out on:

- (a) approximately 50 % of the consignments of foodstuffs from Brazil;
- (b) approximately 20 % of the consignments of foodstuffs from China;
- (c) approximately 20 % of the consignments of foodstuffs from Egypt;
- (d) approximately 50 % of the consignments of foodstuffs from Iran;
- (e) approximately 5 % of the consignments for each category of hazelnuts and derived products from Turkey referred to in Article 1(1)(e)(ii) and (iv) to (viii), approximately 20 % of the consignments for each category of dried figs and derived products from Turkey referred to in Article 1(1)(e)(i) and (iv) to (vii) and approximately 50 % of the consignments for each category of pistachios and derived products from Turkey referred to in Article 1(1)(e)(iii) to (vii);
- (f) a random basis for consignments of foodstuffs from the United States of America, referred to in Article 1(1)(f).’

Article 2

Transitional measures

By derogation to Articles 4(1) and 7(2), foodstuffs originating in or consigned from the United States referred to in Article 1(1)(f) which have left the United States before the entry into force of this Regulation and which are not accompanied by the Voluntary Aflatoxin Sampling Plan certificate, can be imported into the EU on the condition that they are subject to a physical check, including sampling and analysis.

*Article 3***Entry into force**

This Regulation shall enter into force on the twentieth 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, 27 March 2012.

For the Commission

The President

José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 275/2012**of 27 March 2012****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:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multi-lateral 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.

- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

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 to this Regulation.

Article 2

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

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

Done at Brussels, 27 March 2012.

*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	CR	49,7
	IL	97,8
	MA	43,0
	TN	86,2
	TR	84,3
	ZZ	72,2
0707 00 05	JO	119,1
	TR	152,6
	ZZ	135,9
0709 91 00	EG	76,0
	ZZ	76,0
0709 93 10	MA	51,5
	TR	160,0
	ZZ	105,8
0805 10 20	BR	35,0
	EG	45,3
	IL	78,6
	MA	47,6
	TN	55,7
	TR	64,8
	ZZ	54,5
0805 50 10	EG	69,3
	TR	52,3
	ZZ	60,8
0808 10 80	AR	89,5
	BR	81,9
	CA	121,1
	CL	105,3
	CN	81,9
	MK	31,8
	US	155,4
	UY	71,6
	ZA	119,9
	ZZ	95,4
0808 30 90	AR	90,8
	CL	104,5
	CN	76,9
	ZA	90,7
	ZZ	90,7

⁽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 276/2012**of 27 March 2012****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⁾. Those prices and duties were last amended by Commission Implementing Regulation (EU) No 255/2012 ⁽⁴⁾.

- (2) The data currently available to the Commission indicate that those amounts should be amended in accordance with Article 36 of Regulation (EC) No 951/2006.

- (3) Given the need to ensure that this measure applies as soon as possible after the updated data have been made available, this Regulation should enter into force on the day of its publication,

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 the day of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 27 March 2012.

*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 84, 23.3.2012, p. 28.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 28 March 2012

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 12 10 ⁽¹⁾	43,14	0,00
1701 12 90 ⁽¹⁾	43,14	1,67
1701 13 10 ⁽¹⁾	43,14	0,00
1701 13 90 ⁽¹⁾	43,14	1,96
1701 14 10 ⁽¹⁾	43,14	0,00
1701 14 90 ⁽¹⁾	43,14	1,96
1701 91 00 ⁽²⁾	49,59	2,59
1701 99 10 ⁽²⁾	49,59	0,00
1701 99 90 ⁽²⁾	49,59	0,00
1702 90 95 ⁽³⁾	0,50	0,22

⁽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

of 19 March 2012

amending Decision 1999/70/EC concerning the external auditors of the national central banks, as regards the external auditors of the Bank of Greece

(2012/177/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, and in particular to Article 27.1 thereof,

Having regard to Recommendation ECB/2012/1 of the European Central Bank of 10 February 2012 to the Council of the European Union on the external auditors of the Bank of Greece ⁽¹⁾,

Whereas:

- (1) The accounts of the European Central Bank (ECB) and of the national central banks of the Eurosystem are to be audited by independent external auditors recommended by the Governing Council of the ECB and approved by the Council of the European Union.
- (2) The mandate of the current external auditors of the Bank of Greece will end after the audit for the financial year 2011. It is therefore necessary to appoint external auditors from the financial year 2012.
- (3) The Bank of Greece has selected KPMG Certified Auditors A.E. as its external auditors for the financial years 2012 to 2016.
- (4) The Governing Council of the ECB recommended that KPMG Certified Auditors A.E. should be appointed as the external auditors of the Bank of Greece for the financial years 2012 to 2016.

- (5) It is appropriate to follow the recommendation of the Governing Council of the ECB and to amend Council Decision 1999/70/EC ⁽²⁾ accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 1(12) of Decision 1999/70/EC shall be replaced by the following:

‘12. KPMG Certified Auditors A.E. are hereby approved as the external auditors of the Bank of Greece for the financial years 2012 to 2016.’

Article 2

This Decision shall take effect on the day of its notification.

Article 3

This Decision is addressed to the European Central Bank.

Done at Brussels, 19 March 2012.

For the Council
The President
M. GJERSKOV

⁽¹⁾ OJ C 48, 18.2.2012, p. 1.

⁽²⁾ OJ L 22, 29.1.1999, p. 69.

COMMISSION DECISION

of 23 March 2011

on State aid C 10/10 (ex N 562/09) which Spain intends to grant for the restructuring of A NOVO Comlink

(notified under document C(2011) 1740)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2012/178/EU)

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

I. PROCEDURE

- (1) On 16 October 2009, Spain notified a restructuring aid measure planned by the Autonomous Community of Andalusia for A NOVO Comlink SL. By letter dated 25 March 2010, the Commission informed Spain that it had decided to initiate the procedure laid down in Article 108(2) of the TFEU in respect of the measure. Spain responded to this decision by letter of 26 April 2010. By letter dated 22 September 2010, the Commission asked Spain for additional information. The Spanish authorities responded on 20 October 2010 by withdrawing the notification as the company's economic situation had developed better than expected.
- (2) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission invited interested parties to submit their comments on the aid. The Commission did not receive any comments from third parties.

II. DESCRIPTION OF THE MEASURE**1. The notified restructuring plan**

- (3) The restructuring plan that Spain notified in October 2009 provided for restructuring aid for A NOVO

Comlink SL (hereinafter 'A NOVO') on the basis of the Order of 5 November 2008 establishing the regulatory bases for the Aid Programme for Viable Enterprises with economic difficulties in Andalusia and launching a call for applications for 2008 and 2009 ⁽³⁾. The Commission approved this Order in May 2009 as a rescue and restructuring aid scheme for SMEs — hence individual grants of this type of aid to large companies must be notified (Case N 608/08).

- (4) The aid planned by Andalusia consisted of an 80 % guarantee for a 10-year loan of EUR 4 375 000 with an interest-rate subsidy of 0,89 %, and a government loan of EUR 2 000 000 over 10 years, granted by the Andalusia Innovation and Development Agency (IDEA).

- (5) As regards cash requirements, Spain stated in the notification that the debts outstanding at the time of drafting the restructuring measure consisted of:

- debts of EUR 2,7 million to suppliers,
- debts of EUR 650 000 to the government,
- debts of EUR 1,6 million to other undertakings of the A NOVO Group,
- other needs deriving from the expansion of activities.

All this amounted to cash needs of some EUR 5 million.

- (6) Apart from the abovementioned injection of fresh capital, the restructuring plan did not provide for any restructuring of the company's activities, organisation and management, nor its workforce. As regards the company's structure, the plan only described the current areas of activity and the possibilities and prospects for their expansion.

⁽¹⁾ OJ C 140, 29.5.2010, p. 25.

⁽²⁾ See footnote 1.

⁽³⁾ BOJA (Official Gazette of Andalusia) No 236, 27.11.2008, p. 6.

- (7) The plan did not refer to any contribution by the beneficiary or its parent company. As regards compensatory measures, the plan did not provide for any capacity reduction or asset sales. As regards prospects, no distinction was made between best-case, intermediate and worst-case assumptions.

2. Measures not notified to the Commission

- (8) During the assessment of the restructuring plan, it emerged that rescue aid had been granted to A NOVO in May 2009 in the form of an 80 % guarantee on a EUR 1 825 000 loan for six months, with an annual premium of 1,5 % and an interest rate of 2,86 %. Spain did not notify this guarantee.
- (9) After the rescue aid was awarded on 21 May 2009, A NOVO submitted a restructuring plan to the Andalusian authorities on 10 September 2009.

3. Recipient

- (10) A NOVO is a large company that operates in the area of after-sales activities for computers, mobile telephones and other electronic devices. It is a wholly owned subsidiary of the French company A NOVO SA. Originally, A NOVO produced telephones. Between 2004 and 2006 A NOVO gave up production activities and concentrated on after-sales services. A NOVO is located in Malaga (Andalusia), in an area eligible for regional aid under the exemption in Article 107(3)(a) TFEU.
- (11) At the time of notification of the restructuring plan, A NOVO fulfilled the conditions for insolvency. It was having difficulties in obtaining money on the capital markets. Of the initial registered capital of EUR 15 million in 2001, more than EUR 10 million had disappeared, and more than one quarter had been lost in 2008 alone:

(in EUR)

	2001	2004	2005	2006	2007	2008	2009
Capital	15 000 000	14 684 923	6 167 668	6 167 668	8 967 667	4 056 802	2 057 000

A NOVO also had high losses and a decreasing turnover:

(in EUR)

	2006	2007	2008	2009
Increasing losses	- 2 603 000	- 4 549 000	- 3 923 000	- 292 000
Diminishing turnover	22 090 000	21 853 000	15 305 000	15 464 000

- (12) Consequently, at the beginning of 2009, A NOVO was in difficulties according to points 10 and 11 of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty (hereinafter 'the Guidelines') ⁽⁴⁾. More than half of its registered capital had disappeared, and more than one quarter of that capital had been lost over the preceding 12 months (point 10(a) of the Guidelines). The company therefore fulfilled the criteria under Spanish law for being subject to insolvency proceedings (point 10(c) of the Guidelines). In any case, it had diminishing overall turnover and almost nil asset value, as stipulated in point 11 of the Guidelines.
- (13) Restructuring of A NOVO had already begun in July 2005 with a view to switching activities from telephone production to after-sales services. The 2005 Agreement on the Bases and Commitments of A NOVO Comlink SL's Viability Plan required the company to contribute to financing its Viability Plan by means of a sale and lease-back operation covering its real estate at the Andalusia Technology Park (for an estimated sum of EUR 14,9 million), to transform 94

temporary contracts into permanent contracts before 31 December 2007, to conclude 88 new contracts before 31 December 2009, and to keep on the current workforce until 2015. The Agreement also included a partial retirement scheme for employees once they reached the age of 60.

- (14) In return, the Department of Employment of the *Junta de Andalucía* authorised A NOVO to suspend 224 employment contracts for employees aged over 54 until 31 August 2008. This authorisation gives these employees the right to apply for unemployment benefits although, in theory, they are still employed. During the temporary suspension of employment contracts, employees continue to form part of the company. The measure is intended to supplement the income of the employees concerned until they reach retirement age.
- (15) The company's legal obligations are limited to paying the employer's contribution to the social security system for the suspended employees, and payroll and social security costs during the period of partial retirement (between the ages of 60 and 65).

⁽⁴⁾ OJ C 244, 1.10.2004, p. 2.

4. Grounds for initiating the procedure

- (16) Following an analysis of these State aid measures under Article 107(3)(c) TFEU and in the light of the Guidelines, the Commission decided to initiate the procedure under Article 108(2) TFEU because it had doubts whether the conditions for approving the rescue and restructuring aid had been met.
- (17) The Commission concluded that both measures were likely to constitute aid. Under Article 107(1) TFEU, any financial support granted by a Member State which distorts or threatens to distort competition by favouring certain undertakings and which affects trade between Member States constitutes aid. The measures in question, i.e. the guarantees, the interest-rate subsidy, the loan by the region of Andalusia, and the direct payments to employees of A NOVO involve state resources. They were granted by the Autonomous Community of Andalusia and are imputable to the State.
- (18) The measures must confer an advantage on the recipient which it could not obtain under normal market conditions. A guarantee does not constitute such an advantage if the borrower is in financial difficulty (point 3.2(a) of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees)⁽⁵⁾. The loan by Andalusia could confer an advantage. The Commission has doubts that it was granted at market rates determined according to the Commission's rules on setting market rates, laid down in the Communication from the Commission on the revision of the method for setting the reference and discount rates⁽⁶⁾. Hence, the measures are likely to constitute aid which distorts competition.
- (19) Although A NOVO was in economic difficulties in early 2009, there were doubts whether it was eligible for any rescue or restructuring aid, as it is a wholly owned subsidiary of the French undertaking A NOVO SA, which had a turnover of some EUR 350 million and a net profit of EUR 12 million in 2009. According to point 11 of the Guidelines, a firm in difficulty is only eligible where it cannot recover with the funds it obtains from its owners. Furthermore, under point 13 of the Guidelines, in the case of a firm belonging to a larger business group, the Member State must demonstrate that the firm's difficulties are intrinsic and too serious to be dealt with by the group itself. Spain has not submitted information showing whether these conditions are met.
- (20) Regarding the restructuring plan, the Commission has doubts that it will lead to long-term viability, as required by points 35 and 36 of the Guidelines. The

restructuring plan did not contain a description of internal measures to improve the firm's viability and structure. The plan also lacked compensatory measures to mitigate as far as possible any adverse effects of the aid on competitors, such as a reduction in capacity (points 38 and 39 of the Guidelines). Nor was it possible to ascertain that the amount and intensity of the aid were limited to the strict minimum of the restructuring costs necessary (points 43 and 45 of the Guidelines). Specifically, the plan lacked any reference to a contribution from the recipient.

- (21) Regarding the 2005 restructuring, the Commission doubts that the 'one time, last time principle' was respected. According to points 72 et seq. of the Guidelines, state intervention should not be permitted where less than 10 years have elapsed since the last rescue or restructuring aid measure has been implemented. The Commission does not have the information needed to determine whether the direct payments by the Autonomous Community of Andalusia to employees constitute aid. If the payments were made under a general social security scheme they would not be regarded as State aid. If they had to be borne by the company itself — under employment legislation or collective agreements — these payments would form part of the normal costs of the business. If the State makes these payments, they must be counted as aid⁽⁷⁾.
- (22) Therefore, it was doubtful that the rescue and restructuring aid could be considered compatible with the relevant Guidelines.

III. COMMENTS FROM SPAIN

- (23) Spain informed the Commission by letter dated 22 October 2010 that the notified restructuring measure had not been implemented and that it was withdrawing the notification.
- (24) Regarding the May 2009 rescue aid, Spain stated that on 19 January 2009 the Andalusia Innovation and Development Agency (IDEA) had approved a risk operation consisting of a rescue guarantee of EUR 1,5 million for a six-month period which enabled the company to obtain a loan on the capital market for EUR 1 875 000. This loan was issued on 21 May 2009. It relieved the company's cash-flow problems, which would have bankrupted it, and gave it the necessary margin for manoeuvre to develop a new restructuring plan with the measures and actions it needed to guarantee its viability during the unexpected situation involving general credit restrictions by financial institutions.

⁽⁵⁾ OJ C 155, 20.6.2008, p. 10.

⁽⁶⁾ OJ C 14, 19.1.2008, p. 6.

⁽⁷⁾ See also points 61 and 63 of the Guidelines.

- (25) As regards the classification of the guarantee as aid, Spain claimed that there would be no effect on trade. The after-sales services — the recipient's area of activity — would be provided locally and limited to the territory of Spain. Aid would not affect cross-border trade or appreciably hinder non-Spanish competitors from setting up operations in the Spanish market. There would also be no basis for providing post-sales services to Spanish end-users from outside Spanish territory. Although A NOVO was part of the French group A NOVO S.A., an important player in after-sales services in Europe, the potential indirect effect on trade would be a theoretical, and, at most, insignificant possibility and would not appreciably affect competitive relations between a group like A NOVO S.A. and its competitors given the amount of the aid in comparison with a major group like A NOVO S.A. whose turnover amounted to EUR 366 million in 2009.
- (26) The Spanish authorities stated that the interest rate on the 21 May 2009 bank loan of EUR 1,875 million, which was 80 % guaranteed by the *Junta de Andalucía* for a 1,5 % annual premium, was comparable to the rates observed for loans to healthy firms. The interest rate was 2,88 % and the reference rate published by the Commission for May 2009 was 2,22 % ⁽⁸⁾. The Communication on the revision of the method for setting the reference and discount rates ⁽⁹⁾ determines the margin to be applied to loans with high collateral to healthy undertakings (rating AAA – A) of 60 basis points. This would give a limit of 2,82 %. According to the decision granting the guarantee, the guarantee expired not later than six months after the loan was granted.
- (27) The Spanish authorities also stated that the guarantee was justified due to serious social repercussions and had no unduly adverse spill-over effects in other Member States within the meaning of point 25(b) of the Guidelines. The number of people officially employed in the undertaking was 527. A bankruptcy or closure of the undertaking would have affected these employees and, in addition, several hundred indirect jobs. Given the age structure of the employees, a large part would have had difficulties in finding a new job. With the high unemployment rate in Andalusia (30 % in Malaga) a closure would have caused a very serious social situation. Furthermore, Spain considered that, in view of the regional focus of after-sales repair services, unduly adverse spill-over effects in other Member States were unlikely.
- (28) The Spanish authorities also maintained that the conditions of point 25(c) of the Guidelines applicable to non-notified rescue aid were met, according to which the Member State must submit, no later than six months after the first authorisation of a rescue aid measure, a restructuring plan or proof that the guarantee has been terminated. Following the granting of the rescue aid on 21 May 2009, Spain notified the restructuring plan and the planned aid on 16 October 2009. Thereby it remained within six months as from the grant of the rescue aid. Furthermore, Spain confirmed that the state guarantee was limited to six months.
- (29) Lastly, the Spanish authorities held that the amount of aid was limited to the amount needed to keep the undertaking in business during the authorisation period of six months, as required by point 25(d) of the Guidelines. The amount was calculated on the basis of the six-month liquidity needs and the cash deficit submitted by the company, which provided the following six-month cash flow table as part of the rescue application:

(in EUR)

	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
Revenues	1 440 998,00	1 685 785,00	1 586 880,00	1 403 600,00	1 405 920,00	1 549 760,00
Expenses	1 632 677,00	4 231 415,00	2 631 987,00	2 684 834,00	1 754 309,00	1 504 723,00
Balance	- 191 679,00	- 2 545 630,00	- 1 045 107,00	- 1 281 234,00	- 348 389,00	45 037,00
Cumulative balance	- 191 679,00	- 2 737 309,00	- 3 782 416,00	- 5 063 650,00	- 5 412 039,00	- 5 367 002,00

- (30) On the basis of these data the Spanish authorities concluded that the amount needed was EUR 1 875 000 despite the high negative cash flow figure (EUR - 5 367 002). When determining the amount of aid, Spain took into consideration the result obtained by applying the formula provided in the Annex to the Guidelines. The calculation was made as follows:

EBIT 2008: EUR - 4 212 036

Depreciation 2008: EUR 437 201

Working capital 2008: (current assets EUR 7 686 473 – current liabilities EUR 10 446 997) = EUR - 2 760 524

Working capital 2007: (current assets EUR 11 748 449 – current liabilities EUR 10 958 960) = EUR 789 489

(working capital_t – working capital_{t-1}) = EUR - 3 550 013

⁽⁸⁾ http://ec.europa.eu/competition/state_aid/legislation/reference_rates.html

⁽⁹⁾ OJ C 14, 19.1.2008, p. 6.

$[EBIT_t + depreciation_t + (working\ capital_t - working\ capital_{t-1})]/2$

$= [EUR - 4\,212\,036 + EUR\,437\,201 + EUR - 3\,550\,013]/2 = EUR - 3\,662\,424$

As a result, half of the negative operating cash flow for the year preceding the aid amounted to EUR 3 662 424. The loan guaranteed by Spain would remain well below this ceiling and, therefore, limited to the amount needed.

- (31) As to whether A NOVO, as a wholly owned subsidiary of the French undertaking A NOVO SA, whose turnover is some EUR 350 million, can qualify as a company in difficulty eligible for rescue and restructuring support, Spain claimed that the firm's difficulties were intrinsic and too serious to be dealt with by the Group itself. They were intrinsic because exclusively linked to the activities of A NOVO and, in particular, to its shift from manufacturing to services. They did not result from any cost allocations within the group. Furthermore, the firm's financial difficulties were too serious for the group itself to overcome. The 2008 and 2009 profit and cash flow results for the A NOVO Group SA and A NOVO Comlink Spain show that towards the end of 2008, when the difficulties of A NOVO began to call for a rescue operation, the parent company was itself under financial pressure:

(EUR million)

	A NOVO Group SA (France)		A NOVO (Spain)	
	2008	2009	2008	2009
Sales	350	366	14,9	15,5
Profits	- 17	12	- 3,9	- 0,3
Own resources	45	53	0	1,8
Short-term loans	28	18	3,4	2
Long-term loans	56	51	0,6	0,7
Cash flow	- 0,3	2	- 0,6	- 0,9
Assets	230	225	14,2	13,4

The Group's losses of EUR 17 million in 2008 were also caused by a series of commitments towards A NOVO Spain. The A NOVO Group made very significant contributions to its Spanish subsidiary: EUR 2 123 million in 2006 and EUR 2 060 million in 2009. Further pressure arose in 2009 from the need to reschedule the French Group's debts.

- (32) Regarding the 2005 restructuring and the one time, last time principle, according to the Spanish authorities 224 employees benefited from the partial retirement scheme following the suspension of their employment contracts in accordance with a temporary labour force adjustment plan (ERTE). Under this ERTE, 224 employees suspended their employment contracts in accordance with the general labour legislation applicable, in particular Article 45 of the Workers' Statute adopted by Legislative Royal Decree 1/1995 of 24 March 1995 ⁽¹⁰⁾.

- (33) In accordance with Article 45(1) of the Workers' Statute, an employment contract can be suspended for economic, technical, organisational or production reasons. Article 45(2) states that the suspension relieves the parties of the reciprocal obligations of working and remunerating work. The employees receive unemployment benefit on the basis of Article 208(1)(a) of the General Social Security Law (Legislative Royal Decree 1/1994 of 20 June 1994 ⁽¹¹⁾). According to Article 214(2) of this Royal Decree approving the Revised Text of the General Social Security Law, the employer is required to pay the employer's contribution for the social security insurance while the employee's social security contribution is paid by the National Social Security Institute (INSS).

- (34) Once the individual contract suspension period authorised in the ERTE ended, the employees were reincorporated in the company but came under the partial retirement scheme whereby they worked only 15 % of their original contract. The company paid 15 % of the salary and social security contributions. According to the Spanish authorities, this measure, as well as the accompanying financial provisions adopted by the Employment Ministry of the *Junta de Andalucía* in the context of the ERTE of 2005 and based on the 18 July 2005 Agreement on the Bases and Commitments of A NOVO Comlink Spain SL's Viability Plan, comply with the general labour legislation applicable. This concerns, in particular, Articles 51 et seq. of the Workers' Statute; Royal Decree 43/1996 of 19 January of the Ministry of Employment and Social Security approving the Rules on procedure for regulation of short-time working and lay-offs and for administrative action in connection with collective transfers ⁽¹²⁾; Royal Decree 2064/1995 of 22 December approving the General Regulation on the contributions and settlement of other social security entitlements ⁽¹³⁾; and the Collective Life Assurance Contract, which is a specific measure to support employees directly and nominally to cope with the implications of their move to partial retirement, as laid down in Law 50/1980 of 8 October on Insurance Contracts ⁽¹⁴⁾.

⁽¹⁰⁾ BOE (Official State Gazette) No 75, 29.3.1995, p. 9654.

⁽¹¹⁾ BOE No 154, 29.6.1994, p. 20658.

⁽¹²⁾ BOE No 44, 20.2.1996, p. 6074.

⁽¹³⁾ BOE No 22, 25.1.1996, p. 2295.

⁽¹⁴⁾ BOE No 250, 17.10.1980, p. 23126.

IV. ASSESSMENT

1. Withdrawal of the notification by Spain

- (35) After the withdrawal of the notification, the procedure regarding the notified restructuring plan ceased to serve any purpose. However, the withdrawal of a notification cannot have an effect on the rescue aid which was not notified and already granted before the notification of the restructuring aid.

2. The rescue aid of May 2009

- (36) Following the replies by the Spanish authorities, it must be ensured that the rescue aid is compatible with Article 107(3)(c), as it meets the relevant conditions laid down in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty.
- (37) The measure constitutes aid within the meaning of Article 107(1) TFEU. To qualify as State aid, the measure needs to confer an advantage on the recipient which it could not obtain under normal market conditions and which would affect competition and trade between Member States. A guarantee must be considered to constitute aid if the borrower is in financial difficulty under the terms of point 3.2(a) of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees. In this case, the Commission considers that the guarantee confers an advantage on the borrower. The position of the beneficiary company was strengthened compared with that of its competitors. Hence the measure could distort competition.
- (38) The Spanish authorities maintained that there would be no effect on trade between Member States. However, the Court has confirmed that the effect on trade does not depend on the local or regional character of the services supplied or on the scale of the field of activity concerned⁽¹⁵⁾. Moreover, the after-sales services provided by A NOVO are freely traded within the Union. The ownership of the firms providing such services extends to more than one Member State. This applies, in particular, to the recipient, which is part of the French A NOVO Group, a major player in after-sales services in Europe and beyond. A NOVO's services could just as well be provided by other European companies with a subsidiary in Spain. Companies from other Member States could also consider setting up in Spain to offer such services but might be dissuaded from doing so because of the services A NOVO is able to offer thanks to the aid it received. A low amount of aid can also have an impact on trade between Member States, especially if it determines whether A NOVO can continue to operate. The aid could also strengthen the French parent company. Therefore the condition of an effect on trade between Member States is fulfilled and the

rescue aid guarantee constitutes State aid within the meaning of Article 107(1) TFEU. It was awarded by the *Junta de Andalucía* and is imputable to the State.

- (39) A NOVO is a firm in difficulty within the meaning of point 13 of the Guidelines, despite belonging to a larger group. Spain could demonstrate that the difficulties of the undertaking were intrinsic and not the result of an arbitrary allocation of costs. In fact, they were due to the industrial restructuring affecting the company in the preceding years. The difficulties were too serious to be dealt with by the parent company alone as this company itself was under financial strain at the time of the granting of the rescue aid. In 2006 it had invested EUR 2,123 million in A NOVO and it had itself also incurred losses in 2008. In 2009 it made an own cash injection of EUR 2,060 million.
- (40) The guarantee complies with the requirements laid down in point 25(a) of the Guidelines. The rescue bank loan of EUR 1,875 million, which was 80 % guaranteed by the *Junta de Andalucía*, was granted at an interest rate which is comparable to those observed for loans to healthy firms, according to the Communication on the revision of the method for setting the reference and discount rates. In addition, the borrower paid an annual guarantee premium of 1,5 %. The guarantee expired within six months after the date on which the loan was granted.
- (41) The guarantee was justified due to A NOVO's serious social difficulties and had no unduly adverse spill-over effects in other Member States within the meaning of point 25(b) of the Guidelines. The Commission had already acknowledged in the opening Decision that the economic situation of A NOVO, which employed 527 people, became difficult during 2008 (see recitals 11 and 12 above). A bankruptcy or closure of the undertaking would have caused a very serious social situation in Andalusia, which already suffers from a high unemployment rate. In view of the regional focus of after-sales repair services, unduly adverse spill-over effects in other Member States are not likely.
- (42) The conditions of point 25(c) of the Guidelines applicable to non-notified rescue aid are also fulfilled, according to which the Member State must submit within six months after the first authorisation of a rescue aid measure a restructuring plan or proof that the guarantee has been terminated. Following the granting of the rescue aid on 21 May 2009, A NOVO submitted a restructuring plan on 10 September 2009 together with an application for restructuring aid. On 16 October 2009, Spain notified the restructuring plan. In addition, the state guarantee was limited to six months and expired on 21 November 2009.

⁽¹⁵⁾ Case C-280/00 *Altmark Trans* [2003] ECR I-7747, paragraph 82; Case C-172/03 *Heiser/Finanzamt Innsbruck* [2005] ECR I-1627, paragraph 33.

- (43) In addition, the amount of aid was limited to the quantity needed to keep the undertaking in business during the authorisation period of six months, as required by point 25(d) of the Guidelines. The amount was calculated on the basis of the six-month liquidity needs and cash deficit submitted by the company, and was well below the ceiling established following the formula provided in the Annex to the Guidelines. It may be considered to be restricted to the amount needed according to point 25(d) of the Guidelines.
- (44) As regards the one time, last time principle, the information submitted by Spain allowed the Commission to verify that the public funds employed in the context of the 2005 restructuring for social measures for part of A NOVO's workforce took place under a general social security scheme and cannot be regarded as State aid, in accordance with points 61 and 63 of the Guidelines.
- (45) Consequently, the information submitted by the Spanish authorities clears up any doubts about the compatibility of the interim relief awarded to A NOVO with Article 107(3)(c) of the Treaty, which the Commission had expressed in its decision to initiate the procedure laid down in Article 108(2) of the Treaty.

V. CONCLUSION

- (46) Therefore, the Commission has decided to terminate the procedure laid down in Article 108(2) TFEU. With regard to the non-notified rescue aid, the Commission finds that Spain has unlawfully implemented it in breach of Article 108(3) TFEU. However, the Commission must take a positive decision because it is compatible with

the internal market within the meaning of Article 107(3)(c) TFEU. The procedure in respect of the notified restructuring aid is closed on the grounds that it no longer serves any purpose given that Spain has withdrawn the measure,

HAS ADOPTED THIS DECISION:

Article 1

The State aid in the form of a guarantee granted by Spain to rescue A NOVO Comlink SL is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Article 2

After Spain's withdrawal of the restructuring measure, these proceedings have ceased to serve any purpose as far as this restructuring aid is concerned. The Commission has therefore decided to terminate the procedure pursuant to Article 108(2) TFEU with regard to the restructuring aid.

Article 3

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 23 March 2011.

For the Commission

Joaquín ALMUNIA

Vice-President

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