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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION 2014/326/CFSP

of 28 January 2014

on the signing and conclusion of the Agreement between the European Union and the Republic of Korea establishing a framework for the participation of the Republic of Korea in European Union crisis management operations

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 37 thereof, in conjunction with Article 218(5) and (6) of the Treaty on the Functioning of the European Union,

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

Whereas:

- (1) Conditions regarding the participation of third States in European Union crisis management operations should be laid down in an agreement establishing a framework for such possible future participation, rather than being defined on a case-by-case basis for each operation concerned.
- (2) Following the adoption of a Decision by the Council on 13 November 2012 authorising the opening of negotiations, the High Representative of the Union for Foreign Affairs and Security Policy negotiated an agreement between the European Union and the Republic of Korea establishing a framework for the participation of the Republic of Korea in European Union crisis management operations ('the Agreement').
- (3) The Agreement should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Republic of Korea establishing a framework for the participation of the Republic of Korea in the European Union crisis management operations is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in order to bind the Union.

Article 3

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 16(1) of the Agreement ⁽¹⁾.

Article 4

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

Done at Brussels, 28 January 2014.

For the Council
The President
G. STOURNARAS

⁽¹⁾ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

AGREEMENT**between the European Union and the Republic of Korea establishing a framework for the participation of the Republic of Korea in European Union crisis management operations**

THE EUROPEAN UNION (the 'Union') or (the 'EU')

of the one part, and

THE REPUBLIC OF KOREA

of the other part,

hereinafter referred to as the 'Parties',

Whereas:

- (1) The Union may decide to take action in the field of crisis management, including peace-keeping operations or humanitarian operations.
- (2) The Union will decide whether third States will be invited to participate in an EU crisis management operation. The Republic of Korea may accept the invitation by the Union and offer its contribution. In such case, the Union will decide on the acceptance of that proposed contribution.
- (3) Conditions regarding the participation of the Republic of Korea in EU crisis management operations should be laid down in an agreement establishing a framework for such possible future participation, rather than defining these conditions on a case-by-case basis for each operation concerned.
- (4) Such an agreement should be without prejudice to the decision-making autonomy of the Union, and should not prejudice the case-by-case nature of the decision for the Republic of Korea to participate in an EU crisis management operation, in accordance with its legal system.
- (5) Such an agreement should only address future EU crisis management operations and should be without prejudice to any existing agreements regulating the participation of the Republic of Korea in an EU crisis management operation that has already been deployed.

HAVE AGREED AS FOLLOWS:

SECTION I**GENERAL PROVISIONS***Article 1***Decisions relating to participation**

1. Following a decision of the Union to invite the Republic of Korea to participate in an EU crisis management operation, the Union shall exchange all relevant information and assessments related to that operation with a view to facilitating the consideration, by the Republic of Korea, of the Union's invitation.
2. The Union shall provide the Republic of Korea with an early indication of the likely Korean contribution to the common costs or to the costs as set out in the operational budget, in accordance with Articles 8 and 12, with a view to assisting the Republic of Korea in the formulation of any proposed contribution.

3. Once the Republic of Korea has decided to propose a contribution, the Republic of Korea shall determine and provide information on its proposed contribution to the Union, including on the composition of any contingent of Korean personnel.
4. The Union shall assess the Korean contribution in consultation with the Republic of Korea. The Republic of Korea may choose to revise its proposed contribution at any time during the consultation and assessment process.
5. The Union shall communicate the outcome of its assessment and decision on the proposed Korean contribution to the Republic of Korea in writing with a view to securing the participation of the Republic of Korea, in accordance with the provisions of this Agreement.
6. The Republic of Korea may, on its own initiative or at the request of the Union, and following consultations between the Parties, withdraw wholly or in part, at any time, from participation in an EU crisis management operation.

Article 2

Framework

1. The Republic of Korea shall associate itself with the Council Decision by which the Council of the European Union decides that the Union will conduct the crisis management operation, and with any other Decision by which the Council of the European Union decides to extend the EU crisis management operation, in accordance with the provisions of this Agreement and any required implementing arrangements.
2. The contribution of the Republic of Korea to an EU crisis management operation shall be without prejudice to the decision-making autonomy of the Union.

Article 3

Status of personnel and forces of the Republic of Korea

1. The status of personnel seconded to an EU civilian crisis management operation and/or of the forces contributed to an EU military crisis management operation by the Republic of Korea shall be governed by the agreement on the status of forces/mission, if concluded, between the Union and the State(s) in which the operation is conducted.
2. The status of personnel contributed to headquarters or command elements located outside the State(s) in which the EU crisis management operation takes place, shall be governed by arrangements between the headquarters and command elements concerned and the competent authorities of the Republic of Korea.
3. Without prejudice to the agreement on the status of forces/mission referred to in paragraph 1, the Republic of Korea shall exercise jurisdiction over its personnel participating in the EU crisis management operation. Where the forces of the Republic of Korea operate on board a vessel or aircraft of a Member State of the European Union, the latter State may exercise jurisdiction subject to any existing and/or future agreements and in accordance with its laws and regulations and with international law.
4. The Republic of Korea shall be responsible for answering any claims linked to the participation in an EU crisis management operation, from any of its personnel and shall be responsible for bringing any action, in particular legal or disciplinary action, against any of its personnel in accordance with its laws and regulations.

5. The Parties agree to waive any and all claims, other than contractual claims, against each other for damage to, loss of, or destruction of assets owned or operated by either Party, or injury or death to personnel of either Party, arising out of the performance of their official duties in connection with activities under this Agreement, except in the case of gross negligence or wilful misconduct.
6. The Republic of Korea undertakes to make a declaration as regards the waiver of claims against any State participating in an EU crisis management operation in which the Republic of Korea participates, and to do so when signing this Agreement.
7. The Union undertakes to ensure that the Member States of the European Union make a declaration as regards the waiver of claims, for any future participation of the Republic of Korea in an EU crisis management operation, and to do so when signing this Agreement.

Article 4

Classified information

1. The Republic of Korea shall take appropriate measures to ensure that EU classified information is protected in accordance with the security regulations of the Council of the European Union, contained in Council Decision 2013/488/EU ⁽¹⁾, and in accordance with further guidance issued by competent authorities, including by the EU Operation Commander concerning an EU military crisis management operation, or by the Head of Mission concerning an EU civilian crisis management operation.
2. Where the Parties conclude an agreement on security procedures for the exchange of classified information, such agreement shall apply in the context of an EU crisis management operation.

SECTION II

PROVISIONS ON PARTICIPATION IN CIVILIAN CRISIS MANAGEMENT OPERATIONS

Article 5

Personnel seconded to an EU civilian crisis management operation

1. The Republic of Korea:
 - (a) shall ensure that its personnel seconded to the EU civilian crisis management operation undertake their mission in accordance with:
 - (i) the Council Decision and subsequent amendments as referred to in Article 2(1);
 - (ii) the Operation Plan;
 - (iii) implementing measures.
 - (b) shall inform in due time the Head of Mission and the High Representative of the Union for Foreign Affairs and Security Policy ('HR') of any change to its contribution to the EU civilian crisis management operation.
2. Personnel seconded by the Republic of Korea to an EU civilian crisis management operation shall undergo a medical examination, vaccination and be certified medically fit for duty by its competent authority and shall produce a copy of that certification.
3. Personnel seconded by the Republic of Korea shall carry out their duties and conduct themselves solely with the interests of the EU civilian crisis management operation in mind.

⁽¹⁾ Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p. 1).

*Article 6***Chain of command**

1. All personnel shall remain under the full command of their national authorities.
2. National authorities shall transfer operational control to the Civilian Operation Commander of the Union.
3. The Civilian Operation Commander shall assume responsibility and exercise command and control of the EU civilian crisis management operation at strategic level.
4. The Head of Mission shall assume responsibility and exercise command and control of the EU civilian crisis management operation at theatre level and assume its day-to-day management.
5. The Republic of Korea shall have the same rights and obligations in terms of day-to-day management of the operation as the Member States of the European Union taking part in the operation, in accordance with the legal instruments referred to in Article 2(1).
6. The Head of Mission shall be responsible for disciplinary control over the personnel of the EU civilian crisis management operation. Where required, disciplinary action shall be taken by the national authority concerned.
7. A National Contingent Point of Contact ('NPC') shall be appointed by the Republic of Korea to represent its national contingent in the operation. The NPC shall report to the Head of Mission on national matters and shall be responsible for the day-to-day discipline of the contingent.
8. The decision to end the operation shall be taken by the Union, following consultation with the Republic of Korea if it is still contributing to the EU civilian crisis management operation at the date of termination of the operation.

*Article 7***Financial aspects**

1. Without prejudice to Article 8, the Republic of Korea shall assume all the costs associated with its participation in the operation apart from the running costs, as set out in the operational budget of the operation.
2. In case of death, injury, loss or damage to natural or legal persons from the State(s) in which the operation is conducted, the Republic of Korea shall, when its liability has been established, pay compensation under the conditions provided for in the applicable status of mission agreement referred to in Article 3(1).

*Article 8***Contribution to operational budget**

1. Subject to paragraph 4, the Republic of Korea shall contribute to the financing of the operational budget of the EU civilian crisis management operation.
2. Such contribution to the operational budget shall be calculated on the basis of either of the following formulae, whichever produces the lower amount:
 - (a) the share of the reference amount which is in proportion to the ratio of the Republic of Korea's gross national income (GNI) to the total GNIs of all States contributing to the operational budget of the operation; or
 - (b) the share of the reference amount for the operational budget which is in proportion to the ratio of the number of personnel from the Republic of Korea participating in the operation to the total number of personnel of all States participating in the operation.

3. Notwithstanding paragraphs 1 and 2, the Republic of Korea shall not make any contribution towards the financing of per diem allowances paid to personnel of the Member States of the European Union.
4. Notwithstanding paragraph 1, the Union shall, in principle, exempt the Republic of Korea from financial contributions to a particular EU civilian crisis management operation when:
 - (a) the Union decides that the Republic of Korea provides a significant contribution which is essential for that operation; or
 - (b) the Republic of Korea has a GNI per capita which does not exceed that of any Member State of the Union.
5. Subject to paragraph 1, any arrangement on the payment of the contributions of the Republic of Korea to the operational budget of the EU civilian crisis management operation shall be signed between the competent authorities of the Parties and shall, inter alia, include the following provisions on:
 - (a) the amount of the financial contribution concerned;
 - (b) the arrangements for payment of the financial contribution; and
 - (c) the auditing procedure.

SECTION III

PROVISIONS ON PARTICIPATION IN MILITARY CRISIS MANAGEMENT OPERATIONS

Article 9

Participation in an EU military crisis management operation

1. The Republic of Korea shall ensure that its forces and personnel participating in an EU military crisis management operation undertake their mission in accordance with:
 - (a) the Council Decision and subsequent amendments as referred to in Article 2(1);
 - (b) the Operation Plan; and
 - (c) implementing measures.
2. The Republic of Korea shall inform the EU Operation Commander in due time of any change to its participation in the operation.
3. Personnel seconded by the Republic of Korea shall carry out their duties and conduct themselves solely with the interest of the EU military crisis management operation in mind.

Article 10

Chain of command

1. All forces and personnel participating in the EU military crisis management operation shall remain under the full command of their national authorities.
2. National authorities shall transfer the Operational and Tactical control of their forces and personnel to the EU Operation Commander, who is entitled to delegate his authority.
3. The Republic of Korea shall have the same rights and obligations in terms of the day-to-day management of the operation as the Member States of the European Union taking part in the operation, in accordance with the legal instruments referred to in Article 2(1).
4. The EU Operation Commander may, following consultations with the Republic of Korea, at any time request the withdrawal of the contribution by the Republic of Korea.

5. A Senior Military Representative ('SMR') shall be appointed by the Republic of Korea to represent its national contingent in the EU military crisis management operation. The SMR shall consult with the EU Force Commander on all matters affecting the operation and shall be responsible for the day-to-day discipline of the Republic of Korea contingent.

Article 11

Financial aspects

1. Without prejudice to Article 12 of this Agreement, the Republic of Korea shall assume all the costs associated with its participation in the operation unless the costs are subject to common funding as provided for in the legal instruments referred to in Article 2(1), as well as in Council Decision 2011/871/CFSP ⁽¹⁾.

2. In case of death, injury, loss or damage to natural or legal persons from the State(s) in which the operation is conducted, the Republic of Korea shall, when its liability has been established, pay compensation under the conditions provided for in the applicable status of forces agreement referred to in Article 3(1).

Article 12

Contribution to the common costs

1. Subject to paragraph 3, the Republic of Korea shall contribute to the financing of the common costs of the EU military crisis management operation.

2. Such contribution to the common costs shall be calculated on the basis of either of the following formulae, whichever produces the lower amount:

- (a) the share of the common costs which is in proportion to the ratio of the Republic of Korea's GNI to the total GNIs of all States contributing to the common costs of the operation; or
- (b) the share of the common costs which is in proportion to the ratio of the number of personnel from the Republic of Korea participating in the operation to the total number of personnel of all States participating in the operation.

Where the formula under point (b) is used and the Republic of Korea contributes personnel only to the Operation or Force Headquarters, the ratio used shall be that of its personnel to that of the total number of the respective headquarters personnel. In other cases, the ratio shall be that of all personnel contributed by the Republic of Korea to that of the total personnel of the operation.

3. Notwithstanding paragraph 1, the Union shall, in principle, exempt the Republic of Korea from financial contributions to the common costs of a particular EU military crisis management operation when:

- (a) the Union decides that the Republic of Korea provides a significant contribution which is essential for that operation; or
- (b) the Republic of Korea has a GNI per capita which does not exceed that of any Member State of the Union.

4. Subject to paragraph 1, any arrangement on the payment of the contributions of the Republic of Korea to the common costs shall be concluded between the competent authorities of the Parties and shall include, inter alia, the following provisions on:

- (a) the amount of the financial contribution concerned;
- (b) the arrangements for payment of the financial contribution; and
- (c) the auditing procedure.

⁽¹⁾ Council Decision 2011/871/CFSP of 19 December 2011 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena) (OJ L 343, 23.12.2011, p.35).

SECTION IV

FINAL PROVISIONS

Article 13

Arrangements to implement the Agreement

Without prejudice to Articles 8(5) and 12(4), any necessary technical and administrative arrangements in pursuance of the implementation of this Agreement shall be concluded between the competent authorities of the Parties.

Article 14

Non-compliance

Should either Party fail to comply with its obligations under this Agreement, the other Party shall have the right to terminate this Agreement by written notice of one month.

Article 15

Dispute settlement

Disputes concerning the interpretation or application of this Agreement shall be settled by diplomatic means between the Parties.

Article 16

Entry into force, Duration, and Termination

1. This Agreement shall enter into force on the first day of the first month after the Parties have notified each other of the completion of the internal legal procedures necessary for its entry into force.
2. This Agreement shall be subject to regular review.
3. This Agreement may be amended on the basis of a mutual written agreement between the Parties. The amendments shall enter into force in accordance with the procedure laid down in paragraph 1.
4. This Agreement shall remain in force for an initial period of five years, and shall thereafter be automatically extended for successive periods of five years unless either Party notifies the other Party of its intention to terminate this Agreement, in writing, at least six months before such expiry date.

IN WITNESS WHEREOF, the undersigned, both being duly authorized thereto by the respective Parties, have signed this Agreement.

Done at Seoul, on the twenty-third day of May in the year two thousand and fourteen in duplicate in the English and Korean languages, both texts being equally authentic. In case of any divergence of the interpretation, the English text shall prevail.

For the European Union

For the Republic of Korea

DECLARATION BY THE MEMBER STATES OF THE EU APPLYING AN EU COUNCIL DECISION ON AN EU CRISIS MANAGEMENT OPERATION, IN WHICH THE REPUBLIC OF KOREA PARTICIPATES REGARDING THE WAIVER OF CLAIMS

'The EU Member States applying an EU Council Decision of an EU crisis management operation in which the Republic of Korea participates will endeavour, insofar as their internal legal systems so permit, to waive as far as possible any claims against the Republic of Korea for injury, death of their personnel, or damage to, or loss of, any assets owned by them and used by the EU crisis management operation if such injury, death, damage or loss:

- was caused by personnel, contributed by the Republic of Korea to an EU crisis management operation, in the execution of their duties in connection with the EU crisis management operation, except in case of gross negligence or wilful misconduct; or
- arose from the use of any assets owned by the Republic of Korea, provided that the assets were used in connection with the operation and except in the case of gross negligence or wilful misconduct by personnel contributed by the Republic of Korea to an EU crisis management operation, using those assets.'

DECLARATION BY THE REPUBLIC OF KOREA REGARDING THE WAIVER OF CLAIMS AGAINST ANY STATE PARTICIPATING IN EU CRISIS MANAGEMENT OPERATIONS

'The Republic of Korea, having agreed to participate in an EU crisis management operation, will endeavour, insofar as its internal legal system so permits, to waive as far as possible any claims against any State participating in an EU crisis management operation for injury, death of its personnel, or damage to, or loss of, any assets owned by it and used by the EU crisis management operation if such injury, death, damage or loss:

- was caused by personnel in the execution of their duties in connection with the EU crisis management operation, except in case of gross negligence or wilful misconduct; or
 - arose from the use of any assets owned by States participating in the EU crisis management operation, provided that the assets were used in connection with the operation and except in the case of gross negligence or wilful misconduct by EU crisis management operation personnel using those assets.'
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REGULATIONS

COMMISSION REGULATION (EU) No 601/2014

of 4 June 2014

amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards the food categories of meat and the use of certain food additives in meat preparations

(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 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives ⁽¹⁾, and in particular Article 10(3) thereof,

Whereas:

- (1) Annex II to Regulation (EC) No 1333/2008 lays down a Union list of food additives approved for use in foods and their conditions of use.
- (2) That list may be amended in accordance with the common procedure referred to in Article 3(1) of Regulation (EC) No 1331/2008 of the European Parliament and of the Council ⁽²⁾, either on the initiative of the Commission or following an application.
- (3) The Union list of food additives was established based on food additives permitted for use in foods in accordance with Directives of the European Parliament and of the Council 94/35/EC ⁽³⁾, 94/36/EC ⁽⁴⁾ and 95/2/EC ⁽⁵⁾ and after reviewing their compliance with Articles 6, 7 and 8 of Regulation (EC) No 1333/2008. The Union list includes the food additives on the basis of the categories of food to which they may be added to.
- (4) In Part D of the Union list, category 8 covers meat and includes subcategories 8.1: Unprocessed meat and 8.2: Processed meat. Category 8.1 is further subdivided into categories 8.1.1: Unprocessed meat other than meat preparations as defined by Regulation (EC) No 853/2004 of the European Parliament and of the Council ⁽⁶⁾ and 8.1.2: Meat preparations as defined by Regulation (EC) No 853/2004.
- (5) Point 1.15. of Annex I to Regulation (EC) No 853/2004 defines meat preparations as fresh meat, including meat that has been reduced to fragments, which has had foodstuffs, seasonings or additives added to it or which has undergone processes insufficient to modify the internal muscle fibre structure of the meat and thus to eliminate the characteristics of fresh meat. Meanwhile, it has been clarified that meat preparations can be either processed or unprocessed ⁽⁷⁾. However, after processing if the characteristics of fresh meat are completely eliminated, it should no longer be considered a meat preparation, but should fall within the definition of 'meat products' as set

⁽¹⁾ OJ L 354, 31.12.2008, p. 16.

⁽²⁾ Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings (OJ L 354, 31.12.2008, p. 1).

⁽³⁾ European Parliament and Council Directive 94/35/EC of 30 June 1994 on sweeteners for use in foodstuffs (OJ L 237, 10.9.1994, p. 3).

⁽⁴⁾ European Parliament and Council Directive 94/36/EC of 30 June 1994 on colours for use in foodstuffs (OJ L 237, 10.9.1994, p. 13).

⁽⁵⁾ European Parliament and Council Directive 95/2/EC of 20 February 1995 on food additives other than colours and sweeteners (OJ L 61, 18.3.1995, p. 1).

⁽⁶⁾ Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ L 139, 30.4.2004, p. 55).

⁽⁷⁾ Health and Consumers Directorate-General's Guidance document on the implementation of certain provisions of Regulation (EC) No 853/2004 on the hygiene of food of animal origin http://ec.europa.eu/food/food/biosafety/hygienelegislation/guide_en.htm

out in point 7.1. of Annex I to Regulation (EC) No 853/2004. In the interest of legal clarity it is appropriate to use for the purposes of category 8 the terms 'fresh meat', 'meat preparations' and 'meat products' as defined in Regulation (EC) No 853/2004. Therefore, the subcategories under category 8 in Part D of the Union list, should be amended accordingly.

- (6) The use of food additives belonging to Group I as defined in Part C of the Union list is generally authorised in processed meat, whereas the authorisation of the use of food additives belonging to that group in unprocessed meat is restricted and only allowed on a case by case basis.
- (7) When the Union list as set out in Annex II to Regulation (EC) No 1333/2008 was established, meat preparations as defined by Regulation (EC) No 853/2004 were considered as unprocessed meat in which only a restricted number of additives were authorised. However, different interpretation of the definition of meat preparations has led to the situation where the use of certain additives in particular categories of meat differ between the Member States.
- (8) The Commission has received requests to include some of those uses in the Union list of authorised food additives. These requests have been made available to all Member States. It is appropriate to include those uses in the Union list, where they comply with the general conditions of use of food additives laid down in Regulation (EC) No 1333/2008 and taking into account the need to maintain certain traditional products on the market in some Member States.
- (9) At the request of some Member States and/or the meat industry, certain uses of Curcumin (E 100), Carmines (E 120), Caramels (E 150a-d), Paprika extract (E 160c) and Beetroot red (E 162) that were traditionally used in certain Member States for the colouring of merguez type products and other traditional products: *salsicha fresca*, *mici*, *butifarra fresca*, *longaniza fresca*, *chorizo fresco*, *bifteki*, *soutzoukaki*, *kebap*, *cevapcici* and *pljeskavice* have been considered and it is appropriate to authorise these uses.
- (10) At the request of some Member States the use of Acetic acid and acetates (E 260 — 263), Lactic acid and lactates (E 270, E 325 — 327), Ascorbic acid and ascorbates (E 300 — 302), Citric acid and citrates (E 330 — 333), as acidity regulators, preservatives and/or anti-oxidants to prevent oxidation and/or rancidity and to increase microbiological stability have been considered and it is appropriate to authorise these uses in all meat preparations to which other ingredients than additives or salt have been added.
- (11) At the request of some Member States, the use of Phosphoric acid — phosphates — di — tri- and polyphosphates (E 338 — 452) as humectant to prevent the loss of meat juices during further processing, in particular when the brine has been injected, has been considered and it is appropriate to authorise this use. However, in order to limit further exposure to added phosphates in food, the extension of the use of those phosphates should be limited to *Kasseler*, *Bräte*, *Surfleisch*, *toorvorst*, *šaslōkk*, *ahjupraad* and *burger meat* with a minimum vegetable and/or cereal content of 4 % mixed within the meat and Finnish grey salted Christmas ham.
- (12) At the request of some Member States and/or the meat industry, the use of Nitrites (E 249 — 250) as a preservative in certain traditional products: *lomo de cerdo adobado*, *pincho moruno*, *careta de cerdo adobada*, *costilla de cerdo adobada*, *Kasseler*, *Bräte*, *Surfleisch*, *toorvorst*, *šaslōkk*, *ahjupraad*, *kielbasa surowa biała*, *kielbasa surowa metka* and *tatar wołowy (danie tatarskie)* has been considered and it is appropriate to authorise this use.
- (13) At the request of some Member States and/or the meat industry, the use of Alginates (E 401 — 404), Carrageenan (E 407), Processed eucheama seaweed (E 407a), Locust bean gum (E 410), Guar gum (E 412), Tragacanth (E 413), Xanthan gum (E 415), Acetylated distarch phosphate (E 1414) and Hydroxy propyl distarch phosphate (E 1442) as humectants or stabilisers to diminish leakage of water in the packaging and to prevent the loss of meat juices during further processing have been considered. Those uses should be authorised in meat preparations to which ingredients have been injected and in meat preparations composed of meat parts that have been handled differently: minced, sliced or processed and that are combined together, e.g. roulades containing minced meat. Food additives used in meat preparations to prevent the loss of meat juices during further processing do not mislead consumer.

- (14) At the request of some Member States and/or the meat industry, the use of Sodium carbonates (E 500) as humectant in poultry meat preparations, *mici*, *bifteki*, *soutzoukaki*, *kebap*, *seftalia*, *cevapcici* and *pljeskavice* in order to maintain consistency and juiciness during further preparation has been considered and it is appropriate to authorise this use. Furthermore, this use in poultry meat preparations allows to cook poultry meat longer and more effectively, maintaining its juiciness and avoiding the consumption of undercooked poultry.
- (15) At the request of a Member State and/or the meat industry, the use of Acetylated distarch phosphate (E 1414) and Hydroxy propyl distarch phosphate (E 1442) to diminish leakage of water in preparations in which ingredients have been injected, in meat preparations composed of meat parts that have been handled differently: minced, sliced or processed and that are combined together, e.g. roulades containing minced meat and in order to maintain juiciness during the preparation of *gyros*, *souvlaki*, *bifteki*, *soutzoukaki*, *kebap* and *seftalia* have been considered and it is appropriate to authorise these uses.
- (16) As regards the traditional products, the requested uses of the food additives should comply with the general conditions of use set out in article 6 of Regulation (EC) No 1333/2008 and in particular should not mislead the consumers in the Member States or in the regions where these products are traditionally consumed.
- (17) In order to ensure uniform application of the use of additives covered by the present regulation, the traditional meat preparations are described in the guidance document describing the food categories in Part E of Annex II to Regulation (EC) No 1333/2008 on food additives ⁽¹⁾.
- (18) The principle of carry-over set out in Article 18(1)(a) of Regulation (EC) No 1333/2008 should be permitted in meat preparations as defined by Regulation (EC) No 853/2004.
- (19) Pursuant to Article 3(2) of Regulation (EC) No 1331/2008, the Commission has to seek the opinion of the European Food Safety Authority (the Authority) in order to update the Union list of food additives set out in Annex II to Regulation (EC) No 1333/2008, except where the update in question is not liable to have an effect on human health. Acetic acid and acetates (E 260 — 263), Lactic acid and lactates (E 270, E 325- 327), Ascorbic acid and ascorbates (E 300 — 302), Citric acid and citrates (E 330 — 333), Alginates (E 401 — 404), Carrageenan (E 407), Processed eucheama seaweed (E 407a), Locust bean gum (E 410), Guar gum (E 412), Tragacanth (E 413), Xanthan gum (E 415), Sodium carbonates (E 500), Acetylated distarch phosphate (E 1414) and Hydroxy propyl distarch phosphate (E 1442) belong to the group of additives for which no acceptable daily intake has been specified. That implies that they do not pose a risk to health at the levels necessary to achieve the desired technological effect. Therefore the extended use of those additives constitutes an update of the Union list which is not liable to have an effect on human health. The use of Curcumin (E 100), Carmines (E 120), Caramels (E 150a-d), Paprika extract (E 160c), Beetroot red (E 162), Nitrites (E 249 — 250), Phosphoric acid — phosphates — di — tri- and polyphosphates (E 338 — 452), will only be extended to certain products that have been traditionally used, hence the extended use of these additives constitutes an update of the Union list which is not liable to have an effect on human health. Therefore, it is not necessary to seek the opinion of the Authority.
- (20) Annex II to Regulation (EC) No 1333/2008 should be amended accordingly.
- (21) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 1333/2008 is amended in accordance with the Annex to this Regulation.

⁽¹⁾ http://ec.europa.eu/food/food/FAEF/additives/guidance_en.htm

Article 2

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, 4 June 2014.

For the Commission

The President

José Manuel BARROSO

ANNEX

Annex II to Regulation (EC) No 1333/2008 is amended as follows:

(1) Part A is amended as follows:

in Table 1, the entry for point 1 is replaced by the following:

'1	Unprocessed foods as defined in Article 3 of Regulation (EC) No 1333/2008, excluding meat preparations as defined by Regulation (EC) No 853/2004'
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(2) in Part D, the entries for category 08. Meat are replaced by the following:

'08.	Meat
08.1	Fresh meat, excluding meat preparations as defined by Regulation (EC) No 853/2004
08.2	Meat preparations as defined by Regulation (EC) No 853/2004
08.3	Meat products
08.3.1	Non-heat-treated meat products
08.3.2	Heat-treated meat products
08.3.3	Casings and coatings and decorations for meat
08.3.4	Traditionally cured meat products with specific provisions concerning nitrites and nitrates
08.3.4.1	Traditional immersion cured products (Meat products cured by immersion in a curing solution containing nitrites and/or nitrates, salt and other components)
08.3.4.2	Traditional dry cured products. (Dry curing process involves dry application of curing mixture containing nitrites and/or nitrates, salt and other components to the surface of the meat followed by a period of stabilisation/maturation)
08.3.4.3	Other traditionally cured products. (Immersion and dry cured processes used in combination or where nitrite and/or nitrate is included in a compound product or where the curing solution is injected into the product prior to cooking)

(3) Part E is amended as follows:

(a) the entry for category 08.1 is deleted;

(b) the title of category 08.1.1 is replaced by the following:

'08.1	Fresh meat, excluding meat preparations as defined by Regulation (EC) No 853/2004'
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(c) Category 8.1.2 is amended as follows:

(i) the title is replaced by the following:

'08.2	Meat preparations as defined by Regulation (EC) No 853/2004'
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(ii) the entries for E 120, E 150a-d, E 262, E 300, E 301, E 302, E 325, E 326, E 330, E 331, E 332, E 333 and E 338-452 are replaced by the following:

	E 120	Cochineal, Carminic acid, Carmines	100		only <i>breakfast sausages</i> with a minimum cereal content of 6 %, <i>burger meat</i> with a minimum vegetable and/or cereal content of 4 % mixed within the meat (in these products, the meat is minced in such a way so that the muscle and fat tissue are completely dispersed, so that fibre makes an emulsion with the fat, giving those products their typical appearance), merguez type products, <i>salsicha fresca</i> , <i>mici</i> , <i>butifarra fresca</i> , <i>longaniza fresca</i> , <i>chorizo fresco</i> , <i>cevapcici</i> and <i>pljeskavice</i>
	E 150a-d	Caramels	<i>quantum satis</i>		only <i>breakfast sausages</i> with a minimum cereal content of 6 %, <i>burger meat</i> with a minimum vegetable and/or cereal content of 4 % mixed within the meat (in these products, the meat is minced in such a way so that the muscle and fat tissue are completely dispersed, so that fibre makes an emulsion with the fat, giving those products their typical appearance), merguez type products, <i>salsicha fresca</i> , <i>mici</i> , <i>butifarra fresca</i> , <i>longaniza fresca</i> and <i>chorizo fresco</i>
	E 261	Potassium acetate	<i>quantum satis</i>		only prepacked preparations of fresh minced meat and meat preparations to which other ingredients than additives or salt have been added
	E 262	Sodium acetates	<i>quantum satis</i>		only prepacked preparations of fresh minced meat and meat preparations to which other ingredients than additives or salt have been added
	E 300	Ascorbic acid	<i>quantum satis</i>		only <i>gehakt</i> , prepacked preparations of fresh minced meat and meat preparations to which other ingredients than additives or salt have been added
	E 301	Sodium ascorbate	<i>quantum satis</i>		only <i>gehakt</i> , prepacked preparations of fresh minced meat and meat preparations to which other ingredients than additives or salt have been added
	E 302	Calcium ascorbate	<i>quantum satis</i>		only <i>gehakt</i> , prepacked preparations of fresh minced meat and meat preparations to which other ingredients than additives or salt have been added
	E 325	Sodium lactate	<i>quantum satis</i>		only prepacked preparations of fresh minced meat and meat preparations to which other ingredients than additives or salt have been added

	E 326	Potassium lactate	<i>quantum satis</i>		only prepacked preparations of fresh minced meat and meat preparations to which other ingredients than additives or salt have been added
	E 330	Citric acid	<i>quantum satis</i>		only <i>gehakt</i> , prepacked preparations of fresh minced meat and meat preparations to which other ingredients than additives or salt have been added
	E 331	Sodium citrates	<i>quantum satis</i>		only <i>gehakt</i> , prepacked preparations of fresh minced meat and meat preparations to which other ingredients than additives or salt have been added
	E 332	Potassium citrates	<i>quantum satis</i>		only <i>gehakt</i> , prepacked preparations of fresh minced meat and meat preparations to which other ingredients than additives or salt have been added
	E 333	Calcium citrates	<i>quantum satis</i>		only <i>gehakt</i> , prepacked preparations of fresh minced meat and meat preparations to which other ingredients than additives or salt have been added
	E 338-452	Phosphoric acid — phosphates — di — tri — and polyphosphates	5 000	(1) (4)	only <i>breakfast sausages</i> : in this product, the meat is minced in such a way so that the muscle and fat tissue are completely dispersed, so that fibre makes an emulsion with the fat, giving the product its typical appearance; Finnish grey salted Christmas ham <i>burger meat</i> with a minimum vegetable and/or cereal content of 4 % mixed within the meat, <i>Kasseler</i> , <i>Bräte</i> , <i>Surfleisch</i> , <i>toorvorst</i> , <i>šaslōkk</i> , and <i>ahjupraad</i>

(iii) the following entries are inserted in their numerical order:

	E 100	Curcumin	20		only merguez type products, <i>salsicha fresca</i> , <i>butifarra fresca</i> , <i>longaniza fresca</i> and <i>chorizo fresco</i>
	E 160c	Paprika extract	10		only merguez type products, <i>salsicha fresca</i> , <i>butifarra fresca</i> , <i>longaniza fresca</i> , <i>chorizo fresco</i> , <i>bifteki</i> , <i>soutzoukaki</i> and <i>kebab</i>

	E 162	Beetroot red	<i>quantum satis</i>		only merguez type products, <i>salsicha fresca</i> , <i>butifarra fresca</i> , <i>longaniza fresca</i> and <i>chorizo fresco</i>
	E 249-250	Nitrites	150	(7) (7')	only <i>lomo de cerdo adobado</i> , <i>pincho moruno</i> , <i>careta de cerdo adobada</i> , <i>costilla de cerdo adobada</i> , <i>Kasseler</i> , <i>Bräte</i> , <i>Surfleisch</i> , <i>toorvorst</i> , <i>šaslōkk</i> , <i>ahjupraad</i> , <i>kielbasa surowa biała</i> , <i>kielbasa surowa metka</i> , and <i>tatar wołowy</i> (<i>danie tatarskie</i>)
	E 260	Acetic acid	<i>quantum satis</i>		only prepacked preparations of fresh minced meat and meat preparations to which other ingredients than additives or salt have been added
	E 263	Calcium acetate	<i>quantum satis</i>		only prepacked preparations of fresh minced meat and meat preparations to which other ingredients than additives or salt have been added
	E 270	Lactic acid	<i>quantum satis</i>		only prepacked preparations of fresh minced meat and meat preparations to which other ingredients than additives or salt have been added
	E 327	Calcium Lactate	<i>quantum satis</i>		only prepacked preparations of fresh minced meat and meat preparations to which other ingredients than additives or salt have been added
	E 401	Sodium alginate	<i>quantum satis</i>		only preparations in which ingredients have been injected; meat preparations composed of meat parts that have been handled differently: minced, sliced or processed and that are combined together. Except <i>bifteki</i> , <i>soutzoukaki</i> , <i>kebab gyros</i> and <i>souvlaki</i>
	E 402	Potassium alginate	<i>quantum satis</i>		only preparations in which ingredients have been injected; meat preparations composed of meat parts that have been handled differently: minced, sliced or processed and that are combined together. Except <i>bifteki</i> , <i>soutzoukaki</i> , <i>kebab gyros</i> and <i>souvlaki</i>
	E 403	Ammonium alginate	<i>quantum satis</i>		only preparations in which ingredients have been injected; meat preparations composed of meat parts that have been handled differently: minced, sliced or processed and that are combined together. Except <i>bifteki</i> , <i>soutzoukaki</i> , <i>kebab gyros</i> and <i>souvlaki</i>

	E 404	Calcium alginate	<i>quantum satis</i>		only preparations in which ingredients have been injected; meat preparations composed of meat parts that have been handled differently: minced, sliced or processed and that are combined together. Except <i>bifteki, soutzoukaki, kebab, gyros and souvlaki</i>
	E 407	Carrageenan	<i>quantum satis</i>		only preparations in which ingredients have been injected; meat preparations composed of meat parts that have been handled differently: minced, sliced or processed and that are combined together. Except <i>bifteki, soutzoukaki, kebab, gyros and souvlaki</i> ,
	E 407a	Processed eucheama seaweed	<i>quantum satis</i>		only preparations in which ingredients have been injected; meat preparations composed of meat parts that have been handled differently: minced, sliced or processed and that are combined together. Except <i>bifteki, soutzoukaki, kebab, gyros and souvlaki</i>
	E 410	Locust bean gum	<i>quantum satis</i>		only preparations in which ingredients have been injected; meat preparations composed of meat parts that have been handled differently: minced, sliced or processed and that are combined together. Except <i>bifteki, soutzoukaki, kebab, gyros and souvlaki</i>
	E 412	Guar gum	<i>quantum satis</i>		only preparations in which ingredients have been injected; meat preparations composed of meat parts that have been handled differently: minced, sliced or processed and that are combined together. Except <i>bifteki, soutzoukaki, kebab, gyros and souvlaki</i>
	E 413	Tragacanth	<i>quantum satis</i>		only preparations in which ingredients have been injected; meat preparations composed of meat parts that have been handled differently: minced, sliced or processed and that are combined together. Except <i>bifteki, soutzoukaki, kebab, gyros and souvlaki</i>
	E 415	Xanthan gum	<i>quantum satis</i>		only preparations in which ingredients have been injected; meat preparations composed of meat parts that have been handled differently: minced, sliced or processed and that are combined together. Except <i>bifteki, soutzoukaki, kebab, gyros and souvlaki</i>
	E 500	Sodium carbonates	<i>quantum satis</i>		only poultry meat preparations, <i>mici, bifteki, soutzoukaki, kebab, seftalia, čevapčići and pljeskavice</i>

	E 1414	Acetylated distarch phosphate	<i>quantum satis</i>		only preparations in which ingredients have been injected; meat preparations composed of meat parts that have been handled differently: minced, sliced or processed and that are combined together, <i>gyros, souvlaki, bifteki, soutzoukaki, kebab</i> and <i>seftalia</i>
	E 1442	Hydroxy propyl distarch phosphate	<i>quantum satis</i>		only preparations in which ingredients have been injected; meat preparations composed of meat parts that have been handled differently: minced, sliced or processed and that are combined together, <i>gyros, souvlaki, bifteki, soutzoukaki, kebab</i> and <i>seftalia</i>
		(7): Maximum amount that may be added during manufacturing			
		(7'): Maximum amount is expressed as Sodium nitrite'			

(d) the title of category 08.2 is replaced by the following:

'08.3	Meat products'
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(e) the title of category 08.2.1 is replaced by the following:

'08.3.1	Non-heat-treated meat products'
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(f) the title of category 08.2.2 is replaced by the following:

'08.3.2	Heat-treated meat products'
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(g) the title of category 08.2.3 is replaced by the following:

'08.3.3	Casings and coatings and decorations for meat'
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(h) the title of category 08.2.4 is replaced by the following:

'08.3.4	Traditionally cured meat products with specific provisions concerning nitrites and nitrates'
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(i) the title of category 08.2.4.1 is replaced by the following:

'08.3.4.1	Traditional immersion cured products (Meat products cured by immersion in a curing solution containing nitrites and/or nitrates, salt and other components)'
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(j) the title of category 08.2.4.2 is replaced by the following:

'08.3.4.2	Traditional dry cured products. (Dry curing process involves dry application of curing mixture containing nitrites and/or nitrates, salt and other components to the surface of the meat followed by a period of stabilisation/maturation)'
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(k) the title of category 08.2.4.3 is replaced by the following:

'08.3.4.3	Other traditionally cured products. (Immersion and dry cured processes used in combination or where nitrite and/or nitrate is included in a compound product or where the curing solution is injected into the product prior to cooking)'
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COMMISSION IMPLEMENTING REGULATION (EU) No 602/2014**of 4 June 2014****laying down implementing technical standards for facilitating the convergence of supervisory practices with regard to the implementation of additional risk weights according to Regulation (EU) No 575/2013 of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2013 ⁽¹⁾, and in particular Article 410(3) thereof,

Whereas:

- (1) It is appropriate to provide for implementing technical standards to facilitate the convergence of supervisory practices with regard to the implementation of a uniform approach to assess institutions' material non-compliance with the requirements by reason of negligence or omission, and to the application of the additional risk weights. In order to facilitate the convergence of supervisory practices when applying additional risk weights, an appropriate formula should be defined. That formula should impose a proportionate additional risk weight of no less than 250 % which progressively increases with subsequent infringements of Articles 405, 406 or 409 of Regulation (EU) No 575/2013. An appropriate factor should be introduced in the formula to allow for a lower additional risk weight to apply in the cases of exposures exempted pursuant to Article 405(3) of Regulation (EU) No 575/2013.
- (2) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.
- (3) The European Banking Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽²⁾,

HAS ADOPTED THIS REGULATION:

*Article 1***General considerations**

1. Competent authorities shall ensure that any additional risk weight imposed pursuant to Article 407 of Regulation (EU) No 575/2013 is applied to all relevant securitisation positions, held by an institution, which are affected by the material infringement of Article 405, 406 or 409 of Regulation (EU) No 575/2013.
2. Where an institution rectifies its infringement of the requirements provided in Article 405, 406 or 409 of Regulation (EU) No 575/2013, the additional risk weight shall cease to apply as soon as the rectification is notified to the competent authority.

⁽¹⁾ OJ L 176, 27.6.2013, p. 1.

⁽²⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

3. When assessing whether to impose an additional risk weight, competent authorities shall consider both the materiality of the infringement of Article 405, 406 or 409 of Regulation (EU) No 575/2013 and its relevance to the risk analysis of the securitisation position. Materiality shall be taken into consideration in both quantitative and qualitative terms and, where applicable, at both entity and consolidated level. In assessing materiality, competent authorities shall consider, among other factors, the duration of the infringement, the size of the affected positions and whether the institution has attempted to proactively rectify the infringement.

4. When assessing whether an institution has failed to meet the requirements set out in Article 405 of Regulation (EU) No 575/2013 in any material respect by reason of negligence or omission, competent authorities shall not be influenced by any omission by the originator, sponsor or original lender to disclose its commitment to retain a material economic interest of not less than 5 % with regard to past securitisations, where the institution can demonstrate that it has taken appropriate account of such circumstance.

5. In the case of a material infringement of the disclosure requirement provided in Article 409 of Regulation (EU) No 575/2013 by reason of negligence or omission of the institution, competent authorities shall impose an additional risk weight to the originator's, sponsor's or original lender's retained positions in, or other exposure to the relevant securitisation.

6. When assessing whether institutions have failed to meet the requirements set out in Articles 405, 406 or 409 of Regulation (EU) No 575/2013, in any material respect for reasons of negligence or of omission, for securitisation positions issued on or after 1 January 2011 and before 1 January 2014, competent authorities may take into account whether those institutions complied continuously between the date of issuance and 31 December 2013 with the requirements specified in Article 122a of Directive 2006/48/EC of the European Parliament and of the Council ⁽¹⁾ and in the Guidelines to Article 122a of Directive 2006/48/EC of the Committee of European Banking Supervisors ⁽²⁾.

Article 2

Calculation of additional risk weight

Where an institution does not meet the relevant requirements provided in Articles 405, 406 or 409 of Regulation (EU) No 575/2013 in any material respect, competent authorities shall apply the following formula to determine the total risk weight (Total RW) in accordance with the approach specified in Article 245(6) and Article 337(3) of Regulation (EU) No 575/2013:

$$\text{Total RW} = \text{Min}[12,5; \text{Original RW} \times (1 + (2,5 + 2,5 \times \text{InfringementDuration}_{\text{years}}) \times (1 - \text{Article405Exemption}_{\text{Pct}}))]$$

Where:

12,5 is a factor representing the maximum value that the total risk weight can reach;

'Original RW' is the risk weight that would apply to the securitisation positions if no additional risk weight was imposed;

2,5 is the minimum factor applying to the original risk weight in order to calculate the additional risk weight;

'InfringementDuration_{years}' is the duration of the infringement, expressed in years, rounded down to the nearest 12-month period. This variable is equal to '0' for an infringement of less than 12 months, equal to '1' for an infringement of more than 12 months but less than 24 months, equal to '2' for an infringement of more than 24 months but less than 36 months, etc. The duration shall generally be measured from the start of the infringement for the securitisation, although competent authorities, taking account of the specificities of the securitisation, may impose other starting points. 'Infringement' shall mean the breach of one or more of the requirements set out in Article 405, 406 or 409 capable of triggering an additional risk weight. The infringement shall turn into a 'subsequent infringement' when time passes without rectifying the infringement, leading to a progressive increase of the additional risk weight.

'Article405Exemption_{Pct}' is a variable equal to 0,5 if Article 405(3) of Regulation (EU) No 575/2013 applies to the securitisation positions to which the additional risk weight is calculated, and equal to 0 if such exemption does not apply.

⁽¹⁾ Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ L 177, 30.6.2006, p. 1).

⁽²⁾ <http://www.eba.europa.eu/documents/10180/106202/Guidelines.pdf>

*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, 4 June 2014.

For the Commission

The President

José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 603/2014**of 4 June 2014****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 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.
- (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, 4 June 2014.

For the Commission,
On behalf of the President,
Jerzy PLEWA
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	AL	46,1
	MK	77,0
	TR	76,3
	ZZ	66,5
0707 00 05	MK	28,8
	TR	106,0
	ZZ	67,4
0709 93 10	TR	110,5
	ZZ	110,5
0805 50 10	AR	120,1
	ZA	116,4
	ZZ	118,3
0808 10 80	AR	101,9
	BR	87,5
	CL	97,8
	CN	97,8
	NZ	144,5
	US	161,9
	UY	70,3
	ZA	91,4
	ZZ	106,6
0809 10 00	TR	190,9
	ZZ	190,9
0809 29 00	TR	395,0
	ZZ	395,0

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

DECISIONS

COUNCIL DECISION

of 6 May 2014

establishing the position to be adopted by the Union at the 53rd session of the OTIF Committee of Experts on the Transport of Dangerous Goods as regards certain amendments to Appendix C to the Convention concerning International Carriage by Rail (COTIF) applicable from 1 January 2015

(2014/327/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Union acceded to the Convention concerning International Carriage by Rail of 9 May 1980 as amended by the Vilnius Protocol of 3 June 1999 (hereinafter referred to as the 'COTIF Convention'), by virtue of Council Decision 2013/103/EU ⁽¹⁾.
- (2) All Member States, with the exception of Cyprus and Malta, apply the COTIF Convention.
- (3) Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods ⁽²⁾ lays down requirements for the transport of dangerous goods by road, by rail or by inland waterway within or between Member States, by referring to the Regulations concerning the International Carriage of Dangerous Goods by Rail, appearing as Appendix C to the COTIF Convention (RID Annex). In addition, Article 4 of this Directive provides that 'The transport of dangerous goods between Member States and third countries shall be authorised in so far as it complies with the requirements of the ADR, RID or ADN, unless otherwise indicated in the Annexes.' Thus, the Union has exercised its competence in this subject-matter.
- (4) The Committee of Experts on the Transport of Dangerous Goods set up in accordance with Article 13.1(d) of the COTIF Convention, at its 53rd session due to take place on 22 May 2014, is expected to decide upon certain amendments to the RID Annex. These amendments, which concern technical standards or uniform technical prescriptions, have the objective to ensure safe and efficient transport of dangerous goods whilst taking into account scientific and technical progress in the sector and the development of new substances and articles that pose danger during their transport.
- (5) The committee on the transport of dangerous goods established by Article 9 of Directive 2008/68/EC has carried out preliminary discussions on these amendments.
- (6) Most of the proposed amendments are justified and beneficial, and should therefore be supported by the Union. Two proposed amendments need to be further assessed in the light of technical and scientific progress. In particular, the European Railway Agency, in cooperation with the relevant bodies, should continue to work on the identification of a sustainable solution to detect derailments and mitigate their effects, including the future implementation of this solution. Therefore, should the latter amendments be approved at this point, the Union should formulate an objection following the procedure established in Article 35§4 of Title VII of the COTIF Convention,

⁽¹⁾ Council Decision 2013/103/EU of 16 June 2011 on the signing and conclusion of the Agreement between the European Union and the Intergovernmental Organisation for International Carriage by Rail on the Accession of the European Union to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 (OJ L 51, 23.2.2013, p. 1).

⁽²⁾ OJ L 260, 30.9.2008, p. 13.

HAS ADOPTED THIS DECISION:

Article 1

Position of the European Union

1. The position to be taken by the European Union at the 53rd session of the Committee of experts on the transport of dangerous goods in the framework of the Convention concerning international carriage by rail shall be in accordance with the Annex to this Decision.
2. Minor changes to the documents mentioned in the Annex to this Decision may be agreed by the representatives of the Union in the above-mentioned body without further decision of the Council.

Article 2

After its adoption the Decision of the abovementioned body shall be published in the *Official Journal of the European Union*.

Article 3

Entry into force

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

Done at Brussels, 6 May 2014.

For the Council
The President
G. STOURNARAS

ANNEX

Proposal	Reference document	Issue	Comments	EU position
1	Annex I to OTIF/RID/CE/GTP/2012-A	Amendments agreed by the standing working group	Technical consensus at the OTIF standing working group	Agree with the amendments
2	Annex I to OTIF/RID/CE/GTP/2012-A	Amendments left for further examination by the standing working group	These provisions are enclosed in square brackets in the reference document	Agree with the amendments
3	OTIF/RID/CE/GTP/2013/1	Transitional provision for certain placards	Technical consensus at the OTIF standing working group	Agree with the amendment
4	OTIF/RID/CE/GTP/2013/2	Application of special provision TE 25	Technical consensus at the OTIF standing working group	Agree with the amendment
5	OTIF/RID/CE/GTP/2013/5	Inspection of certain markings	Technical consensus at the OTIF standing working group	Agree with the amendment
6	OTIF/RID/CE/GTP/2013/6	Information to be provided to the infrastructure manager	The standing working group opted for the second option presented in the reference document.	Agree with the amendment
7	OTIF/RID/CE/GTP/2013/11	Use of technical vocabulary	Technical consensus at the OTIF standing working group	Agree with the amendment
8	OTIF/RID/CE/GTP/2013/12	Consequences of the deletion of UIC leaflet 573	Technical consensus at the OTIF standing working group	Agree with the amendments
9	OTIF/RID/CE/GTP/2013/13 and OTIF/RID/CE/GTP/2013/15	Application of special provision TE 22	The proposal is not mature enough for decision	Postpone the decision
10	OTIF/RID/CE/GTP/2013/14 and OTIF/RID/CE/GTP/2013/INF.14	Editorial revision of reference to EU railway provisions	Technical consensus at the OTIF standing working group	Agree with the amendments
11	OTIF/RID/CE/GTP/2013/16	Transport of dangerous goods on passenger trains	Technical consensus at the OTIF standing working group	Agree with the amendment as revised in the standing working group

Proposal	Reference document	Issue	Comments	EU position
12	OTIF/RID/CE/GTP/2013/17	Various consolidated amendments agreed by the standing working group	Technical consensus at the OTIF standing working group	Agree with the amendments
	OTIF/RID/CE/GTP/2013/17	Amendments left for further examination by the standing working group:	—	—
13	Idem	Those calling for a common view from the UN-ECE — OTIF Joint Meeting	Efficient intermodal transport needs to be facilitated	Agree with the amendments as recommended by the Joint Meeting
14	idem and OTIF/RID/CE/GTP/2013/INF.3	Provisions relating to compulsory application of derailment detectors in certain wagons	The EU will reconsider its position before the next revision of the rules.	Postpone the decision
15	OTIF/RID/CE/GTP/2013/3 OTIF/RID/CE/GTP/2013/9 and OTIF/RID/CE/GTP/2013/18	Harmonisation of rules with those of Annex 2 to SGMS of OSJD	Efficient transport of dangerous goods between EU and non-EU OSJD countries should be facilitated	Agree with the amendments
16	OTIF/RID/CE/GTP/2013/INF.4	Transport of coal	No consensus was found on technical details in the standing working group	Establish the EU position on the spot
17	OTIF/RID/CE/GTP/2013/INF.8	Revision of Chapter 7.7 of RID	The proposal of this reference document will be discussed in a more general discussion on the revision of Chapter 7.7	Establish the EU position on the spot
18	OTIF/RID/CE/GTP/2013/INF.12	Alignment with rules applicable in road transport	These proposals amend those in reference document OTIF/RID/CE/GTP/2013/17	Agree with the amendments

DECISION OF THE EUROPEAN CENTRAL BANK**of 12 March 2014****amending Decision ECB/2013/35 on additional measures relating to Eurosystem refinancing operations and eligibility of collateral****(ECB/2014/11)****(2014/328/EU)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first indent of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular the first indent of Article 3.1, Article 12.1, Article 14.3 and Article 18.2 thereof,

Having regard to Guideline ECB/2011/14 of 20 September 2011 on monetary policy instruments and procedures of the Eurosystem ⁽¹⁾ and Decision ECB/2013/6 of 20 March 2013 on the rules concerning the use as collateral for Eurosystem monetary policy operations of own-use uncovered government-guaranteed bank bonds ⁽²⁾,

Whereas:

- (1) Pursuant to Article 18.1 of the Statute of the European System of Central Banks and of the European Central Bank, the European Central Bank (ECB) and the national central banks of Member States whose currency is the euro (hereinafter the 'NCBs') may conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral. The standard conditions under which the ECB and the NCBs stand ready to enter into credit operations, including the criteria determining the eligibility of collateral for the purposes of Eurosystem credit operations, are laid down in Annex I to Guideline ECB/2011/14, as well as Decision ECB/2013/6 and Decision ECB/2013/35 ⁽³⁾.
- (2) Pursuant to Section 1.6 of Annex I to Guideline ECB/2011/14, the Governing Council may, at any time, change the instruments, conditions, criteria and procedures for the execution of Eurosystem monetary policy operations.
- (3) On 17 July 2013, the Governing Council decided to further strengthen its risk control framework by adjusting the eligibility criteria and haircuts applied to collateral accepted in Eurosystem monetary policy operations and adopting certain additional measures to improve the overall consistency of the framework and its practical implementation. These measures were laid down in Decision ECB/2013/35.
- (4) In relation to the rating requirements for asset-backed securities, it is necessary to introduce further refinements to Decision ECB/2013/35, which should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1***Amendment**

Article 6 of Decision ECB/2013/35 is amended as follows:

1. paragraph 2 is replaced by the following:

'2. The credit quality threshold applicable to asset-backed securities, as laid down in Section 6.3 of Annex I to Guideline ECB/2011/14, shall correspond to Credit Quality Step (CQS) 2 of the Eurosystem's harmonised rating scale ("single A") (*). All asset-backed securities shall have at least two credit assessments at a "single A" level from any accepted ECAI for the issue.

(*) A "single A" rating is a rating of at least "A3" from Moody's, "A-" from Fitch or Standard & Poor's, or "AL" from DBRS.

2. paragraph 3 is deleted.

⁽¹⁾ OJ L 331, 14.12.2011, p. 1.

⁽²⁾ OJ L 95, 5.4.2013, p. 22.

⁽³⁾ Decision ECB/2013/35 of 26 September 2013 on additional measures relating to Eurosystem refinancing operations and eligibility of collateral (OJ L 301, 12.11.2013, p. 6).

*Article 2***Entry into force**

This Decision shall enter into force on 1 April 2014.

Done at Frankfurt am Main, 12 March 2014.

The President of the ECB
Mario DRAGHI

GUIDELINES

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 12 March 2014

amending Guideline ECB/2011/14 on monetary policy instruments and procedures of the Eurosystem

(ECB/2014/10)

(2014/329/EU)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first indent of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular the first indent of Article 3.1, Article 12.1, Article 14.3 and Article 18.2 thereof,

Whereas:

- (1) Achieving a single monetary policy entails defining the instruments and procedures to be used by the Eurosystem, consisting of the national central banks of Member States whose currency is the euro (hereinafter the 'NCBs') and the European Central Bank (ECB), in order to implement such a policy in a uniform manner.
- (2) The ECB has the authority to establish the necessary guidelines to implement the Eurosystem's monetary policy and the NCBs have an obligation to act in accordance with such guidelines.
- (3) Pursuant to Article 18.1 of the Statute of the European System of Central Banks and of the European Central Bank, the ECB and the NCBs may conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral. The conditions under which the ECB and the NCBs stand ready to enter into credit operations, including the criteria determining the eligibility of collateral for the purposes of such operations, are laid down in Annex I to Guideline ECB/2011/14 ⁽¹⁾, as well as Decision ECB/2013/6 ⁽²⁾ and Decision ECB/2013/35 ⁽³⁾.
- (4) Guideline ECB/2011/14 should be amended to reflect changes to the Eurosystem's collateral framework relating to: (a) the extension of loan-level reporting requirements to asset-backed securities backed by credit card receivables. This is intended to preserve their eligibility as collateral for Eurosystem credit operations in the light of the homogeneity requirement for the cash-flow generating assets backing the asset-backed securities laid down in the penultimate paragraph of Section 6.2.1.1 of Annex I to Guideline ECB/2011/14; and (b) the revision of the mapping of certain credit ratings in the context of the Eurosystem harmonised rating scale.
- (5) Guideline ECB/2011/14 should also be amended to reflect changes due to the introduction of major improvements to the Eurosystem's correspondent central banking model (CCBM). First, it has been decided that the repatriation requirement, which required Eurosystem counterparties prior to mobilising assets as collateral for Eurosystem credit operations to transfer these assets to the respective issuer's securities settlement system (SSS),

⁽¹⁾ Guideline ECB/2011/14 of 20 September 2011 on monetary policy instruments and procedures of the Eurosystem (OJ L 331, 14.12.2011, p. 1).

⁽²⁾ Decision ECB/2013/6 of 20 March 2013 on the rules concerning the use as collateral for Eurosystem monetary policy operations of own-use uncovered government-guaranteed bank bonds (OJ L 95, 5.4.2013, p. 22).

⁽³⁾ Decision ECB/2013/35 of 26 September 2013 on additional measures relating to Eurosystem refinancing operations and eligibility of collateral (OJ L 301, 12.11.2013, p. 6).

should be removed from 26 May 2014. As such, a new mobilisation channel combining the CCBM with links between SSSs would be created, whereby any SSS/eligible link may be used by any Eurosystem counterparty to mobilise eligible assets as Eurosystem collateral. Second, triparty collateral management services, as offered by triparty agents in the market, should be supported on a cross-border basis via the CCBM from 29 September 2014,

HAS ADOPTED THIS GUIDELINE:

Article 1

Amendments to Annex I

Annex I to Guideline ECB/2011/14 is amended in accordance with the Annex to this Guideline.

Article 2

Taking effect and implementation

1. This Guideline shall take effect on the day of its notification to the NCBs.
2. The NCBs shall take the necessary measures to comply with paragraphs 3, 8, 15 and 16 of the Annex to this Guideline and apply them from 1 April 2014. They shall notify the ECB of the texts and means relating to those measures by 24 March 2014 at the latest.
3. The NCBs shall take the necessary measures to comply with paragraphs 1, 2, 4 to 7 and 10 to 13 of the Annex to this Guideline and apply them from 26 May 2014. They shall notify the ECB of the texts and means relating to those measures by 24 March 2014 at the latest.
4. The NCBs shall take the necessary measures to comply with paragraphs 9 and 14 of the Annex to this Guideline and apply them from 29 September 2014. They shall notify the ECB of the texts and means relating to those measures by 24 March 2014 at the latest.

Article 3

Addressees

This Guideline is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 12 March 2014.

The President of the ECB

Mario DRAGHI

ANNEX

Annex I to Guideline ECB/2011/14 is amended as follows:

1. in the Section 'Abbreviations', the following term is added:

'TPA triparty agent';

2. in Section 1.5, the last sentence is replaced by the following:

'All eligible assets may be used on a cross-border basis by means of the correspondent central banking model (CCBM) and, in the case of marketable assets, through eligible links between EEA securities settlement systems (SSSs).';

3. in Section 6.2.1.1.2, the penultimate paragraph is replaced by the following:

'In order to be eligible, an asset-backed security must be backed by cash-flow generating assets that the Eurosystem considers to be homogeneous, i.e. that the cash-flow generating assets backing an asset-backed security belong to only one of the following asset classes: (a) residential mortgages; (b) commercial real estate mortgages; (c) loans to small- and medium-sized enterprises; (d) auto loans; (e) consumer finance loans; (f) leasing receivables; or (g) credit card receivables. Asset-backed securities shall not be eligible for Eurosystem monetary policy operations if the pool of assets underlying them is comprised of heterogeneous assets.';

4. in Section 6.2.1.3, the first sentence is replaced by the following:

'The debt instrument must be issued in the EEA with a central bank or with a central securities depository (CSD) that has been positively assessed by the Eurosystem pursuant to the standards and assessment procedures described in the "Framework for the assessment of securities settlement systems and links to determine their eligibility for use in Eurosystem credit operations" (hereinafter the "Eurosystem User Assessment Framework") (*)(**).

(*) The Eurosystem User Assessment Framework is published on the ECB's website at www.ecb.europa.eu/paym/coll/coll/ssslinks/html/index.en.html.

(**) International debt securities in global bearer form issued on or after 1 January 2007, through the ICSDs Euroclear Bank (Belgium) and Clearstream Banking Luxembourg must, in order to be eligible, be issued in the form of new global notes and must be deposited with a common safekeeper which is an ICSD or, if applicable, a CSD that has been positively assessed by the Eurosystem pursuant to the standards and assessment procedures described in the Eurosystem User Assessment Framework. International debt securities in global bearer form that were issued in the form of classical global notes prior to 1 January 2007 and fungible securities issued under the same ISIN code on or after that date remain eligible until maturity. International debt securities issued in global registered form through the ICSDs Euroclear Bank (Belgium) and Clearstream Banking Luxembourg after 30 September 2010 must, in order to be eligible, be issued under the new safekeeping structure for international debt securities. International debt securities in global registered form issued before or on that date remain eligible until their maturity. International debt securities in individual note form will cease to be eligible if issued after 30 September 2010. International debt securities in individual note form issued before or on that date remain eligible until their maturity.';

5. Section 6.2.1.4 is replaced by the following:

'The debt instrument must be transferable in book-entry form. It must be held and settled in the euro area through an account with the Eurosystem or with an SSS that has been positively assessed by the Eurosystem pursuant to the standards and assessment procedures described in the Eurosystem User Assessment Framework, so that perfection and realisation of collateral are subject to the law of a Member State.

If the CSD where the asset is issued and the CSD where the asset is held are not identical, then the two CSDs must be connected by a link positively assessed by the Eurosystem pursuant to the standards and assessment procedures described in the Eurosystem User Assessment Framework (*).

(*) The list of eligible links is published on the ECB's website at www.ecb.europa.eu/paym/coll/coll/ssslinks/html/index.en.html;

6. Section 6.2.1.5 is replaced by the following:

'The debt instrument must be admitted to trading on a regulated market as defined in Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (*), or admitted to trading on certain non-regulated markets as specified by the ECB (**). The assessment of non-regulated markets by the Eurosystem is based on three principles — safety, transparency and accessibility (***).

(*) OJ L 145, 30.4.2004, p. 1.

(**) A list of acceptable non-regulated markets is published on the ECB's website at www.ecb.europa.eu and updated at least once a year.

(***) "Safety", "transparency" and "accessibility" are defined by the Eurosystem exclusively in terms of the performance of the Eurosystem's collateral management function. The selection process is not aimed at assessing the intrinsic quality of the various markets. The principles are to be understood as follows. Safety is taken to mean certainty with regard to transactions, in particular certainty on the validity and enforceability of transactions. Transparency is taken to mean unimpeded access to information on the market's rules of procedure and operation, the financial features of the assets, the price formation mechanism, and the relevant prices and quantities (quotes, interest rates, trading volumes, outstanding amounts, etc.). Accessibility refers to the Eurosystem's ability to take part in and have access to the market; a market is accessible for collateral management purposes if its rules of procedure and operation allow the Eurosystem to obtain information and conduct transactions when needed for these purposes;';

7. in Section 6.2.3.2, Table 4 is replaced by the following:

'Eligibility criteria	Marketable assets ⁽¹⁾	Non-marketable assets ⁽²⁾	
Type of asset	ECB debt certificates Other marketable debt instruments ⁽³⁾	Credit claims	RMBDs
Credit standards	The asset must meet high credit standards. The high credit standards are assessed using ECAF rules for marketable assets ⁽³⁾	The debtor/guarantor must meet high credit standards. The creditworthiness is assessed using ECAF rules for credit claims.	The asset must meet high credit standards. The high credit standards are assessed using ECAF rules for RMBDs.
Place of issue	EEA ⁽³⁾	Not applicable	Not applicable
Settlement/handling procedures	Place of settlement: euro area Instruments must be centrally deposited in book-entry form with NCBs or an SSS positively assessed by the Eurosystem pursuant to the standards and assessment procedures described in the Eurosystem User Assessment Framework	Eurosystem procedures	Eurosystem procedures
Type of issuer/debtor/guarantors	NCBs Public sector Private sector International and supranational institutions	Public sector Non-financial corporations International and supranational institutions	Credit institutions

'Eligibility criteria	Marketable assets ⁽¹⁾	Non-marketable assets ⁽²⁾	
Place of establishment of the issuer, debtor and guarantor	Issuer ⁽³⁾ : EEA or non-EEA G10 countries Debtor: EEA Guarantor ⁽³⁾ : EEA	Euro area	Euro area
Acceptable markets	Regulated markets Non-regulated markets accepted by the ECB	Not applicable	Not applicable
Currency	Euro	Euro	Euro
Minimum size	Not applicable	Minimum size threshold at the time of submission of the credit claim — for domestic use: choice of the NCB, — for cross-border use: common threshold of EUR 500 000.	Not applicable
Governing laws	For asset-backed securities the acquisition of the underlying assets must be governed by the law of an EU Member State. The law governing underlying credit claims must be the law of an EEA country	Governing law for credit claim agreement and mobilisation: law of a Member State The total number of different laws applicable to (a) the counterparty; (b) the creditor; (c) the debtor; (d) the guarantor (if relevant); (e) the credit claim agreement; and (f) the mobilisation agreement shall not exceed two	Not applicable
Cross-border use	Yes	Yes	Yes

⁽¹⁾ Further details are set out in Section 6.2.1.

⁽²⁾ Further details are set out in Section 6.2.2.

⁽³⁾ The credit standard of non-rated marketable debt instruments issued or guaranteed by non-financial corporations is determined on the basis of the credit assessment source chosen by the relevant counterparty in accordance with the ECAF rules applicable to credit claims, as set out in Section 6.3.3. In the case of these marketable debt instruments, the following eligibility criteria for marketable assets have been amended: place of establishment of the issuer/guarantor: euro area; place of issue: euro area.;

8. in Section 6.3.1, footnotes 67 and 69 are replaced by the following:

‘(*) The Eurosystem’s harmonised rating scale is published on the ECB’s website at www.ecb.europa.eu. A credit quality step 3 credit assessment means a minimum long-term rating of “BBB-” by Fitch or Standard & Poor’s, of “Baa3” by Moody’s, or of “BBBL” by DBRS.’

‘(**) “Triple A” means a long-term rating of “AAA” by Fitch, Standard & Poor’s or DBRS, or “Aaa” by Moody’s.’;

9. in Section 6.4.2, paragraph (k) is replaced by the following:

'The assets are subject to daily valuation. On a daily basis, NCBs (*) calculate the required value of underlying assets taking into account changes in outstanding credit volumes, the valuation principles outlined in Section 6.5 and the required valuation haircuts.

(*) When triparty services are being used, the valuation process is delegated to the TPA, based on information sent by the relevant NCB to the TPA.;

10. in Section 6.6, the second paragraph is replaced by the following:

'A mechanism has been developed by the NCBs (and by the ECB) to ensure that all eligible assets may be used on a cross-border basis. This is the CCBM, under which NCBs act as custodians ("correspondents") for each other (and for the ECB) in respect of assets accepted in their local depository, TPA or settlement system. Specific solutions can be used for non-marketable assets, i.e. credit claims and RMBDs, which cannot be transferred through an SSS (*). The CCBM may be used to collateralise all forms of Eurosystem credit operations. In addition to the CCBM, counterparties may use eligible links between SSSs for the cross-border transfer of marketable assets with their local SSS (**); counterparties may also use these eligible links between SSSs in combination with the CCBM (CCBM with links — see Section 6.6.3). Furthermore, the CCBM (including CCBM with links) is used as a basis for the cross-border use of triparty collateral management services.

(*) Details are provided in the brochure entitled "Correspondent central banking model (CCBM) procedure for Eurosystem counterparties", which is published on the ECB's website at www.ecb.europa.eu.

(**) Eligible assets may be used through an account of a central bank in an SSS located in a country other than that of the central bank in question if the Eurosystem has approved the use of such an account. Since 1999, De Nederlandsche Bank has been authorised to use its account with Euroclear Bank to settle collateral transactions in the Eurobonds issued in that ICSD. Since August 2000, the Central Bank of Ireland has been authorised to open such an account with Euroclear Bank. This account can be used for all eligible assets held in Euroclear Bank, i.e. including eligible assets transferred to Euroclear Bank through eligible links.;

11. in Section 6.6.1, the last paragraph is replaced by the following:

'The CCBM is available to counterparties (both for marketable and non- marketable assets) at least from 9 a.m. to 4 p.m. CET on each TARGET2 business day. A counterparty wishing to make use of the CCBM must advise the NCB from which it wishes to receive credit, i.e. its home NCB, before 4 p.m. CET. Furthermore, the counterparty must ensure that the collateral for securing monetary policy operations is delivered to the account of the correspondent central bank by 4.45 p.m. CET at the latest. Instructions or deliveries not respecting this deadline will only be treated on a best effort basis and may be considered for credit given on the following TARGET2 business day. When the counterparties foresee a need to use the CCBM late in the day, they should, where possible, deliver the assets in advance (i.e. pre-deposit them). In exceptional circumstances or when required for monetary policy purposes, the ECB may decide to extend the CCBM's closing time until the TARGET2 closing time, in cooperation with CSDs regarding their availability to extend their cut-off times for marketable assets.;

12. Section 6.6.2 is replaced by the following:

'In addition to the CCBM, eligible links between EEA SSSs can be used for the cross-border transfer of marketable assets.

A direct or relayed link between two SSSs allows a participant in one SSS to hold securities issued in another SSS without being a participant in that other SSS (*). Before these links can be used to transfer collateral for Eurosystem credit operations, they have to be assessed and approved by the Eurosystem pursuant to the standards and assessment procedures described in the Eurosystem User Assessment Framework (**).

From a Eurosystem perspective, the CCBM and the links between EEA SSSs fulfil the same role of allowing counterparties to use collateral on a cross-border basis, i.e. both enable counterparties to use collateral to obtain credit from their home NCB, even if this collateral was issued in an SSS of another country. The CCBM and the links

between SSSs perform this function in different ways. In the CCBM, the cross-border relationship is between the NCBs. They act as custodians for one another. Using the links, the cross-border relationship is between the SSSs. They open omnibus accounts with one another. Assets deposited with a correspondent central bank can only be used to collateralise Eurosystem credit operations. Assets held through a link can be used for Eurosystem credit operations, as well as for any other purpose selected by the counterparty. When using links between SSSs, the counterparties hold the assets on their own account with their home SSS and have no need for a custodian.

- (*) A link between two SSSs consists of a set of procedures and arrangements for the cross-border transfer of securities through a book-entry process. A link takes the form of an omnibus account opened by an SSS (the investor SSS) in another SSS (the issuer SSS). A direct link implies that no intermediary exists between the two SSSs. Relayed links between SSSs may also be used for the cross-border transfer of securities to the Eurosystem. A relayed link is a contractual and technical arrangement that allows two SSSs not directly connected to each other to exchange securities transactions or transfers through a third SSS acting as the intermediary.
- (**) The list of eligible links is available on the ECB's website at www.ecb.europa.eu/paym/coll/coll/ssslinks/html/index.en.html;

13. in Section 6.6, the following Section 6.6.3 is added:

‘6.6.3. CCBM with links

It is also possible for counterparties to use direct and relayed links referred to in Section 6.6.2 in combination with the CCBM to mobilise eligible marketable assets on a cross-border basis.

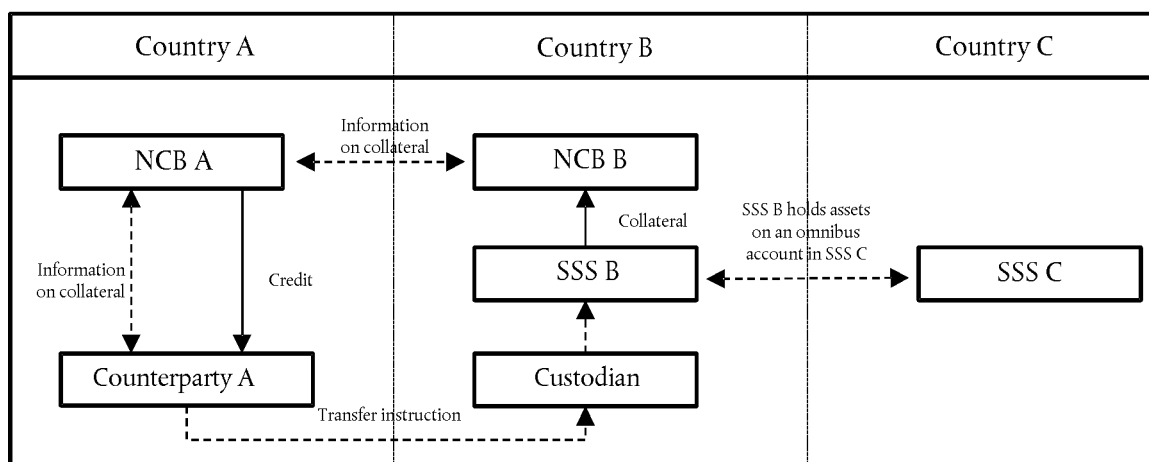
When using links between SSSs in combination with the CCBM, counterparties hold the assets issued in the issuer SSS in an account with an investor SSS directly or via a custodian. In case of relayed links, a third SSS may act as an intermediary SSS.

These assets can be issued in a non-euro area EEA CSD, provided that a link between the Issuer SSS and the Investor SSS has been positively assessed by the Eurosystem pursuant to the standards and assessment procedures described in the Eurosystem User Assessment Framework.

Chart 5

The correspondent central banking model with links

Use of eligible assets issued in the SSS of country C and held in the SSS of country B by a counterparty established in country A through a direct link between the SSSs in countries B and C in order to obtain credit from the NCB of country A



Where eligible assets are to be transferred via CCBM with links, counterparties shall ensure that the securities are delivered to an account at the relevant Investor SSS by 4 p.m. CET on the settlement date in order to ensure the settlement of the same day value operations. Any request for mobilisation received by the home NCBs from their counterparties after 4 p.m., or any request for the delivery of eligible assets to an account at the relevant Investor CSD after 4 p.m. CET is treated on a best effort basis, according to the cut-off times of the involved CSDs.;

14. in Section 6.6, the following Section 6.6.4 is added:

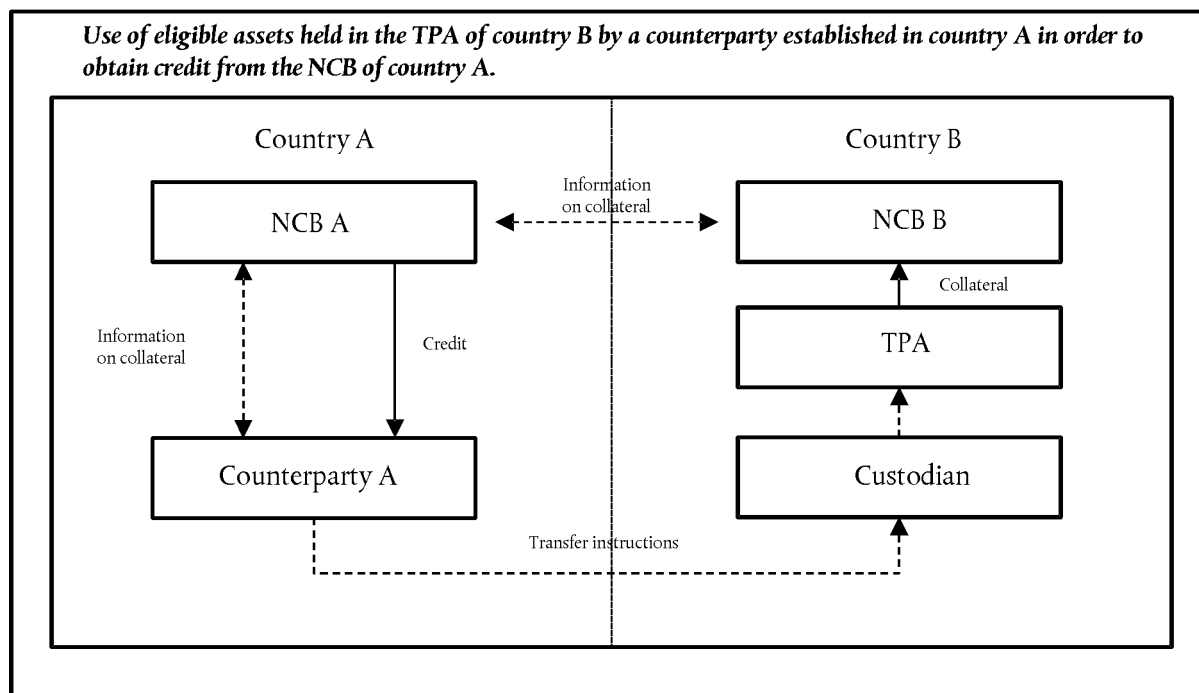
'6.6.4. CCBM with triparty collateral management services

The CCBM (including CCBM with links) is also used as a basis for the cross-border use of triparty collateral management services, whereby the NCB of a Member State, where triparty collateral management services are offered for cross-border Eurosystem use, will act as CCB for NCBs in other Member States whose counterparties have requested to use the respective triparty collateral management services on a cross-border basis. The relevant TPA shall be positively assessed by the Eurosystem.

Cross-border triparty collateral management services allow counterparties to increase or decrease the amount of collateral they provide to their home NCB (hereinafter referred to as the "global amount").

Chart 6

Cross-border triparty services



Note: The arrow "Information on collateral" between counterparty A and NCB A may not be relevant with certain TPAs (depending on the contractual model chosen) and in such case the counterparty does not send an instruction to NCB A or receive a confirmation from NCB A.;

15. in Appendix 8, the following paragraph is inserted as the penultimate paragraph:

'For asset-backed securities where the cash flow generating assets comprise credit card receivables, the loan-by-loan information requirements will apply from 1 April 2014 and the nine-month transition period ends on 31 December 2014.;

16. in Appendix 8, the second footnote is replaced by the following:

‘(*) i.e. on 30 September 2013 for RMBS and SME, 30 November 2013 for CMBS, 30 September 2014 for auto loans, consumer finance loans and leasing receivables, and 31 December 2014 for credit card receivables.’.

GUIDELINE OF THE EUROPEAN CENTRAL BANK**of 12 March 2014****amending Guideline ECB/2013/4 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral and amending Guideline ECB/2007/9****(ECB/2014/12)****(2014/330/EU)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first indent of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular the first indent of Article 3.1, Article 12.1, Article 14.3 and Article 18.2 thereof,

Having regard to Guideline ECB/2011/14 of 20 September 2011 on monetary policy instruments and procedures of the Eurosystem ⁽¹⁾, Decision ECB/2013/6 of 20 March 2013 on the rules concerning the use as collateral for Eurosystem monetary policy operations of own-use uncovered government-guaranteed bank bonds ⁽²⁾ and Decision ECB/2013/35 of 26 September 2013 on additional measures relating to Eurosystem refinancing operations and eligibility of collateral ⁽³⁾,

Whereas:

- (1) Pursuant to Article 18.1 of the Statute of the European System of Central Banks and of the European Central Bank, the European Central Bank (ECB) and the national central banks of Member States whose currency is the euro (hereinafter the 'NCBs') may conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral. The standard conditions under which the ECB and the NCBs stand ready to enter into credit operations, including the criteria determining the eligibility of collateral for the purposes of Eurosystem credit operations, are laid down in Annex I to Guideline ECB/2011/14, as well as Decision ECB/2013/6 and Decision ECB/2013/35.
- (2) Pursuant to Section 1.6 of Annex I to Guideline ECB/2011/14, the Governing Council may, at any time, change the instruments, conditions, criteria and procedures for the execution of Eurosystem monetary policy operations.
- (3) Guideline ECB/2013/4 ⁽⁴⁾, Decision ECB/2013/22 ⁽⁵⁾ and Decision ECB/2013/36 ⁽⁶⁾ together with other legal acts lay down the additional measures relating to Eurosystem refinancing operations and eligibility of collateral to be applied temporarily until the Governing Council considers that they are no longer necessary to ensure an appropriate monetary policy transmission mechanism.
- (4) Guideline ECB/2013/4 should be amended to reflect changes to the Eurosystem's collateral framework, relating to: (a) the extension of loan-level reporting requirements to asset-backed securities backed by credit card receivables in Annex I to Guideline ECB/2011/14; (b) the revision of the mapping of certain credit ratings in the context of the Eurosystem harmonised rating scale; and (c) clarification of the rating rules relating to asset-backed securities,

⁽¹⁾ OJ L 331, 14.12.2011, p. 1.

⁽²⁾ OJ L 95, 5.4.2013, p. 22.

⁽³⁾ OJ L 301, 12.11.2013, p. 6.

⁽⁴⁾ Guideline ECB/2013/4 of 20 March 2013 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral and amending Guideline ECB/2007/9 (OJ L 95, 5.4.2013, p. 23).

⁽⁵⁾ Decision ECB/2013/22 of 5 July 2013 on temporary measures relating to the eligibility of marketable debt instruments issued or fully guaranteed by the Republic of Cyprus (OJ L 195, 18.7.2013, p. 27).

⁽⁶⁾ Decision ECB/2013/36 of 26 September 2013 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral (OJ L 301, 12.11.2013, p. 13).

HAS ADOPTED THIS GUIDELINE:

Article 1

Amendments

Guideline ECB/2013/4 is amended as follows:

1. Article 1(3) is replaced by the following:

‘3. For the purposes of Article 5(1) and Article 7, the Hellenic Republic and the Portuguese Republic shall be considered euro area Member States compliant with a European Union/International Monetary Fund programme.’;

2. Article 3(1) is replaced by the following:

‘1. In addition to asset-backed securities (ABS) eligible under Chapter 6 of Annex I to Guideline ECB/2011/14, ABS which do not fulfil the credit assessment requirements under Section 6.3 of Annex I to Guideline ECB/2011/14 but which otherwise comply with all eligibility criteria applicable to ABS pursuant to Annex I to Guideline ECB/2011/14, shall be eligible as collateral for Eurosystem monetary policy operations, provided that they have two ratings of at least “triple B” level (*) from any accepted ECAI for the issue. They shall also satisfy all the following requirements:

- (a) the cash-flow generating assets backing the ABS shall belong to one of the following asset classes: (i) residential mortgages; (ii) loans to small and medium-sized enterprises (SMEs); (iii) commercial mortgages; (iv) auto loans; (v) leasing; (vi) consumer finance; (vii) credit card receivables;
- (b) there shall be no mix of different asset classes in the cash- flow generating assets;
- (c) the cash-flow generating assets backing the ABS shall not contain loans which are any of the following:
 - (i) non-performing at the time of issuance of the ABS;
 - (ii) non-performing when incorporated in the ABS during the life of the ABS, for example by means of a substitution or replacement of the cash-flow generating assets;
 - (iii) at any time, structured, syndicated or leveraged;
- (d) the ABS transaction documents shall contain servicing continuity provisions.

(*) A “triple B” rating is a rating of at least “Baa3” from Moody’s, “BBB-” from Fitch or Standard & Poor’s, or a rating of “BBBL” from DBRS.’

Article 2

Taking effect and implementation

- 1. This Guideline shall take effect on the day of its notification to the NCBs.
- 2. The NCBs shall take the necessary measures to comply with Article 1 of this Guideline and apply them from 1 April 2014. They shall notify the ECB of the texts and means relating to those measures by 24 March 2014 at the latest.

Article 3

Addressees

This Guideline is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 12 March 2014.

The President of the ECB
Mario DRAGHI

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 407/13/COL

of 23 October 2013

amending, for the 90th time, the procedural and substantive rules in the field of State aid by introducing a new chapter on Regional State aid for 2014-20 and by prolonging the validity of the chapters on national regional aid for 2007-13 and the criteria for an in-depth assessment of regional aid to large investment projects

THE EFTA SURVEILLANCE AUTHORITY ('THE AUTHORITY'),

HAVING regard to the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Articles 61 to 63 and Protocol 26,

HAVING regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('the Surveillance and Court Agreement'), in particular to Article 24 and Article 5(2)(b),

Whereas:

Under Article 24 of the Surveillance and Court Agreement, the Authority shall give effect to the provisions of the EEA Agreement concerning State aid,

Under Article 5(2)(b) of the Surveillance and Court Agreement, the Authority shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if the Authority considers it necessary,

On 28 June 2013 the European Commission adopted the Guidelines on regional State aid for 2014-2020 ⁽¹⁾,

These guidelines are also of relevance for the European Economic Area,

Uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area in line with the objective of homogeneity established in Article 1 of the EEA Agreement,

According to point II under the heading 'GENERAL' on page 11 of Annex XV to the EEA Agreement, the Authority, after consultation with the Commission, is to adopt acts corresponding to those adopted by the European Commission,

HAVING consulted the European Commission,

HAVING consulted the EFTA States by a letter dated 2 August 2013 on the subject,

⁽¹⁾ OJ C 209, 23.7.2013, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

The State aid Guidelines shall be amended by introducing a new chapter on Regional State aid for 2014-20. The new chapter is set out in Annex I to this Decision.

Article 2

The existing chapters on national regional aid for 2007-13 and the criteria for an in-depth assessment of regional aid to large investment projects shall be prolonged until 30 June 2014.

Article 3

Only the English language version of this decision is authentic.

Done at Brussels, 23 October 2013.

For the EFTA Surveillance Authority

Oda Helen SLETNES

President

Sabine MONAUNI-TÖMÖRDY

College member

GUIDELINES ON REGIONAL STATE AID FOR 2014-20

INTRODUCTION

- (1) On the basis of Article 61(3)(a) and Article 61(3)(c) of the EEA Agreement, the EFTA Surveillance Authority ('the Authority') may consider compatible with the internal market State aid to promote the economic development of certain disadvantaged areas within the EEA ⁽¹⁾. This kind of State aid is known as regional aid.
- (2) In these guidelines, the Authority sets out the conditions under which regional aid may be considered to be compatible with the internal market and establishes the criteria for identifying the areas that fulfil the conditions of Article 61(3)(a) and Article 61(3)(c) of the EEA Agreement ⁽²⁾.
- (3) The primary objective of State aid control in the field of regional aid is to allow aid for regional development while ensuring a level playing field between EEA States, in particular by preventing subsidy races that may occur when they try to attract or retain businesses in disadvantaged areas of the EEA, and to limit the effects of regional aid on trade and competition to the minimum necessary.
- (4) The objective of geographical development distinguishes regional aid from other forms of aid, such as aid for research, development and innovation, employment, training, energy or for environmental protection, which pursue other objectives of common interest in accordance with Article 61(3) of the EEA Agreement. In some circumstances higher aid intensities may be allowed for those other types of aid, whenever granted to undertakings established in disadvantaged areas, in recognition of the specific difficulties which they face in such areas ⁽³⁾.
- (5) Regional aid can only play an effective role if it is used sparingly and proportionately and is concentrated on the most disadvantaged regions of the EEA ⁽⁴⁾. In particular, the permissible aid ceilings should reflect the relative seriousness of the problems affecting the development of the regions concerned. Furthermore, the advantages of the aid in terms of the development of a less-favoured region must outweigh the resulting distortions of competition ⁽⁵⁾. The weight given to the positive effects of the aid is likely to vary according to the applied derogation of Article 61(3) of the EEA Agreement, so that a greater distortion of competition can be accepted in the case of the most disadvantaged regions covered by Article 61(3)(a) than in those covered by Article 61(3)(c) ⁽⁶⁾.
- (6) Regional aid can further be effective in promoting the economic development of disadvantaged areas only if it is awarded to induce additional investment or economic activity in those areas. In certain very limited, well-identified cases, the obstacles that these particular areas may encounter in attracting or maintaining economic activity may be so severe or permanent that investment aid alone may not be sufficient to allow the development of that area. Only in such cases may regional investment aid be supplemented by regional operating aid not linked to an investment.
- (7) In the Communication on State aid modernisation of 8 May 2012 ⁽⁷⁾, the European Commission announced three objectives pursued through the modernisation of State aid control:
 - (a) to foster sustainable, smart and inclusive growth in a competitive internal market;

⁽¹⁾ Areas eligible for regional aid under Article 61(3)(a) of the EEA Agreement, commonly referred to as 'a' areas, tend to be the more disadvantaged within the EEA in terms of economic development. Areas eligible under Article 61(3)(c) of the EEA Agreement, referred to as 'c' areas, also tend to be disadvantaged but to a lesser extent. Due to the relatively high GDP per capita in the EFTA States, no region currently qualifies for the derogation under Article 61(3)(a) of the EEA Agreement.

⁽²⁾ These Guidelines correspond to the Communication from the Commission — Guidelines on regional State aid for 2014-2020 ('the Commission Guidelines'), adopted on 28 June 2013 (OJ C 209, 23.7.2013, p. 1).

⁽³⁾ Regional top-ups for aid granted for such purposes are therefore not considered as regional aid.

⁽⁴⁾ Each EFTA State may identify these areas in a regional aid map on the basis of the conditions laid down in Section 5.

⁽⁵⁾ See in this respect Case 730/79 *Philip Morris* [1980] ECR 2671, paragraph 17 and in Case C-169/95 *Spain v Commission* [1997] ECR I-148, paragraph 20.

⁽⁶⁾ See in this respect Case T-380/94 *AIUFFASS and AKT v Commission* [1996] ECR II-2169, paragraph 54.

⁽⁷⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of regions EU State aid Modernisation (SAM), COM/2012/0209 final.

- (b) to focus Commission *ex ante* scrutiny on cases with the biggest impact on the internal market while strengthening the cooperation with EU Member States in State aid enforcement;
 - (c) to streamline the rules and provide for faster decisions.
- (8) In particular, the Communication called for a common approach to the revision of the different guidelines and frameworks with a view to strengthening the internal market, promoting more effectiveness in public spending through a better contribution of State aid to the objectives of common interest, greater scrutiny of the incentive effect, limiting the aid to the minimum, and avoiding the potential negative effects of the aid on competition and trade. The Authority takes the same view. The compatibility conditions set out in these guidelines are based on those common assessment principles and are applicable to notified aid schemes and individual aid.

1. SCOPE AND DEFINITIONS

1.1. SCOPE OF REGIONAL AID

- (9) Regional aid to the steel ⁽⁸⁾ and synthetic fibres ⁽⁹⁾ sectors will not be considered to be compatible with the internal market.
- (10) The Authority will apply the principles set out in these guidelines to regional aid in all sectors of economic activity falling within the scope of the EEA Agreement ⁽¹⁰⁾, apart from the transport sector ⁽¹¹⁾, which is subject to special rules laid down by specific legal instruments, which might derogate partially or totally from these guidelines. The Authority will apply these guidelines for processing and marketing of agricultural products into non-agricultural products.
- (11) These guidelines will not apply to State aid granted to airports ⁽¹²⁾ or in the energy sector ⁽¹³⁾.
- (12) Regional investment aid to broadband networks may be considered compatible with the internal market if, in addition to the general conditions laid down in these guidelines, it complies also with the following specific conditions: (i) aid is granted only to areas where there is no network of the same category (either basic broadband or NGA) and where none is likely to be developed in the near future; (ii) the subsidised network operator offers active and passive wholesale access under fair and non-discriminatory conditions with the possibility of effective and full unbundling; (iii) aid should be allocated on the basis of a competitive selection process in accordance with paragraphs 74(c) and (d) of the Authority's Broadband Guidelines ⁽¹⁴⁾.
- (13) Regional investment aid to research infrastructures ⁽¹⁵⁾ may be regarded to be compatible with the internal market if, in addition to the general conditions laid down in these guidelines, the aid is made conditional on giving transparent and non-discriminatory access to this infrastructure.
- (14) Large undertakings tend to be less affected than small and medium enterprises (SMEs) by regional handicaps for investing or maintaining economic activity in a less developed area. Firstly, large companies can more easily obtain capital and credit on global markets and are less constrained by the more limited offer of financial services in a particular disadvantaged region. Secondly, investments by large undertakings can produce economies of scale

⁽⁸⁾ As defined in Annex II.

⁽⁹⁾ As defined in Annex II(a).

⁽¹⁰⁾ Following the expiry on 31 December 2013 of the Authority's Guidelines on State aid to shipbuilding (OJ L 31, 31.1.2013, p. 77 and EEA Supplement No 7, 31.1.2013, p. 1), regional aid to shipbuilding is also covered by these guidelines. All the Authority's guidelines are available at: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

⁽¹¹⁾ Transport means transport of passengers by aircraft, maritime transport, road, railway and by inland waterway or freight transport services for hire or reward.

⁽¹²⁾ See the Authority's guidelines on aid to the aviation sector (OJ L 124, 23.5.1996, p. 41-52) referring to the Community guidelines on the application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aid to the aviation sector (OJ C 350, 10.12.1994, p. 5) and the Authority's guidelines on financing of airports and start-up aid to airlines departing from regional airports (OJ L 62, 6.3.2008, p. 30 and EEA Supplement No 12, 6.3.2008, p. 3) as amended or replaced.

⁽¹³⁾ The Authority will assess the compatibility of State aid to the energy sector on the basis of the future energy and environmental aid guidelines, amending the current guidelines on State aid for environmental protection, where the specific handicaps of the assisted areas will be taken into account.

⁽¹⁴⁾ Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, not yet published. All the Authority's guidelines are available at: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

⁽¹⁵⁾ As defined in Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC) (OJ L 206, 8.8.2009, p. 1), applied within the EEA by virtue of Protocol 31 to the EEA Agreement, pursuant to the Authority's guidelines on aid for research and development and innovation (OJ L 305, 19.11.2009, p. 1 and EEA Supplement No 60, 19.11.2009, p. 1).

that reduce location-specific initial costs and, in many respects, are not tied to the region in which the investment takes place. Thirdly, large companies making investments usually possess considerable bargaining power vis-à-vis the authorities, which may lead to aid being awarded without need or due justification. Finally, large companies are more likely to be significant players on the market concerned and, consequently, the investment for which the aid is awarded may distort competition and trade on the internal market.

- (15) Since regional aid to large undertakings for their investments is unlikely to have an incentive effect, it cannot be regarded to be compatible with the internal market under Article 61(3)(c) of the EEA Agreement, unless it is granted for initial investments that create new economic activities in these areas ⁽¹⁶⁾, or for the diversification of existing establishments into new products or new process innovations.
- (16) Regional aid aimed at reducing the current expenses of an undertaking constitutes operating aid and will not be regarded as compatible with the internal market, unless it is awarded to tackle specific or permanent handicaps faced by undertakings in disadvantaged regions. Operating aid may be considered compatible if it aims to reduce certain specific difficulties faced by SMEs in particularly disadvantaged areas falling within the scope of Article 61(3)(a) of the EEA Agreement, or to prevent or reduce depopulation in very sparsely populated areas.
- (17) Operating aid awarded to undertakings whose principal activity falls under Section K 'Financial and insurance activities' of the NACE ⁽¹⁷⁾ Rev. 2 statistical classification of economic activities ⁽¹⁸⁾ or to undertakings that perform intra-group activities and whose principal activity falls under classes 70.10 'Activities of head offices' or 70.22 'Business and other management consultancy activities' of NACE Rev. 2 will not be considered to be compatible with the internal market.
- (18) Regional aid may not be awarded to firms in difficulties, as defined for the purposes of these guidelines by the Authority's Guidelines on State aid for rescuing and restructuring firms in difficulty ⁽¹⁹⁾, as amended or replaced.
- (19) When assessing regional aid awarded to an undertaking which is subject to an outstanding recovery order following a previous Authority decision declaring an aid illegal and incompatible with the internal market, the Authority will take account of the amount of aid still to be recovered ⁽²⁰⁾.

1.2. DEFINITIONS

- (20) For the purposes of these guidelines, the following definitions apply:
 - (a) "a" areas' mean those areas designated in a regional aid map in application of the provisions of Article 61(3)(a) of the EEA Agreement; "c" areas' mean those areas designated in a regional aid map in application of the provisions of Article 61(3)(c) of the EEA Agreement;
 - (b) 'ad hoc aid' means aid that is not awarded on the basis of a scheme;
 - (c) 'adjusted aid amount' means the maximum permissible aid amount for a large investment project, calculated according to the following formula:

$$\text{maximum aid amount} = R \times (50 + 0,50 \times B + 0,34 \times C)$$

where: R is the maximum aid intensity applicable in the area concerned, excluding the increased aid intensity for SMEs. B is the part of eligible costs between EUR 50 million and EUR 100 million. C is the part of eligible costs above EUR 100 million;

⁽¹⁶⁾ See paragraph (20)(i).

⁽¹⁷⁾ NACE is an acronym derived from the French title 'Nomenclature générale des Activités économiques dans les Communautés Européennes' (Statistical classification of economic activities in the European Communities) used to designate the various statistical classifications of economic activities in the EU.

⁽¹⁸⁾ Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).

⁽¹⁹⁾ OJ L 107, 28.4.2005, p. 28, as prolonged by OJ L 48, 25.2.2010, p. 27 and by the Authority's Decision 438/12/COL of 28 November 2012 amending for the eighty-sixth time the procedural and substantive rules in the field of State aid (OJ L 190, 11.7.2013, p. 91) and EEA Supplement No 40, 11.7.2013, p. 15. As explained in paragraph 19 of those Guidelines, given that its very existence is in danger, a firm in difficulty cannot be considered an appropriate vehicle for promoting other public policy objectives until such time as its viability is assured.

⁽²⁰⁾ See in this respect Joined Cases T-244/93 and T-486/93, *TWD Textilwerke Deggendorf GmbH v Commission* [1995] ECR II-02265.

- (d) 'date of award of the aid' means the date when the EFTA State took a legally binding commitment to award the aid that can be invoked before the national courts;
- (e) 'eligible costs' means, for the purpose of investment aid, tangible and intangible assets related to an initial investment or wage costs;
- (f) 'gross grant equivalent' (GGE) means the discounted value of the aid expressed as a percentage of the discounted value of the eligible costs, as calculated at the time of award of the aid on the basis of the reference rate applicable on that date;
- (g) 'individual aid' means aid granted either on the basis of a scheme or on an *ad hoc* basis;
- (h) 'initial investment' means
- i. an investment in tangible and intangible assets related to:
 - the setting-up of a new establishment;
 - the extension of the capacity of an existing establishment;
 - the diversification of the output of an establishment into products not previously produced in the establishment; or
 - a fundamental change in the overall production process of an existing establishment, or
 - ii. an acquisition of assets directly linked to an establishment provided the establishment has closed or would have closed if it had not been purchased, and is bought by an investor unrelated to the seller. The sole acquisition of the shares of an undertaking does not qualify as initial investment;
- (i) 'initial investment in favour of new economic activity' means:
- i. An investment in tangible and intangible assets related to:
 - the setting up of a new establishment; or
 - the diversification of the activity of an establishment, under the condition that the new activity is not the same or a similar activity to the activity previously performed in the establishment; or
 - ii. the acquisition of the assets belonging to an establishment that has closed or would have closed if it had not been purchased, and is bought by an investor unrelated to the seller, under the condition that the new activity to be performed using the acquired assets is not a same or similar activity to the activity performed in the establishment prior to the acquisition;
- (j) 'intangible assets' means assets acquired through a transfer of technology such as patent rights, licences, know-how or unpatented technical knowledge;
- (k) 'job creation' means a net increase in the number of employees in the establishment concerned compared with the average over the previous 12 months after deducting from the apparent created number of jobs any job lost during that period;
- (l) 'large investment project' means an initial investment with eligible costs exceeding EUR 50 million, calculated at prices and exchange rates on the date of award of the aid;
- (m) 'maximum aid intensities' means the aid intensities in GGE for large undertakings as laid down in Subsection 5.4 of these guidelines and reflected in the relevant regional aid map;
- (n) 'notification threshold' means aid amounts exceeding the thresholds set out in the table below:

Aid intensity	Notification threshold
10 %	EUR 7,5 million
15 %	EUR 11,25 million

Aid intensity	Notification threshold
25 %	EUR 18,75 million
35 %	EUR 26,25 million
50 %	EUR 37,5 million

- (o) 'number of employees' means the number of annual labour units (ALU), namely the numbers of persons employed full-time in one year; persons working part-time or employed in seasonal work are counted in ALU fractions;
- (p) 'operating aid' means aid aimed to reduce an undertaking's current expenditure that is not related to an initial investment. This includes costs categories such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc., but excludes depreciation charges and the costs of financing if these have been included in the eligible costs when granting regional investment aid;
- (q) 'regional aid map' means the list of areas designated by an EFTA State in accordance with the conditions laid down in these guidelines and approved by the Authority;
- (r) 'the same or a similar activity' means an activity falling under the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities;
- (s) 'single investment project' means any initial investment started by the same beneficiary (at group level) in a period of three years from the date of start of works on another aided investment in the same Statistical region ⁽²¹⁾ at level 3;
- (t) 'SMEs' means undertakings that fulfil the conditions laid down in the Authority's guidelines of 19 April 2006 on aid to micro, small and medium-sized enterprises ⁽²²⁾;
- (u) 'start of works' means either the start of construction works on the investment or the first firm commitment to order equipment or other commitment that makes the investment irreversible, whichever is the first in time. Buying of land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works. For take-overs, 'start of works' means the moment of acquiring the assets directly linked to the acquired establishment;
- (v) 'sparsely populated areas' mean those areas designated by the EFTA State concerned in accordance with the first and second sentence of paragraph (149) of these guidelines;
- (w) 'tangible assets' means assets such as land, buildings, and plant, machinery and equipment;
- (x) 'very sparsely populated areas' means Statistical regions at level 2 for Norway and level 3 for Iceland with less than 8 inhabitants per km² (based on Eurostat data on population density for 2010) or parts of such Statistical regions designated by the EFTA State concerned in accordance with the third sentence of paragraph 149 of these guidelines;
- (y) 'wage costs' means the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising the gross wage before tax and compulsory contributions such as social security, child care and parent care costs over a defined period of time.

⁽²¹⁾ In these guidelines the term 'Statistical region' will be used instead of the acronym 'NUTS' in the Commission Guidelines. NUTS is derived from the title 'Nomenclature of Territorial Units for Statistics' according to Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154, 21.6.2003, p. 1). This regulation has not been incorporated into the EEA Agreement. However, in order to achieve common definitions in an ever-increasing demand for statistical information at a regional level, the Statistical Office of the European Union, Eurostat, and the National Institutes of the Candidate countries and EFTA have agreed that statistical regions be established similar to the NUTS classification.

⁽²²⁾ Available at <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

2. NOTIFIABLE REGIONAL AID

- (21) In principle, EFTA States must notify regional aid pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement, with the exception of measures that fulfil the conditions laid down in a block exemption regulation incorporated in the EEA Agreement through Annex XV.
- (22) The Authority will apply these guidelines to notified regional aid schemes and individual aid.
- (23) Individual aid granted under a notified scheme remains subject to the notification obligation pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement, if the aid from all sources exceeds the notification threshold ⁽²³⁾ or if it is granted to a beneficiary that has closed down the same or similar activity in the EEA two years preceding the date of applying for aid or at the moment of aid application has the intention to close down such an activity within a period of two years after the investment to be subsidised is completed.
- (24) Investment aid granted to a large undertaking to diversify an existing establishment in an 'c' area into new products, remains subject to the notification obligation pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement.

3. COMPATIBILITY ASSESSMENT OF REGIONAL AID

3.1. COMMON ASSESSMENT PRINCIPLES

- (25) To assess whether a notified aid measure can be considered compatible with the internal market, the Authority generally analyses whether the design of the aid measure ensures that the positive impact of the aid towards an objective of common interest exceeds its potential negative effects on trade and competition.
- (26) The Commission's Communication on State aid modernisation of 8 May 2012, referred to in the introductory section of these guidelines, called for the identification and definition of common principles applicable to the assessment of compatibility of all the aid measures carried out by the Commission. The same common principles apply to the compatibility assessment carried out by the Authority. For this purpose, the Authority will consider an aid measure compatible with the EEA Agreement only if it satisfies each of the following criteria:
 - (a) contribution to a well-defined objective of common interest: a State aid measure must aim at an objective of common interest in accordance with Article 61(3) EEA Agreement (Section 3.2);
 - (b) need for state intervention: a State aid measure must be targeted towards a situation where aid can bring about a material improvement that the market cannot deliver itself, for example by remedying a market failure or addressing an equity or cohesion concern (Section 3.3);
 - (c) appropriateness of the aid measure: the proposed aid measure must be an appropriate policy instrument to address the objective of common interest (Section 3.4);
 - (d) incentive effect: the aid must change the behaviour of the undertaking(s) concerned in such a way that it engages in additional activity which it would not carry out without the aid or it would carry out in a restricted or different manner or location (Section 3.5);
 - (e) proportionality of the aid (aid to the minimum): the aid amount must be limited to the minimum needed to induce the additional investment or activity in the area concerned (Section 3.6);
 - (f) avoidance of undue negative effects on competition and trade between EEA States: the negative effects of aid must be sufficiently limited, so that the overall balance of the measure is positive (Section 3.7);
 - (g) transparency of aid: EEA States, the Authority, economic operators, and the public, must have easy access to all relevant acts and to pertinent information about the aid awarded thereunder (Section 3.8).

⁽²³⁾ See paragraph (20)(n).

- (27) The overall balance of certain categories of schemes may further be made subject to a requirement of *ex post* evaluation as described in Section 4 of these guidelines. In such cases, the Authority may limit the duration of those schemes (normally to four years or less) with a possibility to re-notify their prolongation afterwards.
- (28) If a State aid measure or the conditions attached to it (including its financing method when the financing method forms an integral part of the State aid measure) entail a non-severable violation of EEA law, the aid cannot be declared compatible with the internal market ⁽²⁴⁾.
- (29) In assessing the compatibility of any individual aid with the internal market, the Authority will take account of any proceedings concerning infringement to Articles 53 or 54 of the EEA Agreement which may concern the beneficiary of the aid and which may be relevant for its assessment under Article 61(3) of the EEA Agreement ⁽²⁵⁾.

3.2. CONTRIBUTION TO A COMMON OBJECTIVE

- (30) The primary objective of regional aid is to reduce the development gap between the different regions in the EEA. Through its equity or cohesion objective regional aid may contribute to the achievement of the Europe 2020 strategy delivering an inclusive and sustainable growth.

3.2.1. Investment aid schemes

- (31) Regional aid schemes should form an integral part of a regional development strategy with clearly defined objectives and should be consistent with and contribute towards these objectives.
- (32) In 'c' areas schemes may be put in place to support initial investments of SMEs and initial investment in favour of new activity of large undertakings.
- (33) When awarding aid to individual investment projects on the basis of a scheme, the granting authority must confirm that the selected project will contribute towards the objective of the scheme and thus towards the development strategy of the area concerned. For this purpose, EFTA States can rely on the information provided by the applicant for aid in the form annexed to these guidelines where the positive effects of the investment on the area concerned must be described ⁽²⁶⁾.
- (34) To ensure that the investment makes a real and sustained contribution to the development of the area concerned, the investment must be maintained in the area concerned for at least five years, or three years for SMEs, after its completion ⁽²⁷⁾.
- (35) If the aid is calculated on the basis of wage costs, the posts must be filled within three years of the completion of works. Each job created through the investment must be maintained within the area concerned for a period of five years from the date the post was first filled. For investments carried out by all SMEs, EFTA States may reduce this five-year period for the maintenance of an investment or jobs to a minimum of three years.
- (36) To ensure that the investment is viable, the EFTA State must ensure that the beneficiary provides a financial contribution of at least 25 % of the eligible costs, through its own resources or by external financing, in a form that is exempted of any public financial support ⁽²⁸⁾.
- (37) To avoid that State aid measures would lead to environmental harm, EFTA States must also ensure compliance with EEA environmental legislation, including in particular the need to carry out an environmental impact assessment when required by law and ensure all relevant permits.

⁽²⁴⁾ See for instance Case C-156/98 *Germany v Commission* [2000] ECR I-6857, paragraph 78 and Case C-333/07 *Régie Networks v Rhone Alpes Bourgogne* [2008] ECR I-10807, paragraphs 94-116.

⁽²⁵⁾ See Case C-225/91 *Matra v Commission* [1993] ECR I-3203, paragraph 42.

⁽²⁶⁾ See Annex V of these guidelines.

⁽²⁷⁾ The obligation to maintain the investment in the area concerned for a minimum period of 5 years (3 years for SMEs) should not prevent the replacement of plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the minimum period. However, regional aid may not be awarded to replace that plant or equipment.

⁽²⁸⁾ This is not the case for example for subsidised loans, public equity-capital loans or public participations which do not meet the market investor principle, state guarantees containing elements of aid, or public support granted within the scope of the *de minimis* rule.

3.2.2. Notified individual investment aid

- (38) To demonstrate the regional contribution of individual investment aid notified to the Authority, EFTA States may use a variety of indicators such as the ones mentioned below that can be both direct (for example, direct jobs created) and indirect (for example, local innovation):
- (a) The number of direct jobs created by the investment is an important indicator of the contribution to regional development. The quality of the jobs created and the required skill level should also be considered.
 - (b) An even higher number of new jobs might be created in the local (sub-) supplier network, helping to better integrate the investment in the region concerned and ensuring more widespread spillover effects. The number of indirect jobs created will therefore also be taken into account.
 - (c) A commitment by the beneficiary to enter into widespread training activities to improve the skills (general and specific) of its workforce will be considered as a factor that contributes to regional development. Emphasis will also be put on providing traineeships or apprenticeships, especially for young people and on training that improves the knowledge and employability of workers outside the undertaking. General or specific training for which training aid is approved will not be counted as a positive effect of the regional aid to avoid double counting.
 - (d) External economies of scale or other benefits from a regional development viewpoint may arise as a result of proximity (clustering effect). Clustering of undertakings in the same industry allows individual plants to specialise more, which leads to increased efficiency. However, the importance of this indicator in determining the contribution to regional development depends on the state of development of the cluster.
 - (e) Investments embody technical knowledge and can be the source of a significant transfer of technology (knowledge spillovers). Investments taking place in technology intensive industries are more likely to involve technology transfer to the recipient region. The level and the specificity of the knowledge dissemination are also important in this regard.
 - (f) The projects' contribution to the region's ability to create new technology through local innovation can also be considered. Cooperation of the new production facility with local higher education institutions can be considered positively in this respect.
 - (g) The duration of the investment and possible future follow-on investments are an indication of a durable engagement of a company in the region concerned.
- (39) EFTA States can also refer to the business plan of the aid beneficiary which could provide information on the number of jobs to be created, salaries to be paid (increase in household wealth as spill-over effect), volume of acquisition from local producers, turnover generated by the investment and benefiting the area possibly through additional tax revenues.
- (40) For *ad hoc* aid ⁽²⁹⁾, the EFTA State must demonstrate, in addition to the requirements laid down in paragraphs (33) to (37), that the project is coherent with and contributes towards the development strategy of the area concerned.

3.2.3. Operating aid schemes

- (41) Operating aid schemes will promote the development of disadvantaged areas only if the challenges facing these areas are clearly identified in advance. The obstacles to attracting or maintaining economic activity may be so severe or permanent that investment aid alone is not sufficient to allow the development of those areas.
- (42) As regards aid to reduce certain specific difficulties faced by SMEs in 'a' areas, the EFTA States concerned must demonstrate the existence and importance of those specific difficulties and must demonstrate that an operating aid scheme is needed as those specific difficulties cannot be overcome with investment aid.

⁽²⁹⁾ *Ad hoc* aid is subject to the same requirements as individual aid granted on the basis of a scheme, unless otherwise mentioned.

- (43) As regards operating aid to prevent or reduce depopulation in very sparsely populated areas, the EFTA State concerned must demonstrate the risk of depopulation of the relevant area in the absence of the operating aid.

3.3. NEED FOR STATE INTERVENTION

- (44) In order to assess whether State aid is necessary to achieve the objective of common interest, it is necessary first to diagnose the problem to be addressed. State aid should be targeted towards situations where aid can bring about a material improvement that the market cannot deliver itself. This holds especially in a context of scarce public resources.
- (45) State aid measures can indeed, under certain conditions, correct market failures thereby contributing to the efficient functioning of markets and enhancing competitiveness. Furthermore, where markets provide efficient outcomes but these are deemed unsatisfactory from an equity or cohesion point of view, State aid may be used to obtain a more desirable, equitable market outcome.
- (46) As regards aid granted for the development of areas included in the regional aid map in accordance with the rules developed in Section 5 of these guidelines, the Authority considers that the market is not delivering the expected cohesion objectives set out in the EEA Agreement without state intervention. Therefore, aid granted in those areas should be considered compatible with the internal market pursuant to Article 61(3)(a) and (c) of the EEA Agreement.

3.4. APPROPRIATENESS OF REGIONAL AID

- (47) The notified aid measure must be an appropriate policy instrument to address the policy objective concerned. An aid measure will not be considered compatible if other less distortive policy instruments or other less distortive types of aid instrument make it possible to achieve the same positive contribution to regional development.

3.4.1. Appropriateness among alternative policy instruments

3.4.1.1. Investment aid schemes

- (48) Regional investment aid is not the only policy instrument available to EFTA States to support investment and job creation in disadvantaged regions. EFTA States can use other measures such as infrastructure development, enhancing the quality of education and training, or improvements in the business environment.
- (49) EFTA States must indicate why regional aid is an appropriate instrument to tackle the common objective of equity or cohesion when introducing a scheme outside an operational programme financed from the cohesion policy funds.
- (50) The Authority will in particular take account of any impact assessments of the proposed aid scheme that the EFTA State may make available. Likewise, the results of *ex post* evaluations as described in Section 4 may be taken into account to assess the appropriateness of the proposed scheme.

3.4.1.2. Individual investment aid

- (51) For *ad hoc* aid, the EFTA State must demonstrate how the development of the area concerned is better ensured by such aid than by aid under a scheme or other types of measures.

3.4.1.3. Operating aid schemes

- (52) The EFTA State must demonstrate that the aid is appropriate to achieve the objective of the scheme for the problems that the aid is intended to address. To demonstrate that the aid is appropriate, the EFTA State may calculate the aid amount *ex ante* as a fixed sum covering the expected additional costs over a given period, to incentivise undertakings to contain costs and develop their business in a more efficient manner over time ⁽³⁰⁾.

⁽³⁰⁾ However, where future costs and revenue developments are surrounded by a high degree of uncertainty and there is a strong asymmetry of information, the public authority may also wish to adopt compensation models that are not entirely *ex ante*, but rather a mix of *ex ante* and *ex post* (for example, using claw backs such as to allow sharing of unanticipated gains).

3.4.2. Appropriateness among different aid instruments

- (53) Regional aid can be awarded in various forms. The EFTA State should however ensure that the aid is awarded in the form that is likely to generate the least distortions of trade and competition. In this respect, if the aid is awarded in forms that provide a direct pecuniary advantage (for example, direct grants, exemptions or reductions in taxes, social security or other compulsory charges, or the supply of land, goods or services at favourable prices, etc.), the EFTA State must demonstrate why other potentially less distortive forms of aid such as repayable advances or forms of aid that are based on debt or equity instruments (for example, low-interest loans or interest rebates, state guarantees, the purchase of a share-holding or an alternative provision of capital on favourable terms) are not appropriate.
- (54) For aid schemes implementing the objectives and priorities of operational programmes, the financing instrument chosen in this programme is considered to be an appropriate instrument.
- (55) The results of *ex post* evaluations as described in Section 4 may be taken into account to assess the appropriateness of the proposed aid instrument.

3.5. INCENTIVE EFFECT

- (56) Regional aid can only be found compatible with the internal market, if it has an incentive effect. An incentive effect is present when the aid changes the behaviour of an undertaking in a way it engages in additional activity contributing to the development of an area which it would not have engaged in without the aid or would only have engaged in such activity in a restricted or different manner or in another location. The aid must not subsidise the costs of an activity that an undertaking would have incurred in any event and must not compensate for the normal business risk of an economic activity.
- (57) The existence of an incentive effect can be proven in two possible scenarios:
 - (a) The aid gives an incentive to adopt a positive investment decision because an investment that would otherwise not be sufficiently profitable for the beneficiary can take place in the area concerned ⁽³¹⁾ (*scenario 1*, investment decision) or
 - (b) The aid gives an incentive to opt to locate a planned investment in the relevant area rather than elsewhere because it compensates for the net disadvantages and costs linked to a location in the area concerned (*scenario 2*, location decision).
- (58) If the aid does not change the behaviour of the beneficiary by stimulating (additional) investment in the area concerned, it can be considered that the same investment would take place in the region even without the aid. Such aid lacks incentive effect to achieve the regional objective and cannot be approved as compatible with the internal market.
- (59) However, for regional aid awarded through cohesion policy funds in 'a' regions to investments necessary to achieve standards set by EEA law, the aid may be considered to have an incentive effect, if in absence of the aid, it would not have been sufficiently profitable for the beneficiary to make the investment in the area concerned, thereby leading to the closure of an existing establishment in that area.

3.5.1. Investment aid schemes

- (60) Works on an individual investment can start only after submitting the application form for aid.
- (61) If works begin before submitting the application form for aid, any aid awarded in respect of that individual investment will not be considered compatible with the internal market.
- (62) EFTA States must introduce a standard application form for aid, which is annexed to these guidelines ⁽³²⁾. In the application form, SMEs and large companies must explain counterfactually what would have happened had they not received the aid indicating which of the scenarios described in paragraph (57) applies.

⁽³¹⁾ Such investments may create conditions allowing further investments that are viable without additional aid.

⁽³²⁾ See Annex III.

- (63) In addition, large companies must submit documentary evidence in support of the counterfactual described in the application form. SMEs are not subject to such obligation.
- (64) The granting authority must carry out a credibility check of the counterfactual and confirm that regional aid has the required incentive effect corresponding to one of the scenarios described in paragraph (57). A counterfactual is credible if it is genuine and relates to the decision-making factors prevalent at the time of the decision by the beneficiary regarding the investment.

3.5.2. Notified individual investment aid

- (65) In addition to the requirements of paragraphs (60) to (64), for notified individual aid ⁽³³⁾, the EFTA State must provide clear evidence that the aid effectively has an impact on the investment choice or the location choice ⁽³⁴⁾. It must specify which scenario described in paragraph (57) applies. To allow a comprehensive assessment, the EFTA State must provide not only information concerning the aided project but also a comprehensive description of the counterfactual scenario, in which no aid is awarded to the beneficiary by any public authority in the EEA.
- (66) In *scenario 1*, the EFTA State could prove the existence of the incentive effect of the aid by providing company documents that show that the investment would not be sufficiently profitable without the aid.
- (67) In *scenario 2*, the EFTA State could prove the incentive effect of the aid by providing company documents showing that a comparison has been made between the costs and benefits of locating in the area concerned and those in alternative area(s). The Authority verifies whether such comparisons have a realistic basis.
- (68) The EFTA States are, in particular, invited to rely on official board documents, risk assessments (including the assessment of location-specific risks), financial reports, internal business plans, expert opinions and other studies related to the investment project under assessment. Documents containing information on demand forecasts, cost forecasts, financial forecasts, documents that are submitted to an investment committee and that elaborate on various investment scenarios, or documents provided to the financial institutions could help the EFTA States to demonstrate the incentive effect.
- (69) In this context, and in particular in *scenario 1*, the level of profitability can be evaluated by reference to methodologies which are standard practice in the particular industry concerned, and which may include methods to evaluate the net present value of the project (NPV) ⁽³⁵⁾, the internal rate of return (IRR) ⁽³⁶⁾ or the average return on capital employed (ROCE). The profitability of the project is to be compared with normal rates of return applied by the company in other investment projects of a similar kind. Where these rates are not available, the profitability of the project is to be compared with the cost of capital of the company as a whole or with the rates of return commonly observed in the industry concerned.
- (70) If the aid does not change the behaviour of the beneficiary by stimulating (additional) investment in the area concerned, there is no positive effect for the region. Therefore, aid will not be considered compatible with the internal market in cases where it appears that the same investment would take place in the region even without the aid having been granted.

3.5.3. Operating aid schemes

- (71) For operating aid schemes, the incentive effect of the aid will be considered to be present if it is likely that, in the absence of aid, the level of economic activity in the area or region concerned would be significantly reduced due to the problems that the aid is intended to address.

⁽³³⁾ *Ad hoc* aid must also respect the requirements laid down in paragraphs (60) to (64) of these guidelines, in addition to the requirements of Section 3.5.2.

⁽³⁴⁾ The counterfactual scenarios are described in paragraph 57.

⁽³⁵⁾ The net present value of a project is the difference between the positive and negative cash flows over the lifetime of the investment, discounted to their current value (typically using the cost of capital).

⁽³⁶⁾ The internal rate of return is not based on accounting earnings in a given year, but takes into account the stream of future cash flows that the investor expects to receive over the entire lifetime of the investment. It is defined as the discount rate for which the NPV of a stream of cash flows equals zero.

- (72) The Authority will therefore consider that the aid induces additional economic activity in the areas or regions concerned, if the EFTA State has demonstrated the existence and substantial nature of those problems in the area concerned (see paragraphs (42) and (43)).

3.6. PROPORTIONALITY OF THE AID AMOUNT (AID LIMITED TO THE MINIMUM)

- (73) In principle, the amount of the regional aid must be limited to the minimum needed to induce additional investment or activity in the area concerned.
- (74) As a general rule, notified individual aid will be considered to be limited to the minimum, if the aid amount corresponds to the net extra costs of implementing the investment in the area concerned, compared to the counterfactual in the absence of aid. Likewise, in the case of investment aid granted to large undertakings under notified schemes, EFTA States must ensure that the aid amount is limited to the minimum on the basis of a 'net-extra cost approach'.
- (75) For *scenario 1* situations (investment decisions) the aid amount should therefore not exceed the minimum necessary to render the project sufficiently profitable, for example to increase its IRR beyond the normal rates of return applied by the undertaking concerned in other investment projects of a similar kind or, when available, to increase its IRR beyond the cost of capital of the company as a whole or beyond the rates of return commonly observed in the industry concerned.
- (76) In *scenario 2* situations (location incentives), the aid amount should not exceed the difference between the net present value of the investment in the target area with the net present value in the alternative location. All relevant costs and benefits must be taken into account, including for example administrative costs, transport costs, training costs not covered by training aid and also wage differences. However, where the alternative location is in the EEA, subsidies granted in that other location are not to be taken into account.
- (77) To ensure predictability and a level playing field, the Authority further applies maximum aid intensities ⁽³⁷⁾ for investment aid. These maximum aid intensities serve a dual purpose.
- (78) First, for notified schemes, these maximum aid intensities serve as safe harbours for SMEs: as long as the aid intensity remains below the maximum permissible, the criterion of 'aid limited to the minimum' is deemed to be fulfilled.
- (79) Second, for all other cases, the maximum aid intensities are used as a cap to the net-extra costs approach described in paragraphs (75) and (76).
- (80) The maximum aid intensities are modulated in function of three criteria:
- (a) the socioeconomic situation of the area concerned, as a proxy for the extent to which the area is in need of further development and, potentially, the extent to which it suffers from a handicap in attracting and maintaining economic activity;
 - (b) the size of the beneficiary as proxy for the specific difficulties to finance or implement a project in the area, and
 - (c) the size of the investment project, as indicator for the expected level of distortion of competition and trade.
- (81) Accordingly, higher aid intensities (and, potentially, higher resulting distortions of trade and competition) are allowed the less developed the target region is, and if the aid beneficiary is an SME.
- (82) In view of the expected higher distortions of competition and trade, the maximum aid intensity for large investment projects must be scaled down using the mechanism as defined in paragraph (20)(c).

⁽³⁷⁾ See Subsection 5.4 on maximum aid intensities.

3.6.1. Investment aid schemes

- (83) For aid to SMEs, the increased maximum aid intensities described in Section 5.4 may be used. However, SMEs may not benefit from these increased intensities where the investment relates to a large investment project.
- (84) For aid to large undertakings, the EFTA State must ensure that the aid amount corresponds to the net extra costs of implementing the investment in the area concerned, compared to the counterfactual in the absence of aid. The method explained in paragraphs (75) and (76) must be used together with maximum aid intensities as a cap.
- (85) For aid to large investment projects, it must be ensured that the aid does not exceed the scaled down intensity. Where aid is awarded to a beneficiary for an investment that is considered to be part of a single investment project, the aid must be scaled down for the eligible costs exceeding EUR 50 million ⁽³⁸⁾.
- (86) The maximum aid intensity and aid amount per project must be calculated by the granting authority when awarding the aid. The aid intensity must be calculated on the basis of a gross grant equivalent either in relation to the total eligible costs of the investment or eligible wage costs declared by the aid beneficiary when applying for aid.
- (87) If investment aid calculated on the basis of investment costs is combined with regional investment aid calculated on the basis of wage costs, the total aid must not exceed the highest aid amount resulting from either calculation up to the maximum permissible aid intensity for the area concerned.
- (88) Investment aid may be awarded concurrently under several regional aid schemes or cumulated with *ad hoc* aid, provided that the total aid from all sources does not exceed the maximum permissible aid intensity per project that must be calculated in advance by the first granting authority.
- (89) For an initial investment linked to European Territorial Cooperation (ETC) projects meeting the criteria of the Regulation laying down the specific provisions for the support of the European Regional Development Fund to the ETC cooperation goal ⁽³⁹⁾, the aid intensity which applies to the area in which the initial investment is located will apply to all beneficiaries participating in the project. If the initial investment is located in two or more assisted areas, the maximum aid intensity for the initial investment will be the one applicable in the assisted area where the largest part of the eligible costs are incurred. Initial investments carried out by large undertakings in 'c' areas may only benefit from regional aid in the context of ETC projects if they are initial investments in favour of new activities or new products.

3.6.1.1. Eligible costs calculated on the basis of investment costs

- (90) The assets acquired should be new, except for SMEs or in the case of acquisition of an establishment ⁽⁴⁰⁾.
- (91) For SMEs, up to 50 % of the costs of preparatory studies or consultancy costs linked to the investment may also be considered as eligible costs.
- (92) For aid awarded for a fundamental change in the production process, the eligible costs must exceed the depreciation of the assets linked to the activity to be modernised in the course of the preceding three fiscal years.
- (93) For aid awarded for a diversification of an existing establishment, the eligible costs must exceed by at least 200 % the book value of the assets that are reused, as registered in the fiscal year preceding the start of works.
- (94) Costs related to the lease of tangible assets may be taken into account under the following conditions:
- (a) For land and buildings, the lease must continue for at least five years after the expected date of completion of the investment for large companies, and three years for SMEs
 - (b) For plant or machinery, the lease must take the form of financial leasing and must contain an obligation for the beneficiary of the aid to purchase the asset at the expiry of the term of the lease.

⁽³⁸⁾ Scaled down aid intensities are the result of the mechanism defined in paragraph (20)(c).

⁽³⁹⁾ Regulation of the European Parliament and of the Council on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal. Commission proposal COM(2011) 611 ERDF/ETC Regulation.

⁽⁴⁰⁾ Defined in paragraph (20)(h) and (i).

- (95) In the case of acquisition of an establishment only the costs of buying the assets from third parties unrelated to the buyer should be taken into consideration. The transaction must take place under market conditions. Where aid has already been granted for the acquisition of assets prior to their purchase, the costs of those assets should be deducted from the eligible costs related to the acquisition of an establishment. If the acquisition of an establishment is accompanied by an additional investment eligible for aid, the eligible costs of this latter investment should be added to the costs of purchase of the assets of the establishment.
- (96) For large undertakings, costs of intangible assets are eligible only up to a limit of 50 % of the total eligible investment costs for the project. For SMEs, the full costs related to intangible assets may be taken into consideration.
- (97) Intangible assets which are eligible for the calculation of the investments costs must remain associated with the assisted area concerned and must not be transferred to other regions. To this end, the intangible assets must fulfil the following conditions:
- (a) they must be used exclusively in the establishment receiving the aid;
 - (b) they must be amortisable;
 - (c) they must be purchased under market conditions from third parties unrelated to the buyer.
- (98) The intangible assets must be included in the assets of the undertaking receiving the aid and must remain associated with the project for which the aid is awarded for at least five years (three years for SMEs).

3.6.1.2. Eligible costs calculated on the basis of wage costs

- (99) Regional aid may also be calculated by reference to the expected wage costs arising from job creation as a result of an initial investment. Aid can compensate only the wage costs of the person hired calculated over a period of two years and the resulting intensity cannot exceed the applicable aid intensity in the area concerned.

3.6.2. Notified individual investment aid

- (100) For *scenario 1* situations (investment decision) the Authority will verify whether the aid amount exceeds the minimum necessary to render the project sufficiently profitable, by using the method set out in paragraph (75).
- (101) In *scenario 2* situations (location decision), for a location incentive, the Authority will compare the net present value of the investment for the target area with the net present value of the investment in the alternative location, by using the method set out in paragraph (76).
- (102) Calculations used for the analysis of the incentive effect can also be used to assess if the aid is proportionate. The EFTA State must demonstrate the proportionality on the basis of documentation such as that referred to in paragraph (68).
- (103) The aid intensity must not exceed the permissible adjusted aid intensity.

3.6.3. Operating aid schemes

- (104) The EFTA State must demonstrate that the level of the aid is proportionate to the problems that the aid is intended to address.
- (105) In particular, the following conditions must be fulfilled:
- (a) the aid must be determined in relation to a predefined set of eligible costs that are fully attributable to the problems that the aid is intended to address, as demonstrated by the EFTA State;
 - (b) the aid must be limited to a certain proportion of those predefined set of eligible costs and must not exceed those costs;
 - (c) the aid amount per beneficiary must be proportional to the level of the problems actually experienced by each beneficiary.

3.7. AVOIDANCE OF UNDUE NEGATIVE EFFECTS ON COMPETITION AND TRADE

- (106) For the aid to be compatible, the negative effects of the aid measure in terms of distortions of competition and impact on trade between EFTA States must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest. Certain situations can be identified where the negative effects manifestly outweigh any positive effects, meaning that the aid cannot be found compatible with the internal market.

3.7.1. General considerations

- (107) Two main potential distortions of competition and trade may be caused by regional aid. These are product market distortions and location effects. Both types may lead to allocative inefficiencies (undermining the economic performance of the internal market) and to distributional concerns (distribution of economic activity across regions).
- (108) One potentially harmful effect of State aid is that it prevents the market mechanism from delivering efficient outcomes by rewarding the most efficient producers and putting pressure on the least inefficient to improve, restructure or exit the market. A substantial capacity expansion induced by State aid in an underperforming market might in particular unduly distort competition, as the creation or maintenance of overcapacity could lead to a squeeze on profit margins, a reduction of competitors' investments or even the exit of competitors from the market. This might lead to a situation where competitors that would otherwise be able to stay on the market are forced out of the market. It may also prevent undertakings from entering or expanding in the market and it may weaken incentives for competitors to innovate. This results in inefficient market structures which are also harmful to consumers in the long run. Further, the availability of aid may induce complacent or unduly risky behaviour on the part of potential beneficiaries. The long term effect on the overall performance of the sector is likely to be negative.
- (109) Aid may also have distortive effects in terms of increasing or maintaining substantial market power on the part of the beneficiary. Even where aid does not strengthen substantial market power directly, it may do so indirectly, by discouraging the expansion of existing competitors or inducing their exit or discouraging the entry of new competitors.
- (110) Apart from distortions on the product markets, regional aid by nature also affects the location of economic activity. Where one area attracts an investment due to the aid, another area loses out on that opportunity. These negative effects in the areas adversely affected by aid may be felt through lost economic activity and lost jobs including those at the level of subcontractors. It may also be felt in a loss of positive externalities (for example, clustering effect, knowledge spillovers, education and training, etc.).
- (111) The geographical specificity of regional aid distinguishes it from other forms of horizontal aid. It is a particular characteristic of regional aid that it is intended to influence the choice made by investors about where to locate investment projects. When regional aid off-sets the additional costs stemming from the regional handicaps and supports additional investment in assisted areas without attracting it away from other assisted areas, it contributes not only to the development of the region, but also to cohesion and ultimately benefits the whole EEA. With regard to the potential negative location effects of regional aid, these are already limited to a certain degree by regional aid maps, which define exhaustively the areas where regional aid may be granted, taking account of the equity and cohesion policy objectives, and the maximum permissible aid intensities. However, an understanding of what would have happened in the absence of the aid remains important to appraise the actual impact of the aid in the cohesion objective.

3.7.2. Manifest negative effects

- (112) The Authority identifies a number of situations where the negative effects of the aid manifestly outweigh any positive effects, so that the aid cannot be declared compatible with the internal market.
- (113) The Authority establishes maximum aid intensities. These constitute a basic requirement for compatibility, the aim of which is to prevent the use of State aid for projects where the ratio between aid amount and eligible costs is considered very high and particularly likely to be distortive. In general, the greater the positive effects to which the aided project is likely to give rise and the higher the likely need for aid, the higher the cap on aid intensity will be.

- (114) For *scenario 1* cases (investment decisions), where the creation of capacity by the project takes place in a market which is structurally in absolute decline, the Authority considers it to be a negative effect, which is unlikely to be compensated by any positive effect.
- (115) In *scenario 2* cases (location decisions), where without aid the investment would have been located in a region with a regional aid intensity which is higher or the same as the target region this will constitute a negative effect that is unlikely to be compensated by any positive effect because it runs counter to the very rationale of regional aid.
- (116) Where the beneficiary closes down the same or a similar activity in another area in the EEA and relocates that activity to the target area, if there is a causal link between the aid and the relocation, this will constitute a negative effect that is unlikely to be compensated by any positive elements.
- (117) When appraising notified measures, the Authority will request all necessary information to consider whether the State aid would result in a substantial loss of jobs in existing locations within the EEA.

3.7.3. Investment aid schemes

- (118) Investment aid schemes must not lead to significant distortions of competition and trade. In particular, even where distortions may be considered limited at an individual level (provided all conditions for investment aid are fulfilled), on a cumulative basis schemes might still lead to high levels of distortions. Such distortions might concern the output markets by creating or aggravating a situation of overcapacity or creating, increasing or maintaining the substantial market power of some recipients in a way that will negatively affect dynamic incentives. Aid available under schemes might also lead to a significant loss of economic activity in other areas of the EEA. In case of a scheme focussing on certain sectors, the risk of such distortions is even more pronounced.
- (119) Therefore, the EFTA State has to demonstrate that these negative effects will be limited to the minimum taking into account, for example, the size of the projects concerned, the individual and cumulative aid amounts, the expected beneficiaries as well as the characteristics of the targeted sectors. In order to enable the Authority to assess the likely negative effects, the EFTA State could submit any impact assessment at its disposal as well as *ex post* evaluations carried out for similar predecessor schemes.
- (120) When awarding aid under a scheme to individual projects, the granting authority must verify and confirm that the aid does not result in the manifest negative effects described in paragraph (115). This verification can be based on the information received from the beneficiary when applying for aid and on the declaration made in the standard application form for aid where the alternative location in absence of aid should be indicated.

3.7.4. Notified individual investment aid

- (121) In appraising the negative effects of notified aid, the Authority distinguishes between the two counterfactual scenarios described in paragraphs (100) and (101) above.

3.7.4.1. Scenario 1 cases (investment decisions)

- (122) In *scenario 1* cases, the Authority places particular emphasis on the negative effects linked with the build-up of overcapacity in declining industries, the prevention of exit, and the notion of substantial market power. These negative effects are described below in paragraphs (123) to (132) and must be counterbalanced with the positive effects of the aid. However, if it is established that the aid would result in the manifest negative effects described in paragraph (114) the aid cannot be found compatible with the internal market because it is unlikely to be compensated by any positive element.
- (123) In order to identify and assess the potential distortions of competition and trade, EFTA States should provide evidence permitting the Authority to identify the product markets concerned (that is to say, products affected by the change in behaviour of the aid beneficiary) and to identify the competitors and customers/consumers affected.

- (124) The Authority will use various criteria to assess these potential distortions, such as market structure of the product concerned, performance of the market (declining or growing market), process for selection of the aid beneficiary, entry and exit barriers, product differentiation.
- (125) A systematic reliance on State aid by an undertaking might indicate that the undertaking is not able to withstand competition on its own or that it enjoys undue advantages compared to its competitors.
- (126) The Authority distinguishes two main sources of potential negative effects on product markets:
- (a) cases of significant capacity expansion which leads to or deteriorates an existing situation of overcapacity, especially in a declining market and
 - (b) cases where the aid beneficiary holds substantial market power.
- (127) In order to evaluate whether the aid may serve to create or maintain inefficient market structures, the Authority will take into account the additional production capacity created by the project and whether the market is underperforming.
- (128) Where the market in question is growing, there is normally less reason to be concerned that the aid will negatively affect dynamic incentives or will unduly impede exit or entry.
- (129) More concern is warranted when markets are in decline. In this respect the Authority distinguishes between cases for which, from a long-term perspective, the relevant market is structurally in decline (that is to say, shows a negative growth rate), and cases for which the relevant market is in relative decline (that is to say, shows a positive growth rate, but does not exceed a benchmark growth rate).
- (130) Underperformance of the market will normally be measured compared to the EEA GDP over the last three years before the start of the project (benchmark rate); it can also be established on the basis of projected growth rates in the coming three to five years. Indicators may include the foreseeable future growth of the market concerned and the resulting expected capacity utilisation rates, as well as the likely impact of the capacity increase on competitors through its effects on prices and profit margins.
- (131) In certain cases, assessing the growth of the product market in the EEA may not be appropriate to entirely assess the effects of aid, in particular if the geographic market is worldwide. In such cases, the Authority will consider the effect of the aid on the market structures concerned, in particular, its potential to crowd out producers in the EEA.
- (132) In order to evaluate the existence of substantial market power, the Authority will take into account the position of the beneficiary over a period of time before receiving the aid and the expected market position after finalizing the investment. The Authority will take account of market shares of the beneficiary, as well as of market shares of its competitors and other relevant factors, including, for example, the market structure by looking at the concentration in the market, possible barriers to entry ⁽⁴¹⁾, buyer power ⁽⁴²⁾ and barriers to expansion or exit.

3.7.4.2. Scenario 2 cases (location decisions)

- (133) If the counterfactual analysis suggests that without the aid the investment would have gone ahead in another location (*scenario 2*) which belongs to the same geographical market considering the product concerned, and if the aid is proportional, possible outcomes in terms of overcapacity or substantial market power would in principle be the same regardless of the aid. In such cases, the positive effects of the aid are likely to outweigh the limited negative effects on competition. However, where the alternative location is in the EEA, the Authority is particularly concerned with negative effects linked with the alternative location and therefore if the aid results in the manifest negative effects described in paragraphs (115) and (116) the aid cannot be found compatible with the internal market because it is unlikely to be compensated by any positive element.

⁽⁴¹⁾ These entry barriers include legal barriers (in particular intellectual property rights), economies of scale and scope, access barriers to networks and infrastructure. Where the aid concerns a market where the aid beneficiary is an incumbent, possible barriers to entry may exacerbate the potential substantial market power wielded by the aid beneficiary and thus the possible negative effects of that market power.

⁽⁴²⁾ Where there are strong buyers in the market, it is less likely that an aid beneficiary can increase prices *vis-à-vis* these strong buyers.

3.7.5. Operating aid schemes

- (134) If the aid is necessary and proportional to achieve the common objective described in Subsection 3.2.3, the negative effects of the aid are likely to be compensated by positive effects. However, in some cases, the aid may result in changes to the structure of the market or to the characteristics of a sector or industry which could significantly distort competition through barriers to market entry or exit, substitution effects, or displacement of trade flows. In those cases, the identified negative effects are unlikely to be compensated by any positive effects.

3.8. TRANSPARENCY

- (135) EFTA States must publish on a central website, or on a single website retrieving information from several websites (for example, regional websites), at least the following information on the notified State aid measures: the text of the notified aid scheme and its implementing provisions, granting authority, individual beneficiaries, aid amount per beneficiary, and aid intensity. These requirements apply to individual aid granted under notified schemes and as well as for *ad hoc* aid. Such information must be published after the granting decision has been taken, must be kept for at least 10 years and must be available for the general public without restrictions ⁽⁴³⁾.

4. EVALUATION

- (136) To further ensure that distortions of competition and trade are limited, the Authority may require that certain schemes be subject to a time limitation (of normally 4 years or less) and to the evaluation referred to in paragraph (27).
- (137) Evaluations will be carried out for schemes where the potential distortions are particularly high, that is to say, that may restrict competition significantly, if their implementation is not reviewed in due time.
- (138) Given the objectives of the evaluation and in order not to impose a disproportionate burden on EFTA States in respect of smaller aid amounts, this obligation may be imposed only for aid schemes with large aid budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen. The evaluation must be carried out by an expert independent from the State aid granting authority on the basis of a common methodology ⁽⁴⁴⁾ and must be made public. The evaluation must be submitted to the Authority in sufficient time to allow for the assessment of the possible prolongation of the aid scheme and in any case upon expiry of the scheme. The precise scope and the methodology of this evaluation to be carried out will be defined in the decision approving the aid scheme. Any subsequent aid measure with a similar objective must take into account the results of the evaluation.

5. REGIONAL AID MAPS

- (139) In this section, the Authority lays down the criteria for identifying the areas that fulfil the conditions of Articles 61(3)(a) and (c) of the EEA Agreement. The areas that fulfil these conditions and which an EFTA State wishes to designate as 'a' or 'c' areas must be identified in a regional aid map which must be notified to the Authority and approved by the Authority before regional aid can be awarded to undertakings located in the designated areas. The maps must also specify the maximum aid intensities applicable in these areas.

5.1. POPULATION COVERAGE ELIGIBLE FOR REGIONAL AID

- (140) Given that the award of regional State aid derogates from the general prohibition of State aid laid down in Article 61(1) of the EEA Agreement, the EFTA Surveillance Authority considers that the total population coverage of assisted regions in the EFTA States must be lower than that of the non-designated areas.
- (141) In the Authority's guidelines on national regional aid for 2007-2013 ⁽⁴⁵⁾ the national population coverage was fixed on the basis of low population density regions according to Article 61(3)(c) of the EEA Agreement. The national population ceiling for Norway was set at 29,08 % and for Iceland it was set at 31,6 %.

⁽⁴³⁾ This information should be regularly updated (for example every six months) and should be available in non-proprietary formats.

⁽⁴⁴⁾ Such a common methodology may be provided by the Authority.

⁽⁴⁵⁾ OJ L 54, 28.2.2008, p. 1 and EEA Supplement No 11, 28.2.2008, p. 1.

(142) The EFTA States have certain specificities that must be taken into account when determining the eligible population coverage:

(a) due to the relatively high GDP per capita in the EFTA States, no region qualifies for the derogation under Article 61(3)(a) of the EEA Agreement ⁽⁴⁶⁾,

(b) many regions within the EFTA States are low population density regions.

Due to such specificities, the Authority will fix the national population coverage on the basis of low population density regions, as in the Guidelines on national regional aid for 2007-2013 ⁽⁴⁷⁾.

Norway has eight Statistical regions at level 3 with low population density making up 25,51 % of Norwegian population. Consequently, the national population coverage for Norway for 2014-20 is 25,51 %.

Iceland has two Statistical regions at level 3 in total and one of them is with low population density making up 36,5 % of Icelandic population. Consequently, the national population coverage for Iceland for 2014-20 is 36,5 %.

Liechtenstein has no low population density regions and consequently no region which is eligible on that basis.

5.2. THE DEROGATION IN ARTICLE 61(3)(a) OF THE EEA AGREEMENT

(143) Article 61(3)(a) of the EEA Agreement provides that 'aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment' may be considered to be compatible with the internal market. According to the Court of Justice, 'the use of the words "abnormally" and "serious" in Article [107](3)(a) [of the Treaty on the Functioning of the European Union] shows that the exemption concerns only areas where the economic situation is extremely unfavourable in relation to the [Union] as a whole' ⁽⁴⁸⁾.

(144) The Authority considers that the conditions laid down in Article 61(3)(a) of the EEA Agreement are fulfilled if the region, being a Statistical region at level 2, has a per capita gross domestic product (GDP), measured in purchasing power standards (PPS), of less than 75 % of the EEA average. The GDP per capita ⁽⁴⁹⁾ of each region and the EEA average to be used in the analysis are determined by reference to the relevant official statistical. There is however no Statistical region at level 2 in the EFTA States that currently fulfils this condition ⁽⁵⁰⁾. Hence, no region in the EFTA States qualifies for the Article 61(3)(a) EEA derogation.

5.3. THE DEROGATION IN ARTICLE 61(3)(c) OF THE EEA AGREEMENT

(145) Article 61(3)(c) of the EEA Agreement provides that 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest' may be considered to be compatible with the internal market. According to the Court of Justice, '[t]he exemption in Article [107](3)(c) [...] permits the development of certain areas without being restricted by the economic conditions laid down in Article [107](3)(a), provided such aid "does not adversely affect trading conditions to an extent contrary to the common interest". That provision gives the Commission power to authorise aid intended to further the economic development of areas of an EU Member State which are disadvantaged in relation to the national average' ⁽⁵¹⁾. In the Authority's view, the same applies under Article 61(3)(c) of the EEA Agreement.

(146) The European Commission has in its corresponding Guidelines defined the methodology to be applied in order to determine the eligible national population coverage within the Member States. This method entails the following:

⁽⁴⁶⁾ This should be understood as meaning that no region within the EFTA States meets the 75 % per capita GDP as described in paragraph 144.

⁽⁴⁷⁾ Based on Eurostat data for 2010.

⁽⁴⁸⁾ Case 248/84 *Germany v Commission* [1987] ECR 4036, paragraph 19; Case C-169/95 *Spain v Commission* [1997] ECR I-148, paragraph 15; and Case C-310/99 *Italy v Commission* [2002] ECR I-2289, paragraph 77.

⁽⁴⁹⁾ In this, and all subsequent references to GDP per capita in these guidelines, GDP is measured in terms of purchasing power standards (PPS).

⁽⁵⁰⁾ Should this situation change, the Authority would adopt new guidelines to take into account such a modification.

⁽⁵¹⁾ Case 248/84 *Germany v Commission* [1987] ECR 4036, paragraph 19.

- (147) There are two categories of 'c' areas according to the Commission Guidelines:
- (a) areas that fulfil certain pre-established conditions and that an EU Member State may therefore designate as 'c' areas without any further justification ('predefined "c" areas');
 - (b) areas that an EU Member State may, at its own discretion, designate as 'c' areas provided that the EU Member State demonstrates that such areas fulfil certain socioeconomic criteria ('non-predefined "c" areas').
- (148) Coverage for predefined 'c' areas, according to the Commission Guidelines, are allocated according to a specific allocation methodology, prescribed in Section 5.3.1 of those guidelines. This methodology entails that former 'a' areas during the period 2011-13 together with sparsely populated areas are considered as predefined 'c' areas. Since the EFTA States did not have any 'a' regions during this period, only sparsely populated areas fall under this category.

5.3.1. Pre-defined 'c' areas

- (149) For sparsely populated areas, an EFTA State should in principle designate Statistical regions at level 2 with less than 8 inhabitants per km² or Statistical regions level 3 with less than 12,5 inhabitants per km². However, an EFTA State may designate parts of Statistical regions at level 3 with less than 12,5 inhabitants per km² or other contiguous areas adjacent to those Statistical regions at level 3, provided that the areas designated have less than 12,5 inhabitants per km² and that their designation does not exceed the specific allocation of 'c' coverage referred to in paragraph (142). For very sparsely populated areas, an EFTA State may designate parts of Statistical regions at level 2 for Norway and level 3 for Iceland with less than 8 inhabitants per km² or other smaller contiguous areas adjacent to those Statistical regions, provided that the areas designated have less than 8 inhabitants per km² and that their designation does not exceed the specific allocation of 'c' coverage referred to in paragraph (142).

5.3.2. Non-predefined 'c' areas

- (150) The Authority considers that the criteria used by EFTA States for designating 'c' areas should reflect the diversity of situations in which the award of regional aid may be justified. The criteria should therefore address certain socioeconomic, geographical or structural problems likely to be encountered in 'c' areas and should provide sufficient safeguards that the award of regional State aid will not adversely affect trading conditions to an extent contrary to the common interest.
- (151) Accordingly, an EFTA State may designate as 'c' areas the non-predefined 'c' areas defined on the basis of the following criteria:
- (a) Criterion 1: contiguous areas of at least 100 000 inhabitants ⁽⁵²⁾ located in Statistical regions at level 2 or level 3 that have:
 - a GDP per capita below or equal to the EU-27 average, or;
 - an unemployment rate above or equal to 115 % of the national average ⁽⁵³⁾.
 - (b) Criterion 2: Statistical regions at level 3 of less than 100 000 inhabitants that have:
 - a GDP per capita below or equal to the EU-27 average, or;
 - an unemployment rate above or equal to 115 % of the national average.

⁽⁵²⁾ This population threshold will be reduced to 50 000 inhabitants for EFTA States that have a non-predefined 'c' coverage of less than 1 million inhabitants or to 10 000 inhabitants for EFTA States whose national population is below 1 million inhabitants.

⁽⁵³⁾ For unemployment, calculations should be based on regional data published by the national statistical office, using the average of the last three years for which such data are available (at the moment of the notification of the regional aid map). Except as otherwise indicated in these guidelines, the unemployment rate in relation to the national average is calculated on this basis.

- (c) Criterion 3: islands or contiguous areas characterised by similar geographical isolation (for example, peninsulas or mountain areas) that have:
 - a GDP per capita below or equal to the EU-27 average ⁽⁵⁴⁾, or;
 - an unemployment rate above or equal to 115 % of the national average ⁽⁵⁵⁾, or;
 - less than 5 000 inhabitants.
 - (d) Criterion 4: Statistical regions at level 3, or parts of level 3 that form contiguous areas, that are adjacent to an 'a' area or that share a land border with a country outside the EEA or the European Free Trade Association (EFTA).
 - (e) Criterion 5: contiguous areas of at least 50 000 inhabitants ⁽⁵⁶⁾ that are undergoing major structural change or are in serious relative decline, provided that such areas are not located in Statistical regions at level 3 or contiguous areas that fulfil the conditions to be designated as predefined areas or under Criteria 1 to 4 ⁽⁵⁷⁾.
- (152) For the purpose of applying the criteria set out in paragraph (151), the notion of contiguous areas refers to whole local administrative unit 2 (LAU 2) ⁽⁵⁸⁾ areas or to a group of whole LAU 2 areas ⁽⁵⁹⁾. A group of LAU 2 areas will be considered to form a contiguous area if each of those areas in the group shares an administrative border with another area in the group ⁽⁶⁰⁾.
- (153) Compliance with the population coverage allowed for each EFTA State will be determined on the basis of the most recent data on the total resident population of the areas concerned, as published by the national statistical office.

5.4. MAXIMUM AID INTENSITIES APPLICABLE TO REGIONAL INVESTMENT AID

- (154) The aid intensity in 'c' areas must not exceed:
- (a) 15 % GGE in sparsely populated areas and in areas (Statistical regions at level 3 or parts of such regions) that share a land border with a country outside the EEA or the EFTA;
 - (b) 10 % GGE in non-predefined 'c' areas.

5.4.1. Increased aid intensities for SMEs

- (155) The maximum aid intensities laid down in paragraph (154) may be increased by up to 20 percentage points for small enterprises or by up to 10 percentage points for medium-sized enterprises ⁽⁶¹⁾.

5.5. NOTIFICATION AND DECLARATION OF COMPATIBILITY

- (156) Following the adoption of these guidelines, each EFTA State should notify to the Authority a single regional aid map applicable from 1 July 2014 to 31 December 2020. Each notification should include the information specified in the form in Annex III.

⁽⁵⁴⁾ To determine if such islands or contiguous areas have a GDP per capita below or equal to the EU-27 average, the EFTA State may refer to data provided by its national statistical office or other recognised sources.

⁽⁵⁵⁾ To determine if such islands or contiguous areas have an unemployment rate above or equal to 115 % of the national average, the EFTA State may refer to data provided by its national statistical office or other recognised sources.

⁽⁵⁶⁾ This population threshold will be reduced to 25 000 inhabitants for EFTA States that have a non-predefined 'c' coverage of less than 1 million inhabitants, to 10 000 inhabitants for EFTA States whose total population is below 1 million inhabitants, or to 5 000 inhabitants for islands or contiguous areas characterised by similar geographical isolation.

⁽⁵⁷⁾ For the purpose of applying Criterion 5, the EFTA State must demonstrate that the applicable conditions are fulfilled by comparing the areas concerned with the situation of other areas in the same EFTA State or in other EFTA States on the basis of socioeconomic indicators concerning structural business statistics, labour markets, household accounts, education, or other similar indicators. For this purpose, the EFTA State may refer to data provided by its national statistical office or other recognised sources.

⁽⁵⁸⁾ The EFTA State may refer to LAU 1 areas in place of LAU 2 areas if those LAU 1 areas have a smaller population than the LAU 2 area which they form part of.

⁽⁵⁹⁾ The EFTA State may nevertheless designate parts of an LAU 2 area (or LAU 1 area), provided that the population of the LAU area concerned exceeds the minimum population required for contiguous areas under Criteria 1 or 5 (including the reduced population thresholds for those criteria) and that the population of the parts of that LAU area is at least 50 % of the minimum population required under the applicable criterion.

⁽⁶⁰⁾ In the case of islands, administrative borders include maritime borders with other administrative units of the EFTA State concerned.

⁽⁶¹⁾ The increased aid intensities for SMEs will not apply to aid awarded for large investment projects.

- (157) The Authority will examine each notified regional aid map on the basis of these guidelines and will adopt a decision approving the regional aid map for the EFTA State concerned. Each regional aid map will be published in the *Official Journal* and the EEA Supplement thereto and will constitute an integral part of these guidelines.

5.6. AMENDMENTS

5.6.1. Population reserve

- (158) On its own initiative, an EFTA State may decide to establish a reserve of national population coverage consisting of the difference between the population coverage ceiling for that EFTA State, as allocated by the Authority ⁽⁶²⁾, and the coverage used for the 'c' areas designated in its regional aid map.
- (159) If an EFTA State has decided to establish such a reserve, it may, at any time, use the reserve to add new 'c' areas in its map until its national coverage ceiling is reached. For this purpose, the EFTA State may refer to the most recent socioeconomic data provided by Eurostat or by its national statistical office or other recognised sources. The population of the 'c' areas concerned should be calculated on the basis of the population data used for establishing the initial map.
- (160) The EFTA State must notify the Authority each time it intends to use its population reserve to add new 'c' areas prior to putting into effect such amendments.

5.6.2. Mid-term review

- (161) If necessary, the Authority will carry out, at the same time as the European Commission in June 2016, a mid-term review to identify possible areas that may become eligible for regional aid under the Article 61(1)(a) of the EEA Agreement and the level of the aid intensity corresponding to their GDP per capita.

6. APPLICABILITY OF REGIONAL AID RULES

- (162) The Authority extends the Guidelines on national regional aid for 2007-2013 ⁽⁶³⁾ and the Criteria for an in-depth assessment of regional aid to large investment projects ⁽⁶⁴⁾ until 30 June 2014.
- (163) The regional aid maps approved on the basis of the Guidelines on national regional aid for 2007-13 expire on 31 December 2013. The transition period of six months laid down in Article 44(3) of the general block exemption regulation (GBER) ⁽⁶⁵⁾ therefore does not apply to regional aid schemes implemented under the GBER. To grant regional aid after 31 December 2013 on the basis of existing block exempted schemes, EFTA States are invited to notify the prolongation of the regional aid maps in due time to allow the Authority to approve a prolongation of those maps before 31 December 2013. In general, the schemes approved on the basis of the regional aid guidelines 2007-13 expire at the end of 2013 as stated in the corresponding Authority decision. Any prolongation of such schemes must be notified to the Authority in due time.
- (164) The Authority will apply the principles set out in these guidelines for assessing the compatibility of all regional aid intended to be awarded after 30 June 2014. Regional aid awarded unlawfully or regional aid intended to be awarded after 31 December 2013 and before 1 July 2014 will be assessed in accordance with the Guidelines on national regional aid for 2007-2013.

⁽⁶²⁾ See paragraph 142.

⁽⁶³⁾ OJ L 54, 28.2.2008, p. 1 and EEA Supplement No 11, 28.2.2008, p. 1. Available at <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

⁽⁶⁴⁾ OJ L 206, 2.8.2012, p. 13 and EEA Supplement No 42, 2.8.2012, p. 1. Available at <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

⁽⁶⁵⁾ Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (OJ L 214, 9.8.2008, p. 3), inserted into Annex XV of the EEA Agreement, point 1j, by Decision No 120/2008 (OJ L 339, 18.12.2008, p. 111 and EEA Supplement No 79, 18.12.2008, p. 20), which entered into force on 8 November 2008.

- (165) Since they must be consistent with the regional aid map, notifications of regional aid schemes or of aid measures intended to be awarded after 30 June 2014, cannot be considered complete until the Authority has adopted a decision approving the regional aid map for the EFTA State concerned in accordance with the arrangements described in Subsection 5.5. Accordingly, the Authority will in principle not examine notifications of regional aid schemes which are intended to apply after 30 June 2014 or notifications of individual aid intended to be awarded after that date before it has adopted a decision approving the regional aid map for the EFTA State concerned.
- (166) The Authority considers that the implementation of these guidelines will lead to substantial changes in the rules applicable to regional aid in the EEA. Furthermore, in the light of the changed economic and social conditions in the EEA, it appears necessary to review the continuing justification for and effectiveness of all regional aid schemes, including both investment aid and operating aid schemes.
- (167) For these reasons, the Authority proposes the following appropriate measures to EFTA States pursuant to Article 1(1) in Part I of Protocol 3 to the Surveillance and Court Agreement:
- (a) EFTA States must limit the application of all existing regional aid schemes which are not covered under a block exemption regulation and of all regional aid map to aid intended to be awarded on or before 30 June 2014;
 - (b) EFTA States must amend other existing horizontal aid schemes providing specific treatment for aid to projects in assisted areas in order to ensure that aid to be awarded after 30 June 2014 complies with the regional aid map applicable on the date the aid is awarded;
 - (c) EFTA States should confirm their acceptance of the proposals above by 31 December 2013.

7. REPORTING AND MONITORING

- (168) In accordance with Article 21 of Part II of Protocol 3 to the Surveillance and Court Agreement in conjunction with Articles 5 and 6 of Decision No 195/04/COL EFTA States must submit annual reports to the Authority.
- (169) EFTA States shall transmit to the Authority information on each individual aid exceeding EUR 3 million granted under a scheme, in the format laid down in Annex IV, within 20 working days from the day on which the aid is granted.
- (170) EFTA States must maintain detailed records regarding all aid measures. Such records must contain all information necessary to establish that the conditions regarding eligible costs and maximum aid intensities have been fulfilled. These records must be maintained for 10 years from the date of award of the aid and must be provided to the Authority upon request.

8. REVISION

- (171) The Authority may decide to amend these guidelines at any time if this should be necessary for reasons associated with competition policy or to take account of other EEA policies and international commitments or for any other justified reason.
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ANNEX I

FORM FOR PROVIDING INFORMATION ON THE REGIONAL AID MAPS

- (1) EFTA States must provide information for each of the following categories of areas proposed for designation, if applicable:
 - sparsely populated areas;
 - non-predefined areas 'c' areas designated on the basis of Criterion 1;
 - non-predefined areas 'c' areas designated on the basis of Criterion 2;
 - non-predefined areas 'c' areas designated on the basis of Criterion 3;
 - non-predefined areas 'c' areas designated on the basis of Criterion 4;
 - non-predefined areas 'c' areas designated on the basis of Criterion 5;
- (2) Under each category, the EFTA State concerned must provide the following information for each proposed area:
 - identification of the area (using the Statistical regions level 2 or level 3 code of the area, the LAU 2 or LAU 1 code of the areas that form the contiguous area or other official denominations of the administrative units concerned);
 - the proposed aid intensity in the area for the period 2014-20 (indicating any increase of aid intensity as under paragraph 155, if applicable);
 - the total resident population of the area, as stated in paragraph 153.
- (3) For the sparsely populated areas and the non-predefined areas designated on the basis of Criteria 1-5, the EFTA State must provide adequate proof that each of the applicable conditions laid down in paragraphs 149 and 151 to 153 is fulfilled.

ANNEX II

DEFINITION OF THE STEEL SECTOR

For the purpose of these guidelines, 'steel sector' means all activities related to the production of one or more of the following products:

- (a) pig iron and ferro-alloys: pig iron for steelmaking, foundry and other pig iron, spiegeleisen and high-carbon ferro-manganese, not including other ferro-alloys;
- (b) crude and semi-finished products of iron, ordinary steel or special steel: liquid steel cast or not cast into ingots, including ingots for forging semi-finished products: blooms, billets and slabs; sheet bars and tinplate bars; hot-rolled wide coils, with the exception of production of liquid steel for castings from small and medium-sized foundries;
- (c) hot finished products of iron, ordinary steel or special steel: rails, sleepers, fishplates, soleplates, joists, heavy sections 80 mm and over, sheet piling, bars and sections of less than 80 mm and flats of less than 150 mm, wire rod, tube rounds and squares, hot-rolled hoop and strip (including tube strip), hot-rolled sheet (coated or uncoated), plates and sheets of 3 mm thickness and over, universal plates of 150 mm and over, with the exception of wire and wire products, bright bars and iron castings;
- (d) cold finished products: tinplate, terneplate, blackplate, galvanized sheets, other coated sheets, cold-rolled sheets, electrical sheets and strip for tinplate, cold-rolled plate, in coil and in strip;
- (e) tubes: all seamless steel tubes, welded steel tubes with a diameter of over 406,4 mm.

ANNEX II(a)

DEFINITION OF THE SYNTHETIC FIBRES SECTOR

For the purpose of these guidelines, 'synthetic fibres sector' means:

- (a) extrusion/texturisation of all generic types of fibre and yarn based on polyester, polyamide, acrylic or polypropylene, irrespective of their end-uses; or
- (b) polymerisation (including polycondensation) where it is integrated with extrusion in terms of the machinery used; or
- (c) any ancillary process linked to the contemporaneous installation of extrusion/texturisation capacity by the prospective beneficiary or by another company in the group to which it belongs and which, in the specific business activity concerned, is normally integrated with such capacity in terms of the machinery used.

ANNEX III

APPLICATION FORM FOR REGIONAL INVESTMENT AID**1. Information about the aid beneficiary:**

- Name, registered address of main seat, main sector of activity (NACE Code),
- Declaration that the firm is not in difficulty as defined under the rescue and restructuring guidelines
- Declaration specifying aid (both de minimis and State aid) already received for other projects in the last 3 years in the same Statistical region level 3 where the new investment will be located. Declaration specifying regional aid received or to be received for the same project by other granting authorities.
- Declaration specifying whether the company has closed a same or similar activity in the EEA two years preceding the date of this application form
- Declaration specifying whether the company has the intention to close down such an activity at the moment of aid application within a period of two years after the investment to be subsidised is completed.

2. Information about the project/activity to be supported:

- Short description of the project/activity.
- Short description of expected positive effects for the area concerned (for example: number of jobs created or safeguarded, R & D&I activities, training activities, creation of a cluster)
- Relevant legal basis (national, EEA or both)
- Planned starting date and -end date of the project/activity
- Location(s) of the project

3. Information about the financing of the project/activity:

- Investments and other costs linked to it, cost benefit analysis for notified aid measures
- Total eligible costs
- Aid amount needed to execute project/activity
- Aid intensity

4. Information about the need for aid and its expected impact:

- Short explanation of the need for aid and its impact on the investment decision or location decision. Alternative investment or location in absence of aid shall be indicated.
- Declaration of absence of an irrevocable agreement between the beneficiary and contractors to conduct the project

ANNEX IV

FORM FOR THE TRANSMISSION OF INFORMATION TO THE AUTHORITY UNDER PARAGRAPH 169

Aid reference		
EFTA State		
Granting authority	Name	
	Web address	
Name of the bene-ficiary, VAT number and the group it belongs to		
Type of beneficiary	SME	
	Large enterprise	
Region in which the investment/activity is located	Name of the Region (Statistical region ⁽¹⁾)	Regional aid status ⁽²⁾
Economic sector(s) in which the beneficiary is active	NACE Rev. 2 and short description	
Aid element, expressed as full amount in national currency ⁽³⁾		
Aid instrument ⁽⁴⁾	Grant/Interest rate subsidy	
	Loan/Repayable advances/Reimbursable grant	
	Guarantee (where appropriate with a reference to the Authority decision ⁽⁵⁾)	
	Tax advantage or tax exemption	
	Other (please specify)	
Date of granting	dd/mm/yyyy	
Objective of the aid		
legal basis, including the implementing provisions and, where appropriate, the scheme under which the aid is granted		

⁽¹⁾ Typically, the region is specified at level 2.

⁽²⁾ Article 61(3)(a) EEA (status 'A'), Article 61(3)(c) EEA (status 'C'), unassisted areas i.e. areas not eligible for regional aid (status 'N').

⁽³⁾ Gross grant equivalent, or for risk finance schemes, the amount of the public investment.

⁽⁴⁾ If the aid is granted through multiple aid instruments, the aid amount shall be provided by instrument.

⁽⁵⁾ Where appropriate, reference to the Authority decision approving the methodology to calculate the gross grant equivalent.

