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⁽¹⁾ Text with EEA relevance

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1850**of 13 October 2015****laying down detailed rules for the implementation of Regulation (EC) No 1007/2009 of the European Parliament and of the Council on trade in seal products****(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 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products ⁽¹⁾, and in particular Article 3(4) thereof,

Whereas:

- (1) Regulation (EC) No 1007/2009 allows, under specific conditions, for the placing on the market of seal products which result from hunts conducted by Inuit and other indigenous communities. It also allows for the placing on the market of seal products where the import of seal products is occasional in nature and where the imported products consist exclusively of goods for the personal use of travellers and their families.
- (2) Commission Regulation (EU) No 737/2010 ⁽²⁾ established detailed rules for the placing on the market of seal products pursuant to Article 3 of Regulation (EC) No 1007/2009.
- (3) Regulation (EU) 2015/1775 of the European Parliament and of the Council ⁽³⁾ has amended Article 3 of Regulation (EC) No 1007/2009, and it has repealed Regulation (EU) No 737/2010 with effect from date of application of this Regulation. It is necessary, therefore, to lay down measures implementing Article 3 of Regulation (EC) No 1007/2009, as amended.
- (4) It is appropriate to provide that entities which comply with certain requirements should be included in a list of recognised bodies issuing documents attesting compliance with conditions for placing on the market of seal products.
- (5) Models should be set out for the attesting documents and their copies in order to facilitate the management and verification of attesting documents.
- (6) Procedures for the control of attesting documents should be set out. Those procedures should be as simple and as practical as possible without compromising the credibility and consistency of the control system.

⁽¹⁾ OJ L 286, 31.10.2009, p. 36.

⁽²⁾ Commission Regulation (EU) No 737/2010 of 10 August 2010 laying down detailed rules for the implementation of Regulation (EC) No 1007/2009 of the European Parliament and of the Council on trade in seal products (OJ L 216, 17.8.2010, p. 1).

⁽³⁾ Regulation (EU) 2015/1775 of the European Parliament and of the Council of 6 October 2015 amending Regulation (EC) No 1007/2009 on trade in seal products and repealing Commission Regulation (EU) No 737/2010 (OJ L 262, 7.10.2015, p. 1).

- (7) The use of electronic systems should be allowed in order to facilitate the exchange of data between competent authorities, the Commission and the recognised bodies.
- (8) The processing of personal data for the purposes of this Regulation, in particular as regards the processing of personal data contained in attesting documents, should comply with Directive 95/46/EC of the European Parliament and of the Council ⁽¹⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽²⁾.
- (9) Since this Regulation lays down detailed rules for the implementation of Article 3 of Regulation (EC) No 1007/2009 as amended by Regulation (EU) 2015/1775, which applies as of 18 October 2015, it should enter into force as a matter of urgency.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Committee established pursuant to Article 18(1) of Council Regulation (EC) No 338/97 ⁽³⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down detailed rules for the placing on the market of seal products and for the importing of seal products for the personal use of travellers or their families pursuant to Article 3 of Regulation (EC) No 1007/2009.

Article 2

Personal use of travellers or their families

1. Seal products for the personal use of travellers or their families may only be imported where any of the following requirements is fulfilled:
 - (a) the seal products are either worn by the travellers, or carried or contained in their personal luggage;
 - (b) the seal products are contained in the personal property of a natural person transferring his normal place of residence from a third country to the Union;
 - (c) the seal products are acquired on site in a third country by travellers and imported by those travellers at a later date, provided that, upon arrival in the Union territory, those travellers present to the customs authorities of the Member State concerned the following documents:
 - (i) a written notification of import;
 - (ii) a supporting document giving evidence that the products were acquired in the third country concerned.
2. For the purposes of paragraph 1(c), the written notification and the supporting document shall be endorsed by the customs authorities and returned to the travellers. On import, the notification and the supporting document shall be presented to the customs authorities together with the customs declaration for the products concerned.

⁽¹⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

⁽²⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

⁽³⁾ Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 61, 3.3.1997, p. 1).

*Article 3***Recognised bodies**

1. An entity shall be included in a list of recognised bodies where it demonstrates that it fulfils the following requirements:

- (a) it has legal personality;
- (b) it has the capacity to ascertain that the requirements of Article 3(1) of Regulation (EC) No 1007/2009 are met;
- (c) it has the capacity to issue and manage attesting documents referred to in Article 4(1), as well as to process and archive records;
- (d) it has the ability to carry out its functions in a manner that avoids conflict of interest;
- (e) it has the ability to monitor compliance with the requirements set out in Article 3(1) of Regulation (EC) No 1007/2009;
- (f) it has the capacity to withdraw attesting documents referred to in Article 4(1) or suspend their validity in case of non-compliance with the requirements of this Regulation, and to take measures to inform competent authorities and customs authorities of Member States thereof;
- (g) it is subject to independent third party audits;
- (h) it operates at national or regional level.

2. In order to be included in the list referred to in paragraph 1, an entity shall submit to the Commission a request accompanied by documentary evidence that it fulfils the requirements set out in paragraph 1.

3. The recognised body shall submit audit reports produced by the independent third party referred to in paragraph 1(g) to the Commission at the end of each reporting cycle.

*Article 4***Attesting documents**

1. Upon request, where the requirements for placing on the market set out in Article 3(1) of Regulation (EC) No 1007/2009 are met, a recognised body shall issue attesting documents conforming to the models set out in the Annex to this Regulation.

2. The recognised body shall deliver the attesting document to the applicant and shall keep a copy for three years for record-keeping purposes.

3. Subject to Article 5(2), when a seal product is placed on the market, the original attesting document shall be delivered with the seal product. The applicant may keep a copy of the attesting document.

4. A reference to the attesting document number shall be included in any further invoice.

5. A seal product accompanied by an attesting document issued in accordance with paragraph 1 shall be deemed to comply with Article 3(1) of Regulation (EC) No 1007/2009.

6. Acceptance of a customs declaration for release for free circulation of a seal product pursuant to Article 79 of Council Regulation (EEC) No 2913/92⁽¹⁾ shall be subject to the presentation of an attesting document issued in accordance with paragraph 1 of this Article. Without prejudice to Article 77(2) of Regulation (EEC) No 2913/92, the customs authorities shall keep a copy of the attesting document in their records.

7. In case of doubts relating to the authenticity or correctness of an attesting document issued in accordance with paragraph 1 as well as when further advice is required, the customs authorities and other enforcement officers shall contact a competent authority designated by the Member State concerned in accordance with Article 6. The competent authority contacted shall decide on the measures to be taken.

⁽¹⁾ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

*Article 5***Format of the attesting documents**

1. The attesting document referred to in Article 4(1) shall be paper-based or in electronic form.
2. In case of an electronic attesting document, a printed copy of that attesting document shall accompany the seal product at the time the product is placed on the market.
3. The use of the attesting document shall be without prejudice to any other formalities relating to the placing on the market.
4. A competent authority designated in accordance with Article 6 may require that the attesting document be translated into the official language of the Member State where the product is to be placed on the market.

*Article 6***Competent authorities**

1. Each Member State shall designate one or several competent authorities responsible for the following tasks:
 - (a) verification, upon request of the customs authorities pursuant to Article 4(7), of attesting documents for imported seal products;
 - (b) control of the issuing of attesting documents by recognised bodies established and active in that Member State;
 - (c) preservation of a copy of attesting documents issued for seal products originating from seal hunts in that Member State.
2. Member States shall notify the Commission of the competent authorities designated in accordance with paragraph 1.
3. The Commission shall make the list of competent authorities designated in accordance with paragraph 1 available on its website. The list shall be regularly updated.

*Article 7***Electronic systems for the exchange and recording of data**

1. Competent authorities may use electronic systems for the exchange and recording of data contained in attesting documents.
2. Member States shall take into account the complementarity, compatibility and interoperability of the electronic systems referred to in paragraph 1.

*Article 8***Protection with regard to the processing of personal data**

This Regulation is without prejudice to the level of protection of individuals with regard to the processing of personal data under Union law and national law, and in particular does not alter the obligations and rights set out in Directive 95/46/EC and Regulation (EC) No 45/2001. The protection of individuals with regard to the processing of personal data shall be ensured in particular with regard to any disclosure or communication of personal data in an attesting document.

*Article 9***Transitional provision**

The attesting documents issued by a recognised body in accordance with Regulation (EU) No 737/2010 prior to 18 October 2015 shall remain valid after that date.

*Article 10***Entry into force and application**

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

It shall apply from 18 October 2015.

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

Done at Brussels, 13 October 2015.

For the Commission

The President

Jean-Claude JUNKER

ANNEX

**EUROPEAN UNION — ATTESTING DOCUMENT FOR SEAL PRODUCTS RESULTING FROM
HUNT BY INUIT OR OTHER INDIGENOUS COMMUNITIES FOR PLACING ON THE UNION'S
MARKET IN ACCORDANCE WITH ARTICLE 3(1) OF REGULATION (EC) No 1007/2009 ON
TRADE IN SEAL PRODUCTS**

ORIGINAL	1	1 Issuing body Name Address	2 For the purposes of the issuing country	
	3 Attesting document number			
	4 Country of placing on the market			
	5 ISO code			
	6 Commercial description of the seal product			
1	7 Scientific name	8 HS heading		
	9 Country of taking		10 ISO code	
	11 Net weight (kg)		12 Number of units	
	13 Distinguishing marks		14 Unique identifier	
	15 Signature and stamp of issuing body		16 Endorsement by customs	
	Place and date		Number of customs declaration Signature and stamp Place and date	

**EUROPEAN UNION — ATTESTING DOCUMENT FOR SEAL PRODUCTS RESULTING FROM
HUNT BY INUIT OR OTHER INDIGENOUS COMMUNITIES FOR PLACING ON THE UNION'S
MARKET IN ACCORDANCE WITH ARTICLE 3(1) OF REGULATION (EC) No 1007/2009 ON
TRADE IN SEAL PRODUCTS**

2	1 Issuing body	2 For the purposes of the issuing country	
	Name		
	Address		
	3 Attesting document number		
4 Country of placing on the market			
5 ISO code			
6 Commercial description of the seal product			
2			
7 Scientific name	8 HS heading		
9 Country of taking		10 ISO code	
11 Net weight (kg)		12 Number of units	
13 Distinguishing marks		14 Unique identifier	
15 Signature and stamp of issuing body		16 Endorsement by customs	
		Number of customs declaration	
		Signature and stamp	
Place and date		Place and date	

**EUROPEAN UNION — ATTESTING DOCUMENT FOR SEAL PRODUCTS RESULTING FROM
HUNT BY INUIT OR OTHER INDIGENOUS COMMUNITIES FOR PLACING ON THE UNION'S
MARKET IN ACCORDANCE WITH ARTICLE 3(1) OF REGULATION (EC) No 1007/2009 ON
TRADE IN SEAL PRODUCTS**

3	1 Issuing body		2 For the purposes of the issuing country	
	Name			
	Address			
	3 Attesting document number			
	4 Country of placing on the market			
COPY FOR CUSTOMS	5 ISO code			
	6 Commercial description of the seal product			
3				
7 Scientific name		8 HS heading		
9 Country of taking			10 ISO code	
11 Net weight (kg)			12 Number of units	
13 Distinguishing marks			14 Unique identifier	
15 Signature and stamp of issuing body		16 Endorsement by customs		
		Number of customs declaration		
		Signature and stamp		
Place and date		Place and date		

**EUROPEAN UNION — ATTESTING DOCUMENT FOR SEAL PRODUCTS RESULTING FROM
HUNT BY INUIT OR OTHER INDIGENOUS COMMUNITIES FOR PLACING ON THE UNION'S
MARKET IN ACCORDANCE WITH ARTICLE 3(1) OF REGULATION (EC) No 1007/2009 ON
TRADE IN SEAL PRODUCTS**

4	1 Issuing body Name	2 For the purposes of the issuing country	
	Address		
	3 Attesting document number		
	4 Country of placing on the market		
	5 ISO code		
COPY FOR COMPETENT AUTHORITY	6 Commercial description of the seal product		
4	7 Scientific name	8 HS heading	
	9 Country of taking	10 ISO code	
	11 Net weight (kg)	12 Number of units	
	13 Distinguishing marks	14 Unique identifier	
	15 Signature and stamp of issuing body	16 Endorsement by customs	
		Number of customs declaration	
		Signature and stamp	
	Place and date	Place and date	

**EUROPEAN UNION — ATTESTING DOCUMENT FOR SEAL PRODUCTS RESULTING FROM
HUNT BY INUIT OR OTHER INDIGENOUS COMMUNITIES FOR PLACING ON THE UNION'S
MARKET IN ACCORDANCE WITH ARTICLE 3(1) OF REGULATION (EC) No 1007/2009 ON
TRADE IN SEAL PRODUCTS**

5 RESERVE	1 Issuing body Name Address		2 For the purposes of the issuing country	
	3 Attesting document number			
	4 Country of placing on the market			
	5 ISO code			
	6 Commercial description of the seal product			
5	7 Scientific name		8 HS heading	
9 Country of taking			10 ISO code	
11 Net weight (kg)			12 Number of units	
13 Distinguishing marks			14 Unique identifier	
15 Signature and stamp of issuing body Place and date			16 Endorsement by customs Number of customs declaration Signature and stamp Place and date	

Notes for guidance**General:**

Complete in capitals

Box 1.	Issuing body	Indicate the name and address of the recognised body that issues the attesting document.
Box 2.	For the purposes of the issuing country	Space for the purposes of the issuing country.
Box 3.	Attesting document number	Indicate the issuing number of the attesting document.
Box 4.	Country of placing on the market	Indicate the country where the seal product is intended to be placed on the European Union market for the first time
Box 5.	ISO code	Indicate the two-letter code for the country declared in box 4.
Box 6.	Commercial description of the seal product	Indicate the commercial description of the seal product(s). The description shall be consistent with the entry in box 7.
Box 7.	Scientific name	Indicate the scientific name(s) of the species of the seal(s) used in the product. Where more than one species is included in a composite product, indicate each species on a separate line.
Box 8.	HS heading	Give the four-digit or the six-digit commodity code established pursuant to the Harmonised Commodity Description and Coding System.
Box 9.	Country of taking	Indicate the country where the seals used in the product were taken from the wild.
Box 10.	ISO code	Indicate the two-letter code for the country declared in Box 9.
Box 11.	Net weight	Give the overall weight in kg. This is defined as the net mass of the seal products without immediate containers or any packaging, other than bearers, spacers, stickers, etc.
Box 12.	Number of units	Indicate the number of units, if applicable.
Box 13.	Distinguishing marks	Where applicable, indicate any distinguishing marks, such as the lot number or bill of lading number.
Box 14.	Unique identifier	Indicate any traceability identifiers present on the product.
Box 15.	Signature and stamp of issuing recognised body	The box is to be signed by the authorised official, stating the place and date, and stamped with the official stamp of the issuing recognised body.
Box 16.	Endorsement by customs	The customs authority is to indicate the number of the customs declaration and add its signature and stamp.

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1851**of 15 October 2015****amending Implementing Regulation (EU) No 948/2014 as regards the contractual storage period and the amount of aid to be granted for the private storage of skimmed milk powder**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 18(2), Article 20(c), (l) and (m) and Article 223(3)(c) thereof,

Having regard to Council Regulation (EU) No 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products ⁽²⁾, and in particular Article 4 thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) No 948/2014 ⁽³⁾ opened private storage for skimmed milk powder, in view of the particular difficult market situation, notably resulting from the ban introduced by Russia on imports of dairy products from the Union to Russia.
- (2) Following a further deterioration of the prices for skimmed milk powder, the private storage scheme was extended until 28 February 2015 by Commission Implementing Regulation (EU) No 1337/2014 ⁽⁴⁾, until 30 September 2015 by Commission Implementing Regulation (EU) 2015/303 ⁽⁵⁾ and until 29 February 2016 by Commission Implementing Regulation (EU) 2015/1548 ⁽⁶⁾.
- (3) Given the continuous downward trend of the prices for skimmed milk powder resulting from a substantial oversupply of milk on the internal market and continued limitations in global demand, it is appropriate to provide for additional measures with a view to encouraging operators to store higher quantities in order to alleviate the pressure on the market and therefore higher aid amounts should be granted where the products are submitted to a longer contractual storage period.
- (4) However, to allow flexibility for operators in responding to future market signals, it should be allowed to release such products at a reduced aid rate from store after a minimum storage period of nine months.
- (5) Taking into account the length of the increased contractual storage period, the advance payment, referred to in Article 31 of Commission Regulation (EC) No 826/2008 ⁽⁷⁾, should be adapted.
- (6) In accordance with Article 35(3) of Regulation (EC) No 826/2008 and in order to closely follow the use of the measure it is appropriate to specify the deadline for submitting the notifications provided for in Article 35(1)(a) of that Regulation.

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 346, 20.12.2013, p. 12.

⁽³⁾ Commission Implementing Regulation (EU) No 948/2014 of 4 September 2014 opening private storage for skimmed milk powder and fixing in advance the amount of aid (OJ L 265, 5.9.2014, p. 18).

⁽⁴⁾ Commission Implementing Regulation (EU) No 1337/2014 of 16 December 2014 amending Implementing Regulations (EU) No 947/2014 and (EU) No 948/2014 as regards the last day for submission of applications for private storage aid for butter and for skimmed milk powder (OJ L 360, 17.12.2014, p. 15).

⁽⁵⁾ Commission Implementing Regulation (EU) 2015/303 of 25 February 2015 amending Implementing Regulations (EU) No 947/2014 and (EU) No 948/2014 as regards the last day for submission of applications for private storage aid for butter and skimmed milk powder (OJ L 55, 26.2.2015, p. 4).

⁽⁶⁾ Commission Implementing Regulation (EU) 2015/1548 of 17 September 2015 amending Implementing Regulations (EU) No 947/2014 and (EU) No 948/2014 as regards the last day for submission of applications for private storage aid for butter and skimmed milk powder (OJ L 242, 18.9.2015, p. 26).

⁽⁷⁾ Commission Regulation (EC) No 826/2008 of 20 August 2008 laying down common rules for the granting of private storage aid for certain agricultural products (OJ L 223, 21.8.2008, p. 3).

- (7) In order to have an immediate impact on the market and to contribute to stabilise prices, the measure provided for in this Regulation should enter into force on the day following that of its publication.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 948/2014 is amended as follows:

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

'Article 4

1. The aid for the products referred to in Article 1 shall be fixed as follows:

(a) where the contractual storage period is between 90 and 210 days, the aid shall be:

- (1) 8,86 EUR per tonne of storage for fixed storage costs;
- (2) 0,16 EUR per tonne per day of contractual storage;

(b) where the contractual storage period is 365 days, the aid shall be:

- (1) 8,86 EUR per tonne of storage for fixed storage costs;
- (2) 0,36 EUR per tonne per day of contractual storage.

However, by way of derogation from Article 34(6) of Regulation (EC) No 826/2008, where the contractual quantity can be removed after a minimum storage period of 270 days, the aid amounts shall be reduced by 10 %.

2. Applications shall be valid only when they show the aid rates applied for.

Concluded contracts under this Regulation for a storage period between 90 and 210 days cannot be changed into contracts under point (b) of the first subparagraph of paragraph 1.

3. Contractual storage shall end on the day preceding that of the removal from storage.;

- (2) the following Article 4a is inserted:

'Article 4a

By way of derogation from Article 31(2) of Regulation (EC) No 826/2008, the advance payment for contracts under point (b) of the first subparagraph of Article 4(1) of this Regulation shall not exceed the amount of aid corresponding to a storage period of 270 days.;

- (3) Article 6 is replaced by the following:

'Article 6

Member States shall notify the Commission of the following:

- (a) by each Tuesday for the previous week and separately for the quantities referred to respectively in points (a) and (b) of the first subparagraph of Article 4(1), the quantities for which contracts have been concluded as well as the quantities of products for which applications to conclude contracts have been submitted, as required under Article 35(1)(a) of Regulation (EC) No 826/2008;
- (b) not later than the end of each month for the previous month, the information on the stocks required under Article 35(1)(b) of Regulation (EC) No 826/2008.;

Article 2

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

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

Done at Brussels, 15 October 2015.

For the Commission

The President

Jean-Claude JUNKER

COMMISSION DELEGATED REGULATION (EU) 2015/1852**of 15 October 2015****opening a temporary exceptional private storage aid scheme for certain cheeses and fixing in advance the amount of aid**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 219(1) in conjunction with Article 228 thereof,

Whereas:

- (1) Global demand for milk and milk products has generally deteriorated throughout year 2014 and in the first half of 2015, notably as a result of the slowdown in imports from China, the main world importer of milk products.
- (2) Downward pressure on prices for dairy products had been registered due to increased supply both in the Union and in the main milk producing regions of the world.
- (3) In addition, on 25 June 2015 the Russian government announced the prolongation of the ban on the import of agricultural products and foodstuffs originating in the Union for another year, up to 6 August 2016.
- (4) The dairy sector is therefore confronted with a market disturbance situation due to a strong supply-demand imbalance.
- (5) As a consequence, prices of raw milk and dairy products in the Union have further deteriorated and downward pressure is likely to carry on, reaching unsustainable levels for many farmers, which are experiencing cash-flow and treasury difficulties. Union average prices for the main cheeses had decreased by 17 % in 2015.
- (6) The market intervention measures available under Regulation (EU) No 1308/2013 do not appear to be sufficient for the situation recently created, since they are targeted to other products such as butter and skimmed milk powder, or limited to cheeses with a geographical indication.
- (7) The threat of a serious imbalance in the cheese market might be mitigated or eliminated by storage. It is therefore appropriate to grant aid for private storage of cheese and to fix the amount of aid in advance.
- (8) It is appropriate to set a ceiling for the maximum volume to be covered by the scheme and a breakdown of the total volume per Member States based on their cheese production.
- (9) Article 17 of Regulation (EU) No 1308/2013 provides for the granting of private storage aid only for cheeses benefiting from a protected designation of origin or from a protected geographical indication under Regulation (EU) No 1151/2012 of the European Parliament and of the Council ⁽²⁾. However, cheeses with protected designation of origin or protected geographical indication represent only a small share of the total Union cheese production. For reasons of operational and administrative efficiency it is appropriate to set up a single private storage aid scheme covering all types of cheeses.
- (10) It is appropriate to exclude cheeses which are not suitable for storage.
- (11) As a general rule, to facilitate management and control, private storage aid should be granted only to operators established and registered for VAT purposes in the Union.

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343, 14.12.2012, p. 1).

- (12) To ensure that the arrangements can be monitored properly, the information needed to conclude the storage contract should be specified in this Regulation as well as the obligations of the contracting parties.
- (13) In order to make the scheme more effective, contracts should relate to a certain minimum quantity and to the obligations to be fulfilled by the contracting party, in particular those enabling the competent authority responsible for checking storage operations to make an effective inspection of the storage conditions.
- (14) Storage of the contractual quantity during the contractual storage period is one of the requirements for the granting of private storage aid. To take account of commercial practice and practical reasons, a margin of tolerance in respect of the quantity subject to aid should be allowed.
- (15) In order to guarantee the seriousness of the application and in order to ensure that the measure will have its desired effect on the market, a security is needed. Therefore, provisions should be adopted for the lodging, release and forfeit of the security.
- (16) To ensure that the storage is properly managed, it is appropriate to adopt provisions for reducing the amount of aid to be paid when the quantity stored during the contractual storage period is less than the contractual quantity.
- (17) The amount of aid should be fixed on the basis of storage costs and/or other relevant market elements. It is appropriate to set an aid for fixed storage costs for entry and exit of the products concerned and an aid per day of storage for costs for cold storage and financing.
- (18) It is necessary to indicate the conditions under which an advance payment may be granted, the adjustment of the aid in cases where the contractual quantity is not entirely respected, the checks on compliance with entitlement to aid, the possible penalties and the information to be notified to the Commission by the Member States.
- (19) The measure might not be used to the full extent by all Member States, it is appropriate to provide for the reallocation of quantities after three months of application of the measure. The Commission should be authorised to adopt where appropriate implementing act laying down the reallocation per Member States of unused quantities and the new period for lodging applications.
- (20) Rules should also be laid down regarding documentation, accounting and frequency and nature of checks,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation provides for a temporary exceptional private storage aid scheme for cheeses falling under CN code 0406, except for cheeses which are not suitable for further storage beyond the period of maturation referred to in Article 3(1).

The maximum volume of product per Member States subject to this temporary scheme is set out in the Annex.

Article 2

Definition

For the purposes of this Regulation 'the competent authorities of the Member States' shall mean the departments or bodies accredited by the Member States as paying agencies which fulfil the conditions laid down in Article 7 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council ⁽¹⁾.

⁽¹⁾ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

*Article 3***Eligibility of products**

1. In order to qualify for the private storage aid referred to in Article 1, hereinafter the 'aid', the cheese shall be of sound and fair marketable quality, of Union origin and have, on the day when the storage contract starts, a minimum age corresponding to the period of maturation laid down in the product specification for the cheeses benefitting from a protected designation of origin or from a protected geographical indication under Regulation (EU) No 1151/2012 and to a normal period of maturation set by Member States for the other cheeses.
2. The cheese shall comply with the following requirements:
 - (a) each lot weighs at least 0,5 tonnes;
 - (b) it is indelibly marked with an indication, which may be encoded, of the undertaking in which it was manufactured and with the date of manufacture;
 - (c) it bears the date of entry into storage;
 - (d) it has not been the subject of a previous storage aid contract;
 - (e) it is stored in the Member State in which the cheese is produced.
3. Member States may waive the obligation to indicate the date of entry into store referred to in point (c) of paragraph 2 on the cheese provided that the store manager undertakes to keep a register in which the particulars referred to in point (b) of paragraph 2 are entered on the date of entry into store.

*Article 4***Applications for aid**

1. An operator seeking aid shall lodge an application with the competent authorities of the Member States where the products are stored.
2. Operators applying for aid shall be established and registered for VAT purposes in the Union.
3. Applications for aid may be lodged as from the date of entry into force of this Regulation. The last date for the submission of applications shall be 15 January 2016.
4. Applications for aid shall relate to products which have been fully placed in storage.
5. Applications shall be lodged using the method made available to the operators by the Member State concerned.

The competent authorities of the Member States may require that electronic applications be accompanied by an advance electronic signature within the meaning of point 2 of Article 2 of Directive 1999/93/EC of the European Parliament and of the Council ⁽¹⁾ or by an electronic signature offering equivalent assurances with regard to the functionalities attributed to a signature by applying the same rules and conditions as those defined in the Commission's provisions on electronic and digitised documents, set out in Commission Decision 2004/563/EC, Euratom ⁽²⁾, and in its implementing rules.

6. Application shall only be admissible if the following conditions are met:
 - (a) it indicates a reference to this Regulation;
 - (b) it indicates the identification data of the applicants name, address and the VAT registration number;
 - (c) it indicates the product with its relevant 6-digit CN code;
 - (d) it indicates the quantity of products at the time of the application;

⁽¹⁾ Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ L 13, 19.1.2000, p. 12).

⁽²⁾ Commission Decision 2004/563/EC, Euratom of 7 July 2004 amending its Rules of Procedure (OJ L 251, 27.7.2004, p. 9).

- (e) it indicates the name and address of the storage place, the storage lot number and the approval number identifying the factory;
 - (f) it does not include any additional conditions introduced by the applicant other than those laid down in this Regulation;
 - (g) it is presented in the official language, or one of the official languages of the Member State in which the application is lodged;
 - (h) the applicant has lodged a security amounting 20 EUR per tonne in favour of the relevant paying agency in accordance with Section 2 of Chapter IV of Commission Delegated Regulation (EU) No 907/2014 ⁽¹⁾.
7. The content of the applications shall not be amended after their submission.

Article 5

Forfeiture and release of security

1. The security provided for in Article 4(6)(h) shall be forfeit where:
 - (a) a contract application is withdrawn;
 - (b) the quantity established at the checks under Article 16(2) is less than 95 % of the quantity in the application referred to in Article 4(6)(d). In such a case no contract shall be concluded;
 - (c) less than 95 % of the contractual quantity is placed and kept in storage for the contractual storage period, at the risk of the contracting party within the meaning of Article 6 and under the conditions referred to in Article 7(1)(a).
2. Securities shall be released immediately where contract applications are not accepted.
3. Securities shall be released in respect of quantities for which the contractual obligations have been fulfilled.

Article 6

Conclusion of contracts

1. Contracts shall be concluded between the competent authority of the Member State on whose territory the products are stored and the applicant, hereafter referred to as the 'contracting party'.
2. Contracts shall be concluded within 30 days of the date of receipt of the information referred to in Article 4(6)(e) subject, where appropriate, to subsequent confirmation of the eligibility of the products as referred to in the second subparagraph of Article 16(2). If eligibility is not confirmed, the contract concerned shall be considered as null and void.

Article 7

Obligations of the contracting party

1. Contracts shall stipulate at least the following obligations for the contracting party:
 - (a) to place and to keep the contractual quantity in storage, during the contractual storage period, at his own risk and expense in conditions ensuring the maintenance of the characteristics of the products, without substituting the stored products or transferring them to another storage place. Where the contracting party submits a reasoned request, the competent authority may authorise a relocation of the stored products;
 - (b) to retain the weighting-in documents established at the time of entry into the storage place;

⁽¹⁾ Commission Delegated Regulation (EU) No 907/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (OJ L 255, 28.8.2014, p. 18).

- (c) to allow the competent authority to check at any time that all the obligations laid down in the contract are being observed;
 - (d) to make the products stored easily accessible and individually identifiable: each unit individually stored shall be marked so that date of placing in storage, the contract number, the product and the weight are shown. However, Member States may waive the requirement to mark the contract number provided that the store manager undertakes to enter the contract number in the register referred to in Article 3(3).
2. The contracting party shall make available to the authority responsible for checking all documentation, for each contract, allowing in particular the following information on the products placed in private storage to be verified:
- (a) the approval number identifying the factory and the Member State of production;
 - (b) the origin and the date of manufacture of the products;
 - (c) the date of placing into storage;
 - (d) the weight and the number of pieces packaged;
 - (e) the presence in the store and the address of the store;
 - (f) the expected date of the end of the contractual storage period and completed by the actual date of removal.
3. The contracting party or, where applicable the operator of the storage place, shall keep stock accounts available at the warehouse covering, by contract number:
- (a) the identification of the products placed in private storage by lot;
 - (b) the dates of placing in and removal from storage;
 - (c) the quantity indicated per storage in lot;
 - (d) the location of the products in the store.

Article 8

Contractual storage period

1. The contractual storage period shall start on the day following that of receipt by the competent authorities of the information referred to in Article 4(6)(e).
2. Contractual storage shall end on the day preceding that of the removal from storage.
3. Aid may be granted only where the contractual storage period is between 60 and 210 days.

Article 9

Removal from storage

1. Removal from storage may start on the day following the last day of the contractual storage period.
2. Removal from store shall be in whole storage lots or, if the competent authority so authorises, in smaller quantities. However, in the case referred to in Article 16(5)(a), only a sealed quantity may be removed from store.
3. The contracting party shall notify the competent authority before it intends to begin removing products from storage, in accordance with the provisions laid down in Article 16(6).
4. Where the requirement laid down in paragraph 3 is not complied with but the competent authority is satisfied that sufficient evidence has been furnished, within 30 days following removal from the storage place, of the date of removal from storage and the quantities concerned, the aid shall be reduced by 15 % and shall only be paid in respect of the period for which the contracting party supplies to the competent authority satisfactory proof that the product has been maintained in contractual storage.

5. Where the requirement laid down in paragraph 3 is not complied with and the competent authority is not satisfied that sufficient evidence has been furnished, within 30 days following removal from the storage place, of the date of removal from storage and the quantities concerned, no aid shall be paid in respect of the contract concerned, and where applicable, the whole of the security shall be forfeit in respect of the contract concerned.

Article 10

Aid amounts

The aid shall be:

- 15,57 EUR per tonne of storage for fixed storage costs,
- 0,40 EUR per tonne per day of contractual storage.

Article 11

Advance payment of aid

1. After 60 days of storage, a single advance payment of the aid may be made, at the contracting party's request, provided that he lodges a security equal to the advance payment plus 10 %.
2. The advance payment shall not exceed the amount of aid corresponding to a storage period of 90 days. The security referred to in paragraph 1 shall be released as soon as the balance of aid has been paid.

Article 12

Payment of aid

1. The aid, or, where an advance payment has been granted pursuant to Article 11, the balance of aid, shall be paid on the basis of an application for payment lodged by the contracting party within three months after the end of the contractual storage period.
2. Where the contracting party was unable to produce supporting documents within the time limit of three months despite acting promptly to obtain them on time, he may be given extensions, which may not exceed a total of three months.
3. Payment of the aid or of the balance of aid shall be carried out within 120 days following the day when an application for the payment of aid has been lodged provided that the obligations of the contract have been met and the final check has been carried out. However, if an administrative inquiry is under way, payment shall not be made until entitlement has been recognised.
4. Except in cases of *force majeure*, if the quantity actually stored during the contractual storage period is less than the contractual quantity and not less than 95 % of that quantity, the aid shall be paid for the quantity actually stored. However, if the competent authority finds that the contracting party acted deliberately or negligently, it may decide to further reduce or not to pay the aid.
5. Except in cases of *force majeure*, if the quantity actually stored during the contractual storage period is less than the percentage indicated in paragraph 4, but not less than 80 % of the contractual quantity, the aid for the quantity actually stored shall be reduced by half. However, if the competent authority finds that the contracting party acted deliberately or negligently, it may decide to further reduce or not to pay the aid.
6. Except in cases of *force majeure*, if the quantity actually stored during the contractual storage period is less than 80 % of the contracted quantity, no aid shall be paid.
7. If checks during storage or on removal reveal defective products, no aid shall be paid for those quantities. The remainder of the storage lot which is still eligible for aid shall be not less than the minimum quantity as laid down in Article 3(2). The same rule shall apply where part of a storage lot is removed for that reason before the minimum storage period.

Defective products shall not be included in the calculation of the quantity actually stored referred to in paragraphs 4, 5 and 6.

*Article 13***Notifications**

1. Member States shall notify the Commission, by each Tuesday for the previous week, of the quantities for which contracts have been concluded, as well as of the quantities of products for which applications for aid have been submitted.
2. Member States shall notify the Commission not later than the end of each month for the previous month:
 - (a) the quantities of products placed into and leaving storage during the month concerned;
 - (b) the quantities of products in storage at the end of the month concerned;
 - (c) the quantities of products in respect of which the contractual storage period has ended.
3. The notifications by the Member States referred to in paragraphs 1 and 2 shall be made in accordance with Commission Regulation (EC) No 792/2009 ⁽¹⁾.

*Article 14***Measures for respecting the maximum quantity**

Member States shall ensure that a system based on objective and non-discriminative criteria is in place, so that the maximum quantities per Member States referred to in the Annex are not exceeded.

*Article 15***Measures for unused quantities**

Where appropriate, any remaining unused allocations after 15 January 2016 shall be made available to Member States which by 31 December 2015 at the latest notify the Commission of their wish to make a greater use of the private storage aid scheme. The allocation per Member State, which shall be done by taking into account the quantities applied for by Member States until 15 January 2016 and the period for lodging applications shall be decided by means of an implementing act to be adopted without applying the examination procedure referred to in Article 229(2) and (3) of Regulation (EU) No 1308/2013.

*Article 16***Checks**

1. Member States shall take all necessary measures to ensure compliance with this Regulation. Those measures shall include full administrative checking of aid applications, which shall be supplemented by on-the-spot checks as specified in paragraphs 2 to 9.
2. The authority responsible for checking shall conduct checks on the products entering storage within 30 days from the date of receipt of the information referred to in Article 4(6)(e).

Without prejudice to point (a) of the first subparagraph of paragraph 5 of this Article in order to ensure that the products stored are eligible for aid, a representative sample of at least 5 % of the quantities placed in storage shall be physically checked to ensure that, as regards, inter alia, the weight, identification and nature of products, storage lots conform to the particulars in the application for concluding a contract.

The weight of the products as determined at the start of the contractual period shall be used to determine the payment of the aid. However, aid shall not be paid for a quantity exceeding the one applied for as specified in Article 4(6)(d).

3. Where the Member State can offer duly justified reasons, the 30-day limit laid down in paragraph 2 may be extended by 15 days.
4. If the checks show that the products stored do not correspond with the eligibility criteria laid down in Article 3 and as specified in Article 4(6)(c), the security referred to in Article 4(6)(h) shall be forfeit.

⁽¹⁾ Commission Regulation (EC) No 792/2009 of 31 August 2009 laying down detailed rules for the Member States' notification to the Commission of information and documents in implementation of the common organisation of the markets, the direct payments' regime, the promotion of agricultural products and the regimes applicable to the outermost regions and the smaller Aegean islands (OJ L 228, 1.9.2009, p. 3).

5. The authority responsible for checking shall:

- (a) seal the products by contract, storage lot or a smaller quantity at the time of the check provided for in paragraph 2; or
- (b) make an unannounced check to ensure that the contractual quantity is present in the storage place.

The check referred to in point (b) of the first subparagraph shall correspond to at least 10 % of the total quantity under the contract and shall be representative. Such checks shall include an examination of the stock records as referred to in Article 7(3) and supporting documents, such as weigh tickets and delivery dockets, and a verification of the presence of the products in store, type of products and their identification relating to at least 5 % of the quantity subject to the unannounced check.

6. At the end of the contractual storage period, the authority responsible for checking shall, in respect of at least one half of the number of contracts, by sampling, verify weight and identification of the products in storage. For the purposes of this check, the contracting party shall inform the competent body, indicating the storage lots involved, at least five working days before:

- (a) the end of the maximum contractual storage period; or
- (b) the start of removal operations where the products are removed before the expiry of the maximum contractual storage period.

The Member States may accept a shorter time limit than five working days.

7. When verifying the weight of the products during and at the end of the contractual storage for the sake of verifying the presence of the products in store, possible natural loss of weight shall not lead to a reduction of the aid and the forfeiture of the security.

8. Where the option in paragraph 5(a) applies, the presence and integrity of the seals applied shall be verified at the end of the contractual storage period. Sealing and handling costs shall be borne by the contracting party.

9. Any samples taken for verification of the quality and composition of the products shall be taken by the officials of the authority responsible for checking or in their presence.

A physical check or verification of weight shall be conducted in the presence of those officials at the weighing procedure.

For the purposes of audit trail, all stock and financial records and documents checked by those officials shall be stamped or initialled during the control visit. Where computer records are verified, a copy shall be printed and retained on the inspection file.

Article 17

Audit reporting

1. The authority responsible for checking shall draw up a control report on each on-the-spot check. The report shall describe precisely the different items checked.

The report shall set out:

- (a) the date and time of commencement of the check;
- (b) details of advance notice given;
- (c) the duration of the check;
- (d) the responsible persons present;
- (e) the nature and extent of the checks carried out, providing, in particular, details of the documents and products examined;

- (f) the findings and conclusions;
- (g) whether any follow-up is required.

The report shall be signed by the official responsible and countersigned by the contracting party or, where applicable, by the operator of the warehouse and shall be included in the payment file.

2. In case of significant irregularities affecting at least 5 % of the quantities of products covered by a single contract subject to the check, the verification shall be extended to a larger sample to be determined by the authority responsible for the checking.

3. The authority responsible for checking shall record any case of non-compliance on the basis of the criteria of gravity, extent, duration and repetition that may result in exclusion in accordance with Article 18(1), and/or in the repayment of an unduly paid aid, including interests where applicable, in accordance with paragraph 4 of that Article.

Article 18

Penalties

1. Where the competent authority of a Member State finds that a document presented by an applicant for the attribution of the rights deriving from this Regulation provides incorrect information and where the incorrect information concerned is decisive for the attribution of that right, the competent authority shall exclude the applicant from the procedure of granting aid for the same product for which the incorrect information has been given for a period of one year from the moment when a final administrative decision establishing the irregularity has been taken.

2. The exclusion provided for in paragraph 1 shall not apply if the applicant proves, to the satisfaction of the competent authority, that the situation referred to in that paragraph is due to *force majeure* or obvious error.

3. Unduly paid aid shall be recovered, with interest from the operators concerned. The rules laid down in Article 7 of Commission Implementing Regulation (EU) No 809/2014 ⁽¹⁾ shall apply *mutatis mutandis*.

4. Implementation of administrative penalties and recovery of unduly paid amounts, as provided for in this Article, are without prejudice to communication of irregularities to the Commission pursuant to Commission Regulation (EC) No 1848/2006 ⁽²⁾.

Article 19

Entry into force

This Regulation shall enter into force on the third 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, 15 October 2015.

For the Commission

The President

Jean-Claude JUNCKER

⁽¹⁾ Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ L 227, 31.7.2014, p. 69).

⁽²⁾ Commission Regulation (EC) No 1848/2006 of 14 December 2006 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field and repealing Council Regulation (EEC) No 595/91 (OJ L 355, 15.12.2006, p. 56).

ANNEX

Member State	Maximum quantities (tonnes)
Belgium	1 243
Bulgaria	696
Czech Republic	1 421
Denmark	3 334
Germany	23 626
Estonia	454
Ireland	1 835
Greece	1 880
Spain	3 635
France	20 830
Croatia	348
Italy	12 015
Cyprus	199
Latvia	348
Lithuania	1 163
Luxembourg	33
Hungary	827
Malta	30
Netherlands	8 156
Austria	1 968
Poland	7 859
Portugal	704
Romania	797
Slovenia	164
Slovakia	426
Finland	1 210
Sweden	945
United Kingdom	3 854
Total	100 000

COMMISSION DELEGATED REGULATION (EU) 2015/1853
of 15 October 2015
providing for temporary exceptional aid to farmers in the livestock sectors

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 219(1) in conjunction with Article 228 thereof,

Whereas:

- (1) Global demand growth for milk and milk products has generally decreased throughout 2014 and in the first half of 2015, notably as a result of the slowdown in export to China, the main importer of milk products in the world.
- (2) The Union market for pigmeat has deteriorated throughout 2014 and 2015. Union domestic production had increased and well performing exports declined strongly as a result of the loss of Russia as an export market. Due to the specifics of the pig market, with a system of inherent delayed adaptation of the breeding sector to reduced demand for slaughter pigs, the market situation developed into a critical oversupply and continuing price pressure going beyond the one of normal cyclical periods.
- (3) On 25 June 2015 the Russian government announced the prolongation of the ban on the import of agricultural products and foodstuffs originating in the Union for another year, up to 6 August 2016.
- (4) The milk and milk products and pigmeat sectors are therefore confronted with market disturbances due to a strong supply-demand imbalance.
- (5) As a consequence, prices of raw milk and pigmeat in the Union have further decreased and downward pressure is likely to continue, reaching unsustainable levels for many farmers, who are experiencing cash-flow and treasury difficulties. In July 2015, average raw milk prices in the Union had decreased by 12 % compared to the average July price in years 2010 to 2014, and by 20 % when compared with July 2014. In July 2015 the pig carcass price had decreased by 13 % and piglet prices by 23 % compared to the average price in July 2014. In addition, prices have reached exceptionally low levels, below the last five years' average.
- (6) In addition, yields for spring and summer crops were negatively affected in several Member States because of high temperatures in July and August and very low rainfall. The beef and veal, milk and milk products, pigmeat and sheepmeat and goatmeat sectors have been severely influenced by the increase of production costs owing to the scarcity of feed crops and pastures.
- (7) Market intervention instruments in the form of public intervention and private storage for butter and skimmed milk powder have remained available without interruption since September 2014. While those instruments have softened the deleterious effects of the fall in prices, they have not prevented the continuous decrease in milk products' prices and raw milk prices. Private storage for pigmeat has stabilised pig prices in March and April 2015 but not stimulated a substantial price recovery. Given the production cycle of pigmeat, opening a private storage aid scheme at this particular period of time would not appropriately address the present market disturbance. Similarly, market tools provided for under Regulation (EU) No 1308/2013 for other livestock sectors are not designed to alleviate regionally confined economic problems. Any additional market intervention measure that might be envisaged in the form of private storage aid, while being complementary to the targeted financial assistance, would not address the immediate need for liquidity in the livestock sectors, as it would have a medium term impact at farm level.

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

- (8) A situation has therefore arisen in which measures available under Regulation (EU) No 1308/2013 appear to be insufficient to address the market disturbance.
- (9) In order to cater for a situation where prices would further decrease and deepen market disturbances, it is essential that targeted financial assistance is addressed to the Union livestock sectors particularly affected.
- (10) Therefore, in order to address the existing market disturbance efficiently and effectively and to prevent the situation resulting from that disturbance, or its effect on the market, from continuing or deteriorating further, it is appropriate to grant aid to Member States in the form of a one-time financial grant with a view to supporting farmers in the livestock sectors who are experiencing the deepest price fall, the direct consequences of the prolongation of the Russian import ban, and the impact of the drought on feed crops.
- (11) The financial grant available to each Member State concerned should be calculated on the basis of 2014/2015 national milk quotas and national pig population, and proportionate to the observed farm gate milk and pig carcass price decrease, the degree of dependence from the Russian market and the impact of the drought on feed crop production and price. In order to ensure targeting the support to those farmers most affected by the market disturbance taking into account the limited budget resources, the Member States concerned should be given the flexibility to distribute that national amount through the most effective channels on the basis of objective and non-discriminatory criteria, such as the price fall in the sectors concerned, while ensuring that farmers in the livestock sectors are the ultimate beneficiaries of the targeted aid, and avoiding any market and competition distortion.
- (12) As the financial grant allocated to each Member State will compensate only a limited portion of the actual loss suffered by the farmers in the livestock sectors, Member States should be allowed to grant additional support to those farmers, under the same conditions of objectiveness, non-discrimination and non-distortion of competition.
- (13) In order to give them the flexibility to distribute the targeted financial assistance as required to deal with the disturbance, the Member States should be allowed to cumulate it with other support financed by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development.
- (14) As the financial grant for each Member State concerned is fixed in euro, it is necessary, in order to ensure a uniform and simultaneous application, to fix a date for the conversion of the amount allocated to Bulgaria, the Czech Republic, Denmark, Croatia, Hungary, Poland, Romania, Sweden and the United Kingdom into their national currencies. It is therefore appropriate to determine the operative event for the exchange rate in accordance with Article 106 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council ⁽¹⁾. In view of the principle referred to in Article 106(2)(b) of Regulation (EU) No 1306/2013 and the criteria laid down in Article 106(5)(c) of that Regulation, the operative event should be the date of the entry into force of this Regulation.
- (15) The aid provided for in this Regulation should be granted as a measure supporting agricultural markets in accordance with Article 4(1)(a) of Regulation (EU) No 1306/2013.
- (16) For budgetary reasons, the Union should finance the expenditure incurred by the Member States concerned in relation to the farmers in the livestock sectors only where such expenditure is made by a certain deadline.
- (17) In order to ensure transparency and the monitoring and proper administration of the amount available to them, the Member States concerned should inform the Commission of the objective criteria used to determine the methods for granting the support and the provisions taken to avoid distortion of competition.
- (18) In order to ensure that the farmers in the livestock sectors receive the aid as soon as possible, the Member States concerned should be enabled to implement this Regulation without delay. Therefore, this Regulation should enter into force on the day following that of its publication,

⁽¹⁾ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

HAS ADOPTED THIS REGULATION:

Article 1

1. Union aid of a total amount of EUR 420 000 000 shall be available to Member States to provide targeted support to farmers in the beef and veal, milk and milk products, pigmeat and sheepmeat and goatmeat sectors ('livestock sectors').

Member States shall use the amounts available to them as set out in the Annex for measures taken on the basis of objective and non-discriminatory criteria, provided that the resulting payments do not cause distortion of competition.

The measures taken by the Member States shall aim at alleviating the economic consequences resulting from the market disturbances on farmers in the livestock sectors.

Member States shall ensure that, when farmers in the livestock sectors are not the direct beneficiaries of the payments, the economic benefit of the support is passed on to them in full.

Member States' expenditure in relation to the payments under this Regulation shall only be eligible for Union aid if the support has been paid by them by 30 June 2016 at the latest.

2. In respect of Bulgaria, the Czech Republic, Denmark, Croatia, Hungary, Poland, Romania, Sweden and the United Kingdom, the operative event for the exchange rate as regards the amounts set out in the Annex shall be the date of entry into force of this Regulation.

3. Support provided for in this Regulation may be cumulated with other support financed by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development.

Article 2

Member States may grant additional support for the measures taken under Article 1 up to a maximum of 100 % of the corresponding amount as set out in the Annex, and under the same conditions of objectiveness, as laid down in Article 1.

Member States shall pay the additional support by 30 June 2016 at the latest.

Article 3

Member States shall notify the Commission of the following:

- (a) without delay and no later than 31 December 2015, the objective criteria used to determine the methods for granting targeted support and the measures taken to avoid distortion of competition;
- (b) no later than 30 September 2016, the total amounts paid and the number and type of beneficiaries.

Article 4

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

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

Done at Brussels, 15 October 2015.

For the Commission

The President

Jean-Claude JUNKER

ANNEX

Member State	EUR
Belgium	13 049 568
Bulgaria	6 004 009
Czech Republic	11 155 561
Denmark	11 103 077
Germany	69 233 789
Estonia	7 561 692
Ireland	13 734 230
Greece	2 258 253
Spain	25 526 629
France	62 899 543
Croatia	1 812 383
Italy	25 017 897
Cyprus	354 997
Latvia	8 452 333
Lithuania	12 631 869
Luxembourg	669 120
Hungary	9 505 286
Malta	119 570
Netherlands	29 937 209
Austria	7 004 590
Poland	28 946 973
Portugal	4 764 178
Romania	11 145 958
Slovenia	1 368 433
Slovakia	2 464 247

Member State	EUR
Finland	8 985 522
Sweden	8 220 625
United Kingdom	36 072 462

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1854**of 15 October 2015****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 Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽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, 15 October 2015.

*For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development*

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽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	84,4
	MA	132,6
	MK	46,1
	TR	56,6
	ZZ	79,9
0707 00 05	AL	36,9
	TR	116,7
	ZZ	76,8
0709 93 10	TR	136,8
	ZZ	136,8
0805 50 10	AR	161,3
	CL	149,0
	TR	110,2
	UY	78,7
	ZA	104,7
	ZZ	120,8
0806 10 10	BR	252,3
	EG	198,3
	MA	56,6
	MK	97,5
	TR	169,2
	ZZ	154,8
0808 10 80	AR	122,1
	CL	86,3
	MK	23,1
	NZ	155,0
	US	86,4
	ZA	144,4
	ZZ	102,9
0808 30 90	CN	65,9
	TR	135,5
	XS	95,1
	ZA	218,5
	ZZ	128,8

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COUNCIL DECISION (EU) 2015/1855

of 13 October 2015

establishing the position to be taken on behalf of the European Union within the Council for Trade-Related Aspects of Intellectual Property Rights and the General Council of the World Trade Organisation as regards the request from least-developed country Members for an extension of the transitional period under paragraph 1 of Article 66 of the Agreement on Trade-Related Aspects of Intellectual Property Rights concerning certain obligations related to pharmaceutical products, and for a waiver of the obligations under paragraphs 8 and 9 of Article 70 of that Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Pursuant to paragraph 1 of Article 66 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the 'TRIPS Agreement'), the Council for Trade-Related Aspects of Intellectual Property Rights ('Council for TRIPS') is, upon the duly motivated request by a least-developed country ('LDC') Member, to accord extensions of the transitional period.
- (2) On 14 November 2001, the Doha Ministerial Conference of the World Trade Organisation ('WTO') adopted the Declaration on the TRIPS Agreement and Public Health ('Doha Declaration'). It stated that extension of the transitional period as provided for in paragraph 1 of Article 66 of the TRIPS Agreement was without prejudice to the right of LDC Members to seek other extensions.
- (3) In accordance with paragraph 7 of the Doha Declaration and with paragraph 1 of Article 66 of the TRIPS Agreement, the Council for TRIPS, by decision of 27 June 2002, extended the transitional period during which LDC Members are not obliged to provide patent protection for pharmaceutical products until 1 January 2016.
- (4) On 8 July 2002, the General Council of the WTO adopted a closely related decision, waiving the obligations of LDC Members to grant exclusive marketing rights under paragraph 9 of Article 70 of the TRIPS Agreement. The waiver applies until 1 January 2016.
- (5) On 23 February 2015, Bangladesh, on behalf of the LDC Members group, requested an indefinite extension of the transitional period under paragraph 1 of Article 66 of the TRIPS Agreement and an indefinite waiver of the obligations under paragraphs 8 and 9 of Article 70 of that Agreement for as long as each LDC Member remains an LDC.
- (6) As there has been a separate waiver for pharmaceutical-related intellectual property rights since 2002, it is appropriate for the Union to agree to the extension of the transitional period, so as not to hinder LDC Members' access to pharmaceutical products.
- (7) Several WTO Members appear ready to grant the indefinite extension and indefinite waiver, and therefore the Union should join the consensus, in line with its continued support for the Doha Declaration. However, if the WTO Members agree rather to a further temporary extension and temporary waiver, the Union should also agree to such a solution.

- (8) It is appropriate to establish the position to be taken on the Union's behalf within the Council for TRIPS and the General Council of the WTO as regards the request from LDC Members for an extension of the transitional period under paragraph 1 of Article 66 of the TRIPS Agreement concerning certain obligations related to pharmaceutical products, and for a waiver of the obligations under paragraphs 8 and 9 of Article 70 of that Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the European Union within the Council for Trade-Related Aspects of Intellectual Property Rights and the General Council of the World Trade Organisation ('WTO'), shall be the following:

(a) to agree to:

- (i) the request from least-developed country ('LDC') Members for an extension of the transitional period under paragraph 1 of Article 66 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the 'TRIPS Agreement') concerning certain obligations related to pharmaceutical products; and
- (ii) the request to waive the obligations of LDC Members under paragraphs 8 and 9 of Article 70 of the TRIPS Agreement; and

(b) to agree either to:

- (i) the request for the extension referred to in point (a)(i) of this Article, or the waiver referred to in point (a)(ii) of this Article, or both, to apply for as long as each LDC Member remains an LDC; or
- (ii) the request for a temporary extension or a temporary waiver, or both, if that request is also acceptable to the other WTO Members.

Article 2

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

Done at Luxembourg, 13 October 2015.

For the Council
The President
J. ASSELBORN

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 321/14/COL

of 10 September 2014

amending for the one-hundredth time the procedural and substantive rules in the field of State aid by adopting new Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty [2015/1856]

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 thereof,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('Surveillance and Court Agreement'), in particular to Articles 5(2)(b) and 24 thereof and Article 1 in Part I of Protocol 3 thereof,

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 9 July 2014, the European Commission adopted 'Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty' ⁽¹⁾. The Guidelines set out the conditions under which State aid for rescuing and restructuring non-financial undertakings in difficulty can be declared compatible. They apply from 1 August 2014,

These guidelines are of relevance to 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' of Annex XV to the EEA Agreement, the Authority, after consultation with the European Commission, is to adopt new Guidelines, corresponding to those adopted by the European Commission,

HAVING consulted the European Commission,

HAVING consulted the EFTA States by letter dated 1 August 2014 on the subject,

HAS ADOPTED THIS DECISION:

Article 1

The substantive rules in the field of State aid shall be amended by introducing new Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty. The new Guidelines are annexed to this Decision and form an integral part of it.

⁽¹⁾ OJ C 249, 31.7.2014, p. 1.

Article 2

Only the English version is authentic.

Done at Brussels, 10 September 2014.

For the EFTA Surveillance Authority

Oda Helen SLETNES

President

Helga JÓNSDÓTTIR

College Member

ANNEX

**GUIDELINES ON STATE AID FOR RESCUING AND RESTRUCTURING NON-FINANCIAL UNDERTAKINGS
IN DIFFICULTY****PART III
HORIZONTAL RULES****Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ⁽¹⁾****Contents**

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⁽¹⁾ These guidelines correspond to the European Commission guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty adopted on 9 July 2014 (OJ C 249, 31.7.2014, p. 1).

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1. Introduction

- (1) In these guidelines, the EFTA Surveillance Authority ("the Authority") sets out the conditions under which State aid for rescuing and restructuring non-financial undertakings in difficulty may be considered to be compatible with the functioning of the Agreement on the European Economic Area ("the EEA Agreement") on the basis of Article 61(3)(c) of the EEA Agreement.
- (2) The Authority adopted its original Guidelines on State aid for rescuing and restructuring firms in difficulty ⁽¹⁾ in 1994. A modified version of the guidelines was adopted in 1999 ⁽²⁾. In 2004 the Authority adopted new guidelines ⁽³⁾, the validity of which was first extended until 30 November 2012 ⁽⁴⁾ and subsequently until their replacement by new rules ⁽⁵⁾.
- (3) In its Communication of 8 May 2012 on EU State aid modernisation ⁽⁶⁾, the European Commission ("the Commission") announced three objectives in respect of modernising State aid control:
 - (a) to foster sustainable, smart and inclusive growth in a competitive internal market;
 - (b) to focus Commission *ex ante* scrutiny on cases with the biggest impact on the internal market while strengthening the cooperation with Member States in State aid enforcement;
 - (c) to streamline the rules and provide for faster decisions.

⁽¹⁾ Decision No 4/94/COL (OJ L 231, 3.9.1994, p. 1, and EEA Supplement No 32, 3.9.1994, p. 1). The validity of these guidelines was first extended to 31 December 1998 and thereafter to 31 December 1999.

⁽²⁾ Decision No 329/99/COL (OJ L 274, 26.10.2000, p. 1, and EEA Supplement No 48, 26.10.2000, p. 14).

⁽³⁾ Decision No 305/04/COL (OJ L 107, 28.4.2005, p. 28, and EEA Supplement No 21, 28.4.2005, p. 1).

⁽⁴⁾ Decision No 433/09/COL (OJ L 48, 25.2.2010, p. 27, and EEA Supplement No 9, 25.2.2010, p. 12).

⁽⁵⁾ Decision No 438/12/COL (OJ L 190, 11.7.2013, p. 91, and EEA Supplement No 40, 11.7.2013, p. 15).

⁽⁶⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on EU State aid modernisation (SAM), COM(2012) 209 final.

- (4) In particular, the Communication called for a common approach to the revision of the different guidelines and frameworks, based on strengthening the internal market, promoting more effectiveness in public spending through a better contribution of State aid to objectives of common interest and greater scrutiny of the incentive effect, limiting aid to the minimum and avoiding the potential negative effects of the aid on competition and trade. The Authority also follows this approach.
- (5) The Authority has reviewed the guidelines concerning the rescue and restructuring of firms in difficulty on the basis of its experience in applying the existing rules and in line with the common approach referred to above. The revision also takes into account the Europe 2020 strategy adopted by the Commission ⁽¹⁾ and the fact that the negative effects of State aid might interfere with the need to boost productivity and growth, preserve equal opportunities for undertakings and combat national protectionism.
- (6) Rescue and restructuring aid are among the most distortive types of State aid. It is well established that successful sectors of the economy witness productivity growth not because all the undertakings present in the market gain in productivity, but rather because the more efficient and technologically advanced undertakings grow at the expense of those that are less efficient or have obsolete products. Exit of less efficient undertakings allows their more efficient competitors to grow and returns assets to the market, where they can be applied to more productive uses. By interfering with this process, rescue and restructuring aid may significantly slow economic growth in the sectors concerned.
- (7) Where parts of a failing undertaking remain essentially viable, the undertaking may be able to carry out a restructuring that leads to its exit from certain structurally loss-making activities and allows the remaining activities to be reorganised on a basis that gives a reasonable prospect of long-term viability. Such restructuring should usually be possible without State aid, through agreements with creditors or by means of insolvency or reorganisation proceedings. Modern insolvency law should help sound companies to survive, help safeguard jobs and enable suppliers to keep their customers, and allow owners to retain value in viable companies ⁽²⁾. Insolvency proceedings may also return a viable undertaking to the market by way of acquisition by third parties, whether of the undertaking as a going concern or its various production assets.
- (8) It follows that undertakings should only be eligible for State aid when they have exhausted all market options and where such aid is necessary in order to achieve a well-defined objective of common interest. Undertakings should be allowed to receive aid under these guidelines only once within 10 years (the “one time, last time” principle).
- (9) A further concern is the moral hazard problem created by State aid. Undertakings anticipating that they are likely to be rescued when they run into difficulty may embark upon excessively risky and unsustainable business strategies. In addition, the prospect of rescue and restructuring aid for a given undertaking may artificially reduce its cost of capital, giving it an undue competitive advantage in the marketplace.
- (10) State aid for rescuing and restructuring undertakings in difficulty may also undermine the internal market by shifting an unfair share of the burden of structural adjustment and the attendant social and economic problems to other Contracting Parties. This is undesirable in itself and may set off a wasteful subsidy race among Contracting parties. Such aid may also lead to the creation of entry barriers and the undermining of incentives for cross-border activities, contrary to the objectives of the internal market.
- (11) It is therefore important to ensure that aid is only allowed under conditions that mitigate its potential harmful effects and promote effectiveness in public spending. In relation to restructuring aid, the requirements of return to viability, own contribution and measures to limit distortions of competition have proved their value in terms of mitigating the potential harmful effects of such aid. They continue to apply under these guidelines, adapted as necessary to take account of the Authority's recent experience. The notion of burden sharing has been

⁽¹⁾ Communication from the Commission: EUROPE 2020 — A strategy for smart, sustainable and inclusive growth, COM(2010) 2020 final.

⁽²⁾ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee: A new European approach to business failure and insolvency, COM(2012) 742 final. See also Commission Recommendation of 12.3.2014 on a new approach to business failure and insolvency, C(2014) 1500 final, in particular recital 12.

introduced, inter alia, to better address the issue of moral hazard. In the case of rescue aid and temporary restructuring support, potential harmful effects are mitigated by means of restrictions on the duration and form of aid.

- (12) Where aid takes the form of liquidity assistance that is limited in both amount and duration, concerns about its potential harmful effects are much reduced, allowing it to be approved on less stringent conditions. While such aid could in principle be used to support an entire restructuring process, the limitation of the rescue aid period to 6 months means that this rarely happens; instead, rescue aid is commonly followed by restructuring aid.
- (13) To encourage the use of less distortive forms of aid, these guidelines introduce a new concept of “temporary restructuring support”. In common with rescue aid, temporary restructuring support can only take the form of liquidity assistance that is limited in both amount and duration. To allow it to support an entire restructuring process, however, the maximum duration of temporary restructuring support is set at 18 months. Temporary restructuring support may only be granted to SMEs ⁽¹⁾ and to smaller State-owned undertakings ⁽²⁾, which face greater challenges than large undertakings in terms of access to liquidity.
- (14) Where aid to providers of services of general economic interest (“SGEI”) in difficulty falls under these guidelines, the assessment should be carried out in accordance with the standard principles of the guidelines. However, the specific application of those principles should be adapted where necessary to take account of the specific nature of SGEI and, in particular, of the need to ensure continuity of service provision in accordance with Article 59(2) of the EEA Agreement.
- (15) In the present conditions of significant European and global overcapacity, State aid for rescuing and restructuring steel undertakings in difficulty is not justified. The steel sector should therefore be excluded from the scope of these guidelines.
- (16) In the European Union, Council Decision 2010/787/EU ⁽³⁾ sets out the conditions under which operating, social and environmental aid may be granted until 2027 to uncompetitive production in the coal sector ⁽⁴⁾. The current rules follow previous sector-specific rules applied between 2002 and 2010 ⁽⁵⁾ and 1993 and 2002 ⁽⁶⁾, which facilitated the restructuring of uncompetitive undertakings active in the coal sector. As a result, and in view of the persistent need to provide support for structural adjustment of coal production in the Union, the current rules are stricter than previous ones and require the permanent cessation of production and sale of aided coal production and the definitive closure of uncompetitive production units by 31 December 2018 at the latest. In application of those rules, several Member States of the European Union have adopted and are implementing plans leading to the definitive closure of coal mines in difficulty operated by undertakings in this sector ⁽⁷⁾. The Authority notes that Decision 2010/787/EU does not apply to the EEA/EFTA States. The Authority has decided to exclude the coal sector from the scope of these guidelines, given its special characteristics.
- (17) The Authority’s experience with the rescue and restructuring of financial institutions during the financial and economic crisis has shown that specific rules applicable to the financial sector can be beneficial in view of the specific characteristics of financial institutions and financial markets. Undertakings covered by dedicated rules for the financial sector are therefore excluded from the scope of these guidelines.

⁽¹⁾ For the purposes of these guidelines, “SME”, “small enterprise” and “medium-sized enterprise” have the meanings given to those terms in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36). The Authority Guidelines on aid to micro, small and medium-sized enterprises (SMEs), adopted by Decision 94/06/COL (OJ L 36, 5.2.2009, p. 62), incorporate the definition set out in the Commission Recommendation. A “large undertaking” means an undertaking that is not an SME.

⁽²⁾ For the purposes of these guidelines, to avoid discrimination between public and private ownership of undertakings, “smaller State-owned undertakings” are economic units with an independent power of decision that would qualify as small or medium-sized enterprises under Recommendation 2003/361/EC but for the fact that 25 % or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies.

⁽³⁾ Council Decision 2010/787/EU of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (OJ L 336, 21.12.2010, p. 24).

⁽⁴⁾ OJ L 336, 21.12.2010, p. 24.

⁽⁵⁾ Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry (OJ L 205, 2.8.2002, p. 1).

⁽⁶⁾ Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry (OJ L 329, 30.12.1993, p. 12).

⁽⁷⁾ See Commission Decisions in cases N 175/10 — Slovenia, SA 33013 — Poland, N 708/07 — Germany, SA 33033 — Romania and SA 33861 — Hungary.

2. Scope of the guidelines

2.1. Sectoral scope

- (18) The Authority will apply these guidelines to aid for all undertakings in difficulty, except to those operating in the coal sector ⁽¹⁾ or the steel sector ⁽²⁾ and those covered by specific rules for financial institutions ⁽³⁾, without prejudice to any specific rules relating to undertakings in difficulty in a particular sector ⁽⁴⁾.

2.2. Material scope: Meaning of “undertaking in difficulty”

- (19) A Contracting Party which proposes to grant aid in accordance with these guidelines to an undertaking must demonstrate on objective grounds that the undertaking concerned is in difficulty within the meaning of this section, subject to the specific provisions for rescue aid and temporary restructuring support under point 29.
- (20) For the purposes of these guidelines, an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. Therefore, an undertaking is considered to be in difficulty if at least one of the following circumstances occurs:
- (a) In the case of a limited liability company ⁽⁵⁾, where more than half of its subscribed share capital ⁽⁶⁾ has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital.
 - (b) In the case of a company where at least some members have unlimited liability for the debt of the company ⁽⁷⁾, where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses.
 - (c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.
 - (d) In the case of an undertaking that is not an SME, where, for the past 2 years:
 - i. the undertaking’s book debt to equity ratio has been greater than 7,5 and
 - ii. the undertaking’s EBITDA interest coverage ratio has been below 1,0.
- (21) A newly created undertaking is not eligible for aid under these guidelines even if its initial financial position is insecure. This is the case, for instance, where a new undertaking emerges from the liquidation of a previous undertaking or merely takes over that undertaking’s assets. An undertaking will in principle be considered as newly created for the first 3 years following the start of operations in the relevant field of activity. Only after that period will it become eligible for aid under these guidelines, provided that:
- (a) it qualifies as an undertaking in difficulty within the meaning of these guidelines, and
 - (b) it does not form part of a larger business group ⁽⁸⁾ except under the conditions laid down in point 22.

⁽¹⁾ As defined in Decision 2010/787/EU.

⁽²⁾ As defined in Annex II to the Guidelines on regional State aid for 2014-2020, Decision No 407/13/COL (OJ L 166, 5.6.2014, p. 44, and EEA Supplement No 33, 5.6.2014, p. 1).

⁽³⁾ Guidelines on the application, from 1 December 2013, of the State aid rules to support measures in favour of banks in the context of the financial crisis (“2013 Banking Guidelines”), Decision No 464/13/COL (OJ L 264, 4.9.2014, p. 6).

⁽⁴⁾ Specific rules of this nature exist for the rail freight sector — see Guidelines on State aid for railway undertakings, Decision No 788/08/COL (OJ L 105, 21.4.2011, p. 32, and EEA Supplement No 23, 21.4.2011, p. 1).

⁽⁵⁾ This refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

⁽⁶⁾ Where relevant, “share capital” includes any share premium.

⁽⁷⁾ This refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.

⁽⁸⁾ To determine whether a company is independent or forms part of a group, the criteria laid down in Annex I to Recommendation 2003/361/EC will be taken into account.

- (22) A company belonging to or being taken over by a larger business group is not normally eligible for aid under these guidelines, except where it can be demonstrated that the company's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself. Where a company in difficulty creates a subsidiary, the subsidiary, together with the company in difficulty controlling it, will be regarded as a group and may receive aid under the conditions laid down in this point.
- (23) Given that its very existence is in danger, an undertaking in difficulty cannot be considered an appropriate vehicle for promoting other public policy objectives until such time as its viability is assured. Consequently, the Authority considers that aid to undertakings in difficulty may contribute to the development of economic activities without adversely affecting trade to an extent contrary to the common interest only if the conditions set out in these guidelines are met, even if such aid is granted in accordance with a scheme that has already been authorised.
- (24) A number of regulations and communications in the field of State aid and elsewhere therefore prohibit undertakings in difficulty from receiving aid. For the purposes of such regulations and communications, and unless otherwise defined therein:
- (a) "undertakings in difficulty" or "firms in difficulty" should be understood to mean undertakings in difficulty within the meaning of point 20 of these guidelines, and
 - (b) an SME that has been in existence for less than 3 years will not be considered to be in difficulty unless it meets the condition set out in point 20(c).

2.3. Rescue aid, restructuring aid and temporary restructuring support

- (25) These guidelines deal with three types of aid: rescue aid, restructuring aid and temporary restructuring support.
- (26) Rescue aid is by nature urgent and temporary assistance. Its primary objective is to make it possible to keep an ailing undertaking afloat for the short time needed to work out a restructuring or liquidation plan. The general principle is that rescue aid makes it possible to provide temporary support to an undertaking facing a serious deterioration of its financial situation, involving an acute liquidity crisis or technical insolvency. Such temporary support should allow time to analyse the circumstances which gave rise to the difficulties and to develop an appropriate plan to remedy those difficulties.
- (27) Restructuring aid often involves more permanent assistance and must restore the long-term viability of the beneficiary on the basis of a feasible, coherent and far-reaching restructuring plan, while at the same time allowing for adequate own contribution and burden sharing and limiting the potential distortions of competition.
- (28) Temporary restructuring support is liquidity assistance designed to support the restructuring of an undertaking by providing the conditions needed for the beneficiary to design and implement appropriate action to restore its long-term viability. Temporary restructuring support may only be granted to SMEs and smaller State-owned undertakings.
- (29) By way of derogation to point 19, rescue aid as well as, in the case of SMEs and smaller State-owned undertakings, temporary restructuring support may also be granted to undertakings that are not in difficulty within the meaning of point 20 but that are facing acute liquidity needs due to exceptional and unforeseen circumstances.

2.4. Aid to cover the social costs of restructuring

- (30) Restructuring normally entails reductions in or abandonment of the affected activities. Such retrenchments are often necessary in the interests of rationalisation and efficiency, quite apart from any capacity reductions that may be required as a condition for granting aid. Regardless of the underlying reasons, such measures will generally lead to reductions in the beneficiary's workforce.

- (31) Contracting Parties' labour legislation may include general social security schemes under which certain benefits are paid directly to redundant employees. Such schemes are not to be regarded as State aid falling within the scope of Article 61(1) of the EEA Agreement.
- (32) Besides such social security benefits for employees, general social support schemes frequently provide for the government to cover the cost of benefits which an undertaking grants to redundant workers and which go beyond its statutory or contractual obligations. Where such schemes are available generally without sectoral limitations to any worker meeting predefined and automatic eligibility conditions, they are not deemed to involve aid under Article 61(1) of the EEA Agreement for undertakings carrying out restructuring. On the other hand, if the schemes are used to support restructuring in particular industries, they may well involve aid because of the selective way in which they are used ⁽¹⁾.
- (33) The obligations an undertaking itself bears under employment legislation or collective agreements with trade unions to provide certain benefits to redundant workers, such as redundancy payments or measures to increase their employability, are part of the normal costs of business which an undertaking must meet from its own resources. That being so, any contribution by the State to those costs must be counted as aid. This is true regardless of whether the payments are made directly to the undertaking or are administered through a government agency to the employees.
- (34) The Authority has no *a priori* objection to such aid when it is granted to an undertaking in difficulty, for it brings economic benefits above and beyond the interests of the undertaking concerned, facilitating structural change and reducing hardship.
- (35) Besides providing direct financial support, such aid is commonly provided in connection with a particular restructuring scheme for training, counselling and practical help with finding alternative employment, assistance with relocation, and professional training and assistance for employees wishing to start new businesses. Given that such measures, which increase the employability of redundant workers, further the objective of reducing social hardship, the Authority consistently takes a favourable view of such aid when it is granted to undertakings in difficulty.

3. Compatibility with the functioning of the EEA Agreement

- (36) The circumstances in which State aid to undertakings in difficulty may be approved as compatible with the functioning of the EEA Agreement are set out in Article 61(2) and (3) of the EEA Agreement. Under Article 61(3)(c), the Authority has the power to authorise "aid to facilitate the development of certain economic activities (...) where such aid does not adversely affect trading conditions to an extent contrary to the common interest". In particular, this could be the case where the aid is necessary to correct disparities caused by market failures or to ensure economic and social cohesion.
- (37) Aid measures in favour of large undertakings must be notified individually to the Authority. Under certain conditions, the Authority may authorise schemes for smaller amounts of aid to SMEs and smaller State-owned undertakings: those conditions are set out in Chapter 6 ⁽²⁾.
- (38) In assessing whether notified aid can be declared compatible with the functioning of the EEA Agreement, the Authority will consider whether each of the following criteria is met:
- (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) of the EEA Agreement (section 3.1).
 - (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 3.2).

⁽¹⁾ In its judgment in *Case France v Commission*, C-241/94, EU:C:1996:353 (Kimberly Clark Sopalin), the Court of Justice confirmed that the system of financing on a discretionary basis by the French authorities, through the National Employment Fund, was liable to place certain undertakings in a more favourable situation than others and thus to qualify as aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union. The Court's judgment did not call into question the Commission's conclusion that the aid was compatible with the internal market.

⁽²⁾ For the avoidance of doubt, this does not prevent Contracting Parties from notifying individually aid to SMEs and smaller State-owned undertakings. In such cases, the Authority will assess the aid under the principles established in these guidelines.

- (c) appropriateness of the aid measure: an aid measure will not be considered compatible if other, less distortive measures allow the same objective to be achieved (section 3.3).
 - (d) incentive effect: it must be shown that in the absence of the aid, the beneficiary would have been restructured, sold or wound up in a way that would not have achieved the objective of common interest (section 3.4).
 - (e) proportionality of the aid (aid limited to the minimum): the aid must not exceed the minimum needed to achieve the objective of common interest (section 3.5).
 - (f) avoidance of undue negative effects on competition and trade between Contracting Parties: the negative effects of aid must be sufficiently limited, so that the overall balance of the measure is positive (section 3.6).
 - (g) transparency of aid: Contracting Parties, the Authority, economic operators and the public must have easy access to all relevant acts and pertinent information about the aid awarded (section 3.7).
- (39) If any of the above criteria is not met, the aid will not be considered to be compatible with the functioning of the EEA Agreement.
- (40) The overall balance of certain categories of schemes may also be made subject to a requirement of *ex post* evaluation, as described in points 118, 119 and 120 of these guidelines.
- (41) Moreover, if an aid measure or the conditions attached to it (including its financing method when that forms an integral part of the aid measure) entails a non-severable violation of EEA law, the aid cannot be declared compatible with the functioning of the EEA Agreement ⁽¹⁾.
- (42) In this Chapter, the Authority sets out the conditions under which it will assess each of the criteria referred to in point 38.

3.1. Contribution to an objective of common interest

- (43) Given the importance of market exit to the process of productivity growth, merely preventing an undertaking from exiting the market does not constitute a sufficient justification for aid. Clear evidence should be provided that aid pursues an objective of common interest, in that it aims to prevent social hardship or address market failure (section 3.1.1) by restoring the long-term viability of the undertaking (section 3.1.2).

3.1.1. Demonstration of social hardship or market failure

- (44) Contracting Parties must demonstrate that the failure of the beneficiary would be likely to involve serious social hardship or severe market failure, in particular by showing that:
- (a) the unemployment rate in the region or regions concerned (at NUTS level 2) is either:
 - i. higher than the EEA average, persistent and accompanied by difficulty in creating new employment in the region or regions concerned, or
 - ii. higher than the national average, persistent and accompanied by difficulty in creating new employment in the region(s) concerned;
 - (b) there is a risk of disruption to an important service which is hard to replicate and where it would be difficult for any competitor simply to step in (for example, a national infrastructure provider);
 - (c) the exit of an undertaking with an important systemic role in a particular region or sector would have potential negative consequences (for example as a supplier of an important input);

⁽¹⁾ See for instance Case *Germany v Commission*, C-156/98, EU:C:2000:467, paragraph 78 and Case *Régie Networks v Rhone Alpes Bourgogne*, C-333/07, EU:C:2008:764, paragraphs 94-116.

- (d) there is a risk of interruption to the continuity of provision of an SGEL;
- (e) the failure or adverse incentives of credit markets would push an otherwise viable undertaking into bankruptcy;
- (f) the exit of the undertaking concerned from the market would lead to an irremediable loss of important technical knowledge or expertise; or
- (g) similar situations of severe hardship duly substantiated by the Contracting Party concerned would arise.

3.1.2. Restructuring plan and return to long-term viability

- (45) Restructuring aid within the scope of these guidelines cannot be limited to financial aid designed to make good past losses without tackling the reasons for those losses. In the case of restructuring aid, therefore, the Authority will require that the Contracting Party concerned submit a feasible, coherent and far-reaching restructuring plan to restore the beneficiary's long-term viability ⁽¹⁾. Restructuring may involve one or more of the following elements: the reorganisation and rationalisation of the beneficiary's activities on to a more efficient basis, typically involving withdrawal from loss-making activities, restructuring of those existing activities that can be made competitive again and, possibly, diversification towards new and viable activities. It typically also involves financial restructuring in the form of capital injections by new or existing shareholders and debt reduction by existing creditors.
- (46) The granting of the aid must therefore be conditional on implementation of the restructuring plan, which must be endorsed by the Authority in all cases of ad hoc aid.
- (47) The restructuring plan must restore the long-term viability of the beneficiary within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions that should exclude any further State aid not covered by the restructuring plan. The restructuring period should be as short as possible. The restructuring plan must be submitted in all relevant detail to the Authority and must include, in particular, the information set out in this section 3.1.2.
- (48) The restructuring plan must identify the causes of the beneficiary's difficulties and the beneficiary's own weaknesses, and outline how the proposed restructuring measures will remedy the beneficiary's underlying problems.
- (49) The restructuring plan must provide information on the business model of the beneficiary, demonstrating how the plan will foster its long-term viability. This should include, in particular, information on the beneficiary's organisational structure, funding, corporate governance and all other relevant aspects. The restructuring plan should assess whether the beneficiary's difficulties could have been avoided through appropriate and timely management action and, where that is the case, should demonstrate that appropriate management changes have been made. Where the beneficiary's difficulties stem from flaws in its business model or corporate governance system, appropriate changes will be required.
- (50) The expected results of the planned restructuring should be demonstrated in a baseline scenario as well as in a pessimistic (or worst-case) scenario. For this purpose, the restructuring plan should take account, inter alia, of the current state and future prospects of supply and demand on the relevant product market and the main cost drivers of the industry, reflecting baseline and adverse scenario assumptions, as well as the beneficiary's specific strengths and weaknesses. Assumptions should be compared with appropriate sector-wide benchmarks and should, where appropriate, be adapted to cater for country- and sector-specific circumstances. The beneficiary should provide a market survey and a sensitivity analysis identifying the driving parameters of the beneficiary's performance and the main risk factors going forward.
- (51) The beneficiary's return to viability should derive mainly from internal measures, entailing in particular withdrawal from activities which would remain structurally loss-making in the medium term. The return to viability must not be dependent on optimistic assumptions about external factors such as variation in prices,

⁽¹⁾ An indicative model restructuring plan is set out in Annex II.

demand or supply of scarce resources, nor can it be linked to the beneficiary outperforming the market and its competitors or entering and expanding into new activities where it has no experience and track record (unless duly justified and required for reasons of diversification and viability).

- (52) Long-term viability is achieved when an undertaking is able to provide an appropriate projected return on capital after having covered all its costs including depreciation and financial charges. The restructured undertaking should be able to compete in the marketplace on its own merits.

3.2. *Need for State intervention*

- (53) Contracting Parties that intend to grant restructuring aid must provide a comparison with a credible alternative scenario not involving State aid, demonstrating how the relevant objective or objectives in section 3.1.1 would not be attained, or would be attained to a lesser degree, in the case of that alternative scenario. Such scenarios may, for example, include debt reorganisation, asset disposal, private capital raising, sale to a competitor or break-up, in each case either through entry into an insolvency or reorganisation procedure or otherwise.

3.3. *Appropriateness*

- (54) Contracting Parties should ensure that aid is awarded in the form that allows the objective to be achieved in the least distortive way. In the case of undertakings in difficulty, that can be achieved by ensuring that aid is in the appropriate form to address the beneficiary's difficulties and that it is properly remunerated. This section sets out the requirements that must be complied with in order to demonstrate that an aid measure is appropriate.

3.3.1. *Rescue aid*

- (55) In order to be approved by the Authority, rescue aid must fulfil the following conditions:
- (a) it must consist of temporary liquidity support in the form of loan guarantees or loans;
 - (b) the financial cost of the loan or, in the case of loan guarantees, the total financial cost of the guaranteed loan, including the interest rate of the loan and the guarantee premium, must comply with point 56;
 - (c) except as otherwise specified in point (d) below, any loan must be reimbursed and any guarantee must come to an end within a period of not more than 6 months after disbursement of the first instalment to the beneficiary;
 - (d) Contracting Parties must undertake to communicate to the Authority, not later than 6 months after the rescue aid measure has been authorised or, in the case of non-notified aid, not later than 6 months after disbursement of the first instalment to the beneficiary;
 - i. proof that the loan has been reimbursed in full and/or that the guarantee has been terminated; or
 - ii. provided that the beneficiary qualifies an undertaking in difficulty (and not only faces acute liquidity needs in the circumstances foreseen in point 29 above), a restructuring plan as set out in section 3.1.2; upon submission of a restructuring plan, the authorisation of the rescue aid will be automatically extended until the Authority reaches its final decision on the restructuring plan, unless the Authority decides that such extension is not justified or should be limited in time or scope; once a restructuring plan for which aid has been requested has been put in place and is being implemented, all further aid will be considered as restructuring aid; or
 - iii. a liquidation plan setting out in a substantiated way the steps leading to the liquidation of the beneficiary within a reasonable time frame without further aid.

- (e) Rescue aid may not be used to finance structural measures, such as acquisition of significant businesses or assets, unless they are required during the rescue period for the survival of the beneficiary.
- (56) The level of remuneration that a beneficiary is required to pay for rescue aid should reflect the underlying creditworthiness of the beneficiary, discounting the temporary effects of both liquidity difficulties and State support, and should provide incentives for the beneficiary to repay the aid as soon as possible. The Authority will therefore require remuneration to be set at a rate not less than the reference rate set out in the Reference Rate Guidelines ⁽¹⁾ for weak undertakings offering normal levels of collateralisation (currently 1-year IBOR plus 400 basis points) ⁽²⁾ and to be increased by at least 50 basis points for rescue aid the authorisation of which is extended in accordance with point 55(d)ii.
- (57) Where there is evidence that the rate identified in point 56 does not represent an appropriate benchmark, for example where it differs substantially from the market pricing of similar instruments recently issued by the beneficiary, the Authority may adapt the required level of remuneration accordingly.

3.3.2. Restructuring aid

- (58) Contracting Parties are free to choose the form that restructuring aid takes. However, in doing so, they should ensure that the instrument chosen is appropriate to the issue that it is intended to address. In particular, Contracting Parties should assess whether beneficiaries' problems relate to liquidity or solvency and select appropriate instruments to address the problems identified. For instance, in the case of solvency problems, increasing assets through recapitalisation might be appropriate, whereas in a situation where the problems mainly relate to liquidity, assistance through loans or loan guarantees might be sufficient.

3.4. Incentive effect

- (59) Contracting Parties that intend to grant restructuring aid must demonstrate that in the absence of the aid, the beneficiary would have been restructured, sold or wound up in a way that would not have achieved the objective of common interest identified in section 3.1.1. This demonstration can form part of the analysis presented in accordance with point 53.

3.5. Proportionality of the aid/aid limited to the minimum

3.5.1. Rescue aid

- (60) Rescue aid must be restricted to the amount needed to keep the beneficiary in business for 6 months. In determining that amount, regard will be had to the outcome of the formula set out in Annex I. Any aid exceeding the result of that calculation will only be authorised if it is duly justified by the provision of a liquidity plan setting out the beneficiary's liquidity needs for the coming 6 months.

3.5.2. Restructuring aid

- (61) The amount and intensity of restructuring aid must be limited to the strict minimum necessary to enable restructuring to be undertaken, in the light of the existing financial resources of the beneficiary, its shareholders or the business group to which it belongs. In particular, a sufficient level of own contribution to the costs of the restructuring and burden sharing must be ensured, as set out in more detail in this section (3.5.2). Such assessment will take account of any rescue aid granted beforehand.

⁽¹⁾ Rules regarding applicable rates: reference and discount rates ("Reference Rate Guidelines"), Decision No 788/08/COL.

⁽²⁾ For the avoidance of doubt, the note regarding remuneration of rescue aid to the table of loan margins contained in that communication will not apply to aid assessed under these guidelines.

3.5.2.1. Own contribution

- (62) A significant contribution ⁽¹⁾ to the restructuring costs is required from the own resources of the aid beneficiary, its shareholders or creditors or the business group to which it belongs, or from new investors. Such own contribution should normally be comparable to the aid granted in terms of effects on the solvency or liquidity position of the beneficiary. For example, where the aid to be granted enhances the beneficiary's equity position, the own contribution should similarly include measures that are equity-enhancing, such as raising fresh equity from incumbent shareholders, the write-down of existing debt and capital notes or the conversion of existing debt to equity, or the raising of new external equity on market terms. The Authority will take account of the extent to which own contribution has a comparable effect to the aid granted when assessing the necessary extent of the measures to limit distortions of competition in accordance with point 90.
- (63) Contributions must be real, that is to say actual, excluding future expected profits such as cash flow, and must be as high as possible. Contribution by the State or a public company may only be taken into account provided that it is free of aid. That could be the case, in particular, where the contribution is made by an entity which is independent from the aid-granting authority (such as a State-owned bank or public holding company) and that takes the decision to invest on the basis of its own commercial interests ⁽²⁾.
- (64) Own contribution will normally be considered to be adequate if it amounts to at least 50 % of the restructuring costs. In exceptional circumstances and in cases of particular hardship, which must be demonstrated by the Contracting Party, the Authority may accept a contribution that does not reach 50 % of the restructuring costs, provided that the amount of that contribution remains significant.

3.5.2.2. Burden sharing

- (65) Where State support is given in a form that enhances the beneficiary's equity position, for example where the State provides grants, injects capital or writes off debt, this can have the effect of protecting shareholders and subordinated creditors from the consequences of their choice to invest in the beneficiary. That can create moral hazard and undermine market discipline. Consequently, aid to cover losses should only be granted on terms which involve adequate burden sharing by existing investors.
- (66) Adequate burden sharing will normally mean that incumbent shareholders and, where necessary, subordinated creditors must absorb losses in full. Subordinated creditors should contribute to the absorption of losses either via conversion into equity or write-down of the principal of the relevant instruments. Therefore, State intervention should only take place after losses have been fully accounted for and attributed to the existing shareholders and subordinated debt holders ⁽³⁾. In any case, cash outflows from the beneficiary to holders of equity or subordinated debt should be prevented during the restructuring period to the extent legally possible, unless that would disproportionately affect those that have injected fresh equity.
- (67) Adequate burden sharing will also mean that any State aid that enhances the beneficiary's equity position should be granted on terms that afford the State a reasonable share of future gains in value of the beneficiary, in view of the amount of State equity injected in comparison with the remaining equity of the company after losses have been accounted for.
- (68) The Authority may allow exceptions from full implementation of the measures set out in point 66 where those measures would otherwise lead to disproportionate results. Such situations could include cases where the aid amount is small in comparison with the own contribution, or the Contracting Party concerned demonstrates that subordinated creditors would receive less in economic terms than under normal insolvency proceedings and if no State aid were granted.
- (69) The Authority will not systematically require a contribution by senior debt holders to restoring a beneficiary's equity position. However, it may treat any such contribution as grounds for a reduction in the necessary extent of measures to limit distortions of competition in accordance with point 90.

⁽¹⁾ This contribution must not contain any aid. This is not the case, for instance, where a loan carries an interest-rate subsidy or is backed by government guarantees containing elements of aid.

⁽²⁾ See for example Commission Decision in Case SA.32698 *Air Åland*.

⁽³⁾ For this purpose, the firm's balance-sheet situation will have to be established at the time of the provision of the aid.

3.6. Negative effects

3.6.1. "One time, last time" principle

- (70) In order to reduce moral hazard, excessive risk-taking incentives and potential competitive distortions, aid should be granted to undertakings in difficulty in respect of only one restructuring operation. This is referred to as the "one time, last time" principle. The need for an undertaking that has already received aid pursuant to these guidelines to obtain further such aid demonstrates that the undertaking's difficulties are either of a recurrent nature or were not dealt with adequately when the earlier aid was granted. Repeated State interventions are likely to lead to problems of moral hazard and distortions of competition that are contrary to the common interest.
- (71) When planned rescue or restructuring aid is notified to the Authority, the Contracting Party must specify whether the undertaking concerned has already received rescue aid, restructuring aid or temporary restructuring support in the past, including any such aid granted before the entry into force of these guidelines and any non-notified aid ⁽¹⁾. If so, and where less than 10 years have elapsed since the aid was granted or the restructuring period came to an end or implementation of the restructuring plan was halted (whichever occurred the latest), the Authority will not allow further aid pursuant to these guidelines.
- (72) Exceptions to that rule are permitted in the following cases:
- (a) where restructuring aid follows the granting of rescue aid as part of a single restructuring operation;
 - (b) where rescue aid or temporary restructuring support has been granted in accordance with these guidelines and that aid was not followed by restructuring aid, if:
 - i. it could reasonably have been believed that the beneficiary would be viable in the long term when the aid pursuant to these guidelines was granted, and
 - ii. new rescue or restructuring aid becomes necessary after at least 5 years due to unforeseeable circumstances ⁽²⁾ for which the beneficiary is not responsible;
 - (c) in exceptional and unforeseeable circumstances for which the beneficiary is not responsible.
- (73) The application of the one time, last time principle will in no way be affected by any changes in ownership of the beneficiary following the grant of aid or by any judicial or administrative procedure which has the effect of putting its balance sheet on a sounder footing, reducing its liabilities or wiping out its previous debts where it is the same undertaking that is continuing in business.
- (74) Where a business group has received rescue aid, restructuring aid or temporary restructuring support, the Authority will normally not allow further rescue or restructuring aid to the group itself or any of the entities belonging to the group unless 10 years have elapsed since the aid was granted or the restructuring period came to an end or implementation of the restructuring plan was halted, whichever occurred the latest. Where an entity belonging to a business group has received rescue aid, restructuring aid or temporary restructuring support, the group as a whole as well as the other entities of the group remain eligible for rescue or restructuring aid (subject to compliance with the other provisions of these guidelines), with the exception of the earlier beneficiary of the aid. Contracting Parties must demonstrate that no aid will be passed on from the group or other group entities to the earlier beneficiary of the aid.
- (75) Where an undertaking takes over assets of another undertaking, and in particular one that has been the subject of one of the procedures referred to in point 73 or of collective insolvency proceedings brought under national law and has already received rescue or restructuring aid or temporary restructuring support, the purchaser is not

⁽¹⁾ With regard to non-notified aid, the Authority will take account in its appraisal of the possibility that the aid could have been declared compatible with the functioning of the EEA Agreement otherwise than as rescue or restructuring aid.

⁽²⁾ An unforeseeable circumstance is one which could in no way be anticipated by the beneficiary's management when the restructuring plan was drawn up and which is not due to negligence or errors of the beneficiary's management or decisions of the group to which it belongs.

subject to the “one time, last time” principle, provided that there is no economic continuity between the old undertaking and the purchaser ⁽¹⁾.

3.6.2. Measures to limit distortions of competition

- (76) When restructuring aid is granted, measures must be taken to limit distortions of competition, so that adverse effects on trading conditions are minimised as much as possible and positive effects outweigh any adverse ones. The Authority will assess the appropriate form and scope of such measures in accordance with this section (3.6.2).

3.6.2.1. Nature and form of measures to limit distortions of competition

- (77) Without prejudice to point 84, measures to limit distortions of competition will usually take the form of structural measures. Where appropriate to address the distortions of competition in particular cases, the Authority may accept behavioural measures other than those set out in point 84 or market opening measures in place of some or all of the structural measures that would otherwise be required.

Structural measures — divestments and reduction of business activities

- (78) On the basis of an assessment in accordance with the criteria for calibration of measures to limit distortions of competition (set out in section 3.6.2.2), undertakings benefiting from restructuring aid may be required to divest assets or reduce capacity or market presence. Such measures should take place in particular in the market or markets where the undertaking will have a significant market position after restructuring, in particular those where there is significant excess capacity. Divestments to limit distortions of competition should take place without undue delay, taking into account the type of asset being divested and any obstacles to its disposal ⁽²⁾, and in any case within the duration of the restructuring plan. Divestments, write-offs and closure of loss-making activities which would at any rate be necessary to restore long-term viability will generally not be considered sufficient, in the light of the principles set out in section 3.6.2.2, to address distortions of competition.
- (79) In order for such measures to strengthen competition and contribute to the internal market, they should favour the entry of new competitors, the expansion of existing small competitors or cross-border activity. Retrenchment within national borders and fragmentation of the internal market should be avoided.
- (80) Measures to limit distortions of competition should not lead to a deterioration in the structure of the market. Structural measures should therefore normally take the form of divestments on a going concern basis of viable stand-alone businesses that, if operated by a suitable purchaser, can compete effectively in the long term. In the event that such an entity is not available, the beneficiary could carve out and subsequently divest an existing and appropriately funded activity, creating a new and viable entity that should be able to compete in the market. Structural measures that take the form of divestment of assets alone and do not involve the creation of a viable entity able to compete in the market are less effective in preserving competition and will therefore only be accepted in exceptional cases where the Contracting Party concerned demonstrates that no other form of structural measures would be feasible or that other structural measures would seriously jeopardise the economic viability of the undertaking.
- (81) The beneficiary should facilitate divestitures, for example through ring-fencing of activities and by agreeing not to solicit clients of the divested business.

⁽¹⁾ See Joined Cases *Italy and SIM 2 Multimedia v Commission*, C-328/99 and C-399/00, EU:C:2003:252; Joined Cases *Greece and others v Commission*, T-415/05, T-416/05 and T-423/05, EU:T:2010:386; Case *Ryanair v Commission*, T-123/09, EU:T:2012:164 (confirmed on appeal by the European Court of Justice in Case C-287/12 P, EU:C:2013:395).

⁽²⁾ For example, sale of a portfolio or of individual assets may be possible, and should therefore take place, in a significantly shorter time than sale of a business as a going concern, particularly when that business must first be carved out from a wider entity.

- (82) Where it appears that it may be difficult to find a buyer for the assets which a beneficiary proposes to divest, it will be required, as soon as it becomes aware of such difficulties, to identify alternative divestments or measures to be taken in relation to the market or markets concerned if the primary divestment fails.

Behavioural measures

- (83) Behavioural measures aim at ensuring that aid is used only to finance the restoration of long-term viability and that it is not abused to prolong serious and persistent market structure distortions or to shield the beneficiary from healthy competition.
- (84) The following behavioural measures must be applied in all cases, to avoid undermining the effects of structural measures, and should in principle be imposed for the duration of the restructuring plan:
- (a) Beneficiaries must be required to refrain from acquiring shares in any company during the restructuring period, except where indispensable to ensure the long-term viability of the beneficiary. This aims at ensuring that the aid is used to restore viability and not to fund investments or to expand the beneficiary's presence in existing or new markets. Upon notification, any such acquisitions may be authorised by the Authority as part of the restructuring plan;
 - (b) Beneficiaries must be required to refrain from publicising State support as a competitive advantage when marketing their products and services.
- (85) Under exceptional circumstances, it may be necessary to require beneficiaries to refrain from engaging in commercial behaviour aimed at a rapid expansion of their market share relating to specific products or geographic markets by offering terms (for example as regards prices and other commercial conditions) which cannot be matched by competitors that are not in receipt of State aid. Such restrictions will only be applied where no other remedy, structural or behavioural, can adequately address the competition distortions identified, and where such a measure will not itself restrict competition in the market concerned. For the purposes of applying such a requirement, the Authority will compare the terms offered by the beneficiary with those offered by credible competitors with a substantial market share.

Market opening measures

- (86) In its overall assessment, the Authority will consider possible commitments from the Contracting Party concerning the adoption of measures, either by the Contracting Party itself or by the beneficiary, that are aimed at promoting more open, sound and competitive markets, for instance by favouring entry and exit. This could in particular include measures to open up certain markets directly or indirectly linked to the beneficiary's activities to other operators in the EEA, in compliance with EEA law. Such initiatives may replace other measures to limit distortions of competition that would normally be required of the beneficiary.

3.6.2.2. Calibration of measures to limit distortions of competition

- (87) Measures to limit distortions of competition should address both moral hazard concerns and possible distortions in the markets where the beneficiary operates. The extent of such measures will depend on several factors, such as, in particular: the size and nature of the aid and the conditions and circumstances under which it was granted; the size ⁽¹⁾ and the relative importance of the beneficiary in the market and the characteristics of the market concerned; and the extent to which moral hazard concerns remain following the application of own contribution and burden-sharing measures.
- (88) In particular, the Authority will consider the size, where appropriate by means of approximations, and nature of the aid both in absolute terms and in relation to the beneficiary's assets and the size of the market as a whole.

⁽¹⁾ In this respect the Authority may also take into account whether the beneficiary is a medium-sized or a large enterprise.

- (89) As regards the size and the relative importance of the beneficiary on its market or markets both before and after the restructuring, the Authority will assess them in order to evaluate the likely effects of the aid on those markets as compared to the likely outcome in the absence of State aid. The measures will be tailored to market characteristics ⁽¹⁾ to make sure that effective competition is preserved.
- (90) With regard to moral hazard concerns, the Authority will also assess the degree of own contribution and burden sharing. Greater degrees of own contribution and burden sharing than those required under section 3.5.2, by limiting the amount of aid and moral hazard, may reduce the necessary extent of measures to limit distortions of competition.
- (91) Since restructuring activities may threaten to undermine the internal market, measures to limit distortions of competition that help to ensure that national markets remain open and contestable will be considered positively.
- (92) Measures limiting distortions of competition should not compromise the prospects of the beneficiary's return to viability, which might be the case if a measure is very costly to execute or, in exceptional cases duly substantiated by the Contracting Party concerned, would reduce the activity of the beneficiary to such an extent that its return to viability would be compromised, nor should they come at the expense of consumers and competition.
- (93) Aid to cover the social costs of restructuring of the type described in points 32 to 35 must be clearly identified in the restructuring plan, since aid for social measures exclusively for the benefit of redundant employees will be disregarded for the purposes of determining the extent of measures to limit distortions of competition. In the common interest the Authority will ensure, in the context of the restructuring plan, that the social effects of the restructuring in Contracting Parties other than the one granting aid are kept to the minimum.

3.6.3. Recipients of previous unlawful aid

- (94) Where unlawful aid has previously been granted to the undertaking in difficulty, in respect of which the Authority has adopted a negative decision with a recovery order, and where no such recovery has taken place in violation of Article 14 in Part II of Protocol 3 ⁽²⁾, the assessment of any aid pursuant to these guidelines to be granted to the same undertaking will take into account, first, the cumulative effect of the old aid and of the new aid and, secondly, the fact that the old aid has not been repaid ⁽³⁾.

3.6.4. Specific conditions attached to approval of aid

- (95) The Authority may impose any conditions and obligations it considers necessary to ensure that the aid does not distort competition to an extent contrary to the common interest, in the event that the Contracting Party concerned has not given a commitment that it will adopt such provisions. For example, it may require the Contracting Party to take certain measures itself, to impose certain obligations on the beneficiary or to refrain from granting other types of aid to the beneficiary during the restructuring period.

3.7. Transparency

- (96) Contracting Parties shall ensure the publication of the following information on a comprehensive State aid website, at national or regional level:
- the full text of the approved aid scheme or the individual aid granting decision and its implementing provisions, or a link to it,

⁽¹⁾ In particular, concentration levels, capacity constraints, the level of profitability and barriers to entry and to expansion may be taken into account.

⁽²⁾ Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("Protocol 3").

⁽³⁾ Case *Textilwerke Deggendorf v Commission and others*, C-355/95 P, EU:C:1997:241.

- the identity of the granting authority/(ies),
- the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking (SME/large company), the region in which the beneficiary is located (at NUTS level 2) and the principal economic sector in which the beneficiary has its activities (at NACE group level) ⁽¹⁾.

Such a requirement can be waived with respect to individual aid awards below EUR 500 000. For schemes in the form of tax advantage, the information on individual aid amounts ⁽²⁾ can be provided in the following ranges (in EUR million): [0,5-1]; [1-2]; [2-5]; [5-10]; [10-30]; [30 and more].

Such information must be published after the decision to grant the aid has been taken, must be kept for at least 10 years and must be available to the general public without restrictions ⁽³⁾. Contracting Parties will not be required to publish the abovementioned information before 1 July 2016 ⁽⁴⁾.

4. Restructuring aid in assisted areas

- (97) On the basis of Article 61(3)(a) and Article 61(3)(c) of the EEA Agreement, the Authority may consider State aid that has the objective of promoting the economic development of certain disadvantaged areas within the EEA to be compatible with the functioning of the EEA Agreement. The Authority will therefore also take the needs of regional development into account when assessing restructuring aid in assisted areas. The fact that an ailing undertaking is located in an assisted area does not, however, justify a permissive approach to aid for restructuring: in the medium to long term it does not help a region to prop up companies artificially. Furthermore, in order to promote regional development it is in the region's own best interests to apply its resources in such a way as to rapidly develop activities that are viable and sustainable. Finally, distortions of competition must be minimised even in the case of aid to undertakings in assisted areas. In this context, regard must also be had to possible harmful spill-over effects which could occur in the area concerned and other assisted areas.
- (98) Thus, the criteria listed in Chapter 3 are equally applicable to assisted areas, even when the needs of regional development are considered. In assisted areas, however, and unless otherwise stipulated in rules on State aid in a particular sector, the Authority will apply the provisions of section 3.6.2 on measures to limit distortions of competition in such a way as to limit the negative systemic impacts for the region. That could, in particular, involve less stringent requirements in terms of reductions of capacity or market presence. A distinction will be drawn in such cases between areas eligible for regional aid under Article 61(3)(a) of the EEA Agreement and those eligible under Article 61(3)(c), to take account of the greater severity of the regional problems in the former areas. Where the specific circumstances of assisted areas so require, for example where a beneficiary faces particular difficulties in raising new market financing as a result of its location in an assisted area, the Authority may accept a contribution which is less than 50 % of the restructuring costs for the purposes of point 64.

5. Aid to SGEI providers in difficulty

- (99) In assessing State aid to SGEI providers in difficulty, the Authority will take account of the specific nature of SGEI and, in particular, of the need to ensure continuity of service provision in accordance with Article 59(2) of the EEA Agreement.

⁽¹⁾ With the exception of business secrets and other confidential information in duly justified cases and subject to the Authority's agreement (Chapter on professional secrecy in State aid decisions, Decision No 15/04/COL (OJ L 154, 8.6.2006, p. 27, and EEA Supplement No 29, 8.6.2006, p. 1)).

⁽²⁾ The amount to be published is the maximum allowed tax benefit and not the amount deducted each year (e.g. in the context of a tax credit, the maximum allowed tax credit shall be published rather than the actual amount which might depend on the taxable revenues and vary each year).

⁽³⁾ This information shall be published within 6 months from the date of granting (or, for aid in the form of tax advantage, within 1 year from the date the tax declaration is due). In case of unlawful aid, the Contracting Parties will be required to ensure the publication of this information *ex post*, at least within 6 months from the date of the Authority decision. The information shall be available in a format which allows data to be searched, extracted, and easily published on the internet, for instance in CSV or XML format.

⁽⁴⁾ Publication of information on aid awards granted before 1 July 2016 and, for fiscal aid, publication for aid claimed or granted before 1 July 2016, will not be required.

- (100) SGEI providers may require State aid in order to continue to provide SGEI on terms that are compatible with their long-term viability. For the purposes of point 47, therefore, the restoration of long-term viability may be based on the assumption, in particular, that any State aid that meets the compatibility requirements of the SGEI Framework ⁽¹⁾, the SGEI Decision ⁽²⁾, Regulation (EC) No 1370/2007 of the Parliament and the Council ⁽³⁾, Regulation (EC) No 1008/2008 of the Parliament and the Council ⁽⁴⁾ and the Aviation Guidelines ⁽⁵⁾ or Council Regulation (EEC) No 3577/92 ⁽⁶⁾ and the Maritime Guidelines ⁽⁷⁾, will continue to be available for the duration of any entrustment entered into before or during the restructuring period.
- (101) Where the Authority assesses aid to SGEI providers in difficulty under these guidelines, it will take into account all State aid received by the provider in question, including any compensation for public service obligations. However, since SGEI providers can derive a large proportion of their normal revenues from public service compensation, the total amount of aid determined in this manner may be very large in comparison with the size of the beneficiary and may overstate the burden on the State in relation to the beneficiary's restructuring. When determining the own contribution required under section 3.5.2.1, therefore, the Authority will disregard any public service compensation that meets the compatibility requirements of the SGEI Framework, the SGEI Decision or Regulation (EC) No 1370/2007 or Regulation (EC) No 1008/2008 and the Aviation Guidelines or Council Regulation (EEC) No 3577/92 and the Maritime Guidelines.
- (102) To the extent that assets are necessary for the provision of SGEI, it may not be practicable to require the divestment of such assets by way of measures to limit distortions of competition for the purposes of section 3.6.2. In such cases, the Authority may require alternative measures to be taken to ensure that competition is not distorted to an extent contrary to the common interest, in particular by introducing fair competition in respect of the SGEI in question as soon as possible.
- (103) Where an SGEI provider is not able to comply with the conditions of these guidelines, the aid in question cannot be found compatible. In such cases, however, the Authority may authorise the payment of such aid as is necessary to ensure continuity of the SGEI until a new provider is entrusted with the service. The Authority will only authorise aid where the Contracting Party concerned demonstrates on objective grounds that the aid is strictly limited to the amount and duration indispensable to entrust a new provider with the service.

6. Aid schemes for smaller aid amounts and beneficiaries

6.1. General conditions

- (104) Should Contracting Parties wish to provide aid pursuant to these guidelines to SMEs or smaller State-owned undertakings, such aid should normally be granted under schemes. The use of schemes helps to limit distortions of competition linked to moral hazard, by allowing a Contracting Party to make a clear statement *ex ante* concerning the terms on which it may decide to grant aid to undertakings in difficulty.

⁽¹⁾ Framework for State aid in the form of public service compensation ("SGEI Framework"), Decision No 12/12/COL (OJ L 161, 13.6.2013, p. 12, and EEA Supplement No 34, 13.6.2013, p. 1).

⁽²⁾ Application of the State aid rules to compensation granted for the provision of services of general economic interest ("SGEI Decision"), Decision No 12/12/COL.

⁽³⁾ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1), incorporated into point 4(a) of Annex XIII to the EEA Agreement by Joint Committee Decision No 85/2008 (OJ L 280, 23.10.2008, p. 20, and EEA Supplement No 64, 23.10.2008, p. 13).

⁽⁴⁾ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3), Articles 16, 17 and 18, incorporated into point 64(a) of Annex XIII to the EEA Agreement by Joint Committee Decision No 90/2011 (OJ L 262, 6.10.2011, p. 62, and EEA Supplement No 54, 6.10.2011, p. 78).

⁽⁵⁾ Guidelines on State aid to airports and airlines, Decision 216/14/COL.

⁽⁶⁾ Council Regulation (EEC) No 3577/92 of 7 December applying the principles of freedom to provide services to maritime transport within Member States (OJ L 364, 12.12.1992, p. 7), incorporated into point 53(a) of Annex XIII to the EEA Agreement by Joint Committee Decision No 70/1997 (OJ L 30, 5.2.1998, p. 42, and EEA Supplement No 5, 5.2.1998, p. 175).

⁽⁷⁾ Guidelines on State aid to maritime transport, Decision No 62/04/COL (OJ L 240, 13.9.2007, p. 9, and EEA Supplement No 43, 13.9.2007, p. 1).

- (105) Schemes must specify the maximum amount of aid that can be awarded to any one undertaking as part of an operation to provide rescue aid, restructuring aid or temporary restructuring support, including where the plan is modified. The maximum total amount of aid granted to any one undertaking may not be more than EUR 10 million, including any aid obtained from other sources or under other schemes.
- (106) Whilst the compatibility of such schemes will in general be assessed in the light of the conditions set out in Chapters 3, 4 and 5, it is appropriate to provide for simplified conditions in certain respects, to enable Contracting Parties to apply those conditions without further reference to the Authority and to reduce the burden on SMEs and smaller State-owned undertakings of providing the information required. In view of the small size of the aid amounts and the beneficiaries at stake, the Authority considers that the potential for significant distortions of competition is more limited in such cases. Therefore, the provisions of Chapters 3, 4 and 5 apply to such schemes *mutatis mutandis*, except as provided otherwise in sections 6.2, 6.3, 6.4 and 6.5. This Chapter also includes provisions on temporary restructuring support and on the duration and evaluation of schemes.

6.2. Objective of common interest

- (107) Whilst the failure of an individual SME ⁽¹⁾ is unlikely to involve the degree of social hardship or market failure required for the purposes of point 44, there is a greater concern in relation to SMEs that value may be destroyed when SMEs that have the potential to restructure so as to restore their long-term viability are denied the chance to do so by liquidity problems. As regards the grant of aid under schemes, therefore, it is sufficient for a Contracting Party to determine that the failure of the beneficiary would likely involve social hardship or a market failure, in particular that:
- (a) the exit of an innovative SME or an SME with high growth potential would have potential negative consequences;
 - (b) the exit of an undertaking with extensive links to other local or regional undertakings, particularly other SMEs, would have potential negative consequences;
 - (c) the failure or adverse incentives of credit markets would push an otherwise viable undertaking into bankruptcy; or
 - (d) similar situations of hardship duly substantiated by the beneficiary would arise.
- (108) By way of derogation from point 50, beneficiaries under schemes will not be required to submit a market survey.

6.3. Appropriateness

- (109) The requirement set out in point 55(d) will be deemed to have been satisfied provided that rescue aid is granted for no longer than 6 months, during which time an analysis must be made of the beneficiary's position. Before the end of that period:
- (a) the Contracting Party must approve a restructuring plan or liquidation plan, or
 - (b) the beneficiary must submit a simplified restructuring plan, pursuant to point 115, or
 - (c) the loan must be reimbursed or the guarantee terminated.
- (110) By way of derogation from point 57, Contracting Parties will not be required to assess whether the remuneration as determined in accordance with point 56 represents an appropriate benchmark.

6.4. Proportionality of the aid/aid limited to the minimum

- (111) By way of derogation from point 64, Contracting Parties may consider an own contribution to be adequate if it amounts to at least 40 % of the restructuring costs in the case of medium-sized enterprises or 25 % of the restructuring costs in the case of small enterprises.

⁽¹⁾ For the purposes of Chapter 6, "SME" includes smaller State-owned undertakings.

6.5. *Negative effects*

- (112) A Contracting Party that intends to grant rescue aid, restructuring aid or temporary restructuring support must verify whether the “one time, last time” principle set out in section 3.6.1 is complied with. For that purpose, the Contracting Party must determine whether the undertaking concerned has already received rescue aid, restructuring aid or temporary restructuring support in the past, including any such aid granted before the entry into force of these guidelines and any non-notified aid. If so, and where less than 10 years have elapsed since the rescue aid or temporary restructuring support was granted or the restructuring period came to an end or implementation of the restructuring plan was halted (whichever occurred the latest), further rescue aid, restructuring aid or temporary restructuring support must not be granted, except:
- (a) where temporary restructuring support follows the granting of rescue aid as part of a single restructuring operation;
 - (b) where restructuring aid follows the granting of rescue aid or temporary restructuring support as part of a single restructuring operation;
 - (c) where rescue aid or temporary restructuring support has been granted in accordance with these guidelines and that aid was not followed by restructuring aid, if:
 - i. it could reasonably have been believed that the beneficiary would be viable in the long term when the aid pursuant to these guidelines was granted, and
 - ii. new rescue or restructuring aid or temporary restructuring support becomes necessary after at least 5 years due to unforeseeable circumstances for which the beneficiary is not responsible;
 - (d) in exceptional and unforeseeable circumstances for which the beneficiary is not responsible.
- (113) Measures limiting distortions of competition are likely to have a disproportionate impact on small enterprises, particularly given the burden of carrying out such measures. By way of derogation from point 76, therefore, Contracting Parties are not obliged to require such measures from small enterprises, except where otherwise provided by rules on State aid in a particular sector. However, small enterprises should not normally increase their capacity during a restructuring period.

6.6. *Temporary restructuring support*

- (114) In certain cases, it may be possible for an undertaking to complete restructuring without the need for restructuring aid, provided that it is able to obtain liquidity support of a longer duration than is available under the terms of rescue aid. Contracting Parties may put in place schemes that allow liquidity aid for a longer period than 6 months (referred to as “temporary restructuring support”), on the conditions set out below.
- (115) Temporary restructuring support must fulfil the following conditions:
- (a) The support must consist of aid in the form of loan guarantees or loans.
 - (b) The financial cost of the loan or, in the case of loan guarantees, the total financial cost of the guaranteed loan, including the interest rate of the loan and the guarantee premium, must comply with point 116.
 - (c) Temporary restructuring support must comply with the provisions of Chapter 3 of these guidelines, as modified by this chapter.
 - (d) Temporary restructuring support may be granted for a period not exceeding 18 months, less any immediately preceding period of rescue aid. Before the end of that period:
 - i. the Contracting Party must approve a restructuring plan as foreseen in point 55(d)(ii) above, or liquidation plan, or

- ii. the loan must be reimbursed or the guarantee terminated,
 - (e) Not later than 6 months after disbursement of the first instalment to the beneficiary, less any immediately preceding period of rescue aid, the Contracting Party must approve a simplified restructuring plan. That plan need not contain all the elements set out in points 47 to 52, but must, as a minimum, identify the actions that the beneficiary must take to restore its long-term viability without State support.
- (116) Remuneration for temporary restructuring support should be set at a rate not less than the reference rate set out in the Reference Rate Guidelines for weak undertakings offering normal levels of collateralisation (currently 1-year IBOR plus 400 basis points) ⁽¹⁾. To provide incentives for exit, the rate should increase by not less than 50 basis points once 12 months have elapsed from the time of disbursement of the first instalment to the beneficiary (less any immediately preceding period of rescue aid).
- (117) Temporary restructuring support must be restricted to the amount needed to keep the beneficiary in business for 18 months; in determining that amount regard should be had to the outcome of the formula set out in Annex I; any aid exceeding the result of that calculation can only be granted if it is duly justified by the provision of a liquidity plan setting out the beneficiary's liquidity needs for the coming 18 months.

6.7. Duration and evaluation

- (118) The Authority may require Contracting Parties to limit the duration of certain schemes (normally to 4 years or less) and to conduct an evaluation of those schemes.
- (119) Evaluations will be required for schemes where the potential distortions are particularly high, that is to say schemes where there is a risk of significant restrictions of competition if their implementation is not reviewed in due time.
- (120) Given the objectives and in order not to impose disproportionate burdens on Contracting Parties in respect of smaller aid projects, this only applies to aid schemes with large budgets or containing novel characteristics, or when significant market, technology or regulatory changes are anticipated. The evaluation must be carried out by an expert independent from the State aid granting authority, on the basis of a common methodology ⁽²⁾, and must be made public. The evaluation must be submitted to the Authority in due time to allow for the assessment of possible extension of the aid scheme and in any case upon expiry of the scheme. The precise scope of the evaluation and how it is to be carried out will be defined in the decision approving the aid measure. Any subsequent aid measure with a similar objective must take into account the results of the evaluation.

7. Procedures

7.1. Accelerated procedure for rescue aid

- (121) The Authority will as far as possible endeavour to take a decision within a period of 1 month in respect of rescue aid that complies with all of the conditions set out in Chapter 3 and with the following cumulative requirements:
- (a) the rescue aid is limited to the amount resulting from the formula set out in Annex I and does not exceed EUR 10 million;
 - (b) the aid is not granted in the situations mentioned in point 72(b) or (c).

⁽¹⁾ For the avoidance of doubt, the note regarding remuneration of rescue aid to the table of loan margins contained in that communication will not apply to aid assessed under these guidelines.

⁽²⁾ Such a common methodology may be provided by the Authority.

7.2. Procedures related to restructuring plans

7.2.1. Implementation of the restructuring plan

- (122) The beneficiary must fully implement the restructuring plan and must discharge any other obligations laid down in the Authority decision authorising the aid. The Authority will regard any failure to implement the plan or to fulfil the other obligations as misuse of the aid, without prejudice to Article 23 in Part II of Protocol 3 or to the possibility of an action before the EFTA Court pursuant to Article 1(2) in Part I of Protocol 3.
- (123) Where restructuring operations cover several years and involve substantial amounts of aid, the Authority may require payment of the restructuring aid to be split into instalments and may make payment of each instalment subject to:
- (a) confirmation, prior to each payment, of the satisfactory implementation of each stage in the restructuring plan, in accordance with the planned timetable; or
 - (b) its approval, prior to each payment, after verification that the plan is being satisfactorily implemented.

7.2.2. Amendment of the restructuring plan

- (124) Where restructuring aid has been approved, the Contracting Party concerned may, during the restructuring period, ask the Authority to agree to changes to the restructuring plan and the amount of the aid. The Authority may allow such changes where they meet the following conditions:
- (a) the revised plan must still show a return to viability within a reasonable time scale;
 - (b) if the restructuring costs are increased, the own contribution must increase correspondingly;
 - (c) if the amount of the aid is increased, measures to limit distortions of competition must be more extensive than those initially imposed;
 - (d) if the proposed measures to limit distortions of competition are more limited than those initially imposed, the amount of the aid must be correspondingly reduced;
 - (e) the new timetable for implementation of the measures to limit distortions of competition may be delayed with respect to the timetable initially adopted only for reasons outside the beneficiary's or the Contracting Party's control: if that is not the case, the amount of the aid must be correspondingly reduced.
- (125) If the conditions imposed by the Authority or the commitments given by the Contracting Party are relaxed, the amount of aid must be correspondingly reduced or other conditions may be imposed.
- (126) Should the Contracting Party concerned introduce changes to an approved restructuring plan without duly informing the Authority, or should the beneficiary depart from the approved restructuring plan, the Authority will initiate proceedings under Article 4(4) in Part II of Protocol 3, as provided for by Article 16 in Part II of Protocol 3 (misuse of aid), without prejudice to Article 23 in Part II of Protocol 3 and to the possibility of an action before the EFTA Court pursuant to Article 1(2) in Part I of Protocol 3.

7.2.3. Need to notify to the Authority any aid granted to the beneficiary during the restructuring period

- (127) Where restructuring aid is examined under these guidelines, the grant of any other aid during the restructuring period, even in accordance with a scheme that has already been authorised, is liable to influence the Authority's assessment concerning the necessary extent of the measures to limit distortions of competition.

- (128) Therefore, notifications of restructuring aid must indicate all other aid of any kind which is planned to be granted to the beneficiary during the restructuring period, unless it is covered by the *de minimis* rule or by exemption regulations. The Authority shall take such aid into account when assessing the restructuring aid.
- (129) Any aid actually granted during the restructuring period, including aid granted in accordance with an approved scheme, must be notified individually to the Authority to the extent that the latter was not informed thereof at the time of its decision on the restructuring aid.
- (130) The Authority shall ensure that the grant of aid under approved schemes is not liable to circumvent the requirements of these guidelines.

8. Reporting and monitoring

- (131) In accordance with Protocol 3, Contracting Parties must submit annual reports to the Authority. Those annual reports will be published on the Authority's website.
- (132) When adopting a decision under these guidelines the Authority may impose additional reporting obligations regarding the aid granted in order to be able to check whether the decision approving the aid measure has been respected. In certain cases, the Authority may require the appointment of a monitoring trustee, a divestment trustee or both, to ensure compliance with any conditions and obligations linked to the approval of the aid.

9. Appropriate measures as referred to in Article 1(1) in Part I of Protocol 3

- (133) Pursuant to Article 62(1) of the EEA Agreement and Article 1(1) in Part I of Protocol 3, the Authority proposes that Contracting Parties amend, where necessary, their existing aid schemes in order to bring them into line with these guidelines no later than 1 February 2015. The Authority will make authorisation of any future scheme conditional on compliance with those provisions.
- (134) Contracting Parties are invited to give their explicit unconditional agreement to the appropriate measures proposed in point 133 within 2 months from the date of publication of these guidelines on the Authority's website. In the absence of a reply from any of the Contracting Parties, the Authority will assume that the Contracting Party in question does not agree with the proposed measures.

10. Date of application and duration

- (135) The Authority will apply these guidelines with effect from the date of adoption until 31 December 2020.
- (136) Notifications registered by the Authority prior to the date of adoption will be examined in the light of the criteria in force at the time of notification.
- (137) The Authority will examine the compatibility with the functioning of the EEA Agreement of any rescue or restructuring aid granted without its authorisation and therefore in breach of Article 1(3) in Part I of Protocol 3 on the basis of these guidelines if some or all of the aid is granted after their publication on the Authority's website.
- (138) In all other cases it will conduct the examination on the basis of the guidelines which applied at the time the aid was granted.

- (139) Notwithstanding the provisions of points 136, 137 and 138, the Authority will apply the provisions of Chapter 5 from the date of adoption when examining aid to SGEI providers in difficulty, regardless of when that aid was notified or granted.
- (140) Where, by virtue of paragraph 9 of the SGEI Framework, the Authority examines under these guidelines any aid granted before 31 January 2012 to an SGEI provider in difficulty, it will deem such aid to be compatible with the functioning of the EEA Agreement if it complies with the provisions of the SGEI Framework, with the exception of paragraphs 9, 14, 19, 20, 24, 39 and 60.

ANNEX I

FORMULA ⁽¹⁾ FOR CALCULATION OF THE MAXIMUM AMOUNT OF RESCUE AID OR TEMPORARY RESTRUCTURING SUPPORT PER 6-MONTH PERIOD

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

The formula is based on the operating results of the beneficiary (EBIT, earnings before interest and taxes) recorded in the year before granting/notifying the aid (indicated as t). To this amount depreciation has been added back. Then changes in working capital must be subtracted from the total. The change in working capital is calculated as the change in the difference between the current assets and current liabilities ⁽²⁾ for the latest closed accounting periods. Similarly, any provisions at the level of the operating result will need to be clearly indicated and the result should not include such provisions.

The formula aims at estimating the negative operating cash flow of the beneficiary in the year preceding the application for the aid (or before award of the aid in the case of non-notified aid). Half of this amount should keep the beneficiary in business for a 6-month period. Thus the result of the formula has to be divided by 2 for the purposes of point 60. For the purposes of point 117, the result of the formula has to be multiplied by 1,5.

This formula can only be applied where the result is a negative amount. If it leads to a positive result, a detailed explanation will need to be submitted demonstrating that the beneficiary is an undertaking in difficulty as defined in point 20.

Example:

Earnings before interest and taxes (EUR million)	(12)	
Depreciation (EUR million)	2	
Balance sheet (EUR million)	31 December, t	31 December, t – 1
Current assets		
Cash or equivalents	10	5
Accounts receivable	30	20
Inventories	50	45
Prepaid expenses	20	10

⁽¹⁾ To EBIT must be added back depreciation in the same period plus the changes in working capital over a 2-year period (year before the application and preceding year), divided by two to determine an amount over 6 months.

⁽²⁾ Current assets: liquid funds, receivables (client and debtor accounts), other current assets and prepaid expenses, inventories. Current liabilities: financial debt, trade accounts payable (supplier and creditor accounts) and other current liabilities, deferred income, other accrued liabilities, tax liabilities.

Other current assets	20	20
Total current assets	130	100
<i>Current liabilities</i>		
Accounts payable	20	25
Accrued expenses	15	10
Deferred income	5	5
Total current liabilities	40	40
Working capital	90	60
Change in working capital	30	

$[-12 + 2 - 30]/2 = -\text{EUR } 20 \text{ million.}$

As the outcome of the formula is higher than EUR 10 million, the accelerated procedure described in point 121 cannot be used. In addition, in this example, if the amount of rescue aid exceeds EUR 20 million or the amount of temporary restructuring support exceeds EUR 60 million, the amount of aid must be duly justified by the provision of a liquidity plan setting out the beneficiary's liquidity needs.

ANNEX II

Indicative model restructuring plan

This Annex sets out an indicative table of contents for a restructuring plan, to assist Contracting Parties and the Authority in preparing and reviewing restructuring plans as efficiently as possible.

The information set out below is without prejudice to the more detailed requirements set out in the guidelines concerning the content of a restructuring plan and the other matters to be demonstrated by the Contracting Party concerned.

1. Description of the beneficiary
2. Description of the market or markets where the beneficiary operates
3. Demonstration of the social hardship that the aid aims to prevent or the market failure that it aims to address, comparison with a credible alternative scenario not involving State aid, demonstrating how such objective or objectives would not be attained, or would be attained to a lesser degree, in the case of the alternative scenario
4. Description of the sources of the beneficiary's difficulties (including an assessment of the role of any flaws in the beneficiary's business model or corporate governance system in causing those difficulties and the extent to which the difficulties could have been avoided through appropriate and timely management action) and SWOT analysis

5. Description of possible plans to remedy the beneficiary's problems and comparison of those plans in terms of the amount of State aid required and the anticipated results of those plans
 6. Description of the State intervention, full details of each State measure (including the form, amount and remuneration of each measure) and demonstration that the State aid instruments chosen are appropriate to the issues that they are intended to address
 7. Outline of the process for implementing the preferred plan with a view to restoring the beneficiary's long-term viability within a reasonable timescale (in principle, not to exceed 3 years), including a timetable of actions and a calculation of the costs of each action
 8. Business plan setting out financial projections for the next 5 years and demonstrating the return to long-term viability
 9. Demonstration of the return to viability under both a baseline and a pessimistic scenario, presentation and justification on the basis of a market survey of the assumptions used and sensitivity analysis
 10. Proposed own contribution and burden-sharing measures
 11. Proposed measures to limit distortions of competition'
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