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Legislation

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Contents

[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.

The titles of all other acts are printed in bold type and preceded by an asterisk.

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) No 357/2014

of 3 February 2014

supplementing Directive 2001/83/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council as regards situations in which post-authorisation efficacy studies may be required

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use ([1]), and in particular Article 22b thereof,

Having regard to Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency ([2]), and in particular Article 10b thereof,

Whereas:

(1) Authorisation decisions for medicinal products should be made on the basis of the objective criteria of quality, safety and efficacy of the medicinal product concerned, to ensure that only high quality medicinal products are placed on the market and administered to patients. As a consequence, new medicinal products have to undergo extensive studies, including clinical efficacy trials, before they are authorised.

(2) According to Article 21a(f) of Directive 2001/83/EC and to Article 9(4)(cc) of Regulation (EC) No 726/2004 it may be necessary in specific situations to complement the data available at the time of authorisation with additional information concerning the efficacy of a medicinal product, to address concerns that could not be resolved prior to the granting of the marketing authorisation. Moreover, according to Article 22a(1)(b) of Directive 2001/83/EC and to Article 10a(1)(b) of Regulation (EC) No 726/2004 post-authorisation information may require significant revision of previous efficacy evaluations and call for additional, confirmatory efficacy data, while the marketing authorisation is maintained. In both situations, the national competent authorities, the European Medicines Agency and the Commission (hereinafter 'the competent authorities') may oblige the marketing authorisation holder to conduct a post-authorisation efficacy study.

(3) The obligation to conduct a post-authorisation efficacy study should address certain well-reasoned scientific concerns, which could have a direct impact on the maintenance of the marketing authorisation. It should not be used as a justification for the premature granting of a marketing authorisation. According to Article 22a(1) of

([1]) OJ L 311, 28.11.2001, p. 67.
([2]) OJ L 136, 30.4.2004, p. 1.

Directive 2001/83/EC and to Article 10a(1) of Regulation (EC) No 726/2004 the obligation to conduct such a study should be justified on a case-by-case basis, taking into account the properties of a medicinal product and the available data. The study should provide the competent authorities and the marketing authorisation holder with necessary information, in order to either complement initial evidence or to verify whether the marketing authorisation should be maintained as granted, varied, suspended or revoked on the basis of new data resulting from the study.

(4) Article 22b of Directive 2001/83/EC and Article 10b of Regulation (EC) No 726/2004 empowers the Commission to specify the situations in which post-authorisation efficacy studies may be required. In the interests of transparency and legal certainty, and in the light of developments in scientific knowledge, it is appropriate to draw up a list of specific situations and the circumstances that might be considered.

(5) In various therapeutic areas, surrogate endpoints, such as biomarkers or tumour shrinkage in oncology, have been used as a tool to define the efficacy of medicinal products in exploratory or confirmatory clinical studies. To substantiate the assessment based on those endpoints, it may be relevant to generate further efficacy data in the post-authorisation phase to verify the impact of the intervention on clinical outcome or disease progression. It may also be necessary to verify whether the overall survival data in the post-authorisation phase is discordant with or confirmative of the outcome of the surrogate endpoint.

(6) Some medicinal products may be used regularly in combination with other medicinal products. While the applicant for marketing authorisation is expected to address the effects of such combinations in clinical studies, it is often neither required nor appropriate to study exhaustively all possible combinations covered by the marketing authorisation in general terms pre-authorisation. Instead, the scientific assessment may be based partly on extrapolation of existing data. In certain cases it may be relevant to gain further clinical evidence post-authorisation for some specific combinations if such studies could clarify an uncertainty that has not already been addressed. This applies particularly if such combinations are used or are expected to be used in everyday medical practice.

(7) In the pivotal clinical studies conducted prior to granting marketing authorisation, it may be difficult to gather robust representation of all the different sub-populations to which the medicinal product is administered. This may not necessarily preclude an overall positive benefit-risk balance at the time of authorisation. However, for some specific sub-populations for which uncertainties with respect to benefits have been raised, further substantiation of evidence of efficacy may be necessary, with specifically targeted clinical studies in the post-authorisation phase.

(8) Under normal circumstances, there is no mandatory requirement for long-term follow-up of efficacy of medicinal products as part of post-authorisation surveillance, even for medicinal products authorised for chronic conditions. In many instances, the effects of a medicinal product wane over time, requiring a redefinition of therapy. However, this does not necessarily compromise the benefit-risk balance of the medicinal product and the appraisal of the beneficial effect exerted up to that point in time. In exceptional cases, post-authorisation studies should be imposed where a potential lack of efficacy in the long term could raise concerns with respect to the maintenance of a positive benefit-risk balance of the intervention. This could be the case for innovative therapies in which interventions are supposed to modify the course of the disease.

(9) In exceptional situations, studies in everyday medical practice could be requested where there is clear evidence that the benefits of a medicinal product demonstrated in randomised controlled clinical trials is significantly affected by the real-life conditions of use or where the specific scientific concern is best studied by having access to data collected in everyday medical practice. Furthermore, protective efficacy studies of vaccines are not always feasible. Alternatively, estimates of effectiveness from prospective studies conducted during vaccination campaigns after authorisation could be used in order to gain further knowledge on the ability of the vaccine to confer protection in the short or long term.

(10) During the life cycle of an authorised medicinal product, a significant change may occur in the standard of care for the diagnosis, treatment or prevention of a disease, leading to the need to re-open discussions on the established benefit-risk balance of the medicinal product. The European Court of Justice has ruled that a modified consensus within the medical community regarding the appropriate assessment criteria of the therapeutic efficacy of a medicinal product may constitute concrete and objective factors capable of acting as a basis for the finding of a negative benefit-risk assessment of that product ([1]). It may therefore be necessary to provide new evidence on the efficacy of the medicinal product to maintain a positive benefit-risk assessment. Likewise, if an improved understanding of the disease or the pharmacology of a medicinal product has brought into question the criteria used to establish the efficacy of the medicinal product at the time the marketing authorisation was granted, additional studies may be considered.

(11) To obtain meaningful data, it is necessary to ensure that the design of a post-authorisation efficacy study is appropriate to answer the scientific question that it intends to address.

(12) Competent authorities may impose obligations to ensure or confirm efficacy of a human medicinal product in the context of a conditional marketing authorisation and/or a marketing authorisation that has been granted subject to exceptional circumstances, or as a result of a referral procedure initiated under Articles 31 and 107i of Directive 2001/83/EC or Article 20 of Regulation (EC) No 726/2004. Additionally, holders of a marketing authorisation for an advanced therapy medicinal product or a medicinal product for paediatric use may have to comply with certain measures to ensure the follow-up of efficacy. As a consequence, it is necessary to conduct a post-authorisation efficacy study. The need for such a study should be assessed in the context of those procedures and independently of the specific situations and circumstances specified in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. The national competent authorities, the European Medicines Agency or the Commission may require a post-authorisation efficacy study to be carried out by the holder of a marketing authorisation in accordance with Articles 21a(f) and 22a(1)(b) of Directive 2001/83/EC and Articles 9(4)(cc) and 10a(1)(b) of Regulation (EC) No 726/2004:

(a) where concerns relating to some aspects of efficacy of the medicinal product are identified and can be resolved only after the medicinal product has been marketed;

(b) where the understanding of the disease, the clinical methodology or the use of the medicinal product under real-life conditions indicate that previous efficacy evaluations might have to be revised significantly.

2. The national competent authorities, the European Medicines Agency or the Commission shall only apply paragraph 1 if one or more of the following cases arise:

(a) an initial efficacy assessment that is based on surrogate endpoints, which requires verification of the impact of the intervention on clinical outcome or disease progression or confirmation of previous efficacy assumptions;

(b) in case of medicinal products that are used in combination with other medicinal products, the need for further efficacy data to clarify uncertainties that had not been addressed when the medicinal product was authorised;

(c) uncertainties with respect to the efficacy of a medicinal product in certain sub-populations that could not be resolved prior to marketing authorisation and require further clinical evidence;

([1]) Case C-221/10P *Artegodan* v *Commission*, not yet published, paragraphs 100-103.

(d) the potential lack of efficacy in the long term that raises concerns with respect to the maintenance of a positive benefit-risk balance of the medicinal product;

(e) benefits of a medicinal product demonstrated in clinical trials are significantly affected by the use of the medicinal product under real-life conditions, or, in the case of vaccines, protective efficacy studies have not been feasible;

(f) a change in the understanding of the standard of care for a disease or the pharmacology of a medicinal product that requires additional evidence on its efficacy;

(g) new concrete and objective scientific factors that may constitute a basis for finding that previous efficacy evaluations might have to be revised significantly.

3. The situations set out in paragraph 1 and 2 are without prejudice to the imposition of the obligation on the holder of a marketing authorisation to conduct a post-authorisation efficacy study in the context of any of the following situations:

(a) a conditional marketing authorisation granted in accordance with Article 14(7) of Regulation (EC) No 726/2004;

(b) a marketing authorisation granted in exceptional circumstances and subject to certain conditions in accordance with Article 14(8) of Regulation (EC) No 726/2004 or Article 22 of Directive 2001/83/EC;

(c) a marketing authorisation granted to an advanced therapy medicinal product in accordance with Article 14 of Regulation (EC) No 1394/2007 of the European Parliament and of the Council [1];

(d) the paediatric use of a medicinal product in accordance with Article 34(2) of Regulation (EC) No 1901/2006 of the European Parliament and of the Council [2];

(e) a referral procedure initiated in accordance with Articles 31 or 107i of Directive 2001/83/EC or Article 20 of Regulation (EC) No 726/2004.

Article 2

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

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

Done at Brussels, 3 February 2014.

For the Commission
The President
José Manuel BARROSO

[1] Regulation (EC) No 1394/2007 of the European Parliament and of the Council of 13 November 2007 on advanced therapy medicinal products and amending Directive 2001/83/EC and Regulation (EC) No 726/2004 (OJ L 324, 10.12.2007, p. 121).

[2] Regulation (EC) No 1901/2006 of the European Parliament and of the Council of 12 December 2006 on medicinal products for paediatric use and amending Regulation (EEC) No 1768/92, Directive 2001/20/EC, Directive 2001/83/EC and Regulation (EC) No 726/2004 (OJ L 378, 27.12.2006, p. 1).

COMMISSION REGULATION (EU) No 358/2014

of 9 April 2014

amending Annexes II and V to Regulation (EC) No 1223/2009 of the European Parliament and of the Council on cosmetic 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 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products ([1]), and in particular Article 31(1) thereof,

Whereas:

(1) Entry 25 of Annex V to Regulation (EC) No 1223/2009 specifies a maximum concentration of 0,3 % in relation to the use of triclosan as a preservative in cosmetic products.

(2) The Scientific Committee on Consumer Products (SCCP), subsequently replaced by the Scientific Committee on Consumer Safety (SCCS) pursuant to Commission Decision 2008/721/EC ([2]), adopted an opinion on the safety of triclosan for human health in January 2009 ([3]), followed by an addendum of March 2011 ([4]).

(3) The SCCP considered that the continued use of triclosan as a preservative at the current maximum concentration limit of 0,3 % in all cosmetic products is not safe for the consumer because of the magnitude of the aggregate exposure, and the SCCS confirmed this position. However, the SCCP considered that its use at a maximum concentration of 0,3 % in toothpastes, hand soaps, body soaps/shower gels and deodorants, face powders and blemish concealers is safe. In addition, the SCCS considered that other uses of triclosan in nail products where the intended use is to clean the fingernails and toenails before the application of artificial nail systems at a maximum concentration of 0,3 % and in mouthwashes at a maximum concentration of 0,2 % are safe for the consumer.

(4) In light of the SCCS opinions mentioned above, the Commission considers that maintaining the restriction on the use of triclosan at its current level would raise a potential risk to human health. The additional restrictions suggested by the SCCP and the SCCS should therefore be implemented in Annex V to Regulation (EC) No 1223/2009.

(5) Entry 12 of Annex V to Regulation (EC) No 1223/2009 specifies a maximum concentration of 0,4 % for single ester and 0,8 % for mixtures of esters in relation to the use of parabens as preservatives in cosmetic products, under the denomination 4-hydroxybenzoic acid and its salts and esters.

(6) The SCCS adopted an opinion on parabens in December 2010 ([5]), followed by a clarification of October 2011 ([6]) in response to a unilateral decision by Denmark to ban propylparaben and butylparaben, their isoforms and their salts in cosmetic products for children under three years of age based on their potential endocrine activity, taken in accordance with Article 12 of Council Directive 76/768/EEC ([7]).

(7) The SCCS confirmed that methylparaben and ethylparaben are safe at the maximum authorised concentrations. In addition, the SCCS noted that limited or no information was submitted by industry for the safety evaluation of isopropylparaben, isobutylparaben, phenylparaben, benzylparaben and pentylparaben. As a result, for these compounds, the human risk cannot be evaluated. Therefore, those substances should no longer be listed in Annex V and, given that they might be used as antimicrobial agents, they should be listed in Annex II to make clear that they are prohibited in cosmetic products.

([1]) OJ L 342, 22.12.2009, p. 59.
([2]) Commission Decision 2008/721/EC of 5 August 2008 setting up an advisory structure of Scientific Committees and experts in the field of consumer safety, public health and the environment and repealing Decision 2004/210/EC (OJ L 241, 10.9.2008, p. 21).
([3]) SCCP/1192/08, http://ec.europa.eu/health/ph_risk/committees/04_sccp/docs/sccp_o_166.pdf
([4]) SCCS/1414/11, http://ec.europa.eu/health/scientific_committees/consumer_safety/docs/sccs_o_054.pdf
([5]) SCCS/1348/10 Revision 22 March 2011.
([6]) SCCS/1446/11.
([7]) OJ L 262, 27.9.1976, p. 169.

(8) The conclusions the SCCS drew in the same opinions on propylparaben and butylparaben were challenged by a study carried out by the French authorities ([1]), therefore a further risk assessment of those two substances was adopted by the SCCS in May 2013 ([2]). Measures on propylparaben and butylparaben are under preparation, as a second step in the risk management of parabens.

(9) No concerns were raised on the safety of 4-Hydroxybenzoic acid and its salts (calcium paraben, sodium paraben, potassium paraben).

(10) The relevant annexes to Regulation (EC) No 1223/2009 should therefore be amended accordingly.

(11) The application of the above-mentioned restrictions should be deferred to allow the industry to make the necessary adjustments to product formulations. In particular, undertakings should be granted six months to place on the market compliant products, and 15 months to stop making available on the market non-compliant products after the entry into force of this Regulation, in order to allow existing stocks to be exhausted.

(12) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Cosmetic Products,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes II and V to Regulation (EC) No 1223/2009 are amended in accordance with the Annex to this Regulation.

Article 2

From 30 October 2014 only cosmetic products which comply with this Regulation shall be placed on the Union market.

From 30 July 2015 only cosmetic products which comply with this Regulation shall be made available on the Union market.

Article 3

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

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

Done at Brussels, 9 April 2014.

For the Commission

The President

José Manuel BARROSO

([1]) Gazin V., Marsden E., Briffaux J-P (2012), Propylparaben: 8-week postweaning juvenile toxicity study with 26-week treatment free period in male Wistar rat by the oral route (gavage) Poster SOT Annual Meeting San Francisco USA — Abstract ID 2359*327.

([2]) SCCS/1514/13.

ANNEX

The annexes to Regulation (EC) No 1223/2009 are amended as follows:

(1) in Annex II the following entries 1374 to 1378 are added:

Reference Number	Substance Identification		
	Chemical Name/INN	CAS number	EC number
a	b	c	d
‘1374	Isopropyl 4-hydroxybenzoate (INCI: Isopropylparaben) Sodium salt or Salts of Isopropylparaben	4191-73-5	224-069-3
1375	Isobutyl 4-hydroxybenzoate (INCI: Isobutylparaben)	4247-02-3	224-208-8
	Sodium salt or Salts of Isobutylparaben	84930-15-4	284-595-4
1376	Phenyl 4-hydroxybenzoate (INCI: Phenylparaben)	17696-62-7	241-698-9
1377	Benzyl 4-hydroxybenzoate (INCI: Benzylparaben)	94-18-8	
1378	Pentyl 4-hydroxybenzoate (INCI: Pentylparaben)	6521-29-5	229-408-9’

(2) Annex V is amended as follows:

(a) entry 12 is replaced by the following:

	Substance Identification				Conditions			
Reference number	Chemical name/INN	Name of Common Ingredients Glossary	CAS number	EC number	Product type, Body parts	Maximum concentration in ready for use preparation	Other	Wording of conditions of use and warnings
a	b	c	d	e	f	g	h	i
'12	4-Hydroxybenzoic acid and its salts and esters, other than the esters of isopropyl, isobutyl, phenyl, benzyl and pentyl	4-Hydroxybenzoic acid	99-96-7	202-804-9		0,4 % (as acid) for single ester, 0,8 % (as acid) for mixtures of esters'		
		methylparaben	99-76-3	202-785-7				
		butylparaben	94-26-8	202-318-7				
		potassium ethylparaben	36457-19-9	253-048-1				
		potassium paraben	16782-08-4	240-830-2				
		propylparaben	94-13-3	202-307-7				
		sodium methylparaben	5026-62-0	225-714-1				
		sodium ethylparaben	35285-68-8	252-487-6				
		sodium propylparaben	35285-69-9	252-488-1				
		sodium butylparaben	36457-20-2	253-049-7				
		ethylparaben	120-47-8	204-399-4				
		sodium paraben	114-63-6	204-051-1				
		potassium methylparaben	26112-07-2	247-464-2				
		potassium butylparaben	38566-94-8	254-009-1				
		potassium propylparaben	84930-16-5	284-597-5				
		calcium paraben	69959-44-0	274-235-4				

(b) entry 25 is replaced by the following:

	Substance Identification				Conditions			
Reference number	Chemical name/INN	Name of Common Ingredients Glossary	CAS number	EC number	Product type, Body parts	Maximum concentration in ready for use preparation	Other	Wording of conditions of use and warnings
a	b	c	d	e	f	g	h	i
‘25	5-Chloro-2- (2,4-dichlorophenoxy) phenol	Triclosan	3380-34-5	222-182-2	(a) Toothpastes Hand soaps Body soaps/Shower gels Deodorants (non-spray) Face powders and blemish concealers Nail products for cleaning the fingernails and toenails before the application of artificial nail systems (b) Mouthwashes	(a) 0,3 % (b) 0,2 %’		

COMMISSION IMPLEMENTING REGULATION (EU) No 359/2014

of 9 April 2014

amending Annex V to Regulation (EC) No 136/2004 as regards the list of countries referred to in Article 9 thereof

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries ([1]), and in particular Article 19(1) thereof,

Whereas:

(1) Directive 97/78/EC lays down the principles governing the organisation of veterinary checks on products entering the Union from third countries.

(2) Article 19(1) of that Directive provides that the Commission is to draw up a list of plant products which will be subjected to border veterinary checks and a list of the third countries which may be authorised to export those plant products to the Union.

(3) Accordingly Annex IV to Commission Regulation (EC) No 136/2004 ([2]) lists hay and straw as plant products subject to border veterinary checks while Part I of Annex V to that Regulation lists the countries from which Member States are authorised to import hay and straw.

(4) Regulation (EC) No 136/2004 was adopted before the entry into force of the 2003 Treaty of Accession. Part II of Annex V to Regulation (EC) No 136/2004 contains a list of acceding States which was relevant until 30 April 2004. It is therefore no longer necessary to maintain neither Part II of Annex V nor the separation of Annex V in two parts.

(5) For the sake of clarity, the country ISO codes should be added in Annex V.

(6) Serbia has recently requested the authorisation to export hay and straw to the Union.

(7) Commission Regulation (EU) No 206/2010 ([3]) lists Serbia as a country from which consignments of fresh meat of bovine, ovine and caprine animals and of domestic solipeds may be imported into the Union.

(8) Although live ungulates from Serbia are not allowed to be introduced into the Union, hay and straw can be allowed for introduction, as the animal health situation in Serbia does not present a risk of spreading infectious or contagious animal diseases through these plant products, which might have been in contact with live animals.

(9) Regulation (EC) No 136/2004 should therefore be amended accordingly.

(10) The measures provided for in this Regulation are in accordance with the opinion of the Committee on the Food Chain and Animal Health,

([1]) OJ L 24, 30.1.1998, p. 9.
([2]) Commission Regulation (EC) No 136/2004 of 22 January 2004 laying down procedures for veterinary checks at Community border inspection posts on products imported from third countries (OJ L 21, 28.1.2004, p. 11).
([3]) Commission Regulation (EU) No 206/2010 of 12 March 2010 laying down lists of third countries, territories or parts thereof authorised for the introduction into the European Union of certain animals and fresh meat and the veterinary certification requirements (OJ L 73, 20.3.2010, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Annex V to Regulation (EC) No 136/2004 is replaced by the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 9 April 2014.

For the Commission
The President
José Manuel BARROSO

ANNEX

'ANNEX V

THE LIST OF COUNTRIES REFERRED TO IN ARTICLE 9

ISO Code	Country
AU	Australia
BY	Belarus
CA	Canada
CH	Switzerland
CL	Chile
GL	Greenland
IS	Iceland
NZ	New Zealand
RS	Serbia [1]
US	United States of America
ZA	South Africa (excluding that part of the foot-and-mouth disease control area situated in the veterinary region Northern and Eastern Transvaal, in the district of Ingwavuma of the veterinary region of Natal and in the border area with Botswana east of longitude 28°)

[1] As referred to in Article 135 of the Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part (OJ L 278, 18.10.2013, p. 16).'

COMMISSION IMPLEMENTING REGULATION (EU) No 360/2014

of 9 April 2014

imposing a definitive anti-dumping duty on imports of ferro-silicon originating in the People's Republic of China and Russia, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community [1] ('the basic Regulation'), and in particular 11(2), (5) and (6) thereof,

Whereas:

A. **PROCEDURE**

1. **Measures in force**

(1) The Council, following an anti-dumping investigation ('the original investigation'), imposed, by means of Regulation (EC) No 172/2008 [2], a definitive anti-dumping duty on imports of ferro-silicon ('FeSi') currently falling within CN codes 7202 21 00, 7202 29 10 and 7202 29 90 originating in the People's Republic of China ('the PRC'), Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia ('the definitive anti-dumping measures').

(2) The measures took the form of an ad valorem duty established at 31,2 % on imports from the PRC, with the exception of Erdos Xijin Kuangye Co. (15,6 %) and Lanzhou Good Land Ferroalloy Factory Co., (29,0 %), at 18,0 % on imports from Egypt, with the exception of The Egyptian Ferroalloys Co. (15,4 %), at 33,9 % on imports from Kazakhstan, at 5,4 % on imports from the former Yugoslav Republic of Macedonia and at 22,7 % on imports from Russia, with the exception of Bratsk Ferroalloy Plant (17,8 %).

(3) Council Implementing Regulation (EU) No 1297/2009 [3] repealed the anti-dumping duty imposed by Regulation (EC) No 172/2008 on imports of FeSi originating in the Former Yugoslav Republic of Macedonia.

(4) On 30 November 2009, the European Commission ('the Commission') received a request for a partial interim review ('the interim review') pursuant to Article 11(3) of the basic Regulation, lodged by an exporting producer from Russia, Joint Stock Company Chelyabinsk Electrometallurgical Integrated Plant and its related company Joint Stock Company Kuznetsk Ferroalloy Works (hereinafter jointly referred to as 'the Russian group'). The Council, by Regulation (EU) No 60/2012 [4] terminated the partial interim review on the grounds of insufficient evidence of a lasting nature of changed circumstances. In particular, the Russian group did not demonstrate that its pricing behaviour was of a lasting nature. Therefore, the dumping margin established for the Russian group in the original investigation was not amended. The undertaking offer made by the Russian group was rejected on the same grounds.

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ L 55, 28.2.2008, p. 6.
[3] OJ L 351, 30.12.2009, p. 1.
[4] OJ L 22, 25.1.2012, p. 1.

2. **Request for an expiry review**

(5) Following the publication of a notice of impending expiry ([1]) of the definitive anti-dumping measures in force, the Commission received on 28 November 2012 a request for the initiation of an expiry review of those measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by Euroalliages ('the applicant') on behalf of producers representing more than 25 % of the total Union production of FeSi.

(6) The request concerned the following two countries: the PRC and Russia.

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

3. **Initiation of an expiry review**

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced, on 28 February 2013, by a notice published in the *Official Journal of the European Union* ([2]) ('the notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

4. **Investigation**

4.1. *Review investigation period and period considered*

(9) The investigation of a continuation or recurrence of dumping covered the period from 1 January 2012 to 31 December 2012 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2009 to 31 December 2012 ('the period concerned').

4.2. *Parties concerned by the investigation*

(10) The Commission officially advised the applicants, the other known Union producers, the exporting producers in the PRC and in Russia, the unrelated importers, the users known to be concerned, and the representatives of the exporting countries, of the initiation of the expiry review. The interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(11) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(12) In view of the apparent large number of exporting producers in the PRC and of unrelated importers in the Union involved in the investigation, sampling was envisaged in the notice of initiation, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above-mentioned parties were requested to make themselves known to the Commission within 15 days of the initiation of the review and to provide the Commission with the information requested in the notice of initiation.

(13) Given that only one exporting producer in the PRC provided the information requested in the notice of initiation and expressed its willingness to cooperate with the Commission, it was decided not to apply sampling in the case of the exporting producers in the PRC. After having received the questionnaire, the exporting producer decided not to cooperate further. Therefore, it is considered that no exporting producer in the PRC cooperated in the investigation.

([1]) OJ C 186, 26.6.2012, p. 8.
([2]) OJ C 58, 28.2.2013, p. 15.

(14) Regarding Russia, all known Russian producers were invited to cooperate in the investigation, namely Bratsk Ferroalloy Plant, Serov Ferroalloy Plant, NLMK and the Russian group. Only one Russian group cooperated with the Commission in the current review investigation.

(15) With regard to the unrelated importers, no reply to the questionnaire was received. Therefore, it is considered that no unrelated importer in the Union cooperated in the investigation.

(16) Replies to the questionnaires were received from six out of seven known Union producers of FeSi. In view of the relatively limited number of Union producers, no sampling was envisaged in the review investigation.

(17) Verification visits were carried out at the premises of the following companies:

(a) Union producers:

FERROATLANTICA Group:

Ferroatlantica S.L. — Madrid, Spain

Ferropem — Chambery, France

HUTA LAZISKA S.A. — Laziska Gorne, Poland

OFZ a.s. — Istebne, Slovakia

TDR LEGURE d.o.o. — Ruse, Slovenia

VARGON ALLOYS A.B. — Vargön, Sweden

(b) Union users:

Aperam SA — Luxembourg

Ugitech — Ugine, France

(c) Exporting producer in Russia:

The Russian group:

JSC Chelyabinsk Electrometallurgical Integrated Plant ('JSC CHEMK') — Chelyabinsk, Russia

JSC Kuznetsk Ferroalloy Works ('JSC KF') — Novokuznetsk, Russia

RFA International LP ('RFAI') — Mishawaka, USA

(d) Producers in the analogue country:

Elkem AS, Oslo, Norway

FESIL Rana Metall AS, Trondheim, Norway

Finnfjord AS, Finnsnes, Norway.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(18) The product concerned is ferro-silicon currently falling within CN codes 7202 21 00, 7202 29 10 and 7202 29 90, originating in the PRC and Russia.

(19) The production of FeSi takes place in electric arc furnaces by means of reducing quartz using carbon-bearing products. This process is energy-intensive. FeSi is sold in the form of lumps, grains or powder and exists in various qualities, depending on the silicon and the impurity content (e.g. aluminium). FeSi with a silicon content of 70 % and above is considered as a high purity product. With a silicon content of more than 55 % and less than 70 %, it is a medium purity product, and with a silicon content of less than 55 % it is a low purity product. The product concerned is essentially used as a deoxidiser and as an alloying component in the iron and steel industry.

2. **Like product**

(20) The FeSi produced and sold in the Union by the Union industry and the FeSi produced and sold in Norway ('the analogue country') as the PRC is a non-market economy country and has not been investigated in the course of this investigation, and in Russia was found to have essentially the same physical and chemical characteristics and the same basic uses as the FeSi produced in the PRC and in Russia and sold for export to the Union. They are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. **LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING**

(21) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping from the two countries concerned.

IMPORTS FROM THE PRC

1. **Preliminary remarks**

(22) As stated in recital (13) above, no Chinese exporting producers cooperated with the investigation. Thus, in the absence of cooperation from exporting producers in the PRC, the overall analysis, including the dumping calculation, is based on facts available pursuant to Article 18 of the basic Regulation.

(23) Therefore, the likelihood of a continuation or recurrence of dumping was assessed by using the expiry review request, combined with other sources of information such as trade statistics on imports and exports (Eurostat and Chinese export data) and other information publicly available.

(24) The absence of cooperation affected the comparison of the normal value with the export price of the various product types. As explained in recital (30) below, it was considered appropriate to establish both the normal value and the export price on a global basis, namely based of one single product, in accordance with Article 18 of the basic Regulation.

(25) In accordance with Article 11(9) of the basic Regulation, the same methodology as that used to establish dumping in the original investigation was followed whenever it was found that circumstances had not changed.

2. **Dumping of imports during the RIP**

2.1. *Determination of the Normal Value*

(26) In the notice of initiation, the Commission invited all interested parties to comment on its proposal to use Norway as a market economy third country for the purpose of establishing normal value in respect of the PRC. Norway was used as an analogue country in the original investigation. In the absence of comments from any parties on this aspect, it was concluded that Norway should be selected again as an analogue country to establish the normal value for the PRC in accordance with Article 2(7)(a) of the basic Regulation.

(27) In accordance with Article 2(2) of the basic Regulation it was first examined whether the total volume of domestic sales of the like product to independent customers made by the cooperating producers in Norway was representative in comparison with the total export volume from the PRC to the Union, namely whether the total volume of such domestic sales represented at least 5 % of the total volume of export sales of the product concerned to the Union. On that basis, it was found that the domestic sales in the analogue country were representative.

(28) It was also examined whether the domestic sales of the like product could be regarded as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of domestic sales to independent customers on the domestic market which were profitable during the RIP.

(29) Normal value was thus based on the actual domestic price, which was calculated as a weighted average price of the profitable domestic sales made during the RIP.

2.2. *Determination of the export price*

(30) As stated in recital (24) above, the Chinese exporting producers did not cooperate in the investigation. Therefore, the export price was based on the best information available, in accordance with Article 18 of the basic Regulation.

(31) The volume and the import prices were first extracted from the Eurostat import database for the three CN codes listed in recital (18) above, namely with the distinction of the quality. Given that it was considered appropriate to establish the export price on an average basis, the data extracted for CN codes 7202 29 10 and 7202 29 10 90 was adjusted to the silicon content of CN code 7202 21 00. This method is the one proposed in the review request to estimate the total volume of imports on the basis of the quality FeSi75. The volume and import prices of these three CN codes were aggregated and weighted to reflect one average.

(32) Finally, this average import price at CIF level was adjusted by deducting in particular the transportation costs to arrive at the ex-works value. The sales price was thus established in accordance with Article 2(8) of the basic Regulation, on the basis of the price paid or payable reported in Eurostat import statistics.

2.3. *Comparison and adjustments*

(33) The comparison between the normal value and the export price was made on an ex-works basis. In order to ensure a fair comparison, account was also taken of differences which affect price comparability in accordance with Article 2(10) of the basic Regulation. In particular, adjustments were made to reflect customs exportation taxes, on the basis of data mentioned in the review request given the lack of cooperation from Chinese exporting producers.

2.4. *Dumping during the RIP*

(34) On the basis of above, the dumping margin expressed as a percentage of the free-at-Union-frontier price, before duty, was found to be 165 %.

(35) However, it has to be noted that the total import volume of the product concerned to the Union has drastically decreased after the imposition of the original measures and that the above-mentioned dumping margin was established on the basis of a limited volume of imports (namely less than 2 500 tonnes during the RIP).

(36) Therefore, for the completeness of the analysis, the pricing behaviour of the Chinese exporting producers on the three most important non-Union markets, namely Japan, South Korea and the United States of America ('the USA') was also examined.

(37) For that purpose, Chinese export figures were used to establish the price of Chinese exports to Japan, South Korea and the USA. The comparison with the normal value established above also showed the existence of dumping, varying between 86 % to 92 %, depending on the country of destination.

3. **Development of imports should measures be repealed**

3.1. *Production capacity of the PRC*

(38) The PRC is by far the world's largest FeSi producing country. The production capacity was estimated to be 10-11 million tonnes per year during the RIP. Therefore, the PRC's industry operated at an estimated 50 % of its production capacity. This means there is a current spare capacity of around 5,5 million tonnes per annum which represents almost seven times the total Union consumption. In spite of this current overcapacity and based on information provided by the applicant, it appears that capacity in the PRC is still expanding as larger and more efficient furnaces are currently built.

(39) There is no evidence to suggest that the level of consumption on the Chinese domestic market or third country markets would significantly increase and thus absorb increased production in case the spare capacity of the Chinese producers were to be used.

3.2. *Attractiveness of the Union market*

(40) After the imposition of definitive measures in February 2008, imports from the PRC decreased steadily and became marginal, representing less than 1 % of Union consumption during the RIP. After a peak of imports of around 330 400 tonnes in 2007, imports decreased to less than 2 500 tonnes in 2012. However, the EU market for FeSi remains attractive for Chinese exports, based on the observed price levels.

(41) As mentioned above, there is an important production overcapacity in the PRC suggesting a strong incentive to find alternative markets to absorb this excess in production capacity. However, due to several export restrictions imposed by the Chinese government (namely a 25 % export duty, a 17 % non-refundable VAT and export licences), overall Chinese exports have decreased from a peak in 2007 of 1,5 million to just 0,4 million tonnes in 2009. Nevertheless, as from 2010, a rebound was observed in overall exports and the volume of exports increased to 0,8 million tonnes and were estimated at 0,7 million tonnes in 2013. The most recent figures indicate a sustained level of exports, the volume of which is higher than the entire Union consumption.

(42) Despite those export restrictions, Chinese producers exported a significant volume of FeSi to worldwide markets not subject to any import restrictions (namely Japan, South Korea and the USA).

(43) At first sight, the Asian market could be an alternative for absorbing part of the Chinese excess production. However, according to information submitted by the applicant, the recent developments in that market may render it less attractive for Chinese exports.

(44) Indeed, he Asian market will be seriously impacted by the entry into production of two new ferrosilicon projects in Malaysia (Pertama Ferroalloys and Sarawak Ferroalloys plants). It is estimated that Malaysia's annual ferrosilicon output will increase by 420 000 tonnes as from 2014 and will be sold to neighbouring countries in Southeast Asia, especially Japan, which requires 600 000 tonnes of ferrosilicon per year. The output of the Malaysian production facilities will negatively impact Chinese exports to Southeast Asia. In addition, Japanese steel producers and South Korean steel mills already entered into agreements for purchasing significant volumes of ferrosilicon per annum from the new Malaysian producers, thereby making it harder for Chinese exports to enter the market.

(45) In its comments to the disclosure, the exporting producer claimed that Malaysian production was overstated. After verification, this comment was considered appropriated and therefore, Malaysia production was corrected to about 370 000 tonnes.

(46) Therefore, it is expected that the additional Malaysian production will increase competition on this already saturated market where the PRC and Russia today have a significant market share.

(47) The reduced presence of Chinese products on the Union market during the RIP is mainly explained by the exports restriction imposed by the Chinese government mentioned in recital (41) above.

(48) The prices in the EU market would also act as an attraction to absorb the excess capacity of the Chinese producers. Indeed, the average Union market price in 2012 was at least as high as the export prices of Chinese producers to their main countries of destination (Japan, South Korea and USA), further underlining the attractiveness of the Union market when sales to other destinations become more problematic.

(49) It can therefore be concluded that the European market, one of the largest worldwide, remains attractive to Chinese producers.

4. **Conclusion on the likelihood of a continuation of dumping**

(50) The available spare capacity in the PRC and the relatively attractive price level in the Union market lead to the conclusion that there is a risk of an increase in Chinese exports of the product concerned should the measures in force be allowed to lapse.

(51) Given the current and potential spare capacity existing in the PRC, the fact that the Union market is one of the largest market in the world, and the expected pressure on Chinese exports in Southeast Asia, it can be concluded that the PRC exporters are likely to increase their exports to the Union at dumped prices should the anti-dumping measures be repealed.

IMPORTS FROM RUSSIA

1. **Preliminary remarks**

(52) As stated in recital (14), only one group of producers cooperated with the proceeding. However, it was found that the Russian group represented a significant proportion of the total Russian production, i.e. approximately 78 % of Russia's total FeSi production and for most of the FeSi imports originating from Russia into the Union. Therefore, it was considered that the information provided by the Russian group, combined from other sources such as the request for the review and available trade statistics on imports (from Eurostat) had to be used in order to assess the likelihood of a continuation or recurrence of dumping.

(53) For the calculation of the dumping margin, the companies part of the Russian group JSC CHEMK and JSC KF are considered related within the meaning of Article 143 of the Customs Code ([1]), as in the original investigation. Therefore, a single dumping margin was calculated for the whole group by using the following methodology. The amount of dumping was calculated for each individual exporting producer before determining a weighted average dumping margin for the group as a whole. It should be noted that this methodology was different from the methodology applied in the original investigation, where the dumping calculation was done by aggregating all production and sales data of the producing entities. The different methodology was used in the terminated interim review. The change in circumstances that warranted the change in methodology was the change in the corporate structure of the group allowing the identification of the individual producers within the group in respect to sales and production.

2. **Dumping of imports during the RIP**

2.1. *Determination of the Normal Value*

(54) In accordance with Article 2(2) of the basic Regulation it was first examined whether the total volume of domestic sales of the like product to independent customers made by the cooperating exporting producers was representative in comparison with their total volume of export sales to the Union, namely whether the total volume of such sales represented at least 5 % of the total volume of export sales of the product concerned to the Union.

([1]) In accordance with Article 143 of Commission Regulation (EEC) No 2454/93 (OJ L 253, 11.10.1993, p. 1) concerning the implementation of the Community Customs Code, persons shall be deemed to be related only if: (a) they are officers or directors of one another's businesses; (b) they are legally recognized partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife, (ii) parent and child, (iii) brother and sister (whether by whole or half blood), (iv) grandparent and grandchild, (v) uncle or aunt and nephew or niece, (vi) parent-in-law and son-in-law or daughter-in-law, (vii) brother-in-law and sister-in-law. In this context 'person' means any natural or legal person.

(55) It was also examined whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. This examination was made for product types, sold by an exporting producer on its domestic market, which was found to be directly comparable with a product type sold for export to the Union. Domestic sales of a particular product type were considered sufficiently representative when the total volume of that product type sold by the exporting producer on the domestic market to independent customers represented at least 5 % of its total sales volume of the comparable product type exported to the Union.

(56) It was also examined whether the domestic sales of product types could be regarded as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of domestic sales to independent customers on the domestic market which were profitable for each exported type of the product concerned during the RIP.

(57) For product types where more than 80 % by volume of sales on the domestic market of the product type were above cost and the weighted average sales price of that type was equal to or above the unit cost of production, normal value, by product type, was calculated as the weighted average of the actual domestic prices of all sales of the type in question, irrespective of whether those sales were profitable or not.

(58) Where the volume of profitable sales of this product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the unit cost of production, normal value was based on the actual domestic price, which was calculated as a weighted average price of only the profitable domestic sales of that type made during the RIP.

(59) Wherever there were no domestic sales of a particular product type and for product types where the domestic sales were insufficient, the normal value was constructed in accordance with Article 2(3) of the basic Regulation.

(60) When constructing normal value pursuant to Article 2(3) of the basic Regulation, the amounts for selling, general and administrative costs and for profits have been based, pursuant to Article 2(6) of the basic Regulation, on the actual data pertaining to the production and sales, in the ordinary course of trade, of the like product, by the cooperating exporting producers or on facts available.

2.2. *Determination of the export price*

(61) During the RIP, the Russian group's export sales to the Union were made through RFAI, its associated company (the related importer) which performed all import functions in relation to the goods entering into free circulation in the Union, namely the functions of a related importer.

(62) Therefore, the export price was established in accordance with Article 2(9) of the basic Regulation, on the basis of prices at which the imported products were first resold to an independent buyer, adjusted for all costs, incurred between importation and resale, as well as a reasonable margin for SG&A and for profits. For this purpose, the actual SG&A percentage was used and in the absence of new information from independent importers concerning profits accruing, use was made of the profit rate applied in the original investigation, namely 6 %.

(63) The Russian group claimed that RFAI should be treated as part of the same single economic entity ('SEE') as both are controlled and managed by the same persons, and the companies act as a single economic entity. In consequence, when determining the export prices no deduction should be made for SG&A and profit of RFAI.

(64) Whether the association between the Russian group and RFAI took the form of a SEE or not, is irrelevant in the context of an Article 2(9) adjustment for the purposes of constructing the export price.

(65) Therefore, as the Russian group's export sales were made via an associated company (RFAI), the export price had to be adjusted by deducting a reasonable margin for SG&A costs and profit, as expressly provided under Article 2(9) of the basic Regulation. On this basis, the claim has to be rejected.

(66) The exporting producer repeated the claim about the existence of a SEE and that this prevented the adjustments for SG&A and profit under Article 2(9) of the basic Regulation. It also claimed that even if the adjustments were justified, the constructed export price should only include costs related to imports by RFAI, and exclude all SGA costs related to the exports of the SEE. Last, it stated that it disagrees with the finding of non-existence of a SEE in this case.

(67) The existence of a SEE is irrelevant in the context of the construction of the export price under Article 2(9) of the basic Regulation. As long as conditions stipulated in Articles 2(1) and 2(9) of the basic Regulation are met, the degree of control or integration is irrelevant for the assessment of the legality of the adjustments under Article 2(9) ([1]). Article 2(9) of the basic Regulation requires the Commission to construct, in certain situations, an export price, and to adjust this constructed export price for a certain number of parameters, including where the parties 'appear to be associated'. The wording of Article 2(9) of the basic Regulation is clear in the sense that an 'adjustment shall be made' (underlining added by the Commission). The Commission verified that RFAI performed all the functions normally performed by an associated importer in the Union. Indeed, RFAI is closely involved in the international activity of the group (customer assistance, logistics and schedule of deliveries, purchasing of capital goods and key raw materials, etc.). Thereby the requisite condition for an adjustment pursuant to Article 2(9) of the basic Regulation was met, justifying the adjustments made. Hence, it is concluded that the adjustments made were required on the basis of Article 2(9) of the basic Regulation.

(68) The exporting producer asserted that it follows from the ruling in Nikopolsky/Interpipe ([2]) that if the exporter and the related trader constitute a SEE, an adjustment to the export price pursuant to Article 2(9) of the basic Regulation is not permitted. This claim is unfounded. Indeed, that judgment concerns an adjustment made pursuant to Article 2(10)(i) for nominal commissions received by a trader whose functions are similar to those of an agent working on a commission basis. That case law is therefore irrelevant to the present case, where the Swiss company RFAI performs all the functions normally performed by an related importer. The existence of a SEE does not have the same impact on the adjustments under Article 2(10) of the basic Regulation as in relation to claimed adjustments under Article 2(9) of that Regulation. Moreover, there is no discretion whether an adjustment for a reasonable margin for SG&A costs and profit can be claimed. Such an adjustment shall be made pursuant to Article 2(9) of the basic Regulation when parties are associated.

(69) Regarding the scope of the adjustment, the claim concerning partial deductions of SG&A and profit cannot be accepted, in the absence of relevant evidence submitted by the exporting producer. The adjustments under Article 2(9) of the basic Regulation are those inherent in the construction of an export price in the commonest cases of an association. If the global SG&A and profit were to be only partially adjusted, such modification would have to be based on the evidence provided by the exporting producer in relation to the costs, in particular, as to whether these costs constitute special expenses accrued in relation to any activity not directly related to the import of the product concerned between importation and subsequent resale.

(70) The Russian group also claimed that no deduction of the anti-dumping duty should be made in the calculation of the export price in accordance with Article 11(10) of the basic Regulation, since the duty is duly reflected in resale prices and the subsequent selling prices in the Union.

(71) The investigation has established in particular that the resale prices of the product concerned in the Union did not reflect the duty paid for 99 % of the transactions reported. Therefore, it can be concluded that the anti-dumping duty was not duly reflected in the Russian group's resale prices. As a result, this claim of the Russian group could not be accepted and amount of the anti-dumping duties has been deducted when constructing the export prices in accordance with Article 2(9) of the basic Regulation.

2.3. *Comparison and adjustments*

(72) The comparison between the normal value and the export price was made on an ex-works basis. In order to ensure a fair comparison, account was taken of differences which affect price comparability in accordance with Article 2(10) of the basic Regulation.

([1]) Case C-260/84, *Minebea Company Limited v Council of the European Communities*, paragraph 37.

([2]) Case T-249/06, *Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT) and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT) v Council* [2009] ECR II-00383. The judgment was subsequently upheld by the Court of Justice on appeal in Joined Cases C-191/09 P and C-200/09 P.

(73) Adjustments were made for transport costs, insurance costs, terminal and handling costs, credit costs, and commissions, where applicable and justified, in accordance with Article 2(10) of the basic Regulation.

2.4. *Dumping during the RIP*

(74) According to Article 2(11) and (12) of the basic Regulation the weighted average normal value was compared with the weighted average export price per product type on an ex-works basis for each cooperating exporting producer which are part of the Russian Group.

(75) The exporting producer concerned made several claims regarding the calculation of the dumping margin.

(76) Firstly, concerning the adjustment of the cost of quartzite purchased by one producing company of the group from the other producing company of the group, the addition of a 5 % profit margin to the revised purchase price was contested. The argument used is that both companies are members of the same single economic entity.

(77) Although the SEE argument is irrelevant in the context of the quartzite cost adjustment, it is acknowledged that transactions between related parties can be made without realization of a profit. In the absence of quartzite sales to external parties, the existence of any profit could also not be demonstrated. As a consequence, the profit mark-up of the adjusted quartzite cost was omitted and the dumping determination revised accordingly.

(78) A second claim concerned the application by the Commission of the recommendations of the WTO Dispute Settlements Body in the Salmon dispute with Norway. In that case, it was recommended that when domestic sales of a particular product type were not representative, the SGA and profit realized on those transactions should nevertheless be used in the construction of the normal value. The exporting producer also claimed that applying the new methodology in an expiry review was not permitted since no substantial change of circumstances would allow for that.

(79) The Commission has explained the Salmon Panel methodology in a hearing to the exporting producer, who continued to see a breach of Articles 2(4) and 2)6) of the basic Regulation in the Panel's recommendation. It is however the Commission's duty to implement such rulings in the framework of its WTO obligations. Such a methodology affects all cases and not only investigations opened on the basis of article 5 of the basic Regulation.

(80) Based on a third claim, the Commission corrected for those instances where the cost of one exporting producer of the group was compared to certain sales of the other exporting producer.

(81) The Commission further confirms that the turnover was adjusted by the same allowances as the cost of production, such as transport costs, insurance and handling, for establishing the profitability test, and packaging costs for determining the dumping margins.

(82) In a fourth claim, the exporting producer considers that the anti-dumping duty in force was unduly deducted from the export price. In order to prove this point, it is stated that export sales prices were more than 100 % higher in the review investigation period than in the original investigation period, allegedly proving that the anti-dumping duty was incorporated in the export prices. Moreover, certain import duties and anti-dumping duties should not have been deducted because they were allegedly prepaid and referred to a future period. Finally, costs for an office in Japan and Swiss Federal and Cantonal income taxes should also not have been taken into account by the Commission.

(83) The evidence provided by the exporting producer is not conclusive in the context of proving that the anti-dumping duty was duly reflected in the export price in this case and for this product. Both resale prices and production costs have increased strongly since the original investigation. Therefore, the increase in export prices cannot be conclusively attributed to the alleged reflection of the duty. To illustrate the inconclusiveness of the submitted evidence, the Commission compared the export prices to the cost of goods, inclusive of the anti-dumping duty, during the review investigation period, and as a result 99 % of the export transactions do not have an export price high enough to cover the anti-dumping duty. Finally, even if the duty is not deducted, this would not be sufficient to eliminate the finding of substantial dumping and it would not affect the conclusion on the likelihood of a continuation of dumping either. Therefore, it would not have any impact on the outcome of the present expiry review investigation.

(84) The Commission observed that the prepayment of import duties and anti-dumping duties is impossible and that such duties are levied upon importation. Moreover, the group used a bonded warehouse, meaning that duties were only due when imports and sales were effectively made. Moreover, based on a comparison of the trial balance of 31 December 2012 and the audited accounts, it was clearly established that the auditors re-qualified the alleged prepaid anti-dumping duties into effectively paid anti-dumping duties as a cost in the profit and loss account.

(85) The costs of Japan office were not related to the product concerned and therefore did not influence the calculation made by the Commission. The claim was therefore rejected. Finally the Swiss taxes mentioned could only have been excluded if they would relate to corporate income tax, which on the basis of the reply to disclosure appears to be the case. The dumping calculation was therefore adjusted accordingly.

(86) The adjusted interest on a loan made by a group company in the British Virgin Islands to another group company was revised by the Commission in response to the claim that such loans can be made below market conditions and in essence would only make sense if the interest on the loan is lower than what can be obtained from a bank. The Commission further confirms that the profit margin for RFAI was applied to the net invoice value in the company's accounting currency, and was not based on CIF to which certain costs were added.

(87) Taking into account the above considerations, and revising the calculation based on the acceptance of the claims on the quartzite intragroup sales, the intragroup loan and the Swiss Federal and Cantonal income taxes, the dumping margin expressed as a percentage of the free-at-Union-frontier price, before duty, was revised and found to be 43 %.

(88) It has to be recalled that the interim review mentioned in recital (4) above, concluded that the Russian group imports were made at dumped prices during the period October 2009 to September 2010.

3. **Development of imports should measures be repealed**

(89) Further to the analysis of the existence of dumping during the RIP, the likelihood of a continuation or recurrence of dumping was also investigated.

3.1. *Production capacity of Russia*

(90) Russia is the world's second largest FeSi producer. According to the Metal Expert market research company, FeSi production capacity in Russia amounts to some 900 000 tonnes. This includes production by furnaces which can produce FeSi but also other types of ferro-alloys. Indeed, the production equipment of the two producers (i.e. JSC CHEMK and Serov Ferroalloy Plant) allows switching between FeSi and other types of ferroalloys in a short period of time. The equipment of the other Russian producers, however, (i.e. Bratsk Ferroalloy Plant, NLMK and JSC KF) allows only for the production of FeSi.

(91) Following disclosure, the sole cooperating exporting producer claimed that its own information was disregarded from the calculation of the production capacity of Russia. However, as mentioned in recital (52), the primary source of information used was the one provided by this Russian group. Metal Expert report was used to establish the production capacities of other Russian producers. This claim is, therefore not granted.

(92) Furthermore, this exporting producer claimed that JSC CHEMK production was wrongly assessed, as it claims to be virtually impossible, without significant additional costs and time delays, to switch from one ferroalloy production to the other. However, the evidences found during the on-spot verification in the premises of JSC CHEMK show that the JSC CHEMK furnaces can switch from one ferroalloy to another without the time delays described above. This claim is, therefore not granted.

(93) Actual production during the RIP was estimated to be in the region of 633 000 tonnes (basis FeSi75) with spare capacity available up to 267 000 tonnes. Using a conservative approach and taking into consideration the production capacity used for the production of the other ferro-alloys, the spare capacity for FeSi is at least 120 000 tonnes.

(94) The Russian group claimed that the estimation of the Russian spare capacity was wrongly established as the Commission did not consider that the Russian group was operating at 95-100 % capacity of its production capacity. However, as mentioned in the recital above, a conservative approach has been also followed by taking into consideration the actual spare capacity. The claim is, therefore, not granted.

(95) On the basis of the Metal Expert report, the high spare capacity is explained by a significant decrease by 50 % in the domestic demand between 2002 and 2009, and remained stable till 2012. The production capacity is thus largely in excess of demand on the domestic market. Russian producers therefore depend on exports.

3.2. *Attractiveness of the Union market*

(96) Despite the existence of the current measures, the EU market is still attractive to Russian exports. The level of imports observed during the RIP illustrates that Russian imports have to a certain extent been affected by the anti-dumping duties imposed, but were still markedly present during the RIP.

(97) One party claimed that the European Union market for FeSi, would be unattractive for a global supplier, such as the Russian group and that there is a steep overall decline of imports which has so far continued in 2012. It claimed that this trend would not be reversed in the future. An examination of trade data collected from Eurostat and in accordance with Article 14(6) of the basic regulation showed however that Russian imports were rather stable during the period 2010-2012.

(98) Furthermore, when comparing the export prices of the product concerned to the European Union with the prices charged for FeSi on third country markets, it emerges that the Russian group prices to the EU are higher, depending on the country of destination.

(99) Therefore, the allegation that the Union market is not attractive for Russian producers has to be rejected.

(100) One party claimed that the Russian market is becoming more and more attractive in view of several upcoming projects, such as the Olympic Winter Games in 2014, which should boost domestic demand for steel and therefore increase domestic consumption of FeSi. However, it should first be pointed out that this party did not provide any relevant data or estimation concerning the impact of these projects on the domestic consumption of FeSi. In any event, if such situation would indeed materialise, that effect should already have been visible during 2012 and 2013. However, the available data shows that the domestic consumption remained stable. Finally, the effect of these projects would in any case be of limited and temporary nature. Therefore, this argument is disregarded. One party alleged that the overcapacity in Russia is largely absorbed by exports to Asian markets and

the USA. Indeed, during the RIP Russian producers exported worldwide more than 73 % of their output. However, as mentioned in recital (93) above, there is still an important production overcapacity in Russia due to decreasing domestic consumption, suggesting a strong need to find alternative markets to compensate for the loss in domestic sales and to absorb the excess in production capacity.

(101) As mentioned in recital (44) above, competition will increase in Asian markets due to new facilities built in Malaysia which will begin production of about 420 000 tonnes in 2014. This situation will make Russian exports for the Asian market more difficult.

(102) As explained in recital (45), the production of Malaysia has been revised to 370 000 tonnes.

(103) Furthermore, in the USA, one of their main export markets, Russian exporters are already dealing with an anti-dumping investigation for which the petition alleged substantial dumping margins.

(104) Therefore, it has to be concluded that Russian exporting producers are largely depending on exports to third countries markets where more competition will take place. This will render the Union market even more attractive for them.

4. **Conclusion on the likelihood of a continuation of dumping**

(105) In view of the findings described above, it can be concluded that imports from Russia are still being dumped and that there is a strong likelihood of a continuation of dumping. Given the current and potential future spare capacity in Russia, the fact that the Union market is one of the largest market in the world, and the expected expansion of capacity in the Southeast Asian market, it can be concluded that the Russian exporters are likely to further increase their exports to the Union at dumped prices should the anti-dumping measures be allowed to lapse.

5. **Conclusion**

(106) In light of the above considerations it is concluded that there is a significant and real risk of a continuation of dumping with regard to FeSi originating in the PRC and Russia should the existing measures be allowed to lapse.

D. **DEFINITION OF THE UNION INDUSTRY**

(107) During the RIP, the like product was manufactured by seven known Union producers. They constitute the Union industry within the meaning of Article 4(1) of the basic Regulation and will hereafter be referred to as the 'Union industry'.

(108) As indicated in recital (16) above, six Union producers provided the requested information. The companies in question are estimated to represent around 90 % of the total Union production and their situation is considered representative for the Union industry.

E. **SITUATION ON THE UNION MARKET**

1. **Union consumption**

(109) Union consumption was established on the basis of the unrelated and related sales volumes of the Union industry on the Union market, an estimate for the non-cooperating producer (on the basis of the request for a review) and import data from Eurostat, at CN code level.

(110) During the period considered Union consumption increased by 40 %. However, it should be taken into account that the starting year of the period considered (2009) was an extremely bad year due to the negative effects of the economic crisis. Despite partial recovery after 2009, Union consumption still did not reach the levels recorded during the original investigation when in each year the consumption was above 850 thousand tonnes.

Table 1

Consumption

	2009	2010	2011	RIP
Consumption (tonnes)	544 093	799 233	841 796	760 128
Index (2009 = 100)	*100*	*147*	*155*	*140*

Source: Questionnaire replies, expiry review request, Eurostat.

2. **Volume, Prices and market share of imports from the countries concerned.**

(111) The volumes and market shares of imports from the PRC and Russia were analysed on the basis of Eurostat and the data collected in accordance with Article 14(6) of the basic Regulation. Given that the volumes from the PRC are very low, the imports from the countries concerned have not been assessed cumulatively.

(a) ***Volume and market share of the imports concerned***

(112) During the period considered the dumped imports into the Union were found to have developed in terms of volumes and market shares as follows:

Table 2

Volume and market shares of the imports concerned

	2009	2010	2011	RIP
PRC				
Volume of imports (tonnes)	8 105	13 828	5 125	2 516
Index (2009 = 100)	*100*	*171*	*63*	*31*
Market share (%)	1,5	1,7	0,6	0,3
Index (2009 = 100)	*100*	*116*	*41*	*22*
Russia				
Volume of imports (tonnes)	74 678	53 671	29 338	40 725
Index (2009 = 100)	*100*	*72*	*39*	*55*
Market share (%)	13,7	6,7	3,5	5,4
Index (2009 = 100)	*100*	*49*	*25*	*39*

	2009	2010	2011	RIP
Total countries concerned				
Volume of imports (tonnes)	82 783	67 499	34 463	43 241
Index (2009 = 100)	*100*	*82*	*42*	*52*
Market share (%)	15,2	8,4	4,1	5,7
Index (2009 = 100)	*100*	*56*	*27*	*37*

Source: Eurostat

(113) Imports volumes from the countries concerned decreased considerably by 48 % over the period considered. Their market share also decreased from 15,2 % in 2009 to 5,7 % in the RIP. As a result of this trend Chinese exports almost ceased to exist on the Union market. Russian exporting producers however still hold substantial market share, making Russia the fourth biggest exporter to the Union.

(b) ***Price of imports and price undercutting***

(114) The table below shows the average price of the dumped imports. During the period considered average import price from the PRC decreased by 38 %. The average import price from Russia increased by 31 % over this period but it still remained below the sales prices of the Union industry.

Table 3

Average price of dumped imports

	2009	2010	2011	RIP
PRC				
Average price (EUR/tonne)	991	1 088	873	611
Index (2009 = 100)	*100*	*110*	*88*	*62*
Russia				
Average price (EUR/tonne)	716	776	889	999
Index (2009 = 100)	*100*	*108*	*124*	*140*
Total countries concerned				
Average price (EUR/tonne)	742	840	887	976
Index (2009 = 100)	*100*	*113*	*119*	*131*

Source: Eurostat

(115) In order to determine the price undercutting during the RIP, the weighted average sales prices per product type of the cooperating Union producers charged to unrelated customers on the Union market, adjusted to an ex-work level, were compared to the corresponding weighted average prices per product type of the dumped imports from the cooperating Russian producers to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for custom duties.

(116) Since no Chinese exporting producer cooperated in the review investigation, the price undercutting for Chinese export was determined by the comparison of the Union producers' weighted average prices to the unrelated customers on the Union market, on ex-works basis with the average export prices of the Chinese exports on the CIF basis obtained from the Eurostat, with appropriate adjustments for customs duties.

(117) The result of the comparison, when expressed as a percentage of the cooperating Union producers' turnover during the RIP, showed a weighted average undercutting margin on the Union market of ranging from 6 to 39 % for Russia and 46 % for the PRC.

3. **Imports from other third countries not subject to measures**

Table 4

Imports from other third countries

	2009	2010	2011	RIP
Brazil				
Volume of imports (tonnes)	37 303	90 324	72 769	58 548
Index (2009 = 100)	*100*	*242*	*195*	*157*
Price EUR/tonne	974	1 136	1 352	1 173
Index (2009 = 100)	*100*	*117*	*139*	*120*
Market share (%)	6,9	11,3	8,6	7,7
Index (2009 = 100)	*100*	*165*	*126*	*112*
Iceland				
Volume of imports (tonnes)	101 036	103 043	91 462	101 275
Index (2009 = 100)	*100*	*102*	*91*	*100*
Price EUR/tonne	985	1 027	1 251	1 118
Index (2009 = 100)	*100*	*104*	*127*	*114*
Market share (%)	18,6	12,9	10,9	13,3
Index (2009 = 100)	*100*	*69*	*59*	*72*
Norway				
Volume of imports (tonnes)	122 707	193 121	224 372	224 542
Index (2009 = 100)	*100*	*157*	*183*	*183*
Price EUR/tonne	1 019	1 142	1 287	1 286
Index (2009 = 100)	*100*	*112*	*126*	*126*
Market share (%)	22,6	24,2	26,7	29,5
Index (2009 = 100)	*100*	*107*	*118*	*131*
Other third countries				
Volume of imports (tonnes)	119 274	160 690	211 670	120 966
Index (2009 = 100)	*100*	*135*	*177*	*101*
Price EUR/tonne	917	1 054	1 190	1 067
Index (2009 = 100)	*100*	*115*	*130*	*116*
Market share (%)	21,9	20,1	25,1	15,9
Index (2009 = 100)	*100*	*92*	*115*	*73*

	2009	2010	2011	RIP
Total third countries				
Volume of imports (tonnes)	380 320	547 178	600 273	505 331
Index (2009 = 100)	*100*	*144*	*158*	*133*
Price EUR/tonne	974	1 093	1 255	1 187
Index (2009 = 100)	*100*	*112*	*129*	*122*
Market share (%)	69,9	68,5	71,3	66,5
Index (2009 = 100)	*100*	*98*	*102*	*95*

Source: Eurostat

(118) Import volumes from third countries into the Union market increased by 33 % during the period considered which followed the increasing trend in consumption. Market share of the third countries imports remained relatively stable in the period considered circling around 70 % of the Union consumption, with a slight decline in the RIP. However, the geographical structure of the imports was more changeable with a noticeable increase of imported volumes and market shares of Brazil and Norway which countries seem to have benefited mainly from the increase of the consumption.

(119) Average prices of imports from the third countries increased by 22 % over the period considered and they stay far above the level of prices of imports from the PRC and Russia.

4. **Economic situation of the Union industry**

(120) In accordance with Article 3(5) of the basic Regulation, the Commission examined all economic factors and indices having a bearing on the state of the Union industry.

(121) For the purpose of the injury analysis, the economic situation of the Union industry is assessed on the basis of such indicators as production, production capacity, capacity utilization, sales volume, market share and growth, employment, productivity, magnitude of actual dumping margin and recovery from past dumping, average unit prices, unit cost, profitability, cash flow, investments, return on investments and ability to raise capital, stocks and labour costs.

(a) ***Production, production capacity and capacity utilisation***

(122) The Union industry's production increased significantly during the period considered. This increase was the most pronounced between 2009 and 2011 when production increased by 178 %. It remained stable afterwards in the RIP. It is recalled that the starting year of the period considered was exceptional due to the economic crisis, hence it was characterized by unusually low level of production. Indeed, notwithstanding a significant recovery after 2009, it should be recalled that the Union industry's production still did not reach the starting level of the original investigation (year 2003), during which production was reported above 270 thousand tonnes.

Table 5

Total Union industry' production

	2009	2010	2011	RIP
Production (tonnes)	81 147	192 495	225 376	224 540
Index (2009 = 100)	*100*	*237*	*278*	*277*

Source: Questionnaire replies and review request

(123) Production capacity remained relatively stable during the period considered with a slight increase in the RIP. As production increased significantly in the period 2009-2011, capacity utilisation showed an overall increase of 179 %. This trend changed in the RIP where capacity utilization decreased. This negative change however resulted not from the decrease in actual production but from increase in the capacity itself.

Table 6

Production capacity and capacity utilisation

	2009	2010	2011	RIP
Production capacity (tonnes)	301 456	301 456	299 914	324 884
Index (2009 = 100)	*100*	*100*	*99*	*108*
Capacity utilisation (%)	27	64	75	69
Index (2009 = 100)	*100*	*237*	*279*	*257*

Source: Questionnaire replies and review request

(b) ***Sales volume, market share and growth***

(124) The sales volume of the Union industry on the Union market to unrelated customers (established on a basis of sales to both related and unrelated customers in the Union) followed the trend of consumption in the years from 2009 to 2011. Further sudden jump in RIP results from shift of the Union industry's sales from related to unrelated customers in the Union which was noted in this year. This was due to a change in the corporate structure in one Union producer.

Table 7

Union industry's sales to unrelated customers

	2009	2010	2011	RIP
Volume (tonnes)	60 257	113 048	122 860	191 525
Index (2009 = 100)	*100*	*188*	*204*	*318*

Source: Questionnaire replies and review request

(125) As sales volumes on the Union market followed the trend of consumption, the Union industry's market share after an initial jump in 2010 remained relatively stable in the period considered with a slightly increasing trend.

Table 8

Union industry's market share

	2009	2010	2011	RIP
Union industry market share (%)	14	21	22	25
Index (2009 = 100)	*100*	*155*	*165*	*187*

Source: Questionnaire replies, Eurostat

(126) As indicated in recital (111) above, the Union consumption was growing by 40 % between 2009 and RIP. The Union industry managed to benefit from this growth by increasing its sales volumes and market share during the same period.

(c) ***Employment and productivity***

(127) Employment of the Union industry related to the product concerned increased by almost 50 % in the period considered. This increase in the number of employees was at the same time accompanied with even higher increase of productivity, measured as output (tonne) per person employed per year, which accounted for 86 % in the same period.

Table 9

Employment and productivity

	2009	2010	2011	RIP
Number of employees	701	869	1064	1042
Index (2009 = 100)	*100*	*124*	*152*	*149*
Productivity (unit/employee)	116	222	212	216
Index (2009 = 100)	*100*	*191*	*183*	*186*

Source: Questionnaire replies, review request.

(d) ***Magnitude of actual dumping margin and recovery from past dumping***

(128) As indicated in recitals (37) and (87) above the dumping margins of imports from the countries concerned remain high. Analysis of the injury indicators brought evidence that the industry is recovering from the past dumping practices. However, the recovery is recent and a certain decline in some injury indicators such as profitability, cash flow and return on investment was observed in the Union market during the RIP. Furthermore, it should be noted that this positive development takes place under the protection of the current anti-dumping measures. Should the measures be repealed the impact of the actual dumping margins on the Union industry be significant.

(e) ***Average unit selling prices on the Union market and unit costs of production***

(129) The average sales prices of the cooperating Union producers to unrelated customers in the Union increased by 25 % in the years 2009-2011 and then decreased again in the RIP. These moves of prices reflect in general changes of costs of raw materials and energy during the same period. A similar trend i.e. increase in the period of 2009-2011 and decrease in the RIP, can be observed in the selling prices of imports from third countries which hold the major part of the Union market.

Table 10

Selling prices and costs

	2009	2010	2011	RIP
Average unit selling price in the Union to unrelated customers (EUR/tonne)	1 136	1 282	1 421	1 151
Index (2009 = 100)	*100*	*113*	*125*	*101*
Unit cost of production (EUR/tonne)	1 094	1 031	1 228	1 063
Index (2009 = 100)	*100*	*94*	*112*	*97*

Source: Questionnaire replies

(f) ***Profitability, cash flow, investments, return on investments and ability to raise capital***

(130) During the period considered the Union producers' cash flow, investments, return on investments and their ability to raise capital developed as follows:

Table 11

Profitability, cash flow, investment, return on investment

	2009	2010	2011	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	2,3	27,0	18,3	7,4
Cash flow (EUR)	4 554 714	44 888 689	39 959 668	19 353 017
Investments (EUR)	26 599 036	20 962 570	25 274 658	27 076 802
Index (2009 = 100)	*100*	*79*	*95*	*102*
Return on investments (%)	– 62,6	159,2	58,3	24,8

Source: Questionnaire replies

(131) The profitability of the cooperating Union producers was established by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the relevant turnover. In 2009, the profit margin was very low, and also negative for some Union producers; however, it started to recover in 2010, in line with an increase in consumption and sales. It should be noted, however, that in the RIP the profit margin is decreasing despite the fact that sales volumes of the cooperating Union industry (also considering the changes in the corporate structure) remained stable. This raises concerns regarding the future evolution of the profit margins of the EU industry.

(132) Cash flow, which is the ability of the industry to self-finance its activities and which was calculated on the basis of operations, was positive in all the period considered. However, this indicator only improved in 2010; afterwards, in in the two following years, it deteriorated considerably. The investigation also showed that the deterioration in the cash flow was more pronounced for the smaller Union producers. This raises concerns as to the ability of the EU industry to carry on the necessary self-financing of its activities in the current economic context.

(133) The evolution of profitability and cash flow during the period considered affected the ability of the cooperating Union producers to invest in their activities. As a result, the level of investment remains relatively high and stable during the period considered. Return on investment, expressed as the profit in percentage of the net book value of the investments, only became positive after 2009. However, following the trend in profitability and cash flow, this indicator also reached its peak in 2010 and has constantly decreased in the years 2011-2012.

(134) In the light of the above, it can be concluded that, although the financial performance of the cooperating Union producers remained sound through most of the period considered, it started deteriorating towards the end of that period, in particular, during the RIP. As shown by Table 11, the profitability of EU sales dropped significantly and the cash flow generated by the Union industry was lower than the value of investments, thus indicating that the industry had to recur to external financing in the RIP.

(135) At the same time, concerns on the ability to raise capital were reported. This factor might constitute a critical element of fragility of the Union industry should the measures be let to expire. In the present economic situation, it is likely that the Union industry would have problems to find the financial means to face the return of dumped imports from the countries concerned and again could be plunged into serious injury in a very short time-frame. This is a particular concern for the SME's which are part of the Union industry.

(g) ***Stocks***

(136) Although the level of closing stocks of the cooperating Union producers increased by 32 % between 2009 and the RIP, it decreased in proportion to the production levels and is not considered by the producers as abnormally high.

Table 12

Closing stock

	2009	2010	2011	RIP
Closing stock (tonnes)	23 946	21 214	26 117	31 504
Index (2009 = 100)	*100*	*89*	*109*	*132*

Source: Questionnaire replies

(h) ***Labour costs***

(137) Whilst the number of people employed by the cooperating Union producers increased by almost 50 % in the period considered, their average wages remained stable in this period.

Table 13

Labour costs

	2009	2010	2011	RIP
Average labour costs per employee (EUR)	29 705	30 296	28 991	29 837
Index (2009 = 100)	*100*	*102*	*98*	*100*

Source: Questionnaire replies

CONCLUSION ON THE SITUATION OF THE UNION INDUSTRY

(138) The investigation showed that the imports of low-priced dumped products from the countries concerned decreased on the Union market after the imposition of the original measures in 2008. This allowed the Union industry to achieve high level of production, increase its sales volume, market share and profitability and to improve its overall financial situation.

(139) It is therefore concluded that the Union industry did not suffer material injury during the RIP. However, given the decline in consumption and the deterioration in certain financial indicators during the RIP such as profitability, cash flow and return on investment the situation of the Union industry is still vulnerable.

F. LIKELIHOOD OF RECURRENCE OF INJURY

1. Preliminary remarks

(140) To assess the likelihood of recurrence of injury if the measures were allowed to lapse, the potential impact of the Chinese and Russian imports on the Union market and the Union industry was analysed in accordance with Article 11(2) of the basic Regulation.

(141) The analysis focused on the consumption trend of the Union market, spare capacity, trade flows and attractiveness of the Union market, and pricing behaviour of the countries concerned.

2. **Consumption in the Union**

(142) The consumption of the product concerned in the Union has decreased by 10 % in the RIP compared to the previous year. This, at the same time, is a reduction of more than 25 % compared with pre-crisis level of 2007. The fall in the consumption of the product concerned is driven by declining steel production in the Union and a further decline in the next years can be expected. This will be challenging for the Union industry which will be confronted with a highly competitive environment. It is thus considered that the presence of low-priced dumped imports from the PRC and Russia cannot be tolerated. It will exercise a downward pressure on the prices in the market and will distort competition and as a consequence will cause substantial material injury to the Union producers.

3. **Spare capacity, trade flows and attractiveness of the Union market, and pricing behaviour of the countries concerned**

(a) ***The PRC***

(143) It has to be noted that total capacity of the production of the product concerned in the PRC is estimated at 10-11 million tonnes which is higher than the global consumption of FeSi. At the same time overall capacity utilization reaches around 50 %.

(144) Chinese worldwide export of FeSi was relatively stable during the period considered, at a level of 0,8 million tonnes. This level of exports is mainly a result of export restrictions as described in recital (41). However, the Union has no control over these mechanisms and the export restrictions can be removed by the Chinese government at any moment, leaving the Union market under the serious threat of flooding by the export of the product concerned from China.

(145) Even if the export restrictions remain untacked, it should be emphasized that the current volumes of Chinese worldwide exports are higher than total consumption in the Union.

(146) It can be reasonably expected, as a consequence to the attractiveness of the EU market described in recitals (40-49) above, that should the measures be repealed at least part of the current Chinese export would be re-directed to the Union market, especially that very soon it will meet additional competition on its traditional Asian markets due to the development of additional capacity of production in Malaysia as explained in recital (44) above.

(147) Expiry of the anti-dumping duties combined with tougher competition in Asia will definitely make Union market an attractive target for the Chinese exporters. In this context it is recalled that before imposition of the measures China was a major exporter to the Union market.

(148) Finally, the current level of the Chinese export prices, the magnitude of dumping margin found, and the existence of significant price undercutting confirm that in the absence of the anti-dumping measures unfair competition by the Chinese export will recur leading to material injury to the Union industry.

(b) ***Russia***

(149) During the review investigation it was established that the production of the product concerned in Russia in the RIP amounted to 633 thousand tonnes while the capacity of production is estimated to 900 thousand tonnes. This leaves around 267 thousand tonnes of spare capacity, which is itself enough to supply one third of the Union's demand.

(150) With regard to Russian export of the product concerned it should be noted that Russia is currently exporting 73 % of its production. Besides the Union, its other traditional export markets are US, Japan and South Korea. In view of the increased competition on the Asian markets, as described in recital (44) above, there are strong indications that most of these trade flows will be re-directed to the Union should the anti-dumping measures be repealed. This effect might be further accentuated should the currently running US anti-dumping investigation on imports from Russia (as a result of the investigation initiated in July 2013) lead to the imposition of measures.

(151) On this point, one exporting producer from Russia has claimed that the imposition of the duties in the US on ferro-silicon originating from Russia is unlikely. Some unofficial findings from the ongoing investigation were provided in order to support this claim. However, the producer does not provide any documental evidence supporting its claims and given that the US anti-dumping investigation has been initiated and is still ongoing, imposition of measures cannot be ruled out.

(152) Expiry of the anti-dumping duties combined with tougher competition in their main export markets will make Union market an attractive target for the Russian exporters. In this context it is recalled that before imposition of the measures Russia was a major exporter to the Union market and it is still present there despite five years of the measures.

(153) Finally, it should be underlined that the Russian threat in terms of volumes is supplemented by its pricing policy on its export markets. Both the original investigation and the current expiry review have shown that Russian dumping practice seems to be structural: its export price is systematically below that of the Russian domestic market. Moreover, the current investigation confirms that prices of Russian imports are still undercutting the sales prices of the Union producers.

4. **Conclusion**

(154) In view of the findings of the investigation, namely the spare capacity available in the countries concerned, the continuation of dumping and the limited ability of the Chinese and Russian exporters to sell in other main third countries markets which increases the attractiveness of the Union market, it is considered that the repeal of the measures would weaken the position of the Union industry in their core market and the injury suffered would recur due to likely Chinese and Russian imports at dumped prices.

(155) There are no reasons to believe that the improvement of the performance of the Union industry due to the measures in force would remain or strengthen if the measures were repealed. On the contrary, there are favourable conditions for a likely shift of the imports from the countries concerned to the Union market at dumped prices and in considerable volumes and that would likely undermine the positive developments in the Union market reached over the period considered. The likely dumped imports would be able to exercise pressure on the Union industry's sales prices and make it lose market share and as a consequence would negatively impact the Union industry's financial performance which is still vulnerable.

(156) On this point, we have received a comment from a Russian exporting producer, which argues that the recurrence of injury cannot be based on the simple possibility of recurrence of injury, but rather on the likelihood of it. However, the investigation has shown a series of factual elements, including the fact that dumping practices from Russian producers have not ceased to exist, and the existence of spare capacity in Russia. Moreover, it is a fact that the Union consumption is lower in the RIP than before the original investigation. Finally, on the global level, more output of the product is expected, especially on the Asian market. These elements considered together lead to a reasonable certainty that, on the basis of the facts available, should the measures be left to expire, the Union industry would again suffer injury from dumped imports.

G. **UNION INTEREST**

1. **Introduction**

(157) In accordance with Article 21 of the basic Regulation, it was examined whether the maintenance of the existing measures would be against the Union interest as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, i.e. those of the Union industry, of importers and of users. The interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.

(158) As this investigation is a review of the existing measures, it allowed for assessment of any undue negative impact of the existing anti-dumping measures on the interested parties.

2. **Interest of the Union industry**

(159) It was concluded in recital (154) above that the Union industry would be likely to experience a serious deterioration of its situation in case the anti-dumping measures were allowed to lapse. Therefore, the continuation of measures would benefit the Union industry because the Union producers should be able to maintain their sales volumes, market share, profitability and overall positive economic situation. By contrast, the discontinuation of the measures would seriously threaten the viability of the Union industry because there are reasons to expect a shift of the Chinese and Russian imports to the Union market at dumped prices and in considerable volumes that would cause recurrence of injury.

3. **Interest of users**

(160) In the current review, the Commission received cooperation from ten users in the Union (foundries and steel producers). Four of the responses consisted of general comments while only six contained complete questionnaire replies. On the basis of these data it was established that the cost of the product concerned has on average impact of about 1 % over the total cost of production of the users, and it does not reach 2 % for any of the cooperating users. Thus, although some of the users were loss making during 2011 and RIP, this cannot be attributed to the existence of the anti-dumping duties on imports of FeSi.

(161) It should be considered that the market share of China and Russia during the original investigation was about 40 % of the Union market, and the duties for these two countries range from 15,6 % to 31,2 %. Therefore, the potential impact of the expiry of the duties could be estimated as a cost saving on average not higher than 0,1 % (calculated on the basis of market share of 40 % for the countries under measures and an average ad valorem duty of 20 %). For this reason, it is unlikely that the expiry of the duty would have an effect on the return to profitability of the users which have suffered losses during the last two years of the period considered. Furthermore, due to the nature of the product as well as the several sources of supplies available on the market users can easily switch suppliers.

4. **Interest of importers**

(162) All known importers were informed about the initiation of the review. No importer of the product concerned replied to the sampling questionnaire attached to the notice of initiation. The investigation revealed that importers can easily buy from different sources that are currently available on the market, in particular from the Union industry and major third countries' exporters selling at non-dumped prices. Also, in absence of interest from importers, it was concluded that it would not be against their interest to maintain measures.

5. **Conclusion**

(163) In view of the above, it is concluded that there are no compelling reasons of Union interest against the maintenance of the current anti-dumping measures.

H. **ANTI-DUMPING MEASURES**

(164) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to submit comments subsequent to that disclosure. The submissions and comments were duly taken into consideration where warranted.

(165) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of ferro-silicon originating in the PRC and Russia, imposed by Council Regulation (EC) No 172/2008 should be maintained.

(166) In order to minimise the risk of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures, which only apply to companies for which an individual duty rate is introduced, include the following: the presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other producers,

(167) The Committee established by Article 15(1) of the basic Regulation did not deliver an opinion.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of ferro-silicon, currently falling within CN codes 7202 21 00, 7202 29 10 and 7202 29 90 and originating in the People's Republic of China and Russia.

2. The rate of the definitive anti-dumping duty applicable to the, net free-at-Union-frontier price, before duty, of the products described in paragraph 1, and manufactured by the companies listed below shall be as follows:

Country	Company	Anti-Dumping Duty Rate (%)	TARIC Additional Code
The People's Republic of China	Erdos Xijin Kuangye Co. Ltd, Qipanjing Industry Park	15,6	A829
	Lanzhou Good Land Ferroalloy Factory Co., Ltd, Xicha Villa	29,0	A830
	All other companies	31,2	A999
Russia	Bratsk Ferroalloy Plant, Bratsk	17,8	A835
	All other companies	22,7	A999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

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

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, 9 April 2014.

For the Commission

The President

José Manuel BARROSO

ANNEX

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3):

(1) The name and function of the official of the entity issuing the commercial invoice.

(2) The following declaration:

'I, the undersigned, certify that the (volume) of ferro-silicon sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.'

Date and signature

COMMISSION REGULATION (EU) No 361/2014

of 9 April 2014

laying down detailed rules for the application of Regulation (EC) No 1073/2009 as regards documents for the international carriage of passengers by coach and bus and repealing Commission Regulation (EC) No 2121/98

(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 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 ([1]), and in particular Article 5(3) and (5), Article 6(4), Article 7(2), Article 12(5) and Article 28(3) thereof,

Whereas:

(1) Article 5 of Regulation (EC) No 1073/2009 provides that regular services and certain special regular services are to be subject to authorisation;

(2) Article 12(1) of that Regulation states that the occasional services defined in Article 2(4) are to be carried out under cover of a control document;

(3) Article 5(5) of that Regulation lays down that the own-account transport operations defined in Article 2(5) are to be subject to a system of certificates;

(4) Rules governing the use of the control documents referred to in Article 12 of that Regulation and the means of communicating to the Member States concerned the names of the carriers performing the occasional services and the connection points on route need to be established;

(5) It is necessary to standardise, for reasons of simplicity, the journey form for international occasional services and for cabotage operations in the form of occasional services;

(6) The journey form used as a control document in the framework of cabotage operations in the form of special regular services should be filled out in the form of a monthly statement;

(7) It is necessary to standardise the forms for the communication by the Member States to the Commission of the statistical information related to the number of authorisations for regular services as well as cabotage operations;

(8) For reasons of transparency and simplicity, all the model documents adopted in Regulation (EC) No 2121/98 of 2 October 1998 laying down detailed rules for the application of Council Regulations (EEC) No 684/92 and (EC) No 12/98 as regards documents for the carriage of passengers by coach and bus ([2]) should be adapted to Regulation (EC) No 1073/2009 applicable to international coach and bus services;

(9) Regulation (EC) No 2121/98 should therefore be repealed;

(10) Member States need time to have the new documents printed and distributed. Therefore in the meantime carriers should be able to continue to use the documents provided for in Regulation (EC) No 2121/98, which should specify that they take account of the provisions of Regulation (EC) No 1073/2009;

(11) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Road Transport.

([1]) OJ L 300, 14.11.2009, p. 88.
([2]) OJ L 268, 3.10.1998, p. 10.

HAS ADOPTED THIS REGULATION:

SECTION I

CONTROL DOCUMENT

Article 1

1. The control document (journey form) for the occasional services defined in Article 2(4) of Regulation (EC) No 1073/2009 shall conform to the model in Annex I to this Regulation.

2. The journey forms shall be in books of 25 forms, in duplicate, and detachable. Each book shall bear a number. The forms shall also be numbered from 1 to 25. The cover of the book shall conform to the model in Annex II. Member States shall take all necessary measures to adapt these requirements to computerised processing of journey forms.

Article 2

1. The book referred to in Article 1 shall be made out in the name of the carrier and it shall not be transferable.

2. The journey form shall be filled out legibly in indelible letters, in duplicate, either by the carrier or by the driver for each journey prior to departure. It shall be valid for the entire journey.

3. The top copy of the detached journey form shall be kept on the vehicle during the whole of the journey to which it refers. A copy shall be kept at the company's base.

4. The carrier shall be responsible for keeping the journey forms.

Article 3

In the case of an international occasional service provided by a group of carriers acting on behalf of the same contractor, and which may include the travellers catching a connection en route with a different carrier of the same group, the original of the journey form shall be kept on the vehicle carrying out the service. A copy of the journey form shall be kept at the base of each carrier.

Article 4

1. Copies of the journey forms used as control documents for cabotage operations in the form of occasional services pursuant to Article 15(b) of Regulation (EC) No 1073/2009 shall be returned by the carrier to the competent authority or agency in the Member State of establishment in accordance with procedures to be laid down by that authority or agency.

2. In the case of cabotage operations in the form of special regular services pursuant to Article 15(a) of Regulation (EC) No 1073/2009, the journey form in Annex I to this Regulation shall be completed in the form of a monthly statement and returned by the carrier to the competent authority or agency in the Member State of establishment in accordance with procedures to be laid down by that authority or agency.

Article 5

The journey form shall enable the holder, in the course of an international occasional service, to carry out local excursions in a Member State other than that in which the carrier is established, in accordance with the conditions laid down in the second subparagraph of Article 13 of Regulation (EC) No 1073/2009. The local excursions shall be entered on the journey forms before the departure of the vehicle on the excursion concerned. The original of the journey form shall be kept on board the vehicle for the duration of the local excursion.

Article 6

The control document shall be presented at the request of any authorised inspecting officer.

SECTION II

AUTHORISATIONS

Article 7

1. Applications for authorisation of regular services and special regular services subject to authorisation shall conform to the model in Annex III.

2. Applications for authorisation shall contain the following information:

(a) the timetable;

(b) fare scales;

(c) a certified true copy of the Community licence for the international carriage of passengers by coach and bus for hire or reward provided for in Article 4 of Regulation (EC) No 1073/2009;

(d) information concerning the type and volume of the service which the applicant plans to provide in the case of an application to create a service, or which has been provided in the case of an application for renewal of an authorisation;

(e) a map on an appropriate scale on which are marked the route and stopping points where passengers are to be taken up or set down;

(f) a driving schedule to permit verification of compliance with the Union legislation on driving time and rest periods.

3. Applicants shall provide any further information which they consider relevant or which is requested by the issuing authority in support of the application.

Article 8

1. Authorisations shall conform to the model in Annex IV.

2. Each vehicle carrying out a service subject to authorisation shall have on board an authorisation or a copy certified by the issuing authority.

3. Authorisations shall be valid for a maximum of five years.

SECTION III

CERTIFICATES

Article 9

1. Certificates for the own-account transport operations defined in Article 2(5) of Regulation (EC) No 1073/2009 shall conform to the model in Annex V to this Regulation.

2. Undertakings requesting a certificate shall provide the issuing authority with evidence or an assurance that the conditions laid down in Article 2(5) of Regulation (EC) No 1073/2009 have been met.

3. Each vehicle carrying out a service subject to a system of certificates shall carry on board for the duration of the journey a certificate or its certified true copy, which shall be presented at the request of any authorised inspecting officer.

4. Certificates shall be valid for a maximum of five years.

SECTION IV

COMMUNICATION OF STATISTICAL DATA

Article 10

The data on cabotage transport operations referred to in Article 28(2) of Regulation (EC) No 1073/2009 shall be communicated in in the form of a table in accordance with the model in Annex VI to this Regulation.

SECTION V

TRANSITIONAL AND FINAL PROVISIONS

Article 11

1. Member States may authorise the use of existing stocks of the journey forms, applications for authorisation, authorisations and certificates drawn up in conformity with Regulation (EC) No 2121/98 until 31 December 2015.

2. The other Member States shall accept the journey forms and the applications for authorisation on their territory until 31 December 2015.

3. The authorisations and certificates drawn up in conformity with Regulation (EC) No 2121/98 and issued before 31 December 2015 will remain valid until the date of their expiry.

Article 12

Regulation (EC) No 2121/98 is repealed.

Article 13

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

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

Done at Brussels, 9 April 2014.

For the Commission
The President
José Manuel BARROSO

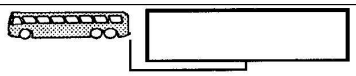
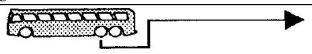
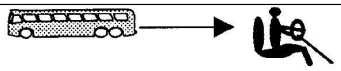
ANNEX I

JOURNEY FORM – MODEL No ..... of Book No .....

(Colour Pantone 358 (light green), or as close as possible to this colour, format DIN A4 uncoated paper)

INTERNATIONAL OCCASIONAL SERVICES and CABOTAGE OPERATIONS IN THE FORM OF OCCASIONAL SERVICES

(Each item, if necessary, can be supplemented on a separate sheet)

1	 Registration number of the coach	..... Place, date and signature of the carrier
2	 Carrier and, where appropriate, subcontractor or group of carriers	1. ..... 2. ..... 3. .....
3	 Name of driver(s)	1. ..... 2. ..... 3. .....
4	Organisation or person responsible for the occasional service	1. ..... 3. ..... 2. ..... 4. .....
5	**Type of service**	☐ International occasional service ☐ Cabotage operation in the form of occasional service ☐ Cabotage operations in the form of special regular services — monthly statement Month ..... Year .....
6	Place of departure of service: ..... Country: ..... Place of destination of service: ..... Country:	

7	Journey	Route/Daily stages and/or passenger pick-up or set-down points		 number of passengers	 empty (mark with an X)	Planned km
	Dates	from	to →			

8	Connection points, if any, with another carrier in the same group	Number of passengers set down	Final destination of the passengers set down	Carrier picking up the passengers

9	**Local excursions**				
	Date	Planned km	Place of departure	Place of excursion	No of passengers

10	**Unforeseen changes**
	.....
	.....

ANNEX II

Cover page

(Format DIN A4 uncoated paper 100 g/m^2 or more)

To be worded in the official language(s) or one of the official languages of the carrier's Member State of establishment

ISSUING STATE

International distinguishing sign ([1])

Competent authority

.....

BOOK No ....

of journey forms:

(a) for international occasional services by coach and bus between Member States, issued on the basis of Regulation (EC) No 1073/2009;

(b) for cabotage operations in the form of occasional services carried out in a Member State other than that in which the carrier is established, issued on the basis of Regulation (EC) No 1073/2009.

to: .....

(Surname and first name or trade name of carrier)

.....

.....

(Full address, telephone and fax number)

....

(Place and date of issue) *(Signature and stamp of issuing authority or agency)*

([1]) Austria (A), Belgium (B), Bulgaria (BG), Croatia (HR), Cyprus (CY), Czech Republic (CZ), Denmark (DK), Estonia (EST), Finland (FIN), France (F), Germany (D), Greece (GR), Ireland (IRL), Italy (I), Latvia (LV), Lithuania (LT), Luxembourg (L), Hungary (H), Malta (M), Netherlands (NL), Poland (PL), Portugal (P), Romania (RO), Slovakia (SK), Slovenia (SLO), Spain (E), Sweden (S), United Kingdom (UK).

(Second page)

To be worded in the official language(s) or one of the official languages of the carrier's Member State of establishment

IMPORTANT NOTICE

A. GENERAL PROVISIONS

1. Article 12(1), the second paragraph of Article 5(3) and Article 17(1) of Regulation (EC) No 1073/2009 state that occasional services shall be carried out under cover of a control document (journey form detached from the book of journey forms issued to a carrier).

2. Article 2(4) of Regulation (EC) No 1073/2009 defines occasional services as services 'which do not fall within the definition of regular services, including special regular services, and the main characteristic of which is the carriage of groups of passengers constituted on the initiative of a customer or the carrier himself'.

   Regular services are defined in Article 2(2) of Regulation (EC) No 1073/2009 as 'services which provide for the carriage of passengers at specified intervals along specified routes, passengers being picked up and set down at predetermined stopping points.' Regular services are open to all, subject, where appropriate, to compulsory reservation.

   The regular nature of the service is not affected by any adjustment to the service operating conditions.

   Services, by whomsoever organised, which provide for the carriage of specified categories of passengers to the exclusion of other passengers, are deemed to be regular services. Such services are called 'special regular services' and include:

   (a) the carriage of workers between home and work,

   (b) the carriage of school pupils and students to and from the educational institution. The fact that a special service may be varied according to the needs of users does not affect its classification as a regular service.

3. The journey form is valid for the entire journey.

4. The Community licence and the journey form entitle the holder to carry out:

   (i) international occasional services by coach and bus between two or more Member States;

   (ii) cabotage operations in the form of occasional services in a Member State other than that in which the carrier is established.

5. The journey form is completed in duplicate, either by the carrier or by the driver before the beginning of each service. The copy of the journey form remains in the undertaking. The driver keeps the original on board the vehicle throughout the journey and presents it on request to enforcement officials.

6. The driver returns the journey form to the undertaking which delivered it at the end of the journey in question. The carrier is responsible for keeping the documents. They are filled in legibly and indelibly.

(Third page)

B. PROVISIONS SPECIFIC TO INTERNATIONAL OCCASIONAL SERVICES

1. The second subparagraph of Article 5(3) of Regulation (EC) No 1073/2009 states that the organisation of parallel or temporary services comparable to existing regular services and serving the same public as the latter shall be subject to authorisation.

2. Carriers may carry out local excursions in a Member State other than that in which they are established within the framework of an international occasional service. Such services are intended for non-resident passengers previously transported by the same carrier in the framework of an international occasional service. They are transported in the same vehicle or another vehicle belonging to the same carrier or group of carriers.

3. In the case of local excursions, the journey form is completed before the departure of the vehicle on the excursion in question.

4. In the case of an international occasional service operated by a group of carriers acting on behalf of the same customer and possibly involving the passengers catching a connection en route with a different carrier of the same group, the original of the journey form is kept in the vehicle carrying out the service. A copy of the journey form is kept at the base of each carrier involved.

C. PROVISIONS SPECIFIC TO CABOTAGE OPERATIONS IN THE FORM OF OCCASIONAL SERVICES

1. Cabotage operations in the form of occasional services shall be subject, save as otherwise provided in Union legislation, to the laws, regulations and administrative measures in force in the host Member State with regard to the following:

   (i) the conditions governing the transport contract;

   (ii) the weights and dimensions of the road vehicles;

   (iii) the requirements relating to the carriage of certain categories of passenger, namely schoolchildren, children and persons with reduced mobility;

   (iv) the driving time and rest periods;

   (v) the value added tax (VAT) on the transport services. In this area, Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]), in particular Article 48 read in conjunction with Articles 193 and 194 shall apply to the services referred in Article 1 of Regulation (EC) No 1073/2009.

2. The technical standards for construction and equipment which the vehicles used to carry out the cabotage transport operations must meet are those laid down for vehicles put into circulation in international transport.

3. Member States apply the national provisions referred to in points 1 and 2 above to non-resident carriers under the same conditions as those imposed on carriers established in the host Member State, in order to prevent any discrimination on grounds of nationality or place of establishment.

4. In the case of cabotage operations in the form of occasional services, the journey forms are returned by the carrier to the competent authority or body of the Member State of establishment in accordance with procedures to be laid down by that authority or body ([2]).

5. In the case of cabotage operations in the form of special regular services, the journey forms shall be filled out in the form of a monthly statement and returned by the carrier to the competent authority or body of the Member State of establishment in accordance with procedures to be laid down by that authority or body.

([1]) OJ L 347, 11.12.2006, p. 1.

([2]) Member States' competent authorities may supplement point 4 with personnel of the agency responsible for collecting the journey forms and the procedure for forwarding the information.

ANNEX III

Cover page

(Format DIN A4 uncoated paper)

To be worded in the official language(s) or one of the official languages of the carrier's Member State of establishment

APPLICATION ([1]):

TO START A REGULAR SERVICE ☐

TO START A SPECIAL REGULAR SERVICE ([2]) ☐

TO RENEW AN AUTHORISATION FOR A SERVICE ([3]) ☐

TO ALTER THE CONDITIONS OF AN AUTHORISED SERVICE ([3]) ☐

carried out by coach and bus between Member States in accordance with Regulation (EC) No 1073/2009

to: .....

(Competent authority)

1. Name and first name or trade name and address, telephone, fax and/or e-mail of the applicant and, where appropriate, of the managing carrier in the case of an association (pool):

.....

.....

2. Service(s) carried out ([1])

by an undertaking ☐ as a member of an association (pool) ☐ as a subcontractor ☐

3. Names and addresses of the:

Carrier associated carrier(s) or subcontractor(s) ([4]) ([5])

3.1 ..... tel .....

3.2 ..... tel .....

3.3 ..... tel .....

3.4 ..... tel .....

([1]) Tick or complete as appropriate.
([2]) Special regular services not covered by a contract between the organiser and the carrier.
([3]) In the context of Article 9 of Regulation (EC) No 1073/2009.
([4]) Indicate in each case whether a member of an association or a subcontractor is concerned.
([5]) Attach list if applicable.

(Second page of the application for authorisation or for renewal of authorisation)

4. In the case of a special regular service

4.1 Category of passengers .....

5. Duration of authorisation requested or date on which the service ends:

.....

.....

.....

.....

6. Principal route of service (underline passenger pick-up points)

.....

.....

.....

.....

7. Period of operation

.....

.....

.....

8. Frequency (daily, weekly, etc.)

.....

9. Fares: ..... Annex attached

10. Enclose a driving schedule to permit verification of compliance with the Community legislation on driving and rest periods

11. Number of authorisations or of copies of authorisations requested ([1])

.....

12. Any additional information:

.....

.....

.....

13. ....

(Place and date) *(Signature of applicant)*

([1]) The attention of the applicant is drawn to the fact that, since the authorisation has to be kept on board the vehicle, the number of authorisations which the applicant must have should correspond to the number of vehicles needed for carrying out the service requested at the same time.

(Third page of the application for authorisation or for renewal of authorisation)

IMPORTANT NOTICE

1. The following is attached to the application, as appropriate:

   (a) the timetable;

   (b) fare scales;

   (c) a certified true copy of the Community licence for the international carriage of passengers by road for hire or reward provided for in Article 4 of Regulation (EC) No 1073/2009;

   (d) information concerning the type and volume of the service that the applicant plans to provide in the case of a new service, or that has been provided in the case of renewal of an authorisation;

   (e) a map on an appropriate scale on which are marked the route and the stopping points at which passengers are to be taken up or set down;

   (f) a driving schedule to permit verification of compliance with the Community legislation on driving and rest periods.

2. Applicants shall provide any additional information in support of their application which they consider relevant or which is requested by the issuing authority.

3. According to Article 5 of Regulation (EC) No 1073/2009 the following services are subject to authorisation:

   (a) regular services, services which provide for the carriage of passengers at specified intervals along specified routes, passengers being picked up and set down at predetermined stopping points. Regular services shall be open to all, subject, where appropriate, to compulsory reservation. The regular nature of the service shall not be affected by any adjustment to the service operating conditions.

   (b) special regular services not covered by a contract between the organiser and the carrier. Services, by whomsoever organised, which provide for the carriage of specified categories of passengers to the exclusion of other passengers shall be deemed to be regular services. Such services are called 'special regular services' and include:

      (i) the carriage of workers between home and work;

      (ii) the carriage of school pupils and students to and from the educational institution.

   The fact that a special service may be varied according to the needs of users shall not affect its classification as a special regular service.

4. The application shall be made to the competent authority of the Member State from which the service departs, namely one of the service termini.

5. The maximum period of validity of the authorisation is five years.

ANNEX IV

(First page of the authorisation)

(Colour Pantone 182 (pink), or as close as possible to this colour, format DIN A4 uncoated paper 100 g/m2 or more)

To be worded in the official language(s) or one of the official languages of the carrier's Member State of establishment

ISSUING STATE

International distinguishing sign ([1])

Competent authority

.....

AUTHORISATION No ....

for a regular service ([2])

for a special regular service

by coach and bus between Member States in accordance with

Chapter III of Regulation (EC) No 1073/2009

to: .....

(Surname, first name or trade name of carrier or of managing carrier in the case of an association of undertakings (pool))

.....

Address: .....

Tel., fax and/or e-mail: .....

Name, address, telephone and fax numbers and/or e-mail of associates or members of the association of undertakings (pool) and subcontractors:

(1) .....

(2) .....

(3) .....

(4) .....

(5) .....

List attached, if appropriate.

Expiry date of authorisation: .....

....

(Place and date of issue) *(Signature and stamp of issuing authority or agency)*

([1]) Austria (A), Belgium (B), Bulgaria (BG), Croatia (HR), Cyprus (CY), Czech Republic (CZ), Denmark (DK), Estonia (EST), Finland (FIN), France (F), Germany (D), Greece (GR), Ireland (IRL), Italy (I), Latvia (LV), Lithuania (LT), Luxembourg (L), Hungary (H), Malta (M), Netherlands (NL), Poland (PL), Portugal (P), Romania (RO), Slovakia (SK), Slovenia (SLO), Spain (E), Sweden (S), United Kingdom (UK).

([2]) Delete as appropriate.

(Second page of authorisation No .....)

1. Route:

   (a) Place of departure of service: .....

   (b) Place of destination of service: .....

   (c) Principal itinerary, with passenger pick-up and set-down points underlined: .....

   .....

   .....

   .....

   .....

2. Periods of operation: .....

   .....

3. Frequency: .....

4. Timetable: .....

5. Special regular service:

   — Category of passengers: .....

6. Other conditions or special points (e.g. authorised cabotage operations ([1])):

   .....

   .....

   .....

   .....

   .....

   .....

.....

(Stamp and/or signature of authority issuing the authorisation)

([1]) As agreed by the host Member State and communicated to the authorising authority, within the time period defined in Article 8.2 of Regulation (EC) No 1073/2009.

(Third page of the authorisation)

To be worded in the official language(s) or one of the official languages of the carrier's Member State of establishment

IMPORTANT NOTICE

1. This authorisation is valid for the entire journey. It may only be used by a party or parties whose name is indicated thereon.

2. The authorisation or a true copy certified by the issuing authority is kept in the vehicle for the duration of the journey and is presented to enforcement officials on request.

3. A true certified copy of the Community licence is kept on board the vehicle.

ANNEX V

(First page of the certificate)

(Colour Pantone 100 (yellow), or as close as possible to this colour, format DIN A4 uncoated paper 100 g/m^2 or more)

To be worded in the official language(s) or one of the official languages of the carrier's Member State of establishment

ISSUING STATE

International distinguishing sign ([1])

Competent authority

.....

CERTIFICATE

issued for own-account transport operations by coach and bus between Member States on the basis of Regulation (EC) No 1073/2009

(Part for the person or entity carrying out the own-account transport operations)

The undersigned.....
responsible for the undertaking, non-profit-making body or other (describe)
.....

(Surname and first name or official name, full address)

certifies that:

— the transport service provided is non-profit-making and non-commercial
— transport is only an ancillary activity for the person or entity
— the coach or bus registration No ..... is the property of the person or entity or has been obtained by them on deferred terms or has been the subject of a long-term leasing contract.
— the coach or bus will be driven by a member of staff of the undersigned person or entity or by the undersigned in person or by personnel employed by, or put at the disposal of, the undertaking under a contractual obligation.

.....

(Signature of the person or representative of the entity)

(Part for the competent authority)

This constitutes a certificate within the meaning of Article 5(5) of Regulation (EC) No 1073/2009.

....

(Period of validity) *(Place and date of issue)*

.....

(Signature and stamp of the competent authority)

([1]) Austria (A), Belgium (B), Bulgaria (BG), Croatia (HR), Cyprus (CY), Czech Republic (CZ), Denmark (DK), Estonia (EST), Finland (FIN), France (F), Germany (D), Greece (GR), Ireland (IRL), Italy (I), Latvia (LV), Lithuania (LT), Luxembourg (L), Hungary (H), Malta (M), Netherlands (NL), Poland (PL), Portugal (P), Romania (RO), Slovakia (SK), Slovenia (SLO), Spain (E), Sweden (S), United Kingdom (UK).

(Second page of the certificate)

To be worded in the official language(s) or one of the official languages of the carrier's Member State of establishment

GENERAL PROVISIONS

1. Article 2(5) of Regulation (EC) No 1073/2009 states that 'own-account transport operations means operations carried out for non-commercial and non-profit-making purposes by a natural or legal person, whereby:

   — the transport activity is only an ancillary activity for that natural or legal person, and
   — the vehicles used are the property of that natural or legal person or have been obtained by that person on deferred terms or have been the subject of a long-term leasing contract and are driven by a member of the staff of the natural or legal person or by the natural person himself or by personnel employed by, or put at the disposal of, the undertaking under a contractual obligation'.

2. Own-account carriers are permitted, under Article 3(2) of Regulation (EC) No 1073/2009, to carry out this type of transport operation without discrimination on grounds of nationality or place of establishment provided that they:

   — are authorised in the Member State of establishment to undertake carriage by coach and bus in accordance with the market-access conditions laid down in national legislation,
   — meet legal requirements on road safety concerning drivers and vehicles, as laid down, in relevant Union legislation.

3. The own-account transport operations referred to in point 1 are subject to a system of certificates.

4. The certificate entitles the holder to carry out international transport operations by coach and bus for own-account. It is issued by the competent authority of the Member State where the vehicle is registered and is valid for the entire journey, including any transit journeys.

5. The relevant parts of this certificate are completed in indelible letters in triplicate by the person or the representative of the entity carrying out the operation and by the competent authority. One copy is kept by the administration and one by the person or entity. The driver keeps the original or a certified true copy on board the vehicle for the entire duration of any international journeys. It is presented to the enforcement authorities on request. The person or entity, as appropriate, is responsible for keeping the certificates.

6. The certificate is valid for a maximum of five years.

ANNEX VI

MODEL COMMUNICATION

(Referred to in Article 28(2) of Regulation (EC) No 1073/2009 of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006)

Number of authorisations issued for cabotage transport operations in the form of regular services carried out in

..... (2-year period)

in ..... (name of the host Member State)

Country where the operator is established	Number of authorisations issued
B	
BG	
CZ	
DK	
D	
EST	
GR	
E	
F	
IRL	
HR	
I	
CY	
LV	
LT	
L	
H	
M	
NL	
A	
PL	
P	
RO	
SLO	
SK	
FIN	
S	
UK	
Total	

COMMISSION REGULATION (EU) No 362/2014

of 9 April 2014

correcting the Spanish language version of Regulation (EC) No 1881/2006 setting maximum levels for certain contaminants in foodstuffs

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food ([1]), and in particular Article 2(3) thereof,

Having regard to Commission Regulation (EU) No 1258/2011 of 2 December 2011 amending Regulation (EC) No 1881/2006 as regards maximum levels for nitrates in foodstuffs ([2]), and in particular Article 1(3) thereof,

Whereas:

(1) An error has occurred in the Spanish language version of Commission Regulation (EC) No 1881/2006 ([3]) and its amendment by Regulation (EU) No 1258/2011 amending Regulation (EC) No 1881/2006 as regards maximum levels for nitrates in foodstuffs. Therefore a correction of the text of the table in the Annex of the Spanish language version of Regulation (EC) No 1881/2006 is necessary. The other languages are not affected.

(2) Regulation (EC) No 1881/2006 should therefore be corrected accordingly.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health and neither the European Parliament nor the Council have opposed them,

HAS ADOPTED THIS REGULATION:

Article 1

(Only concerns the Spanish language version.)

Article 2

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

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

Done at Brussels, 9 April 2014.

For the Commission

The President

José Manuel BARROSO

([1]) OJ L 37, 13.2.1993, p. 1.
([2]) OJ L 320, 3.12.2011, p. 15.
([3]) Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs (OJ L 364, 20.12.2006, p. 5).

COMMISSION IMPLEMENTING REGULATION (EU) No 363/2014

of 9 April 2014

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE EUROPEAN COMMISSION,

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

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

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ([2]), and in particular Article 136(1) thereof,

Whereas:

(1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 9 April 2014.

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

([1]) OJ L 299, 16.11.2007, p. 1.
([2]) OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	MA	62,4
	TN	100,0
	TR	130,0
	ZZ	97,5
0707 00 05	EG	170,1
	MA	44,0
	TR	126,8
	ZZ	113,6
0709 93 10	MA	39,8
	TR	85,7
	ZZ	62,8
0805 10 20	EG	49,3
	IL	68,0
	MA	52,3
	TN	50,1
	TR	60,1
	ZZ	56,0
0805 50 10	MA	63,6
	TR	63,1
	ZZ	63,4
0808 10 80	AR	84,7
	BR	103,6
	CL	102,5
	CN	77,1
	MK	23,1
	NZ	140,3
	US	174,6
	ZA	108,1
	ZZ	101,8
0808 30 90	AR	105,3
	CL	157,3
	CN	81,0
	ZA	103,6
	ZZ	111,8

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

DECISIONS

COUNCIL IMPLEMENTING DECISION

of 18 February 2014

approving the update of the macroeconomic adjustment programme of Portugal

(2014/196/EU)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability ([1]), and in particular Article 7(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Regulation (EU) No 472/2013 applies to Member States that are, at the time of its entry into force, already in receipt of financial assistance, including from the European Financial Stabilisation Mechanism (EFSM) and/or the European Financial Stability Facility (EFSF).

(2) Regulation (EU) No 472/2013 sets rules for the approval of macroeconomic adjustment programmes for Member States in receipt of such financial assistance, which must be applied in conjunction with Regulation (EU) No 407/2010 ([2]) establishing the EFSM when the Member State concerned receives assistance both from the EFSM and from other sources.

(3) Portugal has been granted financial assistance both from the EFSM, by Implementing Decision 2011/344/EU ([3]) and from the EFSF.

(4) For reasons of consistency, the update of the macroeconomic adjustment programme for Portugal under Regulation (EU) No 472/2013 should be approved having reference to the relevant provisions of Implementing Decision 2011/344/EU.

(5) In line with Article 3(10) of Implementing Decision 2011/344/EU, the Commission, together with the International Monetary Fund and in liaison with the European Central Bank, has conducted a tenth review to assess the progress made by the Portuguese authorities in implementing the agreed measures under the macroeconomic adjustment programme, as well as their effectiveness and economic and social impact. As a consequence of that review, some changes need to be made to the existing macroeconomic adjustment programme.

(6) Those changes are set out in the relevant provisions of Implementing Decision 2011/344/EU as amended by Council Implementing Decision 2014/197/EU of 18 February 2014 amending Implementing Decision 2011/344/EU on granting Union financial assistance to Portugal ([4]),

([1]) OJ L 140, 27.5.2013, p. 1.
([2]) Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism (OJ L 118, 12.5.2010, p. 1).
([3]) Council Implementing Decision 2011/344/EU of 17 May 2011 on granting Union financial assistance to Portugal (OJ L 159, 17.6.2011, p. 88).
([4]) See page 61 of this Official Journal.

HAS ADOPTED THIS DECISION:

Article 1

The measures laid down in Article 3(8) and (9) of Implementing Decision 2011/344/EU to be taken by Portugal as part of its macroeconomic adjustment programme are hereby approved.

Article 2

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

Article 3

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 18 February 2014.

For the Council
The President
G. STOURNARAS

COUNCIL IMPLEMENTING DECISION

of 18 February 2014

amending Implementing Decision 2011/344/EU on granting Union financial assistance to Portugal

(2014/197/EU)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism ([1]), and in particular Article 3(2) thereof.

Having regard to the proposal from the European Commission,

Whereas:

(1) The Council granted financial assistance to Portugal, at the latter's request, on 17 May 2011 by means of Implementing Decision 2011/344/EU ([2]). That financial assistance was granted in support of a strong economic and financial reform programme (the 'Programme') which aims to restore confidence, enable the return of the economy to sustainable growth, and safeguard financial stability in Portugal, the euro area and the Union.

(2) In line with Article 3(10) of Implementing Decision 2011/344/EU, the Commission, together with the International Monetary Fund (IMF) and in liaison with the European Central Bank (ECB), conducted, between 4 December and 16 December 2013, the tenth review of the Portuguese authorities' progress on the implementation of the agreed measures under the Programme.

(3) Quarterly real gross domestic product (GDP) growth continued at positive rates in the third quarter of 2013 and the short-term indicators point to the projected economic recovery. On an annual basis, real GDP is still forecast to decline by 1,6 % in 2013 but to move into positive territory in 2014 and 2015, with growth of 0,8 % and 1,5 %, respectively. The labour market outlook has improved as well but unemployment remains high, expected to peak at 16,8 % in 2014 and to progressively decrease thereafter. Downside risks to the macroeconomic outlook remain, as the projected recovery crucially hinges on positive trade and financial market developments, which also depend on the broader European outlook.

(4) Up to November 2013 the government cash deficit recorded an improvement of 0,25 % of GDP (net of extraordinary factors) compared with the same period of the preceding year, which resulted from revenue growth outpacing expenditure growth. The acceleration of tax revenue growth reflects the recovery of economic activity in recent months as well as improved efficiency in the tax administration, especially in the fight against fraud. On the expenditure side budget execution is overall in line with the targets of the second supplementary budget.

(5) The general government deficit target of 5,5 % of GDP (net of bank recapitalisations) in 2013 is likely to be met and the deficit outcome may even be below the target. This results from positive risks having materialised in the last months of the year while most negative risks dissipated. In particular, tax collection is expected to exceed the implicit targets in the second supplementary budget. Moreover, the yield of the one-off debt regularisation scheme for outstanding tax and social security contributions launched at the end of 2013 was about 0,3 % of GDP higher than envisaged. The absorption of Union Funds is also expected to be better than previously estimated. Furthermore, negative risks from the public-private partnerships' (PPPs) renegotiations have been mitigated. Some negative risks nevertheless persist, notably lower-than-projected revenue from property taxes while overruns on specific expenditure items, particularly personnel costs, intermediate consumption and pensions benefits cannot be excluded.

(6) The 2014 State Budget and other supporting legislation are consistent with a deficit target of 4 % of GDP in 2014. In order to reach the target consolidation measures amounting to about 2,3 % of GDP are being implemented, which also cover budgetary pressures and the need to rebuild the provisional budget allocation for 2014. Those measures are primarily of a permanent nature and rely predominantly on expenditure savings.

([1]) OJ L 118, 12.5.2010, p. 1.
([2]) Council Implementing Decision 2011/344/EU of 17 May 2011 on granting Union financial assistance to Portugal (OJ L 159, 17.6.2011, p. 88).

(7) Most of the consolidation in 2014 — about 1,8 % of GDP — should be drawn from the public expenditure review, which was carried out over the past year with the objective of increasing equity and efficiency in the provision of social transfers and public services. The main public expenditure review measures will be implemented along three principal axes: (1) limiting outlays on the public sector wage bill by reducing the size of the public-sector work force while shifting its composition towards higher-skilled employees, in particular through a requalification programme and a voluntary redundancy scheme; further convergence of public and private sector work rules and the revision of the wage scale as well as the streamlining of wage supplements; increase of beneficiaries' contributions to the special public health insurance schemes, aiming at the self-financing of those systems; (2) limiting public pension expenditure, given the need to reassess its sustainability with regard to demographic developments, while at the same time protecting the lowest pensions, by increasing the statutory retirement age by changes to the sustainability factor; recalibrating the 'extraordinary solidarity contribution', by lowering the minimum threshold for the application of the progressive rate as well as the thresholds for the application of higher rates; streamlining survivors' pensions of both Caixa Geral de Aposentações (CGA) and the general pension regime; reducing lifelong pensions to politicians; (3) savings in intermediate consumption and expenditure programmes across line ministries.

(8) With a view to achieving the 4 % of GDP deficit target, the authorities should adopt further smaller-yield permanent revenue measures amounting to 0,4 % of GDP, aiming to further improve the efficiency and equity of the current tax and benefit structure and to complement the public-expenditure-review package. Moreover, a number of one-off measures totalling 0,2 % of GDP should be implemented, which more than offset the costs arising from the one-off upfront payments related to the introduction of a mutual agreement redundancy scheme in the public sector.

(9) Most of the above-mentioned measures were adopted through the 2014 Budget Law or by changes to specific legislation. Some of the envisaged consolidation measures have not yet been fully legislated for. Among them are the tightening of the eligibility conditions for survivors' pensions (beyond the change of replacement rates in case of accumulation with other pensions); the sale of online gambling licences; the transfer of the postal service's (CTT) health fund to the general government and the sale of port concessions.

(10) A comprehensive reform of the corporate income tax aimed at promoting simplification as well as boosting the internationalisation and competitiveness of Portuguese companies was approved in the Parliament in December 2013 and entered into force on 1 January 2014. A key feature of the reform is the reduction of the standard Corporate Income Tax (CIT) rate from 25 % to 23 % and a reduced 17 % rate applicable to the first EUR 15 000 of taxable income for Small and Medium Enterprises (SMEs). In addition to the existing surtaxes, a third state surtax of 7 % will apply on taxable profits exceeding EUR 35 million. Other key provisions of the reform include the revision of tax incentives, changes to dividends and capital gains taxation, group taxation and intangible assets regime, the introduction of a participation exemption regime, an extension of the period during which losses can be carried forward and a further limitation to interest deductibility.

(11) The debt-to-GDP ratio is expected to peak below 129,5 % in 2013 and to decline thereafter. The upward revision of the debt profile compared with the combined eighth and ninth reviews, in spite of a better-than-expected budget execution, is to a large extent explained by a substantial increase in the Treasury's cash balance as well as the postponement to 2014 of some short-term debt reducing operations on the part of the Social Security Financial Stabilisation Fund. Accordingly, the net debt — excluding the cash deposits of the Instituto de Gestão do Crédito Público (IGCP) — is projected to peak at about 120 % of GDP, slightly below the level expected at the last review.The expected decline in the general government debt-to-GDP ratio starting from 2014 will be supported by the projected economic recovery as well as by a decline in cash deposits and the realisation of the Social Security's short-term debt-reducing operations.

(12) The budgetary adjustment process is flanked by a range of fiscal structural measures to enhance control over government expenditure and improve revenue collection. The comprehensive reform of the Budget Framework Law is progressing in a number of important areas. However, given the scope of the reform and the need to engage in a broad-based consultation with all relevant stakeholders the process is expected to take place in two phases. The new commitment control system is showing results by limiting the build-up of new arrears but implementation needs to be monitored closely to ensure that commitments are covered by the available funding. A task-force to evaluate and improve this process will be created. Reforms in the public administration are being implemented with a view to modernising and rationalising public sector employment and entities. Reforms towards a modern compliance risk management model of the revenue administration continue. A new Risk

Assessment Unit has recently been established and will become operational shortly, focusing in the first place on improving compliance of certain groups of taxpayers such as the self-employed and high wealth individuals. Some other reforms, such as the reduction of local tax offices, are delayed. While the renegotiation of PPPs has made progress, it could not be concluded by the end of 2013. Nevertheless, significant savings are expected for 2014 and beyond. State-owned enterprises (SOEs) reached operational balance on average by the end of 2012 and additional reforms are foreseen to avoid a renewed deterioration of their results. Privatisation has made good progress and the proceeds exceed the target under the programme. Reforms in the health care sector are producing significant savings and implementation is continuing broadly in line with targets.

(13) Policy implementation and reforms in the health sector continue progressing and producing savings through increases in efficiency. The consolidated deficit for the sector has been significantly reduced since 2010. However, the remaining stock of arrears, the tight budget line and increased labour costs due to the reinstatement of the 13th and 14th bonus payments forced the authorities to speed up the existing reforms. The existence of an important stock of arrears is strongly (though not solely) related to the consistent underfunding of SOEs hospitals vis-à-vis their service provision. The authorities remain committed to implementing the ongoing hospital reform and to the continued fine-tuning of the set of measures related to pharmaceuticals, centralised procurement and primary care.

(14) The banks' capital ratios comfortably continued to meet the European Banking Authority (EBA) regulatory capital buffers as well as the 10 % Core Tier 1 Programme target. That capital buffer remains adequate across the board when using the new Capital Requirements Directive (CRD) IV rules for evaluating the banks' own funds. These new capital rules apply from January 2014 onwards with a threshold set at 7 % of Common Equity Tier 1 ratio. The system wide loan-to-deposit is 120,7 % and is likely to continue to decrease until the end-of 2014, with some banks already below this threshold. Efforts to diversify the sources of funding for the corporate sector are being continuously strengthened. Building on the recommendations of the 2013 external audit of the existing government-sponsored credit lines, the authorities are implementing the measures aiming to improve the performance and the governance of those instruments including risk management capabilities and practices. The legal framework for new debt restructuring tools directed at households and aiming at the non-litigious settlement of debts is in place and fully operational. Similarly, the impact of the changes in the corporate insolvency and recovery law is being assessed as the new debt restructuring and debt recovery mechanisms are now functioning. The crisis management toolkit is being completed. The bank resolution fund is functioning, early intervention powers have been introduced and the recapitalisation law has been amended to reflect the Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ([1]).The roadmap for improving the effectiveness and governance of the National Guarantee System is being implemented to better serve SMEs financing needs.

(15) Further progress has been made in implementing growth and competitiveness-enhancing structural reforms. The authorities have adopted additional measures to reduce unemployment and to boost labour market effectiveness, including enhanced activation policies and a youth guarantee implementation plan. Revisions affecting the definition of fair dismissals in the Labour Code are under preparation after previous arrangements were declared unconstitutional. Additional measures have been adopted in the area of education, in which progress is satisfactory overall.

(16) The government approved a new levy on energy operators for 2014 which must be closely monitored to avoid distortions in the system. As regards the elimination of the energy tariff debt and ensuring the sustainability of the system, further reforms are required.

(17) In the telecommunication and postal sectors actions have been implemented to comply with Union rules and underpin the attainment of the programme objectives. The selection of the universal service providers and the revision of the existing contract with the incumbent are positive developments towards the full implementation of Directive 2002/22/EC of the European Parliament and of the Council ([2]). The publication of legislation laying down the framework of the concession contract with the national provider of the postal service will reduce the current concession period, thus increasing competition. The authorities remain commited to increasing the sustainability and efficiency in the transport sector.

([1]) OJ C 216, 30.7.2013, p. 1.
([2]) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002, p. 51).

(18) Sector-specific legislation with a view to alignment upon Directive 2006/123/EC of the European Parliament and of the Council [1] is progressing, with some delays in the adoption of the regulatory framework for the construction sector, the amended professional bodies' bylaws and internal rules to adopt the horizontal framework law on public professinal associations. The authorities are commited to further improving the functioning of the Point of Single Contact

(19) The assessment of the urban lease reform is underway after the full implementation of the new legal framework. The authorities aim at increasing the efforts to fight tax evasion in the rental market.

(20) The new framework of the National Regulatory Authorities (NRAs) is advancing and the relevant bylaws are being amended and are expected to be adopted shortly. The publication of a new executive order establishing the contributions of the regulators for 2014 has been delayed.

(21) Reforms of the judicial system continue progressing as planned. Advances have been made in the implementation of the Judicial Organisation Act to streamline the court system, a law strengthening the body for enforcement agents and insolvency administrators has been published and a new extrajudicial procedure creating a pre-trial triage to identify and settle cases out of court is being finalised. Measures to improve the licensing environment and reduce administrative burdens have advanced with the adoption of legal provisions streamlining licensing in the area of tourism, industry and territorial planning. Legislation on commercial licensing is underway and the legal regime for urbanism and building is being reviewed.

(22) In the light of these developments, Implementing Decision 2011/344/EU should be amended,

HAS ADOPTED THIS DECISION:

Article 1

In Article 3 of Implementing Decision 2011/344/EU, paragraphs 8 and 9 are replaced by the following:

'8. Portugal shall adopt the following measures during 2014, in line with specifications in the Memorandum of Understanding:

(a) the general government deficit shall not exceed 4 % of GDP in 2014. For the calculation of this deficit, the possible budgetary costs of bank support measures in the context of the government's financial sector strategy shall not be taken into account. To achieve this objective Portugal shall deliver consolidation measures worth 2,3 % of GDP as defined in the 2014 Budget Law and supporting legislation adopted with this aim;

(b) beyond the currently adopted pension measures, the existing pension legislation of the civil servants' pension regime CGA shall be modified by the end of January 2014 to ensure that the new rules on the sustainability factor and thus the increased retirement age also apply effectively to this regime; Portugal shall also develop new comprehensive measures as part of the ongoing structural reform of pensions in the course of 2014 with a view to ensuring their sustainability whilst strengthening equity principles;

(c) to control for potential expenditure slippages, the government shall closely monitor the respect of the ministerial expenditure ceilings through monthly reporting to the Council of Ministers;

(d) Portugal shall swiftly define and implement the envisaged changes in survivors' pensions eligibility conditions as well as the conditions for the sale of online gamblig licences. In addition, Portugal shall make decisive steps to implement the sale of the port concessions;

(e) the comprehensive reform of the corporate income tax shall be implemented within the existing budgetary envelope to respect the fiscal consolidation targets;

(f) the standstill rule for tax expenditures at central, regional or local level shall be maintained. Efforts to fight tax evasion and fraud for various types of taxes shall be further strengthened, inter alia, by the monitoring of the new e-invoicing system. A study on the shadow economy in the housing market shall be carried out in the first quarter of 2014 with a view to seeking ways to reduce rental tax evasion;

[1] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

(g) should adverse legal or other budgetary execution risks materialise, Portugal shall implement compensatory measures of high quality in order to meet the deficit target;

(h) beyond 2014, Portugal shall achieve a general government deficit of no more than 2,5 % of GDP in 2015 and stop the accumulation of domestic arrears. The strategy to achieve the target shall be underpinned by the Reform of the State document which focuses on social security sustainability, public administration reform, greater efficiency in health and education and environmental taxation. Broad-based consultations with political and social partners to advance and define reforms are ongoing. The progress in this process shall be analysed at the eleventh review and identified measures shall be reflected in the 2014 Fiscal Strategy Document. In order to comply with the Union budgetary framework requirements, that document shall also provide details of the medium-term budgetary plans;

(i) Portugal shall take additional measures to further strengthen its Public Financial Management system. Budget fragmentation shall be reduced by limiting the number of budget entities and reviewing the classification of own revenues. The strategy for the validation and settlement of arrears shall continue to be applied and the commitment control law fully enforced in all public entities to prevent the creation of new arrears. Portugal shall review the Budget Framework Law (BFL) to fully transpose the relevant Union legislation. In addition, Portugal shall carry out a more comprehensive revision of the BFL to streamline the budget appropriation structure, to strengthen accountability and to further anchor public finances in a medium-term framework. Portugal shall ensure that the measures to implement the new budgetary framework at central government level shall also be applied at regional and local level;

(j) Portugal shall continue the reform agenda towards a modern and more efficient revenue administration in line with international best practises. Portugal shall reduce the number of municipal tax offices by at least 25 % in the first quarter of 2014 and by a further 25 % by May 2014. The number of resources devoted to auditing in the tax administration shall increase by at least 30 % of the total staff. A new Taxpayer Services Department, unifying various services for taxpayers, shall be created within the tax administration. The Risk Management Unit shall be fully operational in the first quarter of 2014, focusing initially on targeted projects to improve compliance of self-employed professionals and high net wealth individuals. The tax compliance situation shall be continuously monitored;

(k) Portugal shall continue implementing reforms of the public administration. Following the comprehensive review of wage scales in the public administration by the twelfth review, a single wage scale aimed at the rationalisation and consistency of remuneration policy across all careers shall be developed in the first half of 2014 and finalised by the end of 2014. This shall replace the wage revision included in the 2014 Budget Law. In addition, following the survey on cash supplements, Portugal shall prepare a report on the comprehensive reform of wage supplements. Draft legislation for a single supplement scale shall be presented by the twelfth review;

(l) Portugal shall complete the implementation of the strategy of shared services in public administration;

(m) Portugal shall fully implement the new legal and institutional PPPs framework. Renegotiations of PPPs shall proceed in various sectors in order to contain their budget impact. Following the new SOEs framework law and in line with the Ministry of Finance's enhanced shareholder role, a Technical Unit for the monitoring of SOEs shall be created. The government shall continue its comprehensive restructuring programme of SOEs with a view to reaching a sustainable operational balance. The Portuguese government shall continue with the privatisations already in the pipeline;

(n) Portugal shall present a report with the following objectives:

  (i) identifying overlaps of services and jurisdictions and other sources of inefficiencies between the central and the local levels of government; and

  (ii) reorganising the network of decentralised services of ministries mainly through the "Lojas do Cidadão" (administration and utilities single points of contact) network and other approaches, encompassing more efficient geographical areas and intensifying the use of shared services and digital government;

(o) Portugal shall ensure efficiency and effectiveness in the health care system by continuing with the rational use of services and the control of expendiures, reducing public spending on pharmaceuticals and eliminating arrears;

(p) Portugal shall continue the reorganisation and rationalisation of the hospital network through specialisation, concentration and downsizing of hospital services, joint management and joint operation of hospitals, and ensure the implementation of the multi-year action plan for hospital reorganisation;

(q) following the adoption of the amendments to the Law 6/2006 on new urban leases and the decree law which simplifies the administrative procedure for renovations, Portugal shall undertake a comprehensive review of the functioning of the housing market;

(r) while respecting the Constitutional Court's ruling of 20 September 2013, Portugal shall devise and implement alternative options for a labour market reform with similar effects;

(s) Portugal shall promote wage developments which are consistent with the objectives of fostering job creation and improving firms' competitiveness with a view to correcting macroeconomic imbalances. Over the Programme period, any increase in minimum wages shall take place only if justified by economic and labour market developments;

(t) Portugal shall continue to improve the effectiveness of its active labour market policies in line with the results of the assessment report and the action plan to improve the functioning of the public employment services;

(u) Portugal shall continue to implement the measures set out in its action plans to improve the quality of secondary and vocational education and training; in particular the government shall present plans to make the funding framework of schools more effective and the professional schools of reference shall be established;

(v) Portugal shall complete the adoption of the outstanding sectorial amendments necessary to fully implement Directive 2006/123/EC of the European Parliament and of the Council (*);

(w) Portugal shall improve the business environment by completing pending reforms on the reduction of administrative burden (fully operational Points of Single Contact provided for by Directive 2006/123/EC and "Zero Authorisation" projects) and by converging the characteristics of regulated professions to the relevant Union directives and by carrying out further simplification of existing licensing procedures, regulations and other administrative burdens in the economy which are a major obstacle for the development of economic activities;

(x) Portugal shall complete the reform of the ports' governance system, including the overhaul of port operation concessions;

(y) Portugal shall implement measures enhancing the functioning of the transport system;

(z) Portugal shall continue to implement the transposition of the EU Railway Packages;

(aa) Portugal shall implement a plan to create an independent gas and electricity logistics operator company;

(ab) Portugal shall implement adequate measures to eliminate the energy tariff debt and to ensure the sustainability of the national electricity system;

(ac) the government shall submit to the Portuguese Parliament the professional bodies' amended statutes;

(ad) Portugal shall approve the corresponding amendments to the bylaws of the National Regulatory Authorities;

(ae) Portugal shall continue to eliminate barriers to entry, soften existing authorisation requirements and reduce administrative burden in the services sector;

(af) Portugal shall publish quarterly reports on recovery rates; duration and costs of corporate insolvency cases; duration and cost of tax cases and on the clearance rate of enforcement court cases;

(ag) Portugal shall adopt the Construction Laws and the other sectorial amendments to fully implement the Directive 2006/123/EC;

(ah) Portugal shall assess the impact of the optional VAT cash accounting regime;

(ai) Portugal shall carry out an inventory and an analysis of the cost of regulations that are likely to have a higher impact on economic activity.

9. With a view to restoring confidence in the financial sector, Portugal shall aim to maintain an adequate level of capital in its banking sector and ensure an orderly deleveraging process in compliance with the deadlines set in the Memorandum of Understanding. In that regard, Portugal shall implement the strategy for the portuguese banking sector agreed with the Commission, the ECB and the IMF so that financial stability is preserved. In particular, Portugal shall:

(a) monitor the banks' transition to the new capital rules as laid down in the Capital Requirements Directive IV package (CRD IV) and ensure that capital buffers remain commensurate with the challenging operating environment;

(b) advise banks to strengthen their collateral buffers on a sustainable basis;

(c) remain committed to providing further support to the banking system, if needed, encouraging banks to seek private solutions while resources from the Bank Solvency Support Facility (BSSF) are available in line with the recently amended Union's State aid rules to further support viable banks, subject to strict conditionality;

(d) ensure a balanced and orderly deleveraging of the banking sector, which remains critical in permanently eliminating funding imbalances and reducing the reliance on Eurosystem funding in the medium-term. Banks funding and capital plans shall be reviewed quarterly;

(e) continue to strengthen the supervisory organisation of the Banco de Portugal (BdP), optimise its supervisory processes and develop and implement new supervisory methodologies and tools. The BdP will revise the standards on non-performing loans in order to achieve convergence with the criteria included in the relevant EBA technical standard in line with the timeframe set at the Union level;

(f) continue to monitor on a quarterly basis the banks' potential capital needs with a forward looking approach under stress conditions including through the integration of the new top-down stress testing framework into the quality assurance process, which allows for a review of the key drivers of the results;

(g) continue to streamline the state-owned Caixa Geral de Depósitos (CGD) group;

(h) outsource the management of the Banco Português de Negócios (BPN) credits currently held by Parvalorem to the firms selected through the bidding process with a mandate to gradually recover the assets; and ensure the timely disposal of the subsidiaries of, and the assets in, the other two state-owned special purpose vehicles;

(i) analyse banks' recovery plans and issue guidelines to the system on recovery plans in line with the relevant (draft) EBA technical standards and the forthcoming Union Directive on the recovery and resolution of credit institutions, and prepare resolution plans on the basis of the reports submitted by the banks;

(j) finalise the implementation of the framework for financial institutions to engage in out-of-court debt restructuring for households and smoothen the application of the framework for restructuring of corporate debt;

(k) prepare quarterly reports on the implementation of the new restructuring tools; on the basis of the recently conducted survey, explore alternatives in order to increase the successful recovery of companies adhering to the Special Revitalisation Procedure for companies in serious financial distress (PER) and the Companies' Recovery System through Extrajudicial Agreements for companies in a difficult economic situation or imminent or actual insolvency (SIREVE);

(l) continue the monitoring of the high indebtedness of the corporate and household sectors through quarterly reports and of the implementation of the new debt restructuring framework to ensure that it is working as effectively as possible;

(m) encourage, on the basis of the proposals already made, the diversification of financing alternatives to the corporate sector, develop and implement solutions that provide financing alternatives to traditional bank credit for the corporate sector through an array of measures aiming to improve their access to the capital markets;

(n) improve the performance and governance of the existing government-sponsored credit lines building on the results of the recent external audit. Implement the recently revised roadmap for improving the governance of the National Guarantee System (NGS) and making these schemes more efficient while minimising risks for the State;

(o) establish a development financial institution (DFI) aiming at streamlining and centralising the management of the reimbursable part of the financial instruments of Union structural funds for the 2014-2020 programming period. The institution shall neither accept deposits or other repayable funds from the public nor engage in direct lending.

(*) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).'.

Article 2

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

Article 3

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 18 February 2014.

For the Council
The President
G. STOURNARAS

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 303/13/COL

of 10 July 2013

concerning a Charter Fund Scheme for Northern Norway (Norway)

THE EFTA SURVEILLANCE AUTHORITY (THE 'AUTHORITY'),

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

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

HAVING REGARD to Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'), in particular Article 1(2) of Part I and Articles 6 and 7(4) of Part II,

Whereas:

I. FACTS

1. Procedure

(1) In a letter dated 2 May 2012, and following pre-notification discussions with the Authority, the Norwegian authorities notified a Charter Fund Scheme for Northern Norway, pursuant to Article 1(3) of Part I of Protocol 3 ([1]).

(2) In a letter dated 27 June 2012 ([2]), the Authority informed the Norwegian authorities that it had decided to initiate the formal investigation procedure laid down in Article 1(2) of Part I and Article 6(1) of Part II of Protocol 3 in respect of the plan to grant aid under the Charter Fund Scheme for Northern Norway.

(3) The Authority's Decision (No 246/12/COL) to initiate the procedure was published in the *Official Journal of the European Union* and the EEA Supplement thereto ([3]).

(4) The Norwegian authorities submitted their comments to the Decision No 246/12/COL in a letter dated 27 August 2012 ([4]).

(5) The Authority has received comments on Decision No 246/12/COL from eight interested third parties ([5]).

(6) The Norwegian authorities submitted their comments on the observations from third parties in letters dated 15 November 2012 ([6]) and 23 April 2013 ([7]).

([1]) Event Nos 632837 and 322824.
([2]) Event No 638133.
([3]) OJ C 291, 27.9.2012, p. 2 and EEA Supplement No 53, 27.9.2012, p. 36.
([4]) Event No 644991.
([5]) Innovative Experiences (Event No 650797), NHO Reiseliv (Event No 650549), NHO Luftfart (Event No 650733), Avinor (Event No 650806), VinterTroms AS (Event No 650827), Northern Norway Tourist Board Ltd (Event No 650958), Hotel chains Rica Hotels and Thon Hotels (Event No 650880) and Voigt Travel b.v. (Event No 668161).
([6]) Event Nos 653590 and 653595.
([7]) Event No 669821.

2. **Description of the proposed measure**

2.1. *The Charter Fund Scheme*

(7) The measure consists of establishing a Charter Fund Scheme (the 'Charter Fund' or the 'Scheme') which will grant aid to tour operators flying air charter flights ([8]) to three counties in Northern Norway: Nordland, Troms and Finnmark (the 'Counties'). The Charter Fund will be a non-profit undertaking acting as a vehicle for granting aid. Capitalization of the Charter Fund will be made with funds from the three Counties.

(8) The Scheme will cover charter flights to all airports in Northern Norway. The Norwegian authorities have indicated that they expect only large aircraft ([9]) to be relevant as only such aircraft generally are suitable for charter flights ([10]). All airports in Northern Norway have excess capacity.

(9) The aid will take the form of a payment of up to a maximum of 25 % of the total charter costs incurred by the tour operator for the eligible flights and will be limited to cover only such costs ([11]).

(10) The Norwegian authorities anticipate that the Charter Fund will trigger 16 charter series ([12]) with seven flight rotations per charter series in the first year, *i.e.,* a total of 112 flight rotations. A cabin factor of 60 % ([13]) is the '*worst case scenario*' which will lead to the highest aid intensity ([14]). Assuming an average cabin factor of 60 %, the total annual amount of aid from the Charter Fund is estimated to be around NOK 8 400 000 ([15]).

(11) The Scheme is part of a coherent regional development strategy of the Norwegian authorities. One of the key policy objectives of Norway's 'High North Policy' is to 'strengthen the basis for employment, value creation and welfare throughout the country by means of a regional and national effort in cooperation with partners from other countries and relevant indigenous groups' ([16]). The policy for Northern Norway focuses specifically on tourism, aiming at preventing depopulation by creating jobs in the tourist industry. The tourism strategy of the Norwegian Government also makes reference to the Charter Fund ([17]). Focusing on tourism to prevent depopulation is an important policy of the regional authorities in the Counties of Nordland, Troms and Finnmark ([18]).

([8]) A charter flight is defined as a non-scheduled flight.

([9]) Aircraft of Boeing 737-category and above.

([10]) The following airports in Northern Norway can currently handle large aircraft: Tromsø, Bodø, Harstad Narvik/Evenes, Alta, Kirkenes (Høybuktmoen), Bardufoss, Svalbard, Lakselv (Banak), Andøya (also called '*the Northern lights airports*'). As for Svalbard, see Protocol 40 to the EEA Agreement.

([11]) See Section 2.5 below for a more detailed description of the Scheme.

([12]) The term '*charter series*' means charter flights between two destinations repeated over a limited period of time (e.g. weekly flights between Bodø and London from February to April).

([13]) The cabin factor is the percentage of sold seats in a flight. The cabin factor will be determined according to the actual number of departing passengers, divided with the maximum seat capacity for the aircraft.

([14]) Charter series with an average cabin factor of less than 60 % is eligible for aid; however, the maximum aid that can be granted is still 25 % of the charter costs incurred with a cabin factor of 60 %. With a cabin factor of less than 60 %, the aid will not cover all of the charter operator's loss. This is illustrated in the figure at paragraph 26 below.

([15]) This corresponds to 25 % aid intensity of the total charter costs. The total charter cost is estimated to be NOK 33 600 000 (NOK 300 000 in costs per flight rotation multiplied with 112).

([16]) See the Norwegian Government's white paper 'The High North. Vision and Policy Instruments', (Meld. St. 7 (2011-2012), the short version, p. 25). One priority is to 'maintain focus on the travel and tourism industry in North Norway and Svalbard and to promote further cooperation and coordination between actors in the travel and tourism industry' (p. 37). (http://www.regjeringen.no/upload/UD/Vedlegg/Nordområdene/UD_nordomrodene_EN_web.pdf). The Norwegian Government's political platform form 2009-2013 refers to the importance of tourism and in particular for Northern Norway: '*Northern Norway is a unique travel destination and must be given the opportunity to realize and release its potential*' (p. 22) (http://arbeiderpartiet.no/file/download/4861/58544/file/soriamoria2_english.pdf).

([17]) See the Norwegian Government's tourism strategy: 'Avinor is establishing "Northern Light Airports" as a unified brand for the largest airports in Northern Norway […] Avinor supports the Charter Fund for Northern Norway […] This kind of charter fund is intended to promote charter tours to the region. Feedback from the industry indicates that this will be an important initiative to encourage new traffic' (*'Destination Norway — National strategy for the tourism industry'*, p. 76). (http://www.regjeringen.no/pages/37646196/Lenke_til_strategien-engelsk.pdf).

([18]) For instance, the County of Nordland has prepared a '*Strategy for Tourism in Nordland for the period 2011 until 2015*' (http://www.nfk.no/Filnedlasting.aspx?MId1=1266&FilId=11230).

(12) The Charter Fund will most likely be organised as an undertaking owned by the three Counties. The Charter Fund's Board of Directors will appoint a group to approve applications for aid under the Scheme subject to certain criteria being satisfied.

2.2. *The objective and possible effect of the aid measure*

(13) The objective of the Charter Fund is to increase the use of airports in Northern Norway and thereby contribute to economic development in the region. The aid measure is intended to reduce the economic risk involved in operating air charter (non-scheduled flights) to Northern Norway.

(14) The Counties are low density population areas with an average population density of 4,2 inhabitants per square kilometre thereby falling within the definition of '*least populated regions*' as set out in the Authority's Regional Aid Guidelines ([19]). In addition, the Counties are facing depopulation.

(15) A limited number of charter routes have been operated to Northern Norway in the past, however, without success ([20]). A reason for this may be the cancellation rules applying to air charters. Cancellation at a late stage is very expensive. The deadline for deciding whether to cancel a charter flight is several months before the operation of the charter series. If the sale of tickets at that date is limited, the charter series is often cancelled. The tour operator would otherwise risk having to pay a cancellation fee or bear the loss corresponding to the empty seats. The tourist industry believes that if that risk was reduced, many flights would go ahead. Such flights could even be profitable. However, tour operators seem to prefer to cancel flights due to the risk of empty seats rather than to wait and hope that late sales will make the flight profitable.

(16) In 2010, the estimated economic impact of tourism in the three Counties was about NOK 14 billion. This includes both direct and indirect effects of tourism ([21]). The following table gives some examples of tourist spending divided between different industries in the three Counties ([22]).

County/industry	Food/drinks	Passenger transport	Activities	Food/drinks	Clothing and shoes	Souvenir, maps etc.
Finnmark	311,7 mill	470,8 mill	51,1 mill	192,9 mill	45,8 mill	23,2 mill
Troms	453,9 mill	1457,8 mill	80,0 mill	250,8 mill	59,6 mill	31,6 mill
Nordland	664,0 mill	2654,6 mill	110,3 mill	428,7 mill	101,9 mill	46,6 mill

([19]) The Authority's Guidelines on National Regional Aid for 2007-2013, OJ L 231, 3.9.1994, p. 1, and EEA Supplement No 32, 3.9.1994, p. 42, also available at: http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/. The Guidelines were last time amended on 6.4.2006, published in OJ L 54, 28.2.2008, p. 1 and EEA Supplement No 11, 28.2.2008, p. 1. The Guidelines correspond to the '*Guidelines on National Regional Aid for 2007-2013*' adopted by the European Commission, published in OJ C 54, 4.3.2006, p. 13 (the '*Regional Aid Guidelines*'). The three Counties are NUTS II regions. Finnmark has the lowest population density with 1,6 inhabitants per square kilometre.

([20]) In 2009, the Authority approved an aid scheme for route development from the second largest city in Northern Norway, Bodø, see the Authority's Decision No 179/09/COL (*'the Route Development Fund Bodø'*). The Route Development Fund has not yet granted any aid under the scheme. For three years, the airline company 'Norwegian' operated a route between Tromsø and one of the biggest cities in Europe. Despite receiving support from Avinor, this route was not profitable. The route was shut down in March 2011. Air Baltic has operated a seasonal route between Tromsø and Riga twice a week from 1 April to 30 September. This route was shut down in 2011. SAS operates a route between Tromsø and Stockholm twice a week from 1 July to 15 August. In addition, a Russian airline flies three times a week from Tromsø to Murmansk, Russia. Given the limited number of international routes, there is a presumption that routes between North Norwegian airports and European cities are of little commercial interest for air carriers (Event No 632837).

([21]) Direct effects refer to consumption paid with the tourists' own money. The indirect effects refer to the value of tourists' spending in a broader view, e.g. demand for goods and services in the form of subcontracts.

([22]) All numbers are in NOK. The figures are based on numbers from the report '*Travel Life's economic impact in Trøndelag and North Norway 2010*' prepared by The Executive Committee for Northern Norway (Landsdelsutvalget) and the Norwegian Hospitality Association (NHO Reiseliv Nord-Norge).

(17) The hotel industry in Northern Norway suffers from overcapacity and low operating margins. In addition, the utilization of capacity varies considerably throughout the year. A challenge for the tourist industry is the many seasonal jobs. The Norwegian authorities assume that the Scheme will lead to increased tourism in the low season, with a particularly positive effect on employment in the tourist industry. In 2012, it was estimated that travellers to Northern Norway would spend NOK 9 000 (per person) in the region ([23]). The Norwegian authorities assume that a low level of aid from the Charter Fund will trigger a high amount of spending by tourists in the target area of the Scheme. This can be illustrated by the following table ([24]).

Average cabin factor	Number of tourist year one	Aid from the Charter Fund	Tourist spending	Charter Fund cost/ tourist spending
60 %	10 714	8 400 000	96 422 400	8,7 %
61 %	10 892	7 980 000	98 029 440	8,1 %
62 %	11 071	7 560 000	99 636 480	7,6 %
63 %	11 249	7 140 000	101 243 520	7,1 %
64 %	11 428	6 720 000	102 850 560	6,5 %
65 %	11 606	6 300 000	104 457 600	6,0 %
66 %	11 785	5 880 000	106 064 640	5,5 %
67 %	11 964	5 460 000	107 671 680	5,1 %
68 %	12 142	5 040 000	109 278 720	4,6 %
69 %	12 321	4 620 000	110 885 760	4,2 %
70 %	12 499	4 200 000	112 492 800	3,7 %
71 %	12 678	3 780 000	114 099 840	3,3 %
72 %	12 856	3 360 000	115 706 880	2,9 %
73 %	13 035	2 940 000	117 313 920	2,5 %
74 %	13 213	2 520 000	118 920 960	2,1 %
75 %	13 392	2 100 000	120 528 000	1,7 %
76 %	13 571	1 680 000	122 135 040	1,4 %
77 %	13 749	1 260 000	123 742 080	1,0 %
78 %	13 928	840 000	125 349 120	0,7 %
79 %	14 106	420 000	126 956 160	0,3 %
80 %	14 285	0	128 563 200	0,0 %

([23]) The notification, p. 11 (Event No 632837), referring to a report from the Institute of Transport Economics (Transportøkonomisk institutt, TØI) of 2007 No 941/2008 (https://www.toi.no/getfile.php/Publikasjoner/T%C3%98I%20rapporter/2008/941-2008/941-hele%20%20rapporten%20elektronisk-ny.pdf).

([24]) The Norwegian authorities have submitted that the figures are only estimates made for the purposes of preparing a budget for the Charter Fund. Due to rounding of numbers, the figures in the table are not accurate.

2.3. *National legal basis for the aid measure*

(18) Capital injections from the Counties to the Charter Fund will be made over its budgets. The legal basis for the aid that is granted will be budgetary decisions taken by the Counties ([25]).

(19) The Charter Fund will be entitled to make grants of aid based on its statutes (by-laws); the standard agreements will be entered into between the Charter Fund and the aid beneficiaries.

2.4. *Beneficiaries*

(20) Applicants for aid from the Charter Fund will be the tour operators, *i.e.* the charter operator. All applications to the Charter Fund must be supported by three parties:

— The tour operator, which is the direct aid recipient;

— The destination provider, which could be a destination management company, a hotel, a tourist office, or any other commercial provider of tourist services. Aid from the Charter Fund will not be granted to '*air only packages*'. It must be demonstrated that the tour package includes a '*land arrangement*' in the target area of the Scheme, with a value of at least NOK 800 per tourist;

— The airline, which must set out all costs, deadlines, penalties, obligations and responsibilities applicable to the charter series.

(21) The approval group of the Charter Fund may reject an application if:

— The fund limitations set by the Board of Directors of the Charter Fund for the period in question have been reached;

— Any of the supporting partners of the beneficiary are believed to be unable to meet the expected commercial performance described in the application;

— The application is incomplete or does not comply with published guidelines of the Charter Fund.

(22) The Charter Fund will grant aid to tour operators operating air charters to Northern Norway. Such operators may be located in or outside Northern Norway or in or outside the EEA.

2.5. *Aid intensity, eligible costs, overlap with other schemes*

(23) The aid will take the form of a maximum payment of up to 25 % of the total charter costs and will be limited to such costs only (*i.e.*, financial obligations under the contract between the tourist operator and the airline). Other costs borne by the tour operators are not eligible costs under the Scheme.

(24) The aid will be calculated with reference to the '*average cabin factor*' of the flights operated under the charter series, excluding empty legs ([26]). The cabin factor will be determined according to the actual number of departing passengers divided by the maximum seat capacity of the aircraft. Passenger data will be based on the official numbers recorded by the Norwegian airport authorities. Empty legs will not be taken into account when calculating the average cabin factor but will be included when the total eligible costs for the charter series are calculated.

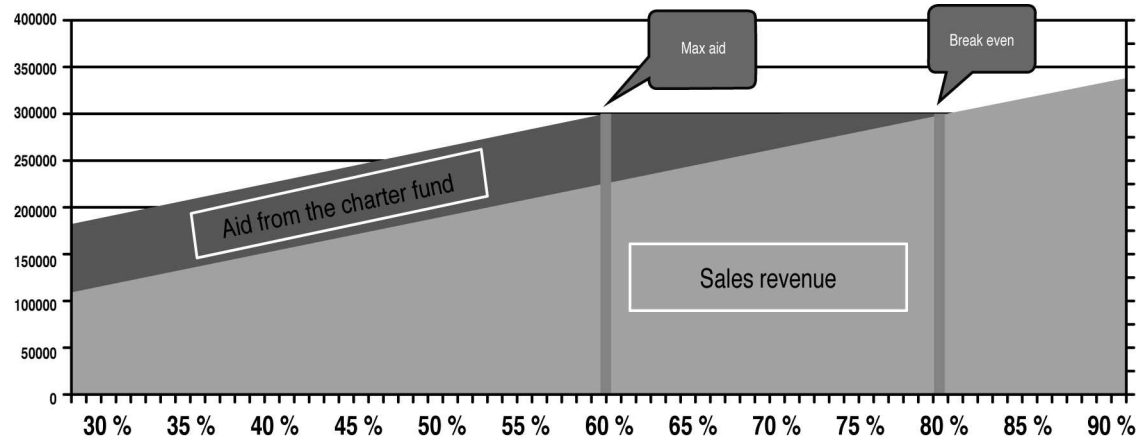
([25]) It is possible that the Norwegian State might provide some funding over the state budget.

([26]) '*Empty legs*' are flights operated in order to position an aircraft at the start and at the end of a charter series. The return flight on the first departure will be empty and the flight to pick up the last passengers will be empty. Empty legs represent a considerable cost for charter series.

(25) Tour operators will be required to set a break-even point at 80 % of the cabin factor ([27]). If sales only reach a cabin factor of 60 % or less, the Charter Fund will reimburse the tour operator 25 % of the charter costs, which will be the maximum aid intensity. Thus, maximum support (25 %) will be given for cabin factors of 60 % or less. The aid will decrease to zero when the cabin factor reaches 80 %. This is illustrated in the following table ([28]).

Cabin factor	Sales revenue (NOK)	Aid from the Charter Fund (NOK)
50 %	187 500	75 000
55 %	206 250	75 000
60 %	225 000	75 000
65 %	243 750	56 250
70 %	262 500	37 500
75 %	281 250	18 750
80 %	300 000	0

(26) If the aircraft operated under a charter series reach a cabin factor between 60 % — 80 %, the contribution paid by the Charter Fund will cover losses incurred by the tour operator in connecting with the charter series. The following figure illustrates how the Charter Fund will work ([29]).



(27) As shown in the figure above, if flights are operated with a cabin factor of less than 60 %, the tour operator will lose money, as the combination of sales revenues and an aid intensity of 25 % will not be enough to reach the break-even point. The financial aid granted by the Charter Fund will only cover the tour operator's losses when the cabin factor lies between 60 % and 80 %.

(28) The aid will be paid to the tour operators from the Charter Fund after the charter series to Northern Norway have been completed and after the approval group of the Charter Fund has evaluated and confirmed that all award criteria are fulfilled.

([27]) A cabin factor of 80 % is deemed to be the industrial break-even standard.
([28]) The table is prepared by the Charter Fund and gives an example of how the Scheme will work with flights from London to Northern Norway with a Boeing 737-800. It is estimated that the net cost quoted by the airline to the tour operator will be NOK 300 000 per flight rotation. 149 persons must purchase tickets to reach the break-even point (80 % of an aircraft capacity of 186 persons).
([29]) The figure is prepared by the Charter Fund for illustration purposes (Event No 632837).

(29) Aid under the Charter Fund may be cumulated with other forms of aid. Funding of the same eligible costs under other schemes will be coordinated by the Charter Fund and the aid ceilings in the applicable guidelines will not be exceeded. Operating aid under the Charter Fund cannot be cumulated with *de minimis* support in respect of the same eligible expenses in order to circumvent the maximum aid intensities laid down in the Regional Aid Guidelines.

2.6. *Monitoring and advertising*

(30) The Charter Fund will be published on a new subpage on Avinor AS' webpage ([30]) and on www.visitnorthnorway.com.

(31) The Charter Fund will ensure that a list of tour operators receiving aid is published annually, in each instance indicating the source of public funding, the recipient company, the amount of aid paid out and the number of passengers concerned.

(32) In the event that a tour operator fails to comply with the criteria fixed by the Charter Fund when aid is granted, penalty mechanisms will apply.

2.7. *Budget and duration*

(33) The budget of the Charter Fund for the three first years of operation will amount to NOK 30 million. Thereafter, further capital will be injected only if necessary. The maximum capital base will not exceed NOK 30 million. The maximum possible grant of aid from the Charter Fund will be NOK 15 million per year (the absolute aid ceiling). However, it is estimated that the amount of aid granted by the Charter Fund will be appreciably below NOK 10 million per year.

(34) The Norwegian authorities have indicated that the Charter Fund will be in place for 10 years.

2.8. *Grounds for initiating the formal investigation procedure*

(35) Based on the information submitted by the Norwegian authorities, the Authority considers that the conditions set out in Article 61(1) of the EEA Agreement are met and that the notified Scheme entails state aid. In the Authority's Decision (No 246/12/COL), the Authority expressed doubts as to whether the Scheme complies with Article 61(3) of the EEA Agreement, read in conjunction with the requirements laid down in the Authority's Regional Aid Guidelines. The doubts were in particular related to whether operating aid could be granted to direct recipients located outside the region of Northern Norway.

3. **Comments from third parties**

(36) The Authority has received comments from eight interested third parties, seven in favour of the Charter Fund: Innovative Experiences ([31]), NHO Reiseliv ([32]), Avinor, VinterTroms AS ([33]), Northern Norway Tourist Board Ltd, Hotel chains Rica Hotels and Thon Hotels, and Voigt Travel b.v.; and one against: NHO Luftfart ([34]).

([30]) Avinor AS is a state-owned company that operates the majority of the civil airports in Norway.
([31]) Innovative Experiences represents 33 experience-based tourist companies in Northern Norway.
([32]) NHO Reiseliv (the Norwegian Hospitality Association) represents more than 2 500 companies that employ a workforce of approximately 55 000. The North Norwegian branch of NHO Reiseliv has 400 members.
([33]) VinterTroms AS is owned by six travel companies in Northern Norway.
([34]) NHO Luftfart represents companies in the airline sector in Norway and other interested companies.

(37) All third parties *in favour* of the Charter Fund strongly support the Charter Fund and submit that it is of very high importance for the regional development of Northern Norway and for Northern Norway as a tourist destination. Some of the comments submitted to the Authority are:

— In order to develop year-round profitable experience-based tourism in Northern Norway, access to important international target groups is vital. The increase in guests arriving in the winter time is very important, and more direct charter flights will support this development. For short breaks or visits outside the summer season driving to Northern Norway, or use of bus or train, is not an option for target groups. Northern Norway needs more year-round operations in order to secure competent staff for the tourist industry, and in order to sustain a vital and attractive region in the years to come. There is a strong relationship between the region as a populated and attractive region to live in, and Northern Norway as a sustainable, authentic, year-round tourism region.

— Northern Norway is threatened by depopulation. With the exception of Tromsø, all airports in the region have ample spare terminal capacity that can be utilized for international flights, to the benefit of the region. The notified measure will make Avinor's airports in Northern Norway into the local power-gateways for tourism. This will contribute to more jobs in the area, and the development of tourism will thus have significant positive regional effects.

— A particular challenge for the tourist industry in Northern Norway is how to operate year-round and ensure that there is a sufficient customer base during the winter months to be sustainable and profitable.

— For the development of winter tourism to Northern Norway charter flights are a priority. The Charter Fund will be crucial for the development of profitable winter traffic and year-round jobs in the tourist industry in the region.

— It is the intention of Northern Norway Tourist Board Ltd to increase visitor numbers to the area by almost 100 %, from 2,9 million to 5 million, by 2018. To reach this goal, charter flights are extremely important and, according to tour operators, the only way to make the destinations accessible.

— For tour operators the challenge is the risk of failure, since Northern Norway is a new destination and many of them already sell similar products in competing markets. Hence, filling charter flights and making the operation profitable at the right price is not easy.

— The fact that there has been a significant decrease in bus charters from Europe to Northern Norway during the last few years means that there is a need to replace this traffic with new traffic, such as charter flights.

— Charter flights operate from an airport convenient to the customer at one end, directly to the chosen destination, thus avoiding unnecessary time spent, delays, costs and energy caused by transiting on various scheduled flights.

— Charter operation is an operation with high risks, as airline cancellation terms do not coincide with customers booking behaviour. An incentive which will reduce the risks may well encourage traffic to a relatively new (winter) destination (Northern Norway).

— Preparing and selling tour programs to Northern Norway using traditional scheduled routes in Norway is not at all an option. Packages including transport with scheduled flights would be a totally different product and involve entering into a quiet different market-segment.

(38) A summary of the main comments of the third party expressing *disfavour* in relation to the Charter Fund are set out below ([35]):

— It is not correct that only a few unsuccessful routes have been operated during the last years. For example, SAS has operated charter routes from Tromsø, Evenes and Bodø to several destinations in Europe for many years, and with a regular yearly increase during the last few years. It is therefore possible to operate such routes on a commercial basis.

([35]) NHO Luftfart (Event No 650733) (unofficial translation from Norwegian to English).

— It is misleading to claim that tour operators take the biggest risks concerning charter flights. For example, SAS offers a standard contract which allows cancellation without extra cost up to 60 days prior to the flight. Cancellation after that is subject to a fee.

— The Norwegian air route system is built around a '*hub and spokes*' principle. Oslo Lufthavn Gardermoen serves as the natural point for all traffic to Norway, which has served as a basis for developing a strong domestic air transport system. Therefore, there is a direct competitive interrelationship between today's air routes to/from Northern Norway and any new charter routes which would be subsidised a Charter Fund. There is a significant number of international passengers on the ordinary air routes to Northern Norway.

— The Scheme will have direct economic consequences for companies operating ordinary scheduled flights.

— The Scheme will discriminate between such charter flights eligible for aid and possible new ordinary air routes from abroad directly to Northern Norway. State aid to charter flights will impede start-up of new scheduled routes and be in breach of the fundamental principle of equal competition.

— Inter-continental flights normally require a higher cabin factor than 80 % to be profitable. In order to deliver a good in-coming air transport offer to Norway from European destinations, the placement of airport bases is decisive. For example, to attract British tourists directly to smaller destinations in Northern Norway, a base in the UK will be a significant competitive advantage. Therefore, in practice, the Scheme will favour foreign air carriers.

— It is fully possible for the Norwegian authorities to buy air transport routes pursuant to Regulation (EC) No 1008/2008 ([36]).

4. **Comments from the Norwegian authorities**

(39) The Norwegian authorities provided their comments on Decision No 246/12/COL in a letter dated 27 August 2012 ([37]) and their views on the comments from third parties in letters dated 15 November 2012 and 23 April 2013 ([38]).

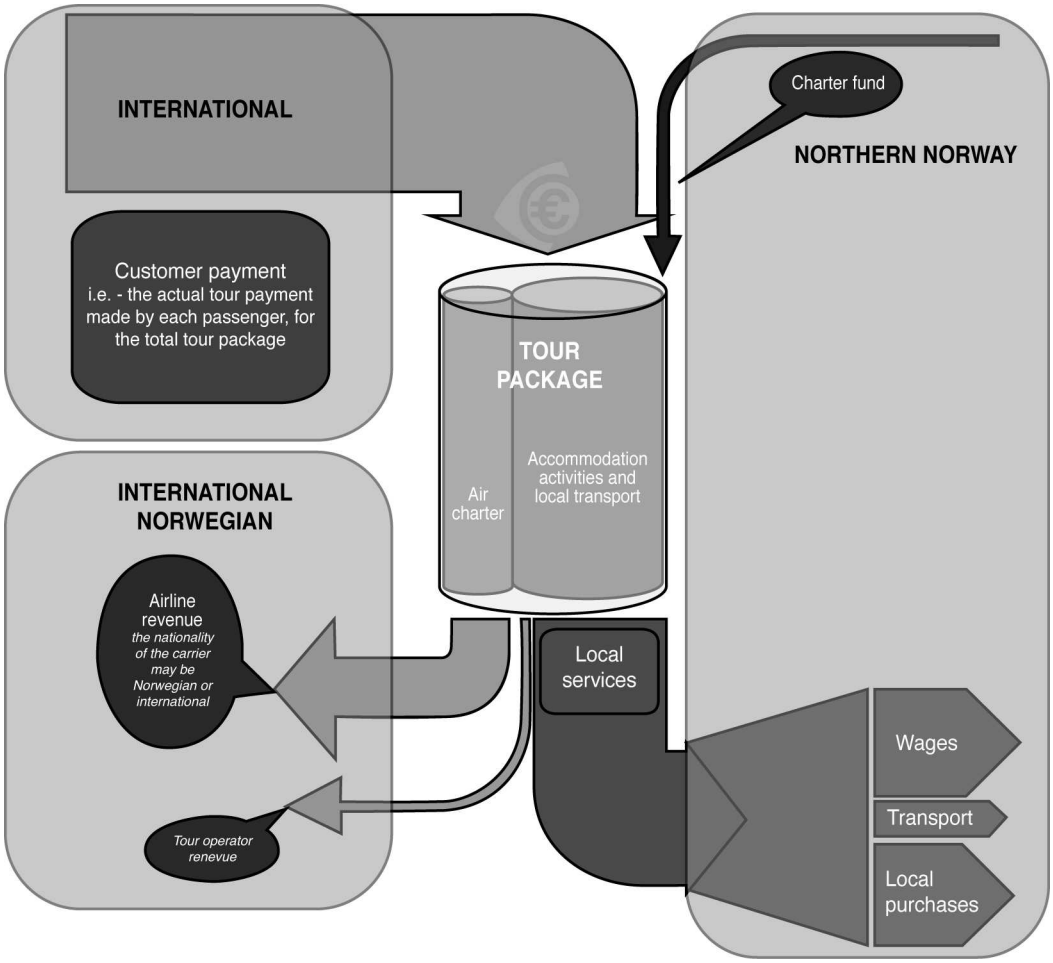
(40) Most Arctic areas, including the northern parts of Norway, suffer from problems relating to a low degree of diversification of local industry, as well as problems resulting from remoteness, long internal and external distances and harsh weather conditions. The Charter Fund is intended to contribute to the diversification of industry in the area, creating jobs in the tourism sector and related sectors. The Counties believe that the Charter Fund will be an important tool with which to slow down the depopulation of the area.

(41) It is fully in line with the Regional Aid Guidelines to grant aid to an undertaking located outside the relevant area as long as the intended effect of the aid takes place in the region eligible for regional aid. The Charter Fund is intended to have effect in the three Counties of Northern Norway.

(42) The Regional Aid Guidelines and the Guidelines on financing of airports and start-up aid to airlines departing from regional airports do not contain any limitations on the granting of operating aid on the basis of the location of the beneficiary, provided that the intended effect takes place within the region concerned. Further, the EU Commission's and the Authority's practice under Article 107(3)(c) TFEU and Article 61(3)(c) EEA respectively, both with regard to operating aid and start-up aid to regional airports, has allowed operating aid without any limitations on the location of the beneficiary.

(43) The link between the aid and the target area is clear. The following figure illustrates how the Charter Fund is intended to bring positive effects to Northern Norway ([39]).

([36]) Regulation (EC) No 1008/2008 of 24.9.2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3). Incorporated into the EEA Agreement by Annex XIII point 64a.
([37]) Event No 644991.
([38]) Event Nos 653590/653595 and Event No 669821.
([39]) The figure is prepared by the Charter Fund for illustration purposes (Event No 644991).



(44) The economic activity generated will have several effects. The airline will receive income from the charter operator for chartering the aircraft. The tour operator will receive income from the charter flights. The main impact is the effect on the Northern Norwegian economy, as shown by the arrows in the right bottom corner in the figure above. The Charter Fund contains no limitations on the location of the tour operator chartering the aircraft, but the tour operator will only receive aid if it operates a charter series to a regional airport in Northern Norway.

(45) The Scheme is both necessary and appropriate ([40]).

(46) The Counties believe that the Charter Fund is compatible with the Regional Aid Guidelines. If the Authority should disagree, the Counties submit that the Scheme nevertheless is compatible with the EEA Agreement, either on the basis of the Guidelines on the financing of airports and start up aid to airlines departing from regional airports, or on the basis of Article 61(3)(c) of the EEA Agreement directly.

(47) As regards the comments from third parties, the Norwegian authorities have in particular commented on the observations made by NHO Luftfart ([41]). The Norwegian authorities consider that some of these observations appear to rely on some divergent views of the facts.

— The Counties have never disputed the existence of charter flights from Northern Norway to holiday destinations in Southern Europe. However, this is a different market from that at issue. The relevant market in the present case is the supply and demand for charter flights to Northern Norway.

— The Counties are not aware of contracts offering favourable cancellation terms as referred to by NHO Luftfart. Other operators and agents in the industry have stated that the standard term in charter flight contracts is a non-refundable deposit of 5-10 % upfront, or a 5-10 % cancellation fee. In any event, a 60-day deadline for free cancellation still exposes the tour operators to considerable risk, as there is a universal trend towards later bookings.

([40]) See Section 3.3 in Part II below.
([41]) Letter from the Norwegian authorities dated 15.11.2012 (Event Nos 653590/653595).

— The Counties are uncertain as to the relevance of NHO Luftfart's argument that the air route system in Norway is built around a '*hub and spokes*' system. The intention of the Charter Fund is to stimulate new traffic, and not to limit already existing traffic. New international traffic will support new tourism development, new infrastructure, and a sustainable tourist industry and employment. The Counties believe that this will support more demand on scheduled services from Oslo to Northern Norway. International charter flights and domestic Oslo flights are complementary services. An increase in charter flights from abroad will not undermine the Norwegian air flight travel pattern. In addition, a significant part of travel to Northern Norway is business travel, a segment that would not in any event be affected by the Scheme.

— The effects on competition for scheduled flights appear to be exaggerated by NHO Luftfart. Different routes constitute different markets. Moreover, non-scheduled flights and scheduled flights are also different markets.

— It is hard to see how the notified measure could be discriminatory. New scheduled routes have repeatedly received support, and the magnitude of such support is far above what will be distributed through the Charter Fund.

— There is no mechanism in the Charter Fund which would discriminate against Norwegian carriers. Norwegian scheduled air transport operators do not only have bases in Norway as argued by NHO Luftfart.

— Regards the possibility of procuring air transport services on unprofitable routes pursuant to Regulation (EC) No 1008/2008, the Counties do not see the relevance of the comment.

II. **ASSESSMENT**

1. **The presence of state aid**

1.1. *State aid within the meaning of Article 61(1) EEA Agreement*

(48) Article 61(1) of the EEA Agreement provides as follows:

'Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement'.

1.2. *Presence of state resources*

(49) The aid measure must be granted by the State or through State resources.

(50) The Norwegian authorities have informed that the Charter Fund is likely to be financed directly from the budgets of the three Counties (it cannot be excluded that it may also receive financing directly from the Norwegian State).

(51) In that light, the Authority considers that this condition is met as the Scheme will be financed either by the budgets of the Counties or the State ([42]).

1.3. *Favouring certain undertakings or the production of certain goods*

(52) Firstly, the aid measure must confer on the beneficiaries an advantage that relieves them of charges that are normally borne from their budgets.

([42]) The Norwegian authorities have also mentioned the fact that the Charter Fund may, at some stage in the future, be co-financed by private undertakings. The assessment carried out by the Authority has not examined this possibility as this option seems to be relatively uncertain.

(53) The tour operators benefiting from the Scheme will receive a direct grant which will reduce the charter costs on a given charter series. The service providers located in the three Counties gaining from an increase in tourists to the region will indirectly benefit from the Scheme.

(54) Secondly, the aid measure must be selective in that it favours certain undertakings or the production of certain goods.

(55) Only tour operators that operate charter flights to Northern Norway will benefit directly from the Scheme. Similarly, only operators (service providers) that are located in the three Counties will indirectly benefit from the Scheme.

(56) The Authority therefore considers that the measure is selective.

1.4. *Distortion of competition*

(57) State aid is covered by Article 61(1) of the EEA Agreement if it distorts or threatens to distort competition and affects trade between the Contracting Parties to the EEA Agreement. For the application of Article 61(1) of the EEA Agreement, it is sufficient that aid threatens to distort competition by granting a selective advantage. Aid is regarded as distorting competition if it is granted to an undertaking which carries out activities in competition with others.

(58) The direct aid beneficiaries of the Scheme are tour operators chartering aircraft to Northern Norway (non-scheduled flights). The tour operators are active in several countries and in a sector characterised by strong competition. The indirect beneficiaries of the Scheme are service providers in the tourist industry in Northern Norway, who will benefit from the aid in the form of an increase in demand from foreign tourists. The aid may encourage tourists to choose to travel to Northern Norway instead of travelling to holiday destinations in other countries. The distortion of competition does not only occur at the level of tour operators but possibly also at the level of tourist service providers. In addition, airports compete internationally to attract new flights and new routes. Therefore, the aid may also possibly lead to a distortion of competition between airports.

(59) The Authority takes the view that the Scheme might strengthen the position of operators directly or indirectly benefitting from the Scheme as compared to competitors that do not receive a similar benefit. Therefore, any aid granted under the Scheme may be regarded as distorting or threatening to distort competition.

1.5. *Effect on trade between Contracting Parties*

(60) State aid to specific undertakings is regarded as affecting trade between the Contracting Parties to the EEA Agreement if the recipient carries out an economic activity involving trade between the Contracting Parties. The aid will be granted to tour operators which offer holiday packages that bring tourists from abroad to Norway. This is, by definition, a cross-border activity. In addition, the tourist industry in Northern Norway, which will indirectly benefit from the Scheme, competes with the tourist industries in other EEA countries.

(61) Therefore, state funding under the notified measure will affect trade between the Contracting Parties to the EEA Agreement.

1.6. *Conclusion*

(62) The Authority considers that all of the conditions set out in Article 61(1) of the EEA Agreement are met and therefore, that the notified Scheme entails state aid. The state aid is only compatible with the functioning of the EEA Agreement if it qualifies for one of the derogations in Article 61(3) of the EEA Agreement.

2. **Procedural requirements**

(63) The aid measure envisaged by the Scheme is considered as operating aid. The Regional Aid Guidelines provide that 'operating aid schemes are not covered by the regional aid maps, and are assessed on a case by case basis on the basis of a notification by the EFTA State concerned pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement' ([43]).

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

(65) By submitting a notification in relation to the Charter Fund on 2 May 2012 ([44]), the Norwegian authorities have complied with the notification requirement in Article 1(3) of Part I of Protocol 3.

(66) By not implementing the notified Scheme, the Norwegian authorities have complied with the standstill obligation provided for under Article 3 of Part II of Protocol 3.

(67) As required by the formal procedure, the Authority has examined the comments made by the Norwegian authorities and the comments made by third parties.

3. **Compatibility of the aid**

3.1. *Assessment of the aid measure under Article 61(3) of the EEA Agreement in conjunction with the Regional Aid Guidelines*

(68) On the basis of the derogation in Article 61(3)(c) of the EEA Agreement, the following may be considered to be compatible with the functioning of the EEA Agreement:

> 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest'.

(69) With a view to assessing the compatibility of the aid, as already noted, it constitutes operating aid. Operating aid releases an undertaking from costs which it would normally have to bear in its day-to-day management or normal activities ([45]). Operating aid is normally prohibited.

(70) The Regional Aid Guidelines provide that:

> 'on the basis of Article 61(3)(a) and Article 61(3)(c) of the EEA Agreement, state aid granted to promote the economic development of certain disadvantaged areas within the EEA may be considered to be compatible with the functioning of the EEA Agreement. This kind of state aid is known as national regional aid. National regional aid consists of aid for investment granted to large companies, or in certain limited circumstances, operating aid, which in both cases are targeted on specific regions in order to redress regional disparities' (emphasis added) ([46]).

(71) The Guidelines also provide that:

> 'In derogation from the previous paragraph, operating aid which is not both progressively reduced and limited in time may only be authorised in the least populated regions, in so far as it is intended to prevent or reduce the continuing depopulation of these regions ([47]). The least populated regions represent or belong to regions at NUTS-II level for Norway and NUTS IV level for Iceland with a population density of 8 inhabitants per km^2 or less and extend to adjacent and contiguous smaller areas meeting the same population density criterion' (emphasis added) ([48]).

([43]) The Regional Aid Guidelines at paragraph 81.
([44]) Event Nos 632837 and 322824.
([45]) See Case T-348/04 *SIDE v Commission* [2008] ECR II-625, paragraph 99, Case T-162/06 *Kronoply GmbH v Commission* [2009] ECR II-1, paragraph 75.
([46]) The Regional Aid Guidelines at paragraph 1.
([47]) It is the task of the EFTA State to demonstrate that the aid proposed is necessary and appropriate to prevent or reduce continuing depopulation (see the Regional Aid Guidelines at footnote 65).
([48]) The Regional Aid Guidelines at paragraph 69.

3.2. *The aid may only be authorised in the least populated regions*

3.2.1. The three Counties belong to the least populated regions

(72) As provided by the Regional Aid Guidelines, operating aid which is not both progressively reduced and limited in time may only be authorised in the least populated regions, insofar as it is intended to prevent or reduce the continuing depopulation of those regions. The least populated regions are regions with a population density of 8 inhabitants or less per square kilometre ([49]).

(73) The three Counties have a population density of 4,2 inhabitants per square kilometre. Therefore they meet the conditions set out in the Regional Aid Guidelines to benefit from the more flexible compatibility assessment for an operating aid measure.

3.2.2. The direct beneficiaries of the Scheme are not necessarily located in the least populated regions — link between the aid measure and the regional development of Northern Norway

(74) The aid as such will be paid to tour operators which may be located outside of Norway/the EEA. The direct beneficiary of the aid will therefore not necessarily be located in the least populated regions.

(75) In its opening Decision, the Authority questioned whether a scheme providing for the grant of operating aid to beneficiaries that may be located outside the least populated regions may be held to be compatible with the Regional Aid Guidelines. The Authority questioned whether the fact that the undertakings in the region concerned are indirectly targeted by the Scheme constitutes a sufficiently strong link for the regional development of the area.

(76) The Norwegian authorities have argued that the link between the aid to the tour operator and the regional development of Northern Norway is sufficient for the following reasons:

— The Scheme will apply to charter flights to Northern Norway exclusively;

— Only packages including a '*land arrangement*' will be eligible for aid under the Scheme; and

— The aid will be paid from the Charter Fund to tour operators after flights to the target area have been completed.

(77) The Authority notes that a tour operator will only receive aid if it operates a charter series to a regional airport in Northern Norway. The aid will not be granted for the transport of tourists on charter flights outside this region. It is clear that the target area of the Scheme is Northern Norway, among the least populated areas of Norway. The Authority also notes the requirement that the Scheme only applies to packages which include a '*land arrangement*' in this region. This means that the Scheme may have a direct effect in the region by way of bringing in tourists that would otherwise not come to the region. The '*land arrangement*' should ensure that tourists stay in the region during their vacation in Northern Norway. The '*land arrangement*' is required by the Scheme to have a value of at least NOK 800 per tourist. Aid from the Charter Fund will be granted once the charter series has been completed and after it has been documented that the award criteria are met. One of the award criteria is that the application be supported by a destination provider of tourist services. Aid will not be awarded to '*air-only packages*'. The service providers located in the three Counties will gain from an increase in tourists and the consequent increase in demand for their services and, as such, will indirectly benefit from the Scheme. The tables in Section 2.2 in Part I above on tourists spending in the region, show that an increase in tourists will have a direct economic impact on the tourism sector in the region. The Authority finds it likely that the main economic effects of the Scheme will be channelled to the Scheme's target area.

([49]) The Regional Aid Guidelines at paragraph 22(a).

(78) The Authority also notes that the EU Commission has accepted the grant of regional aid to beneficiaries located outside regions eligible for regional aid. For example, in a decision concerning Italy (Sicily), the Commission found that grants covering costs aimed at promoting tourist transport by charter flights were compatible with Article 107(3)(a) TFEU. The grants were available to tour operators that hired aircraft for carrying tourists to Sicily. Grants to cover transport costs to Sicily awarded to Italian and foreign travel agencies for providing tourist travel as part of inclusive tours and for carrying tourists by rail or sea were also found to be compatible ([50]).

(79) On this basis, the Authority comes to the conclusion that even though the direct beneficiary of the aid may be located outside Northern Norway, the Scheme contains a sufficient link to the region where the intended effects are aimed to be produced.

3.3. *The aid must be necessary and appropriate to prevent or reduce continuing depopulation*

(80) It is the task of the EFTA State concerned to demonstrate that aid is necessary and appropriate in order to prevent or reduce continuing depopulation ([51]).

(81) In order for the notified measure to be considered *necessary*, the Norwegian authorities must demonstrate that there is a need for state intervention in order to achieve the objective of preventing or reducing continuing depopulation.

(82) The Norwegian authorities have informed the Authority that Northern Norway, one of Europe's least populated areas, has always been extremely sparsely populated and has suffered from depopulation for decades. The Norwegian authorities therefore consider that it is necessary to take further measures to stabilise settlement in the region and to prevent further depopulation. The Scheme is one of the tools necessary to achieve that objective. The Norwegian authorities recognise that the establishment of the Charter Fund will not on its own solve the problem of depopulation, but consider that it will, as a part of a general policy, increase economic activity in the region and maintain and create new jobs. Employment opportunities and expected income are the most decisive factors influencing an individual's choice of residence.

(83) In order for the Scheme to be considered *appropriate*, the Norwegian authorities must demonstrate that it is not apparent that other measures would be better suited in order to achieve the aim of preventing or reducing depopulation in the least populated areas ([52]).

(84) The Norwegian authorities argue that the Scheme is appropriate as it is the best measure available with which to increase tourism, create jobs in the tourist industry and thus to contribute to a reduction in depopulation in the region. In its view, traditional investment aid alone is not always the most adequate instrument to address the specific problems in the region. Jobs are crucial to support population levels. Tourism is a growing sector, and is both labour-intensive and dependent on a local work force. One of the challenges in developing a tourist industry in Northern Norway is profitability and the seasonal nature of the tourism sector. The Charter Fund is intended to increase tourism in the low season, thus contributing to year-round jobs. The Norwegian authorities argue that an aid instrument, which only would have limited aid to local companies in the region, would not result in an increase in the number of flights to relevant airports (and thereby in tourism in the area) or prevent depopulation. In their view, the Charter Fund is the instrument with the highest chance of success and minimal distortive effects. In that light, they consider that the Scheme is appropriate.

(85) In its opening Decision, the Authority expressed doubts in relation to the notified measure and in particular questioned whether the stated objectives of the Scheme could not be achieved by means other than providing operating aid to tour operators organising holiday packages using charter flights (non-scheduled) (for example, through packages using scheduled flights).

([50]) Decision 1999/99/EC of 3.6.1998 concerning Sicilian Regional Law No 25/93 on measures to promote employment (OJ L 32, 5.2.1999, p. 18).

([51]) See the Regional Aid Guidelines at footnote 65.

([52]) See e.g. the Authority's Decision No 228/06/COL of 19.7.2006 on the notified scheme concerning regionally differentiated social security contributions: 'On the basis of the information provided by the Norwegian authorities, the Authority finds that it is not apparent that measures other than operating aid would be better suited in order to achieve the aim of preventing or reducing depopulation in the least populated areas' (p. 23).

(86) The Authority considers that the Norwegian authorities have satisfied some of the Authority's doubts in that regard and thus demonstrated that there is a need for state intervention and that the Scheme is necessary as a tool to prevent depopulation in the region of Northern Norway. The Authority also considers that the Charter Fund can be viewed as a tool with which to increase tourism in the region and in turn increase employment in one of Norway's least populated regions. This finding is supported by third parties from various businesses in the tourist sector in the region, which have expressed themselves in favour of the Scheme. However, the Authority has been in doubt as regards the appropriateness and the effects of the Scheme for the development and the prevention of de-population of the region. It is not obvious that the objectives could not have been achieved through other means, such as arranging packages by using scheduled flights.

(87) In its assessment the Authority has taken into account the Regional Aid Guidelines, which provide that:

> 'where, exceptionally, it is envisaged to grant individual ad hoc aid to a single firm or aid confined to one area of activity, it is the responsibility of the Member State to demonstrate that the project contributes towards a coherent regional development strategy' (emphasis added) ([53]).

(88) Northern Norway is considered a priority in terms of regional development and the aim of the Norwegian Government is to prevent depopulation and encourage settlement in this region. Support for the tourist industry is seen as a key factor for the development of the region and the Norwegian authorities argue that the creation of employment possibilities is of particular importance in order to achieve the aim of preventing or reducing depopulation in the region.

(89) The Institute of Transport Economics estimated that in 2007 foreign air-bound tourists spent NOK 7 480 on prepaid purchases and NOK 6 730 on local purchases. It is estimated that in 2012 travellers to Northern Norway will spend NOK 9 000 per person ([54]).

(90) In that light, the Authority finds that the tourist industry could play an important role in the development of the region. The economic impact the Scheme may have on Northern Norway, through an increase in tourism to the area and it becoming better known as an international tourist destination, could contribute to stabilising, and possibly increasing, population in the region.

(91) Nevertheless, while scheduled flights and non-scheduled flights may form two separate markets ([55]), and that for the purposes of increasing tourism in the region direct scheduled flights to Northern Norway may be a less viable alternative (in particular during the low-season), the Authority remains of the view that it is not entirely obvious why scheduled domestic flights cannot be used as part of a travel holiday package, for example when tour operators arrange '*round-trip packages*'. The Authority notes that Norway has a well-developed, decentralised airport system due to the important role air travel plays as a mean of transport, in particular in regions in the periphery of the EEA such as Northern Norway. Indeed, the Norwegian authorities have identified a number of domestic air transport routes as eligible for public service compensation and in respect of which the State compensates a selected airline to operate routes that would not otherwise be commercially viable. In the Authority's view, it is not entirely clear why the stated aim of the Scheme — to contribute to the development of one of the least populated regions in Norway through aid for charter flights from abroad to Norway with a view to increasing tourists numbers during the low season and thereby contributing to year-round jobs — could not also be achieved, at least in part, through the use of scheduled flights.

(92) In that light, the Authority considers that certain doubts remain as to whether the Scheme is the best instrument with which to achieve the stated objectives with minimal distortive effects. In particular, the Authority considers that the Scheme could have potential distortive effects on the market for the provision of scheduled flights.

([53]) The Regional Aid Guidelines at paragraph 10.

([54]) See reference to the TØI Report No 941/2008 in footnote 23 above and the notification p. 11 (Event No 632837).

([55]) The EU Commission has in its merger decisions held that scheduled and non-scheduled flights are not in the same market. See for instance Case No COMP/M.5141 — KLM/Martinair, where the Commission regarded the supply of airline seats to tour operators (that is the 'wholesale market') as a market distinct from the market for supply of scheduled air transport services to end users. The Commission noted that 'the market for sales of seats to tour operators is a market which is upstream to the market for sales of seats to individuals. Accordingly, the competitive conditions on this market are manifestly different since tour operators have different requirements than individual customers (for example, buying large seat packages, negotiation of rebates, taking into account of customers' needs in terms of flight times etc.)' (OJ C 51, 4.3.2009, p. 4).

(93) For that reason, the Authority finds that the establishment of the Scheme is appropriate only for a limited period of time in order to assist in establishing a viable tourist industry in the least populated area of Norway. The 10-year duration for the Scheme, argued for by the Norwegian authorities, would appear to be excessive in order to reach this goal. The Authority considers that the Scheme should be limited to a '*start-up*' period of three years, which will allow the evaluation of the appropriateness of the Scheme. Therefore, the Norwegian authorities should evaluate the effects of the Scheme at the expiry of this period, taking into account both the positive effects of the Scheme and any negative effects on competition.

3.4. *The aid must be proportionate to the objective of the Scheme*

(94) Pursuant to Article 61(3)(c) of the EEA Agreement, aid granted in order to facilitate the development of certain economic areas may be considered to be compatible with the functioning of the Agreement 'where such aid does not adversely affect trading conditions to an extent contrary to the common interest'. In order to be compatible with the common market, the scheme must be proportionate to the objective of the scheme.

(95) The Norwegian authorities are of the view that the Scheme has been designed so that only the necessary level of aid is granted. Maximum support (25 %) from the Charter Fund will be given at a cabin factor of 60 % or less. The aid intensity will gradually decrease to zero when the cabin factor reaches an average of 80 % ([56]).

(96) The Norwegian authorities submit that the Scheme, which reduces the risk for tour operators, is likely to lead to a cabin factor exceeding 60 %, and therefore, it is unlikely that the aid intensity will correspond to 25 % of the charter costs.

(97) The Authority finds that the main feature of the Scheme is to establish a guarantee for tour operators so that they do not cancel flights with a low cabin factor. The maximum support is 25 % of the charter costs. Additional costs incurred on charter flights with a cabin factor below 60 % will not be reimbursed. The total yearly amount of aid granted from the Charter Fund it is estimated to be below NOK 10 million per year. The Authority finds that this relatively low amount of aid is proportionate. Such a low amount is unlikely to be liable to affect trade in an unduly adverse manner.

(98) The Scheme can thus be distinguished from the EU Commission's decision in relation to a premium scheme for tour operators in Greece ([57]). That scheme provided that tour operators would receive EUR 40 per tourist. As the Authority understands that scheme, it was not limited to compensation for extra transport costs incurred in bringing tourists to Greece ([58]). This is, in contrast to the Charter Fund, which aims to encourage tour operators to enter into contractual obligations prior to receiving bookings from tourists by compensating them in the event that they are not being reimbursed for the transport costs of bringing tourists to Northern Norway.

(99) The Authority also notes, as already described, that beneficiaries of the Scheme can be located either in Norway or abroad and that they can enter into charter flight agreements with either Norwegian or non-Norwegian air carriers. Equal situations are treated equally under the Scheme. Therefore, the Authority does not consider the Scheme to be discriminatory.

(100) In light of the above, the Authority finds that the aid is proportionate to the object of the Scheme.

([56]) See the description of the Scheme in Section 2.5 in Part I above.
([57]) Decision 2003/262/EC of 27.11.2002 on a premium scheme for tour operators in Greece (OJ L 103, 24.4.2003, p. 63).
([58]) In that case, the EU Commission also held that the Greek authorities had not supplied the Commission with information relevant for an assessment of the appropriateness of the aid in terms of its contribution to regional development (see paragraph 22 of the decision).

4. **Duration of authorization**

(101) The Authority in its Decision No 246/12/COL of 27 June 2012 raised doubts as to whether the Scheme could be approved for a period extending beyond 31 December 2013. In the light of the comments received, a longer period is necessary to achieve a measurable impact on the development of the region. Given the doubts expressed by the Authority in its Decision No 246/12/COL as regards the effect of the Scheme on the development and the prevention of depopulation in that region a period of three (3) years is more appropriate. In all cases, the need for and level of operating aid should be regularly re-examined to ensure its long-term relevance to the region concerned ([59]). Such a longer period will facilitate the evaluation of the Scheme's durable effects.

(102) Therefore, after a period of three (3) years Norway should submit a report evaluating the effects of the Scheme on the development of tourism and the prevention of depopulation in the region and its effects on competition so that the Authority can assess the necessity and appropriateness of the Scheme.

5. **Conclusion**

(103) The Authority considers that all of the conditions set out in Article 61(1) of the EEA Agreement are met and that consequently the Charter Fund Scheme entails state aid.

(104) On the basis of the above assessment, the Authority considers that the Charter Fund Scheme is compatible with the EEA Agreement pursuant to the derogation in Article 61(3)(c) of the EEA Agreement.

(105) The Authority has, however, been in doubt as regards the appropriateness and the effects of the Scheme for the development and the prevention of de-population of the region. In particular in relation to whether the objectives could be achieved through other means. Therefore, the Authority has concluded that the Scheme can be approved for a period of three years from the date of this Decision. In addition, the Norwegian authorities shall be committed to prepare and produce an evaluation of the Scheme, documenting its effects on the development of tourism and the prevention of depopulation in the region and its effects on competition. The evaluation is to be made by an independent expert and shall be submitted to the Authority.

(106) The Norwegian authorities are reminded of the obligation under Article 21 of Part II of Protocol 3 in conjunction with Articles 5 and 6 of the Implementing Provisions Decision ([60]) to provide annual reports on the implementation of the Scheme.

(107) The Norwegian authorities are also reminded that all plans to modify this Scheme must be notified to the Authority.

HAS ADOPTED THIS DECISION:

Article 1

The Charter Fund Scheme for Northern Norway as notified by the Norwegian authorities constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

Article 2

The aid scheme is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c) subject to the condition that it is implemented for a period of three (3) years from the date of this Decision. At the expiry of this three (3) year period, Norway shall submit a report to the Authority with an evaluation of the effects of the Scheme on the development of tourism and the prevention of depopulation in the region and its effects on competition.

Article 3

This Decision is addressed to the Kingdom of Norway.

([59]) The Regional Aid Guidelines at paragraph 71.
([60]) Available at: http://www.eftasurv.int/media/decisions/195-04-COL.pdf

Article 4

Only the English language version of this decision is authentic.

Done at Brussels, 10 July 2013.

For the EFTA Surveillance Authority

Oda Helen SLETNES
President

Sverrir Haukur GUNNLAUGSSON
College Member

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