

Official Journal

of the European Union

L 94

Volume 49

1 April 2006

English edition

Legislation

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Commission

2006/260/EC:

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2006/261/EC:

- ★ Commission Decision of 16 March 2005 on aid scheme C 8/2004 (ex NN 164/2003) implemented by Italy in favour of newly listed companies (notified under document number C(2005) 591) ⁽¹⁾

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2006/262/EC:

- ★ Commission Decision of 21 September 2005 on State aid No C 5/2004 (ex N 609/2003) which Germany is planning to implement for Kronoply (notified under document number C(2005) 3497) ⁽¹⁾

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⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 531/2006
of 31 March 2006
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 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 the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 April 2006.

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

Done at Brussels, 31 March 2006.

For the Commission

J. L. DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

ANNEX

to Commission Regulation of 31 March 2006 establishing the 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	052	97,5
	204	47,9
	212	102,0
	999	82,5
0707 00 05	052	137,9
	628	155,5
	999	146,7
0709 90 70	052	118,3
	204	47,5
	999	82,9
0805 10 20	052	67,6
	204	39,5
	212	50,7
	220	43,3
	400	58,7
	624	65,4
	999	54,2
0805 50 10	052	41,3
	624	59,3
	999	50,3
0808 10 80	388	84,7
	400	127,4
	404	101,5
	508	81,6
	512	72,3
	524	73,0
	528	84,2
	720	83,9
	804	133,3
	999	93,5
0808 20 50	388	88,9
	512	76,8
	528	57,1
	720	44,1
	999	66,7

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 750/2005 (OJ L 126, 19.5.2005, p. 12). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 532/2006**of 31 March 2006****fixing the import duties in the cereals sector applicable from 1 April 2006**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector ⁽²⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) Article 10 of Regulation (EC) No 1784/2003 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation. However, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.
- (2) Pursuant to Article 10(3) of Regulation (EC) No 1784/2003, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market.

(3) Regulation (EC) No 1249/96 lays down detailed rules for the application of Regulation (EC) No 1784/2003 as regards import duties in the cereals sector.

(4) The import duties are applicable until new duties are fixed and enter into force.

(5) In order to allow the import duty system to function normally, the representative market rates recorded during a reference period should be used for calculating the duties.

(6) Application of Regulation (EC) No 1249/96 results in import duties being fixed as set out in Annex I to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the cereals sector referred to in Article 10(2) of Regulation (EC) No 1784/2003 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 1 April 2006.

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

Done at Brussels, 31 March 2006.

For the Commission

J. L. DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽²⁾ OJ L 161, 29.6.1996, p. 125. Regulation as last amended by Regulation (EC) No 1110/2003 (OJ L 158, 27.6.2003, p. 12).

ANNEX I

Import duties for the products covered by Article 10(2) of Regulation (EC) No 1784/2003 applicable from 1 April 2006

CN code	Description	Import duty ⁽¹⁾ (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	Common high quality wheat other than for sowing	0,00
1002 00 00	Rye	40,21
1005 10 90	Maize seed other than hybrid	58,86
1005 90 00	Maize other than seed ⁽²⁾	58,86
1007 00 90	Grain sorghum other than hybrids for sowing	40,21

⁽¹⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

— EUR 3/t, where the port of unloading is on the Mediterranean Sea, or

— EUR 2/t, where the port of unloading is in Ireland, the United Kingdom, Denmark, Estonia, Latvia, Lithuania, Poland, Finland, Sweden or the Atlantic coasts of the Iberian peninsula.

⁽²⁾ The importer may benefit from a flat-rate reduction of EUR 24/t, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating duties

period from 17.3.2006-30.3.2006

1. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

Exchange quotations	Minneapolis	Chicago	Minneapolis	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2	YC3	HAD2	Medium quality (*)	Low quality (**)	US barley 2
Quotation (EUR/t)	135,05 (***)	72,34	177,97	167,97	147,97	104,21
Gulf premium (EUR/t)	41,14	13,22	—			—
Great Lakes premium (EUR/t)	—	—	—			—

(*) A discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

(**) A discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

(***) Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).

2. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

Freight/cost: Gulf of Mexico–Rotterdam: 16,89 EUR/t; Great Lakes–Rotterdam: — EUR/t.

3. Subsidy within the meaning of the third paragraph of Article 4(2) of Regulation (EC) No 1249/96: 0,00 EUR/t (HRW2)
-
- 0,00 EUR/t (SRW2).

COMMISSION REGULATION (EC) No 533/2006**of 31 March 2006****fixing the export refunds on cereals and on wheat or rye flour, groats and meal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) Article 13 of Regulation (EC) No 1784/2003 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products in the Community may be covered by an export refund.
- (2) The refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽²⁾.
- (3) As far as wheat and rye flour, groats and meal are concerned, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture. These quantities were fixed in Regulation (EC) No 1501/95.

- (4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination.
- (5) The refund must be fixed once a month. It may be altered in the intervening period.
- (6) It follows from applying the detailed rules set out above to the present situation on the market in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(a), (b) and (c) of Regulation (EC) No 1784/2003, excluding malt, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 April 2006.

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

Done at Brussels, 31 March 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽²⁾ OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 777/2004 (OJ L 123, 27.4.2004, p. 50).

ANNEX

**to the Commission Regulation of 31 March 2006 fixing the export refunds on cereals and on wheat or rye flour,
groats and meal**

Product code	Destination	Unit of measurement	Amount of refunds	Product code	Destination	Unit of measurement	Amount of refunds
1001 10 00 9200	—	EUR/t	—	1101 00 15 9130	C01	EUR/t	0
1001 10 00 9400	A00	EUR/t	0	1101 00 15 9150	C01	EUR/t	0
1001 90 91 9000	—	EUR/t	—	1101 00 15 9170	C01	EUR/t	0
1001 90 99 9000	A00	EUR/t	0	1101 00 15 9180	C01	EUR/t	0
1002 00 00 9000	A00	EUR/t	0	1101 00 15 9190	—	EUR/t	—
1003 00 10 9000	—	EUR/t	—	1101 00 90 9000	—	EUR/t	—
1003 00 90 9000	A00	EUR/t	0	1102 10 00 9500	A00	EUR/t	0
1004 00 00 9200	—	EUR/t	—	1102 10 00 9700	A00	EUR/t	0
1004 00 00 9400	A00	EUR/t	0	1102 10 00 9900	—	EUR/t	—
1005 10 90 9000	—	EUR/t	—	1103 11 10 9200	A00	EUR/t	0
1005 90 00 9000	A00	EUR/t	0	1103 11 10 9400	A00	EUR/t	0
1007 00 90 9000	—	EUR/t	—	1103 11 10 9900	—	EUR/t	—
1008 20 00 9000	—	EUR/t	—	1103 11 90 9200	A00	EUR/t	0
1101 00 11 9000	—	EUR/t	—	1103 11 90 9800	—	EUR/t	—
1101 00 15 9100	C01	EUR/t	0				

NB: The product codes and the 'A' series destination codes are set out in the Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), as amended.

C01: All third countries with the exception of Albania, Bulgaria, Romania, Croatia, Bosnia and Herzegovina, Serbia and Montenegro, the former Yugoslav Republic of Macedonia, Lichtenstein and Switzerland.

COMMISSION REGULATION (EC) No 534/2006**of 31 March 2006****fixing the corrective amount applicable to the refund on cereals**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾, and in particular Article 15(2) thereof,

Whereas:

- (1) Article 14(2) of Regulation (EC) No 1784/2003 provides that the export refund applicable to cereals on the day on which an application for an export licence is made must be applied on request to exports to be effected during the period of validity of the export licence. In this case, a corrective amount may be applied to the refund.
- (2) Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽²⁾, allows for the fixing of a corrective amount for the products listed in Article 1(a), (b) and (c) of Regulation (EC) No 1784/2003. That corrective amount must be calculated taking account of the factors referred to in Article 1 of Regulation (EC) No 1501/95.

- (3) The world market situation or the specific requirements of certain markets may make it necessary to vary the corrective amount according to destination.
- (4) The corrective amount must be fixed at the same time as the refund and according to the same procedure; it may be altered in the period between fixings.
- (5) It follows from applying the provisions set out above that the corrective amount must be as set out in the Annex hereto.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The corrective amount referred to in Article 1(a), (b) and (c) of Regulation (EC) No 1784/2003 which is applicable to export refunds fixed in advance except for malt shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 April 2006.

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

Done at Brussels, 31 March 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽²⁾ OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 777/2004 (OJ L 123, 27.4.2004, p. 50).

ANNEX

to the Commission Regulation of 31 March 2006 fixing the corrective amount applicable to the refund on cereals

(EUR/t)

Product code	Destination	Current 4	1st period 5	2nd period 6	3rd period 7	4th period 8	5th period 9	6th period 10
1001 10 00 9200	—	—	—	—	—	—	—	—
1001 10 00 9400	A00	0	0	0	0	0	—	—
1001 90 91 9000	—	—	—	—	—	—	—	—
1001 90 99 9000	C01	0	- 0,46	- 0,46	- 15,00	- 15,00	—	—
1002 00 00 9000	A00	0	0	0	0	0	—	—
1003 00 10 9000	—	—	—	—	—	—	—	—
1003 00 90 9000	C02	0	- 0,46	- 0,46	- 15,00	- 15,00	—	—
1004 00 00 9200	—	—	—	—	—	—	—	—
1004 00 00 9400	C03	0	- 0,46	- 0,46	- 15,00	- 15,00	—	—
1005 10 90 9000	—	—	—	—	—	—	—	—
1005 90 00 9000	A00	0	0	0	0	0	—	—
1007 00 90 9000	—	—	—	—	—	—	—	—
1008 20 00 9000	—	—	—	—	—	—	—	—
1101 00 11 9000	—	—	—	—	—	—	—	—
1101 00 15 9100	C01	0	- 0,63	- 0,63	- 20,00	- 20,00	—	—
1101 00 15 9130	C01	0	- 0,59	- 0,59	- 19,00	- 19,00	—	—
1101 00 15 9150	C01	0	- 0,54	- 0,54	- 18,00	- 18,00	—	—
1101 00 15 9170	C01	0	- 0,50	- 0,50	- 17,00	- 17,00	—	—
1101 00 15 9180	C01	0	- 0,47	- 0,47	- 15,00	- 15,00	—	—
1101 00 15 9190	—	—	—	—	—	—	—	—
1101 00 90 9000	—	—	—	—	—	—	—	—
1102 10 00 9500	A00	0	0	0	0	0	—	—
1102 10 00 9700	A00	0	0	0	0	0	—	—
1102 10 00 9900	—	—	—	—	—	—	—	—
1103 11 10 9200	A00	0	0	0	0	0	—	—
1103 11 10 9400	A00	0	0	0	0	0	—	—
1103 11 10 9900	—	—	—	—	—	—	—	—
1103 11 90 9200	A00	0	0	0	0	0	—	—
1103 11 90 9800	—	—	—	—	—	—	—	—

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended. The numeric destination codes are set out in Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11).

C01: All third countries with the exception of Albania, Bulgaria, Romania, Croatia, Bosnia and Herzegovina, Serbia and Montenegro, the former Yugoslav Republic of Macedonia, Lichtenstein and Switzerland.

C02: Algeria, Saudi Arabia, Bahrain, Egypt, United Arab Emirates, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Lybia, Morocco, Mauritania, Oman, Qatar, Syria, Tunisia and Yemen.

C03: All third countries with the exception of Bulgaria, Norway, Romania, Switzerland and Lichtenstein.

COMMISSION REGULATION (EC) No 535/2006**of 31 March 2006****fixing the export refunds on malt**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) Article 13 of Regulation (EC) No 1784/2003 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) The refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽²⁾.
- (3) The refund applicable in the case of malts must be calculated with amount taken of the quantity of cereals required to manufacture the products in question. The said quantities are laid down in Regulation (EC) No 1501/95.

- (4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination.
- (5) The refund must be fixed once a month. It may be altered in the intervening period.
- (6) It follows from applying these rules to the present situation on markets in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on malt listed in Article 1(c) of Regulation (EC) No 1784/2003 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 April 2006.

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

Done at Brussels, 31 March 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽²⁾ OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 777/2004 (OJ L 123, 27.4.2004, p. 50).

ANNEX

to the Commission Regulation of 31 March 2006 fixing the export refunds on malt

Product code	Destination	Unit of measurement	Amount of refunds
1107 10 19 9000	A00	EUR/t	0,00
1107 10 99 9000	A00	EUR/t	0,00
1107 20 00 9000	A00	EUR/t	0,00

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11).

COMMISSION REGULATION (EC) No 536/2006**of 31 March 2006****fixing the corrective amount applicable to the refund on malt**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organization of the market in cereals ⁽¹⁾, and in particular Article 15(2),

Whereas:

- (1) Article 14(2) of Regulation (EC) No 1784/2003 provides that the export refund applicable to cereals on the day on which application for an export licence is made must be applied on request to exports to be effected during the period of validity of the export licence. In this case, a corrective amount may be applied to the refund.
- (2) Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽²⁾ allows for the fixing of a corrective amount for the malt referred

to in Article 1(1)(c) of Regulation (EC) No 1784/2003. That corrective amount must be calculated taking account of the factors referred to in Article 1 of Regulation (EC) No 1501/95.

- (3) It follows from applying the provisions set out above that the corrective amount must be as set out in the Annex hereto.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The corrective amount referred to in Article 15(3) of Regulation (EC) No 1784/2003 which is applicable to export refunds fixed in advance in respect of malt shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 April 2006.

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

Done at Brussels, 31 March 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽²⁾ OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 777/2004 (OJ L 123, 27.4.2004, p. 50).

ANNEX

to the Commission Regulation of 31 March 2006 fixing the corrective amount applicable to the refund on malt

(EUR/t)

Product code	Destination	Current 4	1st period 5	2nd period 6	3rd period 7	4th period 8	5th period 9
1107 10 11 9000	A00	0	0	0	0	0	0
1107 10 19 9000	A00	0	0	0	0	0	0
1107 10 91 9000	A00	0	0	0	0	0	0
1107 10 99 9000	A00	0	0	0	0	0	0
1107 20 00 9000	A00	0	0	0	0	0	0

(EUR/t)

Product code	Destination	6th period 10	7th period 11	8th period 12	9th period 1	10th period 2	11th period 3
1107 10 11 9000	A00	0	0	0	0	0	0
1107 10 19 9000	A00	0	0	0	0	0	0
1107 10 91 9000	A00	0	0	0	0	0	0
1107 10 99 9000	A00	0	0	0	0	0	0
1107 20 00 9000	A00	0	0	0	0	0	0

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11).

COMMISSION REGULATION (EC) No 537/2006**of 31 March 2006****fixing the refunds applicable to cereal and rice sector products supplied as Community and national food aid**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾ and in particular Article 13(3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽²⁾ and in particular Article 13(3) thereof,

Whereas:

- (1) Article 2 of Council Regulation (EEC) No 2681/74 of 21 October 1974 on Community financing of expenditure incurred in respect of the supply of agricultural products as food aid ⁽³⁾ lays down that the portion of the expenditure corresponding to the export refunds on the products in question fixed under Community rules is to be charged to the European Agricultural Guidance and Guarantee Fund, Guarantee Section.
- (2) In order to make it easier to draw up and manage the budget for Community food aid actions and to enable the Member States to know the extent of Community participation in the financing of national food aid actions, the level of the refunds granted for these actions should be determined.

(3) The general and implementing rules provided for in Article 13 of Regulation (EC) No 1784/2003 and in Article 13 of Regulation (EC) No 3072/95 on export refunds are applicable *mutatis mutandis* to the abovementioned operations.

(4) The specific criteria to be used for calculating the export refund on rice are set out in Article 13 of Regulation (EC) No 3072/95.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For Community and national food aid operations under international agreements or other supplementary programmes, and other Community free supply measures, the refunds applicable to cereals and rice sector products shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 1 April 2006.

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

Done at Brussels, 31 March 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽²⁾ OJ L 329, 30.12.1995, p. 18. Regulation as last amended by Commission Regulation (EC) No 411/2002 (OJ L 62, 5.3.2002, p. 27).

⁽³⁾ OJ L 288, 25.10.1974, p. 1.

ANNEX

to the Commission Regulation of 31 March 2006 fixing the refunds applicable to cereal and rice sector products supplied as Community and national food aid

(EUR/t)	
Product code	Refund
1001 10 00 9400	0,00
1001 90 99 9000	0,00
1002 00 00 9000	0,00
1003 00 90 9000	0,00
1005 90 00 9000	0,00
1006 30 92 9100	0,00
1006 30 92 9900	0,00
1006 30 94 9100	0,00
1006 30 94 9900	0,00
1006 30 96 9100	0,00
1006 30 96 9900	0,00
1006 30 98 9100	0,00
1006 30 98 9900	0,00
1006 30 65 9900	0,00
1007 00 90 9000	0,00
1101 00 15 9100	0,00
1101 00 15 9130	0,00
1102 10 00 9500	0,00
1102 20 10 9200	54,70
1102 20 10 9400	46,88
1103 11 10 9200	0,00
1103 13 10 9100	70,33
1104 12 90 9100	0,00

NB: The product codes are defined in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), amended.

COMMISSION REGULATION (EC) No 538/2006**of 31 March 2006****fixing the minimum selling prices for butter for the 6th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

- (1) In accordance with Commission Regulation (EC) No 1898/2005 of 9 November 2005 laying down detailed rules for implementing Council Regulation (EC) No 1255/99 as regards measures for the disposal of cream, butter and concentrated butter on the Community market ⁽²⁾, the intervention agencies may sell by standing invitation to tender certain quantities of butter from intervention stocks that they hold and may grant aid for cream, butter and concentrated butter. Article 25 of that Regulation lays down that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further laid down

that the price or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure. The amount of the processing security as referred to in Article 28 of Regulation (EC) No 1898/2005 should be fixed accordingly.

- (2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 6th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005 the minimum selling prices for butter from intervention stocks and the amount of the processing security, as referred to in Articles 25 and 28 of that Regulation respectively, are fixed as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 April 2006.

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

Done at Brussels, 31 March 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

⁽²⁾ OJ L 308, 25.11.2005, p. 1. Regulation as last amended by Regulation (EC) No 2107/2005 (OJ L 337, 22.12.2005, p. 20).

ANNEX

Minimum selling prices for butter and processing security for the 6th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005

(EUR/100 kg)

Formula			A		B	
Incorporation procedure			With tracers	Without tracers	With tracers	Without tracers
Minimum selling price	Butter ≥ 82 %	Unaltered	—	210	—	210
		Concentrated	—	—	—	—
Processing security		Unaltered	—	79	—	79
		Concentrated	—	—	—	—

COMMISSION REGULATION (EC) No 539/2006**of 31 March 2006****fixing the maximum aid for cream, butter and concentrated butter for the 6th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

- (1) In accordance with Commission Regulation (EC) No 1898/2005 of 9 November 2005 laying down detailed rules for implementing Council Regulation (EC) No 1255/99 as regards measures for the disposal of cream, butter and concentrated butter on the Community market ⁽²⁾, the intervention agencies may sell by standing invitation to tender certain quantities of butter of intervention stocks that they hold and may grant aid for cream, butter and concentrated butter. Article 25 of that Regulation lays down that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further laid down

that the price or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure. The amount of the processing security as referred to in Article 28 of Regulation (EC) No 1898/2005 should be fixed accordingly.

- (2) The Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

For the 6th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005 the amount of the maximum aid for cream, butter and concentrated butter and the amount the processing security, as referred to in Articles 25 and 28 of that Regulation respectively, are fixed as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 April 2006.

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

Done at Brussels, 31 March 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

⁽²⁾ OJ L 308, 25.11.2005, p. 1. Regulation as last amended by Regulation (EC) No 2107/2005 (OJ L 337, 22.12.2005, p. 20).

ANNEX

Maximum aid for cream, butter and concentrated butter and processing security for the 6th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005

(EUR/100 kg)

Formula		A		B	
Incorporation procedure		With tracers	Without tracers	With tracers	Without tracers
Maximum aid	Butter $\geq 82\%$	33,5	30	—	—
	Butter $< 82\%$	—	29,2	—	—
	Concentrated butter	40	36,5	40	—
	Cream	—	—	16,3	—
Processing security	Butter	37	—	—	—
	Concentrated butter	44	—	44	—
	Cream	—	—	18	—

COMMISSION REGULATION (EC) No 540/2006**of 31 March 2006****fixing the maximum aid for concentrated butter for the 6th individual invitation to tender opened under the standing invitation to tender provided for in Regulation (EC) No 1898/2005**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

- (1) In accordance with Article 47 of Commission Regulation (EC) No 1898/2005 of 9 November 2005 laying down detailed rules for implementing Council Regulation (EC) No 1255/99 as regards measures for the disposal of cream, butter and concentrated butter on the Community market ⁽²⁾, the intervention agencies are opening a standing invitation to tender for the granting of aid for concentrated butter. Article 54 of that Regulation provides that in the light of the tenders received in response to each special invitation to tender, a maximum amount of aid is to be fixed for concentrated butter with a minimum fat content of 96 %.
- (2) An end-use security provided for in Article 53(4) of Regulation (EC) No 1898/2005 is to be lodged to

ensure the taking over of the concentrated butter by the retail trade.

- (3) In the light of the tenders received, the maximum aid should be fixed at the appropriate level and the end-use security should be determined accordingly.
- (4) The Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

For the 6th individual tender under the standing invitation to tender opened in accordance with Regulation (EC) No 1898/2005 the maximum amount of the aid for concentrated butter with a minimum fat content of 96 %, as referred to in Article 47(1) of that Regulation, is fixed at 38,8 EUR/100 kg,

The end-use security provided for in Article 53(4) of Regulation (EC) No 1898/2005 is fixed at 43 EUR/100 kg.

Article 2

This Regulation shall enter into force on 1 April 2006.

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

Done at Brussels, 31 March 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

⁽²⁾ OJ L 308, 25.11.2005, p. 1. Regulation as last amended by Regulation (EC) No 2107/2005 (OJ L 337, 22.12.2005, p. 20).

COMMISSION REGULATION (EC) No 541/2006**of 31 March 2006****amending Regulation (EC) No 343/2006 opening the buying-in of butter in certain Member States for the period 1 March to 31 August 2006**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾,

Having regard to Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream ⁽²⁾, and in particular Article 2 thereof,

Whereas:

- (1) Commission Regulation (EC) No 343/2006 ⁽³⁾ establishes the list of Member States in which buying-in for butter is open, as provided for in Article 6(1) of Regulation (EC) No 1255/1999.
- (2) On the basis of most recent communications by the Czech Republic, pursuant to Article 8 of Regulation (EC) No 2771/1999, the Commission has observed that butter market prices have been below 92 % of the intervention price for two consecutive weeks. Intervention buying-in should therefore be opened in those Member States. The Czech Republic should therefore be added to the list established in Regulation (EC) No 343/2006.
- (3) Regulation (EC) No 343/2006 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 of Regulation (EC) No 343/2006 is replaced by the following text:

'Article 1

Buying-in of butter as provided for in Article 6(1) of Regulation (EC) No 1255/1999 is hereby open in the following Member States:

- Czech Republic
- Germany
- Estonia
- Spain
- France
- Italy
- Ireland
- Netherlands
- Poland
- Portugal
- Finland
- Sweden
- United Kingdom.'

Article 2

This Regulation shall enter into force on 1 April 2006.

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

Done at Brussels, 31 March 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

⁽²⁾ OJ L 333, 24.12.1999, p. 11. Regulation as last amended by Regulation (EC) No 2107/2005 (OJ L 337, 22.12.2005, p. 20).

⁽³⁾ OJ L 55, 25.2.2006, p. 17. Regulation as amended by Regulation (EC) No 387/2006 (OJ L 63, 4.3.2006, p. 10).

COMMISSION REGULATION (EC) No 542/2006**of 31 March 2006****fixing the minimum selling price for butter for the 38th individual invitation to tender issued under the standing invitation to tender referred to in Regulation (EC) No 2771/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10(c) thereof,

Whereas:

- (1) Pursuant to Article 21 of Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream ⁽²⁾, intervention agencies have put up for sale by standing invitation to tender certain quantities of butter held by them.
- (2) In the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed or a decision shall be taken to make no

award, in accordance with Article 24a of Regulation (EC) No 2771/1999.

- (3) In the light of the tenders received, a minimum selling price should be fixed.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 38th individual invitation to tender pursuant to Regulation (EC) No 2771/1999, in respect of which the time limit for the submission of tenders expired on 28 March 2006, the minimum selling price for butter is fixed at 255,00 EUR/100 kg.

Article 2

This Regulation shall enter into force on 1 April 2006.

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

Done at Brussels, 31 March 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

⁽²⁾ OJ L 333, 24.12.1999, p. 11. Regulation as last amended by Regulation (EC) No 1802/2005 (OJ L 290, 4.11.2005, p. 3).

COMMISSION REGULATION (EC) No 543/2006**of 31 March 2006****fixing the minimum selling price for skimmed-milk powder for the 37th individual invitation to tender issued under the standing invitation to tender referred to in Regulation (EC) No 214/2001**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10(c) thereof,

Whereas:

(1) Pursuant to Article 21 of Commission Regulation (EC) No 214/2001 of 12 January 2001 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in skimmed milk ⁽²⁾, intervention agencies have put up for sale by standing invitation to tender certain quantities of skimmed-milk powder held by them.

(2) In the light of the tenders received in response to each individual invitation to tender a minimum selling price

shall be fixed or a decision shall be taken to make no award, in accordance with Article 24a of Regulation (EC) No 214/2001.

(3) In the light of the tenders received, a minimum selling price should be fixed.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 37th individual invitation to tender pursuant to Regulation (EC) No 214/2001, in respect of which the time limit for the submission of tenders expired on 28 March 2006, the minimum selling price for skimmed milk is fixed at 120,00 EUR/100 kg.

Article 2

This Regulation shall enter into force on 1 April 2006.

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

Done at Brussels, 31 March 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

⁽²⁾ OJ L 37, 7.2.2001, p. 100. Regulation as last amended by Regulation (EC) No 1195/2005 (OJ L 194, 26.7.2005, p. 8).

COMMISSION REGULATION (EC) No 544/2006

of 31 March 2006

amending Regulation (EC) No 1043/2005 implementing Council Regulation (EC) No 3448/93 as regards the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products ⁽¹⁾ and in particular the first subparagraph of Article 8(3) thereof,

Whereas:

- (1) Pursuant to Commission Regulation (EC) No 1043/2005 ⁽²⁾, refund certificates issued for a single budget period may be applied for separately in six tranches. A closing date applies for applications in respect of each of these tranches. Operators may submit an application for a refund certificate only in respect of the tranche corresponding to the first closing date following the date of submission.
- (2) The tranche system of allocation was designed to ensure that, in circumstances where refund certificate applications were received for greater amounts than can be granted, certificates were available both to operators who export at the beginning of the budget period and to those who export at end of the budget period.
- (3) If amounts in respect of which refund certificates may be issued remain available towards the end of the budget period, after completion of the six tranche allocation system, Article 38 of Regulation (EC) No 1043/2005 allows the Commission to open a weekly application system for allocation of the remaining amounts.
- (4) Recent reductions in the refund rates fixed in respect of agricultural products have led to a reduction in the amounts for which refund certificates are applied for under the tranche system. As a consequence amounts reserved for allocation under recent individual tranches have not been fully allocated.

- (5) It is therefore necessary to increase the flexibility of export operations. In circumstances where the level of refund certificate applications for an individual tranche is less than the amount available for that tranche, operators should be permitted to lodge applications on a weekly basis for refund certificates to be issued in respect of any remaining amount available for that tranche for which refund certificate applications have not yet been lodged.
- (6) The existing system for the allocation, on a weekly basis, of refund certificates in respect of the amount available at the end of the budget period should therefore be extended to the allocation of the remaining amount available for a particular tranche.
- (7) Regulation (EC) No 1043/2005 should therefore be amended accordingly.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee on horizontal questions concerning trade in processed agricultural products not listed in Annex I to the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1043/2005 is amended as follows:

1. the following Article 38a is inserted:

'Article 38a

1. If, after the closing date for the lodging of applications for refund certificates in respect of a particular tranche referred to in points (a) to (f) of the first paragraph of Article 33, no reduction coefficient has been published pursuant to Article 37(2), operators may lodge an application for the issue of a refund certificate for any remaining amount available for that tranche not yet applied for.

The application shall be lodged in the period up to the next closing date set out in points (a) to (f) of the first paragraph of Article 33.

⁽¹⁾ OJ L 318, 20.12.1993, p. 18. Regulation as last amended by Regulation (EC) No 2580/2000 (OJ L 298, 25.11.2000, p. 5).

⁽²⁾ OJ L 172, 5.7.2005, p. 24. Regulation as amended by Regulation (EC) No 322/2006 (OJ L 54, 24.2.2006, p. 3).

2. Applications lodged in the course of each week shall be notified by Member States to the Commission on the following Tuesday. The corresponding certificates may be issued from the Monday following notification, unless the Commission issues instructions to the contrary.

3. If the total amount of the applications received in a particular application week exceeds the remaining amount available referred to in paragraph 1 the Commission shall take one or more of the following steps:

- (a) set a reduction coefficient applicable to applications for refund certificates lodged in that particular application week, which have been notified to the Commission and for which refund certificates have not yet been issued;
- (b) direct Member States to reject applications, lodged in that particular application week, which have yet to be notified to the Commission;
- (c) suspend the lodging of applications for refund certificates.’;

2. in Section I of Annex VI, the fifth paragraph is replaced by the following:

‘Applicants shall enter one of the following in box 20:

- the words “Article 33”, or other words to the satisfaction of the competent authority, if the application refers to a certificate provided for in Article 33,
- the words “Article 38”, or other words to the satisfaction of the competent authority, if the application refers to a certificate provided for in Article 38,
- the words “Article 38a” or other words to the satisfaction of the competent authority, if the application refers to a certificate provided for in Article 38a.’

Article 2

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

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

Done at Brussels, 31 March 2006.

For the Commission
Günter VERHEUGEN
Vice-President

COMMISSION REGULATION (EC) No 545/2006

of 31 March 2006

amending Regulation (EC) No 1464/2004 as regards the conditions for authorisation of the feed additive 'Monteban', belonging to the group of coccidiostats and other medicinal substances

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition⁽¹⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) The additive narasin (Monteban, Monteban G 100), belonging to the group of coccidiostats and other medicinal substances, was authorised under certain conditions in accordance with Council Directive 70/524/EEC⁽²⁾. Commission Regulation (EC) No 1464/2004⁽³⁾ authorised that additive for 10 years for use for chickens for fattening, linking the authorisation to the person responsible for putting that additive into circulation. That additive was notified as an existing product on the basis of Article 10 of Regulation (EC) No 1831/2003. Since all the information required under that provision was submitted, that additive was entered into the Community Register of Feed Additives.
- (2) Regulation (EC) No 1831/2003 provides for the possibility to modify the authorisation of an additive further to a request from the authorisation holder and an opinion of the European Food Safety Authority ('the Authority').
- (3) In its opinion adopted on 27 July 2004, the Authority proposed to establish a maximum residue limit (MRL) of

50 µg/kg for all wet tissues in chickens for fattening. Consequently a withdrawal time of one day before the slaughter was considered sufficient. It may be necessary to review the maximum residue limit mentioned in the Annex of this Regulation in light of the results of any evaluation by the European Medicines Agency concerning the active substance.

- (4) The holder of the authorisation of the additive narasin (Monteban, Monteban G 100) proposed changing the terms of the authorisation by submitting an application to the Commission requesting to introduce MRL as evaluated by the Authority.
- (5) Regulation (EC) No 1464/2004 should therefore be amended accordingly.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 1464/2004 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, 31 March 2006.

For the Commission

Markos KYPRIANOU

Member of the Commission

⁽¹⁾ OJ L 268, 18.10.2003, p. 29. Regulation as amended by Commission Regulation (EC) No 378/2005 (OJ L 59, 5.3.2005, p. 8).

⁽²⁾ OJ L 270, 14.12.1970, p. 1. Directive repealed by Regulation (EC) No 1831/2003.

⁽³⁾ OJ L 270, 18.8.2004, p. 8.

ANNEX

Regis- tration number of additive	Name and registration number of person responsible for putting additive into circulation	Additive (Trade name)	Composition, chemical formula, description	Species or category of animal	Maximum age	Minimum content		Maximum content	Other provisions	End of period of authorisation	Maximum residue limits (MRLs) in the relevant foodstuffs of animal origin from species or category of animal concerned
							mg of active substance/kg of complete feedingsstuff				
Coccidiostats and other medicinal substances											
E 765	Eli Lilly and Company Limited	Narasin 100 g/kg (Monteban, Monteban G 100)	Additive composition: Narasin: 100 g activity/kg Soybean oil or mineral oil: 10-30 g/kg Vermiculite: 0-20 g/kg Soybean mill run or rice hulls qs 1 kg Active substance: Narasin, C ₄₃ H ₇₂ O ₁₁ CAS number: 55134-13-9 polyether monocarboxylic acid produced by <i>Streptomyces aureofaciens</i> (NRRL 8092), in granular form Narasin A activity: ≥ 90 %	Chickens for fattening	—	60	70	Use prohibited at least one day before slaughter. Indicate in the instructions for use: “Dangerous for equine species, turkeys and rabbits” “This feedingsstuff contains an ionophore: simultaneous use with certain medicinal substances (e.g. tiamulin) can be contraindicated”	21.8.2014	50 µg Narasin/kg for all wet tissues from chickens for fattening’	

COMMISSION REGULATION (EC) No 546/2006**of 31 March 2006****implementing Regulation (EC) No 999/2001 of the European Parliament and of the Council as regards national scrapie control programmes and additional guarantees and derogating from certain requirements of Decision 2003/100/EC and repealing Regulation (EC) No 1874/2003**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ⁽¹⁾, and in particular point (b)(ii) of Section 1 of Chapter A of Annex VIII thereof,

Whereas:

(1) Regulation (EC) No 999/2001 provides for the approval of the national scrapie control programmes of the Member States if they comply with certain criteria laid down in that Regulation. Regulation (EC) No 999/2001 also provides for the definition of any additional guarantees which may be required for intra-Community trade and imports in accordance with that Regulation.

(2) Commission Decision 2003/100/EC of 13 February 2003 laying down minimum requirements for the establishment of breeding programmes for resistance to transmissible spongiform encephalopathies in sheep ⁽²⁾, provides that each Member State is to introduce a breeding programme to select for resistance to TSEs in certain sheep breeds. That Decision also provides for the possibility for a Member State to derogate from the requirement to establish a breeding programme on the basis of its national scrapie control programme, submitted and approved in accordance with Regulation (EC) No 999/2001, where it provides for the continuous active monitoring of dead-on-farm ovine and caprine animals in all flocks in that Member State.

(3) Commission Regulation (EC) No 1874/2003 of 24 October 2003 approving the national scrapie

control programmes of certain Member States and defining additional guarantees, and granting derogations concerning breeding programmes for TSE resistance in sheep pursuant to Decision 2003/100/EC ⁽³⁾, approved the national scrapie control programmes of Denmark, Finland and Sweden.

(4) On 18 November 2005, Austria submitted a national scrapie control programme to the Commission. On 5 January 2006, certain amendments to that programme were submitted to the Commission. That programme, as amended, meets the required criteria set out in Regulation (EC) No 999/2001. In addition, Austria is likely to have a low prevalence or absence of scrapie on its territory.

(5) On the basis of that national scrapie control programme, Austria should be granted derogation from the breeding programme provided for in Decision 2003/100/EC. Furthermore, the additional trade guarantees required by Annex VIII, Chapter A and Annex IX, Chapter E to Regulation (EC) No 999/2001 should be laid down in the present Regulation.

(6) Regulation (EC) No 1874/2003 provides for certain additional guarantees for Denmark, Finland and Sweden relating to holdings. Those additional trade guarantees should, however, be amended in order to increase subsidiarity to those Member States and also Austria, taking into account different epidemiological and trade situations and differences in scrapie strains present in those four Member States.

(7) Therefore, for practical reasons and in the interests of clarity of Community legislation, it is appropriate to repeal Regulation (EC) No 1874/2003 and replace it by the present Regulation.

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

⁽¹⁾ OJ L 147, 31.5.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 339/2006 (OJ L 55, 25.2.2006, p. 5).

⁽²⁾ OJ L 41, 14.2.2003, p. 41.

⁽³⁾ OJ L 275, 25.10.2003, p. 12. Regulation as amended by Regulation (EC) No 1472/2004 (OJ L 271, 19.8.2004, p. 26).

HAS ADOPTED THIS REGULATION:

Article 1

Approval of national scrapie control programmes

The national scrapie control programmes, referred to in Chapter A, point I(b) of Annex VIII to Regulation (EC) No 999/2001, of the Member States listed in the Annex to the present Regulation are hereby approved.

Article 2

Additional guarantees relating to holdings

1. Ovine and caprine animals destined for the Member States listed in the Annex and coming from other Member States not listed in the Annex or third countries must have been kept continuously, since birth, on holdings which have satisfied the following conditions for a period of at least seven years prior to the date of dispatch of such animals:

- (a) no cases of scrapie have been confirmed;
- (b) no eradication measures have been applied because of scrapie;
- (c) the holdings have not contained animals identified as animals at risk referred to in Article 13(1)(b) of Regulation (EC) No 999/2001.

2. Ovine and caprine animals destined for the Member States listed in the Annex to the present Regulation and coming from other Member States listed in that Annex must have been kept on holdings, in which no ovine and caprine animal have been placed under official TSE movement restrictions in accordance with Article 13(2) of Regulation (EC) No 999/2001, for a period of at least seven years prior to the date of dispatch of such animals.

3. Semen, embryos and ova from ovine and caprine animals, destined for the Member States listed in the Annex, must be obtained from donors kept continuously since birth on holdings fulfilling the conditions set out in:

- (a) paragraph 1, if coming from other Member States not listed in the Annex or from third countries; or
- (b) paragraph 2, if coming from other Member States listed in the Annex.

Article 3

Official movement restrictions

1. The official movement restrictions presented by the Member States listed in the Annex are hereby approved. They shall apply to holdings receiving ovine or caprine animals or semen, embryos and ova from ovine or caprine animals where:

- (a) the animals, semen, embryos and ova are received from other Member States not listed in the Annex or from third countries; and
- (b) scrapie has been confirmed during the three years prior to or after the date of dispatch of the animals, semen, embryos and ova in the Member State or third country of dispatch as referred to in point (a).

2. The official movement restrictions provided for in paragraph 1 shall not apply in the case of receipt of ovine animals of the ARR/ARR prion protein genotype, or of semen, embryos and ova from a donor of the ARR/ARR prion protein genotype.

Article 4

Derogations from the requirement to establish a breeding programme

Pursuant to the first indent of Article 3(1) of Decision 2003/100/EC, Member States listed in the Annex to this Regulation are hereby granted a derogation from the requirement to establish a breeding programme as provided for in Article 2(1) of that Decision.

Article 5

Repeal

Regulation (EC) No 1874/2003 is repealed.

Article 6

Entry into force

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

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

Done at Brussels, 31 March 2006.

For the Commission
Markos KYPRIANOU
Member of the Commission

ANNEX

Member States referred to in Articles 1 to 4

Denmark

Austria

Finland

Sweden

COMMISSION DIRECTIVE 2006/37/EC
of 30 March 2006
amending Annex II to Directive 2002/46/EC of the European Parliament and of the Council as
regards the inclusion of certain substances
(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DIRECTIVE:

Having regard to the Treaty establishing the European Community,

Article 1

Annex II to Directive 2002/46/EC is amended as set out in the Annex to this Directive.

Having regard to Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements ⁽¹⁾, and in particular Article 4(5) thereof,

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 2007 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

After consulting the European Food Safety Authority,

Whereas:

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

(1) Directive 2002/46/EC specifies the vitamins and minerals, and for each of them the forms, that may be used for the manufacture of food supplements.

(2) Those vitamin and mineral substances that have been evaluated by the European Food Safety Authority (hereafter 'the Authority') and have received a favourable scientific evaluation should be included in the Annexes to Directive 2002/46/EC.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

(3) Favourable scientific evaluation for some vitamins and mineral substances has been recently given and made public by the Authority.

Article 3

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

(4) It is appropriate to replace the category heading 'folic acid' in order to take account of the inclusion of other forms of folate in Annex II to Directive 2002/46/EC.

Article 4

This Directive is addressed to the Member States.

(5) Directive 2002/46/EC should therefore be amended accordingly.

Done at Brussels, 30 March 2006.

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

For the Commission
Markos KYPRIANOU
Member of the Commission

⁽¹⁾ OJ L 183, 12.7.2002, p. 51.

ANNEX

Annex II to Directive 2002/46/EC is amended as follows:

1. In Section A. Vitamins:

- (a) the heading '10. FOLIC ACID' is replaced by '10. FOLATE'
- (b) the following line is added under the heading 10. FOLATE:
 - '(b) calcium-L-methylfolate'

2. In Section B. Minerals, the following line is inserted before cupric carbonate:

'ferrous bisglycinate'.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 19 January 2005

on the State aid which Italy is planning to implement for Società Consortile De Tomaso srl and UAZ Europa srl, both part of the De Tomaso group

(notified under document number C(2005) 40)

(Only the Italian version is authentic)

(Text with EEA relevance)

(2006/260/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

I. PROCEDURE

- (1) By letter dated 18 December 2002 the Italian authorities notified to the Commission a plan to grant regional aid to Società Consortile De Tomaso srl and UAZ Europa srl. The Commission requested further information on 4 February 2003. After requesting extensions of the deadline for replying on 12 March and 22 April 2003, the Italian authorities provided the information by letter dated 26 May 2003.
- (2) By letter dated 24 July 2003, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission called on interested parties to submit their comments.
- (4) The Commission received no comments from interested parties.

- (5) Italy submitted its comments in response to the decision opening proceedings on 13 October 2003. On 6 February 2004, the Commission requested clarifications from Italy. On 17 February 2004 a meeting took place between Commission officials, the Italian authorities and representatives of the company. Italy sent further information by letter dated 23 April 2004. On 30 April 2004, the Italian Minister for Production Activities addressed a letter to the Commission asking for an early decision on the case. The Commission replied to this letter on 18 June 2004.

II. DETAILED DESCRIPTION OF THE AID

- (6) The planned aid would be granted to Società Consortile De Tomaso srl and UAZ Europa srl, which form part of the De Tomaso group ('De Tomaso'). De Tomaso is currently active in the production of a very limited number of high performance sports cars. According to Italy, De Tomaso qualifies as a small or medium-sized enterprise under the definition given in Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to state aid to small and medium-sized enterprises ⁽³⁾ ('the SME Regulation').

The project

- (7) De Tomaso plans to set up a new greenfield production plant that when completed will have an installed capacity for:

⁽¹⁾ OJ C 227, 23.9.2003, p. 2.

⁽²⁾ See footnote 1.

⁽³⁾ OJ L 10, 13.1.2001, p. 33. Regulation last amended by Regulation (EC) No 364/2004 (OJ L 63, 28.2.2004, p. 22).

(a) final assembly of around 40 000 units/year of the Simbir model, an off-road vehicle produced by the Russian motor vehicle manufacturer UAZ;

(b) production of around 8 000 units/year of the Vallengunga, a sports sedan model, and 300 units/year of the Pantera, a luxury sports model.

The project is planned to start as soon as the Commission authorises the state aid and completion is scheduled for 2006. Motor vehicle production would start in 2005.

(8) The project would be carried out in Cutro, Calabria. Calabria is an Article 87(3)(a) area whose regional aid ceiling is 50 % gross grant equivalent (*) ('gge') for the period 2000-06.

(9) According to the Italian authorities, the project is mobile and De Tomaso is considering the alternative sites of Timisoara (Romania) for the Simbir model and Modena (Italy) for the Vallengunga and Pantera models. The investment at Timisoara would be carried out on a greenfield site, while the investment at Modena would consist in the expansion of an existing De Tomaso plant that currently produces a very limited number of the Guara model, a high performance sports car.

(10) According to the notification, De Tomaso intends to invest a nominal amount of EUR 218 760 000 (EUR 206 912 337 in present values, calculated using 2003 as the base year and a discount rate of 5,06% ⁽⁴⁾). The entire investment amount was considered eligible by the Italian authorities.

Legal basis and aid amounts

(11) The notified aid was granted, subject to approval by the Commission, in two phases to two companies belonging to De Tomaso. A first direct grant was approved in April 2001 in favour of UAZ Europa srl, for a nominal amount of EUR 9 518 817. A second direct grant was approved in August 2002 in favour of Società Consortile De Tomaso srl, for a nominal amount of EUR 168 490 000. The grants would be paid over the period 2004-08. The aid would be granted under schemes approved by the Commission ⁽⁵⁾ and provided for by the Law on measures to promote production activities in depressed areas ('Law No 488/1992') and the Law on measures to rationalise public finances ('Law No 662/1996').

(12) Since the two grants relate to the same project, the Italian authorities notified them jointly. Total aid to De Tomaso would therefore amount to a nominal EUR 178 008 817 (EUR 155 640 104 in present

values, calculated using 2003 as the base year and a discount rate of 5,06 %). The aid intensity notified by the Italian authorities is 75,22 % gge.

(13) According to Italy, no other Community aid or financing has been allocated to the project.

Grounds for initiating the procedure

(14) In its decision of 23 July 2003 to initiate proceedings, the Commission expressed doubts as to whether De Tomaso qualified as an SME. It also expressed doubts concerning a number of elements of the Cost Benefit Analysis (CBA), and in particular:

(a) the comparability of the projects in the chosen and alternative locations;

(b) the comparison of investment costs in the CBA;

(c) the comparison of operating costs in the CBA, with special reference to labour and outward transport costs.

III. COMMENTS FROM ITALY

(15) On 13 October 2003, Italy sent its comments in response to the decision opening proceedings. Further information and documents were supplied to the Commission during the meeting that took place on 17 February 2004 and with the letters of 23 and 30 April 2004.

(16) Regarding the SME status of De Tomaso, Italy provided detailed information on the ownership structure as well as the financial statements for the enterprise Alejandro S.A. and an extract of Mr De Tomaso's last will.

(17) On the comparability of the projects in the chosen and alternative locations, Italy affirmed first of all that the projects compared identical productions, in identical numbers, for the same product mix and with identical prices. The difference in the investments necessary in the alternatives could be explained by considering the specificity of the chosen location, which was similar to the northern part of Italy from the standpoint of labour costs and social, safety and environmental legislation, but lacked a skilled workforce and a solid industrial tradition.

(18) The situation in the alternative locations was, according to Italy, very different: a highly skilled workforce was available at Modena, as was a dense network of automotive suppliers and producers. At Timisoara, skilled labour was available at a fraction of the cost it would command at Cutro. Timisoara also presented a logistic advantage for the production of the Simbir model.

(*) Factual error: should read 'net grant equivalent'.

(4) The rate of 5,06% is taken from the table 'State Aid - Reference and discount rates (in %) since 01.08.1997' (see http://europa.eu.int/comm/competition/state_aid/others/reference_rates.html) and corresponds to the rate for 2002, which was the year of notification.

(5) Commission Decision of 12 July 2000 not to raise objections in case N 715/99, published in OJ C 278, 30.9.2000, p. 26.

- (19) Italy reaffirmed the strategic value of the Cutro project for the industrial development of the area. In this context, the technological choices aimed at establishing an advanced production facility that incorporated the most innovative techniques and equipment and allowed De Tomaso to carry out in-house research and development. The projects for the alternative sites opted, on the contrary, for more traditional technological solutions.
- (20) Based on these considerations, Italy affirmed that the Commission's demand that a comparison be made between totally identical projects was wrong and misleading, as it would force a comparison between 'hypothetical' solutions that were not based on the real intention of the company carrying out the investments.
- (21) Italy claimed that the comparison 'operation by operation' for the investments in the alternative solutions as required by the Commission for the CBA was not feasible because it would require the complete development of the alternative projects, something that De Tomaso could afford to do only after the location choice was made.
- (22) This notwithstanding, Italy provided new, more detailed, information comparing the investments at Cutro and the alternative sites for pressing, welding and painting for the sports cars (Cutro versus Modena) and for final assembly and painting for the Simbir model (Cutro versus Timisoara).
- (23) According to Italy, many investments planned at Cutro would not be necessary in the alternative solution because of the possibility of outsourcing the relevant operations (painting and engine testing) or of renting existing facilities (test track in the vicinity of Modena). As regards painting of the sports cars, Italy provided an estimate of the cost of investing in a new paintshop at Modena to show that in-house painting at Modena would be cheaper than outsourcing and would therefore slightly increase the handicap at Cutro. As regards the engine test bench, Italy pointed out that the Cutro facility would also allow De Tomaso to develop specific versions of the engines for future productions.
- (24) Regarding operating aspects of the CBA, Italy explained that the difference noted in headcounts was due partly to a mistake in the CBA, by which the number of managers and white collar workers was underestimated in the alternative solution, and partly to the fact that less labour would be needed at Modena since painting could be outsourced. Taking these two factors into account, Italy arrived at similar workforce needs in the alternative solutions.
- (25) As far as outward transport costs were concerned, Italy provided updated information and documentation on the transport costs for the Simbir model from the Timisoara site, according to which outward transport costs would not be higher from Cutro than from the Timisoara alternative.
- (26) Finally, Italy remarked that the company had been suffering from the length of the procedure.

IV. ASSESSMENT OF THE AID

- (27) The measure notified by Italy for De Tomaso constitutes state aid within the meaning of Article 87(1) of the Treaty. It would be financed by the State or through state resources. Furthermore, as it constitutes a significant proportion of the funding of the project, the aid is liable to distort competition in the Community by giving De Tomaso an advantage over competitors not receiving aid. Lastly, there is extensive trade between Member States in the automobile market. This is not contested by Italy.
- (28) Article 87(2) of the EC Treaty lists certain types of aid that are compatible with the common market. In view of the nature and purpose of the aid, and the geographic location of the firm, subparagraphs (a), (b) and (c) are not applicable to the plan in question. Article 87(3) specifies other forms of aid which may be regarded as compatible with the common market. The Commission notes that the project is located in Calabria, a region which qualifies for assistance under Article 87(3)(a), with a maximum regional ceiling of 50% net grant equivalent (nge) for large companies ⁽⁶⁾.
- (29) The Commission considers that the beneficiary of the aid under scrutiny is De Tomaso, the group that includes the companies Società Consortile De Tomaso srl and UAZ Europa srl, which will be the recipients of the aid. De Tomaso plans to manufacture and assemble cars. The firm is therefore part of the motor vehicle industry within the meaning of the Community framework for state aid to the motor vehicle industry ⁽⁷⁾ ('the motor vehicle framework'), which applies to the project in question as the aid was notified to the Commission before 1 January 2003.

⁽⁶⁾ According to Article 4(3) of the SME Regulation, when SMEs undertake investment projects in areas which qualify for regional aid under Article 87(3)(a) of the Treaty, the maximum aid intensity for regional investment aid determined in the map approved by the Commission can be increased by up to 15 percentage points gge, provided that the total net aid intensity for the project does not exceed 75%.

⁽⁷⁾ OJ C 279, 15.9.1997, p. 1 and OJ C 368, 22.12.2001, p. 10.

- (30) Both the total cost of the project and the amount of aid exceed the notification thresholds in the motor vehicle framework. These thresholds are: (i) total cost of the project equalling EUR 50 million, (ii) total gross aid for the project, whether state aid or aid from Community instruments, equalling EUR 5 million. In notifying the proposed aid for De Tomaso, the Italian authorities have complied with the requirements of Article 88(3) of the Treaty.
- (31) According to the motor vehicle framework, the Commission must ensure that the aid granted is both necessary for the implementation of the project and proportional to the gravity of the problems it intended to solve. Both tests, necessity and proportionality, must be satisfied if the Commission is to authorise state aid in the motor vehicle industry.
- (32) According to point 3.2.(a) of the motor vehicle framework, in order to demonstrate the necessity for regional aid, the aid recipient must clearly prove that it has an economically viable alternative location for its project. If the project consists in modernisation and rationalisation of an existing plant, or if there is no alternative industrial site, whether new or in existence, capable of receiving the investment in question within the group, the undertaking would be compelled to carry out its project in the chosen location, even in the absence of aid. Therefore, no regional aid may be authorised for a project that is not geographically mobile.
- (33) In the present case, the geographic alternative to Cutro for the project would be to assemble the Simbir model at Timisoara (Romania) and produce the Vallengunga and Pantera models at Modena (Italy). The Commission considers that Italy has provided sufficient documentary evidence to support this claim. The evidence provided includes studies of the feasibility of the alternative locations, plans and layouts and quotes from potential equipment suppliers.
- (34) Taking into account the nature of the investment (greenfield project on a completely new site) and on the basis of the documents received, the Commission concludes that the project is mobile and that there is a viable alternative location.
- (35) According to point 3.2.(b) of the motor vehicle framework, the Commission determines whether or not costs relating to the mobile aspects of the project are eligible. According to point 3.2.(c) of the motor vehicle framework the Commission needs to ensure that the planned aid is in proportion to the regional problems it is intended to resolve. To that end, a CBA is used.
- (36) The CBA compares, with regard to the mobile elements, the costs which an investor would bear in order to carry out the project in the region in question with those it would bear for an identical project in a different location. This makes it possible to determine the specific handicaps of the assisted region concerned. The Commission authorises regional aid within the limit of the regional handicaps resulting from the investment in the comparator plant.
- (37) In accordance with point 3.2.(c) of the motor vehicle framework, operating handicaps of Cutro as compared with Timisoara and Modena are assessed over five years in the CBA since the project is to be carried out on a greenfield site. The time period covered by the CBA submitted by the Italian authorities is 2005-09, that is three years (*) from the beginning of production in compliance with point 3.3 of Annex I to the motor vehicle framework. The notified CBA indicates a net cost handicap of EUR 158 248 977 in present values for the location at Cutro in comparison with the alternative locations. Consequently, the 'regional handicap ratio' of the project would be 76,48% ⁽⁸⁾.
- (38) As a preliminary technical point, the Commission notes that the CBA presented by Italy takes 2003 as the base year for discounting the relevant figures. The correct year is 2002, which is the year of notification of the planned aid to the Commission. Since the discount rate applied is, correctly, that of 2002 (5,06%), the change in reference year does not however alter in any way the relevant ratios and figures, and can therefore be maintained.
- (39) Turning to the substance of the CBA, the Commission has assessed the information provided by Italy with the aid of an external automotive expert. The assessment has confirmed the doubts expressed in the decision to initiate formal proceedings regarding the comparability of the projects at Cutro and the alternative location. The reasons that lead to this conclusion are detailed below in points (40) to (63).
- (*) Factual error: should read 'five years'.
- ⁽⁸⁾ Regional handicap ratio = $\frac{\text{Investment}}{\text{Net cost handicap}}$ (both in present values). In the present case, the investment amounts to EUR 206 912 337 [see point 10 above].
Regional handicap ratio = $\frac{158\,248\,977}{206\,912\,337} = 76,48\%$.

- (40) As noted in the decision initiating formal investigation proceedings, the Commission has consistently interpreted the 'identical projects' requirement in the motor vehicle framework as meaning projects that concern the production of comparable motor vehicles, in comparable numbers, and that involve comparable production processes. The Commission usually accepts that differences may exist in projects carried out at different sites, for example, regarding final product quality levels or varying degrees of plant automation as a function of labour costs. However, the Commission does not accept the comparison of substantially different projects, such as projects where important investments in equipment and machinery would be undertaken in one location, while no investments for the corresponding production would be undertaken at the comparator site.
- (41) In the present case, the information provided by Italy has not allowed the Commission to fully compare the investment costs. Italy itself stated, in its comments in response to the decision initiating proceedings, that a comparison 'operation by operation' for the investments in the alternative solutions as required by the Commission for the CBA was not feasible. Indeed, the projects in the chosen location of Cutro and in the alternative locations of Modena and Timisoara are, according to the information provided by Italy, substantially different from the point of view of the technological content of the investments and the degree of vertical differentiation.
- (42) Taking this constraint into account, the Commission has examined the available information with the aim of understanding the reasons underpinning the different investment choices and ascertaining whether the substantial difference in investment costs is acceptable within the CBA. In carrying out its assessment, the Commission does not contest the fact that projects can differ greatly between different locations, for example as a result of different industrial choices. However, the Commission needs to make sure that the CBA is a meaningful means of evaluating the specific handicap of the chosen location. This can be done only if the alternative projects are comparable.
- (43) The Commission notes first of all that investment costs at Cutro are much higher than at the alternative sites for land, building and construction, machinery and equipment, tools and dies and supplier tooling. As regards the costs of land and building and construction, the Commission considers that the difference reported in the CBA (EUR 41 530 657 at Cutro as against EUR 10 084 237 in the alternative) can be justified on the one hand by the fact that these assets are much cheaper in Romania than in Italy and on the other hand by the fact that De Tomaso already possesses in Modena the land and part of the buildings that would be necessary for the project.
- (44) Conversely, as regards machinery and equipment, tools and dies and supplier tooling, De Tomaso would have to purchase them in large part anew both at Cutro and at the alternative locations. For these assets, which are usually bought internationally, large differences in investment costs (EUR 165 381 681 at Cutro as against EUR 75 624 552 in the alternative) can be explained only by the fact that the project at Cutro foresees higher levels of automation and higher vertical integration.
- (45) The Commission has assessed the available information in order to ascertain whether these cost differences are justified by the specific conditions of the different locations, and whether they are compatible with the comparability requirements of the CBA.
- (46) The Commission notes that Italy ascribes the cost difference between Cutro and Timisoara mainly to higher labour costs (higher automation is foreseen to reduce headcount) and to tighter social, safety and environmental legislation (newer and more complicated equipment is required to comply with it). The cost difference between Cutro and Modena is, in Italy's view, mainly the result of a lower skilled workforce (more automation needed to compensate for lack of manual skills) and the lack of an established supplier network (need for more vertical integration).
- (47) The Commission accepts that these factors can contribute to increasing investment costs. However it does not consider that they can explain the very high cost differentials in the case under scrutiny.
- (48) Firstly, for a low volume manufacturer like De Tomaso the extent to which automation can help reduce headcount is limited: investments in automation usually pay off only for high or very high volume production. Indeed, the Cutro solution would hardly save any workforce with respect to the alternatives. According to the figures in the CBA, the workforce in 2009 would be 786 at Cutro, compared with 685 at Modena and Timisoara combined. Even taking into account the higher level of vertical integration at Cutro (which results in a larger workforce for the operations carried out in-house), it is evident that higher automation brings hardly any savings in the number of workers employed.

- (49) Secondly, while it is true that social, safety and environmental legislation in Italy is more stringent than in Romania and therefore may require higher investments, this factor should not be overestimated. When medium to long term investment is decided, car makers tend to look at prospective legislation as well as existing laws. In the case of Romania, a convergence in standards towards western European levels seems reasonable in the medium term, also taking into account the country's likely accession to the European Union.
- (50) Thirdly, it is not always the case that higher automation is needed to compensate for lower workforce skills. Indeed, the contrary is often true: automated machines require a highly skilled workforce for their operation and maintenance, while a lower skilled workforce can operate more easily simpler machinery.
- (51) Lastly, it is true that the lack of an established supplier network can lead to a higher degree of vertical integration and therefore to the need for higher investments. However, any additional investment justified on these grounds should be directly linked to the lack of existing or prospective suppliers for specific operations. This is often not the case in the case under scrutiny.
- (52) For example, in its comments in response to the decision initiating formal proceedings, Italy argued that outsourcing the painting operations for the sports cars in Modena did not artificially increase the handicap for Cutro. To support this claim, Italy provided estimates of the investment and operating costs for in-house painting at Modena, showing that the impact of this change on the CBA was very small, and was in the direction of increasing Cutro's handicap. However, the investment cost of the paintshop at Modena would be significantly lower than what is foreseen for Cutro (EUR 4.5 million as against EUR 6.3 million), due to its lower automation content. This shows that the higher investment at Cutro for the paintshop cannot be attributed to the lack of an established supplier network, but is rather the consequence of different technological choices in the alternative locations.
- (53) A similar reasoning applies to the test track at Cutro. While it is true that in the alternative of Modena De Tomaso could rent existing facilities for testing the sports cars, no such facilities would be available for the Simbir model in Timisoara. Indeed, Italy affirms that the Simbir model would be tested on normal roads around the Romanian plant. Yet a specific investment is foreseen at Cutro for dedicated tracks to test the Simbir model.
- (54) The Commission notes furthermore that other factors that could justify a higher degree of automation between different locations do not apply in the present case. Investment in automation is often justified by high volume production, but this is not the case for De Tomaso, which would be a small volume producer both at Cutro and in the alternative location. Similarly, quality levels would be identical in the alternative locations.
- (55) The above elements have led the Commission to conclude that the very high differences in investment costs between Cutro and the alternative locations can only be explained by the fact that the projects compared are very different in nature. This conclusion is supported by the detailed description of the investments that Italy has provided for some operations.
- (56) The latest information shows that the project at Cutro consists in an up-to-date fully automated production system designed for high volume production, while the alternative project is based on a low automation and low volume production concept. The following examples are indicative of the different nature of the projects compared:
- (a) for the assembly of the Simbir model at Cutro an investment of over EUR 2 million is foreseen for a very sophisticated and fully robotised station for the installation of windscreens. This machinery is usually preferred over manual installation processes only for very high volume productions, largely in excess of the 50 000 units envisaged in this project. No such investments are foreseen at Timisoara;
 - (b) similarly, assembly of the Simbir model at Cutro would employ robots for installing dashboards, front end assemblies, roof panels and for seat and door handling. No such machinery is foreseen at Timisoara;
 - (c) for the pressing and welding of the sports cars, a high cost laser cut station is planned for Cutro, with no similar investment foreseen at Modena;
 - (d) investments at Cutro include an expensive, completely equipped metrological unit with a coordinate based measuring system for both a complete body and sub-components. No similar investment is foreseen in the alternative;
 - (e) Cutro includes sophisticated quality control systems for incoming goods. This is contrary to current practices to make quality control the responsibility of the supplier. The alternative solution does not include this capability;

- (f) the Cutro investment plans include a centralised IT monitoring and diagnostic system for the assembly lines. No such system is foreseen for the alternative solution, although the final products are expected to reach the same quality levels;
- (g) the Cutro solution includes investments for the creation of a permanent training centre with multimedia facilities, open also to suppliers' personnel. There is no such centre in the alternative solution;
- (h) the investment at Cutro includes an engine test bench. The facility would allow De Tomaso to carry out both standard production tests and fine tuning, and research and development on the engines (petrol engines for the sports cars and diesel engines for the Simbir) bought from external suppliers and assembled in the cars at Cutro. In the alternative solution, De Tomaso would outsource the standard tests and fine tuning either to independent companies (Modena) or to the engine supplier (Timisoara). No research and development would be carried out.
- (57) Taking all these factors into account, the Commission concludes that the investment costs for machinery and equipment, tools and dies and supplier tooling at Cutro are excessive and not comparable with the investment costs in the alternative solution. On the basis of the available information, the Commission, with the aid of its external automotive expert, has estimated that the objective differences between the alternative locations in terms of the existence of a supplier network, labour costs, legislative requirements and workforce skills could justify a handicap of 25% at Cutro with respect to the alternative solution. The Commission therefore concludes that the investment costs for machinery and equipment, tools and dies and supplier tooling that can be considered eligible for aid at Cutro amount to EUR 94 530 690 ⁽⁹⁾, as against EUR 165 381 681 according to Italy.
- (58) Regarding the estimate of the eligible costs carried out above, the Commission remarks firstly that its objective is not to decide which investment should or should not be carried out at Cutro, but to determine which of the investments that De Tomaso plans to carry out are comparable, within the meaning of the motor vehicle framework, with the investments that would be carried out in the alternative locations and are therefore eligible for aid. Secondly, the Commission remarks that it has not had the possibility to carry out a more detailed comparison of the alternative projects, owing to Italy's claim that such more detailed comparison was not feasible. The Commission therefore had to rely on the information that was made available to it.
- (59) The Commission therefore concludes that total eligible costs for the project amount to EUR 136 061 346 ⁽¹⁰⁾ in present values. Therefore, only these investments have been taken into account for the calculation of the regional handicap at Cutro. This modification has led to a reduction in the handicap for investment costs and other eligible expenses from EUR 89 757 129 to EUR 18 906 138 ⁽¹¹⁾.
- (60) The Commission has also assessed the comparison of operating costs in the CBA submitted by Italy with its comments in response to the decision opening proceedings. Regarding the workforce needs, the Commission accepts the corrections made by Italy for the number of managers and white collar workers in the alternative solution. However, the Commission notes that the increased workforce has not been correctly included in the CBA for the calculation of labour costs. The number of workers in the alternative solution reported in the CBA is 642 in 2009, while the supporting documentation gives the number as 685. The Commission considers that the latter figure is the correct one and has amended the CBA accordingly. Total labour costs in the alternative solution consequently increase from EUR 23 448 521 to EUR 28 526 739, and the handicap for this item is reduced by EUR 5 078 218 (EUR 62 658 707 instead of EUR 67 736 925).
- (61) Regarding outward transport costs, the Commission accepts the correction made by Italy, which reduces the overall outward transport costs handicap to EUR 745 269 (the Italian authorities had originally calculated EUR 754 916).
- ⁽⁹⁾ (Investment in machinery and equipment, tools and dies and supplier tooling in the alternative) x (1+handicap rate at Cutro) = 75 624 552 [see point 46 above] x 1.25 = 94 530 690.
- ⁽¹⁰⁾ Eligible costs of land, building and construction (41 530 657) [see point 45 above] + eligible costs of machinery, equipment, tools and dies and supplier tooling (94 530 690) [see point 59 above] = 136 061 346.
- ⁽¹¹⁾ Offset of any handicap in terms of investment costs for machinery, equipment, tools and dies and supplier tooling equal to eligible costs of these items as calculated (94 530 690) [see point 59 above] – costs of these items in the alternative (75 624 552) [see point 46 above] = 18 906 138.

- (62) The modifications introduced in the analysis produce cost-benefit results that differ from those notified by Italy. The modified CBA indicates a net cost handicap for Cutro of EUR 82 310 114 ⁽¹²⁾ in 2003 values (compared to EUR 158 248 977 as notified). The resulting handicap ratio of the project is 60,49% ⁽¹³⁾ (instead of 76,48% as initially notified).
- (63) Finally, in accordance with point 3.2.(d) of the motor vehicle framework, the Commission considered the question of a 'top-up', which is an increase in the allowable aid intensity intended as a further incentive to the investor to invest in the region in question. It is clear that De Tomaso will increase dramatically its capacity as consequence of the investment, as its production levels are currently extremely low. According to the motor vehicle framework, the 'regional handicap ratio' resulting from the CBA is therefore reduced by one percentage point ('high' impact on competition for an investment project in an Article 87(3)(a) region), resulting in a final ratio of 59,49% gge, which is lower than the regional ceiling of 50% nge for large enterprises in Calabria (which, for the project under scrutiny, corresponds to 73,83% gge) and, *a fortiori*, for SMEs. Given that the 'regional handicap ratio' remains in any event below the regional ceiling of 73,83% gge for the project, there is no longer any need to determine whether De Tomaso is an SME.

V. CONCLUSION

- (64) The Commission finds that the regional aid that Italy plans to grant to De Tomaso for the project in question is compatible with the common market insofar as it does not exceed an aid intensity of 59,49% gge of the eligible costs. The Commission finds that the eligible costs for the project in question amount to EUR 136 061 346 in 2003 values (discount rate

5,06%). Therefore, the Commission finds that the regional aid that Italy plans to grant to De Tomaso for the project in question is compatible with the common market insofar as it does not exceed EUR 80 949 501 gge (in 2003 values, discount rate 5,06%).

- (65) Any additional state aid for the investment projects in question is incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The state aid which Italy is planning to implement for the companies Società Consortile De Tomaso srl and UAZ Europa srl is compatible with the common market within the meaning of Article 87(1) of the Treaty, up to a maximum amount of EUR 80 949 501 gross grant equivalent in 2003 values (discount rate 5,06%).

Article 2

Any state aid in addition to the aid amount referred to in Article 1 that Italy plans to grant to the companies Società Consortile De Tomaso srl and UAZ Europa srl for the project under scrutiny shall be incompatible with the common market.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 19 January 2005.

For the Commission

Neelie KROES

Member of the Commission

⁽¹²⁾ 18 906 138 (investment costs [see point 61 above]) + 62 658 707 (operating costs [see point 62 above]) + 745 269 (transport costs [see point 63 above]) = 82 310 114.

⁽¹³⁾ $\frac{\text{Net cost handicap}}{\text{Investment}} = \frac{82\,310\,114}{136\,061\,346} = 60,49\%$ [see point 61 for the new investment cost as corrected].

COMMISSION DECISION

of 16 March 2005

on aid scheme C 8/2004 (ex NN 164/2003) implemented by Italy in favour of newly listed companies

(notified under document number C(2005) 591)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2006/261/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Italy of its obligation under Article 88(3) of the Treaty to notify the Commission of any measures constituting aid before their implementation.

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

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

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾,

Whereas:

(3) By letters of 11 November 2003 (A/37737) and 26 November 2003 (A/38138), the Italian authorities provided the information requested. By letter dated 19 December 2003 (D/58192), the Commission again reminded Italy of its obligations under Article 88(3) of the Treaty and invited the Italian authorities to inform the possible beneficiaries of the tax incentives in question of the consequences envisaged by the Treaty and by Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽²⁾ in the event that the incentives in question were found to constitute unlawful aid implemented without prior authorisation by the Commission.

(4) By letter of 18 February 2004 (SG 2004 D/200644), the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of Italy's tax incentives for newly listed companies.

(5) By letter of 22 April 2004 (A/32918), the Italian authorities submitted their comments.

(6) The Commission decision to initiate the formal investigation procedure was published on 3 September 2004 in the *Official Journal of the European Communities*, with an invitation to interested parties to submit their observations ⁽³⁾.

(1) Italy enacted Decree-Law No 269 of 30 September 2003 laying down urgent measures to promote development and correct the trend in public finances ('DL 269/2003'), which entered into force on the date of publication in Official Gazette of the Italian Republic No 229 of 2 October 2003. Articles 1(1)(d) and 11 of DL 269/2003 provide for specific tax incentives for companies admitted to listing on a regulated market in the European Union between 2 October 2003 and 31 December 2004. The above provisions were subsequently converted, without amendments, into Law No 326 of 24 November 2003 ('L 326/2003'), published in Official Gazette of the Italian Republic No 274 of 25 November 2003.

(2) By letter dated 22 October 2003 (D/56756), the Commission invited the Italian authorities to provide information about the incentives in question and their entry into force, with a view to establishing whether they constituted aid within the meaning of Article 87 of the Treaty. By the same letter, the Commission reminded

(7) On 16 and 27 September 2004 two *ad hoc* meetings took place between representatives of the Commission and the Italian tax authorities to examine certain aspects of the scheme.

⁽¹⁾ OJ C 221, 3.9.2004, p. 7.

⁽²⁾ OJ L 83, 27.3.1999, p. 1. Regulation amended by the 2003 Act of Accession.

⁽³⁾ See footnote 1.

- (8) By fax of 4 October 2004 (A/37459), Borsa Italiana SpA (the Italian stock exchange) submitted observations. By letter of 28 October 2004 (D/57697), the Commission forwarded them to the Italian authorities, which reacted by letter of 2 December 2004 (A/39473).

II. DESCRIPTION OF THE MEASURE

- (9) The measure provides for two sets of tax incentives with respect to the stock exchange listing of companies subject to Italian corporation tax.

- (10) Pursuant to Article 11 of DL 269/2003, any companies whose shares are admitted to listing on a regulated market in a Member State of the European Union between 2 October 2003 and 31 December 2004 may over a three-year period benefit from a reduced corporate income tax rate of 20% (rate normally applied: 35% in 2003 and 33% in 2004). This 'listing premium' applies only if the newly listed companies increase their net worth by at least 15 percent as a result of the Initial Public Offering (IPO) of their stock and provided that they have not already been listed on a European stock exchange. The maximum amount of income which may be subject to the reduced rate is limited to €30 million per year, corresponding to maximum aid of €4,5 million ($35 - 20 = 15\%$ of 30 million) in 2003, and €3,9 million ($33 - 20 = 13\%$ of 30 million) in 2004.

- (11) Where a company is admitted to listing during the above period but subsequently de-listed, the incentive is applied only with respect to the period(s) in which the company's shares were effectively traded on the stock exchange. The benefit is also maintained on the same terms if a company is subsequently re-listed on another European stock exchange which guarantees an equivalent level of investor protection as that afforded by the Italian stock exchange.

- (12) Article 1(1)(d) of DL 269/2003 provides that newly listed companies fulfilling the conditions laid down in Article 11 of DL 269/2003 may reduce their taxable income by an amount equal to the IPO expenses they incur in 2004. This reduction in taxable income is in addition to the ordinary deduction of the costs involved in the IPO, which are recognised for tax purposes as any other business expense. The expenses incurred with respect to

an IPO transaction notably include due diligence costs, fees of external consultants and the regulatory costs of the transaction which, in the case of the Italian stock exchange, total between 3,5% and 7% of the amount traded during the listing operation. In order to benefit from this reduction in taxable income, a company must obtain certification by an external auditor of the actual expenditures incurred.

- (13) The reduction in taxable income provided for by Article 1(1)(d) of DL 269/2003 has the effect of reducing the effective tax burden for the year 2004 since the amount of the tax liability is reduced by 33% (the corporate income tax rate for 2004, not considering the 20% reduced nominal rate which would apply because of the above listing premium) of the amount of eligible expenses concerned with the listing. Under the system of advance payment of corporation tax in Italy, a beneficiary company would pay in two instalments the income tax due in respect of the 2004 tax year, based on an estimate of the tax that the company expects to pay for 2004, therefore including the reduction resulting from the scheme. To prevent the benefits being carried over to the advance payments for 2005 (which would take place if the latter were computed on the basis of the – reduced – tax paid in 2004), Article 1(1)(d) of DL 269/2003 provides that the advance tax payments for 2005 are to be computed on the basis of the tax that would have been payable in 2004 in the absence of the tax benefit in question.

- (14) The two incentives provided for respectively by Article 1(1)(d) and Article 11 of DL 269/2003 therefore have different timeframes. While the income reduction is applicable only in 2004, the listing premium is applicable as from the date of listing and over a three-year period. The Italian authorities have confirmed that the incentives do not have any effect on the advance tax due in 2003, but are only available in 2004 and, solely in the case of the listing premium under Article 11 of DL 269/2003, during the three years after listing.

- (15) In tabling the Decree-Law providing for the tax incentive in question, the Italian Government estimated that the measure could concern 10 possible beneficiaries in 2003 and 25 in 2004, corresponding to tax expenditures of €7,2 million in 2003 and €27,7 million in 2004. No estimate of the expenditure was provided for the following two years of operation of the scheme.

III. GROUNDS FOR INITIATING THE PROCEDURE

- (16) In its letter initiating the formal investigation procedure, the Commission considered that the measure fulfilled all the criteria for being classed as state aid under Article 87(1) of the Treaty. In particular, the Commission considered that the measure affords two sets of economic advantages. First, it grants companies newly listed on a regulated stock exchange a reduced corporate income tax rate of 20%, thereby increasing the after-tax income they earn from any business activity over a three-year period. Owing to the reduction in the nominal rate, beneficiary undertakings enjoy a reduced tax liability in the year in which they obtain a listing and in the following two years. Second, the scheme lowers the taxable income in the tax year in which the listing transaction takes place by allowing the beneficiary undertakings to reduce their taxable income by an amount corresponding to the IPO expenses. This negative adjustment also has the effect of lowering the effective tax rate applied to 2004 income.
- (17) The Commission observed that the above advantages seemed to favour certain undertakings. In particular, it pointed out that the tax incentives at issue were likely to favour companies with their registered office in Italy. Foreign companies operating in Italy by means of a permanent establishment or any other establishment in the form of an agency, branch or subsidiary within the meaning of Article 43 of the Treaty would benefit from the effective tax rate reduction only with respect to the share of their business activities attributable to such Italian establishments, and this differentiation – although justifiable for tax measures following the territorial logic of the tax system – is not justified for an aid measure because it clearly puts foreign companies carrying on business in Italy at a competitive disadvantage with respect to Italian companies.
- (18) The Commission also observed that, although the benefits of the scheme are formally open to all companies admitted to listing on a European regulated market, and the scheme therefore does not ostensibly discriminate between companies that obtain a listing in Italy and those listed in another Member State, the measure effectively favours only companies listed for the first time within the narrow timeframe stipulated. In this respect, the Commission pointed out that the rules on company listing lay down a number of stringent requirements, including the ability to demonstrate the soundness of the company's assets and financial position, duly certified by company accounts and external auditors. Candidates for listing must take the form of limited companies, so that their shares are freely transferable, and must fulfil certain minimum capi-

talisation requirements. The Commission accordingly observed that the time limits laid down by the scheme would *de facto* exclude many potential candidate companies from the benefits in question.

- (19) In its decision to initiate the formal investigation procedure, the Commission pointed out that the measure involved the use of state resources as it consists in the forgoing of tax revenues and that it was liable to distort competition and trade within the common market because the beneficiaries, being listed companies, operate on markets where competition is intense and where intra-Community trade takes place.
- (20) The Commission finally considered that the selective character of the tax advantages at issue did not appear to be justified by the nature or general scheme of the Italian tax system, nor did the measure appear to compensate for possible expenses incurred as the aid amount is not contingent upon specific costs being borne as a result of admission to listing. Neither did any of the exceptions provided for in Article 87(2) and (3) of the Treaty seem to apply.

IV. COMMENTS FROM ITALY AND INTERESTED PARTIES

- (21) Both the Italian authorities and Borsa Italiana SpA, the only interested party that submitted comments, essentially raised three objections.
- (22) Firstly, according to the Italian authorities and Borsa Italiana SpA, the scheme should be viewed as a general tax policy measure aimed at encouraging Italian companies to seek a listing, thereby countering the negative trend observed in recent years, and strengthening their capitalisation and competitiveness on global markets. As such, they argue, the scheme falls outside the scope of state aid review.
- (23) Secondly, they claim, the scheme does not affect competition because any undertaking can benefit from the incentive by obtaining a listing on a European stock exchange; the scheme is applicable across the board to all business sectors and all industries and is therefore not selective.

- (24) Finally, they argue that the scheme does not affect competition because of its limited duration and budget and because foreign companies are also eligible to receive the incentives in question.

V. ASSESSMENT OF THE MEASURE

State aid within the meaning of Article 87(1) of the Treaty

- (25) Having considered the observations submitted by the Italian authorities, the Commission maintains the position it expressed in the letter of 18 March 2004 initiating the formal investigation procedure, namely that the scheme under examination constitutes state aid because it fulfils the relevant criteria laid down in Article 87(1) of the Treaty.

Selective advantages

- (26) The Commission considers that the measure in question clearly confers selective advantages, since it derogates from the normal operation of the tax system, and that it favours certain undertakings or the production of certain goods, in that it constitutes a specific scheme favouring only the undertakings that are able to obtain a listing during the period stipulated by the scheme, thereby excluding undertakings that are already listed, undertakings that do not fulfil the conditions for being listed and undertakings that decide not seek a listing in that period.
- (27) Italy's argument that the scheme constitutes a tax policy measure falling outside the scope of the state aid rules cannot be accepted, nor can this exception to the normal tax rules be justified by the nature of the Italian tax system, since it does not address any fundamental tax distinctions between the situations of listed as opposed to non listed companies. In particular, since the scheme provides for a reduction in the tax rate applicable to future profits earned by its beneficiaries, it cannot be deemed proportionate because such profits are unrelated to the fact that the beneficiaries are admitted to listing, to their capital structures and to the other characteristics associated with listing. Finally, the scheme cannot be justified by its own specific objectives, because its short duration makes it effectively inaccessible to many potential beneficiaries.

- (28) In the same vein, the reduction of taxable income is also an extraordinary incentive because it comes on top of the ordinary deduction of business expenses. Although such

a measure might potentially be deemed to be justified by the specific objective pursued by the scheme on the basis of the case law of the Court ⁽⁴⁾, the Commission notes that the short duration of the measure makes it inconsistent with the specific objective of encouraging companies to seek a listing, as it effectively excludes many possible beneficiaries.

- (29) As for the objection that the scheme does not confer any specific advantage and cannot therefore have the effect of distorting competition and trade within the Community because it favours only undertakings subject to different tax legislations, the Commission refers to the relevant case law of the Court ⁽⁵⁾ confirming that a derogatory tax measure not justified by the nature of the tax system or by the specific nature of the scheme may constitute aid.

- (30) The Commission notes that in another judgment ⁽⁶⁾ the Court endorsed the Commission's appraisal that a national tax measure, although formally general, constituted aid because it was more advantageous to certain national industrial sectors. In the case in point, the Commission considers that a tax incentive granted as an exception to the normal tax treatment to all undertakings taxable in Italy which are admitted to listing on a regulated market has significant effects on companies of a certain size and could distort competition by improving the competitive position of such companies vis-à-vis their competitors not registered in Italy. In addition, as the aid is granted through the tax system, it mainly favours Italian undertakings because, while the tax reduction applies to the worldwide profits generated by Italian undertakings, it only applies to the Italian profits of foreign undertakings and, in this respect, the latter are put at a disadvantage. While this difference in treatment could normally be justified by the nature of the tax system, in the case in point the fact that the scheme is an extraordinary incentive that cannot be justified as part of the ordinary operation of the tax system rules out such a justification.

- (31) With respect to the limited period of validity of the scheme, Italy argues that the limitation on the number of potential beneficiaries (only companies admitted to listing before 31 December 2004) is imposed by budget constraints. In its view, this further strengthens

⁽⁴⁾ Case C-143/99 *Adria-Wien Pipeline* [2001] ECR I-8365.

⁽⁵⁾ Case 173/73 *Italy v Commission* [1974] ECR 709.

⁽⁶⁾ Case 203/82 *Italy v Commission* [1983] ECR 2525.

the conclusion that the measure's effect on competition is quite limited. The Commission considers that the limited budget earmarked for the incentive does not detract from its classification as aid or from the resulting distortions of competition. The scheme produces an alteration (through taxation) of the pre-existing competitive position of certain undertakings engaged in business activities open to international competition, and as such it constitutes aid which is liable to distort competition.

- (32) The Commission therefore concludes that the measure affords the beneficiaries certain specific tax advantages reducing the costs they normally bear in the course of their business.

State resources

- (33) The Commission considers that the advantages at issue are granted by the State or through state resources. As the Italian authorities did not submit any objections, the Commission confirms the appraisal made when initiating the formal investigation procedure, according to which the advantage is attributable to the State as it consists in the forgoing of tax revenues normally collected by the Italian Treasury.

Effect on competition and trade

- (34) Considering the effects of the measure, the Commission confirms the appraisal made when initiating the formal investigation procedure, namely that the measure is liable to distort competition and have an effect on trade between Member States because the beneficiaries may be operating on international markets and involved in trade and other business activities in markets where competition is intense. Following the settled case law of the Court ⁽⁷⁾, for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.
- (35) In applying for admission to listing on a regulated stock exchange a company seeks to achieve several significant financial objectives, which include (a) increasing and

diversifying the sources of corporate financing with a view to pursuing asset and stock acquisitions; (b) increasing the financial standing of the listed company with respect to debt holders, suppliers and other creditors accepting the stock as a guarantee of debt; and (c) obtaining a market valuation for the company, so as to facilitate merger and acquisition transactions at any future date. By conferring an extraordinary tax advantage on companies that decide to seek a listing, the scheme improves their competitive position and financial standing vis-à-vis their competitors. Given that the above effects may favour Italian beneficiaries operating on markets where intra-Community trade takes place, the Commission considers that, for this reason too, the scheme affects trade and distorts competition.

- (36) The Commission moreover notes that, as of 31 December 2004, ten companies were admitted to listing on the Italian stock markets (a 100% increase on the previous year) ⁽⁸⁾. Under the scheme, the newly listed companies are entitled to tax benefits in proportion to their future profits. The companies obtaining a listing on the Italian stock markets belong to various sectors, ranging from manufacturing to public utilities, which are open to international competition. Neither the Italian authorities nor third parties have argued that, on account of certain specific features of the beneficiaries, the advantages granted to them do not affect competition and intra Community trade. In the light of projections based on the profits generated by the beneficiaries in the three years prior to their listing, the Commission has established that each of the companies could benefit from considerable tax reductions. For example, the Commission has calculated that the tax benefits which would be enjoyed by one beneficiary alone over the period 2004-07 could potentially amount to €75 million. However, because of the above-mentioned clause in Article 11 of DL 269/2003 limiting the benefits, the actual tax concession could not exceed €11,7 million over the three-year period. Italy's submissions do not, however, demonstrate that the benefits accruing to any individual beneficiary would remain below the limit for *de minimis* aid.

- (37) The Commission concludes that the distortion of competition deriving from the scheme in the different sectors where the beneficiaries operate is significant, considering that the beneficiaries are often leaders in their respective business sectors in Italy, and this justifies the negative appraisal of the scheme.

⁽⁷⁾ Case T-214/95 *Het Vlaamse Gewest v Commission* [1998] ECR II-717.

⁽⁸⁾ These were: (1) Trevisan SpA, industrial painting plants; (2) Isagro SpA, pharmaceuticals; (3) Digital Multimedia Technologies (DMT) SpA, media; (4) Terna SpA, public utilities (electricity); (5) Procomac SpA, bottling plants; (6) Azimut Holding SpA, financial services; (7) Greenvision Ambiente SpA, services; (8) Panariagroup SpA, ceramics; (9) RGI SpA, IT applications; (10) Geox SpA, clothing.

Legality of the scheme

- (38) The Italian authorities have put the scheme into effect without prior notification to the Commission and have therefore failed to fulfil their obligation under Article 88(3) of the Treaty. In so far as the measure constitutes state aid within the meaning of Article 87(1) of the Treaty and has been put into effect without prior approval from the Commission, it is to be classed as unlawful aid.

Compatibility

- (39) In so far as the measure constitutes state aid within the meaning of Article 87(1) of the Treaty, its compatibility must be assessed in the light of the exceptions provided for in Article 87(2) and (3) of the Treaty.
- (40) The Italian authorities have not explicitly challenged the Commission's assessment, set out in its letter of 18 March 2004 initiating the formal investigation, that none of the exceptions provided for in Article 87(2) and (3) of the Treaty, whereby state aid may be considered compatible with the common market, applies in the present case. Nor has the Commission found any other elements that could invalidate this conclusion.
- (41) The advantages in question are either unrelated to any expenses or linked to expenses that are not eligible for aid under the Community block exemption regulations or guidelines.
- (42) The exceptions provided for in Article 87(2) of the Treaty, which concern aid of a social character granted to individual consumers, aid to make good the damage caused by natural disasters or exceptional occurrences and aid granted to certain areas of the Federal Republic of Germany, do not apply in this case.
- (43) Neither does the scheme qualify for the exception allowed by Article 87(3)(a) of the Treaty for aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, because the measure in question applies throughout Italy and not only in the Article 87(3)(a) areas of the country. Finally, the scheme does not appear to contribute in any way to the development of such areas.
- (44) In the same way, the scheme cannot be considered to be an important project of common European interest or to remedy a serious disturbance in Italy's economy, as

provided for by Article 87(3)(b) of the Treaty; nor does it have as its object the promotion of culture and heritage conservation as provided for by Article 87(3)(d) of the Treaty.

- (45) Finally, the scheme in question must be examined in the light of Article 87(3)(c) of the Treaty. This Article provides for the authorisation of 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 that is contrary to the common interest. The tax advantages granted by the scheme are not linked to specific investments, job creation or specific projects. They simply constitute a reduction in the costs that would normally have to be borne by the firms concerned in the course of their business and must therefore be regarded as operating aid that is incompatible with the common market.

VI. CONCLUSIONS

- (46) The Commission concludes that the tax incentives granted under this measure constitute operating aid that does not qualify for any of the exceptions to the general ban on such aid and is therefore incompatible with the common market. The Commission also finds that Italy has unlawfully implemented the measure in question.
- (47) Where unlawfully granted state aid is found to be incompatible with the common market, the natural consequence of such a finding is that the aid should be recovered from the beneficiaries. Through recovery of the aid, the competitive position that existed before the aid was granted is restored as far as possible.
- (48) Although in this case the procedure was closed shortly after the end of the first tax year of application of the scheme and therefore before the tax due by most beneficiaries had to be paid, the Commission cannot rule out the possibility that some firms may already have benefited from the aid in terms, for example, of lower advance payments of taxes relating to the current tax year.
- (49) The Commission notes that, following the opening of the formal investigation, the Italian authorities publicly warned the scheme's potential beneficiaries of the possible consequences should the Commission find that the measure in question constituted incompatible aid. The Commission nevertheless considers it necessary that any aid already made available to the beneficiaries should be recovered.

- (50) To that end, Italy should be required to enjoin the potential beneficiaries of the scheme, within two months of the date of notification of this Decision, to reimburse the aid with interest calculated in accordance with Chapter V of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁽⁹⁾. In particular, where the aid has already been made available through reductions in payments of taxes due for the current tax year, Italy must collect the entire tax due by means of the final scheduled payment for 2004. In any event, full recovery must be completed at the latest by the end of the first tax year following the date of notification of the present Decision.
- (51) Italy should be required to provide the Commission with the necessary information, compiling a list of the beneficiaries concerned and indicating clearly the measures planned and already taken to secure immediate and effective recovery of the unlawful state aid. It should also be called upon to forward to the Commission, within two months of the notification of this Decision, all documents giving evidence that recovery proceedings have been initiated against the beneficiaries of the unlawful aid.
- (52) This Decision concerns the scheme as such and must be implemented immediately, including recovery of aid granted under the scheme. However, it is without prejudice to the possibility that all or part of the aid granted in individual cases may be deemed compatible, in particular under Article 5(b) of the Block Exemption Regulation for aid to SMEs,

HAS ADOPTED THIS DECISION:

Article 1

The state aid scheme in the form of tax incentives for companies admitted to listing on a regulated European market, provided for by Articles 1(1)(d) and 11 of Decree-Law No 269 of 30 September 2003, which Italy has put into effect, is incompatible with the common market.

Article 2

Italy shall abolish the aid scheme referred to in Article 1 with effect from the tax year current on the date of notification of this Decision.

Article 3

1. Italy shall take the necessary measures to recover from the beneficiaries the aid referred to in Article 1 and unlawfully made available to them.
2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective implementation of the Decision.
3. The recovery shall be completed at the earliest opportunity. In particular, where the aid has already been made available by means of lower part-payments of taxes due for the current tax year, Italy shall collect the entire tax due by means of the final scheduled payment for 2004. In all other cases, Italy shall recover the tax due at the latest by the end of the tax year current on the date of notification of this Decision.
4. The aid to be recovered shall bear interest, running from the date on which it was first put at the disposal of the beneficiaries until its actual recovery.
5. The interest shall be calculated in accordance with Chapter V of Commission Regulation (EC) No 794/2004.
6. Within two months of the date of notification of this Decision, Italy shall enjoin all beneficiaries of the aid referred to in Article 1 to reimburse the unlawful aid, with interest.

Article 4

Within two months of the date of notification of this Decision, Italy shall inform the Commission of the measures already taken and planned to comply with it. This information shall be provided using the questionnaire in Annex I to this Decision. Within the same period of time, Italy shall transmit all documents giving evidence that the recovery proceedings have been initiated against the beneficiaries of the unlawful aid.

Article 5

This Decision is addressed to the Republic of Italy.

Done at Brussels, 16 March 2005.

For the Commission

Neelie KROES

Member of the Commission

⁽⁹⁾ OJ L 140, 30.4.2004, p. 1.

ANNEX

Information regarding the implementation of Commission Decision of 16.03.2005 on aid scheme C8/2004 (ex NN164/2003) implemented by Italy in favour of newly listed companies

1. Total number of beneficiaries and total amount of aid to be recovered

1.1 Please explain in detail how the amount of aid to be recovered from individual beneficiaries will be calculated

- The principal
- The interest.

1.2 What is the total amount of unlawful aid granted under this scheme that is to be recovered (gross aid equivalent; at ... prices)?

1.3 What is the total number of beneficiaries from whom unlawful aid granted under this scheme is to be recovered?

2. Measures already taken and planned to recover the aid

2.1 Please describe in detail what measures have already been taken and what measures are planned to ensure immediate and effective recovery of the aid. Please also indicate where relevant the legal basis for the measures taken/planned.

2.2 By what date will the recovery of the aid be completed?

3. Information by individual beneficiary

Please provide details for each beneficiary from whom unlawful aid granted under the scheme is to be recovered in the table below.

Identity of the beneficiary	Amount of unlawful aid granted (*) Currency:	Amounts reimbursed (°) Currency: ...

(*) Amount of aid put at the disposal of the beneficiary (in gross aid equivalent; at ... prices)

(°) Gross amounts reimbursed (including interests)

COMMISSION DECISION

of 21 September 2005

on State aid No C 5/2004 (ex N 609/2003) which Germany is planning to implement for Kronoply

(notified under document number C(2005) 3497)

(Only the German text is authentic)

(Text with EEA relevance)

(2006/262/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

1. PROCEDURE

- (1) By letter dated 22 December 2003 (A/39031), Germany notified the Commission that it was planning to award an investment grant to Kronoply GmbH, Heiligengrabe (Brandenburg) (hereinafter 'Kronoply') under the multi-sectoral framework on regional aid for large investment projects ⁽²⁾ ('1998 multisectoral aid framework'). The notified aid was registered under No N 609/03.
- (2) By letter dated 18 February 2004 (SG/D/200649), the Commission informed Germany of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽³⁾. The Commission called on interested parties to submit their comments.

- (4) By letter dated 19 March 2004 (A/32003), Germany submitted its comments.

- (5) By letter dated 24 May 2004 (A/33878), Luther Menold Rechtsanwalts-gesellschaft mbH submitted comments on behalf of Kronoply. The comments were forwarded to Germany on 19 November 2004 (D/58277).

2. DETAILED DESCRIPTION OF THE AID

2.1. First notification N 813/2000

- (6) The present case is related to Case No N 813/2000, in which the Commission approved aid to Kronoply.
- (7) On 3 July 2001 (SG/D/289524) the Commission approved a gross aid intensity of 31,5% for Kronoply under the 1998 multisectoral aid framework in connection with the construction of a production plant for Oriented Strand Board ⁽⁴⁾ ('OSB') in Heiligengrabe, Brandenburg, an assisted area within the meaning of Article 87(3)(a) of the EC Treaty. The aid intensity was set 3,5 percentage points lower than the maximum because the relevant market was considered to be in decline.
- (8) The Commission calculated the three assessment criteria to be applied in determining the maximum allowable aid intensity under the 1998 multisectoral aid framework. Consequently, in order to comply with those criteria, the maximum allowable aid intensity was calculated to be 31,5% (competition factor 0,75, capital-labour factor 0,8 and regional impact factor 1,5). The amount of aid involved was therefore €35,4 million ⁽⁵⁾.

⁽⁴⁾ OSB is a wooden panel used in construction and consisting of three layers of 'strands' made primarily of pine. It is used in timber frame construction, in particular for the refurbishment and restoration of old buildings, in the prefabricated building industry and in the packaging industry.

⁽⁵⁾ Consisting of investment aid in the form of (i) a non-repayable grant amounting to €19,92 million under the 29th general plan of the joint Federal Government/Länder scheme for improving regional economic structures and (ii) an investment allowance of €15,48 million under the Investment Allowance Law 1999.

⁽¹⁾ OJ C 258, 20.10.2004, p. 12.

⁽²⁾ OJ C 107, 7.4.1998, p. 7.

⁽³⁾ See footnote 2.

(9) Calculation of the competition factor caused some disagreement between the Commission and Germany. Both sides agreed, however, that the relevant market consisted of OSB and plywood products. Germany initially provided studies which showed that this market was not in decline. The Commission had doubts concerning those studies because the results hinged on exceptionally strong demand growth for 2000 as compared with previous years. Information was exchanged on several occasions before Germany reduced the notified aid intensity from 35% to 31,5%:

- By letter dated 22 December 2000 (A/40955), Germany notified its intention to grant aid to Kronoply under the 1998 multisectoral aid framework.

- On 3 January 2001 (D/56400) the Commission requested further information. A meeting was held on 11 January 2001 between representatives of the German Government, the Land of Brandenburg, the company involved and the Commission. The German Government provided the requested information by letters dated 9 February 2001 (A/31359) and 20 February 2001 (A/31463). By letter of 9 April 2001 (D/51511), the Commission sent additional questions to which Germany replied on 21 May 2001 (A/34090).

- By letter dated 19 June 2001 (A/34812), Germany reduced the notified aid intensity from 35% to 31,5%.

- By letter dated 5 July 2001 (SG/D/289525), the Commission informed Germany that it had no objections to the aid.

(10) By letter dated 3 January 2002 (A/30013), Germany requested an amendment to the Commission decision. It provided evidence that the growth in demand estimated for 2000 had been achieved and that the market was therefore not in decline. By letter dated 5 February 2002 (D/50463), the Commission refused to amend its earlier decision because the aid had been assessed on the basis of a correct calculation of all the relevant factors. More specifically, the Commission could not amend its decision for the following reasons: the assessment of the competition factor relied on a comparison between the evolution of the apparent consumption of the product in question and the growth rate in manufacturing as a whole during the period 1994-1999 and on a forecast which, at the time of the decision, was correct.

2.2. Second notification N 609/2003

(11) An attempt was made with the second notification to achieve the maximum intensity of 35%, which had

been rejected previously, by granting additional aid equivalent to 3,5% (or €3 939 947).

(12) Germany argued that the market definition given in the original notification N 813/2000 had been factually wrong and referred to Article 9 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽⁶⁾ ('Regulation (EC) No 659/1999'), which allows the revocation of a decision under the following conditions: *The Commission may revoke a decision taken [...] where the decision was based on incorrect information provided during the procedure which was a determining factor for the decision.*

(13) While the relevant market was defined in the original notification as OSB and plywood, Germany claimed that the newly submitted studies showed that the relevant market was more correctly defined as OSB and only certain segments of plywood. Using this new market definition, the relevant market would not be in decline during the period concerned (see point 3.4 of the 1998 multisectoral aid framework) and so the full aid intensity of 35% would have to be approved.

2.3. Decision to initiate the procedure

(14) The Commission did not comply with the request by Germany that, on the basis of a different definition of substitutable products, the relevant market should be limited to OSB and certain segments of plywood.

(15) The Commission did not consider a reassessment of the market to be necessary because two fundamental elements were missing, and this gave rise to serious doubts as to whether the aid was compatible with the common market:

- *Lack of incentive:* The Commission expressed serious doubts about the existence of any incentive effect of the notified aid because the investments had already been made. If the aid does not provide any incentive, the derogations laid down in Article 87(3)(a) and (c) of the EC Treaty concerning regional development do not apply.

- *Lack of necessity:* The Commission seriously doubted that aid for investments already made could still be considered necessary to facilitate the development of certain economic activities or of certain economic areas within the meaning of Article 87(3)(a) and (c). In the case in point, the aid intensity of 31,5% was sufficient to trigger the investment.

⁽⁶⁾ OJ L 83, 27.3.1999, p. 1; as amended by the 2004 Acts of Accession.

3. COMMENTS FROM GERMANY

(16) Germany insisted that the Commission had to reassess the market in accordance with Article 9 of Regulation (EC) No 659/1999:

- The aid would be granted under the joint Federal Government/Länder scheme for improving regional economic structures, which the Commission approved as a regional aid scheme. The Commission's duty, therefore, was simply to assess whether the measure notified complied with the requirements set out in the approved aid scheme and was compatible with the 1998 multisectoral aid framework. As the aid concerned by the new notification fulfilled all these requirements, the aid measure was clearly investment aid and not operating aid.
- The European Court of First Instance confirmed in its judgment in *Kronoply* ⁽⁷⁾ that it was possible to notify additional aid or a change to existing aid. The Commission could not, therefore, classify the aid in the second notification as operating aid on the grounds that the project had already been completed. Otherwise, the possibility of notifying further aid measures – as confirmed by the Court – would be meaningless.

4. COMMENTS FROM INTERESTED PARTIES

(17) Kronoply insisted that several notifications were possible for the same investment project and supported its line of argument with rulings from several court cases:

- The European Court of First Instance confirmed in *Kronoply* ⁽⁸⁾ that additional aid or a change to existing aid was possible: *'Furthermore, the national authorities cannot be denied the right to notify a measure with which further aid shall be granted or an existing aid measure shall be amended.'*
- A similar opinion was expressed in *Nuove Industrie Molisane Srl* ⁽⁹⁾: *'...the [Commission] Decision does not preclude the possibility for the Italian authorities to notify a project to introduce new aid in favour of the applicant, or to amend the aid already granted it.'*

(18) Kronoply also emphasized that the Commission had to assess the new notification on its own merits and advanced two main arguments for this:

- The Commission could not rely on the earlier market assessment because it had been based on a factually wrong market definition.

- Kronoply had no possibility of having the Court review the Commission's original decision because its interests were not affected ⁽¹⁰⁾.

(19) Kronoply denied that there was any lack of incentives and supported this view with the following main arguments:

- Point 4.2. of the Guidelines on national regional aid ⁽¹¹⁾ ('regional aid guidelines') indicates how to test whether there is an incentive. It reads as follows: *'In addition, aid schemes must lay down that an application for aid must be submitted before work is started on the projects.'* Kronoply fulfilled this requirement by applying to the national authorities for aid before the start of the project. Therefore the aid provided the desired incentive and fulfilled the criterion of necessity with a view to promoting economic development within the meaning of Article 87(3)(a) of the EC Treaty.
- Kronoply had consistently applied for an aid intensity of 35%. The reduction in the intensity of the notified aid did not mean that further aid was no longer necessary. As the formal procedure might take up to eighteen months, it was more advantageous for the recipient to receive immediately the part of the aid the admissibility of which was not challenged by the Commission.

5. ASSESSMENT

(20) Having considered the comments submitted by Germany and Kronoply, the Commission maintains the position it took in the decision instituting the procedure, viz. that a reassessment of the market under the 1998 multisectoral aid framework is not necessary because the two fundamental elements of incentive and necessity are missing in the present case.

5.1. No further eligible investment costs within the meaning of the regional aid guidelines

(21) The Commission takes the view that the present notification N 609/03 (dated 22 December 2003) has to be regarded as a separate and second notification of aid for Kronoply – albeit aid that does not give rise to any new investment or jobs. Consequently, there are no new additional eligible costs within the meaning of the regional aid guidelines that might justify the granting of additional aid.

⁽⁷⁾ Case T-130/02 *Kronoply v Commission* [2003] ECR II-4857.

⁽⁸⁾ See footnote 7, paragraph 50.

⁽⁹⁾ Case T-212/00 *Nuove Industrie Molisane Srl v Commission* [2002] ECR II-347, paragraph 47.

⁽¹⁰⁾ See footnote 9, paragraph 41.

⁽¹¹⁾ OJ C 74, 10.3.1998, p. 9.

(22) The Commission approved investment aid for Kronoply amounting to €35.4 million in its decision SG (2001) D/289524 of 3 July 2001, which was based on the information provided by the German authorities at the time. It decided not to raise any objections and approved the aid as finally proposed by Germany. The decision was accepted by Germany and Kronoply. The aid was subsequently granted by the German authorities and Kronoply completed its investment project on 31 January 2003.

(23) Only eighteen months after the Commission's final decision – and almost a year after completion of the investment project – Germany provided a new market definition by notification of 22 December 2003 and explained that, on the basis of new studies, the relevant market was more correctly defined as the market for OSB and only certain segments of plywood. As already stated in its decision to open the formal investigation procedure, the Commission will not, under these circumstances, reconsider its previous decision. It takes the view that the submission of a different market definition by Germany cannot be subsumed under Article 9 of Regulation (EC) No 659/1999.

(24) In line with the judgment of the Court of First Instance in *Kronoply*, the Commission considers that it is indeed possible for a Member State to notify, and for the Commission to approve, additional aid or a change to an approved project, or even different tranches of state aid for a given project, provided that both the incentive effect and the necessity of the aid can be established for each tranche. However, Germany did not notify any additional investment projects planned by Kronoply in addition to the already completed project. Besides, the project to be financed had been completed about one year before the new aid project was notified. The Commission has thus come to the conclusion that this second notification was designed simply to achieve the higher aid intensity of 35% rejected previously and that there were no additional eligible costs for which aid of €3 936 947 could be approved and no incentive effect or necessity.

(25) As the Court of Justice of the European Communities ruled in *Germany v Commission* ⁽¹²⁾, the Commission has to consider such aid as operating aid because it is granted without imposing any obligation on the part of recipients and is intended to improve the liquidity situation of their undertakings.

5.2. Incentive effect

(26) Even though the Commission considers that the foregoing comments are sufficient to show that

granting additional aid will not lead to new investments or to any incentive effect, it would like to expand on the concept of incentive effect in response to the comments submitted by Germany and Kronoply.

5.2.1. Investment process

(27) Business investment should be seen as a dynamic process. It is important to differentiate between the *ex ante* and the *ex post* stages:

- Companies decide *ex ante* whether or not to undertake an investment, basing their calculations on the expected revenues and costs of the project. If the expected return on the investment project is higher than the required rate of return, they will embark on the project. Regional aid should be an incentive for companies to change their behaviour and to invest in regions in which they would otherwise not invest.

- Once an investment has been undertaken, it is difficult to reverse *ex post* because a substantial part of it goes into specific assets which cannot easily be redeployed. In selling such assets, the seller would lose some of the investment capital.

5.2.2. Ex ante assessment of the incentive effect under the regional aid guidelines

(28) Point 4.2 of the regional aid guidelines applies the following test to determine whether or not the aid has an incentive effect: the beneficiary must apply for aid before the start of the project. If this condition is fulfilled, the Commission assumes that there is an incentive effect.

(29) In their comments, Germany and Kronoply claimed that the test in point 4.2 of the regional aid guidelines was met because Kronoply had submitted its aid application before the start of the project.

(30) The test of point 4.2 is designed to check for the incentive effect without unduly delaying the investment. A full analysis of the economic circumstances of the recipient's investment decision might prove very difficult or time-consuming and might therefore hold up the investment and the economic development of the region.

⁽¹²⁾ Case C-288/96 *Germany v Commission* [2000] ECR I-8237, paragraph 48.

(31) In assessing the presence of the incentive effect for the additional aid corresponding to 3,5 %, the key question is whether the difference between 31,5% and 35% changed the incentive effect and influenced Kronoply's investment decision:

- Prior to the investment, Kronoply could not know how much aid it would eventually receive since the assessment of the adjustment factors in the 1998 multisectoral aid framework is at the discretion of the Commission. Kronoply was unsure therefore whether it would be granted an aid intensity of 31,5% or 35%. It assumed that the expected intensity would lie between these two values, depending on the probabilities attached to the two possible outcomes. Kronoply based its investment decision on the expected amount of aid.
- The Commission notes that Kronoply decided to undertake the investment even though the precise amount of aid or the aid intensity was not known. Moreover, Kronoply completed the investment after an aid intensity of 31,5% was approved. It was, therefore, clearly prepared to take on the risk attaching to an aid intensity of only 31,5%.
- The fact that Kronoply met the test of point 4.2 of the regional aid guidelines does not therefore mean that the expectation of these extra 3,5 percentage points provided an incentive effect.

5.2.3. Ex post assessment of the incentive effect on the basis of the facts

(32) Instead of examining even more closely the *ex ante* decision of Kronoply, the Commission considers it more appropriate to rely on the facts. It is apparent that Kronoply decided to invest and continued its operations after having been granted an aid intensity of only 31,5%. The investment project was completed as originally planned. Kronoply did not scale down the investment project in response to the lower aid intensity.

(33) Whether further aid is granted or not, Kronoply will not change its behaviour: There is no indication that further aid will induce it to increase production or enlarge its production facilities. As the investments have already been carried out, there is also no reason to assume that Kronoply will shut down production if it does not receive any more aid.

(34) Accordingly, the Commission has come to the conclusion that granting further aid of 3,5% will not provide any incentive effect.

(35) As stated in the decision to initiate the procedure, for aid measures to help promote the development of certain economic activities or of certain economic areas within the meaning of Article 87(3)(a) and (c) of the EC Treaty, they must act as an incentive. If, as in the case in point, the investments have already been carried out, the aid provides no such incentive and does not lead to new investment or job creation. Therefore the Commission is not in a position to justify the aid because of an increase in new investment or job creation within the meaning of Article 87(3)(a) and (c). It again concludes that the additional aid of €3 936 947 constitutes operating aid.

5.3. Necessity

(36) As regards the statements in the decision to initiate the procedure, the Commission considers that the principle of necessity derives directly from the logic of state aid control. It can declare aid compatible with Articles 87(2) and (3) of the EC Treaty only if it can establish that the aid contributes to the attainment of one of the objectives specified, something which, under normal market conditions, the recipient firms would not achieve by their own actions. This is in accordance with the Commission's standard practice, as confirmed by the Court of Justice of the European Communities in *Philip Morris* ⁽¹³⁾.

(37) As explained in paragraphs 26 to 35, the planned aid does not provide any incentive for new investment or job creation. It does not require from the recipient any *quid pro quo* or any contribution to an objective of common interest. Therefore, it is operating aid which covers current costs that Kronoply itself must normally bear.

(38) Point 4.15 of the regional aid guidelines normally prohibits operating aid. Exceptionally, however, such aid may be granted in regions eligible under the derogation in Article 87(3)(a) provided that (i) it is justified in terms of its contribution to regional development and its nature and (ii) its level is proportional to the handicaps it seeks to alleviate. Germany has not demonstrated the existence of any handicaps or shown how the additional aid is to contribute to regional development.

(39) It is evident from the facts that any further aid is not necessary because Kronoply decided to continue its operations even after only the lower aid intensity of 31,5% was approved. This means that Kronoply runs a viable economic operation or that, in any event, it does not need any more aid. At this stage, any further aid would provide a windfall profit for Kronoply.

⁽¹³⁾ Case 730/79 *Philip Morris v Commission* [1980] ECR 2671.

(40) The Commission concludes therefore that, in the present case, the aid is also not compatible with Article 87(3)(a) of the EC Treaty because it is not necessary for regional development.

87(1) of the EC Treaty. As the aid neither provides any incentive effect nor is necessary, none of the derogations in Article 87(2) or (3) apply. The aid therefore constitutes incompatible operating aid and may not be implemented,

(41) Lastly, it will be examined whether the derogations in Article 87(2) and (3) are applicable:

HAS ADOPTED THIS DECISION:

- The derogations in Article 87(2), which concern aid of a social character granted to individual consumers, aid to make good the damage caused by natural disasters or exceptional occurrences and aid granted to compensate for the economic disadvantages caused by the division of Germany, do not apply in this case.

Article 1

The state aid which, according to notification N 609/2003, Germany is planning to implement for Kronoply, amounting to €3 936 947, is incompatible with the common market.

- The aid cannot be considered as aid for a project of common European interest or to remedy a serious disturbance in the German economy, as provided for by Article 87(3)(b). Nor does it have as its object the promotion of culture and heritage conservation, as provided for by Article 87(3)(d).

The aid may accordingly not be implemented.

Article 2

Germany shall inform the Commission, within two months of notification of this decision, of the measures taken to comply with it.

- Article 87(3)(c) provides for the approval of aid to facilitate the development of certain economic activities or of certain economic regions, where such aid does not adversely affect trading conditions to an extent that is contrary to the common interest. As the aid has been found to be incompatible with Article 87(3)(a) because it neither provides an incentive effect nor is necessary, the aid cannot be declared compatible with Article 87(3)(c) for the same reasons.

Article 3

This decision is addressed to the Federal Republic of Germany.

Done at Brussels, 21 September 2005.

6. CONCLUSIONS

(42) The Commission concludes that the notified aid constitutes state aid within the meaning of Article

For the Commission

Neelie KROES

Member of the Commission