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II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 18 February 2004

on State aid C27/2001 (ex NN 2/2001) concerning the implementation in France of a programme to control pollution of agricultural origin (PMPOA) during the period 1994 to 2000

(notified under document number C(2004) 415)

(Only the French text is authentic)

(2007/51/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

by the Commission by letter dated 11 July 2000. The French authorities replied by letter dated 26 December 2000.

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

Having asked interested parties to submit their observations in accordance with that Article ⁽¹⁾ and having regard to those observations,

Whereas:

- (2) On 13 February 1991 France notified a State aid relating to aid for investments in individual pig farms in favour of the environment. The Commission authorised the aid by letter of 11 December 1991 ⁽²⁾. In addition, on 20 April 1993, as part of a part-financed structural programme and in accordance with Article 29(4) of Council Regulation (EEC) No 2328/91 of on improving the efficiency of agricultural structures ⁽³⁾, France forwarded DEPSE/SDEE circulars No 93-7005 of 2 March 1993 and No 7027 of 5 November 1992 on investment aid in the beef and veal sector. In accordance with Regulation (EEC) No 2328/91 on 29 July 1993 the Commission adopted a Decision authorising a Community financial contribution to that joint measure ⁽⁴⁾. However, the national aid was not notified to the Commission within the meaning of Article 88(3) of the Treaty ⁽⁵⁾. The French authorities declared that those provisions, which predated the entry into force of the PMPOA, had been integrated into it by DEPSE circular

I. PROCEDURE

- (1) Following information received by the Commission on the existence in France of a programme to control pollution of agricultural origin ('Programme de maîtrise des pollutions d'origine agricole' — hereafter called PMPOA or the programme) the Commission sent a letter to the French authorities on 24 February 2000 requesting information on the application of that programme since 1994. By letter dated 31 May 2000 France confirmed that the PMPOA had existed since 1994. Additional information was requested

⁽²⁾ State aid N 136/91.

⁽³⁾ OJ L 218, 6.8.1991, p. 1.

⁽⁴⁾ C(93) 1888.

⁽⁵⁾ Cf. ruling of the Court of First Instance of the European Communities of 15 September 1998 in Joined Cases T-126/96 and T-127/96, *Breda Fucine Meridionali SpA and others v the Commission*, ECR [1998] II-3437. The Court accepted the Commission's argument that a communication from a Member State could not be accepted as a valid notification if it did not explicitly mention Article 93(3) of the Treaty and was not presented to the Secretariat-General. The measures in question had therefore to be considered as non-notified.

⁽¹⁾ OJ C 179, 23.6.2001, p. 18.

No 7016 of 22 April 1994. They therefore form the beef and pig sector components of the PMPOA. That circular was also not notified to the Commission within the meaning of Article 88(3) of the Treaty.

- (3) By letter of 13 June 1994 France notified a State aid for investments to protect the environment in the poultry sector. That scheme, later integrated into the PMPOA as its poultry sector component, was authorised by the Commission by letter of 26 April 1995 ⁽⁶⁾.
- (4) France did not notify within the meaning of Article 88(3) of the Treaty the agreement of 8 October 1993 creating the programme, nor any other document describing the characteristics of the PMPOA relating in particular to the programme's financing key ⁽⁷⁾. The Commission, in particular, was not informed of the participation of water supply agencies in financing the programme.
- (5) Moreover, in respect of the beef and veal sector, France did not notify the Commission of the planned investment aids.
- (6) No notification regarding young farmers was submitted to the Commission.
- (7) By letter of 11 April 2001 the Commission informed France of its decision to initiate proceedings as provided for in Article 88(2) of the Treaty against the PMPOA. The present Decision concerns only the application of the PMPOA in the period 1994-2000.
- (8) The Commission decision to initiate proceedings was published in the *Official Journal of the European Communities* ⁽⁸⁾. The Commission invited the other Member States and interested parties to submit their comments on the aids in question. The Commission received no comments from third parties. France submitted its comments by letter of 21 June 2001.
- (9) Extension of the PMPOA from 2001 was authorised by the Commission by letter of 30 October 2001 ⁽⁹⁾.

II. DESCRIPTION

1. The aid measure

- (10) The PMPOA is the result of an agreement between the French state and French agricultural trade organisations

dated 8 October 1993 which entered into force on 1 January 1994. The purpose of the programme was to enable farmers to adapt their equipment and working practices with a view to better environmental protection in general and water protection in particular. The pollution identified as the subject of the programme was water pollution by plant health products and by mineral and organic fertilisers.

- (11) The PMPOA particularly sought compliance with Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources ⁽¹⁰⁾ (hereafter called the nitrates Directive) and the national provisions to introduce a code of good farming practice. It related to all production methods: livestock and crops.

- (12) In order to satisfy the legal requirements and to avoid polluting water resources with animal waste it was deemed necessary to improve animal housing and to manage liquid waste. The cost of the work on housing alone was indicatively estimated at that time at approximately EUR1 billion up to 2002. An investment programme was launched; its overall financing plan was: livestock rearers: one-third of the cost; the State (Ministry of Agriculture and Fisheries) and local authorities, one-sixth each; water supply agencies: one-third ⁽¹¹⁾. In return, livestock farmers likely to qualify for aid had to pay the pollution charge levied by the water supply agencies.

⁽¹⁰⁾ OJ L 375, 31.12.1991, p. 1.

⁽¹¹⁾ According to information available to the Commission — part of it taken from the water supply agencies' website (<http://www.eaufrance.tm>) — the agencies are public bodies created in 1964 enjoying legal personality and financial independence. They operate under the supervision of the Ministers of the Environment and of the Economy and Finance and are managed by an administrative council representing the various water users. The agencies are split up over six major water regions covering the entire territory of mainland France: Adour-Garonne, Artois-Picardie, Loire-Bretagne, Rhin-Meuse, Rhône-Méditerranée-Corse and Seine-Normandie. These have identical structures: a regional committee, a water supply agency and its administrative council. Their policies are defined by the regional committee and are based on four major components: management of water resources, pollution control, conservation of aquatic environments and monitoring the quality of inland and coastal waters.

Between 1997 and 2001 the agencies planned aid to finance works estimated at some €16 billion to conserve water resources and control pollution. They provide technical advice to local government, economic operators and farmers and provide them with funding so that they can undertake the works needed to prevent water pollution and protect water resources. The agencies are financed by means of proportional charges imposed on water polluters, users and consumers. Those charges are then redistributed in the form of aid (subsidies and loans) to local authorities, industry and agriculture (and, more generally, to works contractors) to carry out works such as water treatment plants, sanitation networks, drinking water plants, river facilities, studies and measuring networks.

⁽⁶⁾ State aid N 342/94.

⁽⁷⁾ Cf. footnote 5.

⁽⁸⁾ Cf. footnote 1.

⁽⁹⁾ State aid N 355/2000.

- (13) By memorandum of 24 February 1994 to the relevant administrative bodies the French ministries of agriculture and of the environment defined the procedures adopted by the national monitoring committee responsible for implementing the programme: timetable, financing keys, application by rearers.
- (14) As regards the programme's link to the classified installations, the French authorities stated in the memorandum that it was in the interests of the rearers to comply with the provisions relating to protection of water resources in the ministerial decrees of 29 February 1992 on livestock farms when work under pollution control contracts was being carried out.
- (15) Implementation of the PMPOA followed a sectoral approach and was by means of circulars containing the aid rules from the Ministry of Agriculture and Fisheries to the regional and departmental prefects. At the request of the Commission the French authorities sent copies of the following circulars:
- DEPSE/SDEEA circular No 7016 of 22 April 1994, 'Aides à la mise en conformité des élevages bovins et porcins' [aid for standardising cattle and pig farms];
 - DEPSE/SDEEA circular No 7021 of 18 April 1995, 'Aides à la mise en conformité des élevages avicoles' [aid for standardising poultry farms];
 - DEPSE/SDEEA circular No 7028 of 19 June 1995, 'Aides à la mise en conformité des élevages' [aid for standardising livestock farms];
 - DEPSE/SDEEA circular No 7001 of 15 January 1996, 'Aide à la mise en conformité des élevages. Cas des jeunes agriculteurs qui s'installent à compter du 1er janvier 1996' [aid for standardising livestock farms, where young farmers set up from 1 January 1996].
- (16) Aid beneficiaries were managers or owners of property for farming use in the beef and veal, pig and poultry sectors. The aim of the investments was to redevelop existing housing so as to increase storage capacity for animal waste and improve storage equipment to bring it in line with the requirements of the nitrates Directive ⁽¹²⁾.
- (17) Financing consisted of a State contribution of 35 % of the costs in the form of a capital subsidy covering 30 % of the costs to which could be added a low-interest loan, the subsidy equivalent of which corresponded to 5 % of the costs. Participation by the water supply agencies to the extent of one-third of the costs was not mentioned in the circulars referred to in recital 15.
- (18) With regard to the beef and veal and pig sectors, aid was also planned for farmers implementing their projects under a material improvement plan (MIP) in less-favoured areas in the form of capital aid of 30 % and a loan with a subsidy equivalent of 15 %. The rates were increased in the case of young farmers (43,75 % in lowland areas and 56,25 % in less-favoured areas). For young farmers in the poultry sector an increase of 5 % via a soft loan was provided for.
- (19) DEPSE/SDEEA circular No 7001 of 15 January 1996 amended the aid rates in favour of young farmers setting up from 1 January 1996. The capital subsidy rate was increased from 30 % to 35 % in less-favoured areas and priority rural development areas. No soft loan was provided for. In other areas the capital subsidy rate was increased from 30 % to 32,5 %. A supplementary loan having a subsidy-equivalent effect of 2,5 % was permitted.
- (20) To qualify for the aid, farmers had to submit a preliminary study performed on their behalf by approved experts and resulting in the drawing up of the farmer's investment project. Analyses were used as the basis for the pollution control contract (see recital 21) and, therefore, for the definition of the eligible amount for each of the parties participating in the public financing of the work. The studies amounted to 2 % of the cost of the investments and were subsidised at the rate of 50 % by the State and 50 % by the water supply agencies up to a ceiling of FRF 6 000 before taxes (equivalent to EUR 914).
- (21) The pollution control contract was the factor which guaranteed the farmer that the aid provided for in the PMPOA would be applied and that any charge by the water supply agencies would be offset. It was a contract of confidence which of necessity highlighted the existence of environmental problems on a farm but the purpose of which was to help resolve them. It was signed by all the financial partners, including the farmer.

2. The reasons given by the Commission for initiating the examination procedure

- (22) Firstly, the Commission felt that the involvement of the water supply agencies in the PMPOA was a State aid within the meaning of Article 87(1) of the Treaty. The water supply agencies were responsible for one-third of the funding of the PMPOA's investment costs. The Commission only became aware of their involvement after dissemination of a report evaluating the management and progress of the PMPOA drawn up by the Inspectorate-General of Finances, the standing committee for the coordination of inspections of the Ministry of Agriculture and Fisheries and the *Conseil Général* for agricultural engineering, water resources and forests ⁽¹³⁾.

⁽¹²⁾ Details on the subsidised investments can be consulted in the decision to initiate the procedure.

⁽¹³⁾ Report dated 26 July 1999 published in 2000 on the website of the French Ministry of Agriculture: <http://www.agriculture.gouv.fr>.

- (23) The Commission noted the fact that Article 2 of French decree No 66-700 of 14 September 1966 on water supply agencies stipulated that the agencies were public State bodies enjoying legal personality and financial independence and that French legislation made it clear that the agencies were public in nature.
- (24) In its decision to initiate the procedure the Commission concluded that, in the light of the legislation adopted in France on the water supply agencies and their operating methods, and the decisions of the Court of Justice of the European Communities and the Court of First Instance ⁽¹⁴⁾, the water supply agencies were to be regarded as extensions of the State and that their funding of investments on agricultural holdings therefore constituted State aid ⁽¹⁵⁾.
- (25) The Commission considered that the amounts allocated to cattle, pig and poultry farmers, including those provided by the water supply agencies, conferred on those farmers an advantage from which other forms of production could not benefit. This was therefore State aid granted by France which, by distorting or being likely to distort competition by favouring certain undertakings or production sectors, was likely to affect trade between the Member States. Consequently the measure fell under Article 87(1) of the Treaty.
- (26) The Commission also concluded that the State aid put into effect by France constituted new aid not notified to the Commission which could by dint of that be considered unlawful aid within the meaning of the Treaty. The Commission based its arguments on Article 1(f) of Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁶⁾, which defines unlawful aid as new aid put into effect in contravention of the former Article 93(3) (now Article 88(3)) of the Treaty. The term new aid covers all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid.
- (27) The Commission noted that any aid scheme authorised by the Commission into which major changes were later introduced — in this case, relating to the participation of a public body in the financing of an aid notified to the Commission, thus significantly altering the financing key and, consequently, the aid rate — constituted a new aid which had to be notified to the Commission within the meaning of Article 88 of the Treaty and authorised by it. The notification obligation was established by Article 1(c) of Regulation (EC) No 659/1999. The Commission stated that varying the aid rate appeared *per se* to constitute an element modifying the substance of the aid which made notification within the meaning of Article 88(2) of the Treaty obligatory.
- (28) The Commission then carried out an assessment of the aids in question in the light of paragraph 23.3 of the Community guidelines on State aid in the agriculture sector ⁽¹⁷⁾ (hereafter 'the agriculture guidelines'), which states that any unlawful aid within the meaning of Article 1(f) of Regulation (EC) No 659/1999 is to be assessed in accordance with the rules and guidelines in force at the time the aid is granted.
- (29) With regard to the subsidised investments and the form of aid, the Commission considered that, where the pigmeat sector was concerned, the type of investment had actually been continued in the PMPOA and that the investments corresponded in the main to those notified to and authorised by the Commission. With regard to the beef and veal sector, the Commission, even though it had not examined the aid from the point of view of the Community's competition rules at the time, noted its compatibility with those rules when it initiated the procedure. With regard to the poultry sector the Commission noted that the PMPOA included exactly what it had previously authorised. Lastly, with regard to the scheme in favour of young farmers setting up from 1 January 1996, the Commission concluded that the scheme did not engender any changes in the scheme as regards the section on eligible investments, but was restricted to a change in the form of that part of the aid financed by the State.
- (30) The Commission was therefore able to conclude on the nature of the investments and the forms of aid provided for by the French authorities that the aids, while tainted with illegality, had been put into effect in compliance with the Community competition rules applicable at the time. The Commission did not therefore object to that aspect of the aid as applied.
- (31) Where the financing key for the aid was concerned, the Commission noted that, according to the rules applicable at the time the programme was launched, the ceiling for investment aid to protect the environment was 35 % of the eligible costs (45 % in less-favoured areas). The fifth indent of Article 12(5) of Regulation (EEC) No 2328/91, which provides for scrutiny of national aids in the light of former Articles 92 and 93 (now Articles 87 and 88) of the Treaty and Article 6 of that Regulation, authorised investment aid to protect the environment provided it did not give rise to

⁽¹⁴⁾ Cf. in particular: Court of First Instance judgment of 12 December 1996 in Case T-358/94, *Compagnie nationale Air France v the Commission*, ECR [1996] II-2109; Court of Justice judgment of 22 March 1977 in Case 78/76, *Steinike & Weinlig v FRG*, ECR [1977] 595; Court of First Instance judgment of 31 January 2001 in Joined Cases T-197/97 and T-198/97, *Weyl Beef Products BV and others v the Commission*, ECR [2001] II-303; Court of Justice judgment of 30 January 1985 in Case 290/83, *Commission v France*, ECR [1985] 439; Commission communication of 26 March 1997 on environmental duties, taxes and charges in the single market (COM (97) 9 final).

⁽¹⁵⁾ Cf. detailed reasoning by the Commission on the public nature of the water supply agencies in the decision to initiate the procedure.

⁽¹⁶⁾ OJ L 83, 27.3.1999, p. 1.

⁽¹⁷⁾ OJ C 28, 1.2.2000, p. 2 and corrigendum, OJ C 232, 12.8.2000, p. 17.

an increase in production. In its decision on State aid N 136/91, the Commission took account of the fact that it normally considered as compatible with the common market an aid rate of 35 % of eligible costs for that type of aid (45 % in less-favoured areas within the meaning of Council Directive 75/268/EEC of 28 April 1975 on mountain and hill farming and farming in certain less-favoured areas⁽¹⁸⁾). Those aid rates were confirmed in paragraph 3.2.3 of the Community guidelines on State aid for environmental protection⁽¹⁹⁾ shortly after entry into force of the programme.

- (32) In addition, the French authorities explained the existence and nature of those ceilings in the sectoral circulars applying the PMPOA as referred to in recital 15. They wrote that the European Union had authorised a derogating rate of 35 % for public aid to this type of investment linked to improvement of the environment.
- (33) Given that the programme's financing key provided for a contribution to investment costs of one-third by the State and local authorities (equal shares, i.e. one-sixth each), one-third by the water supply agencies and one-third by the farmers, and that the contribution by the water supply agencies constituted a State aid, the Commission concluded in its decision to initiate the procedure that the aid ceilings authorised for that type of investment appeared not to have been respected, for the result of the funding of the PMPOA by the water supply agencies would have been to increase the rate of public financing to two-thirds of the investment costs, i.e. some 66,6 % of the costs incurred. According to the Commission that was some 31,6 % (21,6 % in less-favoured areas) more than the permitted rate. A similarly excessive rate applied to the scheme in favour of young farmers setting up on or after 1 January 1996 since the amendments to the scheme related only to the form of the aid in the part financed by the State and therefore did not result in an overall increase in the assistance rate in favour of them.
- (34) However, the Commission also considered the fact since 1 January 2000, the date of application of the agriculture guidelines, it had been authorising, on the basis of paragraph 4.1.1.2 of those guidelines, aid rates for that type of investment of 40 % of costs incurred (50 % in less-favoured areas). For young farmers the accepted rate was 45 % (55 % in less-favoured areas). That meant that, applying these favourable conditions, the excess aid rates granted in 2000 would have been only 26,6 % (16,6 % in less-favoured areas) and, for young farmers, 21,6 % (11,6 % in less-favoured areas), for investments implemented from 1 January 2000 and meeting the conditions set out in the agriculture guidelines.

- (35) Since the aid authorised by the Commission for investments was based on a permitted maximum rate of public financing of 35 % of their costs (45 % in less-favoured areas), or 40 % to 55 %, depending on circumstances, from 1 January 2000, the Commission had to conclude in its decision to initiate the examination procedure that the level of aids granted under the PMPOA did not appear to tally with the aid rate it authorised and so all public funding granted above the authorised ceilings constituted a State aid incompatible with the Treaty.
- (36) Having examined the information provided by the French authorities, the Commission had doubts as to the compatibility with the common market of the aid for investments financed under the PMPOA during the period 1994-2000, in particular in respect of the aid amounts which had been granted in excess of the authorised aid rates of 35 % or 45 %. For that reason the Commission initiated the procedure provided for in Article 88(2) of the Treaty.
- (37) The Commission also concluded that the aid rate used by the French authorities for arranging for the holding analyses was in compliance with the applicable competition rules.

III. COMMENTS SUBMITTED BY FRANCE

- (38) By letter of 21 June 2001 the French authorities submitted their comments on the Commission's decision to initiate the Article 88(2) procedure against the notified aid.
- (39) The French authorities noted the Commission's legal opinion on the public nature of the aid from the water supply agencies. The authorities stated that the French government was planning to revise Act No 64/1245 of 16 December 1964 on water resources and their distribution and controlling their pollution, which defined the underlying principles of the operation of the water supply agencies for the purpose of in future submitting to Parliamentary vote the rules for calculating water charges and the guidelines for financial assistance programmes by the agencies.
- (40) Nevertheless the French authorities believed that the provisions of Article 12(5) of Regulation (EEC) No 2328/91, subsequently Article 12(3)(d) of Council Regulation (EC) No 950/97 on improving the efficiency of agricultural structures⁽²⁰⁾ could have been used to exceed the intensities of 35 % and 45 %. They stated that those provisions allowed for the prohibition of the aids and the limitations on exceeding the rates to be waived in the case of certain investments, including those for environmental protection purposes.

⁽¹⁸⁾ OJ L 128, 19.5.1975, p. 1.

⁽¹⁹⁾ OJ C 72, 10.3.1994, p. 3.

⁽²⁰⁾ OJ L 142, 2.6.1997, p. 1.

- (41) With regard to the impact on competition of the involvement of the water supply agencies in the PMPOA, the French authorities believed that the agencies were not unjustifiably favouring a specific national sector for the following reasons: The investments were non-productive so, even at high aid rates, they were a burden on the finances of the farms and placed the farmers concerned in a disadvantageous position compared to those not carrying out such investments. The latter were by far the more numerous in France. It was the French authorities' opinion that the distortion of competition would therefore generally be to the detriment of the farmers concerned and not to their benefit.
- (42) The French authorities stated that if there were a distortion of competition with in the light of Article 87 of the Treaty it could only by comparison with farmers in other Member States who had carried out similar work, but with financial aid limited to 35 %, or 45 % in less-favoured areas. They stated that the existence of such a distortion could really only be assessed on a case-by-case basis.
- (43) The French authorities pursued their argument by claiming that the actual aid rates applied to such work varied substantially from one farmer to the next depending on the precise rules for applying the programme. They explained that the rates were very generally much lower than 60 % if they were calculated using the value of the aid expressed as a percentage of the amount of the investment, in accordance with Article 7(2) of Regulation (EEC) No 2328/91 and Article 7(2) of Regulation (EC) No 950/97.
- (44) According to the French authorities, the rules for applying the aid granted by the State as communicated to the Commission define the general framework for applying the programme. The water supply agencies decided to adopt the same list of eligible works but the aid ceilings were not always the same. For instance, technical limits (in m² of covered exercise area, for example) were added locally, both for the aid from the agencies and for that from the State or local authorities, and those limits often reduced the financeable portion of the eligible works. Lastly, certain water supply agencies applied an overall ceiling on the aid by amount of nitrogen per livestock unit (UGBN).
- (45) Thus, as a result of the different ceilings the actual aid rate granted, relative to the expenditure agreed by the farmer for the eligible works, is, according to the French authorities, always in practice lower than the maximum rates permitted under the programme.
- (46) The French authorities explained that during work on improving environmental effectiveness some farmers carried out modernisation work. The latter was not eligible and did not therefore receive aid under the PMPOA.
- (47) In the cattle rearing sector, which represented 80 % of the total number of farms eligible under the PMPOA, the actual average aid rate was quite low, often between 35 % and 50 %, and also varied greatly according to production method. That was the result of a large variety of effluent — liquid, solid and most often mixed — and therefore of effluent storage in terms of both its nature (slurry or dung pits) and its capacity, and because of that investments in storage, land concreted-over and coverage for exercise areas were subject to technical limits or particularly low financial ceilings.
- (48) In intensive pig and poultry farms waste storage capacity was usually adequate to cope with periods when spreading was banned. In that case works consisted in re-sealing the pits or existing concrete surfaces or in installing bi-phase supply systems, reducing pollution at source in pig farms and improving the management of droppings in poultry farms. The actual aid rate could in that case be increased to up to 60 % of the cost of eligible works, as Table 1 shows. However, the cost of the works was usually much lower than for the beef and veal sector.
- (49) According to the French authorities, a study covering 20 000 dossiers in the Loire-Bretagne water supply region showed that the average aid rate was 40 %.
- (50) Some of those dossiers related to new structures built under the programme in cases where for various reasons it was felt inappropriate to carry out the recommended works on existing buildings. The French authorities felt that those cases had to be dealt with separately because in that case the aid no longer fell under aid for environmental protection, but instead under modernisation aid as provided for in Article 7(2)(b) of Regulation (EEC) No 2328/91 and Article 12(4)(c) of Regulation (EC) No 950/97. The amount of aid could therefore not exceed 35 % or 26,25 % (45 % or 38,75 % respectively in less-favoured areas) of the cost of the works, depending on whether the farmer could or could not obtain a material improvement plan. In such cases the actual aid rate was, in the examples shown in Table 2, always well below those rates — column (a) indicating what the cost of the environmental works would have been had the buildings been preserved.
- (51) Work on existing buildings and new structures could also be carried out on the same farm.

- (52) Lastly, if it was necessary to make the comparison on a case-by-case basis, the French authorities felt that farmers paying an annual charge to a water supply agency should under all circumstances be excluded from the scope of the comparison.

Table 1

Examples of actual aid rates for upgrading work under the PMPOA

(in FRF ⁽¹⁾)

Farm type	Improvements needed	Total amount for works (a)	Eligible amount for works (b)	Amount approved: State (c)	Amount approved: water agency (d)	Total aid (e)	Actual rate (e/b)
Mixed farm: 52 dairy cows, 20 sucklers plus replacements, or 120 UGBN	Sealing and covering exercise area. Increasing manure capacity. Construction of slurry pit.	334 154	257 372	236 550	236 550	141 930	55,1 %
60 dairy cows and replacements, or 80 UGBN	Sealing existing pit. Construction of open pit. Sealing exercise area.	328 178	328 178	272 038	272 038	163 222	49,7 %
90 dairy cows and replacements, or 120 UGBN	Creation of slurry. Increase in capacity of pit. Rainwater separation. Spreading plan.	1 220 700	671 020	495 800	495 800	252 780	36,7 %
Mixed farm: 450 fatstock pigs, 84 fatstock and dairy cattle, or 115 UGBN	Increase to 9 months in waste storage capacity. Coverage of exercise area. Water fountain for pigs.	196 380	188 330	177 225	177 225	115 195	57,5 %
147 sows, 27 boars, 1 840 fatstock pigs, or 223 UGBN	Separate water network. Covering of runs.	93 180	305 510	16 163	16 163	10 505	34,4 %
210 sows, 1 318 fatstock pigs, or 167 UGBN.	Sealing slurry pit. Drainage network. Multi-phase supply.	100 293	55 375	55 375	55 375	33 225	60 %
242 000 laying poultry, or 1 128 UGBN	Droppings removal and drying installation.	1 575 200	547 700	310 930	310 930	186 558	34,6 %

⁽¹⁾ 1 FRF = EUR 0,15

Table 2

Examples of actual aid rates in the case of the construction of new buildings

(in FRF)

Type of farm	Improvements needed	Estimated cost of old buildings (a)	Total amount for works (b)	Amount approved: State (c)	Amount approved: water agency (d)	Total aid (e)	Actual rate (e/b)
80 dairy cows and replacements, or 123 UGBN	Construction of straw pens for all animals. Installation of gutters.	380 120	468 502	328 640	90 880	118 592	25,3 %
75 sucklers and replacements, or 116 UGBN	Construction of open-run housing. Increase in slurry and dung storage.	280 634	741 807	212 436	111 211	97 094	13,1 %
82 sucklers and replacements, or 134 UGBN	Construction of open-run housing. Sealing of concrete areas. Increase in slurry and dung storage.	605 565	1 197 152	437 153	196 951	190 231	15,9 %
70 sucklers and renewals, or 110 UGBN	Construction of open-run housing. Sealing of concrete areas. Construction of slurry pit.	160 940	565 612	88 550	6 000	26 565	4,7 %
34 650 laying hens, or 214 UGBN	Construction of coops. Drop-pings storage area. Installation of droppings drier.	368 454	2 309 993	368 454	176 454	163 472	7,1 %

IV. ASSESSMENT

1.1. Existence of a selective advantage financed by State funds

1. Introduction: Article 87(1) of the Treaty

(53) Article 87(1) of the Treaty states: 'Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.'

(54) Articles 87 to 89 of the Treaty were made applicable to the pigmeat sector by Article 21 of Council Regulation (EEC) No 2759/75 on the common organisation of the market in pigmeat ⁽²¹⁾. In the beef and veal sector they were made applicable by Article 40 of Council Regulation (EC) No 1254/1999 on the common organisation of the market in beef and veal ⁽²²⁾. Prior to the adoption of the latter, they were made applicable in that sector by Council Regulation (EEC) No 805/68 on the common organisation of the market in beef and veal ⁽²³⁾. In the poultrymeat sector they were made applicable by Article 19 of Council Regulation (EEC) No 2777/75 on the common organisation of the market in poultrymeat ⁽²⁴⁾.

(55) The nature of the aid must be established for each agricultural holding having carried out investments under the PMPOA. The Commission believes that the funding of the PMPOA has conferred a selective advantage on French farmers.

(56) The Commission believes that, contrary to the claims of the French authorities in their comments, the non-productive nature of the investments does not cancel out the impact of the advantage of the aid in purely financial terms, since it takes over a cost normally incurred by the beneficiary, thus placing the latter at an advantage vis-à-vis competitors who do not receive such aid.

(57) Moreover, even assuming that such non-productive investment could initially be a financial burden on the farms by, according to the French authorities, placing the farmers in question at a disadvantage by comparison with those not carrying out such investments, it is no less true that those

⁽²¹⁾ OJ L 282, 1.11.1975, p. 1.

⁽²²⁾ OJ L 160, 26.6.1999, p. 21.

⁽²³⁾ OJ L 148, 28.6.1968, p. 24.

⁽²⁴⁾ OJ L 282, 1.11.1975, p. 77.

investments comply with a precise legal obligation and that, in the end, all the farmers concerned must carry out such an investment in order to avoid committing an infringement.

1.2. *Impact on trade*

(58) In order to establish whether the aid which is the subject of this Decision falls within the scope of Article 87(1) of the Treaty we must firstly establish whether it is likely to affect trade between the Member States.

(59) The Court of Justice has ruled that when an advantage granted by a Member State strengthens the position of an undertaking compared with undertakings competing in intra-Community trade the latter must be regarded as affected by that advantage ⁽²⁵⁾.

(60) It appears that the aid which is the subject of this Decision is likely to affect trade between Member States in so far as it favours national production to the detriment of production in other Member States. The sectors in question are particularly open to competition at a Community level and therefore highly sensitive to any measure in favour of production in one or other Member State.

(61) Table 3 shows trade between France and the other Member States in the products concerned during the first year after the PMPOA entered into force.

Table 3

France/EU 11	Beef and veal	Pigmeat	Poultry
<i>Imports — 1994</i>			
Tonnes	525 000	463 000	85 000
ECU million	1 664	860	170
<i>Exports — 1994</i>			
Tonnes	796 000	361 000	389 000
ECU million	2 368	669	863

1.3. *Conclusions on the nature of the aid within the meaning of Article 87(1) of the Treaty*

(62) The measures examined in this Decision constitute State aid within the meaning of the Treaty because they provide beneficiaries with a financial advantage from which other sectors cannot benefit. Consequently, the Commission concludes that the measures fall within the scope of Article 87(1) of the Treaty.

⁽²⁵⁾ Court of Justice judgment of 17 September 1980 in Case 730/79, *Philip Morris Holland BV v Commission*, ECR [1980] 2671, paragraph 11.

2. **The illegality of the aids in question**

(63) Article 1(f) of Regulation (EC) No 659/1999 defines unlawful aid as new aid put into effect in contravention of Article 88(3) of the Treaty. In accordance with Article 1 (c) of that Regulation the term new aid covers all aid, that is to say aid schemes and individual aid, which is not existing aid, including alterations to existing aid.

(64) Any aid scheme authorised by the Commission to which major modifications are subsequently made — in this case, relating to the involvement of a public body in the financing of the aid notified to the Commission significantly altering the financing key and, therefore, the aid rate — constitutes a new aid which must be notified to, and authorised by, the Commission within the meaning of Article 88 of the Treaty.

(65) The Court of Justice has held that the obligation to inform the Commission of plans to grant or alter aid as provided for in the first sentence of Article 88(3) of the Treaty does not apply solely to the initial plan but also covers subsequent alterations to that plan; such information may be supplied to the Commission in the course of the consultations which take place following the initial notification ⁽²⁶⁾.

(66) The notification obligation is established by Article 1(c) of Regulation (EC) No 659/1999.

(67) It must be noted that inclusion of an information sheet in the list of aids drawn up by the French Ministry of Agriculture merely has an informative value and cannot be described as a notification for the purpose of the Treaty. Moreover, the information in it makes no reference to the involvement of the water supply agencies in the programme but states that the State's contribution is 35 % of the cost of the investments.

(68) The Commission has not been able to assess the involvement of the water supply agencies in the programme or the impact that their involvement could have had on public assistance to the investments concerned. More specifically, it was not able to examine the possible impact that the involvement of a public body in financing the aid was likely to have in terms of the aid rate. Consequently, the aids actually granted by the French authorities did not necessarily comply with the conditions authorised by the Commission for State aids N 136/91 and N 342/94.

⁽²⁶⁾ Court of Justice judgment of 9 October 1984 in joined cases 91 and 127/83, *Heineken Brouwerijen BV v Inspecteur der Vennootschapsbelasting, Amsterdam and Utrecht*, ECR [1984] 3435.

(69) Variation of the aid rate constituted *per se* a factor altering the substance of the aid which made notification within the meaning of Article 88(2) of the Treaty obligatory.

(70) With regard to the beef and veal sector, the French authorities had not notified the Commission of the investment aid. They claimed, however, that once the Commission deemed the scheme eligible for a Community financial contribution they were justified in deducing that it was compatible with Community rules. Article 12(5) of Regulation (EEC) No 2328/91, which applied at that time, stipulated that aid for investment in the protection and improvement of the environment was authorised provided that it did not entail an increase in production and that it complied with Articles 92 to 94 (now 87 to 89) of the Treaty. That included the obligation to notify all State aid schemes within the meaning of the former Article 93(3) of the Treaty, all the more so as the conditions applied to the aids in 1994 were not the same as those communicated to the Commission in 1991.

(71) It is clear from the above that the State aids put into effect by France were new aids not notified to the Commission and hence unlawful within the meaning of the Treaty.

3. Examination of the compatibility of the aid

(72) Article 87 of the Treaty does, however, provide for exceptions, even though some of them are clearly not applicable, particularly those provided for in paragraph 2 of the Article. They were not invoked by the French authorities.

(73) With regard to the derogations provided for in Article 87(3) of the Treaty, these must be interpreted strictly during the examination of any regional or sectoral aid programme or of any individual case of the application of general aid schemes. They may be granted only if the Commission can establish that the aid is necessary for the realisation of one of the objectives in question. Allowing such derogations to apply to aids which do not involve such a *quid pro quo* would be tantamount to permitting interference with trade between Member States and distortion of competition that has no justification in the light of Community interest and, by the same token, undue advantages to operators in certain Member States.

(74) The Commission is of the opinion that the aids in question are not intended to promote the economic development of a region in which the standard of living is abnormally low or in which there is serious underemployment within the meaning of Article 87(3)(a) of the Treaty. Nor are they intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State within the meaning of Article 87(3)(b), or to promote either culture or

heritage conservation within the meaning of Article 87(3)(d).

(75) Article 87(3)(c) of the Treaty stipulates that aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the common market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. To be entitled to that derogation, the aid must contribute to the development of the sector in question.

(76) Turning to the investments subsidised and the form of the aid, the Commission concluded when initiating the procedure that the aid, while tainted with illegality, had been put into effect in compliance with the Community competition rules applicable at the time. The Commission has no cause to call into question that part of the aid as applied.

(77) Therefore, the resultant examination of the compatibility of the aid only concerned the aid rates applied by the French authorities.

(78) The Commission noted when initiating the examination procedure that under the rules applicable at the time the programme entered into force the ceiling for aid for environmental protection investments was 35 % of costs incurred (45 % in less-favoured areas).

(79) Nevertheless, the French authorities believe that Article 12(5) of Regulation (EEC) No 2328/91, later Article 12(3)(d) of Regulation (EC) No 950/97, could have been used to exceed the rates of 35 % and 45 %. According to the French authorities those rules permit derogations from the aid prohibitions and restrictions on exceeding those intensities in the case of certain investments, including those intended to protect the environment.

(80) The Commission initially noted that the fifth indent of Article 12(5) of Regulation (EEC) No 2328/91, which provides for national aid to be examined for compliance with Articles 92 and 93 (now 87 and 88) of the Treaty, and with Article 6 of the same Regulation, authorised aid for investments intended to protect the environment provided they did not result in an increase in production. The Commission believes it is proven that the investments targeted by the aid in question did not bring about an increase in production since they were exclusively intended for the protection of the rural environment (in particular, the storage and treatment of waste).

(81) With regard more specifically to the permitted aid rate, the Commission, in its decision addressed to France on State aid N 136/91, noted that it normally considered as

compatible with the common market a rate of 35 % of eligible costs for that type of aid (45 % in less-favoured areas).

a maximum of 40 %, or 50 % in less-favoured areas. However, in the case of investments made by young farmers within five years after setting-up, the maximum rate of aid was increased to 45 %, or 55 % in less-favoured areas.

- (82) Those aid rates were confirmed by the Community guidelines on State aid for environmental protection shortly after the PMPOA was put into effect. Paragraph 3.2.3 of those Guidelines stated that as a general rule aid for environmental investment could be authorised up to specific levels. The second paragraph of footnote 14 explained that 'for investments covered by Article 12(1) and (5) of Council Regulation (EEC) No 2328/91 [...] the maximum aid level is 35 %, or 45 % in [...] less-favoured areas [...]. These maximum aid levels apply irrespective of the size of the enterprise. Consequently, the maxima may not be increased for SMEs as provided for below in this section. For investments in Objectives 1 and 5(b) regions, the Commission reserves the right, on a case-by-case basis, to accept higher aid levels than the above, where the Member State demonstrates to the satisfaction of the Commission that this is justified.'
- (83) Regulation (EEC) No 2328/91 was repealed by Regulation (EC) No 950/97. Article 12(2)(e) of the latter stipulated that Member States could grant aid to investments intended for 'the protection and improvement of the environment, provided that such investments do not entail an increase in production capacity'. Article 12(3) stipulated that 'in the case of individual or associated holdings which satisfy the conditions of eligibility laid down in Articles 5 and 9, aids for investments which exceed the amounts laid down in Article 7(2) and (3) and 11, are prohibited'. However, pursuant to point (d) of the second subparagraph of Article 12(3) that prohibition applied only to aid intended for 'the protection and improvement of this environment'.
- (84) Article 12(2) and (3) of Regulation (EC) No 950/97 stipulated that Articles 92 to 94 (now 87 to 89) of the Treaty applied to those aids. That is tantamount to a reversion to the competition rules applicable at the time, i.e. Community practice as already cited in the decision on State aid N 137/91, and to the conditions contained in the Community guidelines for environmental protection.
- (85) The Commission, on the basis of the provisions applicable in 1994-1999 as described in this Decision, can only conclude that the maximum aid intensity applicable to the aid in question was 35 % of costs incurred (45 % in less-favoured areas) and that, therefore, aid granted in excess of those intensities was not in compliance with those provisions.
- (86) However, where the year 2000 and aid for investments in agricultural holdings are concerned, paragraph 4.1.1.2 of the agriculture Guidelines, which applied from 1 January 2000, stipulated that the maximum rate of public support, expressed as a volume of eligible investment, was limited to
- (87) Paragraph 4.1.2.4 of the agriculture Guidelines stipulated, as an exception, that where investments resulted in extra costs relating to the protection and improvement of the environment, the improvement of hygiene conditions of livestock enterprises or the welfare of farm animals, the maximum aid rates of 40 % and 50 % referred to in point 4.1.1.2 could be increased by 20 or 25 percentage points respectively. Thus, the increase could be granted for investments aimed at ensuring compliance with the recently introduced minimum standards, subject to the conditions in Article 2 of Commission Regulation (EC) No 1750/1999 of 23 July 1999 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) ⁽²⁷⁾. It had to be strictly contained within the limits of the additional eligible expenditure needed to realise the aim in question and must not concern investments having the effect of increasing production capacity.
- (88) The entry into force on 23 January 2004 of Commission Regulation (EC) No 1/2004 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products ⁽²⁸⁾ changed the legal situation on the case in question. The Regulation authorises, under certain conditions, aid to small and medium-sized agricultural holdings while exempting them from the notification obligation under Article 88(3) of the Treaty.
- (89) The French authorities explained that the beneficiaries of the investment aid under the PMPOA during the period 1994-2000 were small and medium-sized enterprises within the meaning of Article 2(4) of Regulation (EC) No 1/2004.
- (90) Article 20(2) of Regulation (EC) No 1/2004 stipulates that individual aid and aid schemes implemented before the date of entry into force of this Regulation and aid granted under those schemes in the absence of a Commission authorisation and in breach of the notification requirement of Article 88(3) of the Treaty are to be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty
- ⁽²⁷⁾ OJ L 214, 13.8.1999, p. 31. The second paragraph of Article 2 stipulates that where investments are made in order to comply with newly introduced minimum standards regarding the environment, [...] support may be granted in order to reach these new standards. In this case, a time period may be provided for the fulfilment of these minimum standards, where such a period is necessary to solve the specific problems in reaching such standards and where this period is in accordance with the specific legislation concerned.
- ⁽²⁸⁾ OJ L 1, 3.1.2004, p. 1.

and be exempt if they fulfil the conditions laid down in Article 3 of that Regulation, except the requirements in paragraph 1 and paragraph 2(b) and (c) of that Article.

- (91) Article 3(3) of Regulation (EC) No 1/2004 stipulates that aid granted under the schemes referred to in paragraph 2 of that Article is to be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and exempt from the notification requirement of Article 88(3) of the Treaty provided that the aid fulfils all the conditions of the Regulation.
- (92) Article 4 of Regulation (EC) No 1/2004 contains the conditions which have to be respected in the case in question, i.e. in the case of an unnotified investment aid scheme in favour of small and medium-sized enterprises.
- (93) Thus, under Article 4(1) of Regulation (EC) No 1/2004, aid for investments in agricultural holdings in favour of the production of agricultural products is compatible with the common market and exempt from the notification obligation if the gross aid intensity does not exceed 50 % of eligible investments in less-favoured areas and 40 % in other areas.
- (94) However, if the investments result in extra costs linked to the protection and improvement of the environment the maximum aid intensities of 50 % and 40 % may be increased by 25 and 20 percentage points respectively. This increase may only be granted for investments which go beyond the minimum Community requirements in force, or for investments made to comply with newly introduced minimum standards. The increase must be limited to the extra eligible costs necessary and must not apply in the case of investments which result in an increase in production capacity.
- (95) In the case in question it is clear that the investments are aimed at protecting and improving the environment and the applicable environmental legislation is the nitrates Directive. This was adopted in 1991 and could not therefore be described as new legislation in 2000.
- (96) The Commission has already expressed its opinion on that problem as part of State aid N 355/2000, in authorising the continuation of the PMPOA from 2001 to 2006. In line with the arguments invoked at the time, the Commission today insists that it cannot ignore the fact that the initial French action programme implementing the nitrates Directive was only adopted in 1997 and that the actual initial obligations imposed on livestock rearers on the spot, transposing that programme, are subsequent to that date. Even if it seems clear that France did not exercise due diligence in transposing the Directive and that it should have adopted the necessary provisions within time limits long since passed ⁽²⁹⁾, it cannot be denied that the initial obligations of which the livestock rearers were aware were much more recent.
- (97) Moreover, unlike some other Community rules, the Nitrates Directive contains no precise obligations to which economic operators had to agree without the prior intervention of the Member State. Neither does the Directive contain time limits within which installations have to be adapted.
- (98) For that reason, the Commission maintains its opinion that, in the light of the particular circumstances surrounding the nitrates Directive, the obligations on the rearers could be deemed to be new rules within the meaning of Regulation (EC) No 1/2004. Any other interpretation would have the effect of penalising rearers because of France's omission to take legal action.
- (99) It is the Commission's opinion that investments in non-vulnerable areas within the meaning of the nitrates Directive, where the conditions required by the Directive do not apply, could in any case benefit from the higher rates because less exacting rules than those envisaged in that Directive apply and the planned work goes beyond the minimum requirements existing in those regions.
- (100) Turning to investments to be realised in vulnerable areas, the Commission, while remaining consistent to its reasoning already expressed on the new nature of the rules imposed on the rearers, must conclude that an increase in the aid rates could be applied in the case in question. The rates could therefore be set at 60 % of investment costs, or 75 % in less-favoured areas.
- (101) Given that the figures provided by the French authorities show that the level of the aid never in practice exceeded 60 % of incurred costs the Commission believes that the aid granted during the period 1994-1999 under the PMPOA can be authorised.
- (102) In the light of the reasons given, the Commission considers the notified measure to be compatible with Community rules, in particular with Article 87(3)(c) of the Treaty.

⁽²⁹⁾ It should be noted that as the result of infringement proceedings brought against France the Commission took France to the Court of Justice for incorrect application of the nitrates Directive. The Court held against France for failure to take the appropriate steps to identify waters affected by pollution and consequently to designate the corresponding vulnerable zones (Court of Justice judgment in Case C-258/00, *Commission v France*, ECR [2002] I-05959).

V. **CONCLUSION**

(103) The measure consisting in the grant of aid to investments in favour of farmers under the programme to control pollution of agricultural origin (PMPOA) during the period 1994-2000 may benefit from the derogation provided for in Article 87(3)(c) of the Treaty,

is compatible with the common market under Article 87(3)(c) of the Treaty.

Article 2

This Decision is addressed to the French Republic.

HAS ADOPTED THIS DECISION:

Done at Brussels, 18 February 2004

Article 1

The State aid scheme put into effect by France to finance investments by farmers under the programme to control pollution of agricultural origin (PMPOA) from 1994 to 2000

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION

of 19 May 2004

concerning the aid scheme that Italy plans to implement for poultry farms — AIMA programme for the poultry industry — C 59/2001 (ex N 97/1999)

(notified under document number C(2004) 1802)

(Only the Italian text is authentic)

(2007/52/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 called on interested parties to submit their comments pursuant to the provision cited above,

Whereas:

I. PROCEDURE

- (1) By letter dated 17 December 1999, registered as received on 22 December 1999, the Italian Permanent Representation to the European Union notified the Commission, in accordance with Article 88(3) of the Treaty, the above aid scheme relating to assistance from AIMA (*Associazione italiana dei mercati agricoli* — Italian Association for Agricultural Markets) to the Italian poultry market, which was said to have suffered a drastic fall in the consumption and sales of poultry as a result of the 1999 dioxin crisis.
- (2) By letters dated 8 August 2000, registered as received on 9 August 2000, 15 November 2000, registered on 21 November 2000, 27 February 2001, registered on 1 March 2001, and 23 May 2001, registered on 28 May 2001, the Italian Permanent Representation to the European Union sent the Commission the additional information sought from the Italian authorities by letters dated 18 February 2000 (ref. AGR 5073), 2 October 2000 (ref. AGR 25123), 10 January 2001 (ref. AGR 000449) and 24 April 2001 (ref. AGR 009825).
- (3) By letter dated 30 July 2001, the Commission informed Italy of its decision to initiate the procedure provided for in Article 88(2) of the Treaty in respect of this aid.
- (4) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽¹⁾. The Commission invited interested parties to submit their comments on the measure.
- (5) The Italian authorities submitted their comments by letter of 24 October 2001, registered as received on 26 October

2001. The Commission received no comments from other interested parties.

II. DESCRIPTION

Legal basis

- (6) National programme of AIMA assistance for 1999. The legal basis for the proposed aid scheme is Article 3(1)(d) of Law No 610/82, which authorises AIMA, 'using the financial resources at its disposal and based on the situation on the market and according to availability (...), to provide food products to developing countries, designated in agreement with the Ministry for Foreign Affairs and after consulting the national food institute'.

Context

- (7) The Italian *Unione nazionale dell'avicoltura* (UNA) (National Union of Poultry Farmers) had asked AIMA to intervene on the market in order to offset the serious impact of the dioxin crisis on the consumption of poultrymeat.
- (8) Initially (see letter dated 17 December 1999), following the refusal of AIMA to purchase 17 000 tonnes of unsold meat, worth ITL 40 billion (approximately EUR 20 million), UNA had proposed selling some of the meat (11 450 tonnes) at reduced prices on the markets of developing countries; the difference between the actual commercial value of the goods and the selling price (approximately ITL 20 billion i.e. 50 % of the market value) would have been covered by AIMA.
- (9) After the Commission had stated in its letter dated 18 February 2000 that the aid appeared to be an export refund covering the difference between the price of poultry in the third world and its price on the Italian market (and, therefore, by its very nature incompatible with the common market, with the Community's obligations under the World Trade Organisation and with the common organisation of the market), the Italian authorities no longer referred, in their letter dated 10 August 2000, to the initial purpose of the aid, but argued that the losses suffered by Italian poultry farmers were the result of exceptional occurrences (rather than normal market risks) and were therefore eligible for the derogation provided for in Article 87(2)(b) of the Treaty.

⁽¹⁾ OJ C 254, 13.9.2001, p. 2.

Measure

(10) The programme provides for compensation for poultry farmers following the fall in prices and the collapse in sales caused by the dioxin crisis and the ensuing alarm among consumers. The aid corresponds to the difference between average prices in countries not affected by the crisis and prices in Italy in June-July 1999 (the period considered for the purposes of compensation). According to the Italian authorities, average prices in countries not affected by the crisis (excluding Italy) were EUR 137,89/100 kg in June and EUR 132,35/100 kg in July. The price difference was therefore EUR 53,966/100 kg in June and EUR 46,218/100 kg in July ⁽²⁾. The maximum aid is ITL 21 150/100 kg (EUR 10,92/100 kg) and ITL 15 400/100 kg (EUR 7,95/100 kg). Aid is granted for meat produced and marketed in June and July 2001 and the total amount of aid is EUR 10 329 138.

(11) In support of their argument, the Italian authorities state that the dioxin crisis caused not only a collapse in production and trade (due to disturbances on the market following the outbreak of the crisis) but also a sharp fall in the consumption of poultry products. According to data provided by the Italian authorities, 34 700 000 kg of meat was sold at reduced prices in June 1999 (compared with 52 000 000 kg of meat sold in June 1998), followed by 30 200 000 kg in July 1999 (compared with 51 000 000 kg of meat sold in July 1998 ⁽³⁾). In spite of the preventive measures taken by UNA to avoid a crisis of overproduction of poultrymeat (involving the slaughter, in March, of chicks that would have reached maturity in the next few months), the measures were unsuccessful because of the dioxin crisis.

(12) In their letters dated 21 November 2000 and 28 May 2001, the Italian authorities stress the vital role played by the media during the crisis and claim that the alarm triggered by the media aggravated the sharp fall in the consumption of poultrymeat (29,1 % in June, 10,1 % in July, 16,2 % in August and 5,9 % for the year as a whole compared with a year earlier). The collapse in demand caused a sharp reduction in prices, particularly in June and July (down 30 % and 30,1 % respectively compared with the same months of the previous year). In addition, in order to cope with this situation, Italian producers had to place 4 150 tonnes of chicken in storage in June, 9 271 tonnes in July and 2 595 tonnes in August because they could not dispose of it on the market.

⁽²⁾ Prices in Italy were EUR 83,924/100 kg and EUR 86,132/100 kg respectively.

⁽³⁾ These figures include products purchased by both private consumers and organisations.

(13) The scheme provides for no compensation for disposing of poultry or poultry products unfit for sale or consumption.

Amount of aid

(14) The maximum aid planned is ITL 20 billion (EUR 10 329 138).

Reasons for initiating the procedure

(15) The Commission initiated the procedure provided for in Article 88(2) of the Treaty because of its doubts as to the compatibility of the scheme with the common market. These doubts concerned whether or not the aid in question could be viewed as an aid to compensate for losses due to an exceptional occurrence. The Italian authorities referred to Article 87(2)(b) of the Treaty, under which aid to make good the losses caused by exceptional occurrences is compatible with the common market. The notification refers to the dioxin crisis as an exceptional occurrence.

(16) The Treaty does not define the concept of exceptional occurrence and the Commission applies this provision on a case-by-case basis after making a detailed assessment of the event concerned. In the case of the dioxin crisis affecting food and feedingstuffs produced in Belgium, the Commission had concluded that this was an exceptional occurrence within the meaning of Article 87(2)(b) of the Treaty because of the nature and extent of the restrictions that had to be imposed to protect public health in that Member State ⁽⁴⁾.

(17) There are also other precedents as regards the definition of exceptional occurrence, involving, in particular those relating to aid granted by the United Kingdom ⁽⁵⁾ during the BSE crisis: the Commission had concluded that it was an exceptional occurrence, in view, in particular, of the ban on exporting beef and veal and the fall in the consumption of beef and veal due to the uncertainties and concern caused by the news about BSE. It must however be stressed that the examples quoted involve countries directly affected (the United Kingdom in the case of BSE and Belgium in that of dioxin) and not, as in this case, a country where the market was disturbed because of consumers' concerns (about dioxin).

⁽⁴⁾ See in particular its decisions on state aid Nos NN 87/99, NN 88/99, NN 89/99, N 380/99, N 386/99, NN 95/99 and N 384/99.

⁽⁵⁾ See state aids Nos N 299/96, N 290/96, N 278/96 and N 289/96.

- (18) In the cases cited, the Commission approved the compensation paid to producers for losses of income because the losses of market share and the fall in consumption were caused not only by consumer alarm but also by exceptional factors that prevented normal trade in the products concerned (a series of measures taken by the authorities, combined with extraordinary behaviour on the part of consumers and the media). In the above-mentioned decisions, a direct and immediate link could be established between all the facts considered to comprise an exceptional occurrence and the losses suffered by the undertakings concerned.
- (19) The Italian authorities have so far been unable to offer convincing proof of a link between the losses of income suffered by agricultural producers and an exceptional occurrence, which would allow the Commission to approve the payment of compensation under Article 87(2)(b) of the Treaty. The rapid spread of alarm among consumers, resulting in a serious disturbance of the market on which Italian poultry farmers operate, the loss of market share and, consequently, a reduction in the normal level of turnover, does not appear, on the basis of the information available, to constitute in itself an exceptional occurrence within the meaning of the Treaty. In addition, there is nothing to show that the national or Community authorities adopted measures to prevent sales.
- (20) Even were it to be concluded that the media impact in Italy was greater than in other European countries, because of public sensitivity to questions of food safety and the existence of a strand of public opinion that was very critical of livestock-rearing systems, this would still not demonstrate the exceptional nature of the event.
- (21) The Commission looked into why Italian producers had not taken advantage of the situation to increase their sales of poultry products abroad (or even in Italy), since Italy, unlike Belgium, was not one of the countries directly affected by the dioxin crisis.
- (22) Another aspect to be clarified is the statement by the Italian authorities that poultry farmers were forced to freeze unsold meat (4 150,8 tonnes in June, 9 271,3 tonnes in July and 2 595,9 tonnes in August). This does not serve to rule out the possibility that the poultry products remaining unsold during the crisis could have been sold at a later date, in which case the losses incurred would be less than those declared during examination of this case. In addition, the Commission was not in a position to establish the quantities of meat remaining unsold due to the fall in demand caused by the fear of dioxin or the extent of overproduction based on an incorrect estimate of demand over the summer.
- (23) In the light of the above, the Commission could not rule out that the aid was intended simply to improve the financial situation of producers without in any way contributing to the development of the sector and, moreover, that since the aid was granted solely on the basis of price, quantity or unit of production it was to be regarded as constituting operating aid within the meaning of point 3.5 of the Community guidelines for State aid in the agriculture sector⁽⁶⁾ (hereafter referred to as the 'guidelines') and, therefore as being incompatible with the common market.
- (24) The Commission accordingly expressed doubts about the existence of a link between the loss of income suffered by Italian poultry farmers and an exceptional occurrence and about whether the aid could meet the requirements for approval under Article 87(2)(b) or Article 87(3)(c) of the Treaty (since, as regards the latter subparagraph, the aid did not appear to facilitate the development of a particular economic activity) or those for approval under one of the points of the guidelines.

III. OBSERVATIONS SUBMITTED BY ITALY

- (25) In their letter dated 24 October 2001, registered on 26 October 2001, the Italian authorities pointed out, among other things, that the fall in the consumption of poultry products in June, July, August and, to a lesser extent, up until December 1999 had not been questioned in the decision to initiate the procedure.
- (26) According to the Italian authorities, since the losses caused by a fall in sales and prices were not questioned by the Commission, they only had to establish a link between those losses and the dioxin crisis. They claim that such a link is proven by the fact that the first news about dioxin in poultry was broadcast at 7 p.m. on 28 May 1999 and the sudden downturn in sales occurred from June 1999 onwards (29 % fall compared with June 1998). They affirm that the consumption trend in Italy closely followed the public alarm triggered by the media, with a sharp drop in sales when the news concerning dioxin was first broadcast, a resumption of sales in July, when media interest declined, and a further reduction in August following news of the European Union decision to double the maximum permissible level of dioxin in certain products. They add that, from September onwards, with the media paying increasingly less attention to the matter, the consumption of poultry products gradually returned to its normal level.

⁽⁶⁾ OJ C 232, 12.8.2000.

(27) Consequently, the Italian authorities believe there is an undeniable link between consumer concern following news broadcasts about dioxin in Belgium and the fall in consumption and prices.

(28) It therefore remains to be proven that the dioxin crisis in Italy can be regarded as an exceptional occurrence within the meaning of Article 87(2)(b) of the Treaty. The Commission is said to have already recognised the exceptional character of the dioxin crisis in Belgium, in view of the nature and extent of the restrictions imposed to safeguard public health. While Italy may not have been directly affected by the dioxin crisis, according to the Italian authorities there is no question that the effects of the crisis went beyond national borders and also affected neighbouring countries, including Italy.

(29) The Italian authorities argue that an 'exceptional occurrence' within the meaning of Article 87(2)(b) of the Treaty is any unforeseeable event or any event that is difficult to predict, such as a natural disaster. Therefore, it is the event in itself that should be assessed, rather than the measures adopted to cope with the resulting crisis, which are simply a consequence of the event. They state that, in the case of BSE in the United Kingdom, the Commission had accepted the exceptional nature of the event because of the ban on meat exports, but especially because of the fall in the consumption of beef and veal caused by the uncertainty and fear aroused by the news concerning BSE. The Italian authorities claim that the same situation arose in Italy in 1999 following the dioxin scare. The ban on UK exports did not contribute to any major extent to the fall in consumption, since, even without the ban, consumers abroad would in any case have reduced their consumption of beef and veal (just as consumers in the UK did), thus preventing producers from finding other outlets abroad for their products. In the case of dioxin in 1999, it should be added that all non-member countries banned imports of poultrymeat from the EU at the time of the crisis.

(30) The Italian authorities argue that the reason why Italian producers neither turned to foreign markets nor exploited the Italian market is related to the transnational character of the event, which went well beyond the borders of Belgium.

(31) The incomes of certain Italian poultry undertakings over the period June-August 1999 clearly attests, according to the Italian authorities, to this fall in prices and sales.

IV. LEGAL ASSESSMENT

The existence of aid

(32) Under Article 87(1) of the Treaty, any aid granted by a Member State or through state resources in any form whatsoever that distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market.

(33) Article 19 of Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat ⁽⁷⁾ lays down that, save as otherwise provided in that Regulation, Articles 87, 88 and 89 of the Treaty apply to the production of and trade in the products covered by that Regulation.

(34) The planned measure provides for the payment of public funds (totalling ITL 20 billion) to certain undertakings and is granted on a selective basis to poultry farmers presumed to have suffered losses resulting from the dioxin crisis. In addition, this measure favours certain products (poultry products) and, in view of Italy's share of total EU poultry production (13,2 %), is likely to affect trade. In 2001, gross Italian poultry production amounted to 1 134 000 tonnes out of an EU-15 total of 9 088 000 tonnes ⁽⁸⁾.

(35) The measure under examination therefore constitutes state aid as defined in Article 87(1) of the Treaty.

Compatibility of the aid

(36) The prohibition on state aid is not absolute. In this case, the Italian authorities invoked the derogations provided for in Article 87(2)(b) of the Treaty, under the terms of which aid to make good the damage caused by natural disasters or exceptional occurrences can be considered to be compatible with the common market.

(37) Since the Treaty gives no definition of 'exceptional occurrence', it must be verified whether the dioxin crisis in Italy can be treated as an exceptional occurrence within the meaning of Article 87(2)(b) of the Treaty.

⁽⁷⁾ OJ L 282, 1.11.1975, p. 77.

⁽⁸⁾ Source: Eurostat and the European Commission.

(38) In accordance with the Community guidelines for state aid in the agricultural sector ⁽⁹⁾, in assessing aid to compensate for losses caused by natural disasters or exceptional occurrences, because they constitute exceptions from the general principle of the incompatibility of state aid with the common market enshrined in Article 87(1) of the Treaty, the Commission has consistently held that the concepts of natural disaster and exceptional occurrence found in Article 87(2)(b) must be interpreted restrictively. Hitherto the Commission has accepted that earthquakes, avalanches, landslides and floods may constitute natural disasters. Exceptional occurrences that have hitherto been accepted by the Commission include war, internal disturbances or strikes and, with certain reservations and depending on their extent, major nuclear or industrial accidents and fires that result in widespread loss. On the other hand, the Commission did not accept that a fire at a single processing plant which was covered by normal commercial insurance could be considered as an exceptional occurrence. As a general rule, the Commission does not accept that outbreaks of animal or plant diseases can be considered to constitute natural disasters or exceptional occurrences. However, in one case the Commission did recognise the very widespread outbreak of a completely new animal disease as an exceptional occurrence. Given the inherent difficulties in foreseeing such events, the Commission will continue to evaluate proposals to grant aid in accordance with Article 87(2)(b) on a case-by-case basis, having regard to its previous practice in this field. Such a case-by-case analysis is particularly necessary in such a sensitive sector as poultry farming, where any market measure could conflict with measures laid down under the common organisation of the market.

(39) Generally speaking, the Commission cannot accept that the chemical contamination of foodstuffs intended for human consumption constitutes, in itself, an exceptional occurrence within the meaning of Article 87(2)(b) of the Treaty. In fact, the risk of contamination is a consequence of a failure to guarantee the highest quality standards throughout the food chain.

(40) In the case of the dioxin crisis in Belgium, numerous elements had to be taken into account before it could finally be established that this crisis constituted an exceptional occurrence. The Commission first of all looked at the scope of the measures adopted to deal with the crisis and protect human health, including a ban on the marketing and retail sale of poultrymeat, a ban on the trade in and the export to third countries of certain animal products intended for human and animal consumption and the imposition of a series of conditions, including the

monitoring, the traceability and the control of the products concerned ⁽¹⁰⁾. The crisis was declared to be an exceptional occurrence on the basis of two facts, namely the announcement made by the Belgian authorities, along with the emergency measures subsequently adopted and the consequent impossibility of marketing production, which created a crisis situation for Belgian producers. This crisis situation, by its nature and its effects on the operators concerned, differed sharply from the usual situation and the conditions under which the market normally operates. The rapid spread of alarm among consumers and the ban on Belgian animals and animal products imposed by various third countries seriously aggravated the crisis and severely disrupted the market on which Belgian producers sold their products, led to a loss of market share and, consequently, a reduction in turnover compared with what would have been expected in a normal market situation.

(41) Neither the chemical contamination of products nor the fall in sales was sufficient in itself to conclude that this was an exceptional occurrence, which was the result of significant measures to restrict the marketing and exportation of these products, combined with the sharp fall in sales and prices. The alarm among consumers and their reaction to the dioxin contamination of poultrymeat were only contributing factors to the exceptional nature of the occurrence.

(42) In the case of Italian producers, it should be noted that no measures were adopted restricting the marketing or exportation of products and no restrictive measures were adopted to protect consumer health, since the country was not directly affected by the crisis. The only unforeseeable factor that created disruption on the market was the spreading of alarm among consumers and their reaction to contamination detected elsewhere.

(43) The situation in Italy cannot be compared with that in the countries directly affected by the crisis. The dioxin crisis was declared to be an exceptional occurrence in Belgium, not an exceptional occurrence in itself. As stressed in

⁽¹⁰⁾ These measures were laid down in three Commission Decisions: Commission Decision 1999/363/EC of 3 June 1999 on protective measures with regards to contamination by dioxins of certain animal products intended for human or animal consumption (OJ L 141, 4.6.1999, p. 24). These measures concerned, in particular, poultrymeat and all poultry products, such as eggs and egg products, fats and animal proteins used as raw materials in food production, etc.; Commission Decision 1999/368/EC of 4 June 1999 and Commission Decision 1999/389/EC of 11 June 1999 on protective measures with regards to contamination by dioxins of products intended for human or animal consumption derived from bovine animals and pigs (OJ L 142, 5.6.1999, p. 46 and OJ L 147, 12.6.1999, p. 26). These measures concerned, in particular, beef and veal, pigmeat and milk and all products manufactured therefrom.

⁽⁹⁾ OJ C 28, 1.2.2000, p. 2.

recitals 37 to 40, neither the chemical contamination of foodstuffs intended for human consumption nor the spread of alarm among consumers constitutes an exceptional occurrence within the meaning of Article 87(2)(b).

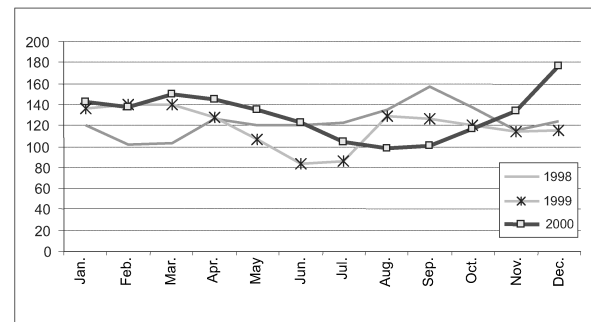
2000), this was not the case with the market for chicken in Italy, on which there was already overproduction and falling prices.

- (44) The Italian authorities also referred to the first BSE crisis in the United Kingdom. In that case, the extraordinary situation in the beef and veal sector was caused by the total ban imposed on the exportation of live animals and of beef and veal from the United Kingdom to other Member States and to non-member countries. The effects of the market measures adopted in response to the problem of BSE in the United Kingdom were unprecedented. The Commission pointed out that, in the context of the measures adopted to deal with the crisis, that there was a total ban on all British meat and meat products that might enter the human and animal food chain and an unprecedented fall in domestic meat consumption. The fall in consumption was related to the stringent restrictions imposed on the market, which had created a situation that could be described as exceptional.
- (45) In addition, concerning more recent cases of BSE in Europe⁽¹¹⁾, the Commission pointed out that a fall in sales or incomes was not regarded as an exceptional event. The collapse in sales is regarded as the consequence of an exceptional occurrence, caused by an unusual combination of factors. As in the cases referred to above, aid intended to deal with an exceptional occurrence within the meaning of Article 87(2)(b) was approved in the countries directly concerned, in which various factors contributed to the exceptional nature of the crisis: the very serious negative repercussions on European agricultural producers, the alarm that spread among consumers, the ban imposed by a large number of non-member countries on animals and meat products from the EU and a series of incidents beyond the control of livestock farmers that aggravated the crisis situation and spread fear among consumers. All this caused serious disruption of the market on which European producers sell their products, a subsequent loss of market share and a reduction in turnover compared with what would have been expected in a normal market situation.
- (46) A major factor that the Commission took into account in recognising that crisis as an exceptional occurrence was the stable and balanced situation on the market for beef and veal before the crisis. However, as shown below (see recitals 54 to 57 below) and as declared by the Italian authorities themselves (see letters dated 28 August and 15 November 2000), this was not the case with the market for chicken in Italy, on which there was already overproduction and falling prices.
- (47) In all the cases referred to above, and in particular those referred to by the Italian authorities, the exceptional occurrence occurred in the country concerned and led to the adoption of a series of restrictive, market-control and health measures which contributed to a fall in sales and prices of the products concerned.
- (48) In addition, an exceptional occurrence must at least, by its nature and its effects on the operators concerned, differ sharply from the usual situation and the conditions under which the market normally operates. The unforeseeable nature of an occurrence and the difficulty in predicting it can contribute to its exceptional nature, but are not in themselves sufficient to declare it 'exceptional' within the meaning of Article 87(2)(b) of the Treaty.
- (49) In this case, the alleged fall in sales is no different from other events that determine demand, such as closure of an export market. Such events are just as unforeseeable, but form part of the normal commercial risks to which an undertaking is exposed and are in no way exceptional within the meaning of Article 87(2)(b) of the Treaty.
- (50) According to the Italian authorities, Italian producers had no other market outlets, because the crisis had spread well beyond the borders of Belgium and the consumption of poultrymeat had fallen throughout Europe.
- (51) However, according to information available to the Commission, intra-Community exports of poultry in June and August 1999 remained at their usual levels and were actually slightly higher than in the previous year. Intra-Community exports in July were higher than the average for 1999 and than in the corresponding month of the previous year. Although this increase was not enough to absorb all the unsold production declared by the Italian authorities, it mitigated the impact of the crisis on producers, allowing them to sell a part of their production on the Community market. The Italian authorities provided no figures to prove the absence of other outlets on the Community market, simply stating that, because of the crisis, the consumption of chicken in all other European countries had also fallen. At the same time, they state that certain countries, such as Denmark, Greece, Spain, Ireland, Austria, Portugal, Finland, Sweden and the United King-
- ⁽¹¹⁾ See, *inter alia*, aids N 113/A/2001 (Decision SG 01 290550 of 27 July 2001), N 437/2001 (Decision SG 01 290526D of 27 July 2001), N 657/2001 (Decision SG 01 292096 of 9 November 2001) and NN 46/2001 (Decision SG 01 290558 of 27 July 2001).

dom, could be taken as reference countries for comparing prices (see recital 7 above) because they were not affected by the crisis. They could therefore have provided an outlet for at least a part of this surplus production.

Monthly market price of whole chickens

EUR/100 kg



(52) In addition, in view of the policy of the Commission as regards the application of Article 87(2)(b) of the Treaty in the agricultural sector, any overcompensation of losses must be ruled out.

(53) The compensation mechanism planned by the Italian authorities is based on aid for meat produced and marketed during June and July 1999, calculated on the basis of the difference between the average price in countries not affected by the crisis and the average price in Italy. According to the Italian authorities, this difference was EUR 53,966/100 kg in June and EUR 46,218/100 kg in July. The aid is ITL 21 150/100 kg (or EUR 10,92/100 kg) and ITL 15 400/100 kg (or EUR 7,95/100 kg).

(54) This calculation method raises two problems. The first concerns the statement by the Italian authorities that farmers had to freeze unsold meat⁽¹²⁾. This would have allowed poultry products unsold during the crisis to be sold at a later date and losses would have been less than declared during examination of this case. The Italian authorities made no comment on this point. Consequently, the risk of overcompensation for the losses, with a part of production being sold at a later date, probably at normal prices, cannot be ruled out. In addition, the Italian authorities declared that 43 170,1 tonnes of chickens were slaughtered in June 1999 and 47 485,9 tonnes in July, making a total of 90 656 tonnes (see letter dated 15 November 2000), while the quantities of meat sold were 34 700 000 kg in June 1999 and 30 200 000 kg in July, a total of 64 900 tonnes. The quantities frozen in June and July were 4 150,8 tonnes and 9 271,3 tonnes respectively, making a total of 13 422,1 tonnes. No information was provided regarding what was done with the part of production that was not sold or frozen and could therefore have been put to another commercial use.

(55) Italy refers to average prices in other European countries not affected by the crisis, without taking into account the fact that prices in Italy were already falling before June 1999 and that prices for poultrymeat vary. The table below shows price trends in Italy in 1998, 1999 and 2000⁽¹³⁾:

⁽¹²⁾ See letter dated 23 May 2001, in which the Italian authorities declare that producers were forced to freeze 4 150,8 tonnes in June, 9 271,3 tonnes in July and 2 595,9 tonnes in August.

⁽¹³⁾ The data refer to intra-Community exports of all poultrymeat (by carcase weight).

(56) According to the Italian authorities, the poultrymeat sector was already experiencing overproduction and, consequently, producers decided in March to slaughter a percentage of the chickens they had been intending to slaughter in April and May, the aim being to reduce the supply of meat in June by 4,8 %. According to the Italian authorities, because of the dioxin crisis, 10 % of production in June was not slaughtered and marketed but rather was kept until July and August, increasing supplies during those two months. On the basis of the data available to the Commission, the number of chicks being reared increased in February, March and April, leading to an estimated 5,6 % increase in production in June.

(57) A comparison of the data for the slaughter of chickens between May and August 1999 with those for the same months of the previous year shows an increase in the number of chickens slaughtered in May 1999, and therefore in the supply of chickens, of almost 9 %; in June 1999, the supply was down 10 % on June 1998 and in July 1999 the number of chicken slaughtered was almost 10 % up on the figure for the same month in 1998. This upward trend in supplies continued in August 1999 (+ 6,5 %). Assuming that prices follow the supply trend, it can be deduced that prices would have fallen from their April level, when they were already lower than the European average because of overproduction. Consequently, comparing the prices of chickens in Italy in June and July with the average of prices in those countries not affected by the dioxin crisis would lead to an overestimation of the value of chickens in Italy.

(58) Given the variability of prices of chickens in Italy and the downward trend in prices already seen before the dioxin crisis broke, no useful comparison can be made between selling prices in June 1999 and those in June 1998 and any comparison would, in any case, not reflect the overproduction that was already affecting the market for chicken in Italy and the resulting fall in prices already being felt. The statement by the Italian authorities that producers had already taken measures to correct the situation on the market, slaughtering chicks in March that were due to be slaughtered in April and May in order to reduce supplies in June and July, does not tally with the

numbers of chicks being reared and, therefore, with estimates for production, which indicate an increase in supplies in June and a small reduction (1,6 %) in July. Any attempt to forecast selling prices in June and July 1999 (compared with prices in June 1998 or prices recorded in other European countries not affected by the dioxin crisis) using these figures would be no more than guesswork.

reasonable compensation for loss of profit, taking into account the difficulties involved in restocking the herd or replanting and any quarantine or waiting period imposed or recommended by the competent authorities to allow the elimination of the disease before the holding is restocked or replanted. The compulsory slaughter of animals by order of the health/veterinary authorities, under a plan for preventing and eradicating the animal disease is therefore a necessary condition for granting this aid.

- (59) Consequently, the Commission can conclude that, since consumer alarm does not in itself constitute an exceptional occurrence within the meaning of Article 87(2)(b) of the Treaty and that the method of calculating losses proposed by the Italian authorities could lead to an overestimate of the losses suffered by Italian poultrymeat producers, the measure cannot be considered to be compatible with the common market under Article 87(2)(b).
- (60) Even if the aid is examined in the light of Article 87(3) of the Treaty, the only conclusion that can be reached is that it is incompatible with the common market. Article 87(3)(a) does not apply, because the aid is not intended to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment.
- (61) As regards Article 87(3)(b), the aid is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State.
- (62) As regards Article 87(3)(d) of the Treaty, the aid is not intended to achieve the objectives laid down in that subparagraph.
- (63) As regards Article 87(3)(c) of the Treaty, since the Italian authorities correctly notified the law for evaluation within the meaning of Article 88(3), the rules laid down in the Community guidelines for state aid in the agricultural sector⁽¹⁴⁾ (hereinafter the guidelines) apply. In accordance with point 23.3 of the guidelines, the guidelines apply to new state aid, including that already notified by the Member States, but on which the Commission has not yet ruled, with effect from 1 January 2000.
- (64) Aid to compensate for losses of income related to animal diseases is governed by point 11.4. It may include
- (65) From the notification, it is clear that the health/veterinary authorities issued no order to slaughter animals under a plan for preventing and eradicating an animal disease, since the chemical contamination did not affect Italian undertakings. Consequently, the measure under consideration does not meet the conditions laid down in point 11.4 of the guidelines.
- (66) In the light of the above, the aid for undertakings in the poultrymeat sector cannot be regarded as aid intended to compensate for losses caused by an exceptional occurrence within the meaning of Article 87(2)(b) or as aid eligible for one of the exemptions provided for in Article 87(3). Consequently, the aid in question appears to be operating aid incompatible with the common market in accordance with point 3.5 of the guidelines⁽¹⁵⁾.
- (67) The aid also infringes the rules laid down in Regulation (EEC) No 2777/75, under which only the following measures may be taken in respect of the products specified in Article 1 thereof: measures to promote better organisation of production, processing and marketing; measures to improve quality; measures to permit the establishment of short- and long-term forecasts on the basis of the means of production used; and measures to facilitate the recording of market price trends. In addition, in order to take account of any restrictions on free circulation imposed in consequence of measures to prevent the spread of animal disease, exceptional measures may be taken under the procedure provided for in Article 17 to support any market affected by such restrictions. Such measures may be taken only to the extent that and for such period as is strictly necessary for the support of that market. In this case, none of these measures was adopted in Italy. It therefore follows that any other type of state aid may be granted only under Articles 87 to 89 of the Treaty. As indicated in the previous recital, the aid in question does not comply with the rules governing state aid and, consequently, is incompatible with the common market.

⁽¹⁴⁾ JO C 28, 1.2.2000, p. 2.

⁽¹⁵⁾ Judgment of the Court of First Instance in Case T 459/1993 (*Siemens SA v Commission of the European Communities*) ECR [1995] 1675.

V. CONCLUSIONS

Italy may not implement the aid in question.

(68) In the light of the above, the Commission is in a position to conclude that the aid provided for under the AIMA programme for poultry farmers constitutes state aid within the meaning of Article 87(1) of the Treaty and that it is ineligible for any of the derogations provided for in Article 87(2) and (3).

Article 2

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

(69) Since the programme was notified in accordance with Article 88(3) of the Treaty, which lays down that the Member State may implement the aid only after approval by the European Commission, it is not necessary to provide for the recovery of the aid,

Article 3

This Decision is addressed to the Italian Republic.

HAS ADOPTED THIS DECISION:

Done at Brussels, 19 May 2004.

Article 1

For the Commission

The aid Italy intends to grant under the national programme of AIMA assistance for 1999 is incompatible with the common market.

Franz FISCHLER

Member of the Commission

COMMISSION DECISION

of 24 May 2004

**relating to a proceeding pursuant to Article 82 of the EC Treaty and Article 54 of the EEA Agreement
against Microsoft Corporation**

(Case COMP/C-3/37.792 — Microsoft)

(notified under document number C(2004) 900)

(Only the English text is authentic)

(Text with EEA relevance)

(2007/53/EC)

On 24 March 2004, the Commission adopted a decision relating to a proceeding pursuant to Article 82 of the EC Treaty and Article 54 of the EEA Agreement. In accordance with the provisions of Article 21 of Regulation No 17 ⁽¹⁾, the Commission herewith publishes the names of the parties and the main content of the decision, having regard to the legitimate interest of undertakings in the protection of their business secrets. A non-confidential version of the full text of the decision can be found in the authentic languages of the case and in the Commission's working languages at DG COMP's Web site at http://europa.eu.int/comm/competition/index_en.html.

I. SUMMARY OF THE INFRINGEMENT

Addressee, nature and duration of the infringement

- (1) This Decision is addressed to Microsoft Corporation.
- (2) Microsoft Corporation has infringed Article 82 of the EC Treaty and Article 54 of the EEA Agreement by:
 - refusing to supply interoperability information and allow its use for the purpose of developing and distributing work group server operating system products, from October 1998 until the date of this Decision,
 - making the availability of the Windows Client PC Operating System conditional on the simultaneous acquisition of Windows Media Player (WMP) from May 1999 until the date of this Decision.

The relevant markets*PC operating systems*

- (3) Operating systems are software products that control the basic functions of a computer. 'Client Personal Computers' (PCs) are general-purpose computers designed for use by one person at a time and that can be connected to a computer network.
- (4) A distinction could be made between (i) operating systems for so-called 'Intel-compatible' PCs and (ii) operating systems for non-Intel-compatible PCs. 'Intel-compatible' in that context relates to a specific type of hardware

architecture. 'Porting' (that is to say, adapting) a non-Intel-compatible operating system (for example Apple's Macintosh) to run on Intel-compatible hardware is a long and costly process. However, the question of the inclusion of operating systems for Intel-compatible and non-Intel-compatible PCs in the definition of the relevant market can be left open since the difference will not be such as to alter the result of the assessment of Microsoft's market power.

- (5) Operating systems for handheld devices such as personal digital assistants (PDA) or 'intelligent' mobile phones and operating systems for servers cannot presently be regarded as competitive substitutes for client PC operating systems.
- (6) As regards supply-side substitutability, a software product that is not presently in the market for client PC operating systems would have to be substantially modified in order to adapt to the specific needs of consumers in that market. This entails a development and testing process that involves a substantial amount of time (often above one year) and expenses, and entails a substantial commercial risk. Furthermore, as is established when discussing Microsoft's dominance in the relevant market, such a new entrant would face significant barriers to entry.

Work group server operating systems

- (7) 'Work group server services' are the basic services that are used by office workers in their day-to-day work, namely sharing files stored on servers, sharing printers, and having

⁽¹⁾ OJ L 13, 21.2.1962, p. 204/62. Regulation as last amended by Regulation (EC) No 1/2003 (OJ L 1, 4.1.2003, p. 1).

their rights as network users 'administered' centrally by their organisation's Information Technology department. 'Work group server operating systems' are operating systems designed and marketed to deliver these services collectively to relatively small numbers of PCs linked together in small to medium-sized networks.

tightly linked to the provision of group and user administration services. Since work group server operating systems are as a rule used with inexpensive hardware, these applications will generally not require extremely high reliability.

(8) Evidence gathered by the Commission in the course of its investigation has confirmed that work group server services are viewed by customers as constituting a distinct set of services provided by servers. In particular, the provision of file and print services on the one hand and of group and user administration services on the other hand are closely interrelated: if there were no proper group and user administration, the user would not have efficient and secure access to file and print sharing services.

(9) Work group servers (servers that run a work group server operating system) must be distinguished from high-end servers that are generally needed to support 'mission-critical' tasks, such as inventory control, airline reservations or banking transactions. Such tasks may involve the need to support storage of vast amounts of data and require maximum (often termed rock-solid) reliability and availability⁽²⁾. They are carried out by expensive machines (sometimes called enterprise servers) or by mainframes. By contrast, work group server operating systems are generally installed on less expensive computers.

(10) However, not all low-end server machines are used as work group servers. For instance, low-end servers can also be installed at the 'edge' of networks and be specialised in web serving⁽³⁾, web caching⁽⁴⁾ or firewall⁽⁵⁾ to the exclusion of the core work group server services.

(11) It should also be pointed out that whilst only file, print and group and user administration services constitute the core work group server services, work group server operating systems can be used to run applications, as is the case with other operating systems. These applications will often be

Streaming media players

(12) Media players are client-side software applications, the core functionality of which is to decode, decompress and play (and further allow the processing of) digital audio and video files downloaded or streamed over the Internet (and other networks). Media players are also capable of playing back audio and video files stored on physical carriers such as CDs and DVDs.

(13) As regards demand-side substitutability, classical playback devices such as CD and DVD players are not substitutes for media players as they offer a very limited subset of the media player functionalities. Media players which depend on third parties' proprietary technologies are, in contrast to Microsoft's WMP, RealNetworks' RealOne Player and Apple's QuickTime Player, not likely to constrain the third parties' behaviour. Media players unable to receive audio and video content streamed over the Internet are not substitutes for streaming media players since they do not satisfy specific consumer demand for streaming.

(14) As regards supply-side substitutability, the significant necessary R&D investments, the protection of existing media technologies through IP rights and the indirect network effects characterising the market translate into entry barriers for developers of other software applications including non-streaming media players.

Dominance

PC operating systems

(15) Microsoft has acknowledged that it holds a dominant position in the PC operating system market.

(16) This dominant position is characterised by market shares that have remained very high at least since 1996 (90 % + in recent years), and by the presence of very high barriers to entry. These barriers to entry are in particular linked to the presence of indirect network effects. Indeed, the popularity of a PC operating system among users derives from its popularity among vendors of PC applications, which in turn choose to focus their development efforts towards the PC operating system which is most popular among users.

⁽²⁾ Reliability is the ability of an operating system to function for a long period of time without malfunctioning or having to be rebooted. Availability is the ability of an operating system to function for a long period of time without having to be taken out of service for routine maintenance or upgrades. Another aspect of availability is how fast an operating system can get back up and running after a failure has occurred.

⁽³⁾ A web server hosts web pages and makes them accessible through standard web protocols.

⁽⁴⁾ A cache is a place where temporary copies of web objects are kept. Web caching is therefore a way of storing web files for later re-use in a way that speeds up the access for the end user.

⁽⁵⁾ A firewall is a hardware/software solution that isolates organisations' computer networks and thereby protects them against external threats.

This creates a self-reinforcing dynamic that protects Windows as the *de facto* standard for PC operating systems (applications barrier to entry).

Work group server operating systems

(17) The Commission concludes that Microsoft has achieved a dominant position in the work group server operating system market. This conclusion rests in particular on the following findings:

- The Commission has examined a variety of data in order to measure Microsoft's market share in the work group server operating system market. All these datasets confirm that Microsoft holds by far the leading market share, which, under every measure, is above 50 %, and for most measures, is in the 60 % 75 % range.
- There are barriers to entry in the work group server operating system market. In particular, the easier it is to find technicians skilled in administering a given work group server operating system, the more customers are inclined to purchase that work group server operating system. In turn, however, the more popular a work group server operating system is among customers, the easier it is for technicians (and the more willing technicians are) to acquire skills related to that product. This mechanism can be formalised from an economic perspective in terms of network effects.
- There are strong commercial and technical associative links between the PC operating system market and the work group server operating system market. As a result, Microsoft's dominance over the PC operating system market has a significant impact on the adjacent market for operating systems for work group servers.

Refusal to Supply

(18) The Decision makes the following findings.

- Microsoft has refused to provide Sun with information enabling Sun to design work group server operating systems that can seamlessly integrate in the 'Active Directory domain architecture', a web of interrelated client PC-to-server and server-to-server protocols that organise Windows work group networks. It is noteworthy that, in order to allow Sun to provide for such seamless integration, Microsoft only had to provide specifications of the relevant protocols, that is to say, technical documentation, and not to give access to the software code of Windows, let alone to allow its reproduction by Sun. There are two further factual circumstances of the refusal at issue that must be pointed out. First, Microsoft's refusal to Sun is part of a broader pattern of conduct of refusing the relevant

information to any work group server operating system vendor. Second, Microsoft's refusal constitutes a disruption of previous levels of supply, since the analogous information for previous versions of Microsoft's products had been made available to Sun and to the industry at large, indirectly through a licence to AT&T.

- Microsoft's refusal risks eliminating competition in the relevant market for work group server operating systems because the refused input is indispensable for competitors operating in that market. Customer evidence confirms the link between on the one hand, the privileged interoperability that Microsoft's work group server operating systems enjoy with its dominant PC operating system, and on the other hand, their rapid rise to dominance (and the increasing uptake of the features of the Active Directory domain architecture that are incompatible with competitors' products). The Commission's investigation also shows that there is no actual or potential substitute to the refused input.
 - Microsoft's refusal limits technical development to the prejudice of consumers, in contradiction in particular with Article 82(b). If competitors had access to the refused information, they would be able to provide new and enhanced products to the consumer. In particular, market evidence shows that consumers value product characteristics such as security and reliability, although those characteristics are relegated to a secondary position due to Microsoft's interoperability advantage. Microsoft's refusal thereby indirectly harms consumers.
- (19) These circumstances of an exceptional nature lead to the conclusion that Microsoft's refusal constitutes an abuse of a dominant position incompatible with Article 82, unless it is objectively justified.
- (20) Microsoft's claimed justification for its refusal is that providing the information at stake and allowing competitors to use it in order to make compatible products would be tantamount to licensing intellectual property rights. The Commission did not take a position on the validity of Microsoft's general intellectual property claims, which could in any event only be ascertained on a case by case basis when Microsoft has prepared the relevant specifications. However, according to the jurisprudence, an undertaking's interest in exercising its intellectual property rights cannot in itself constitute an objective justification when exceptional circumstances such as the ones identified above are established.
- (21) The Commission investigated whether, under the specific circumstances of this case, Microsoft's proffered justification outweighed these exceptional circumstances and

concluded that Microsoft had not provided any evidence to that effect. In particular, an order to supply the relevant information could not lead to the cloning of Microsoft's product. The Commission also took account of the fact that disclosure of information of the kind refused by Microsoft was commonplace in the industry.

(22) Furthermore, the Commission drew inspiration from the undertaking made by IBM to the Commission in 1984 (the IBM Undertaking)⁽⁶⁾, and from the 1991 Software Directive⁽⁷⁾. Microsoft indeed recognises that the IBM Undertaking and the Software Directive provide useful guidance for the present case. The Commission concluded that an order to supply in the present case would be analogous to the IBM Undertaking, in that it would only relate to interface specifications. The Commission also concluded that the refusal at issue was a refusal to supply interoperability information, in the sense of the Software Directive. In that respect, the Commission noted that the Software Directive restricted the exercise of copyright over software (including exercise by non-dominant undertakings) in favour of interoperability, thereby stressing the importance of interoperability in the software industry. It also noted that the Software Directive explicitly provided that its provisions were without prejudice to the application of Article 82, in particular if a dominant undertaking refused to make information available which is necessary for interoperability.

(23) Microsoft further argued that its refusal to supply interoperability information could not be aimed at restricting competition in the work group server operating system market, because the company had no economic incentive to pursue such a strategy. The Commission rejected Microsoft's argument, noting that it was based on an economic model that did not fit the facts in this case and was inconsistent with the views expressed by Microsoft's executives in Microsoft internal documents obtained during the investigation.

Tying

(24) The Decision finds that Microsoft infringes Article 82 of the Treaty by tying WMP with the Windows PC operating system (Windows). The Commission bases its finding of a tying abuse on four elements: (i) Microsoft holds a dominant position in the PC operating system market; (ii) the Windows PC operating system and WMP are two separate products; (iii) Microsoft does not give customers a choice to obtain Windows without WMP; and (iv) this tying forecloses competition. In addition, the Decision rejects Microsoft's arguments to justify the tying of WMP.

(25) Microsoft does not dispute that it holds a dominant position in the PC operating system market.

(26) The Commission Decision finds that streaming media players and PC operating systems are two separate products (rejecting Microsoft's argument that WMP is an integral part of Windows). The Decision first sets out that although Microsoft has been tying its media player with Windows for some time, there remains today separate consumer demand for stand-alone media players, distinguishable from demand for PC operating systems. Secondly, a number of vendors develop and supply media players on a stand-alone basis. Thirdly, Microsoft itself develops and distributes versions of its WMP for other PC operating systems. Finally, Microsoft promotes WMP in direct competition with third party media players.

(27) As regards the third tying element, the Decision finds that Microsoft does not give customers a choice to obtain Windows without WMP. PC manufacturers must license Windows with WMP. If they want to install an alternative media player on Windows, they can only do so in addition to WMP. If a user buys Windows in a retail store, the same considerations apply. The Decision considers Microsoft's arguments that customers need not pay 'extra' for the WMP and that they need not use it to be irrelevant in the context of determining whether there is coercion under Article 82 of the Treaty.

(28) The Decision then explains why tying in this particular case is liable to foreclose competition. The Decision sets out that the tying of WMP to Windows affords Microsoft unmatched ubiquity of its media player on PCs worldwide. The relevant evidence reveals that other distribution means are second best. By tying WMP to Windows, Microsoft can offer content providers and software developers that support the Windows Media technologies the ability to rely on the Windows monopoly to reach almost all PC users worldwide. Evidence shows that supporting several media technologies generates additional costs. As such, WMP's ubiquitous presence induces content providers and software developers to rely primarily on Windows Media technology. Consumers will in turn prefer to use WMP, since a wider array of complementary software and content will be available for that product. Microsoft's tying reinforces and distorts these 'network effects' to its advantage, thereby seriously undermining the competitive process in the media player market. Evidence shows that WMP usage increases due to tying, while other media players are rated more highly in terms of quality by users. Market data as regards media player usage, format usage, as well as content offered by web sites point to a trend in favour of usage of WMP and the Windows Media formats to the detriment of the main competing media players (and media player technologies). Whilst the Decision highlights

⁽⁶⁾ Commission Case IV/29.479. The Commission suspended its investigation, which had started in the 1970s, following that undertaking by IBM.

⁽⁷⁾ Council Directive 91/250/EEC (OJ L 122, 17.5.1991, p. 42).

this trend in favour of WMP and the Windows Media format, the Decision also emphasises that, on the basis of the case law of the Court, the Commission is, in particular, not required to prove that competition has already been foreclosed or that there is a risk of the elimination of all competition to establish a tying abuse. Otherwise, antitrust scrutiny in certain software markets would come too late as evidence of market impact could only be demonstrated once the market had 'tipped'.

- (29) Finally, the Decision discusses Microsoft's arguments to justify the tying of WMP, in particular the alleged efficiencies of tying WMP to Windows. With regard to alleged distribution efficiencies, the Commission rejects Microsoft's argument that tying lowers transaction costs for consumers by reducing time and confusion through having a set of default options in a personal computer 'out-of-the-box'. The benefit of having a media player pre-installed along with the client PC operating system does not require that Microsoft selects the media player for consumers. PC manufacturers can ensure that consumer demand for pre-installed media players of their choice is met. The Decision also finds that Microsoft has not put forward any technical efficiency for which 'integration' of WMP would prove to be a precondition. The tying of WMP rather shields Microsoft from effective competition from potentially more efficient media player vendors, which could challenge its position, thus reducing the talent and capital invested in innovation in respect of media players.

II. REMEDIES

Refusal to Supply

- (30) The Decision orders Microsoft to disclose the information that it has refused to supply and to allow its use for the development of compatible products. The disclosure order is limited to protocol specifications, and to ensuring interoperability with the essential features that define a typical work group network. It applies not only to Sun, but to any undertaking that has an interest in developing products that constitute a competitive constraint to Microsoft in the work group server operating system market. To the extent that the Decision might require Microsoft to refrain from fully enforcing any of its intellectual property rights, this would be justified by the need to put an end to the abuse.
- (31) The conditions under which Microsoft shall disclose the information and allow the use thereof must be reasonable and non-discriminatory. The requirement for the terms imposed by Microsoft to be reasonable and non-discriminatory applies in particular to any remuneration that

Microsoft might charge for supply. For example, such remuneration should not reflect the strategic value stemming from Microsoft's market power in the PC operating system market or in the work group server operating system market. Furthermore, Microsoft may not impose restrictions as to the type of products in which the specifications may be implemented, if such restrictions create disincentives to compete with Microsoft, or unnecessarily restrain the ability of the beneficiaries to innovate. Finally, the terms imposed by Microsoft in the future must be sufficiently predictable.

- (32) Microsoft must disclose the relevant protocol specifications in a timely manner, that is to say, as soon as it has produced a working and sufficiently stable implementation of these protocols in its products.

Tying

- (33) Concerning the tying abuse, the Decision orders Microsoft to offer to end users and OEMs for sale in the EEA a full-functioning version of Windows which does not incorporate WMP. Microsoft retains the right to offer a bundle of Windows and WMP.
- (34) Microsoft must refrain from using any means which would have the equivalent effect of tying WMP to Windows, for example by reserving privileged interoperability with Windows to WMP, by providing selective access to Windows APIs, or by promoting WMP over competitors' products through Windows. Microsoft is also prevented from giving OEMs or users a discount conditional on their obtaining Windows together with WMP, or *de facto*, financially or otherwise, removing or restricting OEMs' or users' freedom to choose the version of Windows without WMP. The unbundled version of Windows must not be less performing than the version of Windows which comes bundled with WMP, regard being had to WMP's functionality which, by definition, will not be part of the unbundled version of Windows.

III. FINES

Basic amount

- (35) The Commission considers that the infringement constitutes by its nature a very serious infringement of Article 82 of the EC Treaty and Article 54 of the EEA Agreement.
- (36) Furthermore, the pattern of exclusionary leveraging behaviour engaged in by Microsoft has a significant impact on the markets for work group server operating systems and for streaming media players.

- (37) For the purposes of assessing the gravity of the abuses, the markets for client PC operating systems, for work group server operating systems and for media players are EEA-wide in scope.
- (38) The initial amount of the fine to be imposed on Microsoft to reflect the gravity of the infringement should be, in light of the above circumstances, EUR 165 732 101. Given Microsoft's significant economic capacity⁽⁸⁾, in order to ensure a sufficient deterrent effect on Microsoft, this figure is adjusted upwards by a factor of two to EUR 331 464 203.
- (39) Finally, the basic amount of the fine is increased by 50 % to take account of the duration of the infringement (five and a half years). The basic amount of the fine is therefore set at EUR 497 196 304.
- Aggravating and attenuating circumstances**
- (40) There are no aggravating or attenuating circumstances relevant to this Decision.
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⁽⁸⁾ Microsoft is currently the largest company in the world by market capitalisation (see <http://news.ft.com/servlet/ContentServer?pagename=FT.com/StoryFT/FullStory&c=StoryFT&-cid=1051390342368&p=1051389855198> and <http://specials.ft.com/spdocs/global5002003.pdf> — the Financial Times 'World's largest Companies', updated on 27 May 2003, printed on 13 January 2004). According to the same measure, Microsoft has held a consistently high ranking in the list of the world's largest companies by market capitalisation, being the largest in 2000, the fifth largest in 2001, and the second largest in 2002 (see <http://specials.ft.com/ln/specials/global5002a.htm> (for 2000, printed on 24 January 2003), <http://specials.ft.com/ft500/may2001/FT36H8Z8KMC.html> (for 2001, printed on 24 January 2003), <http://specials.ft.com/ft500/may2002/FT30M8IPX0D.html> (for 2002, printed on 24 January 2003)). Microsoft's resources and profits are also significant. Microsoft's Securities and Exchange Commission filing for the US fiscal year July 2002 to June 2003 reveals that it possessed a cash (and short-term investment) reserve of USD 49 048 million on June 30, 2003. As regards profits, this Securities and Exchange Commission filing indicates that in US fiscal year July 2002 to June 2003, Microsoft earned profits of USD 13 217 million on revenues of USD 32 187 million (profit margin of 41 %). For the Windows PC client PC operating system product during this period ('Client' product segment), Microsoft earned profits of USD 8 400 million on revenues of USD 10 394 million (profit margin of 81 %).

COMMISSION DECISION

of 2 June 2004

State aid which Italy (Sicily) has envisaged for the promotion and advertising of agricultural products

(notified under document number C(2004) 1923)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2007/54/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 called on interested parties to submit their comments pursuant to the provision cited above ⁽¹⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) By letter dated 2 September 1997, registered on 5 September 1997, the Italian Permanent Representation at the European Union notified the Commission of Article 6 of Regional Law n. 27 of 1997 of the Sicilian Region, in accordance with Article 88(3) of the EC Treaty.
- (2) By telex VI/41836 of 28 October 1997, Commission services asked the competent authorities to provide clarifications on the aid provided for by Article 6 and on Regional Law n. 27 of 1997.
- (3) By letter dated 19 January 1998 the competent authorities sent some complementary information and indicated that the Law had already entered into force. The notification was therefore transferred to the register of non notified aids under number NN 36/98, as communicated to Italy by letter SG(98)D/32328 of 3 April 1998. However, the competent authorities also clearly indicated that no aid would be granted under the law before the termination of the procedure of Article 88(3) of the Treaty.
- (4) By telex VI/13937 of 31 May 2000 (anticipated in the English version by telex of 14 April 2000/VI/10442) Commission services asked the competent authorities to provide explanations regarding the provisions contained in Regional Law n. 27/1997 and a copy of the Law itself.
- (5) By letter dated 31 July 2002, registered on 5 August 2002, the competent authorities sent some complementary information regarding Article 5 of the Law.
- (6) By telex AGR 024925 of 22 October 2002 Commission services asked the competent authorities to provide explanations and clarifications regarding the complementary information lately sent and the measures contained in Regional Law n. 27/1997. In the same letter Commission services indicated that if the aid measures envisaged by Article 6 of Regional Law n. 27 of 1997 and, possibly, by other provisions of the same Law had not yet been put into effect and the competent authorities could assure that no aids had been paid and would be paid under Regional Law n. 27/1997 the competent authorities could consider the possibility of withdrawing the notification under examination.
- (7) Not having received any reply to the above telex, by telex AGR 30657 of 20 December 2002, Commission services sent the Italian authorities a reminder inviting them to submit the requested information within one month and informing them that unless satisfactory replies to all the questions asked were received within this deadline, Commission services reserved the right to propose the Commission to issue an information injunction on the basis of Article 10(3) 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⁾.
- (8) By letter of 10 July 2003 SG(2003)D/230470 the Commission notified Italy of its decision containing an information injunction in respect of Article 6 and Article 4 of Regional Law n. 27/1997, which it had adopted on 9 July 2003 (C(2003) 2054fin) on the basis of Article 10(3) of Regulation (EC) No 659/1999.
- (9) By the said information injunction the Commission had requested Italy to provide, within 20 working days from the notification of its decision, all the documents, information and data necessary to enable the Commission to establish whether the aids foreseen in the law had been granted and were compatible with the common market. Besides inviting Italy to provide any other information deemed useful for the assessment of the above measures, the information injunction specified a list of information that Italy was requested to provide.

⁽¹⁾ OJ C 48 of 24.2.2004, p. 2.

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

- (10) Neither a reply to the above information injunction, nor a request for a prolongation of the deadline within which a reply had to be provided, were received by Commission services.
- (11) By letter dated 17 December 2003 (SG(2003)D/233550), the Commission informed Italy that by its decision C(2003) 4473 fin of 16 December 2003 it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the aid measures provided for by Article 4 (Advertising of Sicilian products) and by Article 6 (Cooperatives, cantine sociali) of Regional Law n. 27/1997.
- (12) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽³⁾. The Commission called on interested parties to submit their comments.
- (13) By letters dated 10 February 2004 registered on 13 February 2004, the Italian Permanent Representation at the European Union, on behalf of Regione Siciliana asked Commission services for a prolongation of 20 working days to provide the information requested by the Commission in its Decision C(2003) 4473 fin of 16 December 2003, in respect of Article 4 (Advertising of Sicilian products) of Regional Law n. 27/1997. In the same letter the Italian authorities announced their intention to withdraw the notification of the aid measure concerned by Article 6 (Cooperatives, cantine sociali) which, as indicated in their letter, had not been implemented.
- (14) By telex AGR 05312 of 23 February 2004 Commission services confirmed that the prolongation requested by Italy had been granted with effect from 13 February 2004.
- (15) By letter dated 18 February 2004, registered on 26 February 2004 the Italian Permanent Representation sent a request for a prolongation of 20 working days with regard to the same aid measure.
- (16) By letter of 24 February 2004, registered on 1 March 2004, later confirmed by letter dated 12 March 2003, registered on 17 March 2003, the Italian authorities informed the Commission of the withdrawal of the notification of the aid measure concerned by Article 6 (Cooperatives, cantine sociali) of Regional Law n. 27/1997 which, as indicated in their letters, had not been and would not be implemented.
- (17) By telex AGR 07074 of 11 March 2004 the Italian authorities were informed that, since the Commission Decision concerned had been published in the *Official Journal of the European Union* on 24 February 2004 and the deadline for third parties to submit comments in its respect would expire on 24 March 2004, no prolongation to submit the information requested and/or comments beyond that date would be granted. By the same telex Commission services acknowledged the withdrawal of Article 6 (Cooperatives, cantine sociali) of Regional Law n. 27/1997.
- (18) The Commission received comments from Italy in respect of Article 4 (Advertising of Sicilian products) of Regional Law n. 27/1997 by letter dated 15 March 2004, registered on 18 March 2004.
- (19) In accordance with the Decision to open the procedure ⁽⁴⁾, the current decision only concerns the State aids provided for by Article 4 (Advertising of Sicilian products) of Regional Law n. 27/1997 in favour of Annex I agricultural products which may have been and which may be granted from the entry into force of the *Community Guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products* ⁽⁵⁾, (hereafter the advertising guidelines), i.e. from 1 January 2002.
- (20) As the notification of Article 6 (Cooperatives, cantine sociali) of Regional Law n. 27/1997 was withdrawn by Italy by letter of 24 February 2004, registered on 1 March 2004, there is no reason to describe and assess the aid measures provided for by Article 6.

II. DETAILED DESCRIPTION OF THE AIDS

- (21) Article 4 (Propaganda prodotti siciliani) amends Article 17 of Regional Law No 14/1966 and envisages that '(1) Advertising campaigns are implemented directly by the Regional Ministry or through the Institute for Foreign Trade or through specialised bodies, or through Consortia established by the Ente Fiera del Mediterraneo and by the Ente Fiera di Messina or by these entities and one or more Chambers of Commerce of the Region on the basis of the programmes indicated in Article 15. The said programmes may have three-year duration. (2) With the exclusion of the consortia indicated above, if the implementation of the programmes is entrusted to bodies outside the national or the regional administration, the rules on entrusting the services of the public administration will apply'.
- (22) Despite repeated requests from Commission services, and the information injunction issued by the Commission by its Decision of 9 July 2003, the Italian authorities had not provided the information which could help the Commission to dispel the doubts that Article 4 may provide for State aids within the meaning of article 87(1) of the EC treaty and, if the case, to allow the Commission to conclude that these aids may be considered compatible with the common market. Moreover it was not clear whether the aids concerned had already been granted or not.

⁽⁴⁾ See points 27, 28 and 29 of the Decision in OJ C 48 of 24.2.2004, p. 2.

⁽⁵⁾ OJ C 252 of 12.9.2001, p. 5.

⁽³⁾ See footnote 1.

- (23) In its Decision to open the procedure envisaged by Article 88(2) of the Treaty on the measure under examination, the Commission noted that at that stage of the procedure, due to the lack of information from the Italian authorities, the Commission did not know whether Article 4 of Regional Law n. 27/1997 provided for the introduction or the modification of State aids for promotion and/or advertising of Annex I agricultural products.
- (24) Moreover the Commission expressed doubts on their compatibility with the common market, as due to the lack of replies from the Italian authorities, it was entirely unclear to the Commission whether the measures which were to be financed under Article 4 of the law would be compatible with the rules which are currently applicable to these types of aid measures, i.e. with the rules set out in the *Community Guidelines for State aid for advertising*.
- (25) Also given the modalities of implementation of the advertising and promotion campaigns and programmes envisaged by Article 4 and reported above at recital 21, the Commission expressed doubts that the State aid measures possibly provided therein would be implemented in compliance with EU public procurement rules. In particular regarding the direct selection of the entities and bodies in charge of the advertising campaigns the Commission had doubts that a contract for pecuniary interest would be concluded in writing between the contracting authority and the service providers selected, and, that in this case, the strict conditions of the *Teckal* judgement would be met ⁽⁶⁾. If those conditions were not met, the Commission had doubts that the selection of the intermediaries would be done following the rules of Council Directive 92/50/EEC ⁽⁷⁾ if applicable, and, in any case, in accordance with the principles of the EC Treaty, in particular those of equal treatment and transparency, by ensuring a 'sufficient degree of advertising' as requested by the Court of Justice ⁽⁸⁾.
- siciliani) to Article 17 of Regional Law n. 14/1966, regarding the implementation of advertising campaigns through Consortia established by the Ente Fiera del Mediterraneo and by the Ente Fiera di Messina or by these entities and one or more Chambers of Commerce of the Region, was not applied as the said consortia were not established.
- (30) According to the information provided, the promotional programmes are implemented directly by the Regional Ministry or through the Institute for Foreign Trade (conventions drafted in the years 1993-1998, and 1999-2001-2003 in the context of the Agreements between the Ministry of production Activities and the Regions). The responsible subjects select the projects submitted for financing on a yearly basis and procure the necessary services for their implementation on the basis of the applicable rules, within the respect of market rules, except where exclusivity contracts with the organisers exist.
- (31) The competence of the Regional Ministry concerns not only the agri-food sector but also other sectors (crafts, publishing, textile, etc.) Regarding the sector under examination the activities which are financed at the rate of 100 % of the expenses by public funds are the following ones:
- (a) participation to trade fairs and exhibitions in Italy and abroad: expenses which are directly linked to the organisation of the stand, the setting-up, the connection to water and electricity, inclusion in the catalogue of the trade fair, related publicity, interpreting services, transport and insurance costs;
 - (b) organisation of international workshops in Italy and abroad: expenses which are necessary for the organisation and the performance of the meetings (rent of rooms, setting-up, selection of meetings, interpreting services and related publicity);
 - (c) advertising through mass media (press, posters, radio, television).

III. COMMENTS FROM INTERESTED PARTIES

- (26) No comments from interested parties were received.

IV. COMMENTS FROM ITALY

- (27) The Commission received comments from Italy, on behalf of Regione Siciliana, by letter dated 15 March 2004, registered on 18 March 2004.
- (28) In this letter the Italian authorities confirmed the withdrawal of the notification of Article 6 of Regional Law n. 27/97 and communicated their observations regarding Article 4.
- (29) In particular the Italian authorities indicated that the modification introduced by Article 4 (Propaganda prodotti
- (32) The beneficiaries of the interventions listed above under letters (a) and (b) are consortia of undertakings and undertakings which are regularly enrolled in the Chambers of Commerce in Sicily. The selection of the beneficiaries is made through a yearly public call for proposals, on the basis of selection criteria published in advance on the Official Journal of the Sicilian Region. On the basis of the fourth recital of Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid ⁽⁹⁾ the interventions indicated above under letters (a) and (b) are not export aids and since 2002 the aids concerned are applied according to the 'de minimis rule'. Regarding the agri-food sector, having
- ⁽⁶⁾ Judgement of the Court of justice of 18 November 1999, Case C-107/98, *Teckal Srl v Comune di Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia* (1999) ECR I-8121.
- ⁽⁷⁾ OJ L 209, 24.7.1992, p. 1. Directive as last amended by the 2003 Act of Accession.
- ⁽⁸⁾ Judgement of the Court of justice of 7 December 2000, Case C-324/98, *Telaustria Verlags GmbH and Telefonadress GmbH v Telekom Austria AG* (2000) ECR I-10745.
- ⁽⁹⁾ OJ L 10, 13.1.2001, p. 30.

regard to the Guidelines applicable to promotion and advertising the aids concerned would appear to be soft aids falling under point 14(1) of the general agricultural Guidelines⁽¹⁰⁾ concerning: 'the organisation of competitions, exhibitions and fairs'. Moreover notwithstanding the fact that the regional law does not specify the maximum ceiling of EUR 100 000 per beneficiary over a three-year period, the aids granted to each beneficiary undertaking for participating to fairs and workshop would be much below this ceiling.

(33) With regard to the advertising through the mass media the Italian authorities specified that the actions implemented both in Italy and in other Community countries do not concern specifically the products of one undertaking or of a group of undertakings, and advertise the products in a generic way, without emphasising their origin, even when the products are typical regional products. For agri-food advertising campaigns the message which is addressed to consumers concerns a product or a group of products, without making reference to their producer undertakings in the Region. The advertising is generic, does not contain any invitation to purchase the products solely because of their regional origin, and it cannot be considered to disparage the products of other Member States. The advertising should not therefore breach Article 28 of the Treaty.

(34) The observations made by the Italian authorities are applicable to promotional and advertising actions carried out both in the European Community and in third countries, as the same criteria are applied.

V. ASSESSMENT OF THE AID

(35) Article 87(1) of the Treaty provides that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

(36) The measure under examination provides for the granting of aid, through public regional resources, to specific agricultural undertakings in Sicily which will undeniably be granted an undue economic and financial advantage to the detriment of other undertakings not receiving the same contribution. According to the case law of the Court of Justice, improvement in the competitive position of an undertaking as a result of State financial aid leads to possible distortion of competition compared with other competing undertakings not receiving such assistance⁽¹¹⁾.

(37) The measure affects trade between Member States in that there is substantial intra-Community trade in agricultural

products as indicated by the table⁽¹²⁾ below which lists the overall value of agricultural imports and exports between Italy and the Community over the 1997-2001 period⁽¹³⁾. It must be considered that within Italy, Sicily is a significant producer of agricultural products.

	All agriculture	
	Millions ECU-EUR	Millions ECU-EUR
	Export	Import
1997	9 459	15 370
1998	9 997	15 645
1999	10 666	15 938
2000	10 939	16 804
2001	11 467	16 681

(38) With respect to the above, it should however be recalled that the Court of Justice has held that aid to an undertaking may be such as to affect trade between the Member States and distort competition where that undertaking competes with products coming from other Member States even if it does not itself export its products. Where a Member State grants aid to an undertaking, domestic production may for that reason be maintained or increased with the result that undertakings established in other Member States have less chance of exporting their products to the market in that Member State. Such aid is therefore likely to affect trade between Member States and distort competition⁽¹⁴⁾.

(39) The Commission therefore concludes that the measure under examination is caught by the prohibition in Article 87(1) of the Treaty. The Italian authorities have never contested this point.

(40) The prohibition in Article 87(1) is followed by exemptions in Article 87(2) and (3).

(41) The exemptions listed in Article 87(2)(a) (b) and (c) are manifestly inapplicable given the nature of the aid measures

⁽¹²⁾ Source: Eurostat.

⁽¹³⁾ According to consistent case law, the condition of the effect on the trade is met since the benefiting company carries out an economic activity which is the subject of trade between the Member States. The simple fact that aid strengthens the position of this company in relation to other competing companies in intra-Community trade, makes it possible to consider that this trade was affected. With regard to State aids in the agriculture sector it is settled case-law that, even when the overall amount of aid in question is small and it is divided among a large number of farmers, intracommunity trade and competition are affected. See Judgment of the Court of Justice of 19 September 2002 Case C-113/00, Kingdom of Spain v Commission of the European Communities (2002) ECR I-7601, paragraphs 30 to 36 and 54 to 56; Judgment of the Court of Justice of 19 September 2002 Case C-114/00, Kingdom of Spain v Commission of the European Communities (2002) ECR I-7657, paragraphs 46 to 52 and 68 to 69.

⁽¹⁴⁾ Judgement of the Court of Justice of 13 July 1988 in Case 102/87 French Republic v Commission of the European Communities (1988) ECR 4067.

⁽¹⁰⁾ OJ C 28 of 1.2.2000, p. 2, rectified in OJ C 232 of 12.8.2000, p. 17.

⁽¹¹⁾ Judgment of the Court of Justice of 17 September 1980, Case C-730/79, Philip Morris Holland BV v Commission of the European Communities (1980) ECR 2671, paragraphs 11 and 12.

in question and their objectives. Indeed, Italy has not submitted that either Article 87(2)(a) (b) or (c) are applicable.

- (42) Article 87(3)(a) is also inapplicable since the aids are not intended to promote the development of areas where the standard of living is abnormally low or where there is serious underemployment. Moreover Italy has not submitted that Article 87(3)(a) is applicable.
- (43) Article 87(3)(b) is also inapplicable as the aids in question are not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in Italy's economy. Moreover Italy has not submitted that Article 87(3)(b) is applicable.
- (44) These aids are not intended to achieve or suitable for achieving the objectives of promoting culture and heritage conservation referred to in Article 87(3)(d), nor has Italy submitted that Article 87(3)(d) is applicable.
- (45) Considering the nature of the aids under examination and their objectives the only exemption which may be applicable is the one provided for by Article 87 (3)(c) of the Treaty.

Applicable provisions

- (46) The applicability of the exemption mentioned at recital 45 needs to be assessed in the light of the provisions applicable to the granting of State aids for promotion and advertising in the agriculture sector, i.e. of the provisions contained in the advertising Guidelines ⁽¹⁵⁾.
- (47) According to point 7.1 of the advertising Guidelines, the Commission will apply these guidelines to new State aid, including pending notifications from Member States, with effect from 1 January 2002. Unlawful aid within the meaning of Article 1(f) of Regulation (EC) No 659/1999 will be assessed in accordance with the rules and guidelines applicable at the time when the aid is granted.
- (48) In accordance with the decision to open the procedure where the Commission expressed doubts that the measures concerned may not comply with the rules currently applied to this type of aids ⁽¹⁶⁾, this Decision only concerns the aids granted and to be granted from 1 January 2002 for the promotion and advertising of Annex I agricultural products.
- (49) With regard to the aids for promotion, point 8 of the said advertising Guidelines establishes that promotion operations such as the dissemination to the general public of scientific knowledge, the organisation of trade fairs or exhibitions, participation in these and similar public

relations exercises, including surveys and market research are not considered as advertising. State aid for such promotion in the broader sense is subject to points 13 and 14 of the Community guidelines for State aid in the agriculture sector ⁽¹⁷⁾. Since the notification does not specify that the aid scheme under examination applies only to small and medium enterprises, Commission Regulation No 1/2004 of 23 December 2003 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products ⁽¹⁸⁾ is not applicable to this case.

- (50) With regard to aids for advertising point 7 of the advertising Guidelines establishes that advertising, to which the Guidelines apply, does not only concern any operation using the media (such as press, radio, TV or posters) which is designed to induce consumers to buy the relevant product, but that it also includes any operation which is designed to induce economic operators or consumers to buy the relevant product and all material which is distributed direct to consumers for the same purpose, including advertising activities aimed at consumers at the point of sale.

Aids for promotion

- (51) On the basis of the information available, it appears that the measures for participation to trade fairs and workshops in the Community and outside the Community, which are described above at recitals 31(a) and (b) and 32 of this Decision, can be entirely considered as aids for promotion only to the extent that the described activities do not include either operations which are designed to induce economic operators or consumers to buy the relevant product, or material which is distributed direct to consumers for the same purpose. On the basis of paragraph 7 of the advertising Guidelines aids for operations which are designed to induce economic operators or consumers to buy the relevant product, and for material which is distributed direct to consumers for the same purpose are considered as aids for advertising.
- (52) In so far as the said measures for participation to trade fairs and workshops in the Community and outside the Community are indeed aids for promotion, in compliance with point 13 and 14 of the Community Guidelines for State aid to the agricultural sector, the aids can be granted at a rate of up to 100 % but should not exceed EUR 100 000 per beneficiary over any three-year period, or, in the case of aid granted to undertakings falling within the scope of the Commission definition of small and medium-sized enterprises, as defined 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-

⁽¹⁵⁾ See footnote 5.

⁽¹⁶⁾ See points 27, 28 and 29 of the Decision in OJ C 48 of 24.2.2004, p. 2.

⁽¹⁷⁾ See footnote 9.

⁽¹⁸⁾ OJ L 1 of 3.1.2004, p. 1.

sized enterprises ⁽¹⁹⁾, 50 % of the eligible costs, whichever is greater. For the purpose of calculating the amount of aid, the beneficiary is considered to be the person receiving the services. As it appears from the observation provided by the Italian authorities the promotional measures under examination are financed within the respect of the above maximum aid amount and appear therefore compatible with the applicable rules ⁽²⁰⁾.

- (53) In compliance with the said point 14 of the general agricultural Guidelines, in order to avoid the creation of distortions of competition, this type of aid measure should in principle be available to all those eligible in the area concerned based on objectively defined conditions. On the basis of the information provided by Italy and reported above at recital 32 of this decision, this condition appears to be met ⁽²¹⁾. Aids which are restricted to identified groups in order to provide support only for their members cannot be considered to facilitate the development of the sector as a whole and must be considered as operating aids. Thus, where the provision of such services is undertaken by producer groups or other agricultural mutual support organisations, the services concerned must be available to all eligible farmers. In such cases any contribution towards the administrative costs of the group or organisation concerned should be limited to the costs of providing the service.

Aids for advertising

- (54) In so far as the said measures for participation to trade fairs and workshops include also operations which are designed to induce economic operators or consumers to buy the relevant product or material which is distributed direct to consumers for the same purpose (for example advertising to the point of sale or advertising which is addressed to economic operators, such as food processors, wholesale or retail distributors, restaurants, hotels and other catering establishments), these measures need to be assessed on the basis of the rules for advertising aids, as much as the advertising measures carried out through the mass media (press, posters, radio, television) which were described above at recitals 31 (c) and 33 of this Decision.

⁽¹⁹⁾ OJ L 10, 13.1.2001, p. 33. Regulation as last amended by Regulation (EC) No 364/2004 (OJ L 63, 28.2.2004, p. 22).

⁽²⁰⁾ As far as the agriculture sector is concerned, promotional and advertising measures implemented outside the EU are not explicitly covered by the agricultural guidelines. Therefore, the Commission exercises its powers of discretion in their assessment. According to current Commission practice, where the measures envisaged comply with relevant state aid rules applicable within the EU territory, they can be considered compatible with the common market (see for example Italy/Tuscany Aid N 656/02, Aid NN 150/02 (ex N 109/02) (Commission letter C(2003) 1747 of 11.6.2003) and Aid NN 44/03 (ex N 6/03) (Commission letter C(2003) 2534 of 23.7.2003).

⁽²¹⁾ As indicated in Commission Decision C(2002)1786 fin of 7.5.2002 (Aid N 241/01 — Italy/Chambers of Commerce) the establishment and the enrolment of a European undertaking in the locally competent Chamber of Commerce are not subject to any legal or de facto limitation. See also Aid N 62/01 (Italy/Union of the Chambers of Commerce of Piemonte and Veneto, Commission Decision SG (2001)D/290914 of 8.8.2001.

- (55) According to the advertising Guidelines, normally, producers and traders would be expected to bear the costs of advertising themselves, as part of their normal economic activities.

- (56) Therefore, in order not to be regarded as operating aids but as aids that are compatible with the common market under Article 87(3)(c) of the Treaty, advertising aids should not interfere with trade to an extent contrary to the common interest (negative criteria), and should facilitate the development of certain economic activities or of certain economic areas (positive criteria). Moreover State aids must comply with the Community's international obligations, which in the case of agriculture are specified in the Agreement on Agriculture (WTO-GATT 1994).

- (57) In order to satisfy the negative criteria, according to point 3.1 of the applicable advertising Guidelines, the aid must not be granted for campaigns contrary to Article 28 of the Treaty (point 3.1.1), or for campaigns which contravene secondary Community legislation (3.1.2), or for advertising related to particular firms (3.1.3). Moreover where the conduct of publicly financed advertising activities is entrusted to private firms, in order to exclude the possibility of aid to the firms carrying out the campaigns, the choice of the private firm concerned must be made on market principles, in a non-discriminative way, where necessary using tendering procedures which are in accordance with Community law, and in particular with case-law ⁽²²⁾ using a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of procurement procedures to be reviewed.

- (58) On the basis of the information provided, the requirements envisaged by point 3.1.1 (campaigns contrary to Article 28 of the Treaty) and 3.1.3 (advertising related to particular firms) appear to be met by the advertising measures which are described above at recitals 30, 31(c) and 33 of this Decision. On the other hand, no indication that the requirement indicated at point 3.1.2 (campaigns which contravene secondary Community legislation) is also met was provided by the Italian authorities.

- (59) Besides satisfying the negative criteria, according to point 3.2 of the applicable advertising Guidelines, advertising aids should satisfy at list one of the positive criteria aimed at showing that the aid indeed facilitates the development of certain economic activities or of certain economic areas. This positive condition is considered to be met provided

⁽²²⁾ Case C-324/98, already cited.

that the subsidised advertising concerns any of the following: surplus agricultural products or underexploited species; new products or replacement products not yet in surplus; high-quality products, including products produced or obtained using environmentally friendly production or catchment methods, such as products from organic farming; development of certain regions; development of small and medium sized undertakings (SMEs) as defined by Regulation (EC) No 70/2001; projects that are implemented by organisations officially recognised within the meaning of Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products⁽²³⁾; projects that are jointly implemented by producer organisations or other organisations of the fishery sector recognised by national authorities.

(60) With regard to the aids for advertising, the observations submitted by the Italian authorities do not indicate that the advertising measures in question meet any of the above positive criteria.

(61) Regarding the maximum level of State aid for the advertising of agricultural products point 5 of the applicable advertising Guidelines requires that as a general rule, direct aid, from a general purpose government budget, must not exceed the amount which the sector itself has committed to a given advertising campaign. Thus, in the case of aid for advertising, the rate of direct aid should not exceed 50 % and undertakings from the sector will have to contribute at least 50 % of the cost, either through voluntary contributions or through the collection of parafiscal levies or compulsory contributions. To take account of the weight of some of the positive criteria mentioned in point 3.2 of the advertising Guidelines, the Commission may authorise the raising of the above-mentioned maximum rate of direct aid up to 75 % of the costs in the case of advertising for products produced by SMEs in areas eligible for support under Article 87(3)(a) of the Treaty.

(62) On the basis of the information provided and reported above at recital 31 of this Decision, it appears that all the promotional and advertising measures envisaged by the present scheme are financed at the rate of 100 % by public funds. The condition that 50 % (or 25 % where applicable) of the financing must come from the sector is therefore not met.

(63) From the above assessment the Commission can therefore conclude that the advertising aids under examination do not meet the requirements set out at points 3.1.2 (campaigns which contravene secondary Community legislation), 3.2 (positive criteria) and 5 (maximum level of State aid) of the applicable advertising Guidelines.

(64) The same conclusion applies to both measures implemented within the Community and outside the Community. Since the advertising measures implemented outside the Community are not explicitly covered by the agricultural guidelines, the Commission exercises its powers of discretion in their assessment. According to current Commission practice, where they comply with relevant state aid rules applicable within the Community territory the envisaged measures can be considered compatible with the common market and aid up to 80 % can be authorised⁽²⁴⁾. In the present case as it appears from the information provided and reported above at recitals 31 and 33 of this Decision, the measures implemented within and outside the Community are the same ones and aid is granted at the rate of 100 %. Therefore also in this case neither the requirements set out at points 3.1.2 (campaigns which contravene secondary Community legislation) and 3.2 (positive criteria) of the applicable advertising Guidelines, nor the maximum level of State aid which is allowed by the Commission are respected⁽²⁵⁾. Also these aid measures are therefore incompatible with the common market.

(65) This Decision concerns exclusively aid to the agricultural sector for the promotion and advertising of Annex I agricultural products. It does not constitute a formal position of the Commission as to whether service providers were selected in accordance with Community public procurement rules and case-law. The Commission reserves the right to further investigate the issue under the angle of public procurement.

VI. CONCLUSION

(66) From the abovementioned considerations, it results that the aid measures for promotion, in so far as they comply with point 13 and with point 14 of the Community Guidelines for State aid to the Agriculture sector, can be considered compatible with the common market in accordance with Article 87(3)(c) as aids to facilitate the development of certain economic activities.

(67) The aid measure for advertising, which do not comply with the rules set out in the Community guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products, are not compatible with the common market and can be implemented only if they are modified in compliance with the said rules.

(68) The aid measures for advertising which are incompatible with the common market, if granted, must be recovered from the beneficiaries,

⁽²³⁾ OJ L 17, 21.1.2000, p. 22. Regulation as amended by the 2003 Act of Accession.

⁽²⁴⁾ See for example Italy/Tuscany Aid N 656/02, Aid NN 150/02 (ex N 109/02) (Commission letter C(2003) 1747 of 11.6.2003) and Aid NN 44/03 (ex N 6/03) (Commission letter C(2003) 2534 of 23.7.2003).

⁽²⁵⁾ See footnote 23.

HAS ADOPTED THIS DECISION:

Article 1

The State aids which Italy has envisaged for the promotion of the agricultural products listed in Annex I to the Treaty on the basis of Article 4 of the Sicilian Regional Law No 27/97 are compatible with the common market.

The above aids may accordingly be implemented.

Article 2

The State aids which Italy has envisaged for the advertising of the agricultural products listed in Annex I to the Treaty on the basis of Article 4 of the Sicilian Regional Law n. 27/97 are incompatible with the common market.

The above aids may accordingly not be implemented.

Article 3

Italy shall take all necessary measures to recover from the beneficiaries the aids referred to in Article 2, if it has unlawfully made them available to the beneficiaries.

Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest from the date on which it was at

the disposal of the beneficiaries until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant-equivalent of regional aid.

Article 4

Italy shall amend its provisions regarding aids for the advertising of Annex I agricultural products in compliance with the Community guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products.

Article 5

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

Article 6

This Decision is addressed to the Republic of Italy.

Done at Brussels, 2 June 2004.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION

of 9 November 2005

concerning the aid scheme that France plans to implement in favour of producers and traders of liqueur wines: Pineau des Charentes, Floc de Gascogne, Pommeau de Normandie and Macvin du Jura

(notified under document number C(2005) 4189)

(Only the French text is authentic)

(2007/55/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 called on interested parties to submit their comments pursuant to the above provision ⁽¹⁾,

Whereas:

I. PROCEDURE

- (1) By letter dated 23 June 2003, the French Permanent Representation to the European Union notified the Commission under Article 88(3) of the EC Treaty of an aid scheme that it planned to implement in favour of producers and traders of liqueur wines: Pineau des Charentes, Floc de Gascogne, Pommeau de Normandie and Macvin du Jura. Further information was sent by letters dated 9 August, 24 and 28 November 2003 and 17 and 24 February 2004.
- (2) By letter dated 20 April 2004, the Commission informed France 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 invited interested parties to submit their comments on the aid in question.
- (4) The Commission has received no comments from interested parties.
- (5) By letter dated 11 June 2004, recorded as received on 14 June 2004, France submitted its comments to the Commission.

II. DESCRIPTION

- (6) The aids notified are a continuation of those previously notified to and approved by the Commission in connection

with state aids Nos N 703/95 ⁽³⁾ and N 327/98 ⁽⁴⁾ and involve publicity and promotion measures, research and experimentation measures, technical assistance measures and measures to promote the production of quality products.

- (7) The Court of Justice annulled the Commission decision on state aid N 703/95 in a judgment detailed below.
- (8) Seven instalments were paid under the two aid schemes 703/95 and 327/98, which were initially planned to run for five years from 1995/96, the final instalment covering the period from May 2001 to April 2002. However, because of budget constraints imposed by the Government, the final payments are still frozen today. The expiry date of the previous scheme was extended to 30 April 2002.
- (9) As regards the products covered, changes were made from the previous schemes. The spirit-drinks sector (Armagnac, Calvados, Cognac) did not ask for the scheme to be extended. Consequently, the French authorities decided to restrict it to liqueur wines with a registered designation of origin.
- (10) For all the inter-branch organisations targeted and all the aid measures described below, the total budget planned is EUR 12 000 000, broken down as follows: EUR 9 360 000 for Pineau des Charentes, EUR 2 040 000 for Floc de Gascogne, EUR 360 000 for Pommeau de Normandie and EUR 240 000 for Macvin du Jura.
- (11) The research, technical assistance and quality-product development measures will be financed solely by the Member State from the budget. The publicity and promotion measures will be financed partly by the Member State and partly by the inter-branch organisations concerned by means of obligatory voluntary levies (CVO) charged to their members. For publicity measures within the European Union, the Member State will contribute up to a maximum of 50 %.

⁽¹⁾ OJ C 42, 18.2.2005, p. 2.

⁽²⁾ See footnote 1.

⁽³⁾ Letter No SG(96) D/9957 to the French authorities dated 21 November 1996.

⁽⁴⁾ Letter No SG(98) D/6737 to the French authorities dated 4 August 1998.

- (12) The CVO applies to the volumes of liqueur wines with a registered designation of origin marketed by winegrowers, professional distillers, traders and wholesalers located within the production area of the registered designation of origin concerned.

- (13) In 2002, the CVO was EUR 12,96/hectolitre for Pineau des Charentes, EUR 0,25/bottle for Floc de Gascogne, EUR 30,79/hectolitre for Pommeau de Normandie and EUR 2,75/hectolitre for Macvin de Jura.

1. Publicity and promotion measures

- (14) The French authorities explained that the planned programmes will be carried out on certain European Union markets, including the French market, and on markets of non-member countries. The purpose of the planned publicity measures is to encourage the development of purchasing intentions by improving knowledge of liqueur wines, without promoting just the products of specific companies. The products concerned will all be registered destinations of origin: Pineau des Charentes, Floc de Gascogne, Pommeau de Normandie and Macvin du Jura.
- (15) These measures benefit all organised producers of liqueur wines who, according to the French authorities, could not alone carry out equivalent measures to improve the marketing of their products.
- (16) Steps will be taken to ensure that the publicity campaigns do not aim to dissuade consumers from buying products from other Member States or to disparage those products.
- (17) The programmes will involve publicity, information and communication campaigns, comprising a range of measures, including advertising in the media, the creation and distribution of other promotional materials and publicity campaigns at points of sale. They may be accompanied by promotion measures such as public relations measures, participation in fairs, seminars and events, information brochures and documentation and studies of the product's image in the eyes of consumers and the relevance of the campaigns.
- (18) The French authorities promised to submit originals or copies of the publicity material to be used for the campaigns.
- (19) The aid planned by the above inter-branch organisations for publicity will be limited to 50 % for measures within the European Union including France and 80 % for measures in non-member countries.
- (20) The estimated aid in euro for the planned measures is:

	EU	Non-member countries	Total
<i>Floc de Gascogne</i>	1 490 000	212 500	1 702 500
<i>Pineau des Charentes</i>	6 956 000	1 000 000	7 956 000

	EU	Non-member countries	Total
<i>Pommeau de Normandie</i>	360 000	—	360 000
<i>Macvin du Jura</i>	175 000	—	175 000
Total	8 981 000	1 212 500	10 193 500

2. Research measures

- (21) According to the French authorities, the purpose of the aid for research and experimentation is exclusively to support general research that is useful to the sector as a whole.
- (22) For Pineau des Charentes: microbiology, bacterial deterioration and consequences (identifying the factors promoting the development of lactic bacteria in Pineau des Charentes, perfecting tests for contamination and methods to solve the problem); ageing methods (identifying analytical criteria characteristic of oxidation phenomena and the factors responsible for ageing); constituting an analytical database (general analyses — rate of vinifiable alcohol, sugars, pH, any chemical or bacteriological contamination, metals, cations, volatile compounds, plant-protection product residues).
- (23) For Floc de Gascogne: studies of vine varieties and blends, with the aim of optimising the harmonisation of blends of varieties to increase the freshness and fruitiness of Floc de Gascogne (aiming to achieve high sugar contents, intense colour and consistent total acidity); study of Armagnac suitable for producing Floc de Gascogne (analysis — copper, ethanol and ethyl acetate contents, alcoholic strength, improvement of the Armagnac used); study and development of a Floc de Gascogne suited to targeted consumption types, qualitative and quantitative tests, storage.
- (24) For Macvin du Jura: technical development (monitoring the maturity of groups of Jura vine varieties in order to determine the state of maturity and the vine varieties best suited for the production of Macvin du Jura); selection and evaluation of vineyards; quality of musts and pressing (effects of extraction methods — enzymage and cold pressing — and of pellicular maceration of musts on the aromatic quality of Macvin du Jura); impact of the quantity of SO₂ during settling; clarification and treatment for bottling (comparison of different methods to ensure that Macvin du Jura is and remains limpid after bottling).
- (25) The full cost of the planned research work will be financed. The estimated allocation of aid for this research measure over the five years, including computer and bibliographical expenditure and expenditure on all the means for disseminating the results of the measures implemented to all operators, is: Pineau des Charentes, EUR 912 600; Floc de Gascogne, EUR 118 000 and Macvin du Jura, EUR 65 000.

3. Technical assistance measures

- (26) The French authorities described the planned technical assistance measures, which will consist primarily of technical training to improve and control production processes at all levels (primary production, wine-making, tasting) and of measures to disseminate knowledge.
- (27) The full cost of this work will be financed, subject to the abovementioned ceiling. The estimated allocation of aid for this work over the five years is: Pineau des Charentes, EUR 280 800 and Floc de Gascogne, EUR 169 000.

4. Aid for the production of quality products

- (28) Aid for the production of quality products is planned for Pineau des Charentes and Floc de Gascogne. The following measures are planned: HACCP and traceability (development and dissemination of a reference framework in accordance with the technical and regulatory requirements); technical and economic studies to encourage quality-improvement measures.
- (29) The estimated allocation of aid for these measures over the five years is: Pineau des Charentes, EUR 210 600 and Floc de Gascogne, EUR 50 500.

III. INITIATION OF THE PROCEDURE PROVIDED FOR IN ARTICLE 88(2) OF THE TREATY

- (30) As regards the nature of, the conditions for granting and the method of financing the planned aid, the preliminary examination of the measures did not raise any substantive doubts, although, in the case of the aid for publicity measures, the Commission took the view that France must make an explicit undertaking that any reference to the national origin of the products concerned would be secondary.
- (31) The Commission initiated the procedure provided for in Article 88(2) of the Treaty because of doubts concerning the compatibility of the aid with other provisions of Community law, in particular Article 90 of the Treaty.
- (32) It should be pointed out that the Commission Decision concerning state aid No N 703/95, of which the notified measure is an extension, was annulled by the Court of Justice ⁽⁵⁾.
- (33) In its judgment, the Court recalled that during 1992 and 1993 ⁽⁶⁾ the French government had introduced a differentiated system of taxation for liqueur wines and naturally sweet wines. Thus, from 1 July 1993 an excise

duty was fixed of FRF 1 400 per hectolitre ⁽⁷⁾ for liqueur wines and FRF 350 per hectolitre for naturally sweet wines.

- (34) During 1993/94, certain French producers refused to pay the additional excise duty on liqueur wines. When that excise strike was suspended in June 1994, the President of the *Confédération nationale des producteurs de vins de liqueur AOC* (National Confederation of Producers of Liqueur Wines with a Registered Designation of Origin; CNVDLAOC) justified that suspension by reference to the fact that, according to him, the French Government was planning to pay French producers of liqueur wines an annual indemnity and compensation for the years 1994 to 1997 in order to compensate for the difference in taxation.
- (35) In 1995, the *Associação de Exportadores de Vinho do Porto* (Association of Port Wine Exporters; AEVP) sent two complaints to the Commission. It claimed that there was a link between the difference in taxation between liqueur wines and naturally sweet wines and certain aid paid to French producers of liqueur wines. According to the AEVP, the aid was intended to compensate French producers of liqueur wines for the higher level of taxation, which meant that only foreign producers of liqueur wines had to pay the higher tax. They claimed that this discriminatory taxation infringed Article 95 (now Article 90) of the Treaty.
- (36) The Court established that part of the aid in question appeared to favour a category of producers that broadly coincided with the category of French producers of liqueur wines fiscally disadvantaged by the system of taxation and that the possible existence of a link between the system of taxation and the proposed aid scheme in question represented a serious difficulty in determining whether that scheme was compatible with the provisions of the Treaty.
- (37) The Court stressed that, under those circumstances, only by initiating the procedure provided for in Article 93(2) of the Treaty (now Article 88(2)) would the Commission have been in a position to appreciate the issues raised in the complaints lodged by the AEVP.
- (38) The Court also found that the Commission Decision was devoid of any statement of reasons, i.e. that the Commission had not explained why it had concluded that the complaint lodged by the AEVP claiming a possible infringement of Article 95 (now Article 90) of the EC Treaty was unfounded.
- (39) The Court therefore concluded that the contested decision was unlawful, as a result both of the failure to initiate the procedure under Article 93(2) (now Article 88(2)) of the Treaty and of the breach of the duty to state reasons, as provided for in Article 190 (now Article 253) of the Treaty.

⁽⁵⁾ Judgment of the Court in Case C-204/97, *Portuguese Republic v Commission of the European Communities*, [2001] ECR I-03175.

⁽⁶⁾ Rectifying Finance Act No 93-859 of 22 June 1993.

⁽⁷⁾ FRF 1 = EUR 0,15.

- (40) Given this judgment, the Commission regarded it essential to make a detailed examination in the light of Article 90 of the Treaty of the notified aid scheme, which is an extension of the scheme approved in the Decision annulled by the Court.
- (41) As part of its preliminary examination of the measure, the Commission therefore asked the French authorities whether the state aid concerned was not, in practice, a partial reimbursement, exclusively to French producers of liqueur wines, of the tax provided for in Article 402(a) of the General Tax Code.
- (42) In its answers during this first phase, France stressed that there had been no link in the past and there was no link today between the proposed support measures and excise duties, for the following reasons:
- (43) According to the French authorities, the amount allocated for the aid (EUR 2,4 million per year, EUR 12 million over five years) is tiny compared with what the sector pays back in excise duties. Thus, the 150 000 hectolitres of liqueur wines with a registered designation of origin marketed, on which an excise duty of EUR 214/hl is imposed, brings in more than EUR 32 million per year in excise revenue.
- (44) With this special rate of EUR 214/hl imposed on liqueur wines, compared with EUR 54/hl for natural sweet wines, this sector paid an extra EUR 24 million in excise duties. According to France, this sum was also out of all proportion to the proposed level of aid.
- (45) According to the French authorities, no provision had ever been implemented providing for the use of funds collected under Article 402a of the General Tax Code for the benefit of French producers of liqueur wines. Thus, between 1 January 1995 and 31 December 2000, the revenue collected was paid to the *fonds de solidarité vieillesse* (Old-Age Solidarity Fund). Between 1 January 2001 and 31 December 2003, it was paid to a fund intended to finance the reduction of working hours. Since 1 January 2004, this revenue has been paid into the national budget.
- (46) After examining this information, the Commission was of the opinion that it did not categorically dispel the doubts regarding the existence of a link between the tax collected and the aid.
- (47) The Commission took the view that the fact that the amount of aid (EUR 2,4 million) did not tally with the revenue from excise duties on liqueur wines (EUR 32 million) or with the additional excise duties imposed on liqueur wines compared with natural sweet wines (EUR 2,4 million) did not constitute reasonable proof of the absence of a link between the tax and the aid. It could not therefore be ruled out, at this stage of the procedure, that the aid could, at least in part, be used to provide compensation to French producers of liqueur wines that other Community producers could not receive.
- (48) The Commission also took the view that it should comply with the Court's wish to allow third parties to put forward their arguments concerning a possible infringement of Article 90 of the Treaty.
- (49) In the decision to initiate the procedure provided for in Article 88(2) of the Treaty, the Commission therefore asked France to provide information and additional figures in support of its position.
- (50) Initially, France was asked to specify whether the national authorities had already made an undertaking to producers of French liqueur wines to provide compensation, even partial, for the impact of the introduction of the tax in 1993.
- (51) The Commission then asked France to provide figures for the sums collected under the tax on liqueur wines from French products and imported products respectively and for the sums collected, broken down by product (French or Community).
- (52) Noting that Pineau des Charentes was, by far, the principal beneficiary of the notified aid, receiving 78 % of the total, followed by Floc de Gascogne with 17 %, then Pommeau de Normandie with 3 % and, finally, Macvin du Jura with 2 %, the Commission asked France to explain if these percentages coincided, for each of these products, with those for the revenue that the State received from the tax on liqueur wines.
- (53) Since most of the aid is for publicity measures, France was asked to explain whether this was representative of French Government policy in other agricultural sectors, in particular as regards quality products.
- (54) The Commission asked France to provide the budget for aid for publicity campaigns in France for each of the four products concerned.
- (55) France was also asked to provide explanations concerning any link between the revenue from the CVO and the resources from the national budget used to finance the aid.

IV. COMMENTS SUBMITTED BY FRANCE

- (56) By letter dated 10 January 2005, France submitted the following information and comments:
- (57) As regards publicity measures (see recital 30), the French authorities promised that the financing would not be provided for measures placing the emphasis on the French origin of the liqueur wines concerned.
- (58) As regards the link between the tax on liqueur wines and the aid, France again underlined that there was no correlation between the revenue from excise duties and the amount of aid from the national budget. The revenue

from excise duties, including that from liqueur wines, is paid into the general state budget. According to the French authorities, the public authorities take decisions on aid for certain economic sectors completely independently. In this case, the aid is intended to remedy a number of structural handicaps affecting these wines, in particular a lack of awareness of the products among consumers, the small size and the dispersal of production facilities and the lack of means to improve market position.

(59) France confirmed that there is no legal text allowing compensation for the excise duties paid by producers of liqueur wines (see recital 50).

(60) As regards the revenue from the release to the market of French liqueur wines and of imported liqueur wines (see recital 51), France first of all explained that the tax statistics (which are broken down by excise duty tariff) do not

differentiate between French products and those from other Member States.

(61) In any event, according to the figures produced by the customs authorities, excise duties levied in 2003 on natural sweet wines and liqueur wines of all origins amounted to EUR 142,5 million, broken down as follows: EUR 25,2 million from natural sweet wines, subjected to a duty of EUR 54/hl on a volume of 467 000 hl, and EUR 117,3 million from liqueur wines, subjected to a duty of EUR 214/hl on a volume of 548 000 hl.

(62) In this latter figure, it is possible, on the basis of harvest declarations, to isolate liqueur wines produced in France. These break down as follows: 94 477 hl of Pineau des Charentes, 2 091 hl of Macvin du Jura, 5 680 hl of Pommeau and 6 057 hl of Floc de Gascogne.

(63) France submitted a table showing the distribution of the planned aid between the four inter-branch organisations and the breakdown by volume of liqueur wines produced (see recital 52).

Designation	Volumes produced	Percentage of production	Percentage of planned aid
Pineau des Charentes	112 436 hl (2001)	87 %	78 %
Floc de Gascogne	8 413 hl (2003)	7 %	17 %
Pommeau	5 111 hl (2002)	4 %	3 %
Macvin du Jura	2 717 hl (2002)	2 %	2 %

(64) France noted that the share of each liqueur wine in total production and the percentage of planned aid are close, although they do not coincide totally. It stressed that the distribution of planned aid was the result of discussions between the beneficiary inter-branch organisations and had not been imposed by the public authorities.

(65) As regards the Commission's question about the budget for publicity measures (see recital 53), France provided figures showing that, particularly for quality wines psr, the sums devoted to publicity measures represent between 50 % and 74 % of the overall budget available to the inter-branch organisations.

(66) France forwarded, for each of the four inter-branch organisations concerned, the share of the budget assigned to publicity campaigns in France. The authorities stated that this allocation would remain unchanged if the aid scheme were approved and was the result of a free choice by the inter-branch organisations concerned.

Liqueur wines with a registered designation of origin	2003 promotional budget (EUR)	Promotion in France	Planned aid (EUR 2,4 million/year) (EUR)	Promotion in France
Pineau	1 671 000	74 %	1 872 000	74 %
Floc	279 000	64 %	408 000	64 %
Pommeau	166 000	100 %	72 000	100 %
Macvin	22 600	100 %	48 000	100 %

- (67) As regards the possible relation between the revenue from the CVO and the resources from the national budget used to finance the aid, France provided the following table:

Designation of origin	Volume (hl)	Rate of CVO	Revenue from the CVO allocated for promotion (EUR)	Aid from the national budget for promotion (EUR)
Pineau	112 436	EUR 12,96/hl	1 457 000 EUR	1 591 000 EUR
Floc	8 413	EUR 0,25/bottle	279 000 EUR	340 000 EUR
Pommeau	5 111	EUR 30,79/hl	157 000 EUR	72 000 EUR
Macvin	2 717	EUR 2,75/hl	75 000 EUR	35 000 EUR

- (68) The revenue that can be used for publicity is not restricted to the amounts collected by means of the CVO. In particular, inter-branch organisations can draw on other resources, for example revenue from the provision of services and the sale of advertising material and from other sources. France confirmed that the publicity measures would receive private financing covering at least 50 % of eligible costs.
- (69) For the purposes of comparing planned aid and revenue from excise duties, estimated on the basis of volumes harvested ⁽⁸⁾, France provided the following figures:

Designation	Estimated revenue from excise duties/year (EUR)	Planned aid (EUR)	Aid/excise duties
Pineau des Charentes	20 218 078	1 872 000	9,3 %
Floc de Gascogne	1 296 198	408 000	31,5 %
Pommeau	1 215 520	72 000	5,9 %
Macvin du Jura	447 474	48 000	10,7 %

- (70) France stressed that this latter table was particularly significant, because it showed that the aim was not to compensate for the burden of excise duties by means of aid, since there was no quantitative correlation between the two.

V. ASSESSMENT

must affect intra-Community trade and distort or threaten to distort competition.

1. Nature of the aid. Applicability of Article 87(1) of the Treaty

- (73) In this case, the Commission considers that these conditions are met:

- (71) According to Article 87(1) of the Treaty, *save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.*

1.1. State resources

- (74) The research, technical assistance and quality-product development measures will be financed entirely by the state from its budgetary resources.

- (72) For a measure to fall within the scope of Article 87(1) of the Treaty, the following four conditions must all be met: (1) the measure must be financed by the state or through state resources, (2) it must selectively concern *certain* undertakings or production sectors, (3) it must involve an economic advantage for the beneficiary undertakings, (4) it

- (75) On the other hand, the promotion and publicity measures will be financed partly by the state and partly (minimum of 50 %) by the trade organisations concerned from resources drawn primarily from the 'compulsory voluntary levy' (CVO) imposed on their members.

⁽⁸⁾ Volumes may differ from the volumes released for consumption).

(76) The Commission considers that the budget allocated to promotion and publicity measures is made up entirely of state resources, on the basis of the arguments set out below.

(77) The Commission has always taken the view that compulsory contributions from undertakings in a sector that are allocated to funding financial support measures are parafiscal charges and therefore constitute state resources when those contributions are imposed by the state or when the proceeds of those contributions pass through a body established by law.

(78) In this case, the French Government made the levies compulsory as part of an extension of inter-trade agreements. The agreements were extended by means of a decree published in the *Journal officiel de la République française*. These levies therefore require an act adopted by the public authorities to take their full effect.

(79) However, case law of the Court of Justice suggests that, when the nature of a state aid is being assessed, it must also be decided whether the state is responsible for the measure concerned ⁽⁹⁾. Recent case law ⁽¹⁰⁾ has provided a framework that should be examined here.

(80) The Court declared that certain measures financed by the members of trade organisations through resources levied from their members did not fall within the scope of Article 87(1) of the Treaty, since (a) contributions were compulsorily allocated to financing the measures; (b) neither the organisation nor the public authorities had power, at any time, freely to dispose of those resources; (c) the members of the trade organisation concerned had exclusive responsibility for the measure, which did not form part of government policy.

(81) This case law implies that, when the role played by the state is purely and simply that of an intermediary, because it does not intervene in policy choices made by the trade and at no time disposes of the resources collected, which are compulsorily allocated to the measures in question, the criterion of state responsibility is not met. The measures can therefore be considered not to be state aid.

(82) Nevertheless, this case does not meet the criteria stipulated in the Pearle judgment. In particular, the fact that the state contributes 50 % to the financing of these promotion/publicity measures clearly shows that they form part of government policy, and, consequently, the funds used to finance them should be regarded, in their totality, as public

resources allocated to measures for which the state is responsible.

1.2. Selective nature

(83) The measures benefit exclusively French producers of liqueur wines and are therefore selective.

1.3. Existence of an advantage

(84) Producers of liqueur wines enjoy an economic advantage in the form of funding for various measures (research projects, technical assistance, the development of quality products, promotion and publicity). This advantage improves the competitive position of the beneficiaries. According to consistent case law of the Court of Justice, the improvement of the competitive position of an undertaking resulting from state aid implies, as a general rule, a distortion of competition with respect to other undertakings not receiving the same support ⁽¹¹⁾.

1.4. Impact on trade and distortion of competition

(85) This aid is likely to affect trade between Member States insofar as it promotes national products to the detriment of the products of other Member States. Indeed, there is very open competition in the Community wine sector, as is well shown by the existence of a common organisation of the markets in the sector.

(86) The following table shows, by way of an example, the level of intra-Community and French trade in wine products over the years 2001, 2002 and 2003 ⁽¹²⁾.

Wine (1 000 hl)				
Year	EU imports	EU exports	French imports	French exports
2001	39 774	45 983	5 157	15 215
2002	40 453	46 844	4 561	15 505
2003	43 077	48 922	4 772	14 997

(87) Some of the planned measures are intended to be carried out outside the European Union. However, in view of the interdependence of the markets on which Community undertakings operate, it cannot be ruled out that aid could distort intra-Community competition by strengthening the competitive position of certain operators ⁽¹³⁾, even though the aid benefits products for export outside the Community ⁽¹⁴⁾.

⁽⁹⁾ Judgment of the Court of Justice in Case C-482/99, *French Republic v Commission*, [2002] ECR I-4397, ground 24 and judgment in Case C-126/01, *GEMO*, [2003] ECR I-13769.

⁽¹⁰⁾ Judgment of the Court in Case C/345/02, *Pearle v Hoofdbedrijfschap Ambachten*, [2004] ECR I-7139.

⁽¹¹⁾ Judgment in Case 730/79, *Philip Morris v Commission*, [1980] ECR 2671, grounds 11 and 12.

⁽¹²⁾ Agriculture in the European Union, Statistical and economic information 2004. Directorate-General for Agriculture, European Commission.

⁽¹³⁾ Judgment of the Court in joined Cases 6 and 11-69, *Commission v French Republic*, [1969] ECR 523, ground 20.

⁽¹⁴⁾ Judgment of the Court in Case C-142/87, *Belgium v Commission*, [1990] ECR 959, ground 35.

- (88) In the light of the above, the measures in question fall within the scope of Article 87(1) of the Treaty and may be declared compatible with the Treaty only if they are eligible for one of the derogations provided for therein.

According to points 16 to 30 of the guidelines, advertising must not infringe Article 28 of the Treaty or Community secondary legislation and must not relate to particular undertakings.

2. Compatibility of the aid

- (89) The only possible derogation at this stage is that provided for in Article 87(3)(c), which stipulates that aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest may be considered to be compatible with the common market.

- (90) To be able to benefit from that derogation, the aid in question must comply with the rules on state aid. The Commission first of all checks the applicability of Commission Regulation (EC) No 1/2004 of 23 December 2003 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products ⁽¹⁵⁾. If that Regulation does not apply, the Commission checks whether other legal bases, such as guidelines or Community frameworks, may apply.

- (91) Since the planned aid is not restricted to small and medium-sized enterprises, Regulation (EC) No 1/2004 does not apply. The Commission therefore based its assessment on the following instruments: (a) the Community guidelines for State aid in the agriculture sector ⁽¹⁶⁾ (hereafter 'agricultural guidelines'); (b) the Community guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products ⁽¹⁷⁾ (hereafter 'guidelines on advertising') and (c) the Community framework for state aid for research and development ⁽¹⁸⁾ (hereafter 'framework').

- (92) Since it is intended to finance the planned aid, at least in part, through compulsory contributions assimilated to parafiscal charges, the Commission also assessed the methods of financing the aid.

2.1. The measures

2.1.1. Aid for publicity and promotion

- (93) The guidelines on advertising ⁽¹⁹⁾ lay down positive and negative criteria that all national aid schemes must meet.

- (94) The French authorities explained that the measures will not benefit particular undertakings, that publicity will not disparage other Community products and that it will make no unfavourable comparison when referring to the national origin of products.

- (95) References to national origin must be secondary to the principal message conveyed to consumers by the campaign and must not be the main reason it is suggested they buy the product. In this case, it is important that the French origin of the products concerned is not the main message of campaigns carried out on French territory.

- (96) On the basis of the samples sent by the French authorities and the explicit undertaking made by France on this matter, it can be concluded that no particular emphasis will be placed on the national origin of the products concerned and that any reference to origin will be secondary to the principal message conveyed by the publicity campaigns.

- (97) As regards the positive criteria, according to points 31 to 33 of the guidelines on advertising, products benefiting from publicity campaigns must concern one of the following: surplus agricultural products or underexploited species, new products or replacement products not yet in surplus, the development of certain regions, the development of small and medium-sized undertakings, or high-quality products, including organic products.

- (98) The French authorities explained that the measures will aim to develop the regions of production concerned by ensuring the disposal of their typical products. The measures will fulfil the need to provide support for the network of small and medium-sized enterprises in the geographical areas concerned: the wine-sector undertakings concerned are essentially small, with few employees and often still family-owned. The measures will also aim to promote high-quality products (registered designations of origin).

- (99) With regard, more particularly, to aid for advertising agricultural products bearing a protected designation of origin or a protected geographical indication registered by

⁽¹⁵⁾ OJ L 1, 1.1.2004, p. 1.

⁽¹⁶⁾ OJ C 232, 12.8.2000, p. 17.

⁽¹⁷⁾ OJ C 252, 12.9.2001, p. 5

⁽¹⁸⁾ OJ C 45, 17.2.1996, p. 5, subsequently amended with regard to its application to the agricultural sector, OJ C 48, 13.2.1998, p. 2.

⁽¹⁹⁾ OJ C 252, 12.9.2001, p. 5

the Community ⁽²⁰⁾, in order to guarantee that aid will not be granted to individual producers, the Commission checks that all producers of the product covered by the registered designation of origin have the same entitlement to the aid. This means that publicity measures must refer to the registered designation of origin itself and not to any logo or label, unless all producers are entitled to use it. In the same way, when, for practical reasons, aid is paid to a producer group, the Commission requests assurances that the aid will actually benefit all producers, whether or not they are members of the group.

(100) The French authorities have given an undertaking that all producers of the products covered by the publicity campaigns and those involved in marketing them will benefit, without discrimination, by means of the measures implemented collectively, from the aid.

(101) As regards the ceilings on aid provided for in point 60 of the guidelines, up to 50 % of the financing for publicity measures may come from state resources and the balance must be provided by the trade bodies and inter-branch organisations that benefit from the measures concerned.

(102) The French authorities have given an undertaking that public financing will cover a maximum of 50 % of the publicity measures carried out within the European Union. The balance will have to be provided by operators in the agricultural sector concerned.

(103) The measures carried out outside the European Union can be financed at the rate of 80 %. This is in accordance with the position adopted by the Commission ⁽²¹⁾, according to which the participation of producers in part-financed measures of this type is provided for, in particular, by Council Regulation (EC) No 2702/1999 of 14 December 1999 on measures to provide information on, and to promote, agricultural products in third countries ⁽²²⁾. With regard to measures the Community can carry out in non-member countries, Article 9 of the Regulation stipulates that, in the case of public relations, promotional and publicity measures for agricultural products and foodstuffs, part of the financing must remain the responsibility of the proposer organisations. Thus, in the case of measures lasting at least two years, as a general rule, the minimum contribution from those organisations is 20 % of the cost, with a maximum Community contribution of 60 % and a contribution from the Member State of 20 %. It follows that the beneficiaries of this type of measure should make a real contribution of at least 20 % of the cost in order to limit distortions of competition with respect to other Community products.

(104) The French authorities sent the Commission examples of the material for promotion and publicity measures financed under the notified aid scheme, on the basis of which it can be confirmed that the commitments made by those authorities have been kept.

(105) The Commission concludes that the aid fulfils the conditions laid down at Community level.

2.1.2. Aid for research

(106) As regards the aid for research and experimentation measures and that for the dissemination of scientific progress, point 17 of the agricultural guidelines lays down that aid for research and development should be examined in accordance with the criteria set out in the applicable Community framework for State aid for research and development ⁽²³⁾. The latter specifies that an aid rate of up to 100 % is compatible with the common market, even where research and development is carried out by firms, subject to fulfilment in each case of the four conditions laid down therein:

- (a) The aid is of general interest to the particular sector concerned, without unduly distorting competition in other sectors.
- (b) Information is published in appropriate journals, with at least national distribution and not limited to members of any particular organisation, to ensure that any operator potentially interested in the work can readily be aware that it is being or has been carried out, and that the results are or will be made available, on request, to any interested party. This information must be published no later than any which may be given to members of any particular organisation.
- (c) The results of the work are made available for exploitation by all interested parties, including the beneficiary of the aid, on an equal basis in terms both of cost and of time.
- (d) The aid fulfils the conditions laid down in Annex II, 'Domestic support: the basis for exemption from the reduction commitments', to the Agreement on agriculture concluded during the Uruguay Round of multilateral trade negotiations ⁽²⁴⁾.

(107) The French authorities have given the following undertaking:

- (a) The research will be of general interest to the sector concerned and intended for general use and dis-

⁽²⁰⁾ In accordance with Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 208, 24.7.1992, p. 1).

⁽²¹⁾ State aid No N 166/2002.

⁽²²⁾ OJ L 327, 21.12.1999, p. 7.

⁽²³⁾ See footnote 18.

⁽²⁴⁾ OJ L 336, 23.12.1994, p. 22.

semination and will not affect trading conditions or unduly distort competition in other sectors.

(b) At the end of each programme, when the data gathered have been validated, they will be disseminated in those journals most accessible to those concerned. The results of research will be published and disseminated so as to provide information on and access to those results to all the producers and traders concerned, without discrimination, at the same time as everyone else and on request. The conclusions of the work or summaries will be published in the publications of the inter-branch organisations concerned intended for the general public, in the specialist publications of the technical bodies involved in carrying out the studies and research and in various brochures and other publications. They will be made available to those in the sector via the usual channels in agricultural sector or via the Ministry of Agriculture and Fisheries.

(c) In view of the general interest of the research, no commercial use of the results is planned. The question of the cost of rights of exploitation or of the conditions for access to rights of exploitation will therefore not arise.

(d) The French authorities have given an assurance that the measures financed do not involve any direct payments to producers or processors and that they satisfy the international trade criteria to which the European Union has committed itself.

(108) The Commission concludes that this aid fulfils the conditions laid down at Community level.

2.1.3. Aid for technical assistance

(109) Point 14 of the agricultural guidelines lays down that this type of aid is authorised, with an aid intensity of 100 %, where it is available to all those eligible in the area concerned based on objectively defined conditions and the total amount of aid granted does not exceed EUR 100 000 per beneficiary per three-year period or, in the case of small and medium-sized enterprises, 50 % of eligible expenditure, whichever is greater. The French authorities have undertaken to comply with those conditions.

(110) The Commission concludes that this aid fulfils the conditions laid down at Community level.

2.1.4. Aid for the production of quality products

(111) Point 13 of the agricultural guidelines lays down that this type of aid is authorised, with an aid intensity of 100 %,

where it is available to all those eligible in the area concerned based on objectively defined conditions and the total amount of aid granted does not exceed EUR 100 000 per beneficiary per three-year period or, in the case of small and medium-sized enterprises, 50 % of eligible expenditure, whichever is greater. The French authorities have undertaken to comply with those conditions.

(112) The Commission concludes that this aid fulfils the conditions laid down at Community level.

2.2. Financing of the aid

2.2.1. The compulsory levy (CVO)

(113) In accordance with the case law of the Court of Justice ⁽²⁵⁾, the Commission normally considers that the financing of state aid by means of compulsory charges may influence the aid by having a protective effect which goes beyond the aid as such. The levies in question (CVO) are compulsory charges. According to the same case law, the Commission considers that aid may not be financed by parafiscal charges that also apply to products imported from other Member States.

(114) The CVO applies to the volumes of liqueur wines with a registered designation of origin marketed by winegrowers, professional distillers, traders and wholesalers located within the production area of the registered designation of origin concerned. The French authorities also explained that, unlike the taxes collected under Community directives on excise duties on alcohol and alcoholic beverages, the inter-branch contributions, by definition, are imposed only on the liqueur wines covered by the registered designations of origin concerned, i.e. exclusively products in the regions specified in the regulations, which means that the CVO is not imposed on liqueur wines from other Member States.

(115) As regards more particularly wholesalers, it cannot be ruled out that they also market imported products. However, the French authorities specified that the inter-branch levy paid by wholesalers will apply only to volumes of the liqueur wines with a registered designation of origin referred to in the notification, i.e. Pineau des Charentes, Flocc de Gascogne, Pommeau de Normandie and Macvin du Jura. Therefore, imported wine is excluded from payment of the levy.

(116) Since only the national liqueur wines with a registered designation of origin covered by the measure are subject to the levy it can be concluded that no imported product is taxed.

(117) As regards state aid financed by parafiscal charges, the Court has also established other criteria that should be examined here. In the *Nygård* case ⁽²⁶⁾, the Court laid down

⁽²⁵⁾ Judgment of the Court of Justice in Case 47/69 *Government of the French Republic v Commission of the European Communities*, [1970] ECR 487.

⁽²⁶⁾ Judgment in Case C-234/99, *Niels Nygård v Svineavgiftsfonden*, [2002] ECR I 3657.

that a charge constitutes a breach of the prohibition of discrimination laid down by Article 90 of the Treaty if the advantage conferred by the use of the revenue generated by the charge benefits in particular those national products subject to it that are processed or marketed on the national market by partially offsetting the charge imposed on them, thus placing national products that are exported at a disadvantage.

total amounts levied on national products marketed on the domestic market in connection with the charge in question and the advantages afforded exclusively to those products.

2.2.2. Compatibility with other provisions of the Treaty

(118) The aid for promotion and publicity, which is the only aid to be financed by means of the CVO, benefits the marketing sector and may not confer the same benefits on traders who are involved exclusively in sales outside France or outside the European Union.

(124) It should be recalled here that state aid, certain of whose conditions contravene other provisions of the Treaty, cannot be declared to be compatible with the common market. In the present case, the Commission examined whether the complaint lodged by the AEVP against aid N 703/95 concerning a possible infringement of Article 90 of the Treaty was well founded. The Commission also notes that the AEVP submitted no comments under the present procedure.

(119) The French authorities however have given assurances that both the Pineau des Charentes National Committee and the Floc de Gascogne Inter-Branch Committee finance publicity and promotion measures both in France and in the European Union and non-member countries and stress that their decisions are taken fully independently by their management boards, on which all those involved in the sector are represented.

(125) Article 90 of the Treaty lays down that 'No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products'.

(120) On the other hand, the inter-branch organisation of cider designations and the inter-branch committee for the wines of the Jura are said not to be planning, for the moment, to finance measures outside the French market. However, according to the French authorities, the decision to concentrate measures on the French market was taken by the sector itself, which gives priority to consolidating its position on the national market, in the knowledge that the sale of these liqueur wines abroad has not yet become the norm in the trade. The French authorities affirm that this policy does not disadvantage any trader, because sales outside France remain marginal and there are no traders specialising in the export trade.

(126) In the present case, the rate of excise duty applicable to liqueur wines in France is the same for French wines and for wines from other Member States.

(127) If the tax paid by French producers were partially offset by the aid that is restricted to those same producers, meaning that only non-French producers were obliged to pay the full amount of the tax, this would constitute discriminatory internal taxation contrary to Article 90 of the Treaty.

(121) In any event, the French authorities have given an undertaking that exported products will benefit from measures financed by means of the inter-branch levies to the same extent as products marketed in France.

(128) It should first of all be noted that taxes do not fall within the scope of the provisions of the Treaty on state aid unless they constitute the means of financing an aid measure and form an integral part of that aid.

(122) The Commission notes this undertaking and is of the opinion that there is nothing in the information provided by France that indicates that there is, at present, any discrimination against exported liqueur wines.

(129) It follows that the tax on liqueur wines will only have an impact on the appraisal of the compatibility of the planned aid and therefore need be examined here *if there is a sufficiently close link between the tax and the aid measures*.

(123) However, the Commission draws the attention of the French authorities to the implications of the Nygård judgment as regards discrimination between exported products and products marketed on national territory. In particular, the Court ruled that it is up to the national courts to establish the extent of any possible discrimination against particular products. To that end, they must verify, during a reference period, the financial equivalence of the

(130) The judgment of the Court of Justice of 13 January 2005 in the *Streekgewest Westelijk North-Brabant* case ⁽²⁷⁾, handed down after the procedure provided for in Article 88(2) of the Treaty had been opened with respect to the aid covered by this Decision, clarified the circumstances in which a sufficiently close link must be considered to exist between a tax and an aid measure, meaning that the tax can be considered to form an integral part of the aid.

(131) Ground 26 of the above judgment stipulates in particular that, for a tax, or part of a tax, to be regarded as forming an integral part of an aid measure, it must be *hypothecated* to the aid measure under the relevant national rules, in the

⁽²⁷⁾ Not yet published in the ECR.

sense that the revenue from the tax has a direct impact on the amount of the aid and, consequently, on the assessment of the compatibility of the aid with the common market.

(132) In the *Streekgewest* case, the Court ruled that even if, for the purposes of the budget estimates of the Member State in question, an increase in the amount of the tax is offset by the advantage given (aid), that fact is not sufficient in itself to show that the tax was hypothecated to the tax exemption ⁽²⁸⁾.

(133) In this particular case, France indicated that the tax revenues are paid into the general state budget and that there is no law allowing compensation for excise duties paid by the producers of liqueur wines. None of the information in the possession of the Commission suggests the contrary. On the basis of this finding, the Commission can therefore conclude that the revenue from the tax on liqueur wines is not hypothecated to the aid granted to those products, without any need to demonstrate the absence of any quantitative link between the amounts levied by France and the amounts spent in the context of the aid measure.

(134) In the alternative case, the Commission also notes that the tables provided by France following the opening of the procedure provided for in Article 88(2) of the Treaty show that there is no quantitative correlation between the revenue from the tax for the various products and the aid granted for those products.

(135) Since there is no sufficiently close link between the tax and the planned aid, it is not necessary to assess the effects of this tax on the compatibility of the notified measures with

the common market, in particular in the light of Article 90 of the Treaty, under the procedure on state aid provided for in Article 88 of the Treaty.

VI. CONCLUSIONS

(136) In the light of the above, the Commission concludes that the aid planned by France is eligible for the derogation provided for in Article 87(3)(c) of the Treaty and can be declared compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The state aid that France plans to implement in favour of producers and traders of liqueur wines totalling EUR 12 000 000 is compatible with the common market under Article 87(3) (c) of the Treaty.

The implementation of this aid is therefore authorised.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 9 November 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

⁽²⁸⁾ Ground 27 of the judgment.

COMMISSION DECISION

of 16 May 2006

on State aid C 26/2004 (ex NN 38/2004) implemented by Germany for Schneider Technologies AG

(notified under document number C(2006) 1857)

(Only the German text is authentic)

(Text with EEA relevance)

(2007/56/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Additional information was submitted on 6 February 2006, registered as received on 7 February 2006.

Having regard to the Treaty establishing the European Community, and in particular 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 ⁽¹⁾ pursuant to the provisions cited above and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) On 24 March 2003, the Commission received a complaint concerning a number of alleged state aid measures in favour of Schneider Technologies AG ('Schneider AG'). The complainant, Gebrüder Schneider GmbH & Co. KG, is a holding company which held the shares in Schneider AG and which is owned by two Schneider brothers.
- (2) On 14 July 2004, the Commission initiated the formal investigation procedure with respect to three loans granted by the Bayerische Landesanstalt für Aufbaufinanzierung (Bavarian State Institute for Development Financing — 'LfA') and two grants from the Bayerische Forschungstiftung (Bavarian Research Foundation — 'BFS') for research and development ('R&D'). The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* on 22 February 2005 ⁽²⁾. The Commission invited interested parties to submit comments on the suspected aid. No such third party comments were submitted ⁽³⁾. Germany's response to the initiation of the formal investigation procedure was submitted by letters dated 16 and 24 September 2004, registered as received on the same respective days.
- (3) The Commission requested further information on 6 September 2005, which Germany submitted by letter dated 5 October 2005, registered as received on 6 October 2005.

II. DESCRIPTION

1. THE BENEFICIARY

- (4) Schneider AG, a large undertaking, was a German producer of colour television sets headquartered in Türkheim, Bavaria. In addition to its manufacturing activities, the company had embarked in the 1990s on an ambitious project concerning the development of a laser display technology which was expected to deliver sharper images, higher brightness, unlimited screen size and flexibility in terms of projection surface. Between 2000 and 2002, these two main areas of activity were allocated to two newly created subsidiaries of Schneider AG: Schneider Electronics AG ('SE'), which continued the television set production, and Schneider Laser Technologies AG ('SLT').
- (5) The LfA, a public bank having as its object the promotion of regional economic development, had held shares in Schneider AG since 1998. In 1999/2000, the LfA was the biggest shareholder, holding 35,6 % of the shares. Lehman Brothers, a private investment bank, held 26,6 %, Gebr. Schneider GmbH & Co. KG 14,6 % and other private investors 23,2 %.
- (6) At that time, the market had high expectations of Schneider AG's future success as a result of its leading role in laser display technology. Between 1998 and 2000, Schneider AG's share price increased almost tenfold, and between 1999 and 2000 it increased by about two and a half times. This positive view of the company's future was shared by the second biggest investor, Lehman Brothers, as evidenced by a study issued in April 2000 which explained that break-even in the field of production of consumer electronics was expected by the end of 2000, whereas break-even in laser display technology was expected for Q4 of 2001. Lehman Brothers bought [...] (*) shares from the LfA between mid-1999 and mid-2000.

⁽¹⁾ OJ C 46, 22.2.2005, p. 12.

⁽²⁾ See footnote 1.

⁽³⁾ Some submissions received during and after the period concerned cannot be considered formal comments (being mainly unrelated press articles without further comments and an offer to provide case-related consultancy services to the Commission without any actual comments).

(*) Business secret

- (7) However, the companies did not perform as expected. SE produced television sets of a lower quality range and could not compete with low-price products imported mainly from Asia. Since no income could be derived from the television set business, Schneider AG ran out of funds needed by SLT to continue its laser technology activities, which progressed much more slowly than originally expected. A first prototype was available only in May 2000, much later than scheduled, and it was suitable only for industrial use. By 2002, the company had not succeeded in developing a product suitable for the private consumer, the actual economic aim of SLT.
- (8) In March 2002, three separate sets of insolvency proceedings were initiated in respect of Schneider AG and its two subsidiaries. The insolvency administrator sold the assets of Schneider AG and SE to the Chinese electronics company TCL, and the assets of SLT to Jenoptik Laser, Optik, Systeme GmbH ('LOS'). TCL and LOS had made the highest respective offers.

2. THE FINANCIAL MEASURES

- (9) In its decision to initiate the procedure, the Commission expressed doubts as to the compatibility of the following two sets of measures.

2.1. THE THREE LFA LOANS

- (10) The three LfA loans were part of a package agreed in autumn 1999 between the LfA, Lehman Brothers, the complainant and a pool of banks. Germany explained that, in 1998, the company had to face losses because the attempt to increase sales of television sets through the specialised retail channel had failed. The management therefore decided to restructure the company and to reinforce the OEM (original equipment manufacturer) business. Liquidity was needed to finance the restructuring, prefinance the production for large-scale orders and cover the losses.
- (11) The first LfA loan ('loan 1') amounted to EUR 2,1 million and was granted in September 1999. The interest rate was [...] %. The second loan ('loan 2') amounted to EUR 5,1 million and was also granted in September 1999. The interest rate was [...] %. The third loan ('loan 3') amounted to EUR 5,6 million, was granted in February 2000 and the interest rate was [...] %. The first two loans were granted for a duration of one year, while loan 3 was granted until 31 December 2001, i.e. for almost two years.
- (12) In September 2000, the first two loans were prolonged until 30 September 2002, i.e. by two further years, and the interest rates were increased for loan 1 to [...] %, and for

loan 2 to [...] %. In December 2000, loan 3 was also prolonged until 30 September 2002 and the interest rate was increased to [...] %.

- (13) Loan 1 was secured by several collateral items such as a charge on land, the cession of receivables and a product property transfer by way of security. These collateral items were ranked below the securities granted to the pool banks, whose loans had been granted earlier. Loans 2 and 3 were not secured by any collateral. Germany explained that securities had been replaced by a higher interest rate. The actual value of securities for the LfA as a shareholder was very limited because it was likely that the shareholder loan would be treated as equivalent to a capital injection under German law (Section 30 of the Law concerning Companies with Limited Liability).
- (14) The contributions by the private parties to the package were as follows:
- (a) Lehman Brothers first injected EUR 25 million into the firm at the end of 1999 to purchase the shares in SLT until then held by Daimler Chrysler and (ii) was lead investor in a further capital increase in February 2000 by an additional EUR 46 million for the financing of the further development of the laser business.
- (b) The pool of private banks had granted Schneider AG a credit line of EUR 31 million in 1998. The agreed interest rate was [...] %. This credit line was expressly upheld in September 1999 as part of the package. In addition, the pool banks accepted a short-term exceeding of the credit line up to EUR [...]. In the same month, the pool leader increased its interest rate to [...] %. Germany explained that it had no information as to any deviation by the other pool banks from the originally agreed interest rate of [...] %.
- (c) The complainant provided a shareholder loan amounting to EUR 7,7 million on the same conditions as the pool banks.

2.2. THE R&D SUBSIDIES

- (15) In 1994 and 1997, the BFS provided two grants to Schneider AG totalling EUR 9 050 121,88. ⁽⁴⁾

Project 1 ('Laser-Display-Technologie')

- (16) The first subsidy amounted to EUR 6 498 468,68. ⁽⁵⁾ It was granted on 16 December 1994 with the aim of co-financing the 'Laser-Display-Technologie' project ('project

⁽⁴⁾ Including a grant for the 'blue laser' project carried out by the University of Würzburg.

⁽⁵⁾ Including the grant for the 'blue laser' project carried out by the University of Würzburg.

1'). The aid was disbursed in several instalments over the lifetime of the project, i.e. between January 1995 and June 1997. Eligible costs amounted to EUR 12 484 972,74, while the aid intensity amounted to 48,9 %.

- (17) Project 1 focused on creating the bases for new working methods for the projecting of large, high-resolution colour images for different applications and the scientific and technological bases for the individual components of the future system.

- (18) The following project costs were taken into account when granting the aid: (*)

Project element	Cost in EUR
Personnel costs (incl. travelling expenses)	4 304 566,36
Other operating expenses (material and supplies)	4 399 666,63
Cost of instruments and equipment	667 235,91
Cost of research by third parties	2 296 459,41
Additional overheads	817 044,43
Total costs	12 484 972,74

- (19) Germany has confirmed that the costs were incurred directly as a result of the research project.

- (20) In accordance with the grant agreements, the results of the project were presented to a broad public and made generally available.

- (21) The BFS also financed 100 % of a 'blue laser' research project carried out by the University of Würzburg. The project costs were EUR 0,26 million. At the BFS's request, project 1 and the 'blue laser' project were associated with each other in the expectation of a mutual know-how exchange.

Project 2 ('Laser-Display-Technologie — Systemintegration und Prototypen')

- (22) The second grant amounted to EUR 2 551 653,20 and was awarded on 23 July 1997. It was intended to finance the project 'Laser-Display-Technologie — Systemintegration und Prototypen' ('project 2'), which followed project 1. The aid was disbursed in several instalments over the project's lifetime, i.e. between April 1997 and September 1999. The planned eligible costs amounted to EUR 5 103 293,22, with the result that the aid intensity amounted to 50 %.

- (23) Project 2 concerned further elaboration on the results of project 1 and the attempt to integrate the individual key

components into an overall system. It comprised studies into image production with picosecond impulse lasers, laser resistance of the individual components and basic research into the miniaturisation of monochrome laser systems.

- (24) The following project costs were taken into account when granting the aid:

Project element	Cost in euro
Personnel costs	2 584 273,68
Other operating expenses (material and supplies)	1 061 850,98
Cost of research by third parties	1 123 308,26
Additional overheads	817 044,43
Total costs	5 103 293,22

- (25) Germany has confirmed that the costs were incurred directly as a result of the research project.

- (26) In accordance with the grant agreements, the results of the project were presented to a broad public and made generally available. Upon request, user rights had to be granted at market rates.

III. REASONS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (27) As regards the three loans, the Commission expressed its initial view that they probably fulfilled the market economy investor test. However, more detailed information was missing in order to enable to Commission to finalise its assessment. The Commission further doubted that the R&D grants for the two laser technology projects were compatible with the state aid rules.

IV. COMMENTS FROM THIRD PARTIES

- (28) No comments were submitted by third parties.

V. COMMENTS FROM GERMANY

- (29) In its comments on the initiation of the formal investigation procedure, Germany argued that the loans did not constitute state aid because they fulfilled the market economy investor test.

- (30) As regards the R&D grants, Germany expressed the opinion that both projects qualified as industrial research and that their subsidisation to the tune of up to 50 % of the eligible

(*) The table contains only the costs of the research carried out by Schneider AG, and not the EUR 0,26 million grant for the 'blue laser' project carried out by the University of Würzburg and associated with the Schneider project at the BFS's request.

cost was therefore compatible with the state aid rules applicable to R&D grants at the time the respective aid awards were made. With regard to project 2, Germany emphasized that the title of the project — 'system integration and prototypes' — was misleading and that the project had the aim of further deepening research into individual components of the project.

VI. ASSESSMENT

1. THE LFA LOANS

1.1. STATE AID

- (31) Pursuant to Article 87 of the EC Treaty, any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market. In order to determine whether shareholder loans granted by a public authority constitute state aid within the meaning of Article 87 of the EC Treaty, it is necessary to consider whether in similar circumstances a market economy investor might have provided loans on conditions comparable to the ones granted by the public authority.
- (32) The Commission considers that there are strong indicators that the three loans did not constitute state aid because the market economy investor test is fulfilled. The information available to the Commission indicates that granting loans to Schneider AG with interest rates of between [...] %, [...] % and [...] % (Commission reference rate 4,76 %), later increased to [...] %, [...] % and [...] % (Commission reference rate 5,7 %), was not economically irrational in the given circumstances of 1999/2000. The trust of the market in future profits by Schneider AG, mainly through a leading position in the laser technology business, is evidenced for instance by the almost tenfold increase in the price of Schneider shares between 1998 and 2000 and by the very favourable study by the strategic investment bank Lehman Brothers, which purchased an additional [...] shares in Schneider AG during that period. In July 2000, about 50 % of the capital was held by about 40 strategic investors. Secondly, compared with the behaviour of the private shareholder Lehman Brothers, the behaviour of the LfA was much more cautious. Lehman Brothers increased the capital of Schneider AG by EUR 25 million in December 1999 and was lead investor in the EUR 46 million capital increase of February 2000. Apart from contributing about EUR 8,74 million to the February capital increase (which was already accepted as complying with the market economy investor test in the decision to initiate the procedure), the LfA provided a further EUR 12,8 million only in the form of a reimbursable loan with interest. Thirdly, the LfA interest rates were higher than the rates of the pool banks, both at the time of the original grant of the loans (September 1999 and February 2000) and at the time of the loans' prolongation (September and December 2002).
- (33) Nevertheless, some doubts persist as to the nature of the loans. Due to the role of the LfA in promoting the regional economy and on the basis of the information currently available, the Commission cannot exclude that the purpose of the investment was to bridge a difficult period for Schneider AG and to save jobs in the region. Further, it is unclear whether the higher interest rates were sufficient to compensate for the lack of collateral. Schneider AG was in a difficult financial situation at the time the loans were granted and it was not impossible that the laser technology might fail. But the question whether the increased interest rates were sufficient to counterbalance this risk is difficult to assess.
- #### 1.2. DECISION WITHOUT OBJECT
- (34) The Commission is of the opinion that the question whether the LfA loans qualified as state aid can be left open. Even if they had to be considered incompatible state aid, a negative decision ordering the aid's recovery would be without object since there is no undertaking existing any more which would have benefited, either directly or indirectly, from the alleged state aid.
- (35) The formal beneficiary of the loans was Schneider AG. SE and SLT were created only after the loans had been granted, but there is no reason to exclude that they benefited from the loans. The insolvency proceedings against the three Schneider companies were initiated in March 2002, and all three companies were liquidated. The loan debt was included in the insolvent estate.
- (36) The three companies' assets were sold by the insolvency administrator, under the supervision of the insolvency courts. The Commission considers that the market price was paid for the respective assets, as a result of which the benefit of the aid was not passed on to any of the purchasers.
- (a) The assets owned by Schneider AG at the time of its liquidation consisted of trade marks. After a worldwide search for potential investors through an M&A consultant, the insolvency administrator sold the trade marks to the Chinese consumer electronics producer TCL for a purchase price of EUR 3,48 million. At the same time, a second consultant had been asked to value the trade marks. He received several offers which were significantly lower than that made by TCL. The Commission therefore considers that the trade marks were sold at their market price.
- (b) SE's assets, consisting of the television production line and stocks, were sold by the insolvency administrator to TCL for a total purchase price of EUR 5 745 480. According to the information submitted by Germany, the insolvency administrator had conducted extensive discussions with a number of potential investors. However, there was very limited interest in purchasing

a television set production line tailor-made for Schneider AG which was already several years old, and no interest at all in the stock of television sets for which no guarantee and no service could be provided. TCL made the highest bid and is therefore considered to have paid the market price.

- (c) As regards SLT, the insolvency administrator had commissioned an M&A consultant who sent the purchase documentation to about 150 potential investors. In-depth discussions took place with a number of potentially interested parties. However, owing to technical problems linked to the development of the laser display technology, the actual interest turned out to be very limited. No higher bid than the one by LOS was submitted, not even when an attempt was made to sell the existing patents and the registrable patents separately. SLT's assets were sold in a two-step procedure ⁽⁶⁾ to LOS for a total purchase price of EUR 6 025 000. The Commission therefore considers that the market price was paid also for the assets of SLT.

2. THE R&D PROJECTS

2.1. STATE AID

- (37) Public funding is provided by the *Land* of Bavaria through the BFS. It thus stems from state resources and is imputable to the State. The funding of the part of project 1 which was carried out by SLT and of project 2 provided an advantage to Schneider AG. Since consumer electronics are traded between Member States, the measure threatens to distort competition and affects trade between Member States. The subsidisation of projects 1 and 2 therefore constitutes state aid.
- (38) As regards the financing of the 'blue laser' project which was carried out by the University of Würzburg, the Commission considers that the public funding does not qualify as state aid. The project concerned fundamental research which was designed to generally increase scientific and technical knowledge. According to point 2.2 of the 1986 Community framework for state aid for research and development ⁽⁷⁾ (applicable in 1994 at the time of grant), the funding of fundamental research is not normally considered state aid. 'However, in exceptional cases where such research is carried out in or for particular firms, the Commission cannot rule out the possibility that the aid does fall within Article 92(1) [now 87(1)]'. This is not such

a case. In particular, the project was not carried out for Schneider. The funding request had been made independently by the University of Würzburg and the grants were disbursed directly to the university. Germany informed the Commission that the results of the university's research were not relevant for Schneider AG, which had its own scientific approach to solving the issues related to the blue laser. Schneider AG continued its research and development activities independently of the blue laser project and did not use the results of the university's project for its own technical solution. The association of both projects had been done by the BFS in the hope of synergies which did not take place.

2.2. DEROGATION UNDER ARTICLE 87(3) OF THE EC TREATY

- (39) The R&D grants fall to be assessed under the Community framework for state aid for research & development ('R&D framework') of 1986 ⁽⁸⁾ and 1996 ⁽⁹⁾, which allows state aid for fundamental research, (basic) industrial research and precompetitive development.

Project 1

Stage of R&D — Aid intensity

- (40) Project 1 can be qualified as a project of basic industrial research within the meaning of Annex 1 to the R&D framework of 1986 ⁽¹⁰⁾. The research activities were focused on acquiring, through original theoretical and experimental work, entirely new knowledge in the field of the projecting of large, high-resolution colour images for different applications and on elaborating the scientific and technological bases for the individual components of a future laser display system.
- (41) The BFS subsidised the project to the tune of 48,98 %, i.e. below the ceiling of 50 % allowed for basic industrial research.

Incentive effect

- (42) The Commission considers that the R&D aid had an incentive effect because the project would not have been carried out without public support. The project involved a very high technical and economic risk and the technology was very innovative: it required very basic research and a high amount of input. This was confirmed by an external study commissioned by the BFS before deciding on the aid

⁽⁶⁾ As a first step, a joint venture was set up to which SLT's assets were transferred. LOS owned 60 % and the insolvent estate 40 % of the joint venture. The purpose of this intermediate step, which lasted one year, was to try to find a strategic investor who would purchase the 40 % owned by the insolvent estate. No such investor was found, and LOS was able to acquire 100 % ownership.

⁽⁷⁾ OJ C 83, 11.4.1986, p. 2.

⁽⁸⁾ See footnote 8.

⁽⁹⁾ OJ C 45, 17.2.1996, p. 5.

⁽¹⁰⁾ In Annex 1 to the R&D framework of 1986, basic industrial research is defined as 'original theoretical or experimental work whose objective is to achieve new or better understanding of the laws of science and engineering as they might apply to an industrial sector or the activities of a particular undertaking'.

grant. The consulted experts were of the opinion that, in view of the high complexity and the demanding overall aim of the project, it could only be carried out if substantial support was provided. The highest technical risk was estimated to be the exact reproduction of the image. The experts further confirmed that this completely new technology contained a high number of single issues which could only be tackled through an intensive, concentrated and financially well-equipped R&D project.

Project 2

Stage of R&D — Aid intensity

- (43) As regards project 2, Germany claims that the project must also be qualified as a project of industrial research⁽¹¹⁾. Germany argues that, despite the misleading subtitle of the project ('Systemintegration und Prototypen'), the activities carried out during the project were such as to fall under the above definition. Germany explained that the aim of the project was to further elaborate on the individual components of the technology. Therefore, in the eyes of the BFS, the project was entirely classified as industrial research. Furthermore, the first prototype was developed a couple of months after the end of project 2 and the prototype was for professional use and not for consumer use, which had been the aim of the project. The actual precompetitive research was carried out only after project 2 and without further public funding.
- (44) The Commission is more convinced that the project should rather be qualified as a project of precompetitive development⁽¹²⁾ — at least partially. Pursuant to points 5.5 and 5.9 of the R&D framework of 1996, the funding would be limited to 25 %, or would have to represent the weighted average of the permissible aid intensities. The Commission considers that the integration of individual components into an overall system could fall under the definition of precompetitive development. Furthermore, the first prototype was finalised just a few months after the end of project 2, which is an indicator that the project was aimed at the creation of an initial prototype.
- (45) However, a further analysis of the question would be without object since any incompatible aid would not distort the market any more. The R&D grants were provided to Schneider AG. SE and SLT were set up only later. It is highly

unlikely that the television set producer SE benefited from the R&D aid for research into laser technology, which was entirely spent in the approved manner. SLT might have benefited from the aid. However, the companies have since been liquidated, the R&D grants were included in the insolvent estate⁽¹³⁾ and the assets were sold at their market price (see paragraph 36).

Incentive effect

- (46) The Commission considers that the technological and economic risk of project 2 was still very high and that SLT would not have been in a position to carry out the project without the support of the BFS. Like the first project before it, the second project had a highly innovative character and required a significant amount of input.

VII. CONCLUSION

- (47) The Commission concludes that the R&D aid for project 1 amounting to EUR 6 498 468,68 and 50 % of the R&D aid for project 2, i.e. EUR 1 275 826,60, were compatible with the Community's state aid rules.
- (48) As regards the three loans totalling EUR 12,8 million and 50 % of the R&D aid for project 2, the Commission considers that the information available is not sufficient for it to reach a conclusive assessment. However, the decisive questions as to whether the loans constituted state aid and how far project 2 was a project of industrial research can be left open. Any incompatible state aid could not be recovered since, following the liquidation of all actual or potential beneficiaries and the sale of their assets at their market price, the aid would no longer distort the market.

The Commission accordingly concludes that the formal investigation procedure initiated under Article 88(2) of the EC Treaty in respect of the three loans and part of project 2 no longer serves any purpose,

HAS ADOPTED THIS DECISION:

Article 1

The aid granted to Schneider AG, Türkheim, in the amount of EUR 6 498 468,68 for the research project 'Laser-Display-Technologie' and in the amount of EUR 1 275 826,60 for the

⁽¹¹⁾ In Annex 1 to the R&D framework of 1996, industrial research is defined as 'planned research of critical investigation aimed at the acquisition of new knowledge, the objective being that such knowledge may be useful in developing new products, processes or services or in bringing about a significant improvement in existing products, processes or services'.

⁽¹²⁾ In Annex 1 to the R&D framework of 1996, precompetitive development is defined as 'the shaping of the results of industrial research into a plan, arrangement or design for new, altered or improved products, processes or services, whether they are intended to be sold or used, including the creation of an initial prototype which could not be used commercially. This may also include the conceptual formulation and design of other products, processes or services and initial demonstration projects or pilot projects, provided that such projects cannot be converted or used for industrial applications or commercial exploitation'.

⁽¹³⁾ After it became clear that the assets of SLT would be sold outside Bavaria, one of the formal preconditions for the grants was no longer fulfilled.

R&D project 'Laser-Display-Technologie — Systemintegration und Prototypen' is compatible with the common market.

Article 2

The formal investigation procedure is closed in so far as it concerned the loans from the Bayrische Landesanstalt für Aufbaufinanzierung totalling EUR 12,8 million and the grant of EUR 1 275 826,60 for the R&D project 'Laser-Display-Technologie — Systemintegration und Prototypen'.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 16 May 2006.

For the Commission
Neelie KROES
Member of the Commission

COMMISSION DECISION

of 7 June 2006

on State aid granted by Germany for the acquisition of shares in winegrowers' cooperatives

(notified under document number C(2006) 2070)

(Only the German text is authentic)

(2007/57/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having given interested parties notice to submit their comments pursuant to that Article ⁽¹⁾, and having regard to those comments,

Whereas:

(6) Germany submitted comments to the Commission by letter of 5 November 2003, registered as received on 6 November 2003.

(7) By letter of 7 March 2005, registered as received on 9 March 2005, Germany submitted further comments to the Commission and requested an assessment of the measure pursuant to Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture and fisheries sectors ⁽³⁾.

I. PROCEDURE

(1) The measure was notified by letter of 19 April 2001 in response to a written inquiry from the Commission. Since the measure had already been implemented, the record of the aid was transferred to the register of non-notified state aid (aid No NN 32/01).

(2) Additional information was submitted by letters of: 13 February 2002, registered as received on 18 February 2002; 5 July 2002, registered as received on 9 July 2002; and 5 December 2002, registered as received on 10 December 2002. A meeting to discuss the aid took place at the Directorate-General for Agriculture on 25 June 2002.

(3) By letter SG (2003) D/232035 of 2 October 2003 the Commission informed Germany of its decision to initiate the procedure under Article 88(2) of the EC Treaty in respect of this state aid measure (aid No C 60/2003).

(4) On 6 November 2003 the Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾ and interested parties were invited to submit their comments.

(5) The Commission received comments from interested parties and from the regional authorities granting the aid by letters of 18 November 2003, registered as received on 25 November 2003; 23 December 2003, registered as received on 5 January 2004; and 12 February 2004, registered as received on 17 February 2004.

II. DETAILED DESCRIPTION OF THE AID

II.1 Title of the measure

(8) Aid for the acquisition of shares by winegrowers in Rhineland-Palatinate

II.2 Legal basis

(9) The scheme is based on the following:

the Guideline on granting assistance from funds of the rural district of *Bernkastel-Wittlich* to support winegrowers who join a winegrowers' cooperative;

the Guideline on granting assistance from funds of the rural district of *Cochem-Zell* to support winegrowers who join a winegrowers' cooperative/producer organisation;

the Guideline on granting assistance from funds of the rural district of *Trier-Saarburg* to support winegrowers who join a winegrowers' cooperative/producer organisation;

the Notice issued by the local authority association of *Schweich* to increase the assistance granted by the rural district of *Trier-Saarburg* to support winegrowers who join a winegrowers' cooperative/producer organisation.

⁽¹⁾ OJ C 267, 6.11.2003, p. 2.

⁽²⁾ See footnote 1.

⁽³⁾ OJ L 325, 28.10.2004, p. 4.

- (10) The Guideline issued by the district administration of Bernkastel-Wittlich specifically provides for aid to purchase shares in the *Moselland* cooperative. The Guidelines issued by the district administration of Cochem-Zell contain similar provisions, and this has led in practice to support being granted only for shares in the *Moselland* cooperative. The Guidelines issued by the district administration of Trier-Saarburg and the local authority association of Schweich are not specifically targeted at a particular company, but generally at cooperatives and producer organisations approved under the German Market Structure Act.
- (16) The assistance paid by the local authority association of Schweich was additional (cumulative) to payments in the rural district of Trier-Saarburg.
- (17) In the rural district of Cochem-Zell, interest relief of up to 4,95 % was granted on any loans taken out for the purchase of shares during a maximum period of four years.
- (18) In 2000, the following payments were made to producer organisations:

II.3 Aim of the measure

- (11) The aim of the scheme was to increase the proportion of grapes collected by producer organisations and to reduce the proportion of cask wine freely saleable, i.e. not sold via producer organisations. The objective was to help stabilise prices on the cask-wine market. At the same time the long-term objective was to close down production capacity in the form of vinification facilities on individual holdings, especially at small winegrowing enterprises in the Mosel-Saar-Ruwer winegrowing area.

Rural district/ municipality	Winegrowers' cooperative Moselland	Producer orga- nisation Mosel- herz	Producer organi- sation Mosel Gate
Bernkastel-Wit- tlich	EUR 44 022	EUR -	EUR -
Cochem-Zell	EUR 20 171	EUR -	EUR -
Trier-Saarburg	EUR 51 270	EUR 6 990	EUR 7 631
Schweich	EUR 16 975	EUR 3 390	EUR 5 011
Total	EUR 132 438	EUR 10 380	EUR 12 642

- (12) The aid was designed to cover part of winegrowing enterprises' costs when acquiring shares in winegrowers' cooperatives/producer organisations (hereinafter: producer organisations). The aid was granted on condition that the winegrower undertook to keep the shares for five years from the date on which the application was filed. Each enterprise also had to bring into the producer organisation its total cultivated area and deliver all its grapes, must and wine to the producer organisation. Each enterprise was also required to shut down its corresponding vinification facilities.
- (19) In 2000, a total of EUR 155 460 was paid out. The scheme was financed from funds of the district administrations and of the Schweich local authority.

II.5. Duration of the measure

- (20) The duration of the scheme in the rural district of Cochem-Zell was four years (2000 to 2003). The other measures were limited to 2000.

II.4. Budgetary appropriations of the aid

- (13) The aid was granted in the form of direct grants and in the form of interest relief on capital-market loans.
- (14) The cost of acquiring shares was normally EUR 293,99. Where the cost was less, the grant was reduced proportionately.
- (15) The following grants per share were granted:

Rural district/ municipality	For the acquisi- tion of 1 to 5 shares	For each addi- tional share	Maximum grant per enterprise newly joining a producer organi- sation
Bernkastel-Wit- tlich	EUR 76,69	EUR 38,35	EUR 766,94
Cochem-Zell	EUR 76,69	EUR 76,69	No upper limit
Trier-Saarburg	EUR 76,69	EUR 38,35	EUR 766,94
Schweich	EUR 51,13	—	EUR 255,65

II.6. Beneficiaries

- (21) The aid was paid direct to the producer organisations which sold shares at reduced prices to newly-joining winegrowers and winegrowing enterprises.
- (22) Winegrowers and winegrowing enterprises in each rural district were thereby able to acquire shares in producer organisations at reduced cost.
- (23) The measure enabled producer organisations to increase their own capital and secure the purchase of raw materials.

II.7 Reasons for initiating the procedure

- (24) After provisional examination, the measure was classified as operating aid to winegrowing enterprises and producer organisations — which is incompatible with the common market. The Commission therefore initiated a formal investigation procedure.

III. COMMENTS BY INTERESTED PARTIES

III.1. Complaints against the measure

- (25) The Commission received a complaint concerning the introduction of the aid scheme. The complainant pointed out that the aid enabled winegrowers to acquire shares in local producer organisations at reduced prices. Besides the advantage of increased capital, the producer organisations were then also able to secure the purchase of raw materials in the form of must and raw wines. The complainant argued that this placed competitors at a disadvantage regarding the procurement of must and raw wines.

III.2. Comments by interested parties as part of the formal investigation procedure

- (26) The comments by interested parties/the German regional authorities granting the aid stressed the support given to necessary structural change in a 2 000-year-old steep-slope winegrowing area whose conservation was hugely important for tourism and gastronomy. They argued that the measure contributed towards closing down production capacity. Application of Regulation (EC) No 1860/2004 was also requested.

IV. COMMENTS BY GERMANY

- (27) In its comments, Germany emphasised the need for support for necessary structural change in a 2 000-year-old steep-slope winegrowing area whose conservation was hugely important for tourism and gastronomy. The aid was intended to offset the disadvantages of winegrowers and winegrowing enterprises whose own vinification facilities had to be closed down in order to fulfil the five-year delivery obligation to the producer organisation, and was therefore justified as a capacity-reduction scheme.
- (28) In additional comments, Germany requested the application of Regulation (EC) No 1860/2004.

V. ASSESSMENT OF THE AID

CMO

- (29) Article 36 the EC Treaty applies to winegrowing and wine processing, which are covered by Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine ⁽⁴⁾.
- (30) According to the comments by Germany and the interested parties, the winegrowers' and winegrowing enterprises' economic difficulties were due to structural change in

market outlets. The usual marketing of cask wine with own vinification facilities had become increasingly difficult. The market now required either raw materials (grapes or freshly-pressed must) or quality, market-oriented wines. Private companies could have entered into similar contracts with the winegrowing enterprises and could have taken over their marketing risks.

- (31) In this context, as described in paragraph 12 above, the regional authorities bore part of the cost of buying shares in winegrowers' producer organisations. Buyers of shares in the producer organisations concerned were required to bring into the producer organisation their total cultivated area and deliver all their grapes, must and wine to the producer organisation. The winegrowers had to undertake to keep the shares for five years, which in practice meant shutting down their vinification facilities. The producer organisations were better able — compared with other wine-production and wine-marketing companies — to secure the purchase of raw materials by requiring their winegrowers and winegrowing enterprises to deliver to them all the grapes, must and wine which they produced during a five-year period (see section II.2 above).
- (32) Favouring the producer organisations by securing the commitment of winegrowers to deliver all their grapes, must and wine and to close down their own vinification facilities constitutes a structural measure strengthening the position of the producer organisations. The producer organisations' advantage of secured procurement, taken in isolation, can be justified as an effect of a market restructuring measure corresponding to the goals stipulated in Article 39 of Regulation (EC) No 1493/1999.

State Aid

- (33) Under Article 71(1) of Regulation (EC) No 1493/1999,

'Save as otherwise provided in this Regulation, Articles 87, 88 and 89 of the Treaty shall apply to the production of and trade in the products covered by this Regulation.'

- (34) Article 71(2) stipulates that

'Chapter II of Title II [abandonment premiums] shall not impede the granting of national aid designated to achieve objectives similar to those sought by that Chapter. Paragraph 1 shall nevertheless apply to such aids.'

- (35) Under Article 87(1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competi-

⁽⁴⁾ OJ L 179, 14.7.1999, p. H1. Regulation as last amended by Regulation (EC) No 2165/2005 (OJ L 345, 28.12.2005, p.).

tion by favouring certain undertakings or the production of certain goods, insofar as it affects trade between Member States, is prohibited.

- (36) The aid scheme in question was financed from public funds of the districts concerned and of one municipality in the German *Land* Rhineland-Palatinate. The aid is liable to distort competition ⁽⁵⁾ and to affect trade between Member States ⁽⁶⁾.

V.1. Economic advantage derived by winegrowers and winegrowing enterprises from grants for acquiring shares and from interest relief

- (37) Certain winegrowers and winegrowing enterprises in Rhineland-Palatinate have acquired shares in producer organisations with support from the German regional authorities, thus paying a reduced price for the shares (see paragraph 15 above). The amount deducted from the usual price of the shares should normally be borne by the purchasers. The price reduction therefore constitutes a direct economic advantage for the undertakings concerned, financed from public resources.
- (38) Interest relief of up to 4,95 % granted to some winegrowers and winegrowing enterprises for such a purchase (see paragraph 17 above) also constitutes an economic advantage for those growers, financed from public resources.
- (39) Article 87(1) of the EC Treaty is therefore applicable.
- (40) Section V.3 below will examine whether point 9 — aid for capacity reduction — of the Community guidelines for State aid in the agricultural sector (hereinafter: the Agricultural guidelines) ⁽⁷⁾ is applicable to the above-mentioned advantages.

V.2. Economic advantage derived by producer organisations

- (41) The Commission confirms the view expressed in its letter initiating the formal investigation procedure, namely that the producer organisations derived advantage from the aid given to winegrowers and winegrowing enterprises for purchasing their shares. The aid for the acquisition of shares was restricted to certain recognised producer organisations (see paragraph 10 above). The winegrowers and winegrowing enterprises had to keep the shares for five years.
- (42) According to the German authorities, a restructuring of the wine market was unavoidable. Although winegrowers could have acquired shares in producer organisations as the price

of the shares was not very high, this structural change did not take place until the regional and municipal authorities' aid scheme was launched.

- (43) Those producer organisations were able — compared with other wine-production and wine-marketing firms — to increase their capital and liquidity and earn extra income through the additional entry of shareholders that were able to acquire shares at reduced prices or with the help of interest assistance. A further advantage to the producer organisations comprised the winegrowers' undertaking, linked to the assisted purchase of shares, to deliver all their grapes, must and wine and to close down their vinification facilities.
- (44) In this connection, it is appropriate to cite paragraph 26 of the ECJ judgment in case C-156/98 *Germany v Commission* ⁽⁸⁾:

'In the present case it must be observed that the origin of the advantage indirectly conferred on the undertakings referred to by Paragraph 52(8) of the EStG is the renunciation by the Member State of tax revenue which it would normally have received, inasmuch as it is this renunciation which has enabled investors to take up holdings in those undertakings on conditions which are in tax terms more advantageous.'

- (45) That judgment was confirmed in paragraph 95 of CFI case T-93/02, *Confédération nationale du Crédit Mutuel v Commission*, ⁽⁹⁾

*'...[I]t is not necessary, in order to found a finding of the existence of intervention by means of State resources in favour of an undertaking, that the undertaking must be the direct recipient. It follows from Article 87(2)(a) EC that aid having a social character granted to individual consumers is capable of coming within the scope of Article 87(1) EC. Likewise, the fact that a Member State renounces tax revenue may involve an indirect transfer of State resources, capable of being treated as aid to economic operators other than those to which the tax advantage is accorded directly (Case C-156/98 *Germany v Commission* [2000] ECR I-6857, paragraphs 24 to 28).'*

- (46) In the light of the case law cited above, the Commission concludes that the aid for winegrowers and winegrowing enterprises to buy shares in certain producer organisations and to retain them for at least five years resulted in an increase in those producer organisations' capital which would not otherwise have occurred. Purchase of such shares with state support constitutes an indirect transfer of state resources to producer organisations. The resulting increase in the producer organisation's capital constitutes

⁽⁵⁾ According to the case law of the European Court of Justice, an improvement in the competitive position of an enterprise as a result of state aid is generally speaking a distortion of competition in relation to competing enterprises which do not receive such support (Case C-730/79, *Philip Morris* ECR [1980] 2671, paragraphs 11 and 12).

⁽⁶⁾ Germany's intra-Community trade in wine comprised 10 364 600 million hectolitres in imports and 1 881 900 million hectolitres in exports in 1999. No separate data are available for Rhineland-Palatinate. (Source: German Federal Statistics Office).

⁽⁷⁾ OJ C 232, 12.8.2000, p. 19.

⁽⁸⁾ Case C-156/98, *Germany v Commission* ECR [2000] I-6857, paragraph 26.

⁽⁹⁾ Case T-93/02, *Confédération nationale du Crédit Mutuel v Commission* ECR [2005] (not yet published) paragraph 95.

an indirect economic advantage which is to be treated as state aid other than the advantage granted to the winegrowers and winegrowing enterprises.

(47) Article 87(1) of the EC Treaty is therefore applicable.

V.3. Exemptions under Article 87(2) and (3) of the EC Treaty

(48) An examination therefore needs to be made of whether one of the exceptions/exemptions from the basic ban on state aid under Article 87(1) of the EC Treaty applies.

(49) According to the information available, the exemptions under Article 87(2) and Article 87(3) (a), (b) and (d) of the EC Treaty are not applicable since the aid cannot be regarded as

- aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, nor as
- aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State, nor as
- aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest.

(50) Article 87(3)(c) of the EC Treaty is therefore the only exemption which might possibly apply.

Compatibility of the aid to winegrowers and winegrowing enterprises

(51) By letter of 13 February 2002, the German authorities proposed assessing the measure on the basis of point 9 of the Agricultural guidelines.

(52) Under point 9, aid may be granted for shutting down production capacity provided that the aid is consistent with other Community schemes for reducing production capacity and meets the following conditions:

- a) The aid must be in the general interest of the sector concerned and limited in time.
- b) There must be a sufficient counterpart from the beneficiaries, normally consisting of a definitive and irrevocable decision to scrap or irrevocably close the production facility concerned.
- c) The possibility must be excluded that the aid could serve to rescue and restructure enterprises in difficulty.

d) There must be no overcompensation for value of production lost or future losses of income. At least half of the costs should be met by a contribution from the sector, either through voluntary contributions or by means of compulsory levies.

e) No aid may be granted which would interfere with the mechanisms of the common market organisations.

Re a) The general interest of the sector

(53) The scheme seems to have had a positive effect in concentrating agricultural production and to have led to some stabilisation of the price situation in the cask-wine market. The aid was limited to three rural districts and one municipality in Rhineland-Palatinate. The Rule issued by the district administration of Bernkastel-Wittlich specifically provided for aid to purchase shares in the *Moselland* cooperative. The Rules issued by the district administration of Cochem-Zell contained similar provisions, leading in practice to support being granted only for the purchase of shares in the *Moselland* cooperative. The Rules issued by the district administration of Trier-Saarburg and the local authority association of Schweich were not specifically targeted at a particular enterprise, but designed to assist cooperatives/producer organisations approved under the German Market Structure Act (*Marktstrukturgesetz*). Other private-sector enterprises which were involved in wine production or wine trading but which did not meet the conditions referred to above were therefore not eligible to take part in the measure. The scheme was limited to a maximum duration of four years.

(54) Under point 9.6 of the Agricultural guidelines, aid schemes for closing capacity should be available to all market participants in the sector concerned. As set out above, this condition cannot be regarded as fulfilled. The Commission also received a letter of complaint from an economic operator in the wine sector who pointed out that assisting certain cooperatives through this measure was by no means in the general interest of the wine sector, because private-sector enterprises involved in wine production or wine trading were not able to take part in the scheme.

Re b) Counterpart

(55) The German authorities stated that the aid scheme was designed to shut down production capacity in winegrowing enterprises. The justification given was that the winegrowers undertook to deliver all their grapes, must and wine to the producer organisation and that, in the long term, their own vinification capacity would be shut down.

(56) Under point 9.2 of the Agricultural guidelines, aid for dismantling capacity may be approved only if it forms part of a programme for restructuring the sector which has

clearly-defined goals and a set timescale. The scheme in question here was implemented without an underlying restructuring programme.

- (57) Under point 9.4 of the Agricultural guidelines, beneficiaries must make an adequate contribution in return — normally consisting of a definitive and irrevocable decision to scrap or irreversibly close down the production capacity concerned. Beneficiaries must give a legally-binding undertaking that the closure is definitive and irrevocable. The German authorities stated that no legally-binding undertakings were given by the winegrowers regarding the closure of their own capacity. As regards wine production, the obligation to deliver grapes, must and wine is tantamount to shutting down such capacity, but only for the five-year period covered by that obligation. The Commission concludes that this condition has not been met.

Re c) No aid to enterprises in difficulty

- (58) This condition is not expressly stipulated in the aid scheme.

Re d) No overcompensation and contribution of the sector

- (59) Point 9.6 of the Agricultural guidelines specifies that the amount of aid must be strictly limited to compensation for losses in asset value, plus an incentive payment which may not exceed 20 % of the value of the assets concerned. In addition, point 9.7 provides that at least half of the cost of such aid schemes should be met by contributions from the relevant sector, either through voluntary contributions or compulsory levies.

- (60) The German authorities have not submitted precise calculations for any losses in asset value by the winegrowing enterprises. At present, it cannot therefore be ruled out that losses have been overcompensated and/or that the aid exceeds 50 % of the actual costs of the aid scheme. The Commission therefore considers that these conditions have not been met.

Re 5) Common market organisation

- (61) The measure is not contrary to the objectives of the common market organisation for wine.
- (62) Since, for the reasons stated above, the aid granted to the winegrowers and winegrowing enterprises does not comply with point 9 of the Agricultural guidelines, it constitutes operating aid incompatible with the common market.

- (63) No other justifications under Article 87(3)(c) of the EC Treaty are applicable.

Compatibility of the aid to the producer organisations

- (64) In the agricultural sector the Commission favours the formation of producer organisations in which farmers are grouped together in order to concentrate supply and to adapt production to market requirements. State aid may be granted for starting up such an organisation (point 10.5 of the Agricultural guidelines) or for significantly extending its activities to cover new products or new sectors (point 10.6 of the Agricultural guidelines). In the present case none of these conditions are met.

- (65) Under point 10.8 of the Agricultural guidelines, aid granted to producer organisations to cover expenses which are not linked to setting-up costs, such as investments, is to be assessed in accordance with the rules governing such aid. Since the measure in question here comprises only an increase in the producer organisations' capital, there is no investment involved and this point cannot apply as the basis for assessing compatibility.

- (66) For the reasons stated above, the aid granted to the producer groups does not comply with point 10 of the Agricultural guidelines. It therefore constitutes operating aid incompatible with the common market.

- (67) No other justifications under Article 87(3)(c) of the EC Treaty are applicable.

V.4. De minimis aid to producer organisations and winegrowing enterprises

- (68) The Commission's experience has shown that very small amounts of aid granted subject to certain conditions do not fall under Article 87(1) of the Treaty.

- (69) Under Regulation (EC) No 1860/2004, aid not exceeding EUR 3 000 per beneficiary over three years, where the total amount of such aid is restricted to approximately 0,3 % of annual agricultural output, does not affect trade between Member States and does not distort or threaten to distort competition and therefore does not fall under Article 87(1) of the Treaty.

- (70) Under Article 5 of Regulation (EC) No 1860/2004 the same applies to aid granted before entry into force, provided that the requirements of Articles 1 and 3 thereof are fulfilled.

- (71) Article 1 limits the application to the agricultural sector. This aid concerns marketing of wine. The restrictions of Article 1 (a) to (c) are not applicable.
- (72) Therefore, up to a maximum amount of EUR 3 000 the measures do not constitute aid because not all the criteria of Article 87(1) of the EC Treaty have been fulfilled. In order to avoid double counting, this limit is to be applied only at the level of the winegrowing enterprises.
- (73) For the reasons stated above, the Commission considers that granting assistance for the acquisition of shares up to the maximum amount of EUR 3 000 does not constitute aid, provided that the conditions of Regulation (EC) No 1860/2004 have been met. Any amount exceeding that threshold at the level of the beneficiary winegrowers and winegrowing enterprises constitutes aid in its entirety.

VI. CONCLUSIONS

- (74) The Commission concludes that the assistance and interest support granted under this measure constitute operating aid which is not covered by any of the derogations to the general prohibition on such aid and which is therefore incompatible with the common market. The Commission also finds that Germany implemented the measure unlawfully.
- (75) Where illegally-granted state aid is found to be incompatible with the common market, the natural consequence is that the aid should be recovered in order — as far as possible — to restore the competitive position that existed before the aid was granted.
- (76) This decision concerns the scheme in question and must be implemented immediately, including as regards recovery in accordance with 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 ⁽¹⁰⁾.
- (77) In order to eliminate the direct and indirect advantage derived by the winegrowers, winegrowing enterprises and producer groups, but at the same time avoid double counting of the aid, Germany is to recover the aid from the undertakings to which the state resources were paid. The obligation to recover the aid from producer groups is, however, without prejudice to the possibility that support of up to EUR 3 000 granted to winegrowers and winegrowing enterprises does not constitute aid within the meaning of Article 87(1) of the EC Treaty provided that the conditions of Regulation (EC) No 1860/2004 have been met. Any amount exceeding that threshold at the level of the beneficiary winegrower or winegrowing enterprise constitutes aid in its entirety and is to be recovered from the producer group whose shares the final beneficiary has acquired.

- (78) This decision is without prejudice to the possibility for the producer groups concerned to claim a corresponding amount from the winegrowers and winegrowing enterprises or to avail themselves of other legal remedies if such a possibility exists under national law.
- (79) In the district of Cochem-Zell, the aid to be recovered from the winegrowers and winegrowing enterprises is to correspond to the interest relief received by them. The obligation to recover the aid from the winegrowers and winegrowing enterprises is, however, without prejudice to the possibility that support of up to EUR 3 000 does not constitute aid within the meaning of Article 87(1) of the EC Treaty provided that the conditions of Regulation (EC) No 1860/2004 have been met. Any amount exceeding that threshold at the level of the beneficiary winegrower or winegrowing enterprise constitutes aid within the meaning of Article 87 (1) of the EC Treaty in its entirety and is to be recovered in full.
- (80) This decision is without prejudice to the possibility for the winegrowers and winegrowing enterprises concerned to avail themselves of other legal remedies vis-à-vis the producer groups, if such a possibility exists under national law.

HAS ADOPTED THIS DECISION:

Article 1

The state aid scheme in the form of direct assistance or interest relief to winegrowers and winegrowing enterprises for investing in shares in producer organisations and in the form of direct assistance for producer organisations, which was unlawfully implemented by the Federal Republic of Germany in breach of Article 88(3) of the EC Treaty, shall — without prejudice to Article 2 — be deemed incompatible with the common market.

Article 2

The scheme referred to in Article 1 shall be deemed not to constitute aid insofar as it complies with the conditions of Regulation (EC) No 1860/2004.

Article 3

1. Within two months from the date of notification of the present decision, the Federal Republic of Germany shall inform all winegrowers and producer organisations concerned with the application of the state aid scheme of the Commission's decision that the state aid scheme referred to in Article 1 is incompatible with the common market.

2. The Federal Republic of Germany shall take all necessary measures to ensure that the aid referred to in Article 1 and unlawfully granted is recovered from the beneficiary winegrowers and/or producer organisations, without prejudice to Article 2 or any subsequent claims under national law. Within

⁽¹⁰⁾ OJ L 83, 27.3.1999, p. 1 Regulation as amended by the 2003 Act of Accession.

two months from the date of notification of the present decision, the Federal Republic of Germany shall inform the Commission of the identity of those beneficiaries, the aid amounts individually granted and the methods used to determine those amounts.

3. Recovery shall be effected without delay and in accordance with the procedures of national law permitting the immediate and effective implementation of this Decision.

4. The aid to be recovered shall bear interest throughout the period, from the date on which it was first placed at the beneficiaries' disposal until its actual recovery.

5. The interest shall be calculated in accordance with the provisions laid down in 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.

Article 4

The Federal Republic of Germany shall inform the Commission, within two months of the date of notification of this Decision, of the measures already taken and planned to comply with it. Germany shall submit, within the same period, all documents which demonstrate that recovery proceedings have been initiated against the beneficiaries of the unlawful aid.

Article 5

This decision is addressed to the Federal Republic of Germany.

Done at Brussels, 07 June 2006.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

COMMISSION DECISION**of 28 August 2006****concerning the conclusion of an Agreement between the Government of Japan and the European Atomic Energy Community for co-operation in the peaceful uses of nuclear energy**

(2007/58/EURATOM)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the second paragraph of Article 101 thereof,

Having regard to the Council Decision of 27 February 2006, approving the conclusion by the Commission of an Agreement between the Government of Japan and the European Atomic Energy Community for co-operation in the peaceful uses of nuclear energy,

Whereas the Agreement between the Government of Japan and the European Atomic Energy Community for co-operation in the peaceful uses of nuclear energy should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the Government of Japan and the European Atomic Energy Community for co-operation in the

peaceful uses of nuclear energy is hereby approved on behalf of the European Atomic Energy Community.

Text of the Agreement is attached to this Decision.

Article 2

The Commissioner for Energy shall, with regard to the Community, give the notification provided for in Article 17(1) of the Agreement.

Done at Brussels, 28 August 2006

For the Commission

Andris PIEBALGS

Member of the Commission

AGREEMENT

Between the Government of Japan and the European Atomic Energy Community for co-operation in the peaceful uses of nuclear energy

THE GOVERNMENT OF JAPAN AND THE EUROPEAN ATOMIC ENERGY COMMUNITY (HEREINAFTER REFERRED TO AS 'THE COMMUNITY'),

Desiring to continue and further develop a long-term, stable co-operation which may benefit Japan, the Community and third parties in the peaceful and non-explosive uses of nuclear energy on the basis of mutual benefit and reciprocity;

Recognizing that Japan, the Community and its Member States have attained a comparable advanced level in the peaceful uses of nuclear energy and in the security afforded by their respective laws and regulations concerning health, safety, the peaceful uses of nuclear energy and the protection of the environment;

Desiring also to make long-term co-operative arrangements in the field of the peaceful and non-explosive uses of nuclear energy in a predictable and practical manner, which take into account the needs of their respective nuclear energy programmes and which facilitate trade, research and development and other co-operative activities between Japan and the Community;

Reaffirming the strong commitment of the Government of Japan, the Community and the Governments of its Member States to nuclear non-proliferation including the strengthening and efficient application of the related safeguards and export control regimes under which co-operation in the peaceful uses of nuclear energy between Japan and the Community should be carried out;

Reaffirming the support of the Government of Japan, the Community and the Governments of its Member States for the objectives of the International Atomic Energy Agency (hereinafter referred to as 'the Agency') and its safeguards system and their desire to promote universal adherence to the Treaty on the Non-Proliferation of Nuclear Weapons, done on July 1, 1968 (hereinafter referred to as 'the Non-Proliferation Treaty');

Noting that nuclear safeguards are applied in all Member States of the Community pursuant to the Treaty establishing the European Atomic Energy Community, done on March 25, 1957 (hereinafter referred to as 'the Euratom Treaty');

Recognizing the principle of the free movement of nuclear material, equipment and non-nuclear material within the Community contained in the Euratom Treaty; and

Recognizing also the significance of a high level of transparency concerning the management of plutonium in order to reduce the risk of proliferation of nuclear weapons and to ensure the protection of workers, the general public and the environment,

HAVE AGREED AS FOLLOWS:

Article 1

(ii) the territories to which the Euratom Treaty applies.

Definitions

For the purposes of this Agreement:

(a) The term 'Parties' means the Government of Japan and the Community. The term 'Party' means one of the above 'Parties'.

(b) The term 'the Community' means both:

(i) the legal person created by the Euratom Treaty; and

(c) The term 'persons' means any natural person, undertaking or other entity governed by the applicable laws and regulations in the respective territorial jurisdiction of the Parties, but does not include the Parties.

(d) The term 'appropriate authority' means, in the case of the Government of Japan, the government agency designated by the Government of Japan, and in the case of the Community, the European Commission or such other authority as the Community may at any time notify in writing to the Government of Japan.

(e) The term 'unclassified information' means information not bearing a security classification placed by either of the Parties or by an individual Member State of the Community.

(f) The term 'nuclear material' means

(i) 'source material', namely, uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; any other material containing one or more of the foregoing in such concentration as the Board of Governors of the Agency determines under Article XX of the Statute of the Agency, done on October 26, 1956 (hereinafter referred to as 'the Statute'), and the appropriate authorities of both Parties inform each other, in writing, to accept; and such other material as the Board of Governors of the Agency determines under Article XX of the Statute and the appropriate authorities of the Parties inform each other, in writing, to accept.

(ii) 'special fissionable material', namely, plutonium; uranium-233; uranium enriched in the isotope 233 or 235; any material containing one or more of the foregoing; and such other material as the Board of Governors of the Agency determines under Article XX of the Statute and the appropriate authorities of both Parties inform each other, in writing, to accept. The term 'special fissionable material' does not include 'source material'.

(g) The term 'sensitive nuclear material' means separated plutonium (including plutonium contained in mixed oxide fuel) or uranium enriched to more than 20 % in the isotope 235 and/or uranium 233.

(h) The term 'equipment' means major items of plant, machinery or instrumentation, or major components thereof, which are especially designed or manufactured for use in nuclear activities, and which are specified in Part A of Annex A to this Agreement.

(i) The term 'non-nuclear material' means heavy water, or any other material suitable for use in a nuclear reactor to slow down high velocity neutrons and increase the likelihood of further fission, as specified in Part B of Annex A to this Agreement.

(j) The term 'nuclear material recovered or produced as a by-product' means special fissionable material derived from nuclear material transferred pursuant to this Agreement or by one or more processes from the use of complete nuclear reactors transferred pursuant to this Agreement and, if the Government of Japan and the European Commission, following consultations between the European Commission and the Government of the Member State of the Community concerned, agree in writing prior to its

transfer, any other equipment specified in Part A of Annex A to this Agreement which is intended to be transferred pursuant to this Agreement.

Article 2

Scope of co-operation

1. The Parties shall co-operate under this Agreement to promote and facilitate nuclear trade, research and development and other activities between or in Japan and the Community for peaceful and non-explosive uses of nuclear energy, in the mutual interests of producers, the nuclear fuel cycle industry, utilities, research and development institutes and consumers while abiding by the principles of non-proliferation.

2. The Parties shall co-operate in the following ways:

(a) Either Party or authorised persons may supply to or receive from the other Party or authorised persons nuclear material, equipment and non-nuclear material, on such terms as may be agreed upon between the supplier and the recipient.

(b) Either Party or authorised persons may perform nuclear fuel cycle services and other services within the scope of this Agreement for or receive such services from the other Party or authorised persons, on such terms as may be agreed upon between the supplier and the recipient.

(c) The Parties shall encourage co-operation between themselves and between persons by exchange of experts. When co-operation pursuant to this Agreement requires such exchanges of experts, the Parties shall facilitate the entry of the experts to Japan and the Community and their stay therein.

(d) The Parties shall facilitate supply and exchange of unclassified information as may be agreed between themselves, between persons, or between either Party and persons.

(e) The Parties may co-operate and encourage co-operation between themselves and between persons in other ways as deemed appropriate by the Parties.

3. Co-operation as specified in paragraphs 1 and 2 above shall be subject to the provisions of this Agreement and the applicable international agreements, laws and regulations in force in Japan and in the Community.

Article 3

Items subject to the Agreement

1. Nuclear material transferred between Japan and the Community, whether directly or through a third country, shall become subject to this Agreement upon its entry into the territorial jurisdiction of the receiving Party, only if the supplying Party has notified the receiving Party in writing of the intended transfer and the receiving Party has confirmed in writing that

such item will be held subject to this Agreement and that the proposed recipient, if other than the receiving Party, will be an authorised person under the territorial jurisdiction of the receiving Party.

2. Equipment and non-nuclear material which are transferred between Japan and the Community, whether directly or through a third country, shall become subject to this Agreement upon their entry into the territorial jurisdiction of the receiving Party, only if:

- (a) in the case of transfers from Japan to the Community, the Government of Japan or, in the case of transfers from the Community to Japan, the Government of the Member State of the Community concerned or, as appropriate, the European Commission, has decided that the transfer of such items shall take place under this Agreement; and
- (b) the supplying Party has notified the receiving Party in writing of the intended transfer and the receiving Party has confirmed in writing that such items will be held subject to this Agreement and that the proposed recipient, if other than the receiving Party, will be an authorised person under the territorial jurisdiction of the receiving Party.

3. The written notifications and confirmations required under paragraphs 1 and 2 above shall be made in accordance with the procedures referred to in Article 14 of this Agreement.

4. Nuclear material, equipment and non-nuclear material subject to this Agreement shall remain subject to this Agreement until:

- (a) such items have been transferred beyond the territorial jurisdiction of the receiving Party in accordance with the relevant provisions of this Agreement;
- (b) the Parties agree that such items should no longer be subject to this Agreement; or
- (c) in the case of nuclear material, it is determined in accordance with the provisions for the termination of safeguards in the relevant agreements referred to in paragraph 1 of Article 8 of this Agreement, that the nuclear material has been consumed, or has been diluted in such a way that it is no longer usable for any nuclear activity relevant from the point of view of safeguards, or has become practicably irrecoverable.

Article 4

Co-operation on nuclear research and development

1. As provided for in Article 2 of this Agreement, the Parties shall develop co-operation on research and development for peaceful and non-explosive uses of nuclear energy between themselves and their agencies and, in respect of the Community,

in so far as it is covered by its specific programmes. The Parties or their agencies, as appropriate, may allow the participation in such co-operation of researchers and organisations from all research sectors, including universities, laboratories and the private sector. The Parties shall also facilitate such co-operation between persons in this field.

2. The Parties shall conclude a separate agreement for the purpose of further developing and facilitating activities subject to this Article.

Article 5

Implementation of the Agreement

1. The provisions of this Agreement shall be implemented in good faith in such a manner as to avoid hampering, delay or undue interference in the nuclear activities in Japan and in the Community and so as to be consistent with the prudent management practices required for the economic and safe conduct of their nuclear activities.

2. The provisions of this Agreement shall not be used for the purpose of seeking commercial or industrial advantages, nor of interfering with the commercial or industrial interests, whether domestic or international, of either Party or authorised persons, nor of interfering with the nuclear policy of either Party or of the Governments of the Member States of the Community, nor of hindering the promotion of the peaceful and non-explosive uses of nuclear energy, nor of hindering the movement of items subject to or notified to be made subject to this Agreement either within the respective territorial jurisdiction of the Parties or between Japan and the Community.

3. Nuclear material subject to this Agreement may be handled based on the principles of fungibility and proportionality when it is used in mixing processes where it loses its identity, or is deemed to lose it, in the process of conversion, fuel fabrication, enrichment or reprocessing.

4. In implementing the provisions of this Agreement, Japan, the Community and its Member States shall act in conformity with the provisions of the Convention on Nuclear Safety, which entered into force on 24 October 1996.

Article 6

Intellectual property

The Parties shall ensure the adequate and effective protection of intellectual property created and technology transferred pursuant to the co-operation under this Agreement in accordance with the relevant international agreements and the laws and regulations in force in Japan and in the European Communities or their Member States.

*Article 7***Peaceful use**

1. Co-operation under this Agreement shall be carried out only for peaceful and non-explosive purposes.
2. Nuclear material, equipment and non-nuclear material transferred pursuant to this Agreement and nuclear material recovered or produced as a by-product shall not be used other than for peaceful purposes; nor shall they be used for any nuclear explosive device, for research on or for development of any such device.

*Article 8***Agency and Euratom safeguards**

1. Co-operation under this Agreement shall require the application, as appropriate, of safeguards by the Community pursuant to the Euratom Treaty and acceptance of the application of safeguards by the Agency pursuant to the following safeguards agreements:

- (a) the Agreement between the Government of Japan and the Agency in implementation of paragraphs 1 and 4 of Article III of the Non-Proliferation Treaty, done on March 4, 1977 (hereinafter referred to as 'the Safeguards Agreement for Japan'), as supplemented by an Additional Protocol, done on December 4, 1998;
- (b) the Agreement between the Republic of Austria, the Kingdom of Belgium, the Kingdom of Denmark, the Republic of Estonia, the Republic of Finland, the Federal Republic of Germany, the Hellenic Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic, the Kingdom of Spain, the Kingdom of Sweden, the Slovak Republic, the Community and the Agency in implementation of Article III (1) and (4) of the Non-Proliferation Treaty, done on April 5, 1973 (hereinafter referred to as 'the Safeguards Agreement for the Member States of the Community other than the United Kingdom of Great Britain and Northern Ireland and the French Republic'), as supplemented by an Additional Protocol, done on September 22, 1998, as subsequently amended;
- (c) the Agreement between the United Kingdom of Great Britain and Northern Ireland, the Community and the Agency for the application of safeguards in the United Kingdom of Great Britain and Northern Ireland in connection with the Non-Proliferation Treaty, done on September 6, 1976 (hereinafter referred to as 'the Safeguards Agreement for the United Kingdom'), as supplemented by an Additional Protocol, done on September 22, 1998; and
- (d) the Agreement between France, the Community, and the Agency for the application of safeguards in France, done on July 27, 1978 (hereinafter referred to as 'the Safeguards

Agreement for France'), as supplemented by an Additional Protocol, done on September 22, 1998.

2. Nuclear material transferred pursuant to this Agreement and nuclear material recovered or produced as a by-product shall be subject:

- (a) while within Japan, to safeguards of the Agency pursuant to the provisions of the Safeguards Agreement for Japan; and
- (b) while within the Community, to safeguards applied by the Community pursuant to the Euratom Treaty and, where applicable, to safeguards of the Agency pursuant to the provisions of the Safeguards Agreement for the Member States of the Community other than the United Kingdom of Great Britain and Northern Ireland and the French Republic, the Safeguards Agreement for the United Kingdom or the Safeguards Agreement for France.

3. In the event that for any reason the Agency does not apply safeguards as required by paragraph 2 above, the Parties shall forthwith consult to take rectifying measures and, in the absence of such rectifying measures, shall immediately enter into arrangements which conform to safeguards principles and procedures of the Agency and provide effectiveness and coverage equivalent to that intended to be provided by the safeguards of the Agency specified in paragraph 2 above.

*Article 9***Retransfers**

1. Nuclear material, equipment and non-nuclear material transferred pursuant to this Agreement and nuclear material recovered or produced as a by-product shall not be retransferred beyond the territorial jurisdiction of the receiving Party, except into the territorial jurisdiction of the supplying Party unless the receiving Party is provided with the assurances of fulfilment of the conditions set out in Annex B to this Agreement in an appropriate way, or unless, in the absence of such assurances, the prior written consent of the supplying Party is obtained.

2. In addition to complying with the provisions of paragraph 1 above, the following items transferred pursuant to this Agreement shall not be retransferred beyond the territorial jurisdiction of the receiving Party, except into the territorial jurisdiction of the supplying Party, without the prior written consent of the supplying Party:

- (a) sensitive nuclear material; and
- (b) equipment for enrichment, reprocessing or production of heavy water

unless, in the case of items transferred from Japan to the Community, they will be subject to the appropriate bilateral agreement for co-operation in the peaceful uses of nuclear energy between the Government of Japan and the Government of the receiving third country or, in the case of transfers from the

Community to Japan, the receiving third country is included on a list to be drawn up by the Community, and notification of such retransfers has been given by the receiving Party to the supplying Party.

Article 10

Transparency

The Parties shall exchange information in respect of the safe and effective management of nuclear material, equipment and non-nuclear material transferred pursuant to this Agreement.

Article 11

Physical protection

1. In respect of nuclear material transferred pursuant to this Agreement and nuclear material recovered or produced as a by-product, the Government of Japan, the Governments of the Member States of the Community and, as appropriate, the European Commission, shall apply measures of physical protection according to the criteria which they have individually adopted and which bring about, as a minimum, protection at levels set out in Annex C to this Agreement.

2. In respect of international transport of nuclear material subject to this Agreement, Japan, the Member States of the Community and, as appropriate, the Community shall act in conformity with the provisions of the Convention on the Physical Protection of Nuclear Material, which entered into force on February 8, 1987, to which they are parties.

Article 12

Existing agreements

1. The provisions of this Agreement shall be regarded as complementary to the provisions of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Japan for Co-operation in the Peaceful Uses of Nuclear Energy, done on February 25, 1998 and to the provisions of the Agreement between the Government of Japan and the Government of the French Republic for Co-operation in the Peaceful Uses of Nuclear Energy, done on February 26, 1972, as amended by the Protocol between the same Parties, done on April 9, 1990 and shall, where appropriate, take precedence over the provisions of the said bilateral agreements.

2. To the extent that the provisions in the bilateral agreements referred to in paragraph 1 of this Article provide for rights or obligations for the Government of Japan, the Government of the United Kingdom of Great Britain and Northern Ireland or the Government of the French Republic beyond those contained in this Agreement, those rights and obligations will continue to be implemented under the said bilateral agreements.

3. Notwithstanding the provisions of paragraph 1 of Article 3 of this Agreement, the provisions of this Agreement shall apply to nuclear material which has been transferred before the entry into force of this Agreement between Japan and the United

Kingdom of Great Britain and Northern Ireland and between Japan and the French Republic pursuant to the bilateral agreements referred to in paragraph 1 above.

4. Notwithstanding the provisions of paragraph 1 of Article 3 of this Agreement, the provisions of this Agreement shall apply to nuclear material which has been transferred before the entry into force of this Agreement between Japan and Member States of the Community other than the United Kingdom of Great Britain and Northern Ireland and the French Republic, if the Parties agree that such nuclear material will be made subject to this Agreement.

Article 13

Suspension and termination

1. If the Community or any of its Member States, or Japan at any time following entry into force of this Agreement :

- (a) acts in violation of the provisions of Articles 7, 8, 9 or 11 of this Agreement, or the decisions of the arbitral tribunal referred to in Article 15 of this Agreement; or
- (b) terminates or materially violates any of its safeguards Agreements with the Agency referred to in paragraph 1 of Article 8 of this Agreement,

the Government of Japan or the Community respectively shall have the right to cease further co-operation under this Agreement in whole or in part, or to terminate this Agreement and to require the return of any nuclear material transferred pursuant to this Agreement.

2. If the Community or any of the Member States of the Community other than the United Kingdom of Great Britain and Northern Ireland and the French Republic detonates a nuclear explosive device, the Government of Japan shall have the right specified in paragraph 1 above.

3. If the United Kingdom of Great Britain and Northern Ireland or the French Republic detonates a nuclear explosive device using any nuclear material transferred pursuant to this Agreement, the Government of Japan shall have the right specified in paragraph 1 above.

4. If Japan detonates a nuclear explosive device, the Community shall have the right specified in paragraph 1 above.

5. Before either Party takes steps to cease co-operation in whole or in part under this Agreement or to terminate this Agreement, or to require such return, the Parties shall consult for the purpose of taking corrective measures and shall, where appropriate, carefully consider the following, taking into account the need to make such other appropriate arrangements as may be required:

- (a) the effects of taking such steps; and
- (b) whether the facts which gave rise to consider such steps were caused deliberately.

6. Rights under this Article shall be exercised only if the other Party fails to take corrective measures within an appropriate period of time following the consultations.

7. If either Party exercises its rights under this Article to require the return of any nuclear material transferred pursuant to this Agreement, it shall compensate the other Party or the persons concerned for the fair market value thereof.

Article 14

Operational procedures

The appropriate authorities of the Parties shall establish and if necessary amend operational procedures for the purpose of the effective implementation of the provisions of this Agreement.

Article 15

Consultation and arbitration

1. With a view to promoting co-operation under this Agreement, the Parties may at the request of either of them, consult with each other through diplomatic channels or other consultative fora.

2. If any question arises concerning the interpretation or application of this Agreement, the Parties shall, at the request of either of them, consult with each other.

3. If any dispute arising out of the interpretation or application of this Agreement is not settled by negotiation, mediation, conciliation or other similar procedure, the Parties may agree to submit such dispute to an arbitral tribunal which shall be composed of three arbitrators appointed in accordance with the provisions of this paragraph. Each Party shall designate one arbitrator who may be a national of Japan or of a Member State of the Community and the two arbitrators so designated shall elect a third, a national of a state other than Japan or a Member State of the Community, who shall be the Chairman. If, within thirty days of the request for arbitration, either Party has not designated an arbitrator, either Party may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within thirty days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected, provided that the third arbitrator so appointed shall not be a national of Japan or of a Member State of the Community. A majority of the members of the arbitral tribunal shall constitute a quorum, and all decisions shall require the concurrence of two arbitrators. The arbitral

procedure shall be fixed by the tribunal. The decisions of the tribunal shall be binding on the Parties.

Article 16

Status of Annexes

The Annexes to this Agreement form an integral part of this Agreement. They may be modified by mutual consent in writing of the Government of Japan and the European Commission without amendment of this Agreement.

Article 17

Entry into force and duration

1. This Agreement shall enter into force on the thirtieth day after the date on which the Parties exchange diplomatic notes informing each other that their respective internal procedures necessary for entry into force of this Agreement have been completed and shall remain in force for a period of thirty years ⁽¹⁾.

This Agreement shall be automatically extended for five-year periods thereafter unless either Party notifies the other Party in writing to terminate this Agreement not later than six months prior to the expiry date.

2. Notwithstanding cessation of further co-operation under this Agreement in whole or in part, or termination of this Agreement for any reason, the provisions of Articles 7, 8, 9 and 11 of this Agreement shall continue in effect.

This Agreement and its Annexes are drawn up in two originals in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Japanese, Portuguese, Spanish and Swedish languages. In case of divergence, the English and Japanese versions shall prevail over the other language versions.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by the Government of Japan and the European Atomic Energy Community respectively, have signed this Agreement.

Done at Brussels, 24 February 2006

For the Government of Japan For the European Atomic Energy
T. KAWAMURA Community
A. PIEBALGS

⁽¹⁾ The exchange of diplomatic notes took place on 20 November 2006. In accordance with the provisions of the Agreement, the date of entry into force is 20 December 2006.

ANNEX A

Part A

1. Complete nuclear reactors:

Nuclear reactors capable of operation so as to maintain a controlled self-sustaining fission chain reaction, excluding zero energy reactors, the latter being defined as reactors with a designed maximum rate of production of plutonium not exceeding 100 grams per year.

2. Nuclear reactor vessels:

Metal vessels, or major shop-fabricated parts therefor, especially designed or prepared to contain the core of a nuclear reactor as defined in paragraph 1 above, as well as relevant nuclear reactor internals as defined in paragraph 8 below.

3. Nuclear reactor fuel charging and discharging machines:

Manipulative equipment especially designed or prepared for inserting or removing fuel in a nuclear reactor as defined in paragraph 1 above.

4. Nuclear reactor control rods and equipment:

Especially designed or prepared rods, support or suspension structures therefor, rod drive mechanisms or rod guide tubes to control the fission process in a nuclear reactor as defined in paragraph 1 above.

5. Nuclear reactor pressure tubes:

Tubes which are especially designed or prepared to contain fuel elements and the primary coolant in a nuclear reactor as defined in paragraph 1 above at an operating pressure in excess of 50 atmospheres.

6. Zirconium tubes:

Zirconium metal and alloys in the form of tubes or assemblies of tubes, and in quantities exceeding 500 kg in any period of 12 months, especially designed or prepared for use in a nuclear reactor as defined in paragraph 1 above, and in which the relation of hafnium to zirconium is less than 1:500 parts by weight.

7. Primary coolant pumps:

Pumps especially designed or prepared for circulating the primary coolant for nuclear reactors as defined in paragraph 1 above.

8. Nuclear reactor internals:

Nuclear reactor internals especially designed or prepared for use in a nuclear reactor as defined in paragraph 1 above, including support columns for the core, fuel channels, thermal shields, baffles, core grid plates and diffuser plates.

9. Heat exchangers:

Heat exchangers (steam generators) especially designed or prepared for use in the primary coolant circuit of a nuclear reactor as defined in paragraph 1 above.

10. Neutron detection and measuring instruments:

Especially designed or prepared neutron detection and measuring instruments for determining neutron flux levels within the core of a nuclear reactor as defined in paragraph 1 above.

11. Plants for the reprocessing of irradiated fuel elements, and equipment especially designed or prepared therefore.

12. Plants for the fabrication of nuclear reactor fuel elements, and equipment especially designed or prepared therefore.

13. Plants for the separation of isotopes of uranium and equipment, other than analytical instruments, especially designed or prepared therefore.
14. Plants for the production or concentration of heavy water, deuterium and deuterium compounds and equipment especially designed or prepared therefore.
15. Plants for the conversion of uranium and plutonium for use in the fabrication of fuel elements and the separation of uranium isotopes as defined in paragraphs 12 and 13 above respectively, and equipment especially designed or prepared therefore.

Part B

1. Deuterium and heavy water:

Deuterium, heavy water (deuterium oxide) and any other deuterium compound in which the ratio of deuterium to hydrogen atoms exceeds 1:5 000 for use in a nuclear reactor as defined in paragraph 1 of Part A above, in quantities exceeding 200 kg of deuterium atoms in any period of 12 months.

2. Nuclear grade graphite:

Graphite having a purity level better than 5 parts per million boron equivalent and with a density greater than 1,50g/cm³ for use in a nuclear reactor as defined in paragraph 1 of Part A above, in quantities exceeding 30 metric tons in any period of 12 months.

ANNEX B

- (i) Items retransferred will be used only for peaceful and non-explosive purposes in the receiving third country.
 - (ii) If the receiving third country is a non-nuclear weapon state, all nuclear material in that country is and will be subject to the application of safeguards by the Agency.
 - (iii) In the case that nuclear material is retransferred, safeguards by the Agency will be applied to the nuclear material in the receiving third country.
 - (iv) In the case that nuclear material is retransferred, adequate measures of physical protection of the nuclear material will be maintained in the receiving third country, as a minimum, at levels set out in Annex C.
 - (v) Items retransferred will not be further retransferred beyond the receiving third country to another country unless the latter country provides assurances equivalent to those set out in this Annex B.
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ANNEX C

Levels of physical protection

The agreed levels of physical protection to be ensured by the Government of Japan, the Governments of the Member States of the Community and, as appropriate, the European Commission in the use, storage and transportation of nuclear material as categorized in the attached table shall as a minimum include protection characteristics as follows:

CATEGORY III

Use and storage within an area to which access is controlled.

Transportation under special precautions including prior arrangements among sender, recipient and carrier, and prior agreement between entities subject to the jurisdiction and regulation of supplier and recipient States, respectively, in case of international transport, specifying time, place and procedures for transferring transport responsibility.

CATEGORY II

Use and storage within a protected area to which access is controlled, i.e., an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control, or any area with an equivalent level of physical protection.

Transportation under special precautions including prior arrangements among sender, recipient and carrier, and prior agreement between entities subject to the jurisdiction and regulation of supplier and recipient States, respectively, in case of international transport, specifying time, place and procedures for transferring transport responsibility.

CATEGORY I

Nuclear material in this category shall be protected with highly reliable systems against unauthorised use as follows:

Use and storage within a highly protected area, i.e., a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response authorities. Specific measures taken in this context should have as their objective the detection and prevention of any assault, unauthorised access or unauthorised removal of the nuclear material concerned.

Transportation under special precautions as identified above for transportation of Category II and III nuclear material and, in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response authorities.

Table

Categorisation of nuclear material

Nuclear Material	Form	Category I	Category II	Category III
1. Plutonium ^(a)	Unirradiated ^(b)	2 kg or more	Less than 2 kg but more than 500 g	500 g or less ^(c)
2. Uranium — 235	Unirradiated ^(b)	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less ^(c)
	— uranium enriched to 20 % 235U or more		10 kg or more	Less than 10 kg ^(c)
	— uranium enriched to 10 % 235U but less than 20 % 235U — uranium enriched above natural, but less than 10 % 235U ^(d)			10 kg or more
3. Uranium — 233	Unirradiated ^(b)	2 kg or more	Less than 2 kg but more than 500 g	500 g or less ^(c)
4. Irradiated fuel			Depleted or natural uranium, thorium or low-enriched fuel (less than 10 % fissile content) ^(e) ^(f)	

^(a) Plutonium with an isotopic concentration of plutonium-238 exceeding 80 % shall not be included.

^(b) Nuclear material not irradiated in a reactor or nuclear material irradiated in a reactor but with a radiation level equal to or less than 1 Gy/hr (100 rads/hr) at one metre unshielded.

^(c) Less than a radiologically significant quantity should be exempted but should be protected in accordance with prudent management practice.

^(d) Natural uranium, depleted uranium, thorium and quantities of uranium enriched to less than 10 % not falling in Category III should be protected in accordance with prudent management practice.

^(e) Although this level of protection is recommended, it would be open to the Government of Japan, the Governments of the Member States of the Community and the European Commission, as appropriate, upon evaluation of the specific circumstances, to assign a different category of physical protection.

^(f) Other fuel which by virtue of its original fissile material content is classified as Category I or II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 1 Gy/hr (100 rads/hr) at one metre unshielded.

COMMISSION DECISION

of 26 September 2006

concerning the State aid granted by the Netherlands to Holland Malt BV

(notified under document number C(2006) 4196)

(Only the Dutch text is authentic)

(2007/59/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

II. DESCRIPTION OF THE AID MEASURE

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

Having called on interested parties to submit their comments ⁽¹⁾ pursuant to the provision(s) cited above and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) The measure was notified in accordance with Article 88 (3) of the EC Treaty by letter of 31 March 2004, registered on 6 April 2004.
- (2) By letters of 1 June 2004, 12 August 2004 and 16 February 2005, the Commission asked the Netherlands for further information. By letters dated 5 July 2004, 17 December 2004 and 15 March 2005, registered as received on 7 July 2004, 3 January 2005 and 23 March 2005 respectively, the Netherlands replied to the Commission's requests.
- (3) By letter dated 5 May 2005, the Commission informed the Netherlands of its decision to initiate the procedure laid down in Article 88(2) of the Treaty concerning this aid measure.
- (4) The Commission decision to initiate the procedure was published in the Official Journal of the European Communities ⁽²⁾. The Commission requested the interested parties to submit their comments on the aid measure in question.
- (5) By letter dated 10 June 2005 the Netherlands submitted a series of comments.
- (6) The Commission received comments from interested parties. It forwarded them to the Netherlands, which was given the opportunity to react; the Netherlands' comments were received by the Commission by letter dated 14 October 2005.

- (7) The Netherlands has decided to grant a subsidy to Holland Malt BV under a regional investment scheme 'Regionale investeringsprojecten 2000' (hereinafter called the IPR scheme). The regional investment scheme was approved by the Commission in 2000 ⁽³⁾; on 18 February 2002 an amendment to the scheme was also approved ⁽⁴⁾, whereby the IPR scheme was applied to the sectors processing and selling agricultural products listed in Annex I to the Treaty.
- (8) The present case concerns a subsidy for an investment project of Holland Malt BV. Holland Malt BV, hereinafter referred to as 'Holland Malt', is a joint venture between the brewery Bavaria NV and Agrifirm, a cooperative association of cereal producers in North Netherlands and Germany. The subsidy is for building a malting plant in Eemshaven, in the municipality of Eemsmond. As a result of the investment, the various stages (storage and processing of malting barley and the production of and trade in malt) will be integrated in one chain.
- (9) The Netherlands Ministry of Economic Affairs has decided to subsidize 13,5 % gross (10 % net) of the eligible investments of EUR 55 million, with a maximum of EUR 7 425 000. Because it concerns a subsidy for an investment project by an undertaking in the sector processing and marketing agricultural products mentioned in Annex I of the Treaty, and the eligible costs of the project are over EUR 25 million, the aid must be specifically notified to the Commission under point 4.2.6 of the Community guidelines for state aid in the agriculture sector ⁽⁵⁾ (hereinafter referred to as 'the guidelines').
- (10) The decision by Holland Malt to invest was taken after the Dutch government had committed itself to granting a subsidy by letter dated 23 December 2003. The commitment was entered into subject to approval of the aid by the European Commission. The building activities of Holland Malt in Eemshaven started in February 2004. The plant became operational in April 2005.
- (11) In initiating the procedure under Article 88(2) of the Treaty, the Commission had regard to the following:

⁽³⁾ Regionale investeringsprojecten 2000 (IPR 2000-2006), N 549/99. Approved on 17 August 2000 by letter SG (2000) D/106266.

⁽⁴⁾ Wijziging Regionale investeringsprojecten 2000, N831/2001. Approved on 18 February 2002 by letter C(2002)233.

⁽⁵⁾ OJ C 28, 1.2.00, p. 2.

⁽¹⁾ OJ C 154, 25.6.2005, p. 6.

⁽²⁾ See footnote 1.

- (12) Having established that the measure at this stage would appear to be state aid within the meaning of Article 87(1) of the Treaty, the Commission investigated whether there were any derogations which meant that the measure could be considered compatible with the common market.
- (13) In view of the measure's characteristics, the only possible derogation is that in Article 87(3)(c) of the Treaty, under which aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered compatible with the common market.
- (14) As the aid was linked to an investment in the processing and marketing of agricultural products, the Commission had to verify whether all requirements of point 4.2 of the guidelines were fulfilled. The Commission doubted the applicability of Article 87(3)(c) of the Treaty, for the following reasons:
- (15) Point 4.2.5 of the guidelines states that no aid may be granted for investments in connection with the processing and marketing of agricultural products unless sufficient evidence can be produced that normal market outlets for the products concerned can be found. On the basis of the information available to the Commission at the time of the opening of the procedure, it could not be excluded that the malt market showed overcapacity.
- (16) Holland Malt argued that it provided 'premium malt' of high quality for the production of 'premium beer' and that the market for this kind of malt and beer was still growing. However, at the time of the opening of the procedure, it was not clear whether 'premium malt' and 'premium beer' were not simply marketing concepts and therefore did not correspond to a specific separate product market for which overcapacity could be excluded.
- Holland Malt
- the Dutch province of Groningen.
- (18) The Finnish Maltsters' Association opposes the Netherlands' intention to grant a subsidy to Holland Malt B.V, saying that state subsidies for malting plant investments will have an anti-competitive impact. It mentions that the overcapacity in the malting industry in the Community is about one million tonnes, which would necessitate a closure of 10 % of the capacity during the coming years. As for Holland Malt's claim that it provides 'premium malt' for the production of 'premium beer', the Finnish Maltsters' Association mentions that existing malting houses in the Community can already serve the market with a wide range of malts including high quality 'premium malt'.
- (19) The Maltsters Association of Great Britain strongly believes that any state aid for malting must be expressly prohibited. It refers to a letter of 2004 from Euromalt, the European association representing the malting industry, to the Commission, in which the association expresses its concern that no new malting capacity should receive state funding due to the existing overcapacity of malt production in both the Community and the world market ⁽⁶⁾. According to the association, the Member States have a malting capacity of 8,8 million tonnes, with demand at about 5,9 million tonnes. This leaves a potential Community export surplus of 2,9 million tonnes to serve a global market in which 4,3 million tonnes are traded annually. Community malt export licences were issued in the 2003/2004 marketing year for a total of 2,48 million tonnes. In the marketing year ending June 2005, this fell to 2,22 million tonnes, reflecting the difficult market situation and limited market opportunities for Community maltsters. The Maltsters' Association of Great Britain estimates that the surplus of malt in the Community is 500 000 tonnes, which is expected to grow to nearly one million tonnes due to a combination of new capacity still to come on stream and reduced export demand from Russia and Eastern Europe as those areas have become virtually self-sufficient. According to the Maltsters' Association of Great Britain, the effect of this overcapacity has been that, in the current market for malt, prices have fallen to a level where variable costs are no longer covered. The Maltsters Association of Great Britain furthermore contests the notion that the new Dutch capacity has been built to produce premium malt for premium markets. There has been significant consolidation in the brewing industry and the majority of maltsters' customers want only high-quality malt that meets their exacting (and often global) specifications and satisfies all food safety requirements. To divide the malt market into premium and non-premium sectors defies reality, according to the Maltsters Association of Great Britain.

III. COMMENTS FROM INTERESTED PARTIES

- (17) The Commission received comments from
- the Finnish Maltsters' Association
- the Maltsters's Association of Great Britain
- the German Maltsters' association
- the French Maltsters' Association
- the Danish Maltsters' Association
- an interested party which on grounds of potential damage requested that its identity be withheld
- the Dutch Agriculture and Horticulture Organisation (LTO Nederland)
- Agrifirm
- (20) The German Maltsters' Association is very concerned about the intention of the Netherlands to grant an investment subsidy for the establishment of a production plant for malt

⁽⁶⁾ Letter dated 23 July 2004 on the granting of subsidies for the construction of malt houses.

in the province of Groningen. According to the German Maltsters' Association, exports from the Community to traditional sales areas such as the Mercosur countries and Russia/Ukraine will decline markedly due to the development of an own malting industry and protection against imports. In addition, overseas competitors such as Canada and Australia are doing extremely well because of their proximity to the still growing beer markets of the Far East and South-East Asia and because of their governments' liberal trade policies. Simultaneously, malt sales in the internal market are stagnating, leading to an EU over-capacity in the Community of around one million tonnes. The German Maltsters' association considers that the promotion of local malting barley production is not a proper argument. It points out that the entire Dutch production of malting barley is already bought by the malting industry and that the new production plant in Groningen will depend on barley imports.

(21) The French Maltsters' Association is against any state aid for new malting factories in the Community. It refers to the same letter from Euromalt as the Maltsters' Association of Great Britain and mentions the same production, import and export figures for malt. It also states that malt is currently being traded at prices at which variable costs are not covered. According to the French Maltsters' Association, justifying the state aid for the Dutch investment by referring to a separate market for high-quality malt is not correct, since the majority of brewers ask for such high quality malt. Finally the French Maltsters' Association is of the opinion that the Community malting industry would actually have to close obsolete malting plants to improve market conditions.

(22) The Danish Maltsters' Association objects to the planned subsidy for Holland Malt. According to the Association, the malting industry worldwide is based on free market conditions. It is characterised by private ownership, its development being driven by private investments made by companies in the malting sector. A subsidy of EUR 7,4 million out of a total investment of EUR 55 million would distort competition and give an unjustified comparative advantage for the company receiving such a subsidy, especially in the first years after commissioning. The Danish Maltsters' Association furthermore objects to the argument whereby 'premium malt' is distinguished from 'normal malt'. Malt is a generic product, with slight variations, but subject to quality standards imposed by the brewing industry. Lastly, the Danish Maltsters' Association does not see any local or regional reasons to subsidise the investment in the Eemsmund region, which is, in its view, a normal developed region in the Netherlands with an infrastructure that is closely associated with the barley and malt supply chain.

(23) The interested party which on grounds of potential damage requested that its identity be withheld objects to the subsidy for the following reasons. It considers a distinction between

premium and normal malt artificial, does not see any local or regional reasons to subsidise the investment and considers that the subsidy would distort competition on the malt market, which is characterised by private ownership and private investments.

(24) The Dutch Agriculture and Horticulture Organisation (LTO Nederland) is of the opinion that the Holland Malt malting plant in Eemshaven is of great importance for arable farming in that region. The location of the factory at a port and the production process aimed at the high-quality segment of the malt and beer market offer considerable socio-economic prospects for arable farming in the north-east Netherlands. It will stimulate the cultivation of cereals that can be used in this production process. The barley of the arable farmers forms part of a fully registered and certified integrated chain, leading to an end product of high-quality beer. The two most important crops being grown in this region are starch potatoes and sugar beet. However, efficiency improvements and reform of Community policy have meant that the area under these crops has become smaller. Barley for the malting factory would offer one of the few lucrative alternatives to growing these crops. For these reasons, arable farmers have promised a financial stake in Holland Malt.

(25) Agrifirm fully supports the granting of a subsidy to Holland Malt. It is cooperating with the brewery Bavaria in the Holland Malt joint venture, which provides an integrated chain with regard to the cultivation, storage and processing of malting barley. According to Agrifirm, the Holland Malt production and storage facility provides unique opportunities. The cultivation of malting barley will offer better prospects for farmers in the region. By focusing on the production of malting barley that meets the needs for premium malt, farmers in the region can profit from the growth prospects afforded by the market for premium beer. Building the plant in Eemshaven will, given the logistic advantages, create new industrial activity in North Netherlands. The decision of the Dutch government to grant a subsidy provides a basis for feasible exploitation in the first critical years of the project.

(26) According to Holland Malt, it is possible to argue that there is a separate market for premium beer and premium malt. In the premium malt market, outlets for Holland Malt's HTST ('high temperature, short time') malt can easily be found. HTST malt increases stability of taste, flavour and sparkle and therefore the shelf life of beer. Holland Malt refers to a letter from the University of Weihenstephan, Munich, which confirms that the patented technology leads to a type of malt that can clearly be distinguished from regular malt (⁷). In addition, a premium beer brewer, in an annex to the letter from Holland Malt, also recognises the unique features of HTST malt. HTST malt will, moreover, be priced in a higher price range than regular malt produced by other malt houses. As a result of its unique physical characteristics, its perceivable quality and its higher price

(⁷) Letter from Dr. Krottenthaler of the University of Weihenstephan, May 2005.

range, it is very likely according to Holland Malt, that there will be no or limited substitutability between HTST malt and regular malt. HTST malt is expected to create a demand and a market of its own. According to Holland Malt, it cannot simply be assumed therefore that its investment will result in a capacity increase of 55 000 tonnes on the market for regular malt.

- (27) Holland Malt also notes that, despite the overcapacity in the global market, the investment in Holland Malt will not necessarily lead to more capacity. Holland Malt, being located at a deep sea port, will find normal outlets in the market for export malt. While the growth prospects of the inland European malting industry may deteriorate on account of falling demand for malt in Western Europe, the export trade in malt offers substantial growth prospects. According to Holland Malt, this is confirmed by three reports from 2005 ⁽⁸⁾. These show that emerging markets in Asia, Latin America, Africa and Eastern Europe place the highest requirements on malt and that the European malt industry has a competitive advantage because of the high quality of its malt. Holland Malt notes that it has no difficulties in finding normal outlets for its malt and refers to the fact that its order books were full for 2005, while for the second year in a row it would sell more malt than it produced. It also notes that its closed capacity at Wageningen and Lieshout was catering for the declining malt market in Western Europe, whereas the new capacity at Eemshaven will be targeted at a growing export market. As a result, the net increase in capacity on the malt market will be smaller than is stated in the Commission's letter of 5 May 2005. Holland Malt contends that the investment in the facility at Eemshaven will affect trade with third countries rather than trade between Member States, as the export of malt is a separate market segment from that in which inland malt suppliers operate. Holland Malt emphasises that the situation on the world malt market did not prevent the Commission from authorising investment aid for a malting plant in Lithuania.

- (28) Holland Malt states that the investment will have a positive impact on the rural development of the North Netherlands region and Germany. It will create an alternative form of crop-growing for a large number of arable farmers (about 1 800). Farmers will grow high quality malting barley for a growing market that, unlike feed barley, will not end up in the Community intervention scheme. In addition, the cultivation of malting barley is less harmful for the environment than that of feed barley. Holland Malt notes that its integrated malt production and barley storage facility makes a definite contribution to food safety.

⁽⁸⁾ RM International, Malt Market Report, 22 April 2005; Rabobank, The malt industry, a changing industry structure, driven by emerging beer markets, March 2005; H.M. Gauger, Market report, May 2005. H.M. Gauger is a malt broker/consultant who issues a monthly malt market report containing data on the production of, and trade in malt.

- (29) The province of Groningen supports the state aid for the Holland Malt investment. It refers to the positive effect on employment in the region. It also underlines the innovative technology used in the project and the boost it will give to the development of Eemshaven, *inter alia* through the creation of an agri-business park. The province also mentions the stimulus it will provide to farmers facing difficulties in traditional, locally grown crops like starch potatoes. Changing to the cultivation of malting barley will give them better prospects.

IV. COMMENTS FROM THE NETHERLANDS

- (30) The Netherlands responded to the opening of the procedure by letter of 10 June 2005. It reacted to the comments from third parties by letter of 14 October 2005, having requested an extension of the period for replying.
- (31) In the first letter, the Netherlands states that although the growth prospects for the inland European malting industry may deteriorate given the decreasing demand for malt in Western Europe, the export trade in malt offers substantial growth prospects. Holland Malt can profit from its location at a deep sea port. In this sense it is fair to talk of a divided malt market. The investment in Holland Malt will not affect the already shrinking market of local, inland malt houses in Western Europe. The Netherlands states that the quantity of malt for which export certificates were issued in the Community in 2004/05 was the same as in 2003/04 and requests the Commission to take account of the most recent data on export certificates. Furthermore, the Netherlands considers that a special market segment exists for the high-quality malt of Holland Malt. Reference is made to the letter from the University of Weihenstephan confirming the distinctive characteristics of HTST malt.
- (32) In its response to the comments from third parties, the Netherlands affirms that in the coming years the world market for malt will grow. Reference is made to a seminar on malting barley on 4-5 October 2005, at which the International Grains Council ⁽⁹⁾ forecast that global malting capacity will have risen by 10 % in 2010. At this seminar, Rabobank announced that global beer consumption was growing by 2 % a year, mainly caused by increasing beer consumption in emerging markets like South America, Africa, Russia, South-East Asia and China. Modern malting facilities located at deep sea ports and able to produce in bulk will be able to profit from this development. The Netherlands refers to a letter from Euromalt of August 2005 ⁽¹⁰⁾, in which it is stated that small, old and inadequate capacity must be closed. The same letter mentions an overcapacity in the Community malting

⁽⁹⁾ An intergovernmental organisation in the cereal trading sector.

⁽¹⁰⁾ Euromalt: 'The EU malting industry', August 2005

industry of at least 500 000 — 700 000 tonnes. The Netherlands, however, claims that this figure is based on a production of 24 hours a day, 7 days a week, 365 days a year. Periods of standstill are not taken into account, which makes it uncertain whether overcapacity actually exists. The Netherlands furthermore refers to a report⁽¹¹⁾ by the research bureau Frontier Economics on Holland Malt (on the geographic market and innovation aspects). The report's conclusion is as follows: 'there is no indication that the subsidy granted to Holland Malt will lead to a displacement of malt sales by other European producers over and above that which would occur in any event. There is no indication therefore that the provision of the subsidy would exacerbate any overcapacity among European producers of standard malt'. The Netherlands requests the Commission to take account of the existence of a separate market for HTST malt, a type of high-quality malt which counteracts the 'ageing' of beer. In addition, it mentions a further closure of 12 000 tonnes of malting capacity, bringing the total closure of existing capacity to 77 000 tonnes. The extra capacity is merely 0,5 % of the total Community production capacity, which would not distort the Community malt market. Finally, the Netherlands states that the subsidy it plans to give is only meant to compensate the location disadvantage of Eemshaven and to offer a level playing field to Holland Malt (without the subsidy, a comparable investment would have been made in a production plant in the deep sea port of Terneuzen).

V. ASSESSMENT OF THE AID

Market organisations

- (33) The measure concerns aid to an undertaking that is active in barley processing. Under Article 23 of Council Regulation (EC) No 1784/2003 of 29 September 2006 on the common organisation of the market in cereals⁽¹²⁾, Articles 87, 88 and 89 of the Treaty are to apply to the products covered by the Regulation. The sector concerned by the aid scheme in question is therefore subject to the Community rules on state aid.

Prohibition of state aid under Article 87(1) of the Treaty

- (34) Under Article 87(1) of the Treaty any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, insofar as it affects trade between Member States, incompatible with the common market.

- (35) The measure consists of a direct subsidy for investment. It is selective in the sense that it favours one single undertaking, i.e. Holland Malt.
- (36) According to the case law of the Court of Justice, improvement in the competitive position of an undertaking resulting from a state aid generally points to a distortion of competition compared with other competing undertakings not receiving such assistance⁽¹³⁾.
- (37) A measure affects trade between Member States adversely if it hampers imports from other Member States or facilitates exports to other Member States. The deciding factor is whether there is a risk that intra-Community trade will develop differently or is liable to develop differently as a result of the measure in question.
- (38) The product to which the aid in question relates (malt) is subject to significant intra-Community trade. In 2004, some 1,3 million tonnes of malt were traded within the Community. This represented some 15 % of total 2004 Community malt production⁽¹⁴⁾. The sector is thus exposed to competition. Therefore, there is a risk that intra-Community trade will develop differently as a result of the measure.

- (39) The measure in question thus constitutes aid within the meaning of Article 87(1) of the Treaty.

Article 87(2) of the Treaty: exceptions

- (40) Exceptions to the prohibition in Article 87(1) are established in paragraphs 2 and 3 of that Article.
- (41) The exceptions listed in Article 87(2) are not applicable, given the nature of the aid measure and its objectives. Nor has the Netherlands claimed that Article 87(2) is applicable.

Article 87(3) of the Treaty: exceptions at the Commission's appreciation

- (42) Article 87(3) specifies other forms of aid, which may be regarded as compatible with the common market. Their compatibility with the Treaty has to be studied from the point of view of the Community, not solely that of a given Member State. To ensure the proper operation of the common market, the exceptions provided for in Article 87(3) must be interpreted in a strict manner.

⁽¹¹⁾ Frontier Economics: 'Holland Malt', October 2005.

⁽¹²⁾ 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).

⁽¹³⁾ Case C-370/79 *Philip Morris* [1980] ECR 2671, paragraphs 11 and 12.

⁽¹⁴⁾ Source: H.M. Gauger Statistical Digest 2004-2005.

(43) As regards Article 87(3)(a), it is pointed out that the beneficiary of the aid is not located in a region where the economic situation can be described as extremely unfavourable in accordance with the Guidelines on national regional aid⁽¹⁵⁾ (having a per capita gross domestic product, measured in purchasing power standards, of less than 75 % of the Community average). Therefore, Article 87 (3) (a) of the Treaty cannot justify an aid for the production, processing or marketing of products in Annex I to the Treaty.

(44) As regards Article 87(3)(b), it is noted that the measure concerned is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State.

(45) Nor is the aid intended or suitable for achieving the objectives referred to in Article 87(3)(d).

Article 87(3)(c) of the Treaty

(46) Aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the common market under Article 87 (3)(c) of the Treaty, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(47) Since Holland Malt is not a small or medium-sized enterprise as defined by the Commission⁽¹⁶⁾, Regulation (EC) No 1/2004 of 23 December 2003 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products⁽¹⁷⁾ does not apply. Whether investment aid for the processing of agricultural products is compatible with Article 87(3)(c) is assessed therefore on the basis of point 4.2 of the guidelines.

Eligible expenses and aid rate

(48) According to point 4.2.3 of the guidelines, eligible expenses may include construction, acquisition or improvement of immovable property, new machinery and equipment, including computer software. The aid rate may not exceed 50 % of eligible investments in Objective 1 regions and 40 % in other regions.

(49) These conditions are met, as aid would be given for the construction of buildings, the purchase of plots for these buildings and machinery. In addition, the Netherlands has limited the notified aid to a maximum of 13,5 % of the eligible costs.

Economic viability and Community minimum standards

(50) Point 4.2.3 of the guidelines states that aid for investments may only be granted to firms the economic viability of which can be demonstrated by an assessment of the prospects of the enterprise. The enterprise must comply with minimum Community standards regarding the environment, hygiene and animal welfare.

(51) These conditions are satisfied. The Netherlands has given sufficient guarantees concerning the economic viability of both Bavaria NV and Agrifirm, which together form Holland Malt. In addition, it has been adequately shown that the malting plant complies with minimum Community standards regarding the environment, hygiene and animal welfare as laid down in the Dutch rural development programme.

Market outlets

(52) Point 4.2.5 of the guidelines provides that no aid may be granted for investments in products for which normal market outlets cannot be found. This must be assessed at the appropriate level in relation to the products concerned, the types of investments, and existing and expected capacities. To this end, any restrictions on production or limitations of Community support under the common market organisation must be taken into account.

(53) The procedure provided for under Article 88(2) of the Treaty was initiated, since, on the basis of the information available to the Commission at the time, could not be ruled out that the malt market showed overcapacity.

(54) The Netherlands' and Holland Malt's comments on the opening of the procedure essentially concern three points. First, the issue of overcapacity on the malt market is challenged (the Netherlands and Holland Malt do not dispute, however, that the project creates additional capacity on the malt market). Second, it is stated that the investment in the Eemshaven plant will affect trade with third countries more than trade between Member States, since the export of malt constitutes a market segment separate from that in which inland malt suppliers operate. Third, different markets are assumed to exist for regular and premium malt.

Overcapacity on the malt market

(55) The Commission has examined the situation concerning the production of and trade in malt at both world and Community levels. As Eurostat statistics on malt are incomplete due to missing or confidential data on the production and exports of several countries, the Commission has used the data of Euromalt, the International Grains Council and H.M. Gauger's report on the barley-malt market report.

⁽¹⁵⁾ OJ C 74, 10.3.1998, p. 9.

⁽¹⁶⁾ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

⁽¹⁷⁾ OJ L 1, 3.1.2004, p. 1.

- (56) As regards the situation on the world market, the Euromalt data indicate that the current world supply capacity of malting plants substantially exceeds demand and will do so for some years to come. The letter from Euromalt of August 2005 ⁽¹⁸⁾ contains the following table on world malt capacity.

Worldwide Malt Capacity

(1000 tonnes)

	2004	Surplus	2006 (estimate)	Surplus
EU-15	7 500		7 600	
EU-10	1 200		1 150	
Total EU-25	8 700	2 500	8 750	2 700
Russia	850	-550	1 550	100
Ukraine	230	-50	330	120
Belarus	70	-6	70	-10
Central and Eastern Europe	460	-60	470	-60
Total Europe	10 130	1 834	11 170	2 850
NAFTA	3 600		3 900	
South America	1 220		1 370	
Oceania	770		950	
Middle East and Central Asia	200		200	
Africa	380		380	
China	3 000		3 300	
Far East	300		340	
Total	9 470	- 1 300	1 440	-900
World total	19 780	534	21 610	1 950

- (57) As can be seen from the table, in 2004 world malt production capacity exceeded demand by approximately half a million tonnes. Estimates for 2006 point to an increase in this overcapacity to approximately 2 million tonnes.

- (58) Euromalt in its letter mentions that world beer production is forecast to continue growing at an average minimum rate of between 1 % and 2 % a year. This average growth is a result of two-digit growth in some 'new' beer regions (South America, Africa, Russia, South-East Asia and China) and a decline in the 'old' regions (Western Europe and North America). At the same time however, the efficiency of the new brewery investments in the growth regions and the trend towards 'lighter' beers has resulted in a drastic decline in the use of malt per litre of beer. Euromalt therefore concludes that the rising demand for beer is not matched by an increase in worldwide malt demand for

some years to come. In fact, the beer consumption growth pattern, and its predicted continuation, have overencouraged the building of additional malting capacity in the world, the result being that current world capacity on the supply side substantially exceeds demand, and will do so for some years to come. According to Euromalt, continuous investment in maltings is required, but Europe does not need additional new capacity while export markets decline.

- (59) The current situation of overcapacity worldwide seems to be confirmed by declining global trade figures for malt, as presented by the International Grains Council at the Malting Barley Seminar on 4 and 5 October 2005 in Brussels ⁽¹⁹⁾. According to the International Grains Council,

⁽¹⁹⁾ Presentation by John Tjaardstra on trends in the production and consumption of beer, malting barley and malt.

⁽¹⁸⁾ See footnote 10.

global trade in malt declined for two years in a row from 5,621 million tonnes in 2002/2003 to 5,275 million tonnes in 2004/2005 (the latter figure is an estimate). For 2005/2006, the International Grains Council expects a further fall in the quantity of malt traded. This downward trend is also reflected in lower export certificates booked by EU malt exporters in 2004/2005 (2 219 661 tonnes) as compared with 2003/2004 (2 477 849 tonnes), with expectations for 2005/2006 being slightly lower than the figure for 2004/2005 ⁽²⁰⁾. RM International's report on the malt market ⁽²¹⁾ would also seem to indicate global overcapacity: given the higher standard capacity for new malting plants and that world beer production has increased less quickly in recent years, new malt output would be absorbed less quickly by demand.

- (60) The Netherlands in its letter of 14 October 2005 states that world demand for malt is expected to rise by 10 % by 2010. Reference is made to the presentation by the International Grains Council at the Malting Barley Seminar in Brussels on 4 and 5 October 2005. It was also stated at this presentation, however, that as regards forecasts for 2010, global malting capacity was expected to rise by 10 %. It would not seem appropriate to use global malting capacity as an indicator of demand, as the Netherlands appears to do.
- (61) In the years ahead, the development of the global malt market would seem to be subject to two important developments. First, there is the increase in beer consumption in the 'new' beer regions. It remains to be seen however, to what extent the Community malting industry will be able to take advantage of this growth.
- (62) The growth of beer production in China has not led to a substantial increase in malt imports. According to the Rabobank report on the global malt industry ⁽²²⁾, the imported volume of malt did not rise, even after the import tariff was significantly reduced in 2002, because China's huge processing industry favours the import of malting-barley.
- (63) Rising beer consumption and production in South-East Asia has been made possible to a large extent through higher malt imports from Australia due to the proximity of, and free-trade agreements, with that country.
- (64) Community maltings located at deep sea ports, such as Holland Malt, would seem to be in a good position to satisfy the growing demand for malt in South America and Africa. As regards South America, however, the new malting capacity currently being built in Argentina could partially absorb the rising demand for malt. In addition, Mercosur's expansion, with Venezuela and possibly other South American countries joining will probably lead to a higher intra-South American trade in malt.
- (65) Developments in Russia are a second important factor for the global malt market. Russia has a total malting capacity of 1 million tonnes, with a further 450 000 tonnes under construction. As the availability of good malting barley catches up with this capacity expansion, Russia will become self sufficient and probably a malt exporter.
- (66) In view of the above, the Commission has no evidence that the current overcapacity in the global malt market will disappear in the next few years. As far as worldwide trade in malt until 2010 is concerned, the International Grains Council seems to predict a relatively stable volume with the 'decline in Russia being offset by South American growth', as mentioned in the presentation at the Malting Barley Seminar in October 2005.
- (67) As regards malt production capacity and trade in the Community, it should be noted that Holland Malt's plant at Eemshaven became operational in April 2005. Euromalt in its letter of August 2005 mentions that, despite closures of several malting factories due to low profitability, the Community still has a surplus capacity in malt of at least 500 000-700 000 tonnes (capacity in the Community being 8 800 000 tonnes, consumption 5 900 000 tonnes and exports 2 250 000 tonnes).
- (68) According to Euromalt, the profitability of the Community malting industry in 2005/2006 will be at its lowest, with many companies making a loss and covering only part of their costs. Probably as a result of this low profitability, the largest German malt producer, Weissheimer in Andernach, filed for bankruptcy in spring 2006. In addition, other malt production plants have shut permanently, including four in the United Kingdom, two in Germany and one in France. These are older units of large companies. Other malt producers have decided to shut part of their capacity temporarily. In other cases, old malt production capacity has been replaced by new. The resultant total malt capacity in the Community in July 2006 is put by H.M. Gauger at 8 800 000 tonnes ⁽²³⁾, the estimates of consumption in, and exports from, the Community being comparable with those in Euromalt's letter of August 2005. This would still leave an overcapacity of around 600 000 tonnes.
- (69) The Netherlands, in its letter of October 2005, claims that the figure of 500 000 — 700 000 tonnes mentioned by Euromalt as being the overcapacity of the Community malting industry is based on so-called 'nameplate' capacities, i.e. production 24 hours a day, 7 days a week, 365 days a year. Periods when plants are at a standstill owing to maintenance, technical failures and overhaul are not taken into account, which makes it uncertain whether overcapacity actually exists.

⁽²⁰⁾ Report No 5 of H.M. Gauger, 2.6.2006. In this report an expected total export figure for 2005/2006 is assumed of 2 140 million tonnes.

⁽²¹⁾ See footnote 8.

⁽²²⁾ See footnote 8.

⁽²³⁾ H.M. Gauger, July 2006 — State of the European Malt Industry.

- (70) The Commission has looked at actual capacity and production figures for the Community malt industry for the last few years. It has taken the following table from H.M. Gauger's statistical digest 2004/2005, which uses national statistics, Euromalt and Eurostat as sources.

Total malt capacity and production in the Community

	Capacity (in tonnes)	Production (in tonnes)
2002	8 613 304	8 455 119
2003	8 632 525	8 595 156
2004	8 818 633	8 644 575

- (71) The figures in the table point to a utilisation of at least 98 % of total capacity during the years 2002-2004. The figures in the report by Frontier Economics ⁽²⁴⁾ indicate a comparable level of utilisation. In 2005, the utilisation rate was lower, with malt production in the Community at 8,4 million tonnes and capacity at 8,8 million tonnes. For marketing year 2006/2007, total production is expected to be 8,0 million tonnes and capacity 8,8 million tonnes ⁽²⁵⁾. These lower rates of utilisation appear, however, to reflect the reaction of malting plants to low profitability, i.e. their decision to produce less malt and temporarily to shut production capacity. For marketing year 2006/2007, part of the explanation is also provided by the poor harvest of malting barley. The figures for 2002 to 2004 show that it is technically possible to use at least 98 % of the total production capacity. This high percentage for the actual utilisation of total capacity does not seem to be a reason to doubt the existence of overcapacity in the Community malting industry.

- (72) As for the future, as mentioned in the Euromalt letter of August 2005, 'small, old and inefficient capacity must be closed. This will be a slow process because of the very structure of the industry in certain Member States'. The process would appear to have accelerated in 2006. By mid-2006, production of malt in the Community appears to have been brought into equilibrium again with actual demand, as malt producers have learned to limit their production to possible sales volumes ⁽²⁶⁾. However, even after the above-mentioned permanent closure of old malt production facilities, total malt production capacity in the Community still exceeds actual demand by some 600 000 tonnes. In addition, demand in the Community is not expected to increase due to stagnating beer consumption, while Community exports will face a global trade situation which is expected to remain relatively stable for the next few years. The Commission does not have clear evidence, therefore, that the current situation of overcapacity will change soon.

Consequences for trade between Member States

- (73) The Netherlands and Holland Malt take the view that the investment in the Eemshaven plant will affect trade with third countries rather than trade between Member States, since the export of malt is a separate market segment from that in which inland malt suppliers operate.
- (74) The Commission recognises that part of the malting capacity in the Community consists of inland, small family/privately-owned companies that produce mainly for domestic markets. However, part of their production can also be for export, in which case they would face competition from other malt companies in the Community mainly focused on exports (such as Holland Malt).
- (75) In addition, there are large groups in the Community malt industry which sell their malt both inside and outside the Community. Holland Malt falls into this category, being located at a deep sea port from which it can serve both the Community and non-Community markets. Community malt companies primarily focused on exports to other markets could therefore face competition from Holland Malt. The same applies to Community malt companies concentrating on selling in the internal market, since Holland Malt still expects to sell a considerable volume of malt to European countries. In its business plan of August 2003, Holland Malt mentioned that it expected to sell 71 540 tonnes to European destinations in 2005 (compared to expected sales of 28 100 tonnes to Asia, 40 600 tonnes to Latin America and 29 000 tonnes to Russia).
- (76) Situations may well occur in which malt companies concentrating primarily on exports to third countries (such as Holland Malt) may not be able to find buyers for the output intended for those destinations, in which case they might seek to sell it inside the Community. The opposite may also occur. The Commission therefore does not consider the segments inside and outside the Community to be completely separate. Linkages exist, with developments outside the Community having an effect on developments inside, and vice versa.
- (77) Given the above, the Commission does not share the conclusion of the report by Frontier Economics that there is no indication that the subsidy granted to Holland Malt will lead to a displacement of malt sales by other European producers over and above those which would occur in any event. The Commission cannot rule out such displacements in the sale of malt by other Community malt producers to customers within and outside the Community. It concludes, therefore, that the aid may well have an impact on trade and competition between the Member States.

⁽²⁴⁾ See footnote 11.

⁽²⁵⁾ H.M. Gauger Market report No 4, 2 May 2006.

⁽²⁶⁾ H.M. Gauger, July 2006 — State of the European Malt Industry.

A market for premium malt

(78) The Commission has taken note of the information sent by the Netherlands and Holland Malt (including the letters from third parties) on the development of HTST malt ⁽²⁷⁾. The Netherlands, Holland Malt and the interested parties describe HTST malt as having different characteristics from regular malt, which give the beer more taste and flavour, longer-lasting sparkle and an increased shelf life.

(79) The Netherlands and Holland Malt state that HTST malt can be considered to be a premium malt. They also maintain that as a result of its unique physical characteristics, its perceived quality and its higher price range, it is very likely that there will be no or limited substitutability between HTST malt and regular malt. HTST malt is expected to create a demand and a market of its own.

(80) The Commission acknowledges that HTST may well have particular characteristics and be of a high quality. It has to be established, however, whether or not a separate market exists for premium malt (which HTST malt would serve) alongside a market for regular malt. The Court of First Instance has specified that in order to be considered the subject of a sufficiently distinct market,

'it must be possible to distinguish the service or the good in question by virtue of particular characteristics that so differentiate it from other services or other goods that it is only to a small degree interchangeable with those alternatives and affected by competition from them. In that context, the degree of interchangeability between products must be assessed in terms of their objective characteristics, as well as the structure of supply and demand on the market, and competitive conditions.' ⁽²⁸⁾

(81) As regards the structure of supply and demand on the market and competitive conditions, the Commission has received comments from several parties (mostly national maltsters' associations) indicating that a clear distinction between regular and premium malt cannot be made. According to these, malt is, if anything, a product of a generic nature, with small variations in characteristics and subject to quality standards imposed by the brewing industry. The majority of maltsters' customers seem only to want high-quality malt that meets their specifications and satisfies all food safety requirements.

(82) The degree of interchangeability between different malts from different malting companies would therefore not seem to be small, since all these companies have to produce malt of high quality to be able to satisfy their customers' demand.

⁽²⁷⁾ Statement by Bühler on Holland Malt's technologies, not dated.
Letter from the University of Freising — Weihenstephan, Munich, May 2005
Letter from an interested party which contains business secrets and will therefore be treated as confidential.

⁽²⁸⁾ Case T-229/94 *Deutsche Bahn* [1997] ECR II-1689, paragraph 10.

(83) This would seem to be confirmed by evidence that premium beer is not necessarily produced with another quality of malt than regular beer. According to the Netherlands, Holland Malt will produce its HTST malt primarily for the 'premium' segment of the beer market. The Netherlands states that for the production of these premium beers, raw materials of a high quality are required with characteristics that improve the flavour of these beers. Holland Malt in its letter mentions the 'Just Drinks.com 2004 report' ⁽²⁹⁾, in which — according to Holland Malt — 'major brewers state that premium beers are an inherently better liquid with a fuller, more distinctive taste'.

(84) According to the Commission, however, this sentence in the report refers to consumers' perception of premium beer, and not to a statement of major brewers. On page 59 of the report it is stated that 'Scottish & Newcastle on the other hand pointed to consumers' perception of higher quality and the status that is conferred by purchasing a premium brand. The key factors are: perception of higher quality — premium beers are an inherently better liquid with a fuller, more distinctive taste'.

(85) In fact, the executive summary of the report as submitted by Holland Malt itself starts by saying that 'interviews by just-drinks.com with a number of major international players in the global brewing industry revealed that premium beer is basically a marketing concept'. The report also mentions that a standard beer can become a premium beer in a given region or a particular country within a region and that the major international brewers adopt different marketing strategies for different markets. Brands recognised as premium in some regions are not necessarily recognised as such in others. The report furthermore states that 'the reader must be aware that demand for premium beer looked at in terms of comparisons between years and trends over a number of years, is variable due to changes in consumer perceptions and not in product specification. As Interbrew points out, it is consumers who decide what is premium, not the industry'.

(86) The fact that product specification is not an important factor in determining which beers are considered premium beers indicates that different malts, provided they meet (minimum) quality standards imposed by the brewing industry, are easily interchangeable. This interchangeability of malt is also referred to in the Hugh Baird/Scottish and Newcastle merger case ⁽³⁰⁾. Concerning the relevant product market, the notifying parties (Hugh Baird and Scottish and Newcastle) state that it is at least as broad as the malt market. The decision mentions that 'although the

⁽²⁹⁾ www.just-drinks.com, 'A global market review of premium beer — with forecasts to 2010'.

⁽³⁰⁾ Case No IV/M.1372, 18.12.1998.

malt market may arguably be subdivided, e.g. into brewing malt and distilling malt, the parties do not believe that this is appropriate because of the high degree of supply-side substitutability'.

- (87) In addition, the Commission has not been able to detect a separate market for premium malt in studying the statistical sources for malt production. On the contrary, all these sources (Eurostat, Euromalt, International Grains Council) only provide data on the general malt market. The Netherlands and Holland Malt themselves have not provided data on existing capacities for, or the production of, premium malt. On the contrary, in the argument about overcapacity, they have referred to figures for malt (as a product), without making a distinction between regular and premium malt.
- (88) The Commission considers, therefore, that a clear dividing line between the two categories (regular and premium malt) cannot be drawn. There may perhaps be differences in quality, but they do not appear to be of such a nature that the interchangeability of types of malt or competition between maltsters is appreciably limited thereby.
- (89) Based on the above findings on overcapacity in the malt market, possible effects on trade between Member States of the aid measure in question and the lack of a clearly distinctive separate market for premium malt, the Commission considers the aid not to comply with point 4.2.5 of the guidelines, which provides that no aid may be granted for investments in products for which normal market outlets cannot be found.

Aid to a malting plant in Lithuania

- (90) Holland Malt points out that the situation on the global malt market did not prevent the Commission from authorising investment aid for a malting plant in Lithuania.
- (91) The Commission would like to stress that it has not authorised state aid for an investment in a malting plant in Lithuania after that country's accession to the Community on 1 May 2004. Before that date, no state aid rules applied in Lithuania for agricultural products. In any event, failings by other Member States to meet their obligations under Articles 87 and 88 of the Treaty are irrelevant to whether the Member State against which the procedure in Article 88 (2) of the Treaty has been initiated has granted (unlawful) aid ⁽³¹⁾.
- (92) The Commission also wishes to state in this respect that it initiated the formal investigation procedure laid down in Article 88(2) of the Treaty after Spain had notified its intention to grant aid to a malt factory named Maltacarrión S.A ⁽³²⁾. The procedure was initiated on the same grounds as in the present case, i.e. that it cannot be ruled out that the malt market shows overcapacity. After the procedure

had been initiated, Spain withdrew its notification of the aid in question.

Regional aspects

- (93) The Commission acknowledges and does not dispute the important regional development aspects of the aid for Holland Malt, as explained by the Netherlands and various interested parties. In this sense, the project would fit well with the IPR scheme.
- (94) The project must, however, meet all the requirements for investment aid for the processing and selling of agricultural products as laid down by the guidelines. As it does not fulfil at least one important condition, the Commission cannot authorise the state aid for the project, despite its positive regional development aspects.

VI. CONCLUSION

- (95) For the above-mentioned reasons, the Commission considers the aid to Holland Malt to be incompatible with Articles 87 and 88 of the Treaty. The aid measure does not comply with point 4.2.5 of the guidelines, which provides that no aid may be granted for investments in products for which normal market outlets cannot be found.
- (96) In its letter dated 17 December 2004, the Netherlands declared that the aid was promised subject to approval by the Commission. If, despite this condition, any aid has actually been disbursed, it will have to be recovered,

HAS ADOPTED THIS DECISION:

Article 1

The state aid which the Netherlands has granted to Holland Malt BV in the form of a subsidy of EUR 7 425 000, subject to authorisation by the Commission, is incompatible with the common market.

Article 2

The Netherlands shall withdraw the state aid referred to in Article 1.

Article 3

1. The Netherlands shall take all necessary measures to recover from the recipient the aid referred to in Article 1 and unlawfully made available to the recipient.

2. Recovery shall be effected without delay and in accordance with the procedures of national law, provided that they allow the immediate and effective execution of this Decision. The aid to be recovered shall include interest from the date on which it was made available to the recipient until its actual recovery. Interest

⁽³¹⁾ See, for example, Case T-214/95 *Het Vlaamse Gewest* [1998] ECR II-717, paragraph 54.

⁽³²⁾ Case C 48, 21.12.05 (not yet published in the Official Journal).

shall be calculated on the basis of the reference rate used for calculating the net grant equivalent under the regional aid rules.

Article 5

This decision is addressed to the Kingdom of the Netherlands.

Article 4

Done at Brussels, 26 September 2006.

The Netherlands shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

COMMISSION DECISION

of 26 October 2006

establishing the Trans-European Transport Network Executive Agency pursuant to Council Regulation (EC) No 58/2003

(2007/60/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 58/2003 of the Council of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community policies ⁽¹⁾, and in particular Article (3)(1) thereof,

Whereas:

- (1) Regulation (EC) No 58/2003 confers on the Commission the power to decide to set up executive agencies in accordance with the statute established by that Regulation and to give them responsibility for certain tasks relating to the management of one or more Community programmes or actions.
- (2) The purpose of empowering the Commission to set up executive agencies is to allow it to focus on core activities and functions which cannot be outsourced, without relinquishing control over, or ultimate responsibility for, activities managed by the executive agencies.
- (3) The management of Community action in the field of the trans-European transport network concerns the implementation of projects which do not involve political decision-making and requires a high level of technical and financial expertise throughout the project cycle.
- (4) Tasks relating to the implementation of such Community action may be delegated to an executive agency with a clear separation between programming, the establishment of priorities and programme evaluation, for which the Commission will be responsible, and the implementation of the projects, which will be entrusted to the executive agency.
- (5) Cost/benefit analysis carried out for this purpose has shown that the setting-up of an executive agency would make it possible to improve the effectiveness of the implementation of the trans-European transport network at a lower cost. In view of the characteristics inherent in the trans-European transport network, the stress must be on the delegation of technical tasks, the main aim being to strengthen the links between the trans-European transport network and the communities of experts.

- (6) The agency must mobilise a high level of expertise in accordance with the objectives defined by the Commission, and under its supervision. The setting up of the agency must also make it possible to optimise the implementation of the trans-European transport network by making it easier to recruit staff specialised in matters relating to the trans-European transport network.
- (7) The setting-up of the agency must increase flexibility in the implementation of Community action in the field of the trans-European transport network. The agency's annual work programme must enable it in particular to contribute to the achievement of the annual priorities for the implementation of the trans-European transport network, as planned and agreed by the Commission. The agency must also ensure better coordination of funds with other Community instruments.
- (8) Management based on the results obtained by the agency, with the establishment of the necessary procedures and supervision and coordination circuits, must enable the Commission to simplify the arrangements for the implementation of the trans-European transport network. The Commission will be able to capitalise on the technical work carried out by the agency by developing in parallel, in an appropriate manner, tasks which involve making policy judgments.
- (9) Cooperation between the agency and the Commission and the accomplishment of its specific tasks must make it possible to raise the profile of Community action in the field of the trans-European transport network.
- (10) The measures provided for in this Decision are consistent with the opinion of the Committee of the Executive Agencies,

HAS DECIDED AS FOLLOWS:

*Article 1***Setting up the agency**

1. An executive agency (hereinafter 'the Agency') is hereby set up for the management of Community action in the field of the trans-European transport network, the status of which is governed by Regulation (EC) No 58/2003.

⁽¹⁾ OJ L 11, 16.1.2003, p. 1.

2. The Agency shall be known as the 'Trans-European Transport Network Executive Agency'.

Article 2

Location

The Agency shall be located in Brussels.

Article 3

Duration

The Agency shall be set up for a period starting on 1 November 2006 and ending on 31 December 2008.

Article 4

Objectives and tasks

1. The Agency shall be responsible, in the framework of Community action in the field of the trans-European transport network, for the implementation of tasks concerning the granting of Community financial aid pursuant to Regulation No 2236/95 of the Council ⁽²⁾, excluding programming, the establishment of priorities, programme evaluation, the adoption of financing decisions and legislative monitoring. It shall be responsible in particular for the following tasks:

- (a) management of the preparatory, funding and monitoring phases of the financial assistance granted to projects of common interest under the budget for the trans-European transport network, as well as the supervision required for this purpose, by taking relevant decisions where the Commission has delegated responsibility for it to do so;
- (b) coordination with other Community instruments by ensuring better coordination of assistance, over the entire route, for priority projects which also receive funding under the Structural Funds, the Cohesion Fund and from the European Investment Bank;
- (c) technical assistance to project promoters regarding the financial engineering for projects and the development of common evaluation methods;
- (d) adoption of the budget implementation instruments for income and expenditure and implementation, where the Commission has delegated responsibility to it, of all operations required for the management of Community actions in the field of the trans-European transport network, as provided for in Council Regulation (EC) No

2236/95, in particular those relating to the award of contracts and grants ⁽³⁾;

- (e) the collection, analysis and transmission to the Commission of all information required for the implementation of the trans-European transport network;
- (f) any technical and administrative support requested by the Commission.

2. Implementation of the tasks provided for in paragraph 1(b) shall not affect the responsibilities of the authorities managing operational programmes co-financed by the Structural Funds or the Cohesion Fund as regards the selection or implementation of projects which are part of the trans-European transport network or the financial responsibility of the Member States in the framework of shared management of these programmes.

3. In addition to the tasks referred to in paragraph 1 above, the Agency may be instructed by the Commission, after the Committee for Executive Agencies has delivered an opinion, to carry out tasks of the same kind in the framework of other Community programmes or actions, within the meaning of Article 2 of Regulation (EC) No 58/2003, provided that such programmes or actions remain within the limits of Community action in the field of the trans-European transport network.

4. The Commission's decision delegating responsibility shall define the details of all the tasks entrusted to the Agency, and shall be adjusted in line with additional tasks which may be entrusted to the Agency. It shall be transmitted, for information, to the Committee for Executive Agencies.

Article 5

Organisational structure

- 1. The Agency shall be managed by a steering committee and a director appointed by the Commission.
- 2. The members of the steering committee shall be nominated for the period stated in Article 3.
- 3. The director of the Agency shall be appointed for the period stated in Article 3..

Article 6

Subsidy

The Agency shall receive a subsidy entered in the general budget of the European Communities and taken from the financial allocation for Community action in the field of the trans-

⁽²⁾ OJ L 228, 9.9.1996, p. 1. Decision last amended by Decision No 884/2004/EC (OJ L 167, 30.4.2004, p. 1).

⁽³⁾ OJ L 228, 23.9.1995, p. 1.

European transport network and, where appropriate, other Community programmes or actions whose implementation is entrusted to the Agency pursuant to Article 4(3).

Article 7

Supervision and reporting requirement

The Agency shall be under the supervision of the Commission and shall provide regular reports on the implementation of the Community action in the field of the trans-European transport network which is entrusted to it, in accordance with the detailed arrangements and at the intervals specified in the decision delegating responsibility.

Article 8

Implementation of the operating budget

The Agency shall implement its operating budget in accordance with the provisions of Commission Regulation (EC) No 1653/2004 ⁽⁴⁾.

Done at Brussels, 26 October 2006.

For the Commission

Jacques BARROT

Vice-President

⁽⁴⁾ OJ L 297, 22.9.2004, p 6.

**DECISION No 1/2006 OF THE JOINT VETERINARY COMMITTEE CREATED BY AN AGREEMENT
BETWEEN THE EUROPEAN COMMUNITY AND THE SWISS CONFEDERATION ON TRADE IN
AGRICULTURAL PRODUCTS**

of 1 December 2006

amending Appendices 1, 2, 3, 4, 5, 6 and 10 to Annex 11 of the Agreement

(2007/61/EC)

THE COMMITTEE,

Having regard to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products (hereinafter the 'Agriculture Agreement'), and in particular Article 19(3) of Annex 11 thereto,

Whereas:

- (1) The Agriculture Agreement entered into force on 1 June 2002.
- (2) Article 19(1) of Annex 11 to the Agriculture Agreement sets up a Joint Veterinary Committee responsible for examining all questions relating to the said Annex and its implementation and for carrying out the tasks provided for therein. Article 19(3) authorises the Joint Veterinary Committee to decide to amend the appendices to Annex 11, in particular with a view to their adaptation and updating.
- (3) Appendices 1, 2, 3, 4, 5, 6 and 11 to Annex 11 to the Agriculture Agreement were amended for the first time by Decision No 2/2003 of the Joint Veterinary Committee set up under the Agreement between the European Community and the Swiss Confederation on trade in agricultural products of 25 November 2003 regarding the amendment of Appendices 1, 2, 3, 4, 5, 6 and 11 to Annex 11 to the Agreement ⁽¹⁾.
- (4) Appendices 1, 2, 3, 4, 5 and 11 to Annex 11 to the Agriculture Agreement were last amended by Decision No 2/2004 of the Joint Veterinary Committee set up under the Agreement between the European Community and the Swiss Confederation on trade in agricultural products of 9 December 2004 regarding the amendment of Appendices 1, 2, 3, 4, 5, 6 and 11 to Annex 11 to the Agreement ⁽²⁾.
- (5) Appendix 6 to Annex 11 to the Agricultural Agreement was amended by Decision No 1/2005 of the Joint Veterinary Committee set up by the Agreement between the European Community and the Swiss Confederation on trade in agricultural products of 21 December 2005 regarding the amendment of Appendix 6 to Annex 11 to the Agreement ⁽³⁾.

- (6) The Swiss Confederation has undertaken to incorporate in its national legislation the provisions of Directive 2003/99/EC of the European Parliament and of the Council of 17 November 2003 on the monitoring of zoonoses and zoonotic agents, amending Council Decision 90/424/EEC and repealing Council Directive 92/117/EEC ⁽⁴⁾, Regulation (EC) No 2160/2003 of the European Parliament and of the Council of 17 November 2003 on the control of salmonella and other specified food-borne zoonotic agents ⁽⁵⁾ and Commission Regulation (EC) No 1003/2005 of 30 June 2005 implementing Regulation (EC) No 2160/2003 of the European Parliament and of the Council as regards a Community target for the reduction of the prevalence of certain salmonella serotypes in breeding flocks of *Gallus gallus* and amending Regulation (EC) No 2160/2003 ⁽⁶⁾.
- (7) The Swiss Confederation has undertaken to incorporate in its national legislation the provisions of Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries ⁽⁷⁾.
- (8) The Swiss Confederation has undertaken to incorporate in its national legislation the provisions of Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs ⁽⁸⁾, the provisions of Commission Regulation (EC) No 2074/2005 of 5 December 2005 laying down implementing measures for certain products under Regulation (EC) No 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No 854/2004 of the European Parliament and of the Council and Regulation (EC) No 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No 853/2004 and (EC) No 854/2004 ⁽⁹⁾, and the provisions of Commission Regulation (EC) No 2075/2005 of 5 December 2005 laying down specific rules on official controls for *Trichinella* in meat ⁽¹⁰⁾.
- (9) Appendix 1 to Annex 11 to the Agriculture Agreement should be amended to take into account the Community

⁽¹⁾ OJ L 23, 28.1.2004, p. 27.

⁽²⁾ OJ L 17, 20.1.2005, p. 1.

⁽³⁾ OJ L 347, 30.12.2005, p. 93.

⁽⁴⁾ OJ L 325, 12.12.2003, p. 31.

⁽⁵⁾ OJ L 325, 12.12.2003, p. 1.

⁽⁶⁾ OJ L 170, 1.7.2005, p. 12.

⁽⁷⁾ OJ L 24, 30.1.1998, p. 9.

⁽⁸⁾ OJ L 338, 22.12.2005, p. 1.

⁽⁹⁾ OJ L 338, 22.12.2005, p. 27.

⁽¹⁰⁾ OJ L 338, 22.12.2005, p. 60.

and Swiss legislation on zoonoses and the specific arrangements applying to trade between the European Community and the Swiss Confederation.

- (10) Appendices 1, 2, 3, 4, 5 and 10 to Annex 11 to the Agriculture Agreement should be amended to take account of changes in the Community and Swiss legislation in force on 1 July 2006.
- (11) The public health measures provided for under Swiss law are recognised as equivalent to the analogous Community measures for commercial ends with respect to animal products intended for human consumption. Appendix 6 to Annex 11 to the Agreement should therefore be amended.
- (12) The provisions of Appendices 5 and 10 to Annex 11 to the Agriculture Agreement will be re-examined by the Joint Veterinary Committee no later than one year after this Decision enters into force,

HAS DECIDED AS FOLLOWS:

Article 1

Appendices 1, 2, 3, 4, 6 and 10 to Annex 11 to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products are hereby replaced by the respective Appendices in the Annex to this Decision.

Signed at Bern, on 1 December 2006.

On behalf of the Swiss Confederation
The Head of the Delegation
Hans WYSS

Article 2

Appendix 5 to Annex 11, Chapter 3, point V, paragraph A is hereby amended as follows:

‘A. For the inspections of live animals from countries other than those listed in this Annex, the Swiss authorities undertake to charge at the least the fees for official inspections provided for in Chapter VI of Regulation (EC) No 882/2004 at the minimum rates laid down in Annex V thereto.’

Article 3

This Decision, drawn up in duplicate, shall be signed by the joint chairmen or other persons empowered to act on behalf of the parties.

Article 4

This Decision shall be published in the *Official Journal of the European Union*.

It shall take effect from the date of the last signature.

Signed at Brussels, on 1 December 2006.

On behalf of the European Community
The Head of the Delegation
Paul VAN GELDORP

ANNEX

'Appendix 1

CONTROL MEASURES/NOTIFICATION OF DISEASES**I. Foot and mouth disease****A. LEGISLATION**

European Community	Switzerland
1. Council Directive 2003/85/EC of 29 September 2003 on Community measures for the control of foot-and-mouth disease, repealing Directive 85/511/EEC and Decisions 84/531/EEC and 91/665/EEC and amending Directive 92/46/EEC (OJ L 306, 22.11.2003, p. 1), amended by Commission Decision 2005/615/EC of 16 August 2005 amending Annex XI to Council Directive 2003/85/EC with regard to national laboratories in certain Member States.	1. Law on epizootic diseases (LFE) of 1 July 1966, as last amended on 23 June 2004 (RS 916.40), and in particular Articles 1, 1a and 9a (measures against highly contagious epizootic diseases, control objectives) and 57 (technical implementing provisions, international cooperation) thereof. 2. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005, (RS 916.401), and in particular Articles 2 (highly contagious epizootic diseases), 49 (handling micro-organisms that are pathogenic for animals), 73 and 74 (cleaning and disinfection), 77 to 98 (common provisions concerning highly contagious epizootic diseases) and 99 to 103 (specific measures to combat foot-and-mouth disease) thereof. 3. Ordonnance of 14 June 1999 on the organisation of the <i>Département fédéral de l'économie</i> (Federal Department of Economic Affairs), as last amended on 10 March 2006 (RS 172.216.1), and in particular Article 8 thereof (reference laboratory, registration, control and provision of vaccine against foot-and-mouth disease).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. The Commission and the *Office Vétérinaire Fédéral* shall notify each other of any intention to carry out emergency vaccinations. In extreme emergencies, notification may cover the decision as taken and the rules and procedures governing its implementation. In any case, consultations must be held as soon as possible within the Joint Veterinary Committee.
2. Pursuant to Article 97 of the Ordonnance on epizootic diseases, Switzerland has established an emergency warning plan, published on the website of the *Office vétérinaire fédéral*.
3. The joint reference laboratory for identifying the foot-and-mouth virus shall be the Institute for Animal Health Pirbright Laboratory, England. Switzerland shall pay the costs it incurs for operations carried out by the laboratory in that capacity. The functions and tasks of the laboratory shall be as laid down in Annex XVI to Directive 2003/85/EC.

II. Classical swine fever

A. LEGISLATION

European Community	Switzerland
Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of swine fever (OJ L 316, 1.12.2001, p. 5), as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded — Annex II: List referred to in Article 20 of the Act of Accession — 6. Agriculture — B. Veterinary and phytosanitary legislation — I. Veterinary legislation (OJ L 236, 23.9.2003, p. 381).	1. Law on epizootic diseases (LFE) of 1 July 1966, as last amended on 23 June 2004 (RS 916.40), and in particular Articles 1, 1a and 9a (measures against highly contagious epizootic diseases, control objectives) and 57 (technical implementing provisions, international cooperation) thereof. 2. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005, (RS 916.401), and in particular Articles 2 (highly contagious epizootic diseases), 40 to 47 (disposal and use of waste), 49 (handling micro-organisms that are pathogenic for animals), 73 and 74 (cleaning and disinfection), 77 to 98 (common provisions concerning highly contagious epizootic diseases) and 116 to 121 (detection of swine fever at slaughter, specific measures to combat swine fever) thereof. 3. Ordonnance of 14 June 1999 on the organisation of the <i>Département fédéral de l'économie</i>, as last amended on 10 March 2006 (RS 172.216.1), and in particular Article 8 thereof (reference laboratory). 4. Ordonnance of 23 June 2004 on the elimination of animal waste (OESPA), last amended on 22 June 2005 (RS 916.441.22).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. The Commission and the *Office Vétérinaire Fédéral* shall notify each other of any intention to carry out emergency vaccinations. Consultations shall be held as soon as possible within the Joint Veterinary Committee.
2. If necessary, pursuant to Article 117(5) of the Ordonnance on epizootic diseases, the *Office Vétérinaire Fédéral* shall lay down technical implementing rules on the marking and treatment of meat coming from protection and surveillance zones.
3. Pursuant to Article 121 of the Ordonnance on epizootic diseases, Switzerland undertakes to implement a plan to eradicate classical swine fever in wild pigs in accordance with Articles 15 and 16 of Directive 2001/89/EEC. Consultations shall be held as soon as possible within the Joint Veterinary Committee.
4. Pursuant to Article 97 of the Ordonnance on epizootic diseases, Switzerland has established an emergency warning plan, published on the website of the *Office Vétérinaire Fédéral*.
5. On-the-spot inspections shall be carried out under the responsibility of the Joint Veterinary Committee in accordance in particular with Article 21 of Directive 2001/89/EC and Article 57 of the Law on epizootic diseases.
6. If necessary, pursuant to Article 89(2) of the Ordonnance on epizootic diseases, the *Office Vétérinaire Fédéral* shall lay down technical implementing rules on serological checks on pigs in protection and surveillance zones in accordance with Chapter IV of the Annex to Decision 2002/106/EC (OJ L 39, 9.2.2002, p. 71).
7. The joint reference laboratory for classical swine fever shall be the *Institut für Virologie der Tierärztlichen Hochschule Hannover*, 15 Bünteweg 17, D-30559, Hanover, Germany. Switzerland shall pay the costs it incurs for operations carried out by the laboratory in that capacity. The functions and tasks of the laboratory shall be as laid down in Annex IV to Directive 2001/89/EC.

III. African swine fever

A. LEGISLATION

European Community	Switzerland
Council Directive 2002/60/EC of 27 June 2002 laying down specific provisions for the control of African swine fever and amending Directive 92/119/EEC as regards Teschen disease and African swine fever (OJ L 192, 20.7.2002, p. 27), as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded — Annex II: List referred to in Article 20 of the Act of Accession — 6. Agriculture — B. Veterinary and phytosanitary legislation — I. Veterinary legislation (OJ L 236, 23.9.2003, p. 381).	1. Law on epizootic diseases (LFE) of 1 July 1966, as last amended on 23 June 2004 (RS 916.40), and in particular Articles 1, 1a and 9a (measures against highly contagious epizootic diseases, control objectives) and 57 (technical implementing provisions, international cooperation) thereof. 2. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005, (RS 916.401), and in particular Articles 2 (highly contagious epizootic diseases), 40 to 47 (disposal and use of waste), 49 (handling micro-organisms that are pathogenic for animals), 73 and 74 (cleaning and disinfection), 77 to 98 (common provisions concerning highly contagious epizootic diseases) and 116 to 121 (detection of swine fever at slaughter, specific measures to combat swine fever) thereof. 3. Ordonnance of 14 June 1999 on the organisation of the <i>Département fédéral de l'économie</i>, as last amended on 10 March 2006 (RS 172.216.1), and in particular Article 8 thereof (reference laboratory). 4. Ordonnance of 23 June 2004 on the elimination of animal waste (OESPA), as last amended on 22 June 2005 (RS 916.441.22).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. The Community reference laboratory for African swine fever shall be the *Centro de Investigación en Sanidad Animal*, 28130 Valdeolmos, Madrid, Spain. Switzerland shall pay the costs it incurs for operations carried out by the laboratory in that capacity. The functions and tasks of the laboratory shall be as laid down in Annex V to Directive 2002/60/EC.
2. Pursuant to Article 97 of the Ordonnance on epizootic diseases, Switzerland has established an emergency warning plan, published on the website of the *Office Vétérinaire Fédéral*.
3. If necessary, pursuant to Article 89(2) of the Ordonnance on epizootic diseases, the *Office Vétérinaire Fédéral* shall lay down technical implementing rules in accordance with the provisions of Decision 2003/422/EC (OJ L 143, 11.6.2003, p. 35) concerning the diagnosis of African swine fever.
4. On-the-spot inspections shall be carried out under the responsibility of the Joint Veterinary Committee in accordance in particular with Article 20 of Directive 2002/60/EC and Article 57 of the Law on epizootic diseases.

IV. African horse sickness

A. LEGISLATION

European Community	Switzerland
Council Directive 92/35/EEC of 29 April 1992 laying down control rules and measures to combat African horse sickness (OJ L 157, 10.6.1992, p. 19), as last amended by Council Regulation (EC) No 806/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (qualified majority) (OJ L 122, 16.5.2003, p. 1).	1. Law on epizootic diseases (LFE) of 1 July 1966, as last amended on 23 June 2004 (RS 916.40), and in particular Articles 1, 1a and 9a (measures against highly contagious epizootic diseases, control objectives) and 57 (technical implementing provisions, international cooperation) thereof. 2. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401), and in particular Articles 2 (highly contagious epizootic diseases), 49 (handling micro-organisms that are pathogenic for animals), 73 and 74 (cleaning and disinfection), 77 to 98 (common provisions concerning highly contagious epizootic diseases) and 112 to 115 (specific measures to combat African horse sickness) thereof. 3. Ordonnance of 14 June 1999 on the organisation of the <i>Département fédéral de l'économie</i>, as last amended on 10 March 2006 (RS 172.216.1), and in particular Article 8 thereof (reference laboratory).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. Where an epizootic disease of particular severity develops in Switzerland, the Joint Veterinary Committee shall meet to consider the situation. The competent Swiss authorities undertake to implement the measures found necessary in the light of that examination.
2. The joint reference laboratory for African horse sickness shall be the *Laboratorio de Sanidad y Producción Animal, Ministerio de Agricultura, Pesca y Alimentación*, 28110 Algete, Madrid, Spain. Switzerland shall pay the costs it incurs for operations carried out by the laboratory in that capacity. The functions and tasks of the laboratory shall be as laid down in Annex III to Directive 92/35/EEC.
3. On-the-spot inspections shall be carried out under the responsibility of the Joint Veterinary Committee in accordance in particular with Article 16 of Directive 92/35/EEC and Article 57 of the Law on epizootic diseases.
4. Pursuant to Article 97 of the Ordonnance on epizootic diseases, Switzerland has established an action plan, published on the website of the *Office Vétérinaire Fédéral*.

V. Avian influenza

A. LEGISLATION

European Community	Switzerland
1. Council Directive 92/40/EEC of 19 May 1992 introducing Community measures for the control of avian influenza (OJ L 167, 22.6.1992, p. 19), as last amended by Council Regulation (EC) No 806/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (qualified majority) (OJ L 122, 16.5.2003, p. 1). 2. Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC (OJ L 10, 14.1.2006, p. 16).	1. Law on epizootic diseases (LFE) of 1 July 1966, as last amended on 23 June 2004 (RS 916.40), and in particular Articles 1, 1a and 9a (measures against highly contagious epizootic diseases, control objectives) and 57 (technical implementing provisions, international cooperation) thereof. 2. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401), and in particular Articles 2 (highly contagious epizootic diseases), 49 (handling micro-organisms that are pathogenic for animals), 73 and 74 (cleaning and disinfection), 77 to 98 (common provisions concerning highly contagious epizootic diseases) and 122 to 125 (specific measures concerning avian influenza) thereof. 3. Ordonnance of 14 June 1999 on the organisation of the <i>Département fédéral de l'économie</i>, as last amended on 10 March 2006 (RS 172.216.1), and in particular Article 8 thereof (reference laboratory).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. The joint reference laboratory for avian influenza shall be the *Central Veterinary Laboratory*, New Haw, Weybridge, Surrey KT15 3NB, United Kingdom. Switzerland shall pay the costs it incurs for operations carried out by the laboratory in that capacity. The functions and tasks of the laboratory shall be as laid down in Annex V to Directive 92/40/EEC and point 2 of Annex VII to Directive 2005/94/EC.
2. Pursuant to Article 97 of the Ordonnance on epizootic diseases, Switzerland has established an emergency warning plan, published on the website of the *Office Vétérinaire Fédéral*.
3. On-the-spot inspections shall be carried out under the responsibility of the Joint Veterinary Committee in accordance in particular with Article 18 of Directive 92/40/EEC, Article 60 of Directive 2005/94/EC and Article 57 of the Law on epizootic diseases.

VI. Newcastle disease

A. LEGISLATION

European Community	Switzerland
Council Directive 92/66/EEC of 14 July 1992 introducing Community measures for the control of Newcastle disease (OJ L 260, 5.9.1992, p. 1), as last amended by Council Regulation (EC) No 806/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (qualified majority) (OJ L 122, 16.5.2003, p. 1).	1. Law on epizootic diseases (LFE) of 1 July 1966, as last amended on 23 June 2004 (RS 916.40), and in particular Articles 1, 1a and 9a (measures against highly contagious epizootic diseases, control objectives) and 57 (technical implementing provisions, international cooperation) thereof. 2. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401), and in particular Articles 2 (highly contagious epizootic diseases), 40 to 47 (disposal and use of waste), 49 (handling micro-organisms that are pathogenic for animals), 73 and 74 (cleaning and disinfection), 77 to 98 (common provisions concerning highly contagious epizootic diseases) and 122 to 125 (specific measures concerning Newcastle disease) thereof. 3. Ordonnance of 14 June 1999 on the organisation of the <i>Département fédéral de l'économie</i>, as last amended on 10 March 2006 (RS 172.216.1), and in particular Article 8 thereof (reference laboratory). 4. Instruction (technical directive) of the <i>Office Vétérinaire Fédéral</i> of 20 June 1989 on combating paramyxovirus in pigeons (Bulletin of the <i>Office Vétérinaire Fédéral</i> No 90(13), p. 113 (vaccination, etc.)). 5. Ordonnance of 23 June 2004 on the elimination of animal waste (OESPA), as last amended on 22 June 2005 (RS 916.441.22).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. The joint reference laboratory for Newcastle disease shall be the Central Veterinary Laboratory, New Haw, Weybridge, Surrey KT15 3NB, United Kingdom. Switzerland shall pay the costs it incurs for operations carried out by the laboratory in that capacity. The functions and tasks of the laboratory shall be as laid down in Annex V to Directive 92/66/EEC.
2. Pursuant to Article 97 of the Ordonnance on epizootic diseases, Switzerland has established an emergency warning plan, published on the website of the *Office Vétérinaire Fédéral*.
3. The information provided for in Articles 17 and 19 of Directive 92/66/EEC shall be the responsibility of the Joint Veterinary Committee.
4. On-the-spot inspections shall be carried out under the responsibility of the Joint Veterinary Committee in accordance in particular with Article 22 of Directive 92/66/EEC and Article 57 of the Law on epizootic diseases.

VII. Diseases affecting fish and molluscs

A. LEGISLATION

European Community	Switzerland
1. Council Directive 93/53/EEC of 24.06.1993 introducing minimum Community measures for the control of certain fish diseases (OJ L 175, 19.7.1993, p. 23), as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded — Annex II: List referred to in Article 20 of the Act of Accession — 6. Agriculture — B. Veterinary and phytosanitary legislation — I. Veterinary legislation (OJ L 236, 23.9.2003, p. 381). 2. Council Directive 95/70/EC of 22 December 1995 introducing minimum Community measures for the control of certain diseases affecting bivalve molluscs (OJ L 332, 30.12.1995, p. 33), as last amended by Council Regulation (EC) No 806/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (qualified majority) (OJ L 122, 16.5.2003, p. 1).	1. Law of 1 July 1966 on epizootic diseases (LFE), as last amended on 23 June 2004 (RS 916.40), and in particular Articles 1, 1a and 10 (measures against epizootic diseases) and 57 (technical implementing provisions, international cooperation) thereof. 2. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401), and in particular Articles 3 and 4 (epizootic diseases referred to), 61 (obligations of leasers of fishing rights and of bodies responsible for monitoring fishing), 62 to 76 (general measures for combating disease) 275 to 290 (specific measures relating to fish diseases, diagnostic laboratory) thereof.

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. At present, salmon farming is not authorised and the species is not present in Switzerland. In accordance with the Ordonnance on epizootic diseases, infectious anaemia in salmon is now classified in Switzerland as a disease to be eradicated.
2. Flat oyster farming is not currently practised in Switzerland. Should cases of bonamiosis or marteiliosis appear, the *Office Vétérinaire Fédéral* undertakes to take the necessary emergency measures in accordance with Community rules on the basis of Article 57 of the Law on epizootic diseases.
3. In cases as referred to in Article 7 of Directive 93/53/EEC, the information shall be submitted to the Joint Veterinary Committee.
4. The joint reference laboratory for fish diseases shall be the *Statens Veterinære Serumlaboratorium Landbrugsministeriet*, Hangevej 2, 8200 Aarhus, Denmark. Switzerland shall pay the costs it incurs for operations carried out by the laboratory in that capacity. The functions and tasks of the laboratory shall be as laid down in Annex C to Directive 93/53/EEC.
5. Pursuant to Article 97 of the Ordonnance on epizootic diseases, Switzerland has established an action plan, published on the website of the *Office Vétérinaire Fédéral*.
6. On-the-spot inspections shall be carried out under the responsibility of the Joint Veterinary Committee in accordance in particular with Article 16 of Directive 93/53/EEC, Article 8 of Directive 95/70/EC and Article 57 of the Law on epizootic diseases.
7. In cases as referred to in Article 5 of Directive 95/70/EEC, the information shall be submitted to the Joint Veterinary Committee.
8. The Community reference laboratory for mollusc diseases shall be the *Laboratoire IFREMER*, BP 133, 17390 La Tremblade, France. Switzerland shall pay the costs it incurs for operations carried out by the laboratory in that capacity. The functions and tasks of the laboratory shall be as laid down in Annex B to Directive 95/70/EEC.

VIII. Transmissible spongiform encephalopathies

A. LEGISLATION

European Community	Switzerland
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 (OJ L 147, 31.5.2001, p. 1), as last amended by Commission Regulation (EC) No 688/2006 of 4 May 2006 amending Annexes III and XI to Regulation (EC) No 999/2001 of the European Parliament and of the Council as regards the monitoring of transmissible spongiform encephalopathies and specified risk material of bovine animals in Sweden (OJ L 120, 5.5.2006, p. 10).	1. Ordonnance of 27 May 1981 on the protection of animals (OPAn), as last amended on 12 April 2006 (RS 455.1), and in particular Article 64f thereof (stunning procedures). 2. Ordonnance of 20 April 1988 on the import, transit and export of animals and animal products (OITE), (RS 916.443.11). 3. Law of 9 October 1992 on foodstuffs and consumer products (LDA1), as last amended on 16 December 2005 (RS 817.0), and in particular Articles 24 (inspection and sampling) and 40 (inspection of foodstuffs) thereof. 4. DFI Ordonnance of 23 November 2005 on foodstuffs of animal origin (RS 817.022.108), and in particular Articles 4 and 7 thereof (parts of the carcass which may not be used). 5. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401), and in particular Articles 6 (definitions and abbreviations), 36 (patents), 61 (obligation to report), 130 (surveillance of Swiss livestock), 175 to 181 (transmissible spongiform encephalopathies), 297 (internal implementation), 301 (duties of the canton veterinarian), 303 (training and further training of veterinary officials) and 312 (diagnostic laboratories) thereof. 6. Ordonnance of 10 June 1999 on the catalogue of feedingstuffs (OLALA), as last amended on 23 November 2005 (RS 916.307.1), and in particular Article 28 thereof (transport of feedingstuffs for productive animals), Annex 1, Part 9 (products of land animals), Part 10 (fish, other marine animals and their products and by-products) and Annex 4 (list of banned substances) thereto. 7. Ordonnance of 23 June 2004 on the elimination of animal waste (OESPA), as last amended on 22 June 2005 (RS 916.441.22).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. The Community reference laboratory for transmissible spongiform encephalopathies (TSEs) shall be the Veterinary Laboratories Agency (VLA), New Haw, Weybridge, Surrey KT 15 3NB, United Kingdom. Switzerland shall pay the costs it incurs for operations carried out by the laboratory in that capacity. The functions and tasks of the laboratory shall be as laid down in Chapter B of Annex X to Regulation (EC) No 999/2001.
2. Pursuant to Article 57 of the Ordonnance on epizootic diseases, Switzerland has established an emergency plan for implementing measures to combat TSEs.
3. Under Article 12 of Regulation (EC) No 999/2001, any animal suspected of being infected by a TSE in the Member States of the Community shall be placed under an official movement restriction until the results of a clinical and epidemiological examination carried out by the competent authority are known, or sacrificed for laboratory examination under official control.

In accordance with Articles 179b and 180a of the Ordonnance on epizootic diseases, Switzerland has banned the slaughter of animals suspected of being infected by a transmissible spongiform encephalopathy. Suspect animals must be killed without spilling blood and incinerated, and their brains must be analysed in the Swiss reference laboratory for TSEs.

Under Article 10 of the Ordonnance on epizootic diseases, Switzerland has introduced a permanent identification system for bovine animals enabling them to be traced back to the dam and herd of origin and making it possible to establish that they are not the progeny of BSE suspect females or BSE confirmed bovine animals.

Under Article 179c of the Ordonnance on epizootic diseases, Switzerland slaughters animals infected with BSE and the progeny of bovine animals infected with bovine spongiform encephalopathy born in the two years preceding diagnosis. Since 1 July 1999, Switzerland has also implemented slaughter by cohort (it practised slaughter by herd from 14 December 1996 until 30 June 1999).

4. Pursuant to Article 180b of the Ordonnance on epizootic diseases, Switzerland slaughters animals infected with scrapie, their dams and the direct descendants of contaminated dams, as well as all the other sheep and goats in the herd, with the exception of:

- sheep carrying at least one ARR allele and no VRQ allele; and
- animals of less than two months old which are intended solely for slaughter. The head and organs of the abdominal cavity of these animals are disposed of in accordance with the provisions of the Ordonnance on the elimination of animal by-products (OESPA).

By way of exception, in the case of breeds which are low in number, the herd does not have to be slaughtered. In this case, the herd is placed under official veterinary surveillance for a period of two years during which a clinical examination of the animals in the herd is carried out twice a year. If during this period animals are presented for slaughter, their heads, including tonsils, are subjected to an analysis by the reference laboratory for TSEs.

These measures are reviewed according to the findings from animal health monitoring. In particular, the monitoring period is extended if a new case of the disease is detected in the herd.

In the event of a confirmed case of BSE in a sheep or goat, Switzerland undertakes to apply the measures laid down in Annex VII to Regulation (EC) No 999/2001.

5. Under Article 7 of Regulation (EC) No 999/2001, the Member States of the Community prohibit the feeding of processed animal proteins to farmed animals which are kept, fattened or bred for the production of food. There is a total prohibition on feeding proteins derived from animals to ruminants in the Member States of the Community.

Under Article 18 of the Ordonnance on the elimination of animal by-products (OESPA), Switzerland has introduced a total prohibition on the feeding of animal protein to farmed animals, which entered into force on 1 January 2001.

6. Under Article 6 of Regulation (EC) No 999/2001 and in accordance with Chapter A of Annex III to that Regulation, the Member States of the Community are to introduce an annual BSE monitoring programme. This plan includes a rapid BSE test for all cattle more than 24 months old subject to emergency slaughter, animals which have died on the farm or found to be ill during the ante mortem inspection and all animals more than 30 months old slaughtered for human consumption.

The rapid BSE tests used by Switzerland are listed in Chapter C of Annex X to Regulation (EC) No 999/2001.

Under Article 179 of the Ordonnance on epizootic diseases, Switzerland is to carry out a compulsory rapid BSE test for all bovine animals more than 30 months old subject to emergency slaughter, animals which have died on the farm or been found to be ill during the ante mortem inspection and all animals more than 30 months old slaughtered for human consumption. In addition, operators are to implement a voluntary programme for monitoring bovine animals more than 20 months old slaughtered for human consumption.

7. Under Article 6 of Regulation (EC) No 999/2001 and in accordance with Chapter A of Annex III to that Regulation, the Member States of the Community are to introduce an annual BSE monitoring programme.

In application of the provisions of Article 177 of the Ordonnance on epizootic diseases, Switzerland has introduced a TSE monitoring programme for ovine and caprine animals more than 12 months old. Animals which are subject to emergency slaughter, have died on the farm or have been found to be ill during the ante mortem inspection and all animals slaughtered for human consumption were examined over the period from June 2004 to July 2005. As all the samples tested negative for BSE, samples for monitoring purposes are taken from clinical suspect animals, animals subject to emergency slaughter and animals which died on the farm.

The recognition of similarities in legislation governing the monitoring of TSEs in ovine and caprine animals will be reconsidered in the Joint Veterinary Committee.

8. The Joint Veterinary Committee is responsible for providing the information required in Article 6 and Chapter B of Annex III and in Annex IV (3.III) to Regulation (EC) No 999/2001.
9. On-the-spot inspections are carried out under the responsibility of the Joint Veterinary Committee in accordance in particular with Article 21 of Regulation (EC) No 999/2001 and Article 57 of the Law on epizootic diseases.

C. ADDITIONAL INFORMATION

1. From 1 January 2003, pursuant to the Ordonnance of 20 November 2002 on the allocation of contributions to cover the costs of eliminating animal waste in 2003 (RS 916.406), Switzerland has introduced a financial incentive for farms on which bovine animals are born and slaughterhouses where they are slaughtered, provided they comply with the procedures for declaring animal movements as provided for in the legislation in force.
2. Under Article 8 of Regulation (EC) No 999/2001 and in accordance with point 1 of Annex XI to that Regulation, the Member States of the Community are to remove and destroy specified risk materials (SRMs).

The list of SRMs removed from bovine animals comprises the skull, excluding the mandible but including the brain and eyes, and the spinal cord of bovine animals aged over 12 months; the spinal column, excluding the vertebrae of the tail, the spinous and transversal processes of the cervical and lumbar vertebrae and the median sacral crest and the wings of the sacrum, but including the dorsal root ganglia and spinal cord of bovine animals aged over 24 months; the tonsils, the intestines from the duodenum to the rectum and the mesentery of bovine animals of all ages.

The list of SRMs removed from ovine and caprine animals comprises the skull, including the brain and eyes, the tonsils and the spinal cord of ovine and caprine animals aged over 12 months or which have a permanent incisor erupted through the gum, and the spleen and ileum of ovine and caprine animals of all ages.

Under Article 179d of the Ordonnance on epizootic diseases and Article 4 of the Ordonnance on foodstuffs of animal origin, Switzerland has introduced a policy of removing SRMs from the animal and human food chains. The list of SRMs removed from bovine animals comprises in particular the spinal column of animals aged over 30 months, and the tonsils, intestines from the duodenum to the rectum, and mesentery of animals of all ages.

Under Article 180c of the Ordonnance on epizootic diseases and Article 4 of the Ordonnance on foodstuffs of animal origin, Switzerland has introduced a policy of removing SRMs from the animal and human food chains. The list of SRMs removed from ovine and caprine animals includes in particular the brain in the cranial cavity, the spinal chord with the dura mater and the tonsils of animals aged over 12 months or which have a permanent incisor erupted through the gum, and the spleen and ileum of animals of all ages.

3. Regulation (EC) No 1774/2002 of the European Parliament and of the Council lays down health rules concerning animal by-products not intended for human consumption in the Member States of the Community.

Under Article 13 of the Ordonnance on the elimination of animal by-products, Switzerland is to incinerate category 1 animal by-products, including specified risk materials and animals which have died on the farm.

IX. **Bluetongue**

A. LEGISLATION

European Community	Switzerland
Council Directive 2000/75/EC of 20 November 2000 laying down specific provisions for the control and eradication of bluetongue.	1. Law on epizootic diseases (LFE) of 1 July 1966, as last amended on 23 June 2004 (RS 916.40), and in particular Articles 1, 1a and 9a (measures against highly contagious epizootic diseases, control objectives) and 57 (technical implementing provisions, international cooperation) thereof. 2. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401), and in particular Articles 2 (highly contagious epizootic diseases), 73 and 74 (cleaning and disinfection), 77 to 98 (common provisions concerning highly contagious epizootic diseases) and 126 to 127 (common provisions concerning the other highly contagious epizootic diseases) thereof. 3. Ordonnance of 14 June 1999 on the organisation of the <i>Département fédéral de l'économie</i>, as last amended on 10 March 2006 (RS 172.216.1), and in particular Article 8 thereof (reference laboratory).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. The Community reference laboratory for bluetongue shall be the AFRC Institute for Animal Health, Pirbright Laboratory, Ash Road, Pirbright, Woking, Surrey GU24 0NF, United Kingdom. Switzerland shall pay the costs it incurs for operations carried out by the laboratory in that capacity. The functions and tasks of the laboratory shall be as laid down in Chapter B of Annex II to Directive 2000/75/EC.
2. Pursuant to Article 97 of the Ordonnance on epizootic diseases, Switzerland has established an emergency warning plan, published on the website of the *Office Vétérinaire Fédéral*.
3. On-the-spot inspections shall be carried out under the responsibility of the Joint Veterinary Committee in accordance in particular with Article 17 of Directive 2000/75/EC and Article 57 of the Law on epizootic diseases.

X. Zoonoses

A. LEGISLATION

European Community	Switzerland
1. Regulation (EC) No 2160/2003 of the European Parliament and of the Council of 17 November 2003 on the control of salmonella and other specified food-borne zoonotic agents (OJ L 325, 12.12.2003, p. 1).	1. Ordonnance of 1 July 1966 on epizootic diseases (LFE), as last amended on 23 June 2004 (RS 916.401).
2. Directive 2003/99/EC of the European Parliament and of the Council of 17 November 2003 on the monitoring of zoonoses and zoonotic agents, amending Council Decision 90/424/EEC and repealing Council Directive 92/117/EEC (OJ L 325 of 12.12.2003, p. 31).	2. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401).
	3. Federal Law of 9 October 1992 on foodstuffs and consumer products (LDAI), as last amended on 16 December 2005 (RS 817.0).
	4. Ordonnance of 23 November 2005 on foodstuffs and consumer products (ODAI0Us) (RS 817.02).
	5. DFI Order of 23 November 2005 on hygiene (OHyg) (RS 817.024.1).
	6. Federal Law of 18 December 1970 on protection against infectious diseases in humans (Epidemics Law), last amended on 21 March 2003 (RS 818.101).
	7. Ordonnance of 13 January 1999 on the declaration of infectious diseases in humans (Ordonnance on the declaration), last amended on 15 December 2003 (RS 818.141.1).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. The Community reference laboratories shall be:
 - Community reference laboratory for the analysis and testing of zoonoses (salmonella):
Rijksinstituut voor Volksgezondheid en Milieuhygiëne (RIVM)
3720 BA Bilthoven
Netherlands
 - Community reference laboratory for the monitoring of marine biotoxins:
Agencia Española de Seguridad Alimentaria (AES):
E-36200 Vigo
Spain
 - Community reference laboratory for monitoring bacteriological and viral contaminations of bivalve molluscs:
The laboratory of the Centre for Environment, Fisheries and Aquaculture Science (CEFAS)
Weymouth
Dorset DT4 8UB
United Kingdom

- Community reference laboratory for *Listeria monocytogenes*:
AFSSA — Laboratoire d'études et de recherches sur la qualité des aliments et sur les procédés agroalimentaires (LERQAP)
F-94700 Maisons-Alfort
France
 - Community reference laboratory for Coagulase positive Staphylococci, including *Staphylococcus aureus*:
AFSSA — Laboratoire d'études et de recherches sur la qualité des aliments et sur les procédés agroalimentaires (LERQAP)
F-94700 Maisons-Alfort
France
 - Community reference laboratory for *Escherichia coli*, including Verotoxigenic *E. coli* (VTEC):
Istituto Superiore di Sanità (ISS)
I-00161 Roma
Italy
 - Community reference laboratory for *Campylobacter*:
Statens Veterinärmedicinska Anstalt (SVA)
S-751 89 Uppsala
Sweden
 - Community reference laboratory for parasites (particularly *Trichinella*, *Echinococcus* and *Anisakis*):
Istituto Superiore di Sanità (ISS)
I-00161 Roma
Italy
 - Community Reference Laboratory for antimicrobial resistance:
Danmarks Fødevareforskning (DFVF)
DK-1790 København V
Denmark
2. Switzerland shall pay the costs it incurs for operations carried out by the laboratory in these capacities. The functions and tasks of these laboratories shall be as laid down in Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ L 165, 30.4.2004, p. 1).
3. Switzerland shall transmit to the Commission every year by the end of May a report on trends and sources of zoonoses, zoonotic agents and antimicrobial resistance, covering the data collected pursuant to Articles 4, 7 and 8 of Directive 2003/99/EC during the previous year. This report shall also contain the information referred to in Article 3 (2)(b) of Regulation (EC) No 2160/2003. This report shall be sent by the Commission to the European Food Safety Authority with a view to the publication of the summary report concerning the trends and sources of zoonoses, zoonotic agents and antimicrobial resistance in the Community.

XI. Other diseases

A. LEGISLATION

European Community	Switzerland
Council Directive 92/119/EEC of 17 December 1992 introducing general Community measures for the control of certain animal diseases and specific measures relating to swine vesicular disease (OJ L 62, 15.3.1993, p. 69), as last amended by Council Regulation (EC) No 806/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (qualified majority) (OJ L 122, 16.5.2003, p. 1).	1. Law of 1 July 1966 on epizootic diseases (LFE), as last amended on 23 June 2004 (RS 916.40), and in particular Articles 1, 1a and 9a (measures against highly contagious epizootic diseases, control objectives) and 57 (technical implementing provisions, international cooperation) thereof. 2. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401), and in particular Articles 2 (highly contagious epizootic diseases), 49 (handling micro-organisms that are pathogenic for animals), 73 and 74 (cleaning and disinfection), 77 to 98 (common provisions concerning highly contagious epizootic diseases) and 103 to 105 (specific measures concerning the control of swine vesicular disease) thereof. 3. Ordonnance of 14 June 1999 on the organisation of the <i>Département fédéral de l'économie</i>, as last amended on 10 March 2006 (RS 172.216.1), and in particular Article 8 thereof (reference laboratory).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. In cases as referred to in Article 6 of Directive 92/119/EEC, the information shall be submitted to the Joint Veterinary Committee.
2. The joint reference laboratory for swine vesicular disease shall be: the AFRC Institute for Animal Health, Pirbright Laboratory, Ash Road, Pirbright, Woking, Surrey GU24 0NF, United Kingdom. Switzerland shall pay the costs it incurs for operations carried out by the laboratory in that capacity. The functions and tasks of the laboratory shall be as laid down in Annex III to Directive 92/119/EEC.
3. Pursuant to Article 97 of the Ordonnance on epizootic diseases, Switzerland has established an emergency plan. Technical implementation rule No 95/65 issued by the *Office Vétérinaire Fédéral* lays down the procedures for that plan.
4. On-the-spot inspections shall be carried out under the responsibility of the Joint Veterinary Committee in accordance in particular with Article 22 of Directive 92/119/EEC and Article 57 of the Law on epizootic diseases.

XII. Notification of diseases

A. LEGISLATION

European Community	Switzerland
Council Directive 82/894/EEC of 21 December 1982 on the notification of animal diseases within the Community (OJ L 378, 31.12.1982, p. 58), as last amended by Commission Decision 2004/216/EC of 1 March 2004 amending Council Directive 82/894/EEC on the notification of animal diseases within the Community to include certain equine diseases and certain diseases of bees to the list of notifiable diseases (OJ L 67, 5.3.2004, p. 27).	1. Law of 1 July 1966 on epizootic diseases (LFE), as last amended on 23 June 2004 (RS 916.40), and in particular Articles 11 (announcement and declaration of diseases) and 57 (technical implementing provisions, international cooperation) thereof. 2. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401), and in particular Articles 2 to 5 (diseases referred to), 59 to 65 and 291 (obligation to report, notification) and 292 to 299 (monitoring, implementation, administrative assistance) thereof.

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

The Commission, in cooperation with the *Office Vétérinaire Fédéral*, shall integrate Switzerland into the animal disease notification system provided for in Directive 82/894/EEC.

Appendix 2

ANIMAL HEALTH

I. Animals and swine

A. LEGISLATION

European Community	Switzerland
Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine (OJ L 121, 29.7.1964, p. 1977/64), as last amended by Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (OJ L 3, 5.1.2005, p. 1).	1. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401), and in particular Articles 27 to 31 (markets, exhibitions), 34 to 37 (trade), 73 and 74 (cleaning and disinfection), 116 to 121 (African swine fever), 135 to 141 (Aujeszky's disease), 150 to 157 (bovine brucellosis), 158 to 165 (tuberculosis), 166 to 169 (enzootic bovine leucosis), 170 to 174 (IBR/IPV), 175 to 195 (spongiform encephalopathies), 186 to 189 (bovine genital infections), 207 to 211 (porcine brucellosis), 297 (approval of markets, assembly centres and disinfection points) thereof. 2. Ordonnance of 20 April 1988 on the import, transit and export of animals and animal products (OITE), (RS 916.443.11).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. Pursuant to the first paragraph of Article 297 of the Ordonnance on epizootic diseases, the *Office Vétérinaire Fédéral* shall approve assembly centres as defined in Article 2 of Directive 64/432/EEC. For the purposes of this Annex, in accordance with Articles 11, 12 and 13 of Directive 64/432/EEC, Switzerland shall draw up a list of its approved assembly centres, transporters and traders.
2. The information provided for in Article 11(3) of Directive 64/432/EEC shall be submitted to the Joint Veterinary Committee.
3. For the purposes of this Annex, Switzerland is recognised as fulfilling the conditions laid down in Annex A(II)(7) to Directive 64/432/EEC as regards bovine brucellosis. In order to maintain its status as having an officially brucellosis-free bovine herd, Switzerland undertakes to meet the following conditions:
 - (a) any animal of the bovine species suspected of being infected with brucellosis shall be reported to the competent authorities and the animal concerned shall undergo the official tests for brucellosis, comprising at least two serological tests with complement fixation and a microbiological examination of suitable samples taken in cases of abortion;
 - (b) until such time as suspicion of the disease is lifted, i.e. when the tests provided for in point (a) have produced negative results, the officially brucellosis-free status of the herd to which the animal (or animals) of the bovine species suspected of infection belongs shall be suspended.

Detailed information concerning herds testing positive and an epidemiological report shall be submitted to the Joint Veterinary Committee. If any of the conditions laid down in the first subparagraph of Annex A(II)(7) to Directive 64/432/EEC is not fulfilled by Switzerland, the *Office Vétérinaire Fédéral* shall immediately notify the Commission. The situation shall be considered within the Joint Veterinary Committee with a view to reviewing this paragraph.

4. For the purposes of this Annex, Switzerland is recognised as fulfilling the conditions laid down in Annex A(II)(4) to Directive 64/432/EEC as regards bovine tuberculosis. In order to maintain its status as having an officially tuberculosis-free bovine herd, Switzerland undertakes to meet the following conditions:
 - (a) an identification system shall be introduced allowing each bovine animal to be traced back to its herd of origin;
 - (b) all slaughtered animals shall undergo a *post mortem* inspection carried out by an official veterinarian;
 - (c) any suspected cases of tuberculosis in live, dead or slaughtered animals shall be reported to the competent authorities;

- (d) in each case the competent authorities shall carry out the investigations necessary to establish whether the suspected disease is present, including upstream research on herds of origin and transit herds; where lesions suspected to have been caused by tuberculosis are discovered during an autopsy or at the time of slaughter, the competent authorities shall have a laboratory examination conducted on the lesions;
- (e) the officially tuberculosis-free status of the herds of origin and transit herds to which the bovine animal suspected of infection belong shall be suspended until clinical, laboratory or tuberculin tests have confirmed that no bovine tuberculosis is present;
- (f) where tuberculin, clinical or laboratory tests confirm that tuberculosis is present, the officially tuberculosis-free status of the herds of origin and transit herds shall be withdrawn;
- (g) officially tuberculosis-free status shall not be established until all the animals suspected of being infected have been removed from the herd, the premises and equipment have been disinfected, and all the remaining animals aged over six weeks have reacted negatively to at least two official intradermal injections of tuberculin pursuant to Annex B to Directive 64/432/EEC, the first being carried out at least six months after the infected animals has left the herd and the second at least six months after the first.

Detailed information on the infected herds and an epidemiological report shall be submitted to the Joint Veterinary Committee. If any of the conditions laid down in the first subparagraph of Annex A(I)(4) of Directive 64/432/EEC is not fulfilled by Switzerland, the *Office Vétérinaire Fédéral* shall immediately notify the Commission. The situation shall be considered within the Joint Veterinary Committee with a view to reviewing this paragraph.

5. For the purposes of this Annex, Switzerland is recognised as fulfilling the conditions laid down in Chapter I(F) of Annex D to Directive 64/432/EEC as regards enzootic bovine leucosis. In order to maintain its status as having an officially enzootic bovine leucosis-free herd, Switzerland undertakes to meet the following conditions:
- (a) the Swiss herd shall be monitored by sampling checks. The size of the sample shall be such that it can be declared with 99 % reliability that less than 0,2 % of herds are infected with enzootic bovine leucosis;
 - (b) all slaughtered animals shall undergo a *post mortem* inspection carried out by an official veterinarian;
 - (c) any suspected cases of enzootic bovine leucosis found in clinical examinations, autopsies or checks on meat shall be reported to the competent authorities;
 - (d) where enzootic bovine leucosis is suspected or found to be present, the officially leucosis-free status of the herd shall be suspended until the isolation period is terminated;
 - (e) the isolation period shall be terminated when, after the infected animals and, where appropriate, their calves have been eliminated, two serological examinations carried out at an interval of at least 90 days have produced negative results.

If enzootic bovine leucosis has been found in 0,2 % of herds, the *Office Vétérinaire Fédéral* shall immediately notify the Commission. The situation shall be considered within the Joint Veterinary Committee with a view to reviewing this paragraph.

6. For the purposes of this Annex, Switzerland is recognised as officially free from infectious bovine rhinotracheitis. In order to maintain that status, Switzerland undertakes to meet the following conditions:
- (a) the Swiss herd shall be monitored by sampling checks. The size of the sample shall be such that it can be declared with 99 % reliability that less than 0,2 % of herds are infected with infectious bovine rhinotracheitis;
 - (b) breeding bulls aged over 24 months shall undergo an annual serological examination;
 - (c) any suspected cases of infectious bovine rhinotracheitis shall be reported to the competent authorities and the animals concerned shall undergo official tests for infectious bovine rhinotracheitis, comprising virological or serological tests;
 - (d) where infectious bovine rhinotracheitis is suspected or found to be present, the officially infection-free status of the herd shall be suspended until the isolation period is terminated;
 - (e) the isolation period shall be terminated when a serological examination carried out at least 30 days after the infected animals have been eliminated produces negative results.

By virtue of the recognised status of Switzerland, Decision 2004/558/EC (OJ L 249, 23.7.2004, p. 20), shall apply *mutatis mutandis*.

The *Office Vétérinaire Fédéral* shall immediately notify the Commission of any change in the conditions on which recognition of that status is based. The situation shall be considered within the Joint Veterinary Committee with a view to reviewing this paragraph.

7. For the purposes of this Annex, Switzerland is recognised as officially free from Aujeszky's disease. In order to maintain that status, Switzerland undertakes to meet the following conditions:
 - (a) the Swiss herd shall be monitored by sampling checks. The size of the sample shall be such that it can be declared with 99 % reliability that less than 0,2 % of herds are infected with Aujeszky's disease;
 - (b) any suspected cases of Aujeszky's disease shall be reported to the competent authorities and the animals concerned shall undergo official tests for Aujeszky's disease including virological or serological tests;
 - (c) where Aujeszky's disease is suspected or found to be present, the officially infection-free status of the herd shall be suspended until the isolation period is terminated;
 - (d) isolation shall be terminated when, after the infected animals have been eliminated, two serological examinations of all breeding animals and a representative number of fattening animals carried out at an interval of least 21 days have produced negative results.

By virtue of the recognised status of Switzerland, Decision 2001/618/EC (OJ L 215, 9.8.2001, p. 48), as last amended by Decision 2005/768/EC (OJ L 290, 4.11.2005, p. 27), shall apply *mutatis mutandis*.

The *Office Vétérinaire Fédéral* shall immediately notify the Commission of any change in the conditions on which recognition of that status is based. The situation shall be considered within the Joint Veterinary Committee with a view to reviewing this paragraph.

8. The question of possible additional guarantees concerning transmissible gastroenteritis of pigs (TGE) and porcine reproductive and respiratory syndrome (PRRS) shall be considered as soon as possible by the Joint Veterinary Committee. The Commission shall inform the *Office Vétérinaire Fédéral* of any developments on this matter.
9. In Switzerland the *Institut de Bactériologie Vétérinaire* of the University of Bern is responsible for the official testing of tuberculins within the meaning of point 4 of Annex B to Directive 64/432/EEC.
10. The *Institut de Bactériologie Vétérinaire* of the University of Bern shall be responsible for the official testing of antigens (brucellosis) in Switzerland in accordance with Annex C(A)(4) to Directive 64/432/EEC.
11. Bovine animals and swine traded between the Member States of the Community and Switzerland shall be accompanied by health certificates in accordance with the models set out in Annex F to Directive 64/432/EEC. The following adjustments shall apply:

Model 1:

- in section C, the certifications are adapted as follows:
 - in point 4, relating to the additional guarantees, the following is added to the indents:
 - ‘— disease: infectious bovine rhinotracheitis,
 - in accordance with Commission Decision 2004/558/EC, which shall apply *mutatis mutandis*;

Model 2:

- in section C, the certifications are adapted as follows:
 - in point 4, relating to the additional guarantees, the following is added to the indents:
 - ‘— disease: Aujeszky's,
 - in accordance with Commission Decision 2001/618/EC, which shall apply *mutatis mutandis*;

12. For the purposes of applying this Annex, bovine animals traded between the Member States of the Community and Switzerland must be accompanied by additional health certificates containing the following health declarations:

‘— The bovine animals:

- are identified by a permanent identification system enabling them to be traced back to the dam and herd of origin and making it possible to establish that they are not the progeny of BSE suspect or confirmed females born during the two years preceding the diagnosis,
- do not come from herds where a suspected case of BSE is under investigation,
- were born after 1 June 2001.’

II. Sheep and goats

A. LEGISLATION

European Community	Switzerland
Council Directive 91/68/EEC of 28 January 1991 on animal health conditions governing intra-Community trade in ovine and caprine animals (OJ L 46, 19.2.1991, p. 19), as last amended by Commission Decision 2005/932/EC of 21 December 2005 amending Annex E to Council Directive 91/68/EEC as regards the updating of the model health certificates relating to ovine and caprine animals (OJ L 340, 23.12.2005).	1. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401), and in particular Articles 27 to 31 (markets, exhibitions), 34 to 37 (trade), 73 and 74 (cleaning and disinfection), 142 to 149 (rabies), 158 to 165 (tuberculosis), 166 to 169 (scrapie), 190 to 195 (ovine and caprine brucellosis), 196 to 199 (contagious agalactia), 200 to 203 (caprine arthritis/encephalitis), 233 to 235 (brucellosis in rams) and 297 (approval of markets, assembly centres and disinfection points) thereof. 2. Ordonnance of 20 April 1988 on the import, transit and export of animals and animal products (OITE), (RS 916.443.11).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. For the purposes of the second subparagraph of Article 3(2) of Directive 91/68/EEC, the information referred to therein shall be submitted to the Joint Veterinary Committee.
2. On-the-spot inspections shall be carried out under the responsibility of the Joint Veterinary Committee in accordance in particular with Article 11 of Directive 91/68/EEC and Article 57 of the Law on epizootic diseases.
3. For the purposes of this Annex, Switzerland is recognised as officially free from ovine and caprine brucellosis. In order to maintain that status, Switzerland undertakes to implement the measures provided for in point II(2) of Chapter I of Annex A to Directive 91/68/EEC.

Should ovine and caprine brucellosis appear or reappear, Switzerland shall inform the Joint Veterinary Committee so that the necessary measures can be taken in line with developments in the situation.

4. Ovine and caprine animals traded between the Member States of the Community and Switzerland shall be accompanied by health certificates in accordance with the models set out in Annex E to Directive 91/68/EEC.

III. EQUIDAE

A. LEGISLATION

European Community	Switzerland
Council Directive 90/426/EEC of 26 June 1990 on animal health conditions governing the movement and import from third countries of equidae (OJ L 224, 18.8.1990, p. 42), as last amended by Council Directive 2004/68/EC of 26 April 2004 laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals, amending Directives 90/426/EEC and 92/65/EEC and repealing Directive 72/462/EEC (OJ L 139, 30.4.2004, p. 320).	1. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401), and in particular Articles 112 to 115 (African horse disease), 204 to 206 (dourine, encephalomyelitis, infectious anaemia, glanders), and 240 to 244 (contagious equine metritis) thereof. 2. Ordonnance of 20 April 1988 on the import, transit and export of animals and animal products (OITE), (RS 916.443.11).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. For the purposes of Article 3 of Directive 90/426/EEC, information shall be submitted to the Joint Veterinary Committee.
2. For the purposes of Article 6 of Directive 90/426/EEC, information shall be submitted to the Joint Veterinary Committee.
3. On-the-spot inspections shall be carried out under the responsibility of the Joint Veterinary Committee in accordance in particular with Article 10 of Directive 90/426/EEC and Article 57 of the Law on epizootic diseases.
4. Annexes B and C to Directive 90/426/EEC shall apply *mutatis mutandis* to Switzerland.

IV. Poultry and hatching eggs

A. LEGISLATION

European Community	Switzerland
Council Directive 90/539/EEC of 15 October 1990 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs (OJ L 303, 31.10.1990, p. 6), as last amended by Council Regulation (EC) No 806/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (qualified majority) (OJ L 122, 16.5.2003, p. 1).	1. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401), and in particular Articles 25 (transport), 122 to 125 (avian influenza and Newcastle disease), 255 to 261 (Salmonella enteritidis) and 262 to 265 (avian infectious laryngotracheitis) thereof. 2. Ordonnance of 20 April 1988 on the import, transit and export of animals and animal products (OITE), (RS 916.443.11).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. For the purposes of Article 3 of Directive 90/539/EEC, Switzerland shall submit a plan to the Joint Veterinary Committee setting out the measures it intends to implement for the approval of its establishments.
2. For the purposes of Article 4 of Directive 90/539/EEC, the national reference laboratory for Switzerland shall be the *Institut de Bactériologie Vétérinaire* of the University of Bern.
3. The requirement concerning eggs held prior to consignment in the first indent of Article 7(1) of Directive 90/539/EEC shall apply *mutatis mutandis* to Switzerland.
4. For consignments of hatching eggs to the Community, the Swiss authorities undertake to comply with the rules on marking laid down in Commission Regulation (EEC) No 1868/77. The mark for Switzerland shall be 'CH'.
5. The holding requirement specified in Article 9, point (a) of Directive 90/539/EEC shall apply *mutatis mutandis* to Switzerland.

6. The holding requirement specified in Article 10, point (a) of Directive 90/539/EEC shall apply *mutatis mutandis* to Switzerland.
7. The requirement concerning eggs held prior to consignment in the first indent of Article 11(2) of Directive 90/539/EEC shall apply *mutatis mutandis* to Switzerland.
8. For the purposes of this Annex, Switzerland is recognised as meeting the requirements of Article 12(2) of Directive 90/539/EEC with regard to Newcastle disease and therefore shall have the status of not vaccinating against Newcastle disease. The *Office Vétérinaire Fédéral* shall immediately notify the Commission of any change in the conditions on which recognition of that status is based. The situation shall be considered within the Joint Veterinary Committee with a view to reviewing this paragraph.
9. The references to the name of the Member State in Article 15 of Directive 90/539/EEC shall apply *mutatis mutandis* to Switzerland.
10. Poultry and hatching eggs traded between the Member States of the Community and Switzerland shall be accompanied by health certificates in accordance with the models set out in Annex IV to Directive 90/539/EEC.
11. In the case of consignments from Switzerland to Finland or Sweden, the Swiss authorities undertake to supply the guarantees concerning salmonella required under Community legislation.

V. Aquaculture animals and products

A. LEGISLATION

European Community	Switzerland
Council Directive 91/67/EEC of 28 January 1991 concerning the animal health conditions governing the placing on the market of aquaculture animals and products (OJ L 46, 19.2.1991, p. 1), as last amended by Council Regulation (EC) No 806/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (OJ L 122, 16.5.2003, p. 1).	1. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401), and in particular Articles 275 to 290 (fish and crayfish diseases) and 297 (approval of establishments, zones and laboratories) thereof. 2. Ordonnance of 20 April 1988 on the import, transit and export of animals and animal products (OITE), (RS 916.443.11).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. The information provided for in Article 4 of Directive 91/67/EEC shall be submitted to the Joint Veterinary Committee.
2. The Joint Veterinary Committee shall decide on any application of Articles 5, 6 and 10 of Directive 91/67/EEC to Switzerland.
3. The Joint Veterinary Committee shall decide on any application of Articles 12 and 13 of Directive 91/67/EEC to Switzerland.
4. For the purposes of Article 15 of Directive 91/67/EEC, the Swiss authorities undertake to implement sampling plans and diagnostic methods in accordance with Community legislation.
5. On-the-spot inspections shall be carried out under the responsibility of the Joint Veterinary Committee in accordance in particular with Article 17 of Directive 91/67/EEC and Article 57 of the Law on epizootic diseases.
6.
 - (a) Where live fish, eggs or gametes from an approved zone are placed on the market, the movement document shall be as set out in Chapter 1 of Annex E to Directive 91/67/EEC.
 - (b) Where live fish, eggs or gametes from an approved farm are placed on the market, the movement document shall be as set out in Chapter 2 of Annex E to Directive 91/67/EEC.
 - (c) Where molluscs from an approved coastal zone are placed on the market, the movement document shall be as set out in Chapter 3 of Annex E to Directive 91/67/EEC.

- (d) Where molluscs from an approved farm are placed on the market, the movement document shall be as set out in Chapter 4 of Annex E to Directive 91/67/EEC.
- (e) Where farmed fish, molluscs or crustaceans, their eggs or gametes not belonging to species susceptible to IHN, VHS or bonamiosis or marteiliosis, as applicable, are placed on the market, the movement document shall be as set out in Annex I to Commission Decision 2003/390/EC.
- (f) Where live wild fish, molluscs or crustaceans, their eggs or gametes are placed on the market, the movement document shall be as set out in Annex I to Commission Decision 2003/390/EC.

VI. Bovine embryos

A. LEGISLATION

European Community	Switzerland
Council Directive 89/556/EEC of 25 September 1989 on animal health conditions governing intra-Community trade in and importation from third countries of embryos of domestic animals of the bovine species (OJ L 302, 19.10.1989, p. 1), as last amended by Commission Decision 2006/60/EC of 2 February 2006 amending Annex C to Council Directive 89/556/EEC as regards the model animal health certificate for intra-Community trade in embryos of domestic animals of the bovine species (OJ L 31, 3.2.2006, p. 24).	1. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401), and in particular Articles 56 to 58 (embryo transfer) thereof. 2. Ordonnance of 20 April 1988 on the import, transit and export of animals and animal products (OITE), (RS 916.443.11).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. On-the-spot inspections shall be carried out under the responsibility of the Joint Veterinary Committee in accordance in particular with Article 15 of Directive 89/556/EEC and Article 57 of the Law on epizootic diseases.
2. Bovine embryos traded between the Member States of the European Community and Switzerland shall be accompanied by health certificates in accordance with the models set out in Annex C to Directive 89/556/EEC.

VII. Bovine semen

A. LEGISLATION

European Community	Switzerland
Council Directive 88/407/EEC of 14 June 1988 laying down the animal health requirements applicable to intra-Community trade in and imports of deep-frozen semen of domestic animals of the bovine species (OJ L 194, 22.7.1988, p. 10), as last amended by Commission Decision 2006/16/EC of 5 January 2006 amending Annex B to Council Directive 88/407/EEC and Annex II to Decision 2004/639/EC as regards import conditions for semen of domestic animals of the bovine species (OJ L 11, 17.1.2006, p. 21).	1. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401), and in particular Articles 51 to 55 (artificial insemination) thereof. 2. Ordonnance of 20 April 1988 on the import, transit and export of animals and animal products (OITE), (RS 916.443.11).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. For the purposes of Article 4(2) of Directive 88/407/EEC, it is noted that in Switzerland all centres keep only animals giving a negative reaction to the serum neutralisation test or the Elisa test.
2. The information provided for in Article 5(2) of Directive 88/407/EEC shall be submitted to the Joint Veterinary Committee.

3. On-the-spot inspections shall be carried out under the responsibility of the Joint Veterinary Committee in accordance in particular with Article 16 of Directive 88/407/EEC and Article 57 of the Law on epizootic diseases.
4. Bovine semen traded between the Member States of the European Community and Switzerland shall be accompanied by health certificates in accordance with the models set out in Annex D to Directive 88/407/EEC.

VIII. Porcine semen

A. LEGISLATION

European Community	Switzerland
Council Directive 90/429/EEC of 26 June 1990 laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the porcine species (OJ L 224, 18.8.1990, p. 62), as last amended by Council Regulation (EC) No 806/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (qualified majority) (OJ L 122, 16.5.2003, p. 1).	1. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401), and in particular Articles 51 to 55 (artificial insemination) thereof. 2. Ordonnance of 20 April 1988 on the import, transit and export of animals and animal products (OITE), (RS 916.443.11).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. The information provided for in Article 5(2) of Directive 90/429/EEC shall be submitted to the Joint Veterinary Committee.
2. On-the-spot inspections shall be carried out under the responsibility of the Joint Veterinary Committee in accordance in particular with Article 16 of Directive 90/429/EEC and Article 57 of the Law on epizootic diseases.
3. Porcine semen traded between the Member States of the European Community and Switzerland shall be accompanied by health certificates in accordance with the models set out in Annex D to Directive 90/429/EEC.

IX. OTHER SPECIES

A. LEGISLATION

European Community	Switzerland
Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A(I) to Directive 90/425/EEC (OJ L 268, 14.9.1992, p. 54), as last amended by Council Directive 2004/68/EC of 26 April 2004 laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals, amending Directives 90/426/EEC and 92/65/EEC and repealing Directive 72/462/EEC (OJ L 139, 30.4.2004, p. 320). Regulation (EC) No 998/2003 of the European Parliament and of the Council of 26 May 2003 on the animal health requirements applicable to the non-commercial movement of pet animals and amending Council Directive 92/65/EEC (OJ L 146, 13.6.2003, p. 1), last amended by Commission Regulation (EC) No 590/2006 of 12 April 2006 amending Annex II to Regulation (EC) No 998/2003 of the European Parliament and of the Council as regards the list of countries and territories (OJ L 104, 13.4.2006, p. 8).	1. Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401), and in particular Articles 51 to 55 (artificial insemination) and 56 to 58 (embryo transfer) thereof. 2. Ordonnance of 20 April 1988 on the import, transit and export of animals and animal products (OITE), (RS 916.443.11).

B. SPECIAL RULES AND PROCEDURES FOR IMPLEMENTATION

1. For the purposes of this Annex, this point shall cover trade in live animals not subject to points I to V, and in semen, ova and embryos not subject to points VI to VIII.
2. The European Community and Switzerland undertake not to ban or restrict trade in the live animals, semen, ova and embryos as referred to in point 1 for animal-health reasons other than those resulting from the application of this Annex, and in particular any safeguard measures taken pursuant to Article 20 thereof.
3. Ungulates of species other than those referred to in points I, II and III which are traded between the Member States of the European Community and Switzerland shall be accompanied by health certificates in accordance with the model set out in the first part of Part I of Annex E to Directive 92/65/EEC, bearing the declaration provided for in Article 6 (A)(1)(e) of Directive 92/65/EC.
4. Lagomorphs which are traded between the Member States of the European Community and Switzerland shall be accompanied by health certificates in accordance with the model set out in the first part of Annex E to Directive 92/65/EEC, bearing where necessary the declaration provided for in the second subparagraph of Article 9(2) of Directive 92/65/EC.

That declaration may be adapted by the Swiss authorities to include in full the requirements of Article 9 of Directive 92/65/EEC.

5. The information provided for in the fourth subparagraph of Article 9(2) of Directive 92/65/EEC shall be submitted to the Joint Veterinary Committee.
6.
 - (a) Consignments of cats and dogs from the European Community to Switzerland shall be subject to Article 10(2) of Directive 92/65/EEC.
 - (b) Consignments of cats and dogs from Switzerland to the Member States of the European Community other than the United Kingdom, Ireland, Malta and Sweden shall be subject to the requirements of Article 10(2) of Directive 92/65/EEC.
 - (c) Consignments of cats and dogs from Switzerland to the United Kingdom, Ireland, Malta and Sweden shall be subject to the requirements of Article 10(3) of Directive 92/65/EEC.
 - (d) The identification system shall be as laid down in Regulation (EC) No 998/2003 of the European Parliament and of the Council of 26 May 2003 (OJ L 146, 13.6.2003, p. 1), as last amended by Commission Regulation (EC) No 590/2006 of 12 April 2006 (OJ L 104, 13.4.2006, p. 8). The passport to be used shall be the one laid down in Commission Decision 2003/803/EC (OJ L 312, 27.11.2003, p. 1). The validity of the anti-rabies vaccination, and if relevant the revaccination, shall be recognised in accordance with the recommendations of the laboratory of manufacture, in accordance with Article 5 of Regulation (EC) No 998/2003 and Commission Decision 2005/91/EC (OJ L 31, 4.2.2005, p. 61).
7. The sperm, ova and embryos of the ovine and caprine species traded between the Member States of the European Community and Switzerland shall be accompanied by health certificates in accordance with Decision 95/388/EC, as last amended by Commission Decision 2005/43/EC of 30 December 2004 (OJ L 20, 22.1.2005, p. 34).
8. Semen of the equine species traded between the Member States of the European Community and Switzerland shall be accompanied by the health certificate provided for in Decision 95/307/EC.
9. Ova and embryos of the equine species traded between the Member States of the European Community and Switzerland shall be accompanied by health certificates in accordance with Decision 95/294/EC.
10. Ova and embryos of the porcine species traded between the Member States of the European Community and Switzerland shall be accompanied by health certificates in accordance with Decision 95/483/EC.
11. Colonies of bees (hives or queens with attendants) traded between the Member States of the Community and Switzerland shall be accompanied by health certificates in accordance with the second part of Annex I to Directive 92/65/EEC.
12. Animals, semen, embryos and ova from bodies, institutes or centres approved in accordance with Annex C to Directive 92/65/EEC traded between the Member States of the European Community and Switzerland shall be accompanied by health certificates in accordance with the model set out in the third part of Annex E to Directive 92/65/EEC.
13. For the purposes of Article 24 of Directive 92/65/EEC, the information provided for in paragraph 2 of that Article shall be submitted to the Joint Veterinary Committee.

Appendix 3

IMPORTS OF LIVE ANIMALS, THEIR SPERM, OVA AND EMBRYOS FROM THIRD COUNTRIES**I. European community — Legislation****A. Ungulates excluding Equidae**

Council Directive 2004/68/EC of 26 April 2004 laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals, amending Directives 90/426/EEC and 92/65/EEC and repealing Directive 72/462/EEC (OJ L 139, 30.4.2004, p. 320).

B. Equidae

Council Directive 90/426/EEC of 26 June 1990 on animal health conditions governing the movement and import from third countries of equidae (OJ L 224, 18.8.1990, p. 42), as last amended by Council Directive 2004/68/EC of 26 April 2004 laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals, amending Directives 90/426/EEC and 92/65/EEC and repealing Directive 72/462/EEC (OJ L 139, 30.4.2004, p. 320).

C. Poultry and hatching eggs

Council Directive 90/539/EEC of 15 October 1990 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs (OJ L 303, 31.10.1990, p. 6), as last amended by Council Regulation (EC) No 806/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (qualified majority) (OJ L 122, 16.5.2003, p. 1).

D. Aquaculture animals

Council Directive 91/67/EEC of 28 January 1991 concerning the animal health conditions governing the placing on the market of aquaculture animals and products (OJ L 46, 19.2.1991, p. 1), as last amended by Council Regulation (EC) No 806/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (qualified majority) (OJ L 122, 16.5.2003, p. 1).

E. Bovine embryos

Council Directive 89/556/EEC of 25 September 1989 on animal health conditions governing intra-Community trade in and importation from third countries of embryos of domestic animals of the bovine species (OJ L 302, 19.10.1989, p. 1), as last amended by Commission Decision 2006/60/EC of 2 February 2006 amending Annex C to Council Directive 89/556/EEC as regards the model animal health certificate for intra-Community trade in embryos of domestic animals of the bovine species (OJ L 31, 3.2.2006, p. 24).

F. Bovine semen

Council Directive 88/407/EEC of 14 June 1988 laying down the animal health requirements applicable to intra-Community trade in and imports of deep-frozen semen of domestic animals of the bovine species (OJ L 194, 22.7.1988, p. 10), as last amended by Commission Decision 2006/16/EC of 5 January 2006 amending Annex B to Council Directive 88/407/EEC and Annex II to Decision 2004/639/EC as regards import conditions for semen of domestic animals of the bovine species (OJ L 11, 17.1.2006, p. 21).

G. Porcine semen

Council Directive 90/429/EEC of 26 June 1990 laying down the animal health requirements applicable to intra-Community trade in and imports of frozen semen of domestic animals of the porcine species (OJ L 224, 18.8.1990, p. 62), as last amended by Council Regulation (EC) No 806/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (qualified majority) (OJ L 122, 16.5.2003, p. 1).

H. Other live animals

1. Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A(I) to Directive 90/425/EEC (OJ L 268, 14.9.1992, p. 54), last amended by Council Directive 2004/68/EC of 26 April 2004 laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals, amending Directives 90/426/EEC and 92/65/EEC and repealing Directive 72/462/EEC (OJ L 139, 30.4.2004, p. 320).
2. Regulation (EC) No 998/2003 of the European Parliament and of the Council of 26 May 2003 on the animal health requirements applicable to the non-commercial movement of pet animals and amending Council Directive 92/65/EEC (OJ L 146, 13.6.2003, p. 1), last amended by Commission Regulation (EC) No 590/2006 of 12 April 2006 amending Annex II to Regulation (EC) No 998/2003 of the European Parliament and of the Council as regards the list of countries and territories (OJ L 104, 13.4.2006, p. 8).

II. Switzerland — Legislation

Ordonnance of 20 April 1988 on the import, transit and export of animals and animal products (OITE), (RS 916.443.11).

For the application of this Annex in Switzerland, Zurich Zoo is the officially approved centre, in accordance with Annex C to Directive 92/65/EEC.

III. Implementing rules

The *Office vétérinaire fédéral* shall apply the same rules as those covered by point I of this Appendix. However, it may adopt more restrictive measures and require additional guarantees. Consultations shall be held within the Joint Veterinary Committee to find suitable solutions.

*Appendix 4***ZOOTECHNICAL PROVISIONS, INCLUDING THOSE GOVERNING IMPORTS FROM THIRD COUNTRIES****I. European community — Legislation****A. Bovine animals**

Council Directive 77/504/EEC of 25 July 1977 on pure-bred breeding animals of the bovine species (OJ L 206, 12.8.1977, p. 8), as last amended by Council Directive 807/2003/EC (OJ L 122, 16.5.2003, p. 36).

B. Porcine animals

Council Directive 88/661/EEC of 19 December 1988 on the zootechnical standards applicable to breeding animals of the porcine species (OJ L 382, 31.12.1988, p. 36), as last amended by Council Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

C. Ovine and caprine animals

Council Directive 89/361/EEC of 30 May 1989 concerning pure-bred breeding sheep and goats (OJ L 153, 6.6.1989, p. 30).

D. Equidae

(a) Council Directive 90/427/EEC of 26 June 1990 on the zootechnical and genealogical conditions governing intra-Community trade in equidae (OJ L 224, 18.8.1990, p. 55).

(b) Council Directive 90/428/EEC of 26 June 1990 on trade in equidae intended for competitions and laying down the conditions for participation therein (OJ L 224, 18.8.1990, p. 60).

E. Pure-bred animals

Council Directive 91/174/EEC of 25 March 1991 laying down zootechnical and pedigree requirements for the marketing of pure-bred animals and amending Directives 77/504/EEC and 90/425/EEC (OJ L 85, 5.4.1991, p. 37).

F. Imports from third countries

Council Directive 94/28/EC of 23 June 1994 laying down the principles relating to the zootechnical and genealogical conditions applicable to imports from third countries of animals, their semen, ova and embryos, and amending Directive 77/504/EEC on pure-bred breeding animals of the bovine species (OJ L 178, 12.7.1994, p. 66).

II. Switzerland — Legislation

Ordonnance of 7 December 1998 on livestock farming, as last amended on 23 November 2005 (RS 916.310).

III. Implementing rules

Without prejudice to the rules on zootechnical checks in Appendices 5 and 6, the Swiss authorities undertake to ensure that Switzerland applies the provisions of Council Directive 94/28/EC for its imports.

Where difficulties arise in trade, the matter shall be referred to the Joint Veterinary Committee at the request of either Party.

Appendix 6

ANIMAL PRODUCTS

CHAPTER I

SECTORS WHERE RECOGNITION OF EQUIVALENCE IS MUTUAL

'Animal products for human consumption'

The definitions of Regulation (EC) No 853/2004 shall apply *mutatis mutandis*.

		Exports from the European Community to Switzerland and exports from Switzerland to the European Community		
		Trade conditions		Equivalence
		EC standards	Swiss standards	
Animal health:				
1. Fresh meat including minced meat, meat preparations, meat products, unprocessed fats and rendered fats				
Domestic ungulates Domestic solipeds	Directive 64/432/EEC Directive 2002/99/EC Regulation (EC) No 999/2001 ⁽¹⁾	Law of 1 July 1966 on epizootic diseases (LFE) (RS 916.40) Ordonnance of 27 June 1995 on epizootic diseases (OFE) (RS 916.401) ⁽¹⁾ .	Yes ⁽¹⁾	
2. Farmed game meat, meat preparations and meat products				
Farmed land mammals other than those cited above	Directive 64/432/EEC Directive 92/118/EEC Directive 2002/99/EC Regulation (EC) No 999/2001	Law of 1 July 1966 on epizootic diseases (LFE) (RS 916.40) Ordonnance of 27 June 1995 on epizootic diseases (OFE) (RS 916.401)	Yes	
Farmed ratites Lagomorphs	Directive 92/118/EEC Directive 2002/99/EC		Yes	
3. Wild game meat, meat preparations and meat products				
Wild ungulates Lagomorphs Other land mammals Feathered wild game	Directive 2002/99/EC Regulation (EC) No 999/2001	Law of 1 July 1966 on epizootic diseases (LFE) (RS 916.40) Ordonnance of 27 June 1995 on epizootic diseases (OFE) (RS 916.401)	Yes	
4. Fresh poultry meat, meat preparations, meat products, fats and rendered fats				
Poultry	Directive 92/118/EEC Directive 2002/99/EC	Law of 1 July 1966 on epizootic diseases (LFE) (RS 916.40) Ordonnance of 27 June 1995 on epizootic diseases (OFE) (RS 916.401)	Yes	
5. Stomachs, bladders and intestines				
Bovine animals Ovine and caprine animals Porcine animals	Directive 64/432/EEC Directive 92/118/EEC Directive 2002/99/EC Regulation (EC) No 999/2001 ⁽¹⁾	Law of 1 July 1966 on epizootic diseases (LFE) (RS 916.40) Ordonnance of 27 June 1995 on epizootic diseases (OFE) (RS 916.401) ⁽¹⁾ .	Yes ⁽¹⁾	

	Exports from the European Community to Switzerland and exports from Switzerland to the European Community		
	Trade conditions		Equivalence
	EC standards	Swiss standards	
6. Bone and bone products			
Domestic ungulates Domestic solipeds Other farmed or wild land mammals Poultry, ratites and feathered wild game	Directive 64/432/EEC Directive 92/118/EEC Directive 2002/99/EC Regulation (EC) No 999/2001 ⁽¹⁾	Law of 1 July 1966 on epizootic diseases (LFE) (RS 916.40) Ordonnance of 27 June 1995 on epizootic diseases (OFE) (RS 916.401) ⁽¹⁾ .	Yes ⁽¹⁾
7. Processed animal proteins, blood and blood products			
Domestic ungulates Domestic solipeds Other farmed or wild land mammals Poultry, ratites and feathered wild game	Directive 64/432/EEC Directive 92/118/EEC Directive 2002/99/EC Regulation (EC) No 999/2001 ⁽¹⁾	Law of 1 July 1966 on epizootic diseases (LFE) (RS 916.40) Ordonnance of 27 June 1995 on epizootic diseases (OFE) (RS 916.401) ⁽¹⁾ .	Yes ⁽¹⁾
8. Gelatine and collagen			
	Directive 2002/99/EC Regulation (EC) No 999/2001 ⁽¹⁾	Law of 1 July 1966 on epizootic diseases (LFE) (RS 916.40) Ordonnance of 27 June 1995 on epizootic diseases (OFE) (RS 916.401) ⁽¹⁾ .	Yes ⁽¹⁾
9. Milk and milk products			
	Directive 64/432/EEC Directive 2002/99/EC	Law of 1 July 1966 on epizootic diseases (LFE) (RS 916.40) Ordonnance of 27 June 1995 on epizootic diseases (OFE) (RS 916.401)	Yes
10. Eggs and egg products			
	Directive 90/539/EEC Directive 2002/99/EC	Law of 1 July 1966 on epizootic diseases (LFE) (RS 916.40) Ordonnance of 27 June 1995 on epizootic diseases (OFE) (RS 916.401)	Yes
11. Fishery products, bivalve molluscs, echinoderms, tunicates and marine gastropods			
	Directive 91/67/EEC Directive 93/53/EEC Directive 95/70/EC Directive 2002/99/EC	Law of 1 July 1966 on epizootic diseases (LFE) (RS 916.40) Ordonnance of 27 June 1995 on epizootic diseases (OFE) (RS 916.401)	Yes
12. Honey			
	Directive 92/118/EEC Directive 2002/99/EC	Law of 1 July 1966 on epizootic diseases (LFE) (RS 916.40) Ordonnance of 27 June 1995 on epizootic diseases (OFE) (RS 916.401)	Yes
13. Snails and frogs' legs			
	Directive 92/118/EEC Directive 2002/99/EC	Law of 1 July 1966 on epizootic diseases (LFE) (RS 916.40) Ordonnance of 27 June 1995 on epizootic diseases (OFE) (RS 916.401)	Yes

⁽¹⁾ The recognition of similarities in legislation governing the monitoring of TSEs in sheep and goats will be reconsidered in the Joint Veterinary Committee.

Exports from the European Community to Switzerland and exports from Switzerland to the European Community		
Trade conditions		Equivalence
EC standards	Swiss standards	
Public health		
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 (OJ L 147, 31.5.2001, p. 1), as last amended by Commission Regulation (EC) No 688/2006 of 4 May 2006 amending Annexes III and XI to Regulation (EC) No 999/2001 of the European Parliament and of the Council as regards the monitoring of transmissible spongiform encephalopathies and specified risk material of bovine animals in Sweden (OJ L 120, 5.5.2006, p. 10). Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (OJ L 139, 30.4.2004, p. 1). Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ L 139, 30.4.2004, p. 55). Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (OJ L 139 of 30.4.2004, p. 206). Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ L 165, 30.4.2004, p. 1). Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs (OJ L 338, 22.12.2005, p. 1). Commission Regulation (EC) No 2074/2005 of 5 December 2005 laying down implementing measures for certain products under Regulation (EC) No 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No 854/2004 of the European Parliament and of the Council and Regulation (EC) No 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No 853/2004 and (EC) 854/2004 (OJ L 338, 22.12.2005, p. 27). Commission Regulation (EC) No 2075/2005 of 5 December 2005 laying down specific rules on official controls for Trichinella in meat (OJ L 338, 22.12.2005, p. 60).	Federal Law of 9 October 1992 on foodstuffs and consumer products (Law on foodstuffs), last amended on 16 December 2005 (RS 817.0). Ordonnance of 27 May 1981 on the protection of animals (OPAn), as last amended on 12 April 2006 (RS 455.1). Ordonnance of 1 March 1995 on the setting up bodies responsible for checking meat hygiene (OFHV), as last amended on 23 November 2005 (RS 817.191.54). Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401). Ordonnance of 23 November 2005 on primary production (RS 916.020). Order of 23 November 2005 on the slaughter of livestock and the checking of meat (OAbCV) (RS 817.190). Ordonnance of 23 November 2005 on foodstuffs and consumer products (ODAlOUS) (RS 817.02). DFI Ordonnance of 23 November 2005 on the implementation of foodstuffs legislation (RS 817.025.21). DFE Ordonnance of 23 November 2005 on hygiene in primary production (RS 916.020.1). DFI Ordonnance of 23 November 2005 on hygiene (RS 817.024.1). DFE Ordonnance of 23 November 2005 on hygiene during the slaughter of livestock (OHyAb) (RS 817.190.1). DFI Ordonnance of 23 November 2005 on foodstuffs of animal origin (RS 817.022.108).	Yes, subject to special conditions.

Special conditions

- (1) Animal products intended for human consumption which are the traded between the Member States of the Community and Switzerland will move on the same conditions only as animal products intended for human consumption which are the traded between the Member States of the Community. Where necessary, these products are accompanied by the health certificates required for trade between the Member States of the Community or defined in this Annex and available in the TRACES system.
- (2) Switzerland will draw up a list of its establishments approved in accordance with Article 31 (registration/approval of establishments) of Regulation (EC) No 882/2004.

- (3) For its imports, Switzerland shall apply the same provisions as those applicable at Community level.
- (4) The competent authorities of Switzerland may not make use of the exemption from the *Trichinella* examination as provided for in Article 3(2) of Regulation (EC) No 2075/2005. Where this exemption is used, the competent authorities of Switzerland undertake to notify the Commission by written procedure of the list of regions where the risk of *Trichinella* in domestic swine is officially recognised as negligible. The Member States of the Community shall have three months from receipt of the notification to send written comments to the Commission. If the Commission or a Member State raises no objections, the region is recognised as a region presenting a negligible *Trichinella* risk and domestic swine coming from that region shall be exempted from examination for *Trichinella* at the time of slaughter. The provisions of Article 3(3) of Regulation (EC) No 2075/2005 shall apply *mutatis mutandis*.
- (5) The detection methods described in Chapters I and II of Annex I to Regulation (EC) No 2075/2005 shall be used in Switzerland for the *Trichinella* examinations. However, no use shall be made of the trichoscopic examination described in Chapter III of Annex I to Regulation (EC) No 2075/2005.
- (6) The competent authorities of Switzerland may derogate from the *Trichinella* examination of carcasses and meat of domestic swine kept for fattening and slaughter in low-capacity slaughter establishments.

This provision shall apply until 31 December 2009.

In application of the provisions of subparagraph 3(a) of Article 8 of the DFE Ordonnance on hygiene during the slaughter of livestock (RS 817.190.1) and of the seventh subparagraph of Article 9 of the DFI Ordonnance on foodstuffs of animal origin (RS 817.022.108), these carcasses and meat of domestic swine kept for fattening and slaughter as well as meat preparations, meat products and derived processed products shall be marked with a special health stamp in accordance with the model specified in the second subparagraph of Annex 9 to the DFE Ordonnance on hygiene during the slaughter of livestock (RS 817.190.1). These products may not be traded between the Member States of the Community as laid down in the provisions of Articles 9(a) and 14(a) of the DFI Ordonnance on foodstuffs of animal origin (RS 817.022.108).

- (7) Carcasses and meat of domestic swine kept for slaughter which are traded between the Member States of the Community and Switzerland from:
- holdings recognised as free from *Trichinella* by the competent authorities of the Member States of the Community,
 - regions where the risk of *Trichinella* in domestic swine is officially recognised as negligible;
- and for which the *Trichinella* examination has not been carried out in application of the provisions of Article 3 of Regulation (EC) No 2075/2005, shall move only under the same conditions as those traded between the Member States of the Community.
- (8) In application of the provisions of Article 2 of the Ordonnance on hygiene (RS 817.024.1), the competent authorities of Switzerland may in particular cases allow adjustments to Articles 8, 10 and 14 of the Ordonnance on hygiene (RS 817.024.1):
- (a) to meet the needs of establishments situated in the mountain regions listed in the Annex to the Federal Act of 21 March 1997 on investment aid in mountain regions.

The competent authorities of Switzerland undertake to notify the Commission by written procedure of such adjustments. This notification:

- provides a detailed description of the provisions for which the competent authorities of Switzerland consider that an adjustment is necessary, and indicates the nature of the adjustment in question,
- describe the foodstuffs and establishments concerned,
- explains the grounds for the adjustment (including, where appropriate, the provision of a summary of the risk analysis carried out and indicating any measure needed to ensure that the adjustment does not compromise the objectives of the Ordonnance on hygiene (RS 817.024.1),
- gives any other relevant information.

The Commission and the Member States shall have three months from the receipt of the notification to submit their written observations. If necessary, the Joint Veterinary Committee will be convened.

- (b) for the production of foods with traditional characteristics.

The competent authorities of Switzerland undertake to notify the Commission by written procedure of such adjustments at the latest twelve months after the individual or general derogations have been granted. Each notification:

- provides a short description of the provisions that have been adapted,
- describes the foodstuffs and establishments concerned, and
- gives any other relevant information.

- (9) The Commission shall inform Switzerland of the derogations and adjustments applied in the Member States of the Community under Articles 13 of Regulation (EC) No 852/2004, 10 of Regulation (EC) No 852/2003, 13 of Regulation (EC) No 854/2003 and 7 of Regulation (EC) No 2074/2005.
- (10) Pending the alignment of Community legislation and Swiss legislation concerning the list of specified risk materials, Switzerland has undertaken, by internal technical directive, not to trade the carcasses of bovine animals aged over 24 months containing vertebral bone or any derived products with the Member States of the Community.

‘Animal by-products not intended for human consumption’

Exports from the European Community to Switzerland and exports from Switzerland to the European Community		
Trade conditions		Equivalence
EC standards	Swiss standards	
Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption (OJ L 273, 10.10.2002, p. 1), as last amended by Commission Regulation (EC) No 208/2006 of 7 February 2006 amending Annexes VI and VIII to Regulation (EC) No 1774/2002 of the European Parliament and of the Council as regards processing standards for biogas and composting plants and requirements for manure (OJ L 36, 8.2.2006, p. 25).	Order of 23 November 2005 on the slaughter of livestock and the checking of meat (OAbCV) (RS 817.190). DFE Ordonnance of 23 November 2005 on hygiene during the slaughter of livestock (OHAb) (RS 817.190.1). Ordonnance of 27 June 1995 on epizootic diseases (OFE), as last amended on 23 November 2005 (RS 916.401). Ordonnance of 20 April 1988 on the import, transit and export of animals and animal products (OITE). Ordonnance of 23 June 2004 on the elimination of animal waste, as last amended on 22 June 2005 (RS 916.441.22).	Yes

Special conditions

For its imports, Switzerland will apply the same provisions as those of Annexes VII, VIII, X (certificates) and XI (country), in accordance with Article 29 of Regulation (EC) No 1774/2002.

Trade in Category 1 and 2 materials shall be prohibited, except in the case of certain technical uses provided for by Regulation (EC) No 1774/2002 (transitional measures established by Commission Regulation (EC) No 878/2004).

Category 3 materials traded between the Member States of the Community and Switzerland shall be accompanied by the commercial documents and health certificates provided for in Chapter III of Annex II, in accordance with Articles 7 and 8 of Regulation (EC) 1774/2002.

In compliance with Chapter III of Regulation (EC) No 1774/2002, Switzerland shall draw up a list of its corresponding establishments.

CHAPTER II

Sectors other than those covered by Chapter I**I. Exports from the Community to Switzerland**

These exports shall be subject to the same conditions as those laid down for intra-Community trade. However, in all cases, a certificate attesting compliance with those conditions shall be issued by the competent authorities to accompany consignments.

If necessary, models for certificates shall be discussed in the Joint Veterinary Committee.

II. Exports from Switzerland to the Community

Exports from Switzerland to the Community shall be subject to the relevant conditions laid down in the Community rules. Models for certificates shall be discussed in the Joint Veterinary Committee.

Pending a decision on these models, the present requirements for certificates shall apply.

CHAPTER III

Transfer of a sector from Chapter II to Chapter I

As soon as Switzerland adopts any legislation it regards as equivalent to Community legislation, the matter shall be brought before the Joint Veterinary Committee. Chapter I of this Appendix shall be adjusted as soon as possible to reflect the outcome of the Committee's deliberations.

Appendix 10

BORDER CHECKS AND INSPECTION FEES

CHAPTER I

A. Border checks for sectors where recognition of equivalence is mutual

Type of border check	Rate
1. Documentary checks	100 %
2. Physical checks	1 %

B. Border checks for sectors other than those referred to in point A

Type of border check	Rate
1. Documentary checks	100 %
2. Physical checks	1 to 10 %

C. Special measures

Note is taken of Annex 3 to Recommendation No 1/94 of the EEC-Switzerland Joint Committee on facilitating certain veterinary checks and formalities for animal products and live animals. The matter shall be examined as soon as possible by the Joint Veterinary Committee.

D. Fees

- For sectors where recognition of equivalence is mutual, the fees shall be:

EUR 1,5/t, a minimum of EUR 30 and a maximum of EUR 350 being charged per consignment.

- For sectors other than those referred to in point 1, the fees shall be:

EUR 3,5/t, a minimum of EUR 30 and a maximum of EUR 350 being charged per consignment.

E. Rules for animal products crossing through European Union or Swiss territory

- Animal products from Switzerland which have to cross the territory of the European Union shall be subject to the inspection arrangements provided for, depending on the case, in points A and B above. The provisions of Article 11(2)(c), (d) and (e) of Directive 97/78/EC shall not apply to products whose equivalence is mutually recognised and which are intended for export outside the territory of the European Union, provided that the veterinary checks performed in accordance with point 2 above are favourable.
- Animal products from the European Union which have to cross the territory of Switzerland shall be subject to the inspection arrangements provided for, depending on the case, in points 2 and 3 above.

F. **TRACES System**1. **Legislation**

European Community	Switzerland
Commission Decision 2004/292/EC of 30 March 2004 on the introduction of the TRACES system and amending Decision 92/486/EEC (OJ L 94, 31.3.2004, p. 63), as last amended by Commission Decision 2005/515/EC of 14 July 2005, amending Decision 2004/292/EC on the introduction of the TRACES system and amending Decision 92/486/EEC (OJ L 187, 19.7.2005, p. 29).	Ordonnance of 20 April 1988 on the import, transit and export of animals and animal products (OITE), (RS 916.443.11).

2. **Special rules and procedures for implementation**

The Commission, in cooperation with the *Office vétérinaire fédéral*, shall integrate Switzerland into the TRACES system, in accordance with Commission Decision 2004/292/EC.

The provisions of Article 3 of Decision 2004/222/EC concerning the registration of common veterinary entry documents in the TRACES computer system shall not apply to products whose equivalence is recognised mutually, with the exception of those admitted under the procedures in Articles 8, 12(4) and 13 of Directive 97/78/EC and those forming the subject of a refusal decision following inspection at the border.

For sectors where recognition of equivalence is mutual, animal products traded between the Member States of the Community and Switzerland shall move under the same conditions as products traded between the Member States of the Community. Where necessary, these products are accompanied by the health certificates required for trade between the Member States of the Community or defined in this Annex and available in the TRACES system.

If necessary, transitional measures shall be laid down in the Joint Veterinary Committee.

CHAPTER II

CHECKS ON IMPORTS FROM THIRD COUNTRIES**1. Legislation**

Checks on imports from third countries shall be carried out in accordance with the provisions referred to below:

European Community	Switzerland
1. Commission Regulation (EC) No 136/2004 of 22 January 2004 laying down procedures for veterinary checks at Community border inspection posts on products imported from third countries (OJ L 21, 28.1.2004, p. 11).	1. Ordonnance of 20 April 1988 on the import, transit and export of animals and animal products (OITE), (RS 916.443.11).
2. Commission Regulation (EC) No 745/2004 of 16 April 2004 laying down measures with regard to imports of products of animal origin for personal consumption (OJ L 122, 26.4.2004, p. 1).	2. Law of 9 October 1992 on foodstuffs (LDA1), as last amended on 18 June 2004 (RS 817.0).
3. Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (OJ L 139 of 30.4.2004, p. 206).	3. Ordonnance of 23 November 2005 on foodstuffs and consumer products (ODAlOUS, RS 817.02).
4. Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ L 165, 30.4.2004, p. 1).	4. Ordonnance of 23 November 2005 on the implementation of foodstuffs legislation (RS 817.025.21).
5. Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries (OJ L 24, 30.1.1998, p. 9), as last amended by Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and welfare rules (OJ L 165, 30.4.2004, p. 1).	
6. Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption (OJ L 18, 23.1.2003, p. 11).	

2. Implementing measures

For the purposes of Article 6 of Directive 97/78/EC, the border inspection posts shall be the following: Basel-Mulhouse Airport, Ferney-Voltaire/Geneva Airport and Zurich Airport. The Joint Veterinary Committee shall be responsible for subsequent amendments.

The implementation of on-the-spot inspections shall be the responsibility of the Joint Veterinary Committee, in accordance in particular with Article 23 of Directive 97/78/EC and Article 57 of the Law on epizootic diseases.

The special situation of the border inspection posts at Basel-Mulhouse Airport and Ferney-Voltaire/Geneva Airport shall be examined by the Joint Veterinary Committee no later than one year after this Appendix enters into force.

In order to apply the provisions of Directive 97/78/EC, the Commission, in collaboration with the *Office vétérinaire fédéral*, shall incorporate Switzerland in the TRACES system, pursuant to Commission Decision 2004/292/EC.

In the context of the activities referred to in Directive 97/78/EC, the Swiss authorities undertake to collect fees or charges for official checks on goods in accordance with Chapter VI of Regulation (EC) No 882/2004 at the minimum rates laid down in Annex V thereof.

CHAPTER III

CONDITIONS GOVERNING IMPORTS OF ANIMAL PRODUCTS FROM THIRD COUNTRIES

1. European Community — Legislation

A. PUBLIC HEALTH MEASURES

1. Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC (OJ L 125, 23.5.1996, p. 10), as last amended by Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ L 165, 30.4.2004, p. 1).
2. 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 (OJ L 147, 31.5.2001, p. 1), as last amended by Commission Regulation (EC) No 688/2006 of 4 May 2006 amending Annexes III and XI to Regulation (EC) No 999/2001 of the European Parliament and of the Council as regards the monitoring of transmissible spongiform encephalopathies and specified risk material of bovine animals in Sweden (OJ L 120, 5.5.2006, p. 10).
3. Regulation (EC) No 2160/2003 of the European Parliament and of the Council of 17 November 2003 on the control of salmonella and other specified food-borne zoonotic agents (OJ L 325, 12.12.2003, p. 1).
4. Directive 2004/41/EC of the European Parliament and of the Council of 21 April 2004 repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC (OJ L 157, 30.4.2004, p. 33).
5. Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ L 139, 30.4.2004), as last amended by Commission Regulation (EC) No 2076/2005 of 5 December 2005 laying down transitional arrangements for the implementation of Regulations (EC) No 853/2004, (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council and amending Regulations (EC) No 853/2004 and (EC) No 854/2004 (OJ L 338, 22.12.2005, p. 83).
6. Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (OJ L 139, 30.4.2004), as last amended by Commission Regulation (EC) No 2076/2005 of 5 December 2005 laying down transitional arrangements for the implementation of Regulations (EC) No 853/2004, (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council and amending Regulations (EC) No 853/2004 and (EC) No 854/2004 (OJ L 338, 22.12.2005, p. 83).

B. ANIMAL HEALTH RULES

1. Council Directive 91/67/EEC of 28 January 1991 concerning the animal health conditions governing the placing on the market of aquaculture animals and products (OJ L 46, 19.2.1991, p. 1), as last amended by Council Regulation (EC) No 806/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (OJ L 122, 16.5.2003, p. 1).
2. Council Directive No 93/53/EEC of 24 June 1993 introducing minimum Community measures for the control of certain fish diseases (OJ L 175, 19.7.1993, p. 23), as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded — Annex II: List referred to in Article 20 of the Act of Accession — 6. Agriculture — B. Veterinary and phytosanitary legislation — I. Veterinary legislation (OJ L 236, 23.9.2003, p. 381).

3. Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A(I) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425/EEC (OJ L 062, 15.3.1993, p. 49), last amended by Directive 2004/41/EC of the European Parliament and of the Council of 21 April 2004 repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC (OJ L 157, 30.4.2004, p. 33).
4. 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 (OJ L 147, 31.05.2001, p. 1), as last amended by Commission Regulation (EC) No 688/2006 of 4 May 2006 amending Annexes III and XI to Regulation (EC) No 999/2001 of the European Parliament and of the Council as regards the monitoring of transmissible spongiform encephalopathies and specified risk material of bovine animals in Sweden (OJ L 120, 5.5.2006, p. 10).
5. Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption (OJ L 273, 10.10.2002, p. 1), as last amended by Commission Regulation (EC) No 208/2006 of 7 February 2006 amending Annexes VI and VIII to Regulation (EC) No 1774/2002 of the European Parliament and of the Council as regards processing standards for biogas and composting plants and requirements for manure (OJ L 36, 8.2.2006, p. 25).
6. Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption (OJ L 18, 23.1.2003, p. 11).

2. Switzerland — Legislation

Ordonnance of 20 April 1988 on the import, transit and export of animals and animal products (OITE).

3. Implementing rules

The *Office vétérinaire fédéral* shall apply the same rules as those covered by Chapter 3 point I of this Appendix. However, it may adopt more restrictive measures and require additional guarantees. Consultations shall be held within the Joint Veterinary Committee to find suitable solutions.

CHAPTER IV

FINAL PROVISIONS

The provisions of this Appendix shall be reviewed by the Joint Veterinary Committee no later than one year after its entry into force.'

COMMISSION DECISION**of 8 December 2006****concerning national provisions notified by Denmark on certain industrial greenhouse gases***(notified under document number C(2006) 5934)***(Only the Danish text is authentic)***(2007/62/EC)*

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

1.2. *Regulation (EC) No 842/2006*

Having regard to the Treaty establishing the European Community, and in particular Article 95(6) thereof,

- (5) Regulation (EC) No 842/2006 on certain fluorinated greenhouse gases (F-gases) aims at preventing and containing the emissions of certain F-gases (HFCs, PFCs and SF₆) covered by the Kyoto Protocol.

Whereas:

I. FACTS AND PROCEDURE

- (1) By letter of 2 June 2006 the Permanent Representation of the Kingdom of Denmark to the European Union, the Danish Government, referring to Article 9(3)(b) of Regulation (EC) No 842/2006 of the European Parliament and of the Council⁽¹⁾, notified to the Commission its national provisions concerning the regulation of certain industrial greenhouse gases that it deems necessary to maintain after the adoption of that Regulation, together with the justification for maintenance.

- (6) It also contains a limited number of use bans and placing on the market prohibitions when alternatives were considered available and cost effective at Community level and where improvement of containment and recovery were regarded as not feasible.

- (2) In this letter the Danish Government points out that the Kingdom of Denmark intends to maintain its national provisions which are more stringent than the Regulation, in accordance with Article 9(3)(a) of Regulation (EC) No 842/2006.

- (7) The Regulation has a double legal base, Article 175(1) of the EC Treaty with respect to all provisions but Articles 7, 8 and 9, which are based on Article 95 of the EC Treaty due to their implications in terms of free circulation of goods within the EC single market.

1. Community legislation**1.1. Article 95(4) and (6) of the EC Treaty**

- (3) Article 95(4) of the EC Treaty provides that 'If, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.'

- (8) Article 9 of the Regulation governs the placing on the market and, more precisely, prohibits the marketing of a number of products and equipment containing, or whose functioning relies upon, F-gases covered by the Regulation. In its paragraph 3(a) it stipulates that Member States that have, by 31 December 2005, adopted national measures which are stricter than those laid down in the Article and which fall under the scope of the Regulation may maintain those national measures until 31 December 2012. In accordance with its paragraph 3(b), these measures and their justification shall be notified to the Commission and they shall be compatible with the Treaty.

- (9) The Regulation shall apply with effect from 4 July 2007, with the exception of Article 9 and Annex II, which shall apply from 4 July 2006.

2. National provisions notified

- (4) According to Article 95(6), the Commission shall, within six months of the notification, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

- (10) The national provisions notified by Denmark were introduced by Order No 552 of 2 July 2002.

- (11) The Order concerns three greenhouse gases classified under the Kyoto Protocol, most of which have high global warming potentials: hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF₆).

⁽¹⁾ OJ L 161, 16.4.2006, p. 1.

- (12) The Order consists of a general ban on the import, sale and use of new products containing the above mentioned greenhouse gases after 1 January 2006 as well as a ban on the import, sale and use of these greenhouse gases, new and recovered, after 1 January 2006.
- (13) The general ban on new products containing the covered F-gases is accompanied by derogations specified in Annex I of the Order.
- (14) The Order allows for exemptions to be possibly granted by the Danish Environmental Protection Agency in 'very special cases'. The notification contains a description of when such an exemption process can be contemplated in practice, pointing for instance at the unforeseen disproportionate effects of a ban, at situations where it turns out that alternatives are not available or not suitable, or at situations where the overall level of greenhouse gas emissions converted to carbon dioxide equivalent are demonstrated to be lower for a system containing F-gases. The notification also contains a guidance document issued by the Danish Environmental Protection Agency for operators willing to apply for an exemption. This document lists the criteria used by the Danish Environmental Protection Agency to grant or refuse the exemption, and a brief overview of all applications submitted so far, as well as the corresponding decisions taken by the Danish Environmental Protection Agency.
- (15) By letter of 26 October 2006 the Commission informed the Danish Government that it had received the notification and that the six-month period for its examination pursuant to Article 95(6) started on 9 June 2006, the day following the day on which the notification was received.
- (16) By letter of 19 September 2006, the Commission informed the other Member States of the notification providing them a period of 30 days to submit any comments. The Commission also published a notice regarding the notification in the *Official Journal of the European Union* ⁽²⁾ in order to inform other interested parties of Denmark's national provisions, as well as the grounds invoked to that effect.
- (19) Placing on the market of products and equipments containing certain F-gases is harmonised at the EC level by Regulation (EC) No 842/2006, and in particular by Article 9 and Annex II thereof.
- (20) The Danish Order consists of more stringent provisions than Regulation (EC) No 842/2006 since it contains a general ban on the import, sale and use of new products containing F-gases after 1 January 2006 as well as a ban on the import, sale and use of F-gases, new and recovered, after 1 January 2006, while the Regulation contains a limited ban on the placing on the market since it only applies to products as listed in its Annex II
- (21) As a result of the above, including Article 9(3)(b) of Regulation (EC) No 842/2006, Member States shall notify their measures to the Commission, together with their underlying justification. Such measures shall be compatible with the Treaty.
- (22) The compatibility is examined through the procedure of Article 95(4) and 95(6), taking Regulation 842/2006 into account. Article 95(4) requires that the notification be accompanied by a description of the grounds relating to one or more of the major needs referred to in Article 30 or to the protection of the environment or the working environment.
- (23) In the light of the foregoing, the Commission considers that the application submitted by Denmark with a view to obtaining authorisation to maintain its national provisions on certain industrial greenhouse gases is admissible under Article 95(4) of the EC Treaty.

2. Assessment of merits

II. ASSESSMENT

1. Consideration of admissibility

- (17) Article 95(4) concerns cases where, after the adoption of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment.
- (18) The Danish notification relates to national provisions derogating from those of Article 9(1) of Regulation (EC) No 842/2006. These national provisions were adopted and entered into force in 2002, therefore before the adoption of that Regulation.

- (24) In accordance with Article 95(4) and (6), first subparagraph, of the EC Treaty, the Commission must ascertain that all the conditions enabling a Member State to maintain its national provisions derogating from a Community harmonisation measure provided for in that Article are fulfilled. In particular, the national provisions have to be justified by the major needs referred to in Article 30 of the Treaty or relating to the protection of the environment or the working environment, must not be a means of arbitrary discrimination or a disguised restriction on trade between Member States and must not constitute an obstacle to the functioning of the internal market which would not be proportionate or necessary.

2.1. The burden of proof

- (25) The Commission, when examining whether the national measures notified under Article 95(4) are justified, has to take as a basis 'the grounds' put forward by the notifying Member State. This means that, according to the provisions of the EC Treaty, the responsibility of proving that the national measures are justified lies with the requesting Member State which seeks to maintain them.

⁽²⁾ OJ C 228, 22.9.2006, p. 4.

(26) It is up to the notifying Member State to provide sufficient grounds, facts and scientific evidence so that it can be given authorisation to maintain more stringent national legislation. It is thus in the Member State's interest to attach to the notification any substantive or legal elements which could support the application⁽³⁾. Failure to include in the notification such elements shall lead the Commission to consider the notification not founded.

2.2. *Justification on grounds of major needs referred to in Article 30 or relating to the protection of the environment or the working environment*

2.2.1. Danish position

(27) To justify the maintenance of their national provisions, the Danish authorities have submitted an explanatory statement which provides the following justifications.

(28) The Order no 552 of 2 July 2002 concerns the regulation of certain industrial greenhouse gases (HFCs, PFCs and SF₆), which are all powerful greenhouse gases. For example, 1 kg of the two most widely used HFC gases in Denmark (HFC-134a and HFC-404A) are equivalent to 1 300 and 3 780 kg CO₂ respectively, while 1 kg SF₆ is equivalent to over 22 000 kg CO₂.

(29) Under the Kyoto Protocol, the EC committed to reducing its collective emissions of greenhouse gases from Member States by at least 8 % below the level in 1990 in the 2008 to 2012 period. During the subsequent discussions within the EC (Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, Burden Sharing Agreement⁽⁴⁾), Denmark committed to reduce its overall level of greenhouse gases emissions by 21 % during this period.

(30) In their notification, the Danish authorities invoke the objective of protecting the environment and, in particular, the need to achieve by all possible means the target of greenhouse gas emissions reduction, as laid down in Decision 2002/358/EC.

(31) In the case of this Order, the objective is to contribute to the reduction of greenhouse gases emission through the prevention of fluorinated greenhouse gases emissions.

(32) The Danish authorities point out that the purpose of the Danish Order on industrial greenhouse gases is to restrict

the use and therefore, the emission of industrial greenhouse gases as far as possible, so as to contribute to the reduction of their emissions and thereby contribute to meeting its obligations which it has committed to in an international context. The Danish authorities consider that the ambitious target of greenhouse gases emissions reductions which Denmark committed itself to reach under Decision 2002/358/EC requires a concerted effort in tackling every source of greenhouse gas emissions.

(33) HFCs are used in Denmark mainly as cooling fluids in refrigeration units. PFCs are no longer used in Denmark. SF₆ was previously used in soundproof insulating glass units and within the electrical sector in certain switches. Nowadays, it is only used for the latter application, involving very few tonnes per year.

(34) In their notification, the Danish authorities refer to projections according to which, without further regulation, the level of emissions would double by 2010, accounting for 0,5-0,7 million more tonnes of carbon dioxide equivalent than with the notified legislative measures.

(35) The Danish authorities indicate that the principles introduced at Community level by Regulation (EC) 842/2006 to reduce emissions through containment were introduced in the Danish legislation more than 50 years ago and since then applied to applications using F-gases and are therefore unlikely to result in further reductions.

(36) In its notification, Denmark gives a brief description of some of the areas of application where alternative solutions have been developed, and which therefore are covered by the Danish regulation. From Denmark's point of view, there is a presumption that alternatives to the industrial greenhouse gases being used in the applications which were banned from 1 January 2006 or will be banned from 1 January 2007 are available.

(37) The general ban on the import, sale and use of new products containing the covered F-gases is accompanied by derogations specified in Annex I of the Order. These derogations relate to a number of highly specific applications and, for a number of more common applications, are based on the quantity of greenhouse gases used in the respective systems, thereby exempting for instance refrigeration units, heat pumps or air conditioning units with charges between 0,15 kg and 10 kg as well as refrigeration systems for recovering heat with a charge less or equal to 50 kg. Products for ships and military use as well as the use of SF₆ in high voltage units are exempted.

(38) In addition to the derogations mentioned above, the Danish Order provides a possibility, 'in very special cases', for an exemption from the general ban. The purpose of this exemption option is to prevent the ban, in specific cases, from having disproportionately serious consequences (in cases not envisaged when the order was issued, in specific situations where the installation of refrigeration equipment based on alternatives to HFCs would incur exceptional and unreasonable additional costs for the installer/owner, or in situations where the overall level of greenhouse gas emissions converted to carbon dioxide equivalent are demonstrated to be lower for a system containing F-gases.).

⁽³⁾ See the Communication from the Commission concerning Article 95 (paragraphs 4, 5 and 6) of the Treaty establishing the European Community (COM(2002) 760 final, 23.12.2002), in particular paragraph 13.

⁽⁴⁾ OJ L 130, 15.5.2002, p. 1.

- (39) The exemption option is intended to be used so that the environmental improvement expected by the ban is achieved in the best and most effective way from an overall environmental perspective, including from an energy standpoint.
- (40) In accordance with Article 8 of the Act on Chemical Substances and Products No 21 of 16 January 1996, the ban does not apply to the import, production and sale of products exclusively intended for export.
- (41) In addition, there is no ban either on importing industrial greenhouse gases to be used in the manufacture of a given product intended for export.
- (42) The Danish Government takes the view that the purpose of the Order is to protect the environment and that it is necessary and proportionate in terms of preventing and reducing emissions of fluorinated gases. Therefore, in its view, it is compatible with the Treaty.

2.2.2. Evaluation of the position of Denmark

- (43) After having examined the information submitted by Denmark, the Commission considers that the request to maintain more stringent measures than those contained in Regulation (EC) 842/2006 can be considered compatible with the Treaty for the following reasons.

2.2.2.1. The environmental justification:

- (44) The Order forms part of a broader strategy put in place by Denmark in order to meet its emission reduction target under the Kyoto Protocol and the subsequent burden sharing agreement adopted at Community level. Under such a Community arrangement, Denmark shall reduce its Greenhouse gases (GHG) emissions by 21 % over the period 2008 to 2012 compared to the 1990 base year.
- (45) Considering the above, Denmark is putting in place a climate strategy to meet its commitments which covers every source of greenhouse gas emissions. Measures on F-Gases are therefore part of its overall effort to fulfil its obligations. It should be noted that emissions of these F-Gases are estimated to double by 2010 in the absence of further regulation with increasing use of refrigeration and also as a result of the up-coming phase out of HCFCs from refrigeration under Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer⁽⁵⁾.
- (46) Regulation (EC) 842/2006 is expected to result in significant F-gases emission reductions throughout the Community, principally in those Member States where appropriate measures for reducing F-gases emissions are not yet in place, mainly by measures aimed at improving the containment and recovery of F-gases used in certain applications. However, the Danish legislation had already introduced comparable provisions (containment policy based notably on compulsory training programmes, regular

checks for leakages) more than 50 years ago, which was then applied to applications containing F-gases, and are therefore unlikely to result in further reductions that could significantly counter the expected growth in F-gases emissions in Denmark.

- (47) Considering the above, the Commission considers that the environmental justification given by Denmark, namely the reduction and prevention of fluorinated gases emissions, is valid.

2.2.2.2. Relevance and proportionality of the Danish Order in relation to the objective of achieving further reduction of fluorinated greenhouse gases:

- (48) In this context, and in order to further reduce and prevent F-gases emissions, Denmark has decided in 2002 already to opt for selective placing on the market bans of new equipment. This selection was based on investigations that were aimed to check, in particular, the existence and availability of F-gas free alternatives.
- (49) Based on this investigation, the Order foresees a general ban on imports, sales and use of new products containing F-gases as from 1 January 2006, with a significant number of derogations and exemptions by which certain products and equipments are automatically exempted or could be exempted under certain conditions, or by which the ban schedule is advanced or put back. Annex I of the Order contains specific derogations for a number of highly specific applications (e.g medical aerosols, laboratory equipment) and, for some more common applications, exemptions which are based on the quantity of fluorinated gases used in the respective systems, which results in exempting refrigeration units, heat pumps or air conditioning units with charges between 0,15 kg and 10 kg as well as refrigeration systems for recovering heat with a charge less or equal to 50 kg. Products for ship and military use as well as the use of SF6 in high voltage units are equally exempted.
- (50) Additionally, the Order allows for exemptions to be possibly granted by the Danish Environmental Protection Agency in 'very special cases', namely in cases not envisaged when the order was issued, in situations where it turns out that alternatives are not available or not suitable, or in situations where the overall level of greenhouse gas emissions (including 'indirect emissions' due to energy consumption) converted to carbon dioxide equivalent are demonstrated to be lower for a system containing F-gases.
- (51) The procedure applied by the Danish Environmental Protection Agency is clearly described, as well as the criteria upon which the decisions to grant or refuse exemptions are based. These criteria take into account the principle of proportionality.
- (52) In the same vein, it is worth pointing out that the Danish Order allows the use of F-gases for the servicing and maintenance of existing equipment so as not to result in the unnecessary abandonment of equipment.

⁽⁵⁾ OJ L 244, 29.9.2000, p. 1

(53) While noting that the Order has implications on the free circulation of goods within the Community, the Commission nevertheless draws the conclusion from the above analysis that the Order is justified from an environmental point of view and takes into consideration the implications of the envisaged bans on the internal market, reinforced by the possibility to grant individual exemptions.

(54) It should also be recalled that Article 9(3)(a) of Regulation (EC) No 842/2006 allows national measures to be maintained only until 31 December 2012. Therefore, and considering that the notification made by the Kingdom of Denmark referred to this Article of the Regulation, it follows that the Order would apply for a limited period.

2.3. Absence of any arbitrary discrimination, any disguised restriction of trade between Member States

(55) Pursuant to Article 95(6) of the EC Treaty, the Commission shall approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States.

(56) It should be recalled that an application pursuant to Article 95(4) of the EC Treaty must be assessed in the light of the conditions laid down in both that paragraph and paragraph 6 of that Article. If any one of those conditions is not met, the application must be rejected without there being a need to examine the others.

(57) The notified national provisions are general and apply to national and imported products alike. There is no evidence that the notified national provisions can be used as a means of arbitrary discrimination between economic operators in the Community.

(58) The objective behind the order is the protection of the environment, there is no indication that the Order, in its intention or implementation, would result in any arbitrary discrimination or disguised barriers to trade.

(59) In view of the risks for the environment resulting from certain F-gases, the Commission considers that there is no evidence indicating that the national provisions notified by the Danish authorities do constitute a disproportionate obstacle to the functioning of the internal market in relation to the pursued objectives.

III. CONCLUSION

(60) In the light of the above considerations, and taking account of comments provided by Member States and other third parties on the notification submitted by the Danish

authorities, the Commission is of the opinion that the request by Denmark, submitted on 2 June 2006, for maintaining until 31 December 2012 its national legislation more stringent than Regulation (EC) No 842/2006 with respect to the placing on the market of products and equipment containing, or whose functioning relies upon, F-gases, as, is admissible.

Moreover, the Commission finds that the national provisions:

- meet needs on grounds of the protection of the environment,
- take into account the existence and technical and economic availability of alternatives to the banned applications in Denmark, and are likely to result in limited economic impact,
- are not a means of arbitrary discrimination,
- do not constitute a disguised restriction on trade between Member States, and
- are thus compatible with the Treaty

The Commission therefore considers that they can be approved,

HAS ADOPTED THIS DECISION:

Article 1

The national provisions on certain fluorinated greenhouse gases, which the Kingdom of Denmark notified to the Commission by letter, dated 2 June 2006, and which are more stringent than Regulation (EC) No 842/2006 with respect to the placing on the market of products and equipment containing, or whose functioning relies upon, F-gases, are hereby approved. The Kingdom of Denmark is authorised to maintain them until 31 December 2012.

Article 2

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 8 December 2006.

For the Commission

Stavros DIMAS

Member of the Commission

DECISION NO 2/2006**of 13 December 2006****of the committee established under the Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to the listing of a conformity assessment body under the sectoral chapter on personal protective equipment**

(2007/63/EC)

THE COMMITTEE,

Having regard to the Agreement between the European Community and the Swiss Confederation on Mutual Recognition in relation to conformity assessment, and in particular Article 10.4 (a) and 11 thereof,

Whereas the Committee is to take a decision to list a Conformity Assessment Body or Bodies under a Sectoral Chapter of the Annex 1 of the Agreement,

HAS DECIDED AS FOLLOWS:

1. The Conformity Assessment Body in the Attachment is added to the list of Swiss Conformity Assessment Bodies

Signed in Bern, 22 November 2006.

On behalf of the Swiss Confederation

Heinz HERTIG

under the Sectoral Chapter for personal protective equipment in Annex 1 of the Agreement.

2. The specific scope of listing, in terms of products and conformity assessment procedures, of the Conformity Assessment Body indicated in the Attachment has been agreed by the Parties and will be maintained by them.

This Decision, done in duplicate, shall be signed by representatives of the Committee who are authorized to act on behalf of the Parties for the purposes of amending the Agreement. This Decision shall be effective from the date of the later of these signatures.

Signed in Brussels, 13 December 2006.

On behalf of the European Community

Andra KOKE

ATTACHMENT

Swiss Conformity Assessment Body added to the list of Conformity Assessment Bodies under the Sectoral Chapter for personal protective equipment in Annex 1 of the Agreement

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COMMISSION DECISION

of 15 December 2006

establishing revised ecological criteria and the related assessment and verification requirements for the award of the Community eco-label to growing media

(notified under document number C(2006) 6962)

(Text with EEA relevance)

(2007/64/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme ⁽¹⁾, and in particular the second subparagraph of Article 6(1) thereof,

After consulting the European Union Eco-Labeling Board,

Whereas:

(1) Pursuant to Regulation (EC) No 1980/2000, a timely review has been carried out of the ecological criteria, as well as of the related assessment and verification requirements, established by Commission Decision 2001/688/EC ⁽²⁾ for the award of the Community eco-label to soil improvers and growing media.

(2) Following that review, the product group was divided into two separate product groups and accordingly Decision 2006/799/EC ⁽³⁾ on soil improvers was adopted. That Decision replaced Decision 2001/688/EC in so far as soil improvers were concerned.

(3) However, it is necessary to replace Decision 2001/688/EC in so far as growing media are concerned.

(4) In the light of the review, it is appropriate, in order to take account of scientific and market developments, to revise the criteria and requirements relating to growing media, the period of validity of which expires on 28 August 2007.

(5) The revised ecological criteria and requirements should be valid for a period of four years.

(6) It is appropriate to allow a transitional period of not more than eighteen months for producers whose products have

been awarded the eco-label before 1 October 2006 or who have applied for such an award before that date, so that they have sufficient time to adapt their products to comply with the revised criteria and requirements.

(7) The measures provided for in this Decision are in accordance with the opinion of the Committee instituted by Article 17 of Regulation (EC) No 1980/2000,

HAS ADOPTED THIS DECISION:

Article 1

The product group 'growing media' shall comprise material other than soils in situ, in which plants are grown.

Article 2

In order to be awarded the Community eco-label for growing media, under Regulation (EC) No 1980/2000, a product must fall within the product group 'growing media' as defined in Article 1, and must comply with the ecological criteria set out in the Annex to this Decision.

Article 3

The environmental performance of the product group 'growing media' shall be assessed by reference to the specific ecological criteria set out in the Annex.

Article 4

For administrative purposes, the code number assigned to the product group 'growing media' shall be '029'

Article 5

Eco-labels awarded before 1 October 2006 in respect of products falling within the product group 'soil improvers and growing media' may continue to be used until 30 April 2008.

⁽¹⁾ OJ L 237, 21.9.2000, p. 1.

⁽²⁾ OJ L 242, 12.9.2001, p. 17. Decision as amended by Decision 2005/384/EC (OJ L 127, 12.5.2005, p. 20).

⁽³⁾ OJ L 325, 24.11.2006, p. 28.

Where applications have been submitted before 1 October 2006 for award of the eco-label in respect of products falling within the product group 'soil improvers and growing media', those products may be awarded the eco-label under the conditions applicable until 28 August 2007. In such cases, the eco-label may be used until 30 April 2008.

Article 6

This Decision is addressed to the Member States.

Done at Brussels, 15 December 2006.

For the Commission

Stavros DIMAS

Member of the Commission

ANNEX

FRAMEWORK

Testing and sampling shall where applicable be carried out in accordance with test methods developed by Technical Committee CEN 223 'Soil improvers and growing media' until relevant horizontal standards elaborated under the guidance of CEN Task Force 151 'Horizontal' become available.

Sampling shall be carried out in accordance with methodologies set out by CEN/TC 223 (WG 3) as specified and approved by CEN in EN 12579 — Soil improvers and growing media — Sampling. Where testing or sampling is required that is not covered by these methods and sampling techniques, the Competent Body or bodies assessing the application (hereinafter referred to as the 'Competent Body') shall indicate which testing and/or sampling methods it considers acceptable.

Where appropriate, other test methods may be used if their equivalence is accepted by the Competent Body. Where no tests are mentioned, or are mentioned as being for use in verification or monitoring, competent bodies should rely as appropriate on declarations and documentation provided by the applicant and/or independent verifications.

The competent bodies are recommended to take into account the implementation of recognized environmental management schemes, such as EMAS or ISO 14001, when assessing applications and monitoring compliance with the criteria in this Annex. (Note: it is not required to implement such management schemes.)

These criteria aim in particular at promoting:

- the use of renewable materials and/or recycling of organic matter derived from the collection and/or processing of waste material and therefore contributing to a minimization of solid waste at the final disposal (e.g. at landfill);
- minimization of environmental impact in retrieval and production of non renewable materials.

The criteria are set at levels that promote the labelling of growing media that have a lower environmental impact during the whole life-cycle of the product.

ECOLOGICAL CRITERIA**1. Ingredients**

The following ingredients are admitted:

1.1. Organic ingredients

A product shall only be considered for the award of the eco-label if it does not contain peat and its organic matter content is derived from the processing and/or re-use of waste (as defined in Council Directive 75/442/EEC on waste ⁽¹⁾ and in Annex I to the said Directive).

The applicant shall provide the Competent Body with the detailed composition of the product, and a declaration of compliance with the above requirement.

⁽¹⁾ OJ L 194, 25.7.1975, p. 39.

1.2. Sludges

Products shall not contain sewage sludge. (Non-sewage) sludges are allowed only if they meet the following criteria:

Sludges are identified as one of the following wastes according the European list of wastes (as defined by Commission Decision 2001/118/EC amending Decision 2000/532/EC ⁽²⁾):

02 03 05	sludges from on-site effluent treatment in the preparation and processing of fruit, vegetables, cereals, edible oils, cocoa, coffee, tea and tobacco; conserve production; yeast and yeast extract production, molasses preparation and fermentation
02 04 03	sludges from on-site effluent treatment in sugar processing.
02 05 02	sludges from on-site effluent treatment in the dairy products industry.
02 06 03	sludges from on-site effluent treatment in the baking and confectionery industry.
02 07 05	sludges from on-site effluent treatment in the production of alcoholic and non-alcoholic beverages (except coffee, tea and cocoa).

Sludges are single-source separated, meaning that there has been no mixing with effluents or sludges outside the specific production process.

Maximum concentrations of heavy metals in the waste before treatment (mg/kg dry weight) meet the requirements of criterion 2.

Sludges shall meet all other Eco-label criteria specified in this Annex, in which case they are considered to be sufficiently stabilized and sanitized.

The applicant shall provide the Competent Body with the detailed composition of the product, and a declaration of compliance with each of the above requirements.

1.3. Minerals

Minerals shall not be extracted from:

- notified sites of Community importance pursuant to Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ⁽³⁾;
- Natura 2000 network areas, composed of the special protection areas pursuant to Council Directive 79/409/EEC on the conservation of wild birds ⁽⁴⁾, and those areas under Directive 92/43/EEC together, or equivalent areas located outside the European Community that fall under the corresponding provisions of the United Nations' Convention on Biological Diversity.

The applicant shall provide the Competent Body with a declaration of compliance with this requirement issued by the appropriate authorities.

⁽²⁾ OJ L 47, 16.2.2001, p. 1.

⁽³⁾ OJ L 206, 22.7.1992, p. 7.

⁽⁴⁾ OJ L 59, 25.4.1979, p. 1.

2. Limitation of hazardous substances

In the organic growing medium constituents, the content of the following elements shall be lower than the values shown below, measured in terms of dry weight:

Element	mg/kg (dry weight)
Zn	300
Cu	100
Ni	50
Cd	1
Pb	100
Hg	1
Cr	100
Mo (*)	2
Se (*)	1,5
As (*)	10
F (*)	200

(*) Data relating to the presence of these elements are needed only for products containing material from industrial processes

Note: These limit values are valid unless national legislation is more strict

The applicant shall provide the Competent Body with the relevant test reports, and a declaration of compliance with this requirement.

3. Product Performance

Products shall not adversely affect plant emergence or subsequent growth.

The applicant shall provide the Competent Body with the relevant test reports, and a declaration of compliance with this requirement.

4. Health and safety

Products shall not exceed the maximum levels of primary pathogens as follows:

- Salmonella: absent in 25 g;
- Helminth Ova: absent in 1,5 g. ⁽⁵⁾
- E. Coli: <1 000 MPN/g (MPN: most probable number) ⁽⁶⁾

The applicant shall provide the Competent Body with the relevant test reports and documentation, and a declaration of compliance with these requirements.

⁽⁵⁾ For those products whose organic content is not exclusively derived from green, garden or park waste

⁽⁶⁾ For those products whose organic content is exclusively derived from green, garden or park waste

5. **Viable seeds/propagules**

In the final product, the content of weed seeds and the vegetative reproductive parts of aggressive weeds shall not exceed two units per litre.

The applicant shall provide the Competent Body with a declaration of compliance with these requirements, together with any related test reports and/or documentation.

6. **Other criteria**

a) The electrical conductivity of the products shall not exceed 1,5 dS/m.

b) Applicable to mineral growing media only:

For all substantial professional markets (i.e. where the applicant's annual sales in any one country in the professional market exceed 30 000 m³), the applicant shall fully inform the user about available options for the removal and processing of growing media after use. This information shall be integrated in the accompanying fact sheets.

The applicant shall inform the Competent Body about the option(s) on offer and their response, to these options in particular:

- *a description of collection, processing and destinations. At any time, plastics should be separated from minerals/organics and processed separately;*
- *an annual overview of the volume of growing media collected (input) and processed (by destination).*

The applicant shall demonstrate that at least 50 % by volume of the growing media waste is recycled after use.

7. **Information provided with the product**

General information:

The following information shall be provided with the product, either written on the packaging or on accompanying fact-sheets:

- a) the name and address of the body responsible for marketing;
- b) descriptor identifying the product by type, including the wording 'GROWING MEDIA';
- c) batch identification code;
- d) the quantity (in weight or volume);
- e) the main input materials (those over 5 % by volume) from which the product has been manufactured;

If applicable, the following information about the use of the product shall be provided with the product, either written on the packaging or on accompanying fact-sheets:

- a) the recommended conditions of storage and the recommended 'use by' date;
- b) guidelines for safe handling and use;
- c) a description of the purpose for which the product is intended and any limitations on use;
- d) a statement about the suitability of the product for particular plant groups (e.g. calcifuges or calcicoles);
- e) pH and Carbon to Nitrogen (C/N) ratio;
- f) a statement about the stability of organic matter (stable or very stable) by national or international standard;
- g) a statement on recommended methods of use;

- h) in hobby applications: recommended rate of application expressed in kilograms or litres of product per unit surface area (m²) per annum;

Information items can only be omitted if a satisfactory justification is provided by the applicant.

Note: This information is supplied unless national legislation requires otherwise.

Detailed information

Parameter	Test methods
Quantity	EN 12580
pH	EN 13037
Electrical conductivity	EN 13038
Carbon to Nitrogen ration (C/N)	C/N (*)
Heavy metals (Cd, Cr, Cu, Pb, Ni, Zn)	EN 13650
Hg	ISO 16772
Salmonella	ISO 6579
Helminth ova	prXP X 33-017
E. Coli	ISO 11866-3

(*) Carbon = organic matter (EN 13039) × 0,58, total N (prEN 13654/1-2).

8. Information appearing on the eco-label

Box 2 of the eco-label shall include the following text:

- promotes the recycling of materials;
- promotes the use of materials produced in a more sustainable manner, thus reducing environmental degradation.

COMMISSION DECISION

of 15 December 2006

establishing the Commission's standard security measures and alert states and amending its Rules of Procedure as regards operational procedures for management of crisis situations

(2007/65/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 218(2) thereof,

Having regard to the Treaty establishing European Atomic Energy Community, and in particular Article 131 thereof,

Having regard to the Treaty on European Union, and in particular Article 28(1) and Article 41(1) thereof,

Whereas:

- (1) It is appropriate for the Commission to establish operational procedures and measures to manage crises and emergencies (hereinafter referred to as crisis situations), and, in particular, to ensure that all necessary decisions can be taken as efficiently and rapidly as possible, while ensuring that they remain subject to political control.
- (2) It is necessary for the Commission to establish an operational structure for crisis management.
- (3) Procedures and measures should, *inter alia*, be established to manage the security aspects of a crisis situation. In the interests of clarity, the procedures and measures to be used in normal security conditions should also be specified.
- (4) Good management of crisis situations involves the possibility of rapidly warning the personnel of the nature of the threat and of protective measures to be taken.
- (5) Current practice in the Member States and in other international organisations shows that the establishment of a system of alert states is the most efficient way to ensure that appropriate and proportional security measures are taken in response to the evaluated risk level. A system comprising standard security measures and three alert states should therefore be established. It should apply to all the premises of the Commission.
- (6) The Commission provisions on security annexed to its internal Rules of Procedure by Commission Decision 2001/844/EC, ECSC, Euratom ⁽¹⁾ provide for a member of the Commission to be responsible for security matters and for implementation of the Commission's security policy.

- (7) The general principles established in Section 2 of the Annex to those provisions on security establish general principles of legality, transparency, accountability and subsidiarity (proportionality) which apply equally to crisis management.
- (8) The attribution of authority within the Commission and the particular situation of the delegations of the Community in third countries require specific procedures and distinct types of action, depending on whether the security measures concern the premises of the Commission in the Member States or in third countries.
- (9) According to the principle of continuity of public service, the Commission should be able to accomplish its tasks in all circumstances as set out in the Treaties. Consequently, in the case of exceptional and unforeseeable events which make it impossible for the Commission to adopt decisions as a College by written or oral procedure as provided for in its Rules of Procedure ⁽²⁾, the President of the Commission should have extraordinary powers to take any measure which, in the context of the specific situation, is considered urgent and necessary.
- (10) The Commission provisions on operational procedures for crisis management, as annexed to its internal Rules of Procedure by Decision 2003/246/EC, Euratom ⁽³⁾, should therefore be amended accordingly. For reasons of clarity, they should be replaced by this Decision,

HAS DECIDED AS FOLLOWS:

Article 1

1. The crisis system shall be managed by a Management Group, in accordance with paragraph 2. It shall be supported by an Operational Team and a Monitoring Team, established by the Director of the Commission Security Directorate.
2. The Management Group shall meet under the chairmanship of the Deputy Secretary-General. It shall consist of a Member of the Cabinet of the President and of the Member of the Commission responsible for security matters, the Director of the Commission Security Directorate, Directors-General of the Legal Service, for Personnel and Administration, for Budget, for

⁽¹⁾ OJ L 317, 3.12.2001, p. 1. Decision as last amended by Decision 2006/548/EC, Euratom (OJ L 215, 5.8.2006, p. 38).

⁽²⁾ OJ L 347, 30.12.2005, p. 83.

⁽³⁾ OJ L 92, 9.4.2003, p. 14.

Communication, for Justice Freedom and Security, for External Relations, for Informatics and such other persons as the Deputy Secretary-General considers appropriate in the circumstances.

3. If a crisis situation arises outside the European Union, a member of the cabinet of the Commissioner responsible for External Relations shall be invited to attend the meetings of the Management Group.

4. The Management Group shall be responsible for advising the Commission and in particular the Member of the Commission responsible for security matters on appropriate measures to be taken to protect the staff and assets of the Commission, and ensure its operational effectiveness, in the event of a crisis situation.

5. The President, the Member of the Commission responsible for security matters and each Member of the Commission involved in the crisis situation shall be kept informed of developments by the Chairman of the Management Group.

6. A 24-hour, seven-days-a-week readiness service shall operate, on the basis of the constant presence of at least two officials, so that the Security Directorate can discharge its responsibilities.

Article 2

1. Inside the European Union, the Member of the Commission responsible for security matters may at any time instruct the Director of the Commission Security Directorate to put the crisis management system into operation.

2. If a crisis situation arises outside the European Union, the decision to put the crisis management system into operation shall be taken jointly by the Members of the Commission responsible for External Relations and for Security Matters.

Article 3

1. To enable decisions to be taken with sufficient speed to ensure the protection of Commission staff (including protection of their health at the workplace), information, buildings and other assets from any threat and to ensure its operational capacity, in situations where urgency precludes the use of usual decision-making procedures, paragraphs 2 and 3 shall apply.

2. If a crisis situation arises inside the European Union, the Member of the Commission responsible for security matters may take any decision he considers necessary to protect the staff and assets of the Commission from such threat.

In situations of extreme urgency the Director of the Commission Security Directorate may take similar decisions to those provided for in the first subparagraph, acting where possible in consultation with the Management Group. Any use of these powers shall immediately be reported to the Member of the Commission responsible for security matters, for review, and

where appropriate, endorsement, amendment or revocation. The chairperson of the Management Group shall be informed at the same time as the Member of the Commission responsible for security matters.

3. If a crisis situation arises outside the European Union, in situations of extreme urgency the Head of a Commission mission or Community delegation may take similar decisions to those provided for in the first subparagraph of paragraph 2. Any use of these powers shall be reported to the Member of the Commission responsible for External Relations who shall immediately inform the Member of the Commission responsible for security matters. These decisions shall be jointly reviewed by the two Members, and where appropriate endorsed, amended or revoked. The chairperson of the Management Group shall be informed at the same time as the Member of the Commission responsible for security matters.

4. Any decision taken pursuant to this article shall be submitted to the next meeting of the College for review and, where appropriate, endorsement, amendment or revocation.

Article 4

1. In the case of exceptional and unforeseeable events which make it impossible for the Commission to decide as a College by written or oral procedure as set out in article 4 of its Rules of Procedure, the President of the Commission may, on behalf of the Commission and under its responsibility, adopt any measure which, in the context of the specific crisis situation, is considered urgent and necessary to preserve the Community public interest, to meet legal obligations of the Community or to prevent avoidable damages on Community institutions or bodies, Member States or on the Union's citizens and undertakings.

2. The President shall act, as far as practicable, after consultation of the departments with a legitimate interest and the members of the Commission not prevented from exercising their functions.

3. Any decision taken pursuant to this article shall be submitted to the College for review and, where appropriate, endorsement, amendment or revocation once the conditions necessary for the functioning of the College are in place.

Article 5

The provisions on deputising laid down in the Rules of Procedure of the Commission and the Rules giving effect to them shall apply, *mutatis mutandis*, to the present decision.

Article 6

A system comprising standard security measures and three alert states is established. The system and the corresponding security measures shall be as set out in the Annex. It shall apply to all the premises of the Commission.

Article 7

The Commission provisions on operational procedures for crisis management annexed to its Rules of Procedure by Decision 2003/246/EC, Euratom are deleted.

Article 8

This Decision is without prejudice to the Commission provisions setting up the ARGUS general alert system annexed to its Rules of Procedure by Commission Decision 2006/25/EC, Euratom ⁽⁴⁾.

Article 9

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

It shall be published in the *Official Journal of the European Union*.

Done at Brussels, 15 December 2006.

For the Commission

Siim KALLAS

Member of the Commission

⁽⁴⁾ OJ L 19, 24.1.2006, p. 20.

ANNEX

STANDARD SECURITY MEASURES AND ALERT STATES**Section 1**

A security system comprising standard security measures and three alert states corresponding to the existence of a threat is applicable in the premises of the Commission. The standard security measures and the alert states, from level one to level three, corresponding to increasing threat levels, detailed in Appendix 1, are identified by the colour codes 'WHITE', 'YELLOW', 'ORANGE' and 'RED'.

Section 2

The standard security measures, identified by the colour 'WHITE', listed in Appendices 2A and 2B are applicable when no particular security threat has been identified.

The standard security measures listed in Appendix 2A to the present Annex are applicable in the premises of the European Commission situated in the Member States of the European Union.

The standard security measures listed in Appendix 2B to the present Annex are applicable in the premises of the European Commission situated in third countries.

Section 3

1. Inside the EU, the Director of the Commission Security Directorate is authorised to modify the application of the Standard Security Measures 'WHITE' to take account of local or temporary threat assessments. He shall, without delay, inform the Member of the Commission responsible for security matters and the chairperson of the Management Group of his actions, and the reasons for them.

Without prejudice to Section 4(3)(a), the Member of the Commission responsible for security matters shall:

- (a) Decide to increase the level of security to the 'YELLOW', 'ORANGE' or 'RED' alert state, to reduce the alert state or to return to the standard security measures 'WHITE';
- (b) Decide which of the specific measures of the alert states shall be implemented in light of the actual security situation. In reaching these decisions, he shall take account of the advice of the Director of the Commission Security Directorate.

In situations of extreme urgency where the security situation requires an immediate change to the alert state, the Director of the Commission Security Directorate shall take the decisions required in the preceding paragraph. He shall, without delay, inform the Member of the Commission responsible for security matters and the chairperson of the Management Group of his actions, and the reasons for them. When possible, the Director of the Commission Security Directorate shall confer with the Management Group as laid down in Article 1(2) of the present Decision

2. Outside the EU, the Director-General of DG External Relations is authorised to modify the application of the standard security measures 'WHITE' to take account of local situations. He shall, without delay, inform the Member of the Commission responsible for external relations who shall immediately inform the Member of the Commission responsible for security matters and the chairperson of the Management Group of the actions taken and the reasons for them.

Without prejudice to section 4(3)(a), the Members of the Commission responsible for external relations and for security matters shall decide jointly:

- (a) To increase the level of security to the 'YELLOW', 'ORANGE' or 'RED' alert state, to reduce the alert state or to return to the standard security measures 'WHITE';
- (b) Which of the specific measures of the alert states shall be implemented in light of the actual security situation. In reaching these decisions, they shall take account of the advice of the Director of the Commission Security Directorate.

In situations of extreme urgency where the security situation requires an immediate change to the alert state, the Head of the Commission mission or EC Delegation shall take the decisions required in paragraph 2. He shall, without delay,

inform the Member of the Commission responsible for External Relations who shall immediately inform the Member of the Commission responsible for security matters and the chairperson of the Management Group of the actions taken and the reasons for them.

Section 4

1. *The Commission Representations, Regional Representations and the EU Missions to international organisations in the Member States*
 - (a) The Commission Security Directorate will prepare guidelines, to be followed in the Commission Representations and Regional Representations. These guidelines shall be developed with DG Communications and DG External Relations respectively, and shall take account of any threat assessments made by the Commission Security Directorate. DG Communications and DG External Relations respectively shall be responsible for the implementation, operation and enforcement of the relevant security measures.
 - (b) If the Head of a Commission Representation or Regional Representation in the Member States considers a change in the alert state to be necessary, he shall submit the request to the Commission Security Directorate, with copy to DG Communications or DG External Relations respectively, which will analyse the situation and forward the request to the Member of the Commission responsible for security matters for consideration.
 - (c) In situations of extreme emergency, the Head of a Commission Representation or Regional Representation in the Member States may take any decision considered necessary to protect staff and assets from threat. Any use of these powers shall immediately be reported to the Commission Security Directorate, with copy to DG Communications or DG External Relations respectively, which will report to the Member of the Commission responsible for security matters for review and, where appropriate, endorsement, amendment or revocation. The chairperson of the Management Group shall be informed at the same time as the Member of the Commission responsible for security matters.
 2. *The Joint Research Centre*
 - (a) The Commission Security Directorate will prepare guidelines to be followed in the Commission Joint Research Centre. These guidelines shall be developed with the Joint Research Centre, and shall take account of any threat assessments made by the Commission Security Directorate. The Joint Research Centre shall be responsible for the implementation, operation and enforcement of the relevant security measures.
 - (b) If the Head of a Commission Joint Research Centre considers a change in the alert state to be necessary, he shall submit the request to the Commission Security Directorate which will analyse the situation and forward the request to the Member of the Commission responsible for security matters for consideration.
 - (c) In situations of extreme emergency, the Head of a Commission Joint Research Centre may take any decision he considers necessary to protect staff and assets from threat. Any use of these powers shall immediately be reported to the Member of the Commission responsible for security matters, for review, and where appropriate endorsement, amendment or revocation. The chairperson of the Management Group shall be informed at the same time as the Member of the Commission responsible for security matters.
 3. *The Commission EC Delegations and Missions in non-EU Countries*
 - (a) In non-EU countries, the Member of the Commission responsible for External Relations shall decide jointly with the member of the Commission responsible for Security Matters on the alert state for each EC Delegation.
 - (b) In situations of extreme emergency, or where the situation does not allow for consultation, the Head of a Commission EC Delegation may take any decision considered necessary to protect staff and assets from threat, including making temporary changes to the alert state. Any use of these powers, and any change to the alert state, shall, without delay, be notified by the Head of EC Delegation to the Member of the Commission responsible for External Relations who shall immediately inform the Member of the Commission responsible for security Matters of the actions taken and the reasons for them. The chairperson of the Management Group shall be informed at the same time as the Member of the Commission responsible for security matters.
 - (c) In situations other than those covered by the previous paragraph, if the Head of a Commission mission or EC Delegation considers a change in the alert state to be necessary, a request shall be made to the External Relations Director-General, who will report to the Director of the Commission Security Directorate. The authorisation to do so will be given jointly by the Member of the Commission responsible for External Relations and the Member of the Commission responsible for security matters.
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*Appendix 1***SECURITY ALERT STATES IN THE COMMISSION****Introduction**

An alert state is a set of security measures intended to provide a specific level of protection to Commission staff, information, buildings and other assets from any threat and to ensure its operational capacity. These security measures are implemented and discontinued in a general or selective manner, as the threat level increases or decreases.

An alert state requires the adoption of detailed measures to be implemented by the Security Directorate or by the Head of the Delegation concerned by the crisis situation according to the nature of the threat. Sets of measures are laid down in a separate decision.

The standard security measures 'WHITE'

The standard security measures coded 'WHITE' are used when no significant security threat has been identified. These standard security measures are applicable on a daily basis. They indicate a normal security situation and provide for a minimum acceptable level of security. They form the basis of the security measures applied in Commission premises.

'YELLOW' alert state

The 'YELLOW' alert state takes effect when threats are made or exceptional events happen that endanger the integrity of staff, information, buildings and other assets and that may possibly have an adverse effect on the European Commission or its functioning.

'ORANGE' alert state

The 'ORANGE' alert state takes effect when threats are made or exceptional events happen that endanger the integrity of staff, information, buildings and other assets and that are aimed at the European Commission or its functioning, even though no definite object, target or time of attack has been identified.

'RED' alert state

The 'RED' alert state takes effect when the European Commission or its functioning becomes the target of threats or exceptional events that endanger the integrity of staff, information, buildings and other assets. These threats are clear and definite and may happen at any moment.

Appendix 2A

**STANDARD SECURITY MEASURES APPLICABLE IN THE PREMISES OF THE EUROPEAN COMMISSION
SITUATED IN THE MEMBER STATES OF THE EUROPEAN UNION****Introduction**

The standard security measures are established in general terms and, when applied, will be accompanied by detailed instructions to the services which will be responsible for their implementation. The creation of these detailed instructions, and supervision of their implementation, shall be undertaken by the Commission Security Directorate.

1. Terms of application

These standard security measures are generally applicable. They provide for a level of security commensurate with the situation where there is no elevated level of threat. This situation will be identified by the colour code 'WHITE'. They form the basis of the security measures applied in Commission premises.

2. Communications outside the Commission

- (a) The Commission Security Directorate shall establish and maintain contacts with local and federal police services in Member States in particular in Belgium and Luxembourg. The Commission Security Directorate shall establish contact points for the routine exchange of information of mutual interest especially in relation to security measures. If and when necessary, coordination meetings shall be organised.
- (b) The Commission Security Directorate shall establish and maintain contacts with the security services of the Member States. It shall establish a routine exchange of information of mutual interest between contact points. If and when necessary, it will hold coordination meetings.
- (c) The Commission Security Directorate shall establish and maintain contacts with the security services of the other Community Institutions. It shall establish a routine exchange of information of mutual interest between contact points. If and when necessary, it will hold coordination meetings.

3. Communications inside the Commission

The Commission Security Directorate shall inform all new staff, including temporary staff, national experts and contract agents of the standard security measures applicable to Commission premises. Awareness-raising will emphasise at least the individual responsibility of Commission officials in the following areas: access to Commission buildings, visitors, rules governing the organisation of meetings, the use of the mail system, the use of e-mail, the security aspects of telephone communications and the handling and use of EU classified information.

4. Physical protection/access control**4.1. Principles of access control**

- (a) Entry to Commission premises shall be on a strictly 'need to access' basis. The Commission Security Directorate shall establish the operational principles by which access to buildings of the European Commission or parts thereof shall be controlled.
- (b) All persons entering a Commission building shall have a valid access pass recognised by the Commission Security Directorate. All persons entering Commission buildings shall be obliged to comply with any security instructions given by the Commission Security Directorate or a member of the guard service.
- (c) The valid access pass shall at all times be clearly displayed by all persons inside Commission buildings and premises.
- (d) The timetable for access to Commission buildings by the different categories of personnel shall be established in cooperation with the Commission Security Directorate.

- (e) Outside the timetable referred to above, and including weekends and holidays, persons holding a Commission service card shall make an entry into the registry provided at the reception of the building. All other personnel shall provide, in addition to entering their identification into the registry, a valid authorisation granting access to a Commission building. This authorisation shall be granted by the Commission Security Directorate upon request by the responsible service and transmitted according to existing procedures to the concerned reception.

4.2. Valid access passes

- (a) *Service cards* shall be issued to Commissioners and Commission staff i.e. persons covered by the Staff Regulations or by the Conditions of employment of other servants of the European Communities and seconded national experts and when deemed necessary also to staff of other institutions, agencies and other bodies housed in Commission premises. Service cards from other EU institutions shall be accepted on the basis of an agreement with the institution concerned.
- (b) *Access cards* shall be issued to all other personnel requiring access to the Commission buildings to fulfil contractual obligations with the Commission services. Cards for personnel with a contract limited in time shall not extend beyond this time-limit unless authorised by the Commission's Security Directorate. The period of validity of an access card for such persons shall never extend beyond the end of the current year. Where a Member of the European Parliament wishes to enter a Commission building, he may do so on presentation of his access card issued by the European Parliament to the security guard on duty, without the need to undergo the additional security checks required of external visitors.
- (c) *Laissez-passer* passes shall be issued by the Commission Security Directorate for legitimate reasons justifying access to Commission's buildings.
- (d) *Press passes*: The request for accreditation by journalists is processed by DG Communications, in cooperation with the Council and the national services. If a request for accreditation is approved, DG Communications asks the Commission Security Directorate to issue a pass.
- (e) *Visitors' access passes or contractor visitors' access passes* shall be issued temporarily to visitors at the reception point to Commission buildings upon verification of a bona fide identification.
- (f) Only holders of a *service card* may invite visitors to Commission buildings. Where the Commission department responsible for the holders of other valid access passes wishes to invite visitors, it may make a motivated request to the Commission Security Directorate.
- (g) Family members of Commission officials requesting access to the administrative areas shall be treated as visitors.
- (h) All service cards and access passes remain Commission property and shall be handed back to the Commission Security Directorate upon its request. The services of the Commission that asked the Commission Security Directorate for the issue of valid access passes shall ensure that the pass is returned to the Commission Security Directorate either at the end of the contract or if the basis upon which the pass was issued is no longer valid.

4.3. Type of visitors to Commission premises

- (a) *Individual visitors* to Commission administrative areas shall be accompanied by a person holding a Commission service card. Administrative areas are those parts of the Commission premises that are not of general interest and concern the functioning of the Commission. Visitors shall be met in the reception area and, at the end of the visit, shall be accompanied back to this area. Individual visitors shall not be allowed to move unaccompanied within Commission premises.
- (b) *Participating visitors to meetings and events*. The Directorate general, cabinet or service responsible for meetings and events shall establish at the reception area where the event is to take place the necessary means for the issue of participant visitor badges. These must be visibly displayed by the participant during his presence in the Commission building where the event takes place.
- (c) *Contractor visitors* shall be allowed access only for a specified reason and will receive a temporary pass after verification of a bona fide identification. The procedures regulating access and registration of visitors shall be complied with before all access to Commission buildings.

- (d) Control over access shall be performed at all times, even in the case of the evacuation of a building or an emergency situation.
- (e) The Commission service responsible for health and safety at work shall give advance notice of all evacuation exercises to the Commission Security Directorate in order to ensure access control during and after the exercise.
- (f) Contractors making a delivery to a Commission building shall present a goods manifest detailing the reason for making the delivery. Any infringement of this procedure shall immediately be notified to the Commission Security Directorate.
- (g) If a person is not allowed to enter one or more Commission buildings, this information shall be forwarded to the Commission Security Directorate which shall take the necessary measures.
- (h) Visitors to Commission buildings and their personal belongings may be subjected to technical controls such as searches and luggage inspections.

4.4. VIP visits

The Commission Security Directorate shall be responsible for the security arrangements for all official visits that take place to Commission premises or associated areas. This shall include visits from VIPs whose visit to the Commission warrants additional security arrangements. The Commission service organising the visit shall notify the Commission Security Directorate of all necessary details as soon as these are known. The service concerned will keep the Commission Security Directorate fully informed of any new developments or changes to the notified programme.

4.5. Restricted access to Commission's buildings

- (a) Host country police services do not have right of access to Commission buildings by virtue of the Protocol on the Privileges and Immunities of the European Communities, and in particular Articles 1 and 19 thereof, except upon request to and authorisation by the competent authorities of the Commission. If access is granted, personnel from the Commission shall assist the police if and when necessary.
- (b) Detailed questions of access for host countries may be laid down in specific agreements.
- (c) Armed persons shall not enter or move about a Commission building except by previous written authorisation from the Commission Security Directorate.
- (d) No animals are allowed in Commission buildings except for dogs to be used for checks of Commission premises requested by the Commission Security Directorate, patrol dogs used for the security of Commission premises, guide dogs for the blind and hearing dogs.
- (e) Except for service requirements, no photography, filming or audio recording is allowed inside Commission buildings without the prior consent of the Commission service responsible for Communication and the Security Directorate.

4.6. Access to garages and parking areas

- (a) Only drivers in possession of a valid vehicle access pass and a valid service card, access card or laissez-passer may introduce a car into Commission garages or parking areas. All other passengers in the car shall have a valid access pass to the Commission buildings. Service and access cards must be shown on request to the guard on duty or Commission Security Directorate personnel.
- (b) All vehicles requesting access to Commission garages or parking areas, except for duly marked Commission service vehicles, shall have a valid vehicle access pass to be clearly displayed at all times in the garage or parking area.
- (c) A Commission official requesting vehicle access shall only be given one vehicle access pass. This pass shall be handed in by the official if a new one is to be issued. No new pass shall be issued unless the old one is returned. If the pass is lost or stolen, a formal statement shall be made to the Commission Security Directorate.
- (d) Out of office hours, vehicles may only be left in a Commission garage or parking area where the Commission official concerned is on mission. Furthermore, this requires prior agreement by the Commission Security Directorate.

- (e) Access to garages or parking areas of the Commission may be refused for security reasons by the Commission Security Directorate where exceptional circumstances so justify.
- (f) Urgent and specific measures may be taken concerning security or safety regarding all vehicles parked in the garages, parking areas or the immediate surrounding area of Commission premises.

4.7. Mail and parcel delivery

- (a) All incoming external mail including parcels shall be routed through the relevant Commission mail reception centre. If and when necessary, unusual and/or suspect mail shall undergo further security checks.
- (b) Except for cases notified to, and approved by, the Commission Security Directorate, no hand-delivered external mail item shall be presented directly to a Commission building.

4.8. Valuable items

Commission staff entrusted with Commission property shall take all appropriate precautions to ensure proper use and storage of this property and to avoid damage, loss or unauthorised access.

4.9. Security in the surroundings of the Commission's premises

- (a) Any person working in Commission buildings must report to the Security Directorate persons trying to enter clandestinely in the Commission buildings. They should immediately report any suspect vehicles or objects that are found near to Commission buildings to the Commission Security Directorate.
- (b) Before leaving Commission premises at night, before weekends and holidays, particular efforts should be made by all persons working in Commission premises to check that windows are shut and, if applicable, doors are closed and lights extinguished.
- (c) When the Commission Security Directorate receives information relating to any events with potential security implication or incidents happening outside or near a Commission building it shall take immediately the necessary security measures in order to avoid any unauthorised access by either persons or vehicles. If necessary, the Commission Security Directorate shall contact the host country security or emergency services.

4.10. Security inside Commission's premises

The Commission Security Directorate shall define the security standards to be respected by all persons in Commission sites.

4.11. Actions to be taken by the Commission's Security Directorate in the event of safety incidents

- (a) The Commission Security Directorate incorporates the Commission service responsible for health and safety at work concerning matters of safety and hygiene at work.
- (b) The internal emergency hotline is managed by the Commission Security Directorate. If required, the host country fire department and/or the emergency medical services will be alerted, following the emergency instructions in place.
- (c) When the Commission Security Directorate is informed of a safety incident such as a serious medical event, a fire, a gas leak, a breakdown of electricity, an inundation or severe structural problems with a Commission building, the Commission Security Directorate shall alert the personnel of the services occupying the building, as well as the technical service.
- (d) If required, the Commission Security Directorate is responsible for initiating the appropriate measures for the evacuation of persons present in Commission buildings.
- (e) If an incident involving a serious personal injury occurs, any member of personnel shall call the host country emergency medical services. The person calling the emergency services should immediately inform the Commission Security Directorate. The Commission Security Directorate shall ensure appropriate action is taken not to leave the Commission building unattended.

4.12. Action to be taken in case of a demonstration outside Commission premises

- (a) In the event of a demonstration immediately outside Commission premises, the personnel at the reception and garage areas shall inform the Commission Security Directorate, who shall take protective measures and issue orders concerning the building's security.
- (b) When there are indications that an attack is likely on Commission premises, the Commission Security Directorate shall issue specific orders to all concerned services and Commission staff. Depending upon the nature of the threat, the Commission Security Directorate shall take any necessary measures to address the problem and activate the measures laid down in the Commission Decision concerning detailed rules for the implementation of a system of security alert states.

4.13. Breach of integrity of Commission's premises

- (a) All persons authorised to be present in Commission premises are obliged to wear a visible service card or valid access pass. All persons without such a service card or valid access pass may be obliged to leave Commission premises immediately upon request by the personnel in charge of access control or by an official duly identified from the Commission Security Directorate.
- (b) Where persons are trying to obtain unlawful access to Commission premises, Commission officials shall first take care to close offices, safes and locks, provided that their own physical protection is not at risk. They shall immediately report the incident to the Commission Security Directorate. Where the Commission Security Directorate receives information on these incidents it shall issue instructions on the course of action to be taken and the appropriate services to be alerted.
- (c) The Commission Security Directorate shall take any necessary measures to address the problem and activate the measures laid down in Commission Decision concerning detailed rules for the implementation of a system of security alert states.

4.14. Presence of suspected persons in Commission's premises

- (a) In order to maintain acceptable security protection for persons working in Commission premises and for Commission property, all members of Commission staff must report any person showing erratic or suspicious behaviour. Commission staff has a duty to report these persons to the Commission Security Directorate.
- (b) The Commission Security Directorate shall immediately be informed of all suspicious or unauthorised persons in Commission sites. The Commission Security Directorate shall at all times, and without delay, issue instructions on the course of action to be taken and the appropriate services to be alerted.

4.15. Bomb threat

- (a) If a person working in the Commission's premises receives a bomb threat, that person shall immediately inform the Commission Security Directorate. The Commission Security Directorate shall try to obtain as much information as possible from the person calling or from the message received.
- (b) The Commission Security Directorate shall issue instructions on the course of action to be taken and the appropriate services to be alerted at all times of day or night including evacuation where appropriate.

4.16. Discovery of a suspect parcel or other object

- (a) Any Commission official or member of the personnel on duty shall immediately inform the Commission Security Directorate of the discovery of a suspect parcel or other object. When a suspected parcel or other suspected object is discovered, an appropriate security perimeter shall be installed around it, either by the Commission Security Directorate or the local Commission service responsible for health and safety at work. No person shall touch or tamper with the suspect parcel or other object. Use of wireless means of communication shall be forbidden in the vicinity of the place of the incident. The Commission Security Directorate shall operate in close cooperation with the local Commission service responsible for health and safety at work in the interventions described above.

- (b) After evaluating the threat and the circumstances, the Commission Security Directorate shall contact the local Commission service responsible for health and safety at work and the competent national authorities. The Commission Security Directorate shall be responsible for the coordination of actions with other Commission or host nation services.

4.17. Securing of evidence

In case of a misdemeanour or any offence inside Commission premises, witnesses of the events must contact the Commission Security Directorate which will take the appropriate measures. Witnesses must not tamper with any evidence.

Appendix 2B

**STANDARD SECURITY MEASURES APPLICABLE IN THE PREMISES OF THE EUROPEAN COMMISSION
SITUATED IN COUNTRIES OTHER THAN THOSE INCLUDED IN APPENDIX 2A.****Introduction**

Outside the European Union, the standard security measures and their detailed instructions are implemented under the authority of the Head of the European Commission EC Delegation. The External Relations Director-General keeps the Director of the Commission Security Directorate informed at all times.

When an EC Delegation is hosted in the diplomatic compound of a Member State or an International organisation, security rules at least equivalent to those in the present Decision are laid down in a Memorandum of Understanding between the European Commission and the Member State, host country or organisation.

1. Terms of application:

These standard security measures are generally applicable. They provide for a level of security commensurate with the situation where there is no elevated level of threat. This situation will be identified by the colour code 'WHITE'. They form the basis of the security measures applied in Commission premises.

If necessary, these standard security measures shall be adapted according to specific local situations.

2. Communications outside the EC Delegation

- (a) The Head of the EC Delegation shall on a regular basis and if possible establish and maintain contacts in the field of security with the appropriate host country authorities. If and when necessary, coordination meetings shall be organised.
- (b) The Head of the EC Delegation shall establish contact points with the other Member States embassies for the routine exchange of information of mutual interest especially in relation to security measures. If and when necessary, coordination meetings shall be organised.
- (c) When necessary, such contacts might also be established with International Organisations on site.

3. Communications inside the EC Delegation

The Head of the EC Delegation, shall brief all new staff, including temporary staff, seconded national experts and contract agents on the standard security measures applicable to EC Delegation premises. Awareness-training will emphasise at least the individual responsibility of Commission officials in the following areas: access to Commission buildings, visitors, rules governing the organisation of meetings, the use of the mail system, the use of e-mail, the security aspects of telephone communications and the handling and use of EU classified information.

4. Physical protection/access control**4.1. Principles of access control**

- (a) Entry to EC Delegation premises shall be on a strictly 'need to access' basis. The Head of the EC Delegation, in close cooperation with the External Service Directorate General shall establish the operational principles by which access to buildings of the EC Delegation shall be controlled.
- (b) All persons entering an EC Delegation building shall have a valid Commission access pass issued by the Commission Security Directorate or a valid access pass issued by the Head of the EC Delegation according to norms and standards to be established by the Security Directorate. All persons entering Commission buildings shall be obliged to comply with any security instructions given by the Head of the EC Delegation.

- (c) The valid access pass shall at all times be clearly displayed by all persons inside EC Delegation buildings and premises.

4.2. Valid access passes

- (a) Service cards shall be issued to Commission officials i.e. persons covered by the Staff Regulations of Officials of the European Communities or by the Conditions of employment of other servants of the European Communities and seconded national experts, and when deemed necessary also to staff of other institutions, agencies and other bodies housed in EC Delegation premises.
- (b) *Access cards* shall be issued to all other personnel requiring access to the EC Delegation buildings to fulfil contractual obligations with the Commission services. Cards for personnel with a contract limited in time shall not extend beyond this time-limit. The period of validity of an access card shall never extend beyond the end of the current year.
- (c) *Laissez-passer passes* shall be issued by the Head of the EC Delegation for legitimate reasons justifying access to the EC Delegation's building.
- (d) *Visitors' access passes or contractor visitors' access passes* shall be issued temporarily to visitors at the reception point to EC Delegation buildings upon verification of a bona fide identification.
- (e) *Family members of EC Delegation officials* requesting access to the administrative areas shall be treated as visitors.
- (f) Only holders of a *service card* may invite visitors to EC Delegation buildings.
- (g) Service cards and access passes remain Commission property and shall be handed back to the Head of the EC Delegation upon its request. The services having issued valid access passes shall ensure that the pass is returned either at the end of the contract or if the basis upon which the pass was issued is no longer valid.

4.3. Type of visitors to Commission premises

- (a) *Individual visitors* to EC Delegation administrative areas shall be accompanied by a person holding a Commission service card. Administrative areas are those parts of the EC Delegation premises that are not of general interest and concern the functioning of the EC Delegation. Visitors shall be met in the reception area and, at the end of the visit, shall be accompanied back to this area. Individual visitors shall not be allowed to move unaccompanied within EC Delegation premises.
- (b) *For participating visitors to meetings and social events*, the Head of EC Delegation shall establish at the reception area where the event is to take place the necessary means for the issue of the specific meeting and events participant visitor badges. These must be visibly displayed by the participant during his presence in the EC Delegation building where the event takes place.
- (c) *Contractor visitors* shall be allowed access only for a specified reason and will receive a temporary pass after verification of a bona fide identification. The procedures regulating access and registration of visitors shall be complied with before all access to EC Delegation buildings.
- (d) Control over access shall be performed at all times, even, if possible, in the case of the evacuation of a building or an emergency situation.
- (e) The opening hours of the EC Delegation are fixed by the Head of EC Delegation. Outside the opening hours referred to above, and including weekends and holidays, persons holding a Commission service card, and accessing the EC Delegation, shall make an entry into the registry provided at the reception of the building.
- (f) All visitors shall be registered at the reception of the EC Delegation. They shall provide, in addition to entering their identification into the registry, a valid authorisation granting access to the EC Delegation.
- (g) Contractors making a delivery to an EC Delegation building shall present a goods manifest detailing the reason for making the delivery. Any infringement of this procedure shall immediately be notified to the External Service Directorate General.
- (h) Visitors to Commission buildings and their personal belongings may be subjected to technical controls such as searches and luggage inspections.

4.4. VIP visits

The Head of the EC Delegation shall be responsible for the security arrangements for all official visits that take place to EC Delegation premises or associated areas.

4.5. Restricted access to EC Delegation buildings

(a) Access to EC Delegation premises is regulated by:

- the Vienna Convention on diplomatic relations and optional protocols done on 18 April 1961,
- the Treaty establishing the European Economic Community, and in particular provisions adopted on the basis of Article 218 thereof, and the Protocol on the Privileges and Immunities of the European Communities, and in particular Articles 1 and 19 thereof, and by Commission Decision C (1998) 2528/1 of 12 August 1998 on the appointment of the authority in charge of lifting the inviolability of Commission premises, buildings and archives,
- the establishment agreements concluded by the European Commission with the third countries.

(b) Detailed questions of access for host countries may be laid down in specific agreements which state that, unless the Head of the EC Delegation refuse access, host country emergency services may enter EC Delegation buildings in case of immediate danger to security or the health of personnel requiring immediate intervention. The External Relations Director-General shall be immediately informed of these interventions.

Host country police services do not have right of access to EC Delegation premises buildings, except upon request to the Head of EC Delegation. If access is granted, personnel from the EC Delegation shall assist the police if and when necessary.

- (c) Armed persons shall not enter or move about an EC Delegation building except by previous written agreement with the Head of EC Delegation.
- (d) No animals are allowed in EC Delegation buildings except for dogs to be used for checks of EC Delegation premises, patrol dogs used for the security, guide dogs for the blind and hearing dogs.
- (e) Except for service requirements, no photography, filming or audio recording is allowed inside EC Delegation buildings without the prior consent of the Head of EC Delegation.

4.6. Access to garages or parking areas

- (a) Only drivers in possession of a valid vehicle access pass and a valid service card, access card or laissez passer may introduce a car into EC Delegation garages or parking areas. All other passengers in the car shall have a valid access pass to the EC Delegation buildings. Service and access cards shall be shown on request.
- (b) All vehicles requesting access to EC Delegation garages or parking areas, except for duly marked Commission service vehicles, shall have a valid vehicle access pass to be clearly displayed not only upon entry into the building but also during the stay in the garage or parking area.
- (c) A Commission official requesting vehicle access shall only be given one vehicle access pass. This pass shall be handed in by the official if a new one is to be issued. No new pass shall be issued unless the old one is returned. If the pass is lost or stolen, a formal statement to the Head of EC Delegation shall be made.
- (d) Access to garages or parking areas of the EC Delegation may be refused for security reasons by the Head of EC Delegation.
- (e) Urgent and specific measures may be taken concerning security or safety regarding all vehicles parked in the garages, parking areas or the immediate surrounding area of EC Delegation premises.

4.7. Mail and parcel delivery

- (a) Except for diplomatic pouch, all incoming external mail including parcels shall, when unusual or suspect, undergo further security checks.
- (b) Except for cases notified to, and approved by, the Head of EC Delegation, no hand-delivered external mail item shall be presented directly to an addressee in the EC Delegation.

4.8. Valuable items

EC Delegation staff entrusted with Commission property shall take all appropriate precautions to ensure proper use and storage of this property and to avoid damage, loss or unauthorised access.

4.9. Security in the surroundings of EC Delegation premises

- (a) Any person working in an EC Delegation building shall report persons observing or trying to enter clandestinely EC Delegation buildings. They shall immediately report any suspect vehicles, objects or persons that are found next or near to EC Delegation buildings to the Head of an EC Delegation.
- (b) Before leaving EC Delegation premises at night, before weekends and holidays, particular efforts shall be made by all persons working in EC Delegation premises to check that windows are shut and, if applicable, doors are closed and lights are extinguished.
- (c) When the External Relations Director-General receives information relating to any events with potential security implication or incidents happening outside or near an EC Delegation building, he shall immediately inform the Head of EC Delegation who shall immediately take the necessary security measures in order to avoid any unauthorised access by either persons or vehicles. If necessary, he shall contact the appropriate host nation authority.

4.10. Security inside EC delegations premises

The Head of EC Delegation shall define the standards to be respected in the security arrangements, tasks and instructions applicable to all persons in EC Delegation buildings or surrounding areas.

4.11. Actions to be taken by the Head of EC Delegation in the event of safety incidents

- (a) If an incident involving a serious personal injury is reported, any member of personnel shall call the local emergency medical services.
- (b) Appropriate action shall be undertaken in order not to leave the EC Delegation building unattended.

4.12. Action to be taken in case of a demonstration outside EC Delegation premises

- (a) In the event of a demonstration in the immediate surroundings of EC Delegation premises, the personnel at the reception and garage areas shall inform the Head of EC Delegation, who shall take protective measures and issue orders concerning the building's security.
- (b) When there are indications that an attack is likely on EC Delegation premises, the Head of EC Delegation shall issue specific orders to all concerned services and EC Delegation staff and immediately inform the External Relations Directorate-General, who will inform the Director of the Commission Security Directorate. Depending upon the nature of the threat, appropriate measures shall be taken.

4.13. Breach of integrity of EC Delegation premises

- (a) All persons authorised to be present in EC Delegation premises are obliged to wear a visible valid access pass or service card. All persons without such a valid access pass or service card may be obliged to leave the EC

Delegation premises immediately upon request by the personnel in charge of access control or by an official duly identified by the Head of an EC Delegation.

- (b) Where persons are trying to obtain unlawful access to EC Delegation premises, EC Delegation officials should first take care to close offices, safes and locks, provided their own physical protection is not at risk. They shall immediately inform the External Relations Director-General and seek instructions on the course of action to be taken and the appropriate services to be alerted.
- (c) The External Relations Director-General shall take the appropriate measures in cooperation with the Director of the Commission Security Directorate to resolve the problem. He may contact the appropriate host country authorities to seek their assistance, including the police forces.

4.14. Presence of suspect individuals in EC Delegation premises

- (a) In order to maintain acceptable security protection for persons working in EC Delegation premises and for Commission property, all members of EC Delegation must report any person showing erratic or suspicious behaviour. EC Delegation staff has a duty to report these persons to the Head of the EC Delegation.
- (b) The Head of EC Delegation shall immediately be informed of all suspicious or unauthorised intrusions into Commission buildings. The External Relations Director-General shall at all times, and without delay, issue instructions on the course of action to be taken and the appropriate services to be alerted.

4.15. Bomb threat

- (a) If a person working in a EC Delegation receives a bomb threat, that person shall immediately inform the External Relations Director-General. This person shall try to obtain as much information as possible from the person calling or from the message received.
- (b) The External Relations Director-General shall issue instructions on the course of action to be taken and, without delay, inform the Member of the Commission responsible for External Relations who will in turn inform the Member of the Commission responsible for security matters.
- (c) Acting on the request of the competent host country's authorities (i.e. the emergency services), the Head of EC Delegation may decide to evacuate the EC Delegation building. The External Relations Director-General shall be kept fully informed.

4.16. Discovery of a suspect parcel or other object

- (a) Any EC Delegation official or member of the personnel on duty shall immediately inform the Head of EC Delegation of the discovery of a suspect parcel or other object. When a suspected parcel or other suspect object is discovered, an appropriate security perimeter shall be installed around it. No person shall touch or tamper with the suspect parcel or other object. Use of wireless means of communication shall be forbidden in the vicinity of the place of the incident.
- (b) After evaluating the threat and the circumstances, the Head of EC Delegation shall contact the appropriate host country authorities.

4.17. Securing of evidence

In case of a misdemeanour or any offence inside EC Delegation premises, witnesses of the events must contact the Head of EC Delegation who will take the appropriate measures. Witnesses must not tamper with any evidence.

COMMISSION DECISION

of 18 December 2006

on a temporary experiment with regard to increasing the maximum weight of a lot of certain fodder plant seeds under Council Directive 66/401/EEC

(notified under document number C(2006) 6572)

(Text with EEA relevance)

(2007/66/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

by the Council of the OECD (Organisation for Economic Cooperation and Development) on 24 May 2006 permit procedures whereby the maximum weight of a lot may be increased for grasses.

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed ⁽¹⁾ and in particular Article 13a thereof,

- (5) To test in practice the conditions under which production plants are able to produce sufficiently homogeneous large seed lots, a temporary experiment should be organised increasing the maximum weight of a lot of grasses.

Whereas:

- (6) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Seeds and propagating material for Agriculture, Horticulture and Forestry,

- (1) Directive 66/401/EEC provides for the maximum weight of a lot to avoid heterogeneity in seed lots in the context of seed testing.

HAS ADOPTED THIS DECISION:

- (2) Changes in seed production and marketing practices, in particular the increased size of the seed crops and the methods of transporting seed including bulk shipment, suggest that an increase in the maximum prescribed lot weight for seed of grasses may be desirable.

Article 1

- (3) By Commission Decision 2002/454/EC ⁽²⁾ a temporary experiment with regard to increasing the maximum weight of a lot of certain fodder plant seeds under Directive 66/401/EEC was organised which was to end on 1 June 2003. However no seed companies participated because that Decision required a heterogeneity test to be carried out on every seed lot produced under the experiment involving large additional costs.
- (4) Current international practice, namely the ISTA (*International Seed Testing Association*)/ISF (*International Seed Federation*) Technical Protocol, approved by the ISTA Executive Committee on 10 February 2006, and adopted

1. By way of derogation from Article 7(2) of Directive 66/401/EEC and Annex III to that Directive, for Member States participating in the temporary experiment and for seed of the species listed in column 1 of Annex III to that Directive under the heading 'GRAMINEAE' the maximum weight of a lot shall be 25 tonnes.

2. For Member States participating in the temporary experiment, the conditions set out in the Annex to this Decision shall apply in addition to the conditions provided for in Directive 66/401/EEC.

3. Member States participating in the experiment shall inform the Commission accordingly. They may terminate their participation at any time by informing the Commission accordingly.

⁽¹⁾ OJ L 125, 11.7.1966, p. 2298/66. Directive as last amended by Directive 2004/117/EC (OJ L 14, 18.1.2005, p. 18).

⁽²⁾ OJ L 155, 14.6.2002, p. 57.

Article 2

Member States shall for each year, by 31 March of the following year, present to the Commission and the other Member States a report on the results of the experiment.

Article 3

The temporary experiment shall start on 1 January 2007 and end on 30 June 2012.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 18 December 2006.

For the Commission

Markos KYPRIANOU

Member of the Commission

ANNEX

Conditions referred to in Article 1:

- a) When derogating from the maximum size of gramineae seed lots, the ISTA/ISF Experiment on Herbage Seed Lot Size ⁽¹⁾, as adopted by the Council of the OECD on 24 May 2006, shall be followed;
 - b) seed producers shall be officially licensed by the Certification Authority;
 - c) the official label prescribed under Directive 66/401/EEC shall bear the number of this Decision after the words 'EC rules and standards';
 - d) samples supplied for Community comparative trials by a Member State participating in the temporary experiment shall derive from seed lots officially certified under the terms of the experiment; and
 - e) the Certification Authority shall monitor the experiment, and carry out, where appropriate, checks of up to 5 % of the heterogeneity tests.
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⁽¹⁾ [http://www.seedtest.org/en/content ---1 --- 1039.html](http://www.seedtest.org/en/content---1---1039.html)

COMMISSION DECISION

of 18 December 2006

**allowing Member States to extend provisional authorisations granted for the new active substance
tritosulfuron***(notified under document number C(2006) 6573)***(Text with EEA relevance)***(2007/67/EC)*

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽¹⁾, and in particular the fourth subparagraph of Article 8 (1) thereof,

Whereas:

- (1) In accordance with Article 6(2) of Directive 91/414/EEC, in June 2001 Germany received an application from BASF AG for the inclusion of the active substance tritosulfuron in Annex I to Directive 91/414/EEC. Commission Decision 2002/268/EC ⁽²⁾ confirmed that the dossier was complete and could be considered as satisfying, in principle, the data and information requirements of Annex II and Annex III to that Directive.
- (2) Confirmation of the completeness of the dossier was necessary in order to allow it to be examined in detail and to allow Member States the possibility of granting provisional authorisations, for periods up to three years, for plant protection products containing the active substance concerned, while complying with the conditions laid down in Article 8(1) of Directive 91/414/EEC and, in particular, the condition relating to the detailed assessment of the active substance and the plant protection product in the light of the requirements laid down by that Directive.
- (3) For this active substance, the effects on human health and the environment have been assessed, in accordance with the provisions of Article 6(2) and (4) of Directive 91/414/EEC, for the uses proposed by the applicant. The rapporteur Member State submitted the draft assessment report to the Commission on 5 September 2002.
- (4) Following submission of the draft assessment report by the rapporteur Member State, it has been found to be necessary to request further information from the applicant and to

have the Rapporteur Member State examine that information and submit its assessment. Therefore, the examination of the dossier is still ongoing and it will not be possible to complete the evaluation within the timeframe provided for in Directive 91/414/EEC.

- (5) As the evaluation so far has not identified any reason for immediate concern, Member States should be given the possibility of prolonging provisional authorisations granted for plant protection products containing the active substance concerned for a period of 24 months in accordance with the provisions of Article 8 of Directive 91/414/EEC so as to enable the examination of the dossier to continue. It is expected that the evaluation and decision-making process with respect to a decision on possible Annex I inclusion for tritosulfuron will have been completed within 24 months.
- (6) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Member States may extend provisional authorisations for plant protection products containing tritosulfuron for a period not exceeding 24 months from the date of adoption of this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 18 December 2006.

For the Commission

Markos KYPRIANOU

Member of the Commission

⁽¹⁾ OJ L 230, 19.8.1991, p. 1. Directive as last amended by Directive 2006/75/EC (OJ L 248, 12.9.2006, p. 3).

⁽²⁾ OJ L 92, 9.4.2002, p. 34.

COMMISSION DECISION

of 18 December 2006

concerning a request from the Republic of Latvia to apply a reduced rate of VAT to the supply of district heating, natural gas and electricity to households

*(notified under document number C(2006) 6592)***(Only the Latvian text is authentic)**

(2007/68/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

vis-à-vis legal persons who exercise the right to deduct VAT and thus do not bear the final cost of VAT.

Having regard to the Treaty establishing the European Community,

Having regard to the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment ⁽¹⁾, and in particular Article 12(3)(b) thereof,

Whereas:

- (1) By initial request of 19 April 2006 sent to the Commission, followed by a formal letter registered on 10 July 2006, the Republic of Latvia informed the Commission of its intention of applying a reduced rate of VAT to the supply of district heating, natural gas and electricity to households. Latvia defined households as all final consumers with whom contracts about the supplies concerned are concluded as with natural persons.
- (2) According to annex VIII of the Accession Treaty, by way of derogation from Article 12(3)(a) of Directive 77/388/EEC (hereinafter the Sixth VAT Directive), Latvia was allowed to maintain an exemption from value added tax on the supply of heating sold to households until 31 December 2004. In fact, Latvia applied an exemption from value added tax on the supply of district heating to households also after this date.
- (3) Latvia wishes to apply a reduced rate (5 %) to supplies of district heating, natural gas and electricity to households, excluding supplies for commercial activities or for other professional activities. This rate neither causes distortion of competition, nor tax-induced changes in the consumption of electricity, gas or heating sold to households. This is mainly because from a technical-technological point of view, those three products act as substitute goods only for heating purposes. Moreover, since the application of this reduced VAT rate is restricted to households, such application is not likely to cause distortion of competition

- (4) Moreover, the VAT rules regarding the place of supply of natural gas and electricity, as laid down in the Sixth VAT Directive, were amended by Council Directive 2003/92/EC ⁽²⁾. The supply of natural gas through the distribution networks and electricity in the final stage, from traders and distributors to final consumers, is taxed at the place where the customer has effective use and consumption of the goods, in order to ensure that taxation takes place in the country where actual consumption takes place. As regards the supply of district heating, as there are no cross-border transactions, the supply is thus local and there is no risk of distortion of competition within the meaning of Article 12(3)(b) of the Sixth VAT Directive.
- (5) The planned measure applying a reduced rate of VAT to the supply of district heating, natural gas and electricity to households pursuant to Article 12(3)(b) of the Sixth VAT Directive is limited to the supplies made to final consumers and does not apply to the supplies made to taxable persons for the needs of their commercial, professional and other economic activities.
- (6) Since the measure is limited to the supplies made to final consumers and does not apply to the supplies made to taxable persons for the needs of their commercial, professional and other economic activities, the risk of distortion of competition must be thus deemed non-existent. Since the condition laid down by Article 12(3)(b) of the Sixth Directive is thus fulfilled, Latvia should be authorised to apply the measure concerned as soon as this Decision is notified,

HAS ADOPTED THIS DECISION:

Article 1

Latvia may apply the measure notified in its letter registered by the Commission on 10 July 2006, applying a reduced rate of

⁽¹⁾ OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2006/69/EC (OJ L 221, 12.8.2006, p. 9).

⁽²⁾ OJ L 260, 11.10.2003, p. 8.

VAT to the supply of district heating, natural gas and electricity to households, irrespective of the conditions of production and supply.

Article 2

For the purposes of this Decision, households shall be defined as natural persons who are the recipients of the supplies referred to in Article 1 for the purposes of their final consumption, excluding therefore any supplies made for the needs of their commercial, professional and other economic activities.

Article 3

This Decision is addressed to the Republic of Latvia.

Done at Brussels, 18 December 2006.

For the Commission

Markos KYPRIANOU

Member of the Commission

COMMISSION DECISION

of 18 December 2006

authorising Romania to postpone the application of certain provisions of Council Directive 2002/53/EC with regard to the marketing of seed of certain varieties of agricultural plant species

(notified under document number C(2006) 6568)

(Text with EEA relevance)

(2007/69/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty of Accession of Bulgaria and Romania, and in particular Article 4(3) thereof,

Having regard to the Act of Accession of Bulgaria and Romania, and in particular Article 42 thereof,

Whereas:

- (1) Pursuant to Article 42 of the Act of Accession, the Commission may adopt transitional measures if these transitional measures are necessary to facilitate the transition from the existing regime in Bulgaria and Romania to that resulting from the application of the Community veterinary and phytosanitary rules. Those rules include the rules in respect of the marketing of seed.
- (2) Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species ⁽¹⁾ provides that seed of varieties of agricultural plant species covered by the Directive 2002/53/EC as referred to in its Article 1(1) may be marketed only if the requirements of Articles 4(1), 7 and 11 of this Directive have been met.
- (3) Marketing of seed of certain varieties would have to be banned in Romania from the date of accession, unless a derogation from those provisions is granted.
- (4) In order to enable Romania to take and to implement the measures necessary to ensure that the varieties in question have been accepted in accordance with the principles of the Community system, it should be allowed to postpone for a period of three years following the date of accession, the application of Directive 2002/53/EC with regard to the marketing in its territory of seed of the varieties that are listed in its catalogue in accordance with principles other than those of that Directive and that are covered by the Romanian official request of 28 September 2006.

- (5) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Articles 4(1), 7 and 11 of Directive 2002/53/EC Romania may postpone, for a period of three years following the date of accession, the application of that Directive with regard to the marketing in its territory of seed of the varieties listed in the Annex to this Decision.

During that period, such seed shall only be marketed in the territory of Romania. Any label or document, official or otherwise, which is affixed to or accompanies the seed lot under the provisions of this Decision shall clearly indicate that the seed is intended to be marketed exclusively in the territory of Romania.

Article 2

This Decision shall apply subject to and as from the date of the entry into force of the Treaty of Accession of Bulgaria and Romania.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 18 December 2006.

For the Commission

Markos KYPRIANOU

Member of the Commission

⁽¹⁾ OJ L 193, 20.7.2002, p. 1. Directive as last amended by Regulation (EC) No 1829/2003 of the European Parliament and of the Council (OJ L 268, 18.10.2003, p. 1).

ANNEX

Species/Variety
<i>Beta vulgaris</i> L. — Sugar Beet
Graf
<i>Beta vulgaris</i> L. — Fodder Beet
Lovrin 515
Lovrin 628
<i>Dactylis glomerata</i> L.
Magda
Marius (ant. Adrian)
Ovidiu
Poiana
Regent
Simina
<i>Festuca arundinacea</i> Schreber
Adela
Vio
<i>Festuca pratensis</i> Hudson
Postăvar
Tâmpa
Transilvan
<i>Festuca rubra</i> L.
Feruma
Măgurele 23 (ant. Pastoral)
Peisaj (ant. Tedi)
<i>Lolium multiflorum</i> Lam.
Ancuța (ant. Anca)
Iuliana (ant. Iulia)
<i>Lolium perenne</i> L.
Martarom (ant. Marta)
Măgura
<i>Lolium x boucheanum</i> Kunth
Cătălin
Florin
<i>Phleum pratense</i> L.
Horia
Rarău
Tirom

Species/Variety
<i>Poa pratensis</i> L.
Colina (ant. Fima)
<i>Lotus corniculatus</i> L.
Doru
Nicol (ant. Nico)
Oltim
<i>Lupinus albus</i> L.
Medi
<i>Medicago sativa</i> L.
Adin
Alina
Carina
Cosmina
Daniela (ant. Dana)
Dorinela (ant. Dorina)
Granat
Magnat
Mădălina
Opal (ant. Topaz)
Sandra
Satelit
Sigma
Tamas
<i>Pisum sativum</i> L.
Aurora
Dorica (ant. Dora)
Mona
Vedea
<i>Trifolium alexandrinum</i> L.
Viorel
<i>Trifolium repens</i> L.
Carmencita (ant. Carmen)
Carpatin
Danitim
Miorița
<i>Trifolium pratense</i> L.

Species/Variety	Species/Variety
Novac	Alex
Rotrif (ant. Roza)	
Sătmărean	Petrana
<i>Vicia faba</i> L.	
Montana	<i>Glycine max.</i> (L.) Merrill
<i>Brassica napus</i> L., var. <i>napobrassica</i> (L.) Rchb.	
Ana Maria	Balkan
Montana	
<i>Arachis hypogaea</i> L.	Columna
Solar	
Venus	Daciana
<i>Brassica napus</i> L. partim.	
Diana	Danubiana
Doina	
Perla	Eugen
<i>Cannabis sativa</i> L.	
Denise	Felix
Diana	
Zenit	Granat (ant. Agat)
<i>Carthamus tinctorius</i> L.	
CW1221	Kiskun Daniela
CW4440	
<i>Linum usitatissimum</i> L.	Onix
Ada	
Adria	Perla
Alexin	
Alin	Proteinka
Bazil	
Betalisa (ant. Elisa)	Românesc 99
Codruța	
Cosmin	Safir
Cristina	
Ferdinand (ant. Carolina)	Stine 2250
Floriana	
Florinda	Triumf
Fluin	
Iunia 96	Venera
Louis	
Luncavăț (ant. Elena)	<i>Avena sativa</i> L.
Martin	
Monica	Jeremy
Nineta	
Paula	Mureș
Radu	
Rareș	Lovrin 1
Sabena	
Șumuleu	Lovrin 27
Vasilelin (ant. Iordan)	
<i>Sinapis alba</i> L.	<i>Hordeum vulgare</i> L.- 2 row barley
	Andreea
	Bogdana (ant. Avânt)

Species/Variety
Capriana
Daciana
Haşdate (ant. Aura)
Jubileu
Kristal
Laura
Maria
NS 525
NS 529
Romaniţa
Stindard
<i>Hordeum vulgare</i> L.- 6 row barley
Amical (ant. Adi)
Andrei
Compact
Dana
Liliana
Mădălin
NS 313
Orizont
Regal
Univers
<i>Oryza sativa</i> L.
Brăila
Dunărea
Elida
Magic
Polizeşti 28
Speranţa
Zefir
<i>Secale cereale</i> L.
Suceveana
<i>Sorghum bicolor</i> (L.) Moench
Andrea
Donaris
Dorina
F135ST
Fundulea 21
Fundulea 32
Marina
Regina
Siret
<i>Sorghum sudanense</i> (Piper) Stapf.
Sabin
Sorin
<i>Sorghum bicolor</i> (L.) Moench x <i>Sorghum sudanense</i> (Piper) Stapf.
Catinca (ant. Tinca)
Fundulea 235 (ant. Tereza)
x <i>Triticosecale</i> Witt.

Species/Variety
Gorun
Haiduc
Plai
Silver
Stil
Trilstar
Țebea
<i>Triticum aestivum</i> L.emend.Fiori et Paol.
Albota
Aniversar
Apullum
Ardeal 1
Arieşan
Beti
Boema
Briana
Ciprian
Crina
Crişana
Delabrad
Dor
Drobeta
Dropia
Dumbrava
Eliana
Esenţial
Faur

Species/Variety	Species/Variety
Flamura 85	Generos
Gabriela	
Gasparom	GS307
Gruia	
Iași 2	GS308
Kraljevica	
Kristina	Kiskun 4230
Ljiljana	
Lovrin 34	Kiskun 4255
Mina	
Moldova 83	Kiskun 4297
Pădureni (ant. Rubin)	
PKB Romanța	Kiskun 4344
Romulus	
Sonata	Kiskun 4380
Speranța	
SV99	Kiskun Aliz
Șimnic 30	
Trivale	Kiskun Blako
Turda 95	
Turda 2000	Kiskun Cilike
Voroneț	
<i>Triticum durum</i> Desf.	Kiskun Dori
Condurum (ant. Condur)	
Grandur	Kiskun Ermina
Pandur	
<i>Zea mays</i> L.	Kiskun Galja
Andreea	
Boris 5	Kiskun Gitta
Brateș	
Campion	Kiskun Kristof
Cera 6	
Cera 9	Kiskun Natalie (ant. Natalie)
Cera 10	
Ciclon	Kiskun Nusi
Dacic	
Dăma	Kiskun Olike
Danubian (ant. Danubiu)	
F425M	Kiskun Piros
Falco	
Faur	Kiskun Reni
Fulger	
Fundulea 322	Kiskun Roy
Fundulea 365	
Fundulea 376	Kiskun Szoliani
Fundulea 475M	
Fundulea 515 (ant. Premier)	Kiskun Tamara
Fundulea 540 (ant. Granit)	
Fundulea 625	Kiskun Vanda
	Kiskun Vivien
	Kiskun Xintia

Species/Variety
Klausen
Krisztina
Laurina
Lorenca
Lovrin 400
Milcov
Mv Major
Neptun
NS300
NS355
NS540
NSSC420YU
Octavian
Oituz
Olimpius (ant. Olimp)
Olt
Ozana (ant. Dana)
Paltin
Pamela
Panciu
Partizan
Patria
Podu Iloaiei 110
Rapid
Rapsodia
Rodna
Staniša
Star
Szegedi SC 276
Szegedi SC 516
Turda 145
Turda 165
Turda 167
Turda 200
Turda 201
Turda Favorit
Turda Mold 188
Turda Star
Turda Super
Turda SU181
Turda SU182
Turda SU210
ZP278
ZP335
ZP394
ZP409
ZP434
ZP471
ZP488

Species/Variety
ZP684
<i>Solanum tuberosum</i> L.
Alina
Alize (ant. Amelia)
Amicii
Astral N
Armonia
Christian
Claudiu
Coval
Cristela
Dacia
Dragomirna
Dumbrava
Eterna
Frumoasa
Harghita
Ioana
Loial
Luiza
Magic
Mikel
Milenium
Moldovița
Nana
Nativ
Nemere

Species/Variety	Species/Variety
Productiv	Ruxandra (ant. Nicoleta)
Rapsodia	Speranța
Rasant	Star
Redsec	Tâmpa
Robusta	Tentant
Roclas	Timpuriu de Brașov
Rozal	Transilvania

COMMISSION DECISION

of 20 December 2006

concerning the extension of the deadline for placing on the market of biocidal products containing certain active substances not examined during the ten-year work programme referred to in Article 16 (2) of Directive 98/8/EC

*(notified under document number C(2006) 6707)***(Only the Czech, Danish, English, Finnish, Greek and Swedish text is authentic)**

(2007/70/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Commission together with information demonstrating a need for further use of the substances concerned.

Having regard to the Treaty establishing the European Community,

Having regard to the European Parliament and Council Directive 98/8/EC of 16 February 1998 concerning the placing of biocidal products on the market ⁽¹⁾, and in particular Article 16 (2) thereof,

Whereas:

(1) Article 16(2) second subparagraph, and (3) of Directive 98/8/EC (hereinafter referred to as 'the Directive') provide that, where the requisite information and data for the evaluation of an active substance have not been submitted within the prescribed period, it may be decided not to include the active substance in Annexes I, IA or IB of the Directive. Following such a decision, Member States should withdraw all authorisations for biocidal products containing the active substance.

(2) Commission Regulations (EC) No 1896/2000 and (EC) No 2032/2003 lay down the detailed rules for the implementation of the first and second phase of the 10-year work programme referred to in Article 16(2) of the Directive. Article 4(2) of Commission Regulation (EC) No 2032/2003 specifies 1 September 2006 as the date with effect from which Member States shall cancel existing authorisations for biocidal products containing active substances in respect of which there has been neither an accepted notification nor an expression of interest by a Member State.

(3) Article 4a of Commission Regulation (EC) No 2032/2003, as amended by Commission Regulation (EC) No 1048/2005, lays down the conditions under which Member States may apply to the Commission for an extension of the phase-out period laid down in its Article 4(2) and the conditions for granting such an extension.

(4) For some of the active substances for which use in biocidal products shall be prohibited after 1 September 2006, applications for extension of this phase-out period have been submitted by individual Member States to the

(5) Finland, Denmark, Norway and Iceland have submitted information demonstrating the absence of suitable alternatives to pine tar with regard to its use as a wood protection product on historical wooden buildings, vessels and articles. An extension of the phase-out period for this substance seems appropriate in order to preserve the cultural heritage of these Member States and countries.

(6) The Czech Republic has submitted information demonstrating the highly prevalent use of sodium N-chlorobenzenesulphonamide/Chloramine B as a disinfectant by the Czech armed forces and public health services. Its substitution by other, notified substances might prove problematic if it were to happen by the end of the phase-out period, especially where public procurement procedures need to be carried out. An extension of the phase-out period for this substance seems appropriate to allow for a switch to other disinfectants.

(7) Greece has submitted information demonstrating the prevalent use of temephos for mosquito nuisance and public health control by public authorities. Its substitution by other, notified substances might prove problematic if it were to happen by the end of the phase-out period, especially where public procurement procedures need to be carried out. An extension of the phase-out period for this substance seems appropriate to allow for a switch to other available substances.

(8) The United Kingdom has submitted information demonstrating the need for temporary continuation of use of ammonia as a veterinary hygiene biocidal product to prevent infections by coccidia, cryptosporidium and nematodes in livestock. An extension of the phase-out period for this substance seems appropriate to permit its gradual replacement by other available substances that are notified for evaluation under the Directive's review programme.

(9) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

⁽¹⁾ OJ L 123, 24.4.1998, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

By derogation from Article 4(2) of Commission Regulation (EC) No 2032/2003, the Member States listed in column B of the Annex to this Decision may grant or maintain an existing approval for placing on the market of biocidal products containing substances listed in column A of the Annex, for the essential uses listed in column D and until the dates stated in column C of that Annex.

Article 2

1. Member States making use of the derogation provided for in Article 1 of this Decision shall ensure that the following conditions are complied with:

- (a) continued use is only possible under the conditions that products containing the substance are approved for the intended essential use;
- (b) the continued use is only accepted so far as it has no unacceptable effect on human or animal health or on the environment;
- (c) all appropriate risk reduction measures are imposed when granting approval;

(d) such biocidal products remaining on the market after 1 September 2006 are relabelled in order to match the restricted use conditions;

(e) where appropriate, Member States shall ensure that alternatives for such uses are being sought by the holders of the approvals or by the Member States concerned, or that a dossier is being prepared for submission in accordance with the procedure laid down in Article 11 of Directive 98/8/EC by 14 May 2008 at the latest.

2. The Member States concerned shall inform the Commission annually on the application of paragraph 1 and in particular on the actions taken pursuant to point (e).

Article 3

This Decision is addressed to the Republic of Finland, the Kingdom of Denmark, the Czech Republic, the Hellenic Republic and the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 20 December 2006.

For the Commission

Stavros DIMAS

Member of the Commission

ANNEX

List of authorisations referred to in Article 1

Column A	Column B	Column C	Column D
Active substance	Member State	Dates	Use
Pine tar EC n° 232-374-8 CAS n° 8011-48-1	Finland Denmark	14.5.2010 14.5.2010	As wood protection product for buildings, vessels and articles that belong to the cultural heritage of the applicant Member States
Sodium N-chlorobenzene-sulphonamide/Chloramine B EC n° 204-847-9 CAS n° 127-52-6	Czech Republic	1.11.2007	Disinfectant for use by the public health service, the public veterinary service and the armed forces (civilian purposes) of the applicant Member State
Temephos EC n° 222-191-1 CAS n° 3383-96-8	Greece	1.11.2007	For nuisance and public health mosquito (<i>Culicidae</i>) control
Ammonia EC n° 231-635-3 CAS n° 7664-41-7	United Kingdom	14.5.2008	Veterinary hygiene biocidal product for the prevention of infections by coccidia, cryptosporidia and nematodes in livestock; only when no other means with similar effect can be used

COMMISSION DECISION

of 20 December 2006

setting up a scientific group of experts for designations of origin, geographical indications and traditional specialities guaranteed

(2007/71/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community,

Article 1

A scientific group of experts, hereinafter referred to as 'the group', is hereby set up for designations of origin, geographical indications and traditional specialities guaranteed.

Whereas:

*Article 2***Terms of reference**

The Commission may consult the group on any matter relating to the protection of geographical indications, designations of origin and traditional specialities guaranteed relating to agricultural products and foodstuffs, and in particular:

- (1) Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs⁽¹⁾ lays down the conditions to be met in order for a name to be registered as a protected geographical indication (PGI) or a protected designation of origin (PDO).
- (2) Council Regulation (EC) No 509/2006 of 20 March 2006 on agricultural products and foodstuffs as traditional specialities guaranteed⁽²⁾ lays down the conditions to be met in order for a name to be registered and protected at Community level as a traditional speciality guaranteed (TSG).
- (3) In order to resolve certain complex scientific and technical problems which may arise in examining the conditions allowing the registration of a particular protected designation of origin, protected geographical indication or traditional speciality guaranteed, the Commission may need to call upon the expertise of specialists in an advisory group.
- (4) The group should be made up of highly qualified experts from a wide range of scientific and technical disciplines related to agriculture and the agri-food industry, human sciences and intellectual property rights.
- (5) The scientific group of experts for designations of origin, geographical indications and traditional specialities guaranteed should therefore be set up and its terms of reference and structures detailed.
- (6) The scientific committee for designations of origin, geographical indications and certificates of specific character set up by Decision 93/53/EEC of 21 December 1992⁽³⁾ should be disbanded,

- compliance with the criteria laid down in Article 2 of Regulation (EC) No 510/2006 by a particular name for which an application for registration has been submitted, and in particular the link between the product and the geographical environment and/or its reputation,
- compliance with the criteria laid down in Articles 2, 4 and 5 of Regulation (EC) No 509/2006 by a particular name for which an application for registration has been submitted, and in particular its traditional and/or specific nature,
- the generic nature of a name,
- the assessment of criteria regarding fair competition in commercial transactions and the risk of confusing consumers in cases of conflict between the designation of origin or geographical indication and designations of origin or geographical indications which are already registered, trademarks, names of plant varieties and animal breeds, homonyms, or names of existing products which are legally marketed,
- any other matter of particular interest having regard to the group's field of expertise.

The Chairman of the group may indicate to the Commission that it would be appropriate to consult the group on a specific question.

The Commission may, where appropriate, ask the group to adopt its opinion on a specific question within a given deadline.

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ L 93, 31.3.2006, p. 1.

⁽³⁾ OJ L 13, 21.1.1993, p. 16. Decision as last amended by Decision 97/656/EC (OJ L 277, 10.10.1997, p. 30).

Article 3

Membership — Appointment

1. The members of the group shall be appointed by the Commission from specialists who have responded to the call for applications to this end, and who are highly qualified in the different technical and scientific aspects of the fields referred to in Article 2 and together cover the widest possible range of scientific and technical disciplines and, consistent with this criteria, on the basis of a geographical distribution which reflects the diversity of scientific issues and approaches in the Community.

2. The group shall be composed of 11 members.

Candidates found suitable for the position in the group but not appointed shall be invited to be included on a reserve list. The reserve list may be used by the Commission to appoint candidates to replace members.

3. The following provisions shall apply:

— members shall be appointed in a personal capacity and be required to advise the Commission independently of any outside influence. They shall not delegate their responsibilities to another member or to a third person;

— the term of office of members shall be three years, renewable. However, from the appointment referred to in paragraph 1, members may not remain in post for more than three consecutive mandates. They shall remain in office until they are replaced or their appointments are renewed;

— members who are no longer able to contribute effectively to the group's deliberations, who resign or who do not respect the conditions set out in the first or second indent of this paragraph or Article 287 of the Treaty establishing the European Community may be replaced for the remaining period of their mandate;

— members shall each year sign an undertaking to act in the public interest and a declaration indicating the absence or existence of any interest which may undermine their objectivity;

— the names of members appointed individually shall be published on the Internet site of the Directorate-General for Agriculture and Rural Development and in the C series of the *Official Journal of the European Union*. The names of members shall be collected, processed and published in accordance with the provisions of Regulation (EC) No 45/

2001 of the European Parliament and of the Council on the protection and processing of personal data ⁽⁴⁾.

Article 4

Operation

1. The group shall elect a chairman and two deputy chairmen from among its members. The election shall take place by simple majority of the members.

2. In agreement with the Commission, sub-groups may be set up to examine specific questions under terms of reference established by the group; they shall be disbanded as soon as they have fulfilled those terms of reference.

3. The Commission representative may invite experts or observers with special expertise on a matter on the agenda to participate in the group's work where appropriate and/or necessary.

4. Information obtained as a result of attending group or sub-group meetings shall not be divulged where the Commission declares them to relate to confidential matters.

Members may not use for professional purposes any information they obtain through being a member of the group.

5. The group and its sub-groups shall normally meet in one of the sites where the Commission and its departments are located, following the procedures and timetable laid down by it. The Commission shall organise the secretariat. Other Commission officials concerned may take part in the meetings.

6. The group shall adopt its rules of procedure on the basis of the standard rules of procedure adopted by the Commission.

7. The Commission may publish on the Internet, in the original language of the document concerned, requests for opinions, agendas and minutes, and opinions adopted by the group. They may also publish under the same terms any working document of the group.

Article 5

Meeting expenses

The travel and accommodation expenses incurred by the members, experts and observers in fulfilment of the group's activities shall be reimbursed by the Commission in accordance with the Commission rules in force. There shall be no remuneration for the tasks performed.

⁽⁴⁾ OJ L 8, 12.1.2001, p. 1.

Meeting expenses shall be reimbursed within the limits of the appropriations allocated to the departments concerned under the annual procedure for allocating resources.

Article 6

Repeal

Decision 93/53/EEC is hereby repealed.

However, the Committee set up by that Decision shall remain operational until the Commission has informed its members that the group set up by this Decision has become operational.

Article 7

Entry into force

This Decision shall take effect on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 20 December 2006.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

COMMISSION DECISION
of 20 December 2006
on the prolongation of certain State aid decisions

(notified under document number C(2006) 6927)

(Text with EEA relevance)

(2007/72/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty establishing the European Community, and in particular Articles 87 and 88 thereof,

Article 1

Without prejudice to the appropriate measures contained in the third indent of point 107 of the Guidelines on national regional aid for 2007–2013 of 4 March 2006 ⁽⁵⁾ and accepted by all Member States, the validity of the Decisions of the Commission approving State aid schemes on the basis of Regulations (EC) No 2204/2002, (EC) No 70/2001 or (EC) No 68/2001 before the entry into force of this Decision shall be extended until 30 June 2008.

Article 2

This decision is addressed to the Member States.

It shall be applicable from 1 January 2007.

Done at Brussels, 20 December 2006.

For the Commission

Neelie KROES

Member of the Commission

Whereas:

- (1) The period of validity of Commission Regulation (EC) No 2204/2002 of 5 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment ⁽¹⁾, 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 for small and medium-sized enterprises ⁽²⁾ and Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ⁽³⁾ has been extended by Commission Regulation (EC) No. 1976/2006 of 20 December 2006 amending Regulations (EC) No 2204/2002, (EC) No 70/2001 and (EC) No 68/2001 as regards the extension of the periods of application ⁽⁴⁾ until 30 June 2008.
- (2) In order to avoid unnecessary administrative work and to guarantee legal security it is appropriate to extend the validity of decisions of the Commission approving aid schemes notified on the basis of the exemption regulations being subject of this prolongation regulation,

⁽¹⁾ OJ L 337, 13.12.2002, p. 3. Regulation as amended by Regulation (EC) No 1040/2006 (OJ L 187, 8.7.2006, p. 8).

⁽²⁾ OJ L 10, 13.1.2001, p. 33. Regulation as last amended by Regulation (EC) No 1040/2006.

⁽³⁾ OJ L 10, 13.1.2001, p. 20. Regulation as last amended by Regulation (EC) No 1040/2006.

⁽⁴⁾ OJ L 368, 23.12.2006, p. 85.

⁽⁵⁾ OJ C 54, 4.3.2006, p. 13.

COMMISSION DECISION

of 20 December 2006

on appointment of members of the Standards Advice Review Group created by the Commission Decision 2006/505/EC of 14 July 2006 setting up a Standards Advice Review Group to advise the Commission on the objectivity and neutrality of the European Financial Reporting Advisory Group's (EFRAG's) opinions

(2007/73/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community,

Article 1

The Commission herewith appoints 7 members of the Standards Advice Review Group, whose names are reproduced in the Annex.

Having regard to Commission Decision 2006/505/EC of 14 July 2006 setting up a Standards Advice Review Group to advise the Commission on the objectivity and neutrality of the European Financial Reporting Advisory Group's (EFRAG's) opinions ⁽¹⁾, and in particular Article 3 thereof,

Article 2

The decision shall take effect on the day of its publication in the *Official Journal of the European Union*.

Whereas:

Done at Brussels, 20 December 2006.

According to Article 3 of the Decision 2006/505/EC, the Commission shall appoint a maximum of seven members of the Standards Advice Review Group from independent experts whose experience and competence in the accounting area, in particular in financial reporting issues, are widely recognised at Community level,

For the Commission

Charlie McCREEVY

Member of the Commission

⁽¹⁾ OJ L 199, 21.7.2006, p. 33.

ANNEX

LIST OF MEMBERS

Josef JÍLEK

Elisabeth KNORR

Carlos Soria SENDRA

Hervé STOLOWY

Enrico LAGHI

Jan KLAASEN

Geoffrey MITCHELL

COMMISSION DECISION

of 21 December 2006

establishing harmonised efficiency reference values for separate production of electricity and heat in application of Directive 2004/8/EC of the European Parliament and of the Council

(notified under document number C(2006) 6817)

(Text with EEA relevance)

(2007/74/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

addition correction factors for heat grid losses are not required as heat is always used near the site of production.

Having regard to the Treaty establishing the European Community,

(4) The harmonised efficiency reference values have been based on the principles mentioned in Annex III (f) of Directive 2004/8/EC.

Having regard to Directive 2004/8/EC of the European Parliament and of the Council on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EC ⁽¹⁾, and in particular Article 4(1) thereof,

(5) Stable conditions for investment in cogeneration and continued investor confidence are needed. In this perspective it is appropriate to maintain the same reference values for a cogeneration unit for a reasonably long period of ten years. However, taking into consideration the main aim of Directive 2004/8/EC to promote cogeneration in order to save primary energy, an incentive for retrofitting older cogeneration units should be given in order to improve their energy efficiency. For these reasons the efficiency reference values for electricity applicable to a cogeneration unit should become stricter from the eleventh year after the year of its construction.

Whereas:

(6) The measures provided for in this Decision are in accordance with the opinion of the Cogeneration Committee,

(1) Pursuant to Article 4 of Directive 2004/8/EC the Commission is to establish harmonised efficiency reference values for separate production of electricity and heat consisting of a matrix of values differentiated by relevant factors, including year of construction and types of fuel.

HAS ADOPTED THIS DECISION:

Article 1

Establishment of the harmonised efficiency reference values

The harmonised efficiency reference values for separate production of electricity and heat shall be as set out in Annex I and Annex II respectively.

Article 2

Correction factors for the harmonised efficiency reference values for separate production of electricity

(2) The Commission has completed a well-documented analysis in accordance with Article 4(1) of Directive 2004/8/EC. Developments in the best available and economically justifiable technology which were observed during the period covered by this analysis indicate that for the harmonised efficiency reference values for separate production of electricity, a distinction should be drawn relating to the year of construction of a cogeneration unit. Furthermore, correction factors relating to the climatic situation should be applied to these reference values because the thermodynamics of generating electricity from fuel depend on the ambient temperature. In addition correction factors for avoided grid losses should be applied to these reference values to take account of the energy savings obtained when grid use is limited due to decentralised production.

1. Member States shall apply the correction factors set out in Annex III(a) in order to adapt the harmonised efficiency reference values set out in Annex I to the average climatic situation in each Member State.

(3) By contrast, the analysis showed that concerning the harmonised efficiency reference values for separate production of heat a distinction relating to the year of construction was not necessary as the net energy efficiency of boilers has hardly improved in the period covered by the analysis. No correction factors relating to the climatic situation were required because the thermodynamics of generating heat from fuel do not depend on the ambient temperature. In

The correction factors for the average climatic situation shall not apply to fuel cell-based cogeneration technology.

⁽¹⁾ OJ L 52, 21.2.2004, p. 50.

If on the territory of a Member State official meteorological data show differences in the annual ambient temperature of 5 °C or more, that Member State may, subject to notification to the Commission, use several climate zones for the purpose of the first subparagraph using the method set out in Annex III(b).

2. Member States shall apply the correction factors set out in Annex IV in order to adapt the harmonised efficiency reference values set out in Annex I to avoided grid losses.

The correction factors for avoided grid losses shall not apply to wood fuels and biogas.

3. Where Member States apply both the correction factors set out in Annex III(a) and those set out in Annex IV, they shall apply Annex III(a) before applying Annex IV.

Article 3

Application of the harmonised efficiency reference values

1. Member States shall apply the harmonised efficiency reference values set out in Annex I relating to the year of construction of a cogeneration unit. These harmonised efficiency reference values shall apply for 10 years from the year of construction of a cogeneration unit.

2. From the eleventh year following the year of construction of a cogeneration unit, Member States shall apply the harmonised efficiency reference values which by virtue of paragraph 1 apply to a cogeneration unit of 10 years of age. These harmonised efficiency reference values shall apply for one year.

3. For the purpose of this Article the year of construction of a cogeneration unit shall mean the calendar year of the first electricity production.

Article 4

Retrofitting of a cogeneration unit

If an existing cogeneration unit is retrofitted and the investment cost for the retrofitting exceeds 50 % of the investment cost for a new comparable cogeneration unit, the calendar year of first electricity production of the retrofitted cogeneration unit shall be considered as its year of construction for the purpose of Article 3.

Article 5

Fuel mix

If the cogeneration unit is operated with a fuel mix the harmonised efficiency reference values for separate production shall be applied proportionally to the weighted mean of the energy input of the various fuels.

Article 6

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 21 December 2006.

For the Commission

Andris PIEBALGS

Member of the Commission

ANNEX I

Harmonised efficiency reference values for separate production of electricity (referred to in Article 1)

In the table below the harmonised efficiency reference values for separate production of electricity are based on net calorific value and standard ISO conditions (15 °C ambient temperature, 1,013 bar, 60 % relative humidity).

[illegible]

ANNEX II

Harmonised efficiency reference values for separate production of heat (referred to in Article 1)

In the table below the harmonised efficiency reference values for separate production of heat are based on net calorific value and standard ISO conditions (15 °C ambient temperature, 1,013 bar, 60 % relative humidity).

	Type of fuel:	Steam (*) /hot water	Direct use of exhaust gases (**)
Solid	Hard coal/coke	88	80
	Lignite/lignite briquettes	86	78
	Peat/peat briquettes	86	78
	Wood fuels	86	78
	Agricultural biomass	80	72
	Biodegradable (municipal) waste	80	72
	Non-renewable (municipal and industrial) waste	80	72
	Oil shale	86	78
Liquid	Oil (gas oil + residual fuel oil), LPG	89	81
	Biofuels	89	81
	Biodegradable waste	80	72
	Non-renewable waste	80	72
Gaseous	Natural gas	90	82
	Refinery gas/hydrogen	89	81
	Biogas	70	62
	Coke oven gas, blast furnace gas + other waste gases	80	72

(*) Il faut retrancher 5 points de pourcentage absolus au rendement vapeur lorsque les États membres qui appliquent l'article 12, paragraphe 2, de la directive 2004/8/CE prennent en compte le retour du condensat dans les calculs de rendement d'une unité de cogénération.

(**) Les valeurs applicables à la chaleur directe doivent être utilisées si la température est de 250 °C ou plus.

ANNEX III

Correction factors relating to the average climatic situation and method for establishing climate zones for the application of the harmonised efficiency reference values for separate production of electricity (referred to in Article 2(1))

(a) Correction factors relating to the average climatic situation

Ambient temperature correction is based on the difference between the annual average temperature in a Member State and standard ISO conditions (15 °C). The correction will be as follows:

0,1 %-point efficiency loss for every degree above 15 °C;

0,1 %-point efficiency gain for every degree under 15 °C.

Example:

When the average annual temperature in a Member State is 10 °C, the reference value of a cogeneration unit in that Member State has to be increased with 0,5 %-points.

(b) Method for establishing climate zones

The borders of each climate zone will be constituted by isotherms (in full degrees Celsius) of the annual average ambient temperature which differ at least 4 °C. The temperature difference between the average annual ambient temperatures applied in adjacent climate zones will be at least 4 °C.

Example:

In a Member State the average annual ambient temperature in place A is 12 °C and in place B it is 6 °C. The difference is more than 5 °C. The Member State has now the option to introduce two climate zones separated by the isotherm of 9 °C, thus constituting one climate zone between the isotherms of 9 °C and 13 °C with an average annual ambient temperature of 11 °C and another climate zone between the isotherms of 5 °C and 9 °C with an average annual ambient temperature of 7 °C.

ANNEX IV

Correction factors for avoided grid losses for the application of the harmonised efficiency reference values for separate production of electricity (referred to in Article 2(2))

Voltage:	For electricity exported to the grid	For electricity consumed on-site
> 200 kV	1	0,985
100-200 kV	0,985	0,965
50-100 kV	0,965	0,945
0,4-50 kV	0,945	0,925
< 0,4 kV	0,925	0,860

Example:

A 100 kW_{el} cogeneration unit with a reciprocating engine driven with natural gas generates electricity of 380 V. Of this electricity 85 % is used for own consumption and 15 % is fed into the grid. The plant was constructed in 1999. The annual ambient temperature is 15 °C (so no climatic correction is necessary).

According to Annex I of this Decision the harmonised efficiency reference value of 1999 for natural gas is 51,1 %. After the grid loss correction the resulting efficiency reference value for the separate production of electricity in this cogeneration unit would be (based on the weighted mean of the factors in this Annex):

$$\text{Ref } \eta = 51,1 \% * (0,860 * 85 \% + 0,925 * 15 \%) = 44,4 \%$$

COMMISSION DECISION

of 22 December 2006

setting up an expert group on transfer pricing

(2007/75/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Whereas:

- (1) The study 'Company Taxation in the Internal Market' ⁽¹⁾ prepared by the Commission services identified the increasing importance of transfer pricing tax problems as an Internal Market issue.
- (2) In its Communication 'Towards an Internal Market without tax obstacles — a strategy for providing companies with a consolidated corporate tax base for their EU-wide activities' ⁽²⁾ the Commission recognized the need to call upon the expertise of specialists in the field of transfer pricing.
- (3) In 2002, the 'EU Joint Transfer Pricing Forum' was informally set up.
- (4) Since it has been established the 'EU Joint Transfer Pricing Forum' has provided for a useful discussion forum between Member States and the private sector which led the Commission to propose two Codes of Conduct which were subsequently adopted by Member States in the Council.
- (5) Given the positive experience with that forum and the Commission's continuous need for such a body, the continuation of the work of that forum should be laid down in a formal act. It is therefore necessary to set up a group of experts in the field of transfer pricing and to define its tasks and its structure.
- (6) The expert group on transfer pricing should be composed of governmental and private-sector experts in the field of transfer pricing.
- (7) The expert group on transfer pricing should assist and advise the Commission in transfer pricing tax issues.
- (8) Rules on disclosure of information by members of the group should be provided for, without prejudice to the rules

on security annexed to the Commission's rules of Procedure by Decision 2001/844/EC, ECSC, Euratom ⁽³⁾.

- (9) Personal data relating to members of the group should be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽⁴⁾.
- (10) It is appropriate to fix a period for the application of this Decision. The Commission will in due time consider the advisability of an extension,

HAS DECIDED AS FOLLOWS:

Article 1

Expert group on transfer pricing

An expert group on transfer pricing, hereinafter referred to as the 'group', is set up with effect from 1 March 2007.

The group shall be known as 'the EU Joint Transfer Pricing Forum'.

Article 2

Tasks

The group's tasks shall be the following:

- to create a platform where business and national tax administration experts can discuss transfer pricing problems which constitute obstacles to cross-border business activities within the Community
- to advise the Commission on transfer pricing tax issues
- to assist the Commission in finding practical solutions, compatible with the OECD Guidelines ⁽⁵⁾, in order to achieve a more uniform application of transfer pricing rules within the Community.

⁽¹⁾ SEC(2001) 1681 23.10.2001

⁽²⁾ COM(2001) 582 final, 23.10.2001

⁽³⁾ OJ L 317, 3.12.2001, p. 1.

⁽⁴⁾ OJ L 8, 12.1.2001, p. 1.

⁽⁵⁾ OECD Transfer Pricing Guidelines for Multinational enterprises and Tax administration, adopted in July 1995.

*Article 3***Consultation**

1. The Commission may consult the group on any matter relating to transfer pricing.
2. The Chairman of the group may advise the Commission that it is desirable to consult the group on a specific question.

*Article 4***Membership — Appointment**

1. The group shall comprise up to 43 members composed as follows:
 - (a) One representative from each Member State.
 - (b) Up to 15 representatives from the private sector.
 - (c) A Chairman
2. Members representing the Member States shall be appointed by the national authorities concerned. Those members shall be civil servants dealing with transfer pricing matters.
3. Private sector members shall be appointed by the Commission from specialists with experience and competence in transfer pricing issues.
4. Applicants deemed suitable for membership but not appointed may be placed on a reserve list, which the Commission may use for the appointment of replacements.
5. Private sector members shall be appointed in a personal capacity and shall advise the Commission independently of any outside influence.
6. They shall inform the Commission in good time of any conflict of interests which might undermine their objectivity.
7. The Commission shall also appoint a Chairman.
8. Members of the group shall be appointed for a 2-year renewable term of office. They shall remain in office until such time as they are replaced or their term of office ends.
9. Members may be replaced for the remainder of their term of office in any of the following cases:
 - (a) where the member resigns;
 - (b) where the member is no longer capable of contributing effectively to the group's deliberations;
 - (c) where the member does not comply with Article 287 of the Treaty;

(d) where, contrary to paragraph 5, the member is not independent of any outside influence;

(e) where, contrary to paragraph 6, the member has failed to inform the Commission in good time of a conflict of interest.

10. The names of members appointed in a personal capacity shall be published on the website of DG TAXUD. The names of members shall be collected, processed and published in accordance with Regulation (EC) Nr 45/2001.

*Article 5***Operation**

1. The group may with the agreement of the Commission, set up sub-groups to examine specific questions under terms of reference established by the group. Such sub-groups shall be dissolved as soon as their mandates are fulfilled.

2. The Commission's representative may ask experts or observers with specific competence on a subject on the agenda to participate in the work of the group, or in the deliberations or work of a sub-group, if, in the opinion of the Commission, this is necessary or useful.

In particular, representatives of the candidate countries and from the OECD Secretariat may be invited as observers.

3. Information obtained by participating in the deliberations or work of the group or of a sub-group shall not be divulged if, in the opinion of the Commission, that information relates to confidential matters.

4. The group and its sub-groups normally shall meet on Commission premises in accordance with the procedures and schedule established by it. The Commission shall provide secretarial services.

5. Commission officials with an interest in the proceedings may attend these meetings.

6. The group shall adopt its rules of procedure on the basis of the standard rules of procedure adopted by the Commission.

7. The Commission services may publish, or place on the Internet ⁽⁶⁾, in the original language of the document concerned, any summary, conclusion, or partial conclusion or working document of the group.

*Article 6***Reimbursement of expenses**

The Commission shall reimburse travel expenses and, where appropriate, subsistence expenses for members, experts and

⁽⁶⁾ http://ec.europa.eu/taxation_customs/taxation/company_tax/transfer_pricing/forum/index_en.htm

observers in connection with the group's activities in accordance with the Commission's rules on the compensation of external experts.

Article 7

Expiry

The decision shall expire on 31 March 2011.

The members, experts and observers shall not be remunerated for the services they render.

Done at Brussels, 22 December 2006.

Meeting expenses shall be reimbursed within the limits of the annual budget allocated to the group by the competent Commission department.

For the Commission

László KOVÁCS

Member of the Commission

COMMISSION DECISION

of 22 December 2006

implementing Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance*(notified under document number C(2006) 6903)***(Text with EEA relevance)**

(2007/76/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation ⁽¹⁾), and in particular Article 6 (4), Article 7(3), Article 8(7), Article 9 (4), Article 10(3), Article 12(6), Article 13(5), and Article 15(6),

Whereas:

- (1) Regulation (EC) No 2006/2004 lays down the conditions under which the competent authorities in the Member States designated as responsible for the enforcement of the laws that protect consumers' interests are to cooperate with each other and with the Commission in order to ensure compliance with those laws and the smooth functioning of the internal market and in order to enhance the protection of consumers' economic interests.
- (2) It provides for the establishment of networks between those competent authorities in the Member States.
- (3) It is necessary to adopt measures for the implementation of the provisions of that Regulation on the mechanisms and conditions governing mutual assistance between competent authorities and on the position of the single liaison office.
- (4) It is appropriate to lay down minimum requirements for the information to be supplied in all requests for mutual assistance to enable the system to operate effectively. Rules should also be laid down on the content of the standard forms through which information is exchanged to ensure greater efficiency and ease of processing of that information.
- (5) Time-limits should be laid down for each step in the mutual assistance procedures to ensure that the system operates expeditiously.
- (6) Rules should be laid down on the notification of intra-Community infringements to enable prompt and effective

steps to be taken against them in all the Member States concerned.

- (7) Since information supplied pursuant to Regulation (EC) No 2006/2004 may often be sensitive, it is necessary to lay down appropriate rules restricting access to it.
- (8) Appropriate general arrangements should be made to ensure that communications are not hindered by language problems while permitting flexibility to address specific cases.
- (9) Further measures may be adopted on the basis of the experience gained with the operation of the enforcement cooperation networks of competent authorities in the Member States.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Committee set up by Article 19 (1) of Regulation (EC) No 2006/2004,

HAS ADOPTED THIS DECISION:

*Article 1***Subject matter**

This Decision lays down rules for the implementation of Regulation (EC) No 2006/2004 as regards mutual assistance between competent authorities and the conditions governing that assistance.

*Article 2***Definitions**

For the purposes of this Decision, the following definitions shall apply in addition to those laid down in Regulation (EC) No 2006/2004:

1. 'database' means the database provided for in Article 10(1) of Regulation (EC) No 2006/2004;
2. 'alert' means a notification of an intra-Community infringement under Article 7(1) of Regulation (EC) No 2006/2004;

⁽¹⁾ OJ L 364, 9.12.2004, p. 1. Regulation as amended by Directive 2005/29/EC (OJ L 149, 11.6.2005, p. 22.)

3. 'confidential treatment' means treatment of information in accordance with the requirements of confidentiality and professional and commercial secrecy as provided for in Article 13 of Regulation (EC) No 2006/2004;
4. 'legal basis': means the provision of the laws that protect consumers' interest that is, or is suspected to be, the subject of an intra-community infringement, including a precise indication of the relevant provision of the laws of the Member states of the applicant authority.

Article 3

Information requirements

The rules on the information to be supplied pursuant to Regulation (EC) No 2006/2004 and on the format of that information are laid down in Chapter 1 of the Annex to this Decision.

Article 4

Time-limits for action

The rules on the time-limits applying to the different stages of mutual assistance pursuant to Regulation (EC) No 2006/2004 are laid down in Chapter 2 of the Annex to this Decision.

Article 5

Alerts

The rules on alerts are laid down in Chapter 3 of the Annex.

Article 6

Access to information exchanged

Access to information exchanged pursuant to Regulation (EC) No 2006/2004 shall be restricted in accordance with the rules laid down in Chapter 4 of the Annex to this Decision.

Article 7

Languages

The rules on the languages to be used for requests and for the communication of information pursuant to Regulation (EC) No 2006/2004 are laid down in Chapter 5 of the Annex to this Decision.

Article 8

Date of application

This Decision shall apply from 29 December 2006.

Article 9

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 22 December 2006.

For the Commission

Markos KYPRIANOU

Member of the Commission

ANNEX

Rules concerning mutual assistance between competent authorities pursuant to Chapters II and III of Regulation (EC) No 2006/2004

1. CHAPTER 1 — INFORMATION REQUIREMENTS

1.1. *Information fields to be made available to competent authorities in the database standard forms*

The fields to be made available in the different database standard forms may be defined as follows:

- (a) Details of the authorities and officials dealing with intra-Community-infringements
 - (i) competent authority,
 - (ii) single liaison office,
 - (iii) competent official,
- (b) Details of the seller or supplier responsible for an intra-Community infringement or a suspected intra-Community infringement
 - (i) name,
 - (ii) other trading names,
 - (iii) name of parent company, if any,
 - (iv) type of business,
 - (v) address(es),
 - (vi) E-mail address,
 - (vii) telephone number,
 - (viii) fax number,
 - (ix) website,
 - (x) IP address,
 - (xi) name(s) of company director(s), if any.
- (c) Information relating to exchanges of information without requests (alerts) (Article 7 of Regulation (EC) No 2006/2004)
 - (i) type of intra-Community infringement,
 - (ii) status of intra-Community infringement (verified, reasonable suspicion),
 - (iii) legal basis,
 - (iv) short summary,
 - (v) estimated number of consumers likely to be harmed and estimated financial detriment,
 - (vi) any requirement for confidential treatment.
 - (vii) attached documents (in particular relating to statements and other evidence.)
- (d) Information relating to requests for mutual assistance (Articles 6 and 8 of Regulation (EC) No 2006/2004)
 - (i) location of consumers likely to be harmed,
 - (ii) name of product or service,

- (iii) COICOP code, [Classification of Individual Consumption According to Purpose (United Nations statistical methodology, <http://unstats.un.org/unsd/cr/registry/regcst.asp? Cl=5>)]
- (iv) legal basis,
- (v) advertising or sales medium involved,
- (vi) type of intra-Community infringement,
- (vii) status of intra-Community infringement (verified, reasonable suspicion),
- (viii) estimated number of consumers likely to be harmed and estimated financial detriment,
- (ix) proposed time-table for a response,
- (x) attached documents (in particular relating to statements and other evidence.) and any requirement for confidential treatment,
- (xi) indication of the assistance requested,
- (xii) reference to alert (if applicable),
- (xiii) list of requested authorities and Member States concerned,
- (xiv) request for a competent official to participate in investigation (Article 6(3) of Regulation (EC) No 2006/2004).

1.2. *Minimum information to be included in requests for mutual assistance and alerts (Articles 6, 7 and 8 of Regulation (EC) No 2006/2004)*

1.2.1. When issuing a request for mutual assistance or an alert, a competent authority shall supply all information at its disposal that may be useful for other competent authorities to fulfil the request efficiently or ensure a proper follow-up to the alert, and indicate whether any of the information supplied must be given confidential treatment.

1.2.2. When requesting information under Article 6 of Regulation (EC) No 2006/2004, the applicant authority shall at least:

- a) inform the requested authority of the nature of the suspected intra-Community infringement and its legal basis
- b) provide sufficient elements to identify the conduct or practice under investigation;
- c) specify the information requested.

1.2.3. When issuing a request for enforcement measures under Article 8 of Regulation (EC) No 2006/2004, the applicant authority shall provide the requested authority at least with:

- a) an identification of the seller or supplier against whom the measures are requested;
- b) details of the conduct or practice concerned;
- c) legal qualification of the intra-Community infringement under the applicable law, and its legal basis.
- d) evidence of harm to the collective interests of consumers, including if possible an estimate of the number of consumers likely to be harmed.

1.3. *Responses to requests for mutual assistance*

1.3.1. When responding to a request for information under Article 6 of Regulation (EC) No 2006/2004, a requested authority shall supply any information specified by the applicant authority which is necessary to establish whether an intra-Community infringement has occurred or whether there is a reasonable suspicion that it may occur.

1.3.2. When responding to a request for enforcement measures under Article 8 of Regulation (EC) No 2006/2004, the requested authority shall inform the applicant authority of the actions taken or planned and the powers exercised to address the request.

1.3.3. In all cases, the requested authority shall indicate whether any of the information supplied must be given confidential treatment.

1.3.4. If a competent authority refuses to comply with a request as provided for in Article 15(2), (3) and (4) of Regulation (EC) No 2006/2004, it must include in its response a statement of grounds for that refusal.

1.4. *Additional powers granted to competent authorities under national law*

Member States shall inform the Commission and the other Member States, via the discussion forum which shall be made available in the database, of any additional investigation and enforcement powers granted to competent authorities in addition to those set out in Article 4(6) of Regulation (EC) No 2006/2004.

1.5. *Designation of bodies having a legitimate interest in the cessation or prohibition of intra-Community infringements in accordance with Article 8(3) of Regulation (EC) No 2006/2004*

1.5.1. When, in accordance with Article 5(1) of Regulation (EC) No 2006/2004, a Member State communicates to the Commission and the other Member States the identity of a body designated in accordance with the second sentence of Article 4(2) of that Regulation as having a legitimate interest in the cessation or prohibition of intra-Community infringements, it shall specify the investigative and enforcement powers granted to that body.

1.5.2. A requested authority which intends, pursuant to Article 8(3) of Regulation (EC) No 2006/2004, to instruct a body having a legitimate interest in the cessation or prohibition of intra-Community infringements, shall provide the applicant authority with sufficient information about that body to enable the applicant authority to establish that the conditions set out in Article 8(4) are met. It shall also obtain the prior agreement of the applicant authority as regards the instruction of that body, specifying the nature and details of the information communicated by the applicant authority that the requested authority may disclose to that body.

2. CHAPTER 2 — TIME-LIMITS

2.1. *Requests for mutual assistance and responses*

2.1.1. Requested authorities shall respond to requests for mutual assistance from applicant authorities to the best of their ability, making use of all the appropriate investigation and enforcement powers and without delay.

2.1.2. The time-limits for addressing requests for mutual assistance under Articles 6 and 8 of Regulation (EC) No 2006/2004 shall be agreed by the applicant authority and the requested authority on a case-by-case basis, using the database standard forms.

2.1.3. If no agreement can be reached, the requested authority shall issue a response supplying all the relevant information at its disposal and indicating the investigation and enforcement actions taken or planned (including time-limits) no later than fourteen days after the date of receipt of a request via its single liaison office. The requested authority shall update the applicant authority on these actions at least on a monthly basis until:

(a) any relevant information required to establish whether an intra-Community infringement has occurred or to establish whether there is a reasonable suspicion it may occur has been sent to the applicant authority

or

(b) the intra-Community infringement has ceased or the request has proved to be unfounded.

2.1.4. The single liaison office for the requested authority shall forward all the requests it receives via the single liaison office for an applicant authority to the appropriate competent authority as soon as technically possible and in any case no later than two working days after the date of receipt of the request.

2.1.5. The requesting authority shall notify the Commission and remove the information from the database as soon as technically possible and in any case no later than seven days after the closure of the case if, following a request pursuant to Article 6 of Regulation (EC) No 2006/2004:

(a) the information exchanged does not generate an alert or a request pursuant to Article 8,

or

(b) it is established that no intra-Community infringement has taken place.

2.2. Alerts

2.2.1. A competent authority shall issue an alert as soon as technically possible and in any case no later than seven days after it has become aware of an intra-Community infringement, or has established a reasonable suspicion that such an infringement may occur.

2.2.2. A competent authority shall, where an alert proves to be unfounded, withdraw it as soon as technically possible and in any case within seven days. The Commission shall remove all information relating to an unfounded alert and stored in the database as soon as technically possible and in any case no later than seven days after the withdrawal of the alert by the competent authority.

3. CHAPTER 3 — TRANSMISSION OF ALERTS

A competent authority which issues an alert shall transmit it, through the appropriate standard form in the database, to the Commission and to the authorities competent in other Member States for the enforcement of the legislation under which the alert is made. The notifying competent authority shall have sole responsibility for determining which other Member States receive the alert .

4. CHAPTER 4 — ACCESS TO INFORMATION EXCHANGED

4.1. Competent authorities

A competent authority shall be able to access and consult only the information in the database relating to the laws that protect consumers' interests for which it has direct enforcement responsibilities pursuant to the designations transmitted by the Member State under Article 4(1) of Regulation (EC) No 2006/2004.

4.2. Single liaison offices

In carrying out their coordination tasks as defined in particular by Article 9(2) and Article 12(2) and (5) of Regulation (EC) No 2006/2004, single liaison offices shall be able to access information relating to requests for mutual assistance which has not been given confidential treatment.

5. CHAPTER 5 — LANGUAGES TO BE USED FOR REQUESTS FOR MUTUAL ASSISTANCE AND FOR THE COMMUNICATION OF INFORMATION

5.1. The agreements on the use of languages for requests and for the communication of information made between competent authorities under the first sentence of Article 12(4) of Regulation (EC) No 2006/2004 shall be recorded in a table which shall be made available to competent authorities through the database.

5.2. Those agreements shall include a clause permitting a competent authority to propose the use in a specific case of another language in view of the language skills of the competent official concerned.

5.3. The relevant database standard forms include a data field allowing a competent authority to propose to another authority the use of another language.

If no agreement can be reached, the second sentence of Article 12(4) of Regulation (EC) No 2006/2004 shall apply.

DECISION N° 35/2006**of 22 December 2006****of the Joint Committee established under the Agreement on Mutual Recognition between the European Community and the United States of America related to the listing of a Conformity Assessment Body under the Sectoral Annex on Telecommunication Equipment**

(2007/77/EC)

THE JOINT COMMITTEE,

Having regard to the Agreement on Mutual Recognition between the European Community and the United States of America and in particular Article 7 and 14;

Whereas the Joint Committee is to take a decision to list a Conformity Assessment Body or Bodies under a Sectoral Annex;

HAS DECIDED AS FOLLOWS:

1. The Conformity Assessment Body in Attachment A is added to the list of Conformity Assessment Bodies in Section V of the Sectoral Annex on Telecommunication Equipment.
2. The specific scope of listing, in terms of products and conformity assessment procedures, of the Conformity Assessment Body indicated in Attachment A has been agreed by the Parties and will be maintained by them.

This Decision, done in duplicate, shall be signed by representatives of the Joint Committee who are authorized to act on behalf of the Parties for purposes of amending the Agreement. This Decision shall be effective from the date of the later of these signatures.

On behalf of the United States of America

James C. SANFORD

Signed in Washington D.C. on 15 December
2006.

On behalf of the European Community

Andra KOKE

Signed in Brussels on 22 December 2006.

*Attachment A***EC Conformity Assessment Body added to the list of Conformity Assessment Bodies in Section V of the Sectoral Annex on Telecommunication Equipment**

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RECOMMENDATIONS

COMMISSION

COMMISSION RECOMMENDATION

of 22 December 2006

on safe and efficient in-vehicle information and communication systems: update of the European Statement of Principles on human machine interface

(2007/78/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 211 thereof,

- (5) Whereas the Commission adopted a Communication (COM (2006) 59 final) on the i2010 Intelligent Car Initiative of 15 February 2006, and announced this Recommendation as one of the priority actions,

PRESENTS THE UPDATE OF THE 1999 RECOMMENDATION ON HUMAN MACHINE INTERFACE

- (1) Whereas the Commission adopted Recommendation 2000/53/CE ⁽¹⁾ on safe and efficient in-vehicle information and communication systems on 21 December 1999 and whereas the update of this Recommendation is essential to assure safe use of the in-vehicle information systems, taking into account the technological progress.

This Recommendation asks all involved parties, such as the industry, professional organisations related to transport to adhere to the updated European Statement of Principles, and the Member States to monitor their application and use. The updated European Statement of Principles (version 2006) summarises the essential safe design and use aspects to be considered for the human machine interface (HMI) for in-vehicle information and communication systems. This 2006 Recommendation and its Annex attached replace the previous 1999 Recommendation and Annex,

- (2) Whereas further work was carried out by an expert group appointed by the Commission after the publication of the Commission Recommendation, on the expansion of the original principles, explaining in more detail each principle, describing the rationale and giving examples of good practices as well as on the verification procedures, this report on the expansion of principles being published in July 2001.

AND HEREBY RECOMMENDS:

- (3) Whereas the Commission adopted a Communication on Information and Communication Technologies for safe and intelligent vehicles on 15 September 2003, COM (2003) 542 final, including recommendations for human machine interface as one of the priority actions.

1. The European vehicle manufacturing and supply industries, which design and/or provide and/or fit in-vehicle information and communication systems, whether original equipment providers or after sales system providers, including importers and nomadic devices suppliers, should comply with the attached updated European Statement of Principles and should enter into a voluntary agreement on this matter within a period of nine months from the publication of this Recommendation;

- (4) Whereas the joint industry-public sector eSafety Forum established a Working Group on human machine interface, which produced its final report in February 2005, confirming the necessity of updating the 1999 Recommendation;

2. Professional organisations related to transport (e.g. transport companies, vehicle rental companies) should commit to these principles within the same time frame;

3. Member States should monitor activities linked to HMI, disseminate the updated version of the statement of

⁽¹⁾ OJ L 19, 25.1.2000, p. 64.

principles towards all relevant stakeholders, encourage them to adhere to these Principles. Where appropriate, they should discuss and co-ordinate their actions through the Commission, the eSafety Forum or other appropriate forums (nomadic devices forum etc); Member States should perform a continuous evaluation and monitoring of the impact of the European Statement of Principles of 2006 and report to the Commission about the dissemination activities carried out as well as the results of the application

of the 2006 Principles within a period of 18 months from their publication.

Done at Brussels, 22 December 2006.

For the Commission

Viviane REDING

Member of the Commission

ANNEX

UPDATED VERSION OF THE EUROPEAN STATEMENT OF PRINCIPLES ON HUMAN MACHINE INTERFACE (HMI) FOR IN-VEHICLE INFORMATION AND COMMUNICATION SYSTEMS**1. DEFINITION AND OBJECTIVES**

This statement of principles summarises essential safety aspects to be considered for the Human Machine Interface (HMI) for in-vehicle information and communication systems. **This updated text version 2006 replaces the previous one elaborated in 1999.**

These principles promote the introduction of well designed systems into the market, and by taking into account both the potential benefits and associated risks they do not prevent innovation of the industry.

These principles presume that those applying them have technical knowledge of the products as well as access to resources necessary to apply the principles in designing these systems. Considering that the driver's primary task is the safe control of the vehicle in a complex and dynamic traffic environment, **the primary goal of the principles is to fulfil this requirement.**

These principles also take into account the capabilities and constraints of all stakeholders in their efforts in the design, installation and use of in-vehicle information and communications systems. They are applicable to the development process, addressing issues like complexity, product costs and time to market, and in particular take into account small system manufacturers. Since the driver finally decides whether (s)he buys and uses e.g. an integrated navigation system, a nomadic device or a paper map, **the intention is to promote a good HMI design rather than prohibit the inclusion of some functionalities by simplistic pass/fail criteria.**

The principles are not a substitute for any current regulations and standards, which should always be taken into consideration. These principles can be reinforced by national legislation or by individual companies. These principles constitute the minimum set of requirements to be applied.

2. SCOPE

These principles apply primarily to in-vehicle information and communication systems intended for use by the driver while the vehicle is in motion, for example navigation systems, mobile phones and traffic and travel information systems (TTI). Due to a lack of comprehensive research results and scientific proof, they are not intended to apply to systems that are voice controlled or to systems providing vehicle braking stabilization (such as ABS and ESP) or to system functionality providing information, warnings or support that requires immediate driver action (e.g. Collision Mitigation Systems, Night vision) sometimes referred to as Advanced Driver Assistance Systems (ADAS). ADAS are fundamentally different and require additional considerations in terms of Human Machine Interface. However, some of the principles may provide assistance in designing ADAS.

The principles apply to all parts and aspects of all systems that are intended for interface with the driver while driving and also to certain other components. They also have provisions for systems and their functionality that should not be used while driving. In these principles, 'system' refers to the functions and parts, such as displays and controls, which constitute the interface between the in-vehicle system and the driver. The scope of the principles excludes head-up displays and aspects not related to HMI, such as the electrical characteristics, material properties and legal aspects not related to safe use. Some principles make a distinction between system use 'while driving' (also called 'while the vehicle is in motion') and other use. Where no distinction is made, the principles refer only to system use by the driver while driving.

The principles apply specifically to vehicles of class M and N ⁽¹⁾. The principles apply to both portable and permanently installed systems. The principles are intended to apply to systems and functionalities in OEM-, after-market-, and nomadic systems. The principles apply to HMI functionality independent of the degree of integration between systems. In general, a number of industries and organisations are involved in designing, producing and providing parts of such systems and the associated services, including, for example:

- Vehicle manufacturers offering in-vehicle devices with information and communication functionality;
- After-market system and service producers;
- Providers of nomadic devices, intended to be used by a driver while driving;
- Manufacturers of parts enabling the use of nomadic devices by the driver while driving (e.g. cradles, interfaces and connectors);
- Service providers including software providers or broadcasters of information meant to be used by the driver while driving, e.g. traffic, travel and navigation information, radio programmes with traffic information.

3. EXISTING PROVISIONS

The principles are not a substitute for regulations and standards and these should always be taken note of and used.

All standards are subject to revision, and users of this statement of principles should apply the most recent editions of the standards indicated here.

Applicable EC Directives with their subsequent amendments include:

- On the field of vision of motor vehicle drivers: Commission Directive 90/630/EEC of 30 October 1990 ⁽²⁾;
- The interior fittings of motor vehicles (interior parts of the passenger compartment other than the interior rear-view mirrors, layout of controls, the roof or sliding roof, the backrest and rear part of seats): Council Directive 74/60/EEC of 17 December 1973 ⁽³⁾;
- The interior fittings of motor vehicles (identification of controls, tell tales and indicators): Council Directive 78/316/EEC of 21 December 1977 ⁽⁴⁾;
- Council Resolution of 17 December 1998 ⁽⁵⁾ (4) on operating instructions for technical consumer goods;
- Council Directive 92/59/EEC of 29 June 1992 on general product safety ⁽⁶⁾

Economic Committee for Europe (UN/ECE) regulations which are recognised by the Community after its adhesion to the Revised Agreement of 1958 (see Council Decision 97/836/EC of 27.11.1997:

- ECE-R21 of 1 December 1971
- 71/127/EEC — Rearward field of view
- 77/649/EEC — Field of vision of motor vehicles

⁽¹⁾ Classification and definition of power-driven vehicles and trailers: Council Directive 70/156/EEC (as amended by 92/53/EEC), annex 2.

⁽²⁾ OJ L 341, 6.12.1990, p. 20.

⁽³⁾ OJ L 38, 11.2.1974, p. 2.

⁽⁴⁾ OJ L 81, 28.3.1978, p. 3.

⁽⁵⁾ OJ C 411, 31.12.1998, p. 24.

⁽⁶⁾ OJ L 228, 11.8.1992, p. 24.

Standards and standard documents in preparation implicitly referred to in the principles are:

- ISO 3958 Road vehicles — Passenger car driver hand control reach
- ISO (DIS) 11429 Ergonomics — System danger and non-danger signals with sounds and lights.
- ISO 4513 (2003) Road vehicles — Visibility. Method for establishment of eyellipse for driver's eye location
- ISO 15008 (2003): 'Road vehicles — Ergonomic aspects of transport information and control systems — Specifications and compliance procedures for in-vehicle visual presentation'.
- ISO 15005 (2002): 'Road vehicles — Ergonomic aspects of transport information and control systems — Dialogue Management principles and compliance procedures'
- ISO 17287 (2003): 'Road vehicles — Ergonomic aspects of transport information and control systems — Procedure for assessing suitability for use while driving'.
- ISO 4040 (2001): 'Road vehicles — passenger cars — location of hand controls, indicators and tell-tales'.
- ISO 15006 (2004): Road vehicles — Ergonomic aspects of transport information and control systems — Specifications and compliance procedures for in-vehicle auditory presentation.
- ISO/TS16951 (2004): Road Vehicles — Ergonomic aspects of transport information and control systems — Procedure for determining priority of on-board messages presented to drivers.
- ISO 15007-1 (2002): Road vehicles — Measurement of driver visual behaviour with respect to transport information and control systems — Part 1: Definitions & parameters.
- ISO TS 15007-2 (2001): Road vehicles — Measurement of driver visual behaviour with respect to transport information and control systems — Part 2: Equipment and procedures.
- ISO FDIS 16673: Road vehicles — Ergonomic aspects of transport information and control systems — Occlusion method to assess visual distraction
- ISO 2575 (2004) — Road Vehicles — Symbols for Controls, Indications and Telltales
- ISO 7000 (2004) — Graphical symbols for use on equipment — Index and synopsis

4. **EUROPEAN STATEMENT OF PRINCIPLES ON THE DESIGN OF HUMAN-MACHINE INTERFACE (ESOP 2006)**

4.1. **Stakeholders involved in system design and construction**

As described in the scope, the principles are intended to apply to systems and functionalities in OEM-, after-market-, and nomadic (portable) systems. In general, a number of organisations are involved designing, producing and providing elements of such systems and devices, including, for example:

- Vehicle manufacturers offering in-vehicle devices with information and communication functionality;
- After-market system and services producers;
- Providers of nomadic devices, intended to be used by a driver while driving;
- Manufacturers of parts enabling the use of nomadic devices by the driver while driving (e.g. cradles, interfaces and connectors);
- Service providers including software providers or broadcasters of information meant to be used by the driver while driving, e.g. traffic, travel and navigation information, radio programmes with traffic information.

Where systems are provided by a vehicle manufacturer (OEM) it is clear that the manufacturer is responsible for the overall design. In other cases, the 'Product-Responsible Organisation' will include the organisation introducing a product or functionality into the market, part or all of which may have been designed and produced by different parties. Consequently the responsibility may often be shared between different organizations. Where the term 'manufacturer' is used in the following text, this may include several product-responsible organisations.

Generally, it will be clear where the responsibility lies, among manufacturers, suppliers and installers, of applying the principles. Where the responsibility rests with more than one party, those parties are encouraged to use the principles as a starting point to explicitly confirm their respective roles.

The responsibilities of the driver related to safe behaviour while driving and interacting with these systems remain unchanged.

4.2. **General comments**

The need for special skills or training and the suitability of a system for different driver groups is a matter of definition by the manufacturers. Such definitions should be taken into account when considering the application of the principles to a system's HMI.

Where the manufacturer's intention has been clearly stated (such that the driver can reasonably be expected to be aware of it) and the driver subsequently uses the system in a way, which is not intended by the manufacturer, this can be considered as misuse.

The current state of scientific development is not sufficient to link robustly compliance criteria with safety for all the principles. That's why all principles are not linked systematically to standards or already defined and accepted criteria.

Systems designed in accordance with the principles are generally expected to be safer than those that do not take account of them. However, it may be possible to meet the overall design goals even if one or more principles are violated.

4.3. **Principles**

Each principle is followed by an elaboration with the following sections:

Explanation: includes some rationale and further explanation for the principle.

Examples: 'Good' and 'Bad' examples provide additional explanation concerning implementation of the principle.

Application: describes which specific systems or HMI functionality are being addressed by the principle as a necessary first step in determining whether a particular system's HMI is in accordance with the principle.

Verification: provides some information to address the question of whether a system is in accordance with a principle. Where possible, a suitable method is outlined and interpretation of the resulting metric is given:

- Where the result can be expressed as 'Yes/No' this indicates the availability of a clear identification of compliance with a principle;
- In other cases the approach/methods identified do not lead to simple pass/fail criteria but offer the opportunity of increased optimisation of the HMI;
- If regulations are addressed the Base-Directive is mentioned. The Product-responsible organisation has to comply with the current version of this directive.

References: provide additional information which may be of interest in the context of the respective principle.

Since international standards are subject to revision, the version referred to is mentioned.

Standards under revision and draft ISO standards are sometimes given in order to provide additional information for system designers.

4.3.1. Overall design principles

4.3.1.1. Design goal I

The system supports the driver and does not give rise to potentially hazardous behaviour by the driver or other road users.

Explanation:

An important overall requirement can be simply stated as 'Do no harm'. This means that the system should enhance or at least not reduce road safety. The approach taken by this document is to systematically guide a system's designer by principles addressing design relevant aspects like installation, information presentation or interface. This is because the overall effects may not be entirely predictable or measurable since they depend not only on the system design but also on the individual driver and the driving task/traffic situation.

Systems which are not designed with this principle in mind are unlikely to be in accordance with the other principles.

4.3.1.2. Design goal II

The allocation of driver attention while interacting with system displays and controls remains compatible with the attentional demand of the driving situation.

Explanation:

The driver has a limited but variable attentional resource and physical capacity which can be distributed dynamically by the driver between tasks. The resources activated by the driver depend not only on personal factors but may also vary according to his motivation and state. Interfaces (including visual, tactile and auditory) can induce both physical and cognitive workload.

The relevant tasks addressed in this overall design goal are:

the task of driving (controlling the vehicle, participating in traffic flow and reaching a destination). This has an associated attentional demand which varies with the driving situation;

the task of interacting with system displays and controls. Except for very simple systems, the attentional demand of this task will also vary as the system is used.

Reaching this goal requires compatibility between the two tasks and this means that the attentional demand of the system does not cause the available resource to be less than that required to attend properly to the prevailing driving task. This means that the driver needs to be able to anticipate the attentional demand associated with both the driving task and secondary tasks.

The concept of compatibility is preferable compared with a limit on the total amount of interface because:

The concept of task is controversial since the same task can vary substantially in terms of its parameters e.g. duration; moreover a suitable definition of task is not available;

Dependent on the motivation and state of the driver, an interface with displays and controls may have a different effect; this is due to the fact that less workload is not necessarily better;

The relation between the components of interface (complexity, intensity, duration etc.), workload and driving performance is not well enough understood.

Systems which are designed in accordance with the ESoP should be such that the attentional demand of the system can be modified by the driver by choosing to interact (or not), and by choosing when and how to interact. This also means that the driver can anticipate the attentional demand of the interface with the system.

4.3.1.3. Design goal III

The system does not distract or visually entertain the driver.

Explanation:

The aim of this principle is to ensure that the driver is distracted as little as possible by the use of a driver information or communication system while driving such that his/her ability to be in full control of the vehicle is not compromised. This Design Goal is also formulated to highlight the special importance of avoiding distraction caused by visual entertainment.

Visual entertainment may occur by visually displaying images which are attractive (*i.e.* likely to catch the attention) because of their form or content. It is of particular relevance in the driving context because of the importance of vision for safe driving.

4.3.1.4. Design goal IV

The system does not present information to the driver which results in potentially hazardous behaviour by the driver or other road users.

Explanation:

The content of the information should not encourage the driver to engage in behaviour which may increase the risk of an accident while driving. A hazardous behaviour may influence other road user behaviour. An example could be the display of a race-driving-strategy in order to achieve a maximum speed while cornering.

Other road users may be concerned if the hazardous behaviour of the driver occurs when he/she is interacting with them, as well as if the system generates signals perceptible from the exterior which may induce erroneous interpretation by other road users, and possibly dangerous manoeuvres.

4.3.1.5. Design goal V

Interfaces and interface with systems intended to be used in combination by the driver while the vehicle is in motion are consistent and compatible.

Explanation:

All HMI components of individual systems should be designed according to principles for single systems and this will give a minimum level of consistency. However, consistency can still be an issue between individual well-designed products.

System use 'in combination' occurs when more than one system is used to achieve a desired result. This includes parallel use (i.e. use of more than one system at the same time) and serial use when the systems are used one after another. So, when designing a system for use in combination with another (possibly pre-existing system), account should be taken of the existing system. When the functionality is completely different, it may be good design to have a different HMI to avoid confusion.

Consistency involves for example the following design issues:

- Use of common terminology between systems; e.g. 'slow traffic', 'next junction';
- Use of words and/or use of icons to represent concepts or functions; e.g. 'Help', 'Enter';
- Use of colours, icons, sounds, labels (to optimise a balance between similarity and differentiation);
- Physical dialogue channel issues; e.g. single/double-click, timing of response and time-outs, mode of feedback e.g. visual, auditory, tactile (depending on functionality feedback should be different in order to avoid misinterpretation);
- Grouping of concepts and similar menu structures (for related functionalities);
- Overall design of dialogue and order of concepts.

4.3.2. Installation principles

4.3.2.1. Installation principle I

The system should be located and securely fitted in accordance with relevant regulations, standards and manufacturers instructions for installing the system in vehicles.

Explanation:

Manufacturers design products (e.g. systems, holders, functionalities) for an intended use. If suitable means for correct installation (e.g. a holder) are not provided or the manufacturer's installation instructions are not followed, this may cause the system to be used by the driver in a way which was not intended by the manufacturer, and this could have safety consequences.

The system should be located (i.e. physically positioned) within the vehicle during use by the driver in the following ways:

- Fixed within the vehicle;
- Moveable over a pre-determined range (for systems that have an adjustable position by means of cable, stalk or bracket, for example);
- Holder mounted with the intention that the system is used within the holder.

Special attention should be given to the installation of systems in terms of passive safety in order to avoid an increased risk of injury in case of a vehicle crash.

Examples:

Good: A hands-free mobile phone fitted fully in accordance with all required standards, regulations and manufacturers instructions.

Bad: A traffic information display fixed to the dashboard with a poor quality temporary fastening (such as adhesive tape) rather than the holder recommended by the manufacturer.

Applicability:

The principle applies to all in-vehicle systems, and is very important to be considered for after-market systems and nomadic devices.

Verification/Applicable methods:

This principle requires the location and fitting of systems to be undertaken in accordance with:

- Interior fittings of motor vehicles (Council Directive 74/60/EEC of 17 December 1973, ECE-R21 of 1 December 1971 and Council Directive 78/316/EEC of 21 December 1977)
- Instructions provided by the product-responsible organisation (i.e. the formal written instructions provided by the manufacturer)
- Inspection whether the relevant requirements have been taken into account.

Result = Yes/No.

References:

- ISO 4040 (2001) — location of hand controls, indicators and tell-tales.

4.3.2.2. Installation principle II

No part of the system should obstruct the driver's view of the road scene.

Explanation:

Successful performance of the driving task is mainly based on the acquisition of visual information about the local road and traffic environment. Consequently, construction regulations ensure that each road vehicle provides the driver with an adequate external field of view out of the vehicle from the driver's seat. Additional systems must not compromise this basic design provision. This principle is likely to be particularly important for the installation of after-market and nomadic systems.

The 'driver's view' is the mandatory minimum requirement in accordance with EEC Regulations. It should be interpreted as pertaining to the forward view directly through the windscreen, side views and rear view either directly or indirectly.

If the physical position of a component of the system can be modified by the driver and can (as part of its intended range of movement) obstruct the driver's vision, then the driver should be informed, through the system instructions (see section 6) about the use as intended by the manufacturer. If no such information is provided to the driver, then the principle should apply throughout the range of adjustment of the system or its component.

Examples:

Good: A display mounted within the instrument panel such that it can be easily viewed by the driver but does not interfere with the driver field of view requirements.

Bad: A display mounted on a long flexible stalk from the upper surface of the instrument panel which can be adjusted such that the display obscures a substantial part of the external road scene.

Applicability:

The principle applies to all in-vehicle systems, and is very important to be considered for after-market systems and nomadic devices. It does not apply to head-up displays.

Verification/Applicable methods:

When installed in a vehicle no part of the system should be in a physical position such that the driver's view of the road scene is obstructed to such an extent that the Regulations cannot be complied with.

A system is in compliance with this principle if all parts of it are correctly located taking into account:

- 71/127/EEC — Rearward field of view
- 77/649/EEC — Field of vision of motor vehicles

Verification is by inspection or by measurement.

Result = Yes/No.

References:

No additional references.

4.3.2.3. Installation principle III

The system should not obstruct vehicle controls and displays required for the primary driving task.

Explanation:

The aim of this principle is to ensure that the driver's ability to use mandatory displays and controls and other displays and controls required for the primary driving task is not compromised by the physical presence of a system (such as a display). This ensures that the driver's ability to be in full control of the vehicle is not affected by installation of the system.

Obstruction of controls in this context means to prevent operation, or render significantly more difficult to identify, reach and/or operate the relevant controls throughout their intended range of movement.

Obstruction of displays in this context means to render not visible some portion (any portion) of the relevant displays from the drivers' normal seating position.

The required controls and displays are those relevant for undertaking the primary driving task and all those which are mandatory.

Required controls include: accelerator, brake, (clutch, if fitted), steering wheel, gear changer, parking brake, horn, light switches, turn indicators, washers and wipers (all modes and speeds), hazard flashers, de-mister controls.

Required displays include: the speedometer, all warning lights, mandatory control labels and mandatory tell-tales.

Obstruction or impairment of other controls and displays should be balanced against the additional benefits provided by the system.

Examples:

Good: A route-guidance display integrated into the dashboard in a high central position which does not obstruct any other displays or controls.

Bad:

An after-market route guidance system which obstructs the light switches;

A display that covers the hazard flasher control

An additional control on the exterior of the steering wheel rim which could make the steering wheel more difficult to use during cornering.

Applicability:

The principle applies to all in-vehicle systems, and is very important to be considered for after-market systems and nomadic devices.

Verification/Applicable methods:

Verification is by inspection whether the driver can see all displays and controls required for the primary driving task.

Result = Yes/No.

References:

- ISO 4513 (2003) Road Vehicle — Visibility, method for establishment of eyellipse for driver's eye location

4.3.2.4. Installation principle IV

Visual displays should be positioned as close as practicable to the driver's normal line of sight

Explanation:

For a driver to be in full control of the vehicle and aware of the dynamic road scene there is a broad consensus that, apart from brief glances at mirrors or instrumentation, the driver's gaze should be directed towards the road scene. Visual displays positioned close to the normal line of sight reduce the total eyes-off-the-road time relative to those which are positioned further away and maximises the possibility for a driver to use peripheral vision to monitor the road scene for major developments while looking at a display. The further away from the driver's normal line of sight the display is positioned, the more difficult it is to obtain information and the greater the possible impact on driving performance.

It is recommended that the most important or safety critical information be closest to the normal line of sight.

This principle therefore requires the designer/installer to make an explicit, but essentially qualitative, trade-off between practicability and closeness. Important factors include:

- The requirement not to obstruct the road scene (see principle 4.3.2.2);
- The requirement not to obstruct other controls or displays (see principle 4.3.2.3);
- The requirement that the display should not itself be substantially obstructed by, for example, controls such as the steering wheel or gear change lever.

In particular for passenger cars it is recommended that displays containing information relevant for driving and all displays requiring long sequences of interface be placed within approximately 30° downward viewing angle of the driver's normal forward view. For a discussion on long sequences of interface refer to principle 4.3.4.2.

Examples:

Good: A display for navigation in a passenger car is installed within approximately 30° downward viewing angle because the information is related to driving.

Bad: A display for communication, e.g. of a Personal Digital Assistant (PDA) or Phone, is positioned near the gear lever between the front seats in a passenger car in spite of long sequences of interfaces necessary to enter or search for a telephone number.

Applicability:

The principle applies to all in-vehicle systems equipped with visual displays and for situations of use that involve forward vision. Displays that support specific driving conditions such as reversing are a separate issue.

Verification/Applicable methods:

In general, the aim should be the best compromise in allocation of dashboard space, which can be assessed by designers and ergonomics specialists.

References:

- ISO 4513 (2003) Road Vehicle — Visibility, method for establishment of eyellipse for driver's eye location.

4.3.2.5. Installation principle V

Visual displays should be designed and installed to avoid glare and reflections.

Explanation:

Glare and reflections that are likely to make it more difficult to extract information from the display may cause distraction from the driving task or other tasks performed while driving. This is likely to lead to increased driver frustration and annoyance and may evoke behavioural adaptations such as squinting, closing of the eyes for brief periods and head movements to obtain a more comfortable view. All of these effects are likely to reduce driver comfort and, therefore, may compromise road safety to some extent.

Glare is the distracting (and potentially disabling) effect of bright light in an otherwise relatively dark scene which interferes with visual attention and selection. In the in-vehicle context, this can occur in a number of ways:

External light (usually sunlight) falls on the visual display reducing display contrast and makes the information on the screen more difficult to see from the driver's normal viewing position;

The display is itself too bright and causes distraction from the road scene and other in-vehicle displays and controls. This is most likely to be apparent to the driver in low ambient light conditions.

Reflection is the generation of a secondary image of an object as a result of light from the object bouncing off intermediate surfaces. This is relevant in a number of ways:

Light from a light emitting display travels to another surface (or via several surfaces) producing a secondary image of the display screen; for example, on the windscreen. This is most likely to be perceived by the driver when there is high contrast between the secondary image and its background, such as against the windscreen during darkness;

Light from an external source (e.g. the sun, streetlights, or other bright objects) is reflected by the display surface into the driver's eyes (see also glare above).

The effects should be considered during design and installation process. Issues that could be considered include provision of a (manual or automatic) display brightness control, choice of display technology, choice of display surface texture and finish, choice of colour and gloss of surfaces being reflected in the display surface, choice of image polarity, sighting of the display and adjustability, the use of a recess or cowl.

Examples:

Good: A screen with an automatic brightness control which does not produce secondary images on the vehicle's glass and which has a display front surface which can be easily read under all normal lighting conditions.

Bad: A display which is so bright at night that it is significant in the driver's peripheral vision when looking at the forward road-scene and whose information is difficult to read in sunlight because the contrast is so low.

Applicability:

The principle applies to all in-vehicle information and communication systems equipped with visual displays.

Verification/Applicable methods:

The verification should be based upon procedures to determine glare and reflections. Specific criteria depend on the vehicle concept.

References:

- ISO 15008 (2003): Road vehicles — ergonomic aspects of transport information and control systems — specification and compliance procedures for in-vehicle visual presentation.

4.3.3. Information presentation principles

4.3.3.1. Information presentation principle I

Visually displayed information presented at any one time by the system should be designed such that the driver is able to assimilate the relevant information with a few glances which are brief enough not to adversely affect driving.

Explanation:

Visual processing by the driver to take account of the traffic environment forms the basis for completion of vehicle control and manoeuvring tasks. Therefore, demand to detect and acquire visually presented relevant information at any one time should be limited. Increasing the frequency and/or duration of glances required to detect and acquire visually displayed information may increase the risk for potentially dangerous traffic situations caused by driver preoccupation with non-primary driving-related tasks. Relevant information is the portion of all visually displayed information sought by the driver to satisfy a particular need.

Examples:

Good: Easily legible and well structured graphics on a well positioned visual display which allows identification of the relevant menu item with one single glance of 1 second.

Bad: A navigation system which only offers support by a visual display rich in detail, which needs full and lengthy attention of the driver to identify a target on a moving map.

Applicability:

The principle applies to all in-vehicle information and communication systems with visual displays presenting information intended to be viewed by the driver while driving.

Verification/Applicable methods:

Compare design alternatives for the presentation of information: the number and duration of glances needed to detect and acquire relevant information presented at a time should be minimized.

Result: Optimized design of a single screen.

References:

- ISO 15007-1 (2002): Road vehicles — Measurement of driver visual behaviour with respect to transport information and control systems — Part 1: Definitions & parameters.
- ISO TS 15007-2 (2001): Road vehicles — Measurement of driver visual behaviour with respect to transport information and control systems — Part 2: Equipment and procedures.
- ISO 15008 (2003): Road vehicles — ergonomic aspects of transport information and control systems — specification and compliance procedures for in-vehicle visual presentation.
- ISO FDIS 16673: Road vehicles — ergonomic aspects of transport information and control systems — Occlusion method to assess visual distraction

Additional Methods/Scales are under development in ISO TC22/SC13/WG8 for quantification of visual distraction; e.g. revision of ISO 15008, display legibility and TC22/SC13/WG8/AWI on the Lane Change Test, method to measure driver distraction.

4.3.3.2. Information presentation principle II

Internationally and/or nationally agreed standards relating to legibility, audibility, icons, symbols, words, acronyms and/or abbreviations should be used.

Explanation:

Standards related to legibility, audibility and symbols prescribe geometrical and/or physical characteristics for information which is displayed visually and/or aurally and are intended to give information the highest probability of being easily comprehended by drivers in a large range of circumstances and environments.

The continuously increasing number of functions available to the driver makes it necessary to adopt the most common practice in the selection of symbols, icons, abbreviations and words for function identification.

Examples:

Good: Road signs are used on in-vehicle displays to augment traffic information

Bad: Symbols and icons used in a navigation system are unique to a particular manufacturer and are not comprehended by a majority of drivers.

Applicability:

The principle applies to all cues used to identify functionality and functions provided by information or communication systems in a vehicle.

Verification/Applicable methods:

Verification by inspection, whether internationally and/or nationally agreed standards relating to legibility, audibility, icons, symbols, words, acronyms and/or abbreviations are used, taking into account the main relevant standards.

Result = Yes/No.

References:

- ISO 15008 (2003) — Road Vehicles — Traffic Information and Control Systems (TICS) — Ergonomic Aspects of In-Vehicle Information Presentation (under revision)
- ISO 15006 (2004) — Road Vehicles — Traffic Information and Control Systems (TICS) — Auditory Presentation of Information
- ISO 2575 (2004) — Road Vehicles — Symbols for Controls, Indications and Telltales
- ISO 7000 (2004) — Graphical symbols for use on equipment — Index and synopsis

4.3.3.3. Information presentation principle III

Information relevant to the driving task should be accurate and provided in a timely manner.

Explanation:

Information relevant to the driving task should be provided to the driver at the most appropriate moment and be sufficiently accurate to assist the driver in dealing adequately with the situation.

The driving task requires the driver to continuously monitor the environment to select relevant stimuli and to concentrate and focus attention on those stimuli which require an adjustment of his/her behaviour. This adjustment depends on which action is most suitable for the situation and on the goals and priorities of the driver. The actions may involve changing speed, changing lane, warning others, etc.

Correctly timed and accurate information reduces uncertainty by giving valid and clear answers to questions such as: 'What?' 'When?' 'Where?' 'For how long?' etc. The requirement of accuracy and timing of information also implies that it is necessary for the displayed message to match the driver's judgement of the environment. Therefore, information should not conflict with, for instance, road signs. Systems providing ill-timed and/or incorrect information may create safety critical driver distraction and frustration.

Examples:

Good: The distance to the next manoeuvre is provided exactly at the point where the driver needs to know if a manoeuvre is to be undertaken and which manoeuvre it should be.

Bad: Direction instructions from a navigation system are displayed well after the manoeuvre needs to be performed.

Applicability:

The principle applies to all auditory and visual time-critical information from information and communication systems.

Verification/Applicable methods:

Verification by inspection, whether the information provided by the system is sufficiently correct and presented at the expected point of time.

Result: Yes/No.

References:

No additional references.

4.3.3.4. Information presentation principle IV

Information with higher safety relevance should be given higher priority.

Explanation:

The driver may need to perceive and act on safety-relevant information within a short timescale. Such information therefore needs to be presented as rapidly as possible and should not be delayed by more routine information.

Information priority from the point of view of safety-relevance depends on its urgency and criticality (i.e. severity of the consequences if the information is not acted upon). These factors, in turn, also depend on the driving situation as explained in ISO/TS 16951. Where information is generated off-board (from the roadside or remote system) prioritisation cannot take account of the driving situation and only a more generic priority allocation is possible. Where information is derived from autonomous vehicle systems, or where external and on-board information can be combined, the possibility of appreciating the driving situation exists and message priority can be refined.

For off-board information, the dynamic information providers (service providers) should implement an information dissemination strategy which ensures — apart from currency and reliability — transmission priority to messages with highest importance. In-vehicle systems need to recognise incoming safety-relevant messages and treat them accordingly.

Safety relevance of information may not always be easily determined and not all information may be technically available for prioritization.

Examples:

Good: Information concerning manoeuvring around a complex intersection is given priority over an incoming telephone call.

Bad: A high-priority message concerning ice at the current location is prevented from immediate delivery because the information screen is in the process of displaying a message concerning distant traffic congestion.

Applicability:

The principle applies to systems that provide dynamic information (i.e. information that changes as a result of conditions immediately surrounding the vehicle or traffic conditions more generally).

Verification/Applicable methods:

Verification by inspection whether priority of information is taken into account.

Result = Yes/No.

References:

- ISO/TS16951 (2004): Road Vehicles — Ergonomic aspects of transport information and control systems — Procedure for determining priority of on-board messages presented to drivers.

4.3.3.5. Information presentation principle V

System generated sounds, with sound levels that can not be controlled by the driver, should not mask audible warnings from within the vehicle or the outside.

Explanation:

Auditory information at a sound level which is too high may affect driving or road safety by masking significant and important warning sounds concerning road and vehicle safety. In addition, improperly designed sounds might result in driver distraction and annoyance. Therefore, auditory information needs to be designed such that it does not mask warning sounds from the interior or exterior to the driver. Any system, including audio systems, should bear in mind the effect the system could have on the driver before being introduced.

This can be achieved in a number of ways including:

- The sounds produced by the system are not at such a level that warning sounds are likely to be masked;
- The duration of the sounds is sufficiently short that warnings are not missed;
- Intermittent sounds are such that the interval between them is long enough for warnings to be received by the driver.

Examples:

Good: Auditory signals from the system are set at a level that is below the sound level of warnings from within and outside the vehicle.

Bad: An incoming telephone call is at a very high sound level liable to mask warnings, and out of the driver's control.

Applicability:

The principle applies to all audible sounds from information- and communication systems with sound levels that can not be controlled by the driver, either from in-vehicle systems, after-market or nomadic devices, or as a result of information received through communication with the outside world.

Verification/Applicable methods:

Verification by inspection whether warnings are still clearly perceptible while the system produces uncontrollable sound levels.

Result = Yes/No.

References:

- ISO 15006 (2004) — Road Vehicles — Traffic Information and Control Systems (TICS) — Auditory Presentation of Information.

4.3.4. *Interface with displays and controls*

4.3.4.1. Interaction with displays and controls principle I

The driver should always be able to keep at least one hand on the steering wheel while interacting with the system.

Explanation:

This principle is concerned with interfaces which require the driver to provide manual control inputs (e.g. using buttons or knobs).

There are driving situations which require the driver to have precise control of the vehicle's steering and this can be achieved most effectively with both hands on the steering wheel. For other driving situations, one hand on the steering wheel is acceptable as long as the other hand is immediately available for steering if circumstances demand it. That leads to the consideration that handheld devices are not recommended for use whilst driving.

To be in accord with this Principle, the system should be designed such that only one hand is needed away from the steering wheel to interact with the system leaving one hand remaining on the steering wheel. In addition, if one hand must be removed from the steering wheel to undertake the interface, the other hand should not simultaneously be needed for interface (e.g. for operating fingertip controls).

Examples:

Good: A control device that is securely mounted in a conveniently positioned holder and can be used one-handed without removal from the holder.

Bad: An unfixed control device that the driver needs to hold in his hand while interacting.

Applicability:

All information and communications systems.

Verification/Applicable methods:

Verification by inspection whether the driver can operate the system with only one hand.

Result = Yes/No.

References:

No additional references.

4.3.4.2. Interaction with displays and controls principle II

The system should not require long and uninterruptible sequences of manual-visual interfaces. If the sequence is short, it may be uninterruptible.

Explanation:

The principle allows for uninterruptible sequences of interfaces as long as they are short whereas long sequence of interfaces should be interruptible by the driver. This means that the system should not delete any driver input during interruption unless the sequence of interfaces is short or a sufficiently large time-out period has passed.

If a driver is aware that a sequence of interfaces is 'interruptible', there will be a greater tendency to attend to developing traffic situations in the knowledge that the system interface can be completed when the traffic situation has been attended to.

On the other hand an interface may be uninterruptible if it is short in order to avoid an additional input for returning the system's state to normal. A well established example is a two- or three-step interface for changing the sound settings of a conventional radio.

Examples:

Good: A sequence of interfaces for looking up traffic information can be interrupted without the system changing its state.

Only a few of the 'short-sequence-interfaces', 3 button presses or less, have a 10-second-time-out period.

Bad: Key presses when entering a telephone number must not be more than 5 seconds apart or all previously entered numbers are cancelled.

Applicability:

The principle applies to systems with manual-visual sequences of interfaces, i.e. the function requires more than one input (by inspection). It does not apply to speech-based systems.

Verification/Applicable methods:

1. Analyse whether the sequence of interfaces can be considered as short taking into account the following dimensions of an interface:

- the number of individual control inputs (e.g. less than 4-5 button presses);
- the complexity of the interface (e.g. less than 2 menu changes);
- the time to make the control inputs;
- the visual intensity of the interface.

2. Inspection whether system state changes when interrupting those sequences of interfaces identified to be long by step 1.

Result: Yes/No.

References:

- Visual intensity of interface: see ISO FDIS 16673 on occlusion.

4.3.4.3. Interaction with displays and controls principle III

The driver should be able to resume an interrupted sequence of interfaces with the system at the point of interruption or at another logical point.

Explanation:

If partly entered data disappears when an input sequence is interrupted, the driver may be incited to achieve the full sequence even if the driving situation requires full attention.

The principle requires that the driver is given the possibility of continuing an interrupted sequence of interfaces (with no need to restart it) either from the point of interruption, or from another previously completed step.

When the driver resumes the sequence, it may happen that some events have made the point of interruption no longer relevant. In such cases, the logical point provided by the system will simplify the task and lessen the workload.

Examples:

Good: The driver can interrupt entering a phone number, look for several seconds at the road scene and then complete the partly entered number.

Bad: When the driver is reading a list of traffic messages and interrupts viewing half way through the list, the system cancels the list after a short time-out period. Consequently the driver needs to 'call' the list again in order to resume reading.

Applicability:

All information and communication systems with sequences of interfaces.

Verification/Applicable methods:

Inspection whether the system state changes after interrupting a sequence of interfaces.

Result = Yes/No.

If no, check/assess that the resuming point is logical. Verification of this requires assessment and judgement

References:

No additional references.

4.3.4.4. Interaction with displays and controls principle IV

The driver should be able to control the pace of interface with the system. In particular the system should not require the driver to make time-critical responses when providing inputs to the system.

Explanation:

Interface with the system refers here to making input by a control action, or by voice, into the system, either at the driver's initiative or as a response to displayed information initiated by the system itself. The provision of an appropriate response usually requires the driver to perceive and process information before deciding on the correct action. This pre-supposes that the situation develops such that the driver has sufficient time and mental resources available. As systems are not actually available which can predict the level of driver workload in a continuous and reliable manner, for the sake of safety and convenience it should be for the driver alone to decide when he/she is ready to respond to the system.

Time critical responses are responses which must be made by the driver within a short imposed time window. The driver is able to control the pace if he/she always remains in command of the time before which an input must be provided and the time for which the output is displayed.

Exceptions:

If the information displayed is directly related to the immediate driving situation (e.g. the precise speed of the vehicle, the distance to the next turn — which determines the time for which a displayed route direction is valid, etc.);

If the system provides assistance to help the driver to escape from hazards or avoid mistakes and requires the driver to react within a specific time;

The second click on an input device, which requires a double click, as a specific signal is acceptable;

Inputs provided by the same control giving different results depending on the duration of the control activation (e.g. a button kept pressed for several seconds for radio station storage) are not within the scope of this principle.

Examples:

Good: The driver can choose to listen to incoming touristic messages when the situation permits and messages are not automatically presented to the driver when they arrive.

Bad: Confirmation or rejection of a re-routing proposal of a navigation system due to traffic problems is available only for a few seconds before re-routing automatically starts.

Applicability:

Systems which provide information not directly related to the immediate driving situation. (Compare exceptions under explanation)

Verification/Applicable methods:

Inspection, whether the driver can interact with the system at his own pace, i.e. can he decide when to provide an input and how long information is displayed?

Result = Yes/No

References:

No additional references.

4.3.4.5. Interaction with displays and controls principle V

System controls should be designed such that they can be operated without adverse impact on the primary driving controls.

Explanation:

This principle addresses the relationship between the primary driving controls and the system controls in order to avoid an unintended interference of operation. This means that the location, kinematics, control forces and control travel of a system control should be designed such that its operation does neither hinder an intended nor facilitate an unintended primary control input.

Examples:

Good: The most frequently used controls of the system are located within fingertip reach from the steering wheel rim.

Bad: A rotary control with concentric axis on the steering wheel, which requires a momentum for operation that may also induce a change in steering angle.

Applicability:

All systems intended to be used while driving, especially nomadic devices and aftermarket systems.

Verification/Applicable methods:

Verification by inspection whether system operation interferes with operation of primary driving controls resulting in an unintended effect on vehicle motion.

Result = Yes/No.

References:

ISO 4040 (2001) Road vehicles — Location of hand controls, indicators and tell-tales.

4.3.4.6. Interaction with displays and controls principle VI

The driver should have control of the loudness of auditory information where there is likelihood of distraction.

Explanation:

To have control of auditory information means that the driver can adjust the volume and mute the sound to a virtually unperceivable level.

Distraction is the capture of significant driver attention by stimulations which can arise from non driving-relevant information, or from driving-relevant information presented in such a way that the stimulation attracts more driver attention than needed. This undesirable capture of driver attention may be caused by the frequency of the stimulus, its duration, its intensity and, more generally, by its irrelevance to the driving task and may subsequently cause irritation.

Since some important information may have to be conveyed to the driver while the sound is off or while the sound level has been turned down to an inaudible level, the system may provide non-auditory information on the system's state.

Examples:

Good: The driver may control the 'incoming phone call' acoustic signal and select a mode where only a visual signal is displayed.

Bad: An obsolete traffic message is repeated many times and cannot be switched off.

Applicability:

All systems which provide non-safety relevant auditory information. Systems providing warnings related to the driving task are excluded.

Verification/Applicable methods:

Inspection whether the system's auditory output can be switched off and on, or whether its loudness can be adjusted by the driver down to a virtually muted level.

Result = Yes/No.

References:

ISO 15006 (2004): Road vehicles — Ergonomic aspects of transport information and control systems — Specifications and compliance procedures for in-vehicle auditory presentation.

4.3.4.7. Interaction with displays and controls principle VII

The system's response (e.g. feedback, confirmation) following driver input should be timely and clearly perceptible.

Explanation:

The system's response applies at two levels:

- The control activation feedback level, e.g. button displacement, auditory beep;
- The dialogue level, which is the system's response to the driver's input, e.g. recommended route.

The system's response is timely if it is perceived as quite instantaneous. For control activation feedback timing should be from the moment at which the system recognises each driver input. For the dialogue level response (which may be either the requested information, or an indication that processing is underway) the timing should be from the end of the driver's input.

When the system needs significant processing time, some signal should be displayed to inform the driver that the system has recognised the input and is preparing the requested response.

The systems response is clearly perceptible if it is obvious for the driver that a change has occurred in the system and that this change is the consequence of the input.

A system which reacts as expected by the driver contributes to the reliability of the driver-system interface. Any delayed, ambiguous or uncertain system response may be misinterpreted, may be taken as an error by the system or by the driver, and may lead to the driver making a second input.

Uncertainty about whether input has been completed also reduces driver attention to the road scene.

Examples:

Good: A message 'BUSY' is displayed immediately following a driver request to change the area shown on a map.

Bad: The last RDS message displayed on driver request differs only from the previous one by one item: the number of km. This item is not enhanced, which creates doubt about whether the input has been acknowledged by the system or not.

Applicability:

All information and communication systems with manual input.

Systems controlled by voice are not currently considered as within the scope of this principle because the nature and structure of speech is such that mid-sentence pauses can be significant. There is insufficient experience to properly define 'timely' for voice controlled systems at this time.

Verification/Applicable methods:

Verification by measurement of system response time: The system should respond quickly upon a manual control input or display a 'system busy' message.

Result = Yes/No.

References:

No additional references.

4.3.4.8. Interface with displays and control principle VIII

Systems providing non-safety related dynamic visual information should be capable of being switched into a mode where that information is not provided to the driver.

Explanation:

Dynamic visual information is visual information which changes as a result of system initiation. Non-safety related information is information which is not relevant to the driver in avoiding or reducing the risk of an immediate or imminent hazardous situation.

Examples of non-safety related information include navigation map, freight and fleet data, banking services.

Since an unacceptable distraction from the driving task may be caused by a dynamic presentation of non-safety related information the driver should be able to switch the information off.

Examples:

Good: The driver can select from a menu whether non-safety related dynamic visual information is displayed or not.

Bad: A navigation map, which is updated every second, cannot be switched off without losing complete guidance support.

Applicability:

Information and Communication systems providing non-safety related dynamic visual information.

Verification/Applicable methods:

Inspection whether the system can be switched into a mode where non-safety related dynamic visual information is not provided to the driver.

Result = Yes/No.

References:

No additional references.

4.3.5. System behaviour principles

4.3.5.1. System behaviour principle I

While the vehicle is in motion, visual information not related to driving that is likely to distract the driver significantly should be automatically disabled, or presented in such a way that the driver cannot see it.

Explanation:

This principle emphasises the importance of the visual modality for safe driving and seeks to limit visual information from within the vehicle which can provide a distraction from the primary driving task. Likelihood of significant distraction refers to modes of presentation where the information has a dynamic and unpredictable component such that the entirety of information presented cannot be obtained by the driver with a few brief glances (e.g. TV, video and automatically scrolling images and text).

One example is automatically scrolling images and text that cover a variety of forms of dynamic presentation where the driver is not able to pace the presentation and where the entire information is not available at any one time. Any other specific modes of presentation, e.g. 'Internet pages', should be examined within the context of these examples. Scrolling lists under the control of the driver, such as navigation system destinations, are not within the scope of this principle as the driver can always interrupt and resume the interface.

Even after a vehicle ceases motion, it is recommended that a time delay of a few seconds be included before one of the visual presentation modes covered by this principle is activated. This deals, at least partially, with the situation of divided attention of the driver in 'stop-and-go' traffic conditions.

Examples:

Good: A TV picture which goes blank when the vehicle is in motion and does not re-appear immediately when the vehicle stops.

Bad: A passenger entertainment system which can be seen by the driver while the vehicle is in motion.

Applicability:

This principle refers to visual information only which is not related to driving. Therefore it does not apply to non-visual information, like tonal or verbal information, or to visual information related to driving.

Verification/Applicable methods:

Verification by inspection whether information which is not intended to be seen by the driver while the vehicle is in motion is not shown or cannot be seen by the driver.

Result = Yes/No

References:

- ISO 15005 (2002) 'Road vehicles — Ergonomic aspects of transport information and control systems — Dialogue Management principles and compliance procedures' (2002);
- ISO 4513 (2003) Road Vehicle — Visibility, method for establishment of eyellipse for driver's eye location.

4.3.5.2. System behaviour principle II

The behaviour of the system should not adversely interfere with displays or controls required for the primary driving task and for road safety.

Explanation:

This principle is intended to ensure that the driver's ability to be in full control of the vehicle is not affected (in a way which decreases safety) by the behaviour of the information and communication system during normal operation or failure. This means that the system should not override information or controls relevant for the safe operation of the vehicle. In this context, interference is any influence or interface which modifies the performance, characteristics or behaviour, of existing displays or controls.

Adverse interference with displays or controls results in an overall impairment of performance (from that intended) of the display or control. Examples include changes to mandatory displays or controls. In addition, the behaviour of a system should not obstruct or render inoperative other systems which are specifically intended as safety systems.

Examples:

Good: On a multipurpose display, navigation directions are given in a way that the speedometer always remains easily readable.

Bad: On a multipurpose display, mandatory information is overlaid by radio station identification information.

Applicability:

Refers to systems which can be reasonably foreseen to induce display and control interference.

Verification/Applicable methods:

Verification by inspection whether the system's behaviour does not interfere with the use of displays and controls required for the primary task of driving.

Result = Yes/No.

References:

— ISO 4040 (2001): 'Road vehicles — passenger cars — location of hand controls, indicators and tell-tales'.

4.3.5.3. System behaviour principle III

System functions not intended to be used by the driver while driving should be made impossible to interact with while the vehicle is in motion, or, as a less preferred option, clear warnings should be provided against the unintended use.

Explanation:

This principle seeks to ensure clarity, particularly for the driver, in terms of the manufacturer's intention for use of the system. If this principle is complied with, subsequent use of the system not within the envelope of intended use can be considered as misuse.

'Impossible' in this context means that the designated system function is not operable by the driver during normal use or during reasonably foreseeable misuse. In this context, it would not be reasonable for a manufacturer to anticipate that a driver would undertake sophisticated technical measures to defeat the manufacturer's intentions. The manufacturer's rationale may be based on regulation or their own judgement.

A clear warning gives information or advice about the negative consequences of a situation or action in sufficient detail. The warning is available in such a way or form that the driver can readily perceive it. It can be written information or an automatic display by the system. Reasonable drivers should be in no doubt concerning the use of the system intended by the manufacturer after taking account of the clear warning.

There are a number of ways of conveying warnings. A continuously displayed warning is one option. If the warning is not continuously displayed, then it should remain available for a sufficient duration to ensure that the driver has the opportunity to become aware of it. One suitable solution is for the driver to acknowledge the warning by pressing a button.

Examples:

Good: When the vehicle starts to move, the driver's interface with an internet website is cancelled and a message 'not available while driving' is displayed. When the vehicle comes to a full stop, the driver can resume the interface.

Bad: A television facility is designated as an unavailable function while the vehicle is in motion as detected by a hand-brake position sensor. The sensor on the hand brake can be deactivated by a partially engaged hand brake. (This is an example of misuse which is reasonably foreseeable and should, therefore, have been designed out, or clear warnings provided.)

Applicability:

This principle applies only to system functions intended by the manufacturer not to be used by the driver while driving.

Verification/Applicable methods:

Verification by inspection whether system functionality not intended to be used while driving is inaccessible by the driver while the vehicle is in motion (this is the preferred option) or a clear warning is provided to the driver.

Result = Yes/No.

References:

- ISO 15005 (2002): 'Road vehicles — Ergonomic aspects of transport information and control systems — Dialogue Management principles and compliance procedures';
- ISO 17287 (2003): 'Road vehicles — Ergonomic aspects of transport information and control systems — Procedure for assessing suitability for use while driving'.

4.3.5.4. System behaviour principle IV

Information should be presented to the driver about current status, and any malfunction within the system that is likely to have an impact on safety.

Explanation:

There can be safety implications when there is a divergence between the actual function of a system and the driver's reasonable expectations based on previous information and/or experience. Therefore a change in status or a malfunction which modifies system performance needs to be made apparent to the driver.

The information to be presented should be designed to be readily perceived by the driver (i.e. easily understood and meaningful) in terms of the consequences of the current status or system malfunction, particularly on vehicle control and manoeuvring with respect to other traffic and the road infrastructure.

Examples:

Good: An in-vehicle speed advice system informs the driver that the system is unable to provide dynamic information rather than continuing to show the prevailing inter-urban speed even on entry to an urban area.

Bad: A route guidance system displays the information 'Illegal Entry Mode 31' before each turn instruction. The implications of this message are not readily perceived by the driver.

Applicability:

This principle applies only to information about status and malfunctions of information and communication systems which are likely to have an impact on safety.

Verification/Applicable methods:

Verification by inspection whether information is presented to the driver in an appropriate way about status and malfunction of the system which is likely to have an impact on safety.

Result = Yes/No.

References:

- ISO 15008 (2003): 'Road vehicles — Ergonomic aspects of transport information and control systems — Specifications and compliance procedures for in-vehicle visual presentation'.
- ISO 15005 (2002): 'Road vehicles — Ergonomic aspects of transport information and control systems — Dialogue Management principles and compliance procedures'.

4.3.6. *Information about the system*

4.3.6.1. Information about the system principle I

The system should have adequate instructions for the driver covering use and relevant aspects of installation and maintenance.

Explanation:

This principle aims to ensure that instructions are available to as many drivers as possible so that they can easily become aware of the capabilities and limitations of the system, its context of use, proper installation and maintenance. Drivers should rarely need to seek information beyond that provided in the instructions.

Adequate instructions are sufficient for the purpose of the driver that is reasonable for the manufacturer to anticipate. This will depend on the intended use of the system (functionality, context etc.). One indication of adequacy is the size and quality of any text or diagrams. For example, print is not expected to be smudged or in a font style which is too small or difficult to read. For written instructions 'adequate' relates to the physical media of presentation. For example, printed material should be on paper (or other material) providing a reasonable durability and the printing should be permanent on that material. Instructions which are only on packaging material are not considered adequate as packaging is likely to be discarded rather than being passed to subsequent owners. In the case that instructions are only available in form of 'help functions' these should be designed in a way that allows their operation without prior reading of written material.

Examples:

Good: Good quality printed colour manual on A5 pages with text and illustrations which fits within the glove box.

Bad: No instructions; sketchy instructions just on the packaging material; instructions on poor quality paper; instructions that are so small that they can be easily mislaid.

Applicability:

This principle applies to system instructions in all forms.

This principle refers to system instructions intended for the driver, not a full workshop manual as might be required by garage or maintenance institutions.

The principle applies to all aspects of systems which it is reasonable for the manufacturer to anticipate that drivers will require at some time within the expected life of the system. The principle excludes aspects of systems specifically designated by the manufacturer as not intended for use while driving.

Verification/Applicable methods:

Verification requires assessment and judgement specifically taking into account the system's functionality and the intended user groups.

4.3.6.2. Information about the system principle II

System instructions should be correct and simple.

Explanation:

Design of user instructions is an HMI issue in itself. Instructions are typically ignored by drivers and this is exacerbated by poor design of the instructions. This principle is intended to promote high acceptance of instructions by drivers.

Instructions should be factually accurate in all important aspects. Each element of the instructions (group of words, diagram, function-described etc.) should be correct for the actual system to which it relates.

Simple has to be interpreted in the context of the system being described and will vary with the complexity and functionality of the system. The instructions should be unambiguous and easy to understand, if possible by all members of the intended user population (e.g. documents in 'Plain Language'). Instructions should not be overly technical and should use user-oriented language. It is important that the instructions are simple even if the system is complex.

Examples:

Good: Good examples might be expected to have some of the following features: well presented manual with factually accurate text and diagrams, contents page, page numbers, good use of colour, written in a plain language style using common words. Good Index. Use of different fonts, italics, bold, underlines etc. to distinguish portions of the text.

Bad: Instructions which refer to a previous model with different functions and controls.

Applicability:

This principle applies to system instructions in all forms.

Verification/Applicable methods:

Assessment of correctness is a matter of comparison between the actual system and the system instructions. Assessment of simplicity is a matter of judgement taking driver knowledge and expectations into account.

A system instruction can conform with this principle even if small errors are present as long as these can be shown to be unimportant and are not too numerous.

Verification requires assessment and judgement.

4.3.6.3. Information about the system principle III

System instructions should be in languages or forms designed to be understood by the intended group of drivers.

Explanation:

The aim of this principle is to ensure that instructions are of use to as many drivers as possible and that drivers are aware of the capabilities and limitations of the system, its context of use etc.

Different forms of instructions may exist which could be presented in different modalities: Auditory instructions may be spoken or presented by noises or earcons. Visually presented information includes diagrams, photographs, highlighting of the next element, programmed tutorials etc.

Spoken instructions and written instructions (either printed or within a system) will be in one or a number of languages (e.g. English, Finnish etc.)

This principle requires that when instructions are being devised, consideration is given to the intended and most likely driver population and that instructions are designed which can reasonably be expected to be understood and used by as many drivers as possible.

Manufacturers should consider the driver population and the likely and intended use of the system as well as the native languages and other languages spoken and read. Published statistics on language proficiency by country could be used as reference. At minimum, the majority language of the country in which the system is sold should be considered. Diagrams often provide additional clarity. Where used these should follow accepted stereotypes and conventions for the intended population.

Examples:

Good: For a system sold in Sweden, instructions are formulated in easily understandable Swedish and incorporate pictorial help at relevant passages.

Bad: Written instructions (without diagrams or photographs) automatically translated from Japanese (unedited) for a system presented for sale in the European market.

Applicability:

This principle applies to instructions in all forms.

Verification/Applicable methods:

Verification requires assessment and judgement taking into account the system's functionality and the intended user groups.

4.3.6.4. Information about the system principle IV

The instructions should clearly state which functions of the system are intended to be used by the driver while driving and those which are not.

Explanation:

Instructions that are in accord with this principle allow the driver the opportunity to be fully aware of the use of the system intended by the manufacturer and to make clear the responsibilities in the case where the driver uses the system beyond the manufacturer's intentions. Functions which are specifically not intended by the manufacturer to be used by the driver while driving should be explicitly designated as such whether disabled while the vehicle is in motion or not.

After becoming aware of the instructions, reasonable drivers should be in no doubt about which functions of the system have been designed to be used by the driver while driving (i.e. the intended use of the system). They should also be in no doubt about those functions which have not been designed for use while driving.

A specific recommendation is that if drivers need to equip themselves before using a hands-free communication system, they should be instructed to do so while the vehicle is not in motion.

Examples:

Good: Instructions for a mobile phone which states that the hand-set is not intended for use in a moving vehicle (and the hand-set is disabled and switches to hands free microphone/speaker when the vehicle is in motion).

Bad: A feature-rich driver information and communications system which has additional functionality for use by a passenger, or driver while stationary, but whose instructions make no clear distinction concerning the features intended for use by the driver while driving.

Applicability:

This principle applies to instructions in all forms.

Verification/Applicable methods:

Verification is by inspection.

Result = Yes/No.

4.3.6.5. Information about the system principle V

Product information should be designed to accurately convey the system functionality.

Explanation:

The aim of this principle is to encourage good design of all product information and to assist potential or current user of the system in appreciating the benefits and limitations of the system.

All product information should be factually correct and presented transparently and without ambiguity. Information does not have to be comprehensive to be accurate.

Functionality is concerned with what the system does and, by implication, the benefits that the functionality provides to the driver. Functionality should distinguish between that which is designed to be used by the driver while driving and that which is not; i.e. the information should not claim or imply that a function which has not been designed to be used while driving can be so used. The product information should make it clear if additional software or hardware is required (other than that with the base model) for specific functionality.

This principle is also in line with consumer protection requirements, EC Regulations and existing codes concerning advertising and all product information should conform to the report on advertising.

Examples:

Good: A communications system which is not designed to store telephone numbers while driving provides the information that 'pre-stored numbers can be selected using a single button'.

Bad: The same communications system provides the information 'Telephone numbers can be stored for later use' adjacent to a picture of a driver and vehicle in motion. This association implies that number storage is designed for use while driving.

Applicability:

This principle refers to product information intended for the driver, not a full workshop manual as might be required by garage or maintenance institutions.

Verification/Applicable methods:

Verification requires assessment and judgement taking into account the system's functionality and the intended user groups.

References:

- Advertising in the context of road safety. Final Report VII/671/1995, High Level Working Party of Representatives of the Government of the Member States.

4.3.6.6. Information about the system principle VI

Product information should make it clear if special skills are required to use the system as intended by the manufacturer or if the product is unsuitable for particular users.

Explanation:

This principle is intended to ensure that the design population intended by the manufacturer is made clear to potential and actual users of the system. The normal presumption is that a system can be used by all drivers. However, initial training may be required; for example, for systems designed for specialist professional use. Although all drivers are required to have a minimum level of (far) vision, other capabilities may vary considerably and this includes the capabilities of drivers with special needs.

This principle is also designed to encourage compliance with consumer protection requirements, EC Regulations and existing codes concerning advertising.

Product information refers to any information that the driver has access to concerning the system. It includes system instructions, technical specifications, promotional materials, packaging etc. However, full workshop and technical manuals are excluded from the scope of this principle.

The need for special skills and the unsuitability for particular user groups are matters for definition by the manufacturers. If any special skill requirement or initial training is envisaged by the manufacturer, then all product information should make this clear. Similarly, any restriction on use intended by the manufacturer should be described in the product information.

Examples:

Good: The product information makes it clear that routing instructions are provided exclusively using the auditory modality and the system is therefore unsuitable for drivers with a hearing impairment.

Bad: A voice input system only works reliably with deep male voices, but this limitation is not made clear in the product information.

Applicability:

This principle refers to product information intended for the driver, not a full workshop manual as might be required by garage or maintenance institutions.

Verification/Applicable methods:

Verification is by inspection.

Result = Yes/No.

4.3.6.7. Information about the system principle VII

Representations of system use (e.g. descriptions, photographs and sketches) should neither create unrealistic expectations on the part of potential users nor encourage unsafe use

Explanation:

The aim of this principle is to assist the driver in appreciating the functionality, benefits and limitations of the system before (and during) use. It is also intended to promote road safety and compliance with existing traffic regulations and codes of road and vehicle use as well as consumer protection requirements, EC Regulations and existing codes concerning advertising.

Unrealistic expectations are expectations held by reasonable potential users (based on their own knowledge and experience and any product information available) which are false, partial, too high, or overly general.

Unsafe use covers a range of behaviours but includes any behaviour which is in conflict with the road code of the EC Member States where the system is used.

Examples:

Good: Photographs of the system being used as intended by the manufacturer and following all relevant codes and Regulations.

Bad: A photograph showing a hand-held telephone being used while driving.

Applicability:

This applies to all representations of system use included those provided by the manufacturer in instruction manuals (diagrams etc.), photographs, films, computer animations, sound clips and any form of product information or advertising that users or potential users of the system may be exposed to.

Verification/Applicable methods:

Verification requires assessment and judgement taking into account the system's functionality and the intended user groups.

5. RECOMMENDATIONS ON SAFE USE (RSU)

5.1. Stakeholders involved in system use

The driver can be supported in the safe operation of in-vehicle systems while driving by:

Making individual system design as good as possible (installation, information presentation, interface, system behaviour, user documentation);

Making other aspects of the context of use as benign as possible. These non-system design aspects of the context of use can be called the 'Human Machine Environment'.

In the same way that the principles in the ESoP 2006 have been formulated to inform and influence those organisations responsible for (or contributing to) system design and construction, the use recommendations here in the RSU have been formulated to inform and influence those organisations that are responsible for (or contribute to) the human-machine environment of system use. This environment includes:

- The combined use of systems to complete a task;
- The knowledge and skill of the driver (in terms of the systems and tasks);
- The driving task/situation;
- The social environment (including time pressure).

For a professional driver, this environment also includes:

- Tasks that are required as part of the job (in addition to the driving task);
- Company instructions and practices;
- Principles are presented relevant for Employers, Point-of-sale, Vehicle Hire Companies and drivers themselves.

5.2. Recommendations

5.2.1. Recommendations on influencing use

5.2.1.1. Recommendation on influencing use I

Employers should ensure that all in-vehicle information systems are maintained in accordance with the manufacturer's instructions.

Explanation:

It is expected that the product-responsible organisation will, according to ESoP principle 4.3.6.1, produce instructions concerning how the information systems should be maintained (physical issues, hardware, replaceable parts, software and software updates etc.)

The employer should ensure (by direct action, contract or instruction) that all recommended maintenance actions are carried out. This is to help ensure that the product supports the driver as much as possible.

Examples:

Good: The route guidance system's map CD is updated regularly (e.g. annually) as recommended by the manufacturer.

Bad: The employer has no records of their vehicles' information systems and undertakes no maintenance. As a result digital maps become progressively out-dated.

Applicability:

The recommendation applies to in-vehicle information and communication systems that, based on the product responsible organisation's recommendations, require maintenance.

Verification/Applicable methods:

The employer should maintain a permanent record of maintenance actions. These records should be in accordance with the manufacturer's instructions.

5.2.1.2. Recommendation on influencing use II

Employer's procedures and incentive schemes should not cause or encourage system misuse. There should be a clear distinction between systems or functions that are intended (by the employer) to be used while driving and those that are not.

Explanation:

Employers are expected to have procedures concerning the conduct of their employees. Those related to use of in-vehicle information and communication systems should support safe driving practice. Therefore, the procedures should discourage listening to, or reading, complex information while driving. They should not put the employee in a position where they are required to make difficult business decisions 'live' on the phone.

Similarly, company reward (incentive) or punishment schemes should not encourage system misuse by implicitly encouraging time saving by inappropriate use of systems while driving.

For each system, the employer should make it clear, by specific written instructions and procedures, whether a system (or functions of a system) may be used while driving or whether it is not permitted. This removes the situation where individual drivers make personal (and often not well-founded) decisions concerning system use.

Where multiple (non-integrated) systems are available to drivers, restrictions for use of multiple systems should be documented (e.g. do not use system A simultaneously with system B while driving).

Examples:

Good: Company policy forbids all mobile phone use while driving

Bad: The company reward scheme is related to the number of deliveries completed in a fixed time period and this encourages use of a system not designed for use while driving to be so used.

Applicability:

The recommendation applies where there is an employer-employee relationship, where driving is part of the task, and where the information systems are supplied by the employer.

Verification/Applicable methods:

Clear permanent instructions are provided to the drivers that list any systems or functions of a system that should not be used simultaneously with driving;

The employer periodically checks the employee's knowledge and understanding of company procedures and which functions or systems should not be used while driving.

5.2.1.3. Recommendation on influencing use III

Adequate training should be given on all in-vehicle systems that drivers are required to use by employers while driving. Employers should ensure that employees can use the systems without endangering themselves or other road users.

Explanation:

The recommendation requires employers to identify which information systems their drivers need to use and to provide training such that recommendations for safe use are fully explained to them. It also requires some assessment of whether, in practice, each employee can undertake the dual task of system use and safe driving at the same time.

The need for this recommendation arises from the different physical and cognitive abilities of drivers and the need to assess, on an individual basis, that they are capable of undertaking the required job. The job in this case involves driving and simultaneous use of an information or communication system. The rationale is that training improves performance and safety.

Where multiple (non-integrated) systems are involved, training and documentation should describe how tasks can be achieved using multiple systems; training on individual systems is not a complete solution.

Note that the driver will always be expected to attend to safe driving as the primary task (as required by the 1968 Vienna Convention) and may, therefore, abandon or suspend use of an in-vehicle information or communications system as external circumstances require.

A relevant EC directive exists:

Council regulation 3820/85/EEC (harmonization of certain social legislation relating to road transport) — last amended on 15 July 2003 by the European Parliament (2003/59/EC) — on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers.

Examples:

Good: The Employer has an ongoing monitoring and assessment programme that includes expert assessor observation of driving performance whilst simultaneously using the information system. It also solicits feedback from drivers.

Bad: The employer states that a system may (or should) be used while driving, but does not monitor in any way the impact that this has on driving performance and safety.

Applicability:

The recommendation applies where there is an employer-employee relationship and where driving is part of the task and where the information systems supplied by the employer need to be used while driving, or may be used while driving according to the employers procedures.

Verification/Applicable methods:

Employer identifies systems that their drivers are required to use as part of their job;

Drivers are trained on system use;

Employer periodically checks the employee's knowledge and understanding of the system's operation and functionality;

Employer periodically checks that the employee can use the system safely while driving.

5.2.1.4. Recommendation on influencing use IV

Employers should ensure that a copy of the manufacturer's instructions for use is available in every equipped vehicle.

Explanation:

Since some information and communication systems are rich in features and some of the functions are used rarely, there are often situations when a driver needs to refer to some instructions in order to undertake a task. Without instructions, the driver may be more frustrated or distracted by the system or may be unable to complete their task.

The recommendation requires the employer to ensure that there are user instructions available and that a copy is provided in each vehicle used by their employees.

Where multiple (non-integrated) systems are involved, training and documentation should describe how tasks can be achieved using multiple systems; one instruction manual per system is not a complete solution.

Examples:

Good: The telephone manufacturer provides user instructions and the employer places a copy in each vehicle and periodically checks that it is present.

Bad: No user manual is provided or no system is in place to ensure that a copy remains in each equipped vehicle.

Applicability:

The recommendation applies where there is an employer-employee relationship and where driving is part of the task and where the information systems are supplied by the employer.

Verification/Applicable methods:

The test is presence within each relevant vehicle of the correct user instructions.

Verification by inspection.

Result = Yes/No.

5.2.1.5. Recommendation on influencing use V

Point of sale promotion (e.g. advertising) should not encourage unsafe use.

Explanation:

This recommendation is intended to assist the driver in appreciating the functionality, benefits and limitations of the system before (and during) use and to promote road safety. It is also designed to encourage compliance with consumer protection requirements, EC Regulations and existing codes concerning advertising.

Promotional materials include those provided by the point-of-sale in instructions (diagrams etc.), photographs, films computer animations, sound clips and any form of product information or advertising that users or potential users of the system may be exposed to.

Unsafe use means anything which is in conflict with these recommendations or with safe driving codes.

Examples:

Good: Photographs of the system being used as intended by the manufacturer and following all relevant codes and Regulations.

Bad: A photograph showing a hand-held telephone being used while driving.

Applicability:

The recommendation applies to any product related information provided by the point-of-sale for all in-vehicle information and communication systems.

Verification/Applicable methods:

The test is in accordance with the advertising code of practice.

Verification by inspection.

Result = Yes/No.

5.2.1.6. Recommendation on influencing use VI

Point of sale information should inform vehicle purchasers of the safety issues associated with in-vehicle information systems.

Explanation:

Drivers are influenced in their use of in-vehicle information and communication systems according to their knowledge about the system and their appreciation of the risks of use. In order to promote risk-aware driving, and hence contribute to safety, drivers need to be well informed concerning the systems that they use.

In addition to user experience and the manufacturer's user instructions, drivers should be able to obtain information from the point-of-sale.

Therefore, this recommendation requires that suitable information exists and/or that point-of-sale personnel have adequate knowledge in order to inform purchasers of the safety issues.

Examples:

Good: At the point-of-sale all personnel involved with customers have basic knowledge concerning safe use of information and communication systems. In addition, certain personnel have more in-depth knowledge and can advise drivers concerning safe practice.

Bad: No-one at the point-of-sale is aware of the information systems, how they function and the safety issues associated with their use. There is also no information available to potential purchasers.

Applicability:

The recommendation applies to first sale of all in-vehicle information and communication systems.

Verification/Applicable methods:

Undertake a risk assessment concerning use of the system;

For major risks, develop suitable material for the purchasers;

Verification of the adequacy of the procedures requires judgement. Adequacy can also be assessed from the point of view of the purchasers.

5.2.1.7. Recommendation on influencing use VII

Vehicle hire companies should ensure that all information and communication systems are maintained in accordance with the manufacturer's instructions.

Explanation:

It is expected that the product-responsible organisation will, according to principle 6.1, produce instructions concerning how the information systems should be maintained (physical issues, hardware, replaceable parts, software and software updates etc.)

The vehicle hire company should ensure (by direct action or contract) that all recommended maintenance actions are carried out.

Examples:

Good: The route guidance system's map CD is updated annually as recommended by the manufacturer.

Bad: The hire company has no records of their vehicles' information systems and undertakes no maintenance. As a result digital maps become progressively out-dated.

Applicability:

The recommendation only applies to in-vehicle information and communication systems that, based on the product responsible organisation's recommendations, require maintenance.

Verification/Applicable methods:

The test is:

- The vehicle hire company should maintain a permanent record of maintenance actions.
- These should be in accordance with the manufacturer's instructions.

Verification by inspection.

Result = Yes/No.

5.2.1.8. Recommendation on influencing use VIII

Vehicle hire companies should ensure that a copy of the manufacture's instructions for use is available in every equipped vehicle.

Explanation:

Since some information and communication systems are rich in features and some of the functions are used rarely, there are often situation when the driver needs to refer to some instructions in order to undertake a task. Without some instructions, the drivers may be more frustrated or distracted by the system or may be unable to complete their task.

The recommendation requires the hire company to ensure that there are user instructions available and that a copy is provided in each vehicle used by their customers.

Examples:

Good: The telephone manufacturer provides user instructions and the hire company places a copy in each vehicle and periodically checks that it is present.

Bad: No user manual is provided or no system is in place to ensure that a copy remains in each equipped vehicle.

Applicability:

The recommendation applies where there is a hire relationship and where the information systems are supplied with the vehicle.

Verification/Applicable methods:

The test is presence or absence within each relevant vehicle of the correct user instructions.

Verification by inspection.

Result = Yes/No.

5.2.1.9. Recommendation on influencing use IX:

Vehicle hire personnel should have adequate knowledge concerning in-vehicle information systems within the vehicles they make available and should offer instructions in their safe use.

Explanation:

Drivers are influenced in their use of in-vehicle information and communication systems according to their knowledge about the system and their appreciation of the risks of use. In order to promote risk-aware driving, and hence contribute to safety, drivers need to be well informed concerning the systems that they use.

In addition to user experience and the manufacturer's user instructions, drivers should be able to obtain information from their point of rental of the vehicle.

Therefore, this recommendation requires vehicle hire personnel to have adequate knowledge in order to inform purchasers of the safety issues.

Examples:

Good: At the rental outlet all personnel involved with customers have basic knowledge concerning safe use of information and communication systems. In addition, certain personnel have more in-depth knowledge and can advise drivers concerning safe practice.

Bad: No-one at the point of vehicle hand-over is aware of the information systems, how they function and the safety issues associated with their use.

Applicability:

The recommendation applies where there is a hire relationship and the vehicle is equipped with in-vehicle information and communication systems.

Verification/Applicable methods:

Undertake a risk assessment concerning use of the system;

For major risks, develop suitable material for the hirers.

Verification of the adequacy of the procedures requires judgement. Adequacy can also be assessed from the point of view of the hirers.

5.2.2. *Recommendations for drivers*

According to the Vienna Convention (1968), the driver must always be in full control of the vehicle and consequently has full responsibility for system use while driving. In addition, the following recommendations can be expressed to promote the safe use of in-vehicle information and communication systems:

- Drivers should ensure that nomadic systems and after-market systems are installed in accordance with the manufacturer's instructions;
- Drivers should ensure that all in-vehicle systems are maintained in accordance with the manufacturer's instructions;
- Drivers are responsible for modifications to any system. These need to be in accordance with technical descriptions and should not contradict the information provided by the manufacturer;
- Drivers should only use in-vehicle equipment as recommended by the manufacturer. This may require a period of familiarisation or training;
- Drivers should only use information and communication systems while driving if it is safe to do so;
- Nomadic systems should not be used hand-held or unsecured within the vehicle while driving;
- All instructions associated with in-vehicle equipment should be retained with the vehicle and passed to the next vehicle owner or user.

6. IMPLEMENTATION OF THE ESOP 2006 AND RSU

6.1. Stakeholders involved in the implementation of the EsOP 2006 and RSU

The following actions are relevant for industry with a special emphasis on nomadic devices, for providers of transport and haulage services, for fleet owners and managers, for point of sales promotion, for vehicle rental companies, and for the Member States.

6.2. Implementation actions

6.2.1. Implementation actions by industry

The primary need is for all sections of industry to be aware of the ESOP 2006 and RSU and to include the principles within their considerations of design and use of in-vehicle systems.

For vehicle OEMs, a key organisation is ACEA, who self-committed to the principles within the 1999 ESOP. ACEA is invited to similarly endorse the 2006 ESOP and ensure that it is distributed and acknowledged within their industry, including their supply chains.

Additional industry stakeholders are involved with nomadic devices and the products and services that they support. There is no single appropriate industry body, but many of the issues specific to the design of nomadic devices and their use and integration within vehicles can be discussed through the Nomadic Devices Forum.

This deserves strong support across industry.

An important objective for the Nomadic Devices Forum is achieving an agreement over definitions and safety issues:

- Clarification of legal aspects (responsibility and liability) associated with nomadic devices integration
- Agreement on an ESOP implementation plan for the entire industry, e.g. by self-commitments, MOUs, device certification
- Arrangements for provision of a fitting kit in accordance with the ESOP 2006
- Design of devices and functions intended for use while driving, in accordance with the ESOP 2006
- Provision of clear safety instructions to drivers, in accordance with the ESOP 2006
- Co-operation between nomadic devices and vehicle manufacturers leading to smart interfaces

Industry is encouraged to promote these principles at the international level (relevant groups include among others: JAMA ⁽⁷⁾, AAM ⁽⁸⁾, IHRA-ITS ⁽⁹⁾ and UNECE ⁽¹⁰⁾) as well as at the standardisation level.

6.2.2. Implementation actions by professional transport companies

The providers of transport and haulage services as well as fleet owners and managers are invited to ensure that all in-vehicle information systems in their vehicles are maintained in accordance with the manufacturers' instructions. Their procedures and incentive schemes should not cause or encourage system misuse. There should be a clear distinction between systems or functions that are intended (by the employer) to be used while driving and those that are not.

Furthermore, they should ensure that employees can use the systems without endangering themselves or other road users. Adequate training should be given on all in-vehicle systems that drivers are required to use by employers while driving. They should also ensure that a copy of the manufacturer's instructions for use is available in every equipped vehicle.

⁽⁷⁾ Japan Automobile Manufacturers Association.

⁽⁸⁾ Alliance of Automobile Manufacturers

⁽⁹⁾ International Harmonized Research Activities — Intelligent Transport Systems

⁽¹⁰⁾ United Nation Economic Commission for Europe

6.2.3. *Implementation actions by point of sales promotion*

Point of sale promotion (e.g. advertising) should not encourage unsafe use.

Point of sale information should include information to vehicle purchasers of the safety issues associated with the in-vehicle information and communication systems and their use.

6.2.4. *Implementation actions by vehicle rental companies*

Vehicle rental companies should ensure that all the in-vehicle information and communication systems in their vehicles are maintained in accordance with the manufacturers' instructions.

They should ensure that a copy of the manufacturers' instructions for use are available in every equipped vehicle.

Vehicle rental personnel should have adequate knowledge concerning in-vehicle information systems within the vehicles they make available and should offer instructions about their safe use.

6.2.5. *Implementation actions by Member States*

Member States should promote these principles, encourage stakeholders to adhere to them by written commitment if possible, and monitor the concrete adherence to these principles. They should ensure that the ESoP is effectively disseminated, known and applied by designers, installers, manufacturers, retailers, rental companies and fleet managers at national and local levels.

They should provide general information to drivers on safe use of the in-vehicle information and communication systems e.g. by means of safety campaigns.

They should promote self-commitment of ESoP compliance for after-market systems and nomadic devices providers and support provision of consumer information concerning the safety implication and usability of in-vehicle information and communication devices (e.g. via consumer organisations, automobile clubs, driving schools, EURONCAP, etc)

They should ensure that regularly updated information is available on the definition and dynamics of the market for after-market and nomadic devices to be informed about the evolution of the market and of the techniques, and so that the Commission can be informed about the evolution of the market.

They should ensure that their data collection is sufficiently detailed to enable further evaluation and monitoring of the safety-impact of in-vehicle information and communication systems especially of aftermarket systems and nomadic devices.

Furthermore, they should take appropriate measures (i.e. legislative, enforcement measures) to ensure secure fixing of aftermarket systems and nomadic devices.

They should continue to actively enforce existing Health and Safety legislation concerning at-work driving practices.

They should take measures, as they see appropriate, to ensure that use of nomadic devices by drivers while driving does not compromise traffic safety and, in particular, identify and take necessary actions to prevent unintended use or misuse of visual entertainment systems by drivers while driving (e.g. movies, TV, video games).

7. **GLOSSARY**

Advanced Driver Assistance Systems (ADAS): Systems which are designed to support the driving task on the level of vehicle manoeuvring by providing specific, information, warnings, support or actions, being relevant for immediate driver action.

Aftermarket Systems: Systems which are fitted into a vehicle not during, but after its production.

Context of use: Users, tasks, equipment (hardware, software and materials), and the physical and social environments in which a product is used (ISO 9241-11, 1998)

Distraction: Attention given to a non-driving related activity, typically to the detriment of driving performance.

Display (noun): Device capable of presenting information to the driver

EXAMPLES: Visual displays (such as LCD screens), auditory displays (such as tones) and tactile displays (such as pedal vibration).

Driving: Activity of the primary driving task and secondary tasks associated with or supporting the primary driving task

Employer: Person or organisation that has a contract with an employee

NOTE: Those employers addressed by these principles require the employees to drive as part of their job.

EXAMPLES: fleet managers, taxi companies, delivery companies, emergency service organisations

Hands-free: With no need to permanently hold with the hand any component of the system

Information related to driving: Information on aspects of the vehicle which are mandatory or which are related to safety or which are related to the road and traffic environment and driver related infrastructure services

NOTE: the information will be presented by means of a display; e.g. a visual or auditory display

EXAMPLES: tyre and brake parameters, proximity of other vehicles, route guidance, congestion information, ice warning, speed limits, parking information

EXAMPLES of information not related to driving include news, entertainment and advertising

In-vehicle information and communication systems: provide the driver with information or communication either not related to driving (e.g. news, music) or related to driving but not relevant for immediate, time critical driver action (e.g. traffic messages, navigation map, route guidance).

Installation: Fitting of systems and sub-systems within the vehicle including loading of software

NOTE: Systems which are fully pre-installed do not require these operations

Maintenance: Action(s) to enhance or continue the product's operation

NOTE: Surface dusting and cleaning (which may apply to other in-vehicle equipment) is not included within the term 'maintenance'.

EXAMPLES: replacement of sub-systems (e.g. batteries, licenses, software) periodic cleaning and checking and calibration procedures

Malfunction: Departure from the expected range of operation during system use as intended by the manufacturer

EXAMPLE: External signal loss or loss of sensor calibration data reducing the accuracy of a route guidance system.

Manoeuvring: The longitudinal and lateral control of the vehicle relative to the traffic environment.

Nomadic devices: Non stationary devices which accompany people whilst travelling.

EXAMPLES: mobile phones, Personal Digital Assistants (PDA)

Point-of-sale (PoS): Access point for the potential buyer to the person or organisation offering systems for sale

EXAMPLES: Car dealer (for OEM equipment); shop (for after-market equipment) website, helpline or telephone sales point

Primary driving control: Control which is directly necessary to drive a vehicle.

Primary driving task: Activities that the driver has to undertake while driving in navigating, manoeuvring and handling a vehicle including steering, braking and accelerating

Priority: Relative importance of two or more entities which determines their ranking in a time sequence or emphasis of presentation (ISO/TS 16951, 2004)

Product information: All information that the driver has access to concerning the system

EXAMPLES: system instructions, technical specifications, promotional materials, packaging

Product-responsible organisation (PRO): Any participant in the production process, any importer, supplier or any person putting his name, trademark or other distinguishing feature on the product.

NOTE: Responsibility is shared between these organizations or persons.

Reasonably foreseeable misuse: Use of a product, process or service under conditions or for purposes not intended by the manufacturer, but which can happen, induced by the product, process or service in combination with, or as a result of, common human behaviour.

Sequence of interfaces: Related set of successive inputs/outputs also called a dialogue;

EXAMPLE: Entering a new destination or a phone number

Stationary: Having a zero speed relative to the vehicle's supporting surface

Status: Available and/or active system mode(s)

EXAMPLE: 'processing'

Support means that an action by the driver is enhanced by the system.

System instructions: Information about the system intended to teach the driver about the system and assist in using it for specific purposes.

NOTE: Instructions may be in a printed form using text or pictorial information or may be integrated within the system in the form of 'help' functions or a tutorial.

System failure: State of non-operation or malfunction of the system

NOTE 1: Partial failure may involve some component, sub-function or mode of operation of the system becoming inoperable or performing outside of the specifications intended by the manufacturer.

NOTE 2: Total system failure renders all aspects of the system inoperative.

Visual information: Graphical, pictorial, textual or other messages presented to the driver using the visual modality.

Vehicle in motion: vehicle with a speed above approximately 5 km/h ⁽¹⁾.

Vehicle-hire Company: Person or organisation that offers a contract to hire a vehicle equipped with an in-vehicle information or communication system.

⁽¹⁾ the value of 5 km/h is chosen for technical reasons because it is difficult to determine whether the vehicle speed is zero.