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I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COMMISSION REGULATION (EC) No 1115/2008

of 11 November 2008

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽²⁾, and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 12 November 2008.

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

Done at Brussels, 11 November 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	AL	34,6
	MA	56,3
	MK	46,2
	TR	89,1
	ZZ	56,6
0707 00 05	JO	175,9
	MA	30,8
	TR	85,3
	ZZ	97,3
0709 90 70	MA	62,9
	TR	129,3
	ZZ	96,1
0805 20 10	MA	83,7
	ZZ	83,7
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	HR	21,1
	MA	75,0
	TR	83,5
	ZZ	59,9
0805 50 10	MA	103,9
	TR	100,1
	ZA	88,0
	ZZ	97,3
0806 10 10	BR	227,1
	TR	122,8
	US	241,5
	ZA	197,4
	ZZ	197,2
0808 10 80	AL	32,1
	AR	75,0
	CA	96,0
	CL	64,2
	MK	37,6
	US	102,2
	ZA	89,5
	ZZ	70,9
0808 20 50	CN	53,6
	TR	124,9
	ZZ	89,3

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

COMMISSION REGULATION (EC) No 1116/2008**of 11 November 2008****entering certain names in the register of protected designations of origin and protected geographical indications (Bœuf de Bazas (PGI), Kainuun rönttönen (PGI))**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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⁾, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 6(2) and in accordance with Article 17(2) of Regulation (EC) No 510/2006, France's application to register the name 'Bœuf de Bazas' and Finland's application to register the

name 'Kainuun rönttönen' were published in the *Official Journal of the European Union* ⁽²⁾.

- (2) As no objection under Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, these names should be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The names contained in the Annex to this Regulation are hereby entered in the register.

Article 2

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

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

Done at Brussels, 11 November 2008.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ C 73, 19.3.2008, p. 26 (Bœuf de Bazas), OJ C 74, 20.3.2008, p. 72 (Kainuun rönttönen).

ANNEX

1. Agricultural products intended for human consumption listed in Annex I to the Treaty

Class 1.1. Fresh meat (and offal)

FRANCE

Bœuf de Bazas (PGI)

2. Foodstuffs listed in Annex I to the Regulation

Class 2.4. Bread, pastry, cakes, confectionery, biscuits and other baker's wares

FINLAND

Kainuun rönttönen (PGI)

COMMISSION REGULATION (EC) No 1117/2008**of 11 November 2008****amending Regulation (EC) No 1973/2004 laying down detailed rules for the application of Council Regulation (EC) No 1782/2003 as regards the support schemes provided for in Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001⁽¹⁾, and in particular Article 110b(2) and Article 145(r) second indent thereof,

Whereas:

- (1) Regulation (EC) No 1782/2003 as amended by Regulation (EC) No 637/2008⁽²⁾ sets out the rules for the coupled support for cotton in conformity with the Court's judgement C-310/04.
- (2) In particular, Chapter 10a of Title IV of Regulation (EC) No 1782/2003 provides for the possibility of direct aid being granted for the production of cotton. It is therefore necessary to adapt the corresponding detailed rules laid down in Commission Regulation (EC) No 1973/2004⁽³⁾.
- (3) Article 110b(1) of Regulation (EC) No 1782/2003 states that, in order to be eligible for the aid per hectare, the farmer must sow the area under cotton with approved varieties and grow the cotton on land authorised by the Member States. The criteria should therefore be specified for both the authorisation of land suitable for cotton production and the approval of varieties.
- (4) In order to receive the aid per hectare for cotton, farmers must sow authorised lands. A criterion defining 'sowing' should be established. The Member States' fixing of the

minimum planting density on these lands based on soil and climate conditions and specific regional features must be an objective criterion for establishing whether sowing has been conducted properly or not.

- (5) The Member States should approve inter-branch cotton producing organisations on the basis of objective criteria relating to their scale and internal organisation. The scale of an inter-branch organisation should be fixed, taking into account the requirement on the member ginning undertaking to be able to take delivery of sufficient quantities of unginned cotton.
- (6) In order to avoid complications in managing the aid scheme, a producer may not be a member of more than one inter-branch organisation. For that same reason, where a producer belonging to an inter-branch organisation undertakes to supply the cotton he has produced, he should supply it only to the ginning undertaking belonging to that same organisation.
- (7) The cotton aid scheme requires Member States to send their producers certain information on cotton growing, such as approved varieties, the objective criteria for authorising land and the minimum plant density. In order to inform the farmers in good time, the Member State should send them this information by a specific date.
- (8) Regulation (EC) No 1973/2004 should therefore be amended accordingly.
- (9) Since the rules laid down in Chapter 10a of Title IV of Regulation (EC) No 1782/2003 apply from 1 January 2009, the detailed rules to be established by this Regulation should apply from the same date.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

⁽¹⁾ OJ L 270, 21.10.2003, p. 1.

⁽²⁾ OJ L 178, 5.7.2008, p. 1.

⁽³⁾ OJ L 345, 20.11.2004, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

Chapter 17a of Regulation (EC) No 1973/2004 is replaced by the following:

'CHAPTER 17a

CROP SPECIFIC PAYMENTS FOR COTTON

Article 171a

Authorisation of agricultural land for cotton production

The Member States shall establish objective criteria on the basis of which land is authorised for the crop-specific payment for cotton provided for in Article 110a of Regulation (EC) No 1782/2003.

These criteria shall be based on one or more of the following:

- (a) the agricultural economy of those regions where cotton is a major crop;
- (b) the soil and climate in the areas in question;
- (c) the management of irrigation water;
- (d) rotation systems and cultivation methods likely to respect the environment.

Article 171aa

Approval of varieties for sowing

The Member States shall approve the varieties registered in the "Common Catalogue of Varieties of Agricultural Plant Species" that are adapted to market needs.

Article 171ab

Eligibility requirements

Sowing the areas referred to in Article 110b(1) of Regulation (EC) No 1782/2003 shall be done by achieving a minimum plant density, to be fixed by the Member State on the basis of the soil and weather conditions and specific regional characteristics, where appropriate.

Article 171ac

Agonomic practices

The Member States shall be authorised to establish specific rules on the agonomic practices needed to maintain and harvest the crops under normal growing conditions.

Article 171ad

Approval of inter-branch organisations

1. Before 31 December each year, Member States shall approve for the following year any inter-branch cotton-producing organisation that applies to plant cotton and which:

- (a) covers a total area of at least 4 000 ha as established by the Member State and meeting the authorisation criteria laid down in Article 171a, and which includes at least one ginning undertaking;
- (b) has adopted internal operating rules, in particular on membership conditions and fees, in accordance with national and Community rules and regulations.

However, for 2009, Member States shall approve the inter-branch cotton-producing organisations by 28 February 2009.

2. Where it is found that an approved inter-branch organisation does not respect the criteria for approval provided for in paragraph 1, the Member State shall withdraw the approval unless the non-respect of the criteria concerned is remedied within a reasonable period of time. Where it is planned to withdraw the approval, the Member State shall notify that intention to the inter-branch organisation, together with the reasons for the withdrawal. The Member State shall allow the inter-branch organisation to submit its observations within a specified period. In case of withdrawal, the Member States shall provide for the application of appropriate sanctions.

Farmers who are members of an approved inter-branch organisation whose approval is withdrawn in accordance with the first subparagraph of this paragraph shall lose their right to the increase of the aid provided for in Article 110e(2) of Regulation (EC) No 1782/2003.

Article 171ae

The producers' obligations

- 1. A producer shall not be a member of more than one inter-branch organisation.
- 2. A producer who is a member of an inter-branch organisation shall deliver his cotton to a ginner belonging to that same organisation.
- 3. The participation of producers in an approved inter-branch organisation must be the result of voluntary membership.

Article 171af

Communications to the producers

1. Before January 31 of the year in question, Member States shall notify cotton growers of:

- (a) the approved varieties; however, varieties approved in accordance with Article 171aa after that date must be notified to the growers before 15 March in the same year;
- (b) the criteria for authorising land;
- (c) the minimum cotton plant density referred to in Article 171ab;

(d) the required agronomic practices.

2. Where approval for a variety is withdrawn, the Member States shall inform the growers no later than 31 January for the purposes of the following year's sowing season.'

Article 2

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

It shall apply from 1 January 2009.

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

Done at Brussels, 11 November 2008.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

COMMISSION REGULATION (EC) No 1118/2008
of 11 November 2008
amending Regulation (EC) No 1075/2008 fixing the import duties in the cereals sector applicable
from 1 November 2008

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

- (1) The import duties in the cereals sector applicable from 1 November 2008 were fixed by Commission Regulation (EC) No 1075/2008 ⁽³⁾.

- (2) As the average of the import duties calculated differs by more than EUR 5/tonne from that fixed, a corresponding adjustment must be made to the import duties fixed by Regulation (EC) No 1075/2008.

- (3) Regulation (EC) No 1075/2008 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 1075/2008 are hereby replaced by the text in the Annex to this Regulation.

Article 2

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

It shall apply from 12 November 2008.

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

Done at Brussels, 11 November 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 161, 29.6.1996, p. 125.

⁽³⁾ OJ L 294, 1.11.2008, p. 6.

ANNEX I

Import duties on the products referred to in Article 136(1) of Regulation (EC) No 1234/2007 applicable from 12 November 2008

CN code	Description	Import duties ⁽¹⁾ (EUR/t)
1001 10 00	Durum wheat, high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	High quality common wheat, other than for sowing	0,00
1002 00 00	Rye	28,01
1005 10 90	Maize seed other than hybrid	8,12
1005 90 00	Maize, other than seed ⁽²⁾	8,12
1007 00 90	Grain sorghum other than hybrids for sowing	28,01

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

- 3 EUR/t, where the port of unloading is on the Mediterranean Sea, or
- 2 EUR/t, where the port of unloading is in Denmark, Estonia, Ireland, Latvia, Lithuania, Poland, Finland, Sweden, the United Kingdom or the Atlantic coast of the Iberian peninsula.

⁽²⁾ The importer may benefit from a flatrate reduction of EUR 24 per tonne where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating the duties laid down in Annex I

31.10.2008-10.11.2008

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

(EUR/t)

	Common wheat ⁽¹⁾	Maize	Durum wheat, high quality	Durum wheat, medium quality ⁽²⁾	Durum wheat, low quality ⁽³⁾	Barley
Exchange	Minneapolis	Chicago	—	—	—	—
Quotation	192,55	120,48	—	—	—	—
Fob price USA	—	—	237,49	227,49	207,49	116,94
Gulf of Mexico premium	—	16,03	—	—	—	—
Great Lakes premium	14,92	—	—	—	—	—

⁽¹⁾ Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).⁽²⁾ Discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).⁽³⁾ Discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

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

Freight costs: Gulf of Mexico–Rotterdam: 13,10 EUR/t

Freight costs: Great Lakes–Rotterdam: 12,79 EUR/t

II

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

DECISIONS

COUNCIL

COUNCIL DECISION

of 24 October 2008

on the adjustment of the allowances paid to members and alternates of the European Economic and Social Committee

(2008/845/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the fourth subparagraph of Article 258 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the fourth subparagraph of Article 166 thereof,

Having regard to the request from the European Economic and Social Committee dated 9 September 2008,

Whereas the amount of the daily allowances paid to members and alternates of the European Economic and Social Committee, laid down by Decision 81/121/EEC ⁽¹⁾, should be adapted,

HAS DECIDED AS FOLLOWS:

Article 1

Article 2 of Decision 81/121/EEC shall be replaced by the following:

'Article 2

1. The daily allowance per travel day shall be:

— EUR 145 for members and alternates.

2. The daily allowance per meeting day shall be:

— EUR 233 for members and alternates.

3. Where the beneficiary furnishes satisfactory proof that he has incurred expenditure on an overnight stay at the place of work, he shall be paid a supplementary daily allowance of EUR 34.'

Article 2

This Decision shall take effect on 24 October 2008.

Done at Luxembourg, 24 October 2008.

For the Council

The President

M. ALLIOT-MARIE

⁽¹⁾ OJ L 67, 12.3.1981, p. 29.

COUNCIL DECISION
of 4 November 2008
appointing an Italian member of the Committee of the Regions
(2008/846/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Article 263 thereof,

Article 1

The following is hereby appointed as a member of the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2010:

Having regard to the proposal of the Italian Government,

Ms Maria Luisa COPPOLA, Consigliere regionale — Assessore, Regione Veneto.

Whereas:

Article 2

- (1) On 24 January 2006, the Council adopted Decision 2006/116/EC ⁽¹⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2006 to 25 January 2010.

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

Done at Brussels, 4 November 2008.

- (2) A member's seat on the Committee of the Regions has become vacant following the expiry of the mandate of Mr Fabio GAVA,

For the Council
The President
C. LAGARDE

⁽¹⁾ OJ L 56, 25.2.2006, p. 75.

COUNCIL DECISION

of 4 November 2008

on the eligibility of central Asian countries under Decision 2006/1016/EC granting a Community guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Community

(2008/847/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 181a thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) In accordance with Article 2 of Decision 2006/1016/EC ⁽¹⁾, for countries listed in Annex I and marked with an asterisk (*) and for others not listed in Annex I, eligibility for European Investment Bank (EIB) financing under Community guarantee is decided by the Council on a case by case basis in accordance with the procedure provided for in Article 181a(2) of the Treaty.
- (2) Annex I to Decision 2006/1016/EC includes five central Asian countries, namely Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, among the countries marked with an (*).
- (3) In the EU Strategy for a new partnership with central Asia, adopted by the European Council in its meeting of 21 and 22 June 2007, it is highlighted that the EIB should play an important role in financing projects of interest to the EU in central Asia.

- (4) Since the macroeconomic conditions prevailing in the central Asian countries, and in particular the situation regarding external finances and debt sustainability, have improved in recent years as a result of strong economic growth and prudent macroeconomic policies, those countries should be allowed access to financing from the EIB,

HAS DECIDED AS FOLLOWS:

Article 1

Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan shall be eligible for EIB financing under Community guarantee in accordance with Decision 2006/1016/EC.

Article 2

This Decision shall take effect on the third day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 4 November 2008.

For the Council
The President
C. LAGARDE

⁽¹⁾ OJ L 414, 30.12.2006, p. 95.

COMMISSION

COMMISSION DECISION

of 16 July 2008

on State aid C 14/07 (ex NN 15/07) implemented by Italy for NGP/SIMPE

(notified under document number C(2008) 3528)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2008/848/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

(3) By letter dated 10 May 2007, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(4) By letter dated 16 July 2007, Italy presented its comments in the context of the above mentioned procedure. The Commission requested further information by letter dated 25 October 2007, to which Italy replied by letter of 23 November 2007. A meeting between the Italian authorities and the Commission departments took place on 13 December 2007. The Commission requested additional clarification by letter dated 8 February 2008, to which Italy replied by letter dated 25 February 2008. Italy submitted additional final comments by e-mail of 22 May 2008.

(5) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission called on interested parties to submit their comments.

(6) The Commission received comments from interested parties. It forwarded them to Italy, which was given the opportunity to react; its comments were received by letter dated 21 September 2007.

1. PROCEDURE

(1) On 14 July 2006 Italy notified its intention to grant restructuring aid to NGP SpA (NGP). Missing annexes were submitted by letter dated 28 July 2006. The Commission had previously received three complaints claiming that Italy intended to grant aid to NGP which would affect the synthetic fibre market.

(2) By letter dated 22 August 2006, the Commission requested additional information which Italy submitted by letter dated 14 December 2006. On 12 February 2007 it requested further information which Italy submitted by letter dated 7 March 2007, registered as received on 8 March.

2. DESCRIPTION

2.1. The beneficiary

(7) According to the notification, the beneficiary of the aid is NGP, a firm located in Acerra, Campania (Italy). NGP was created in February 2003 through the divestment of the production of polyester polymer (polymerisation) from Montefibre, a producer of polyester fibre also located in Acerra. Polyester polymer is an intermediate product used, among other things, in the production of polyester fibre.

⁽¹⁾ OJ C 131, 13.6.2007, p. 22.

⁽²⁾ See footnote 1.

(8) The assets of NGP comprised two production plants as well as a thermoelectric power station, some ancillary facilities and a research centre. The first production plant produced the intermediate product dimethyl-terephthalate (DMT). DMT was the raw material for the second production plant, the polymerisation plant. The second plant produced polymer either in molten state to supply the production plant of Montefibre or in the solid state in the form of chips for the external market.

(9) The polymerisation plant operated with three production lines, (CP1, CP2 and CP3). Of these, CP3 had been created in 2003. Italy had granted regional aid of EUR 13,7 million for the investments in CP3. The aid had been provided under a regional aid scheme approved by the Commission ⁽³⁾.

2.2. The financial difficulties of NGP

(10) NGP quickly ran into difficulties after its creation for several reasons. In 2003 a breakdown of the cooling system halted production. Although the broken equipment was provisionally replaced, the production plant did not return to full operation. The situation was aggravated by strong pressure on prices due to the weakening of the US dollar exchange rate, which made producers outside the euro area more competitive.

(11) Moreover, the costs of production of DMT were to a large extent fixed costs, which are independent of the volumes produced. The reduced volume of chips and molten polymer sold led to reduced production of DMT, which, however, resulted in only a small decrease in total production costs because of the large share of fixed costs. In turn, unit production costs of DMT therefore increased considerably.

(12) NGP recorded losses of EUR 29,68 million in 2003, its last year of full production, and losses of EUR 17,87 million in 2004. In 2005 it nevertheless recorded profits of EUR 5,27 million, which were largely due to extraordinary revenues.

2.3. The restructuring plan

(13) In January 2004 the board of the firm took the decision to suspend production and to draw up a project to convert the existing industrial facilities. The objective

was to change the raw material used for the polymerisation plant, replacing own-production DMT with another raw material, purified terephthalic acid (PTA), in order to create a more flexible cost structure. It was estimated that a further EUR 22 million would be needed for the raw material changeover. Because of insufficient financial means, NGP would not have been able to complete these investments.

(14) In May 2004 a protocol of understanding (*protocollo di intesa*) was concluded between several public authorities, Montefibre, NGP and other companies in which all parties agreed to the need to safeguard the investments already carried out for CP3 and to finalise them.

(15) In July 2005 an agreement (*accordo di programma*) was signed by national and regional authorities, NGP, Montefibre and Edison (another firm located in Acerra) concerning the NGP site as well as other activities at the Acerra site. The main elements of this agreement concerning NGP were as follows:

(16) creation of a new firm, SIMPE SpA, in July 2005, with NGP as the majority shareholder and with Montefibre (19,1 % of the share capital) and a public development agency, Sviluppo Italia (9,8 % of the share capital) as minority shareholders. SIMPE would take over the polymerisation activities of NGP (i.e. production assets plus related liabilities) and part of the workforce. NGP would remain in activity only as a utilities provider ⁽⁴⁾;

(17) closure of the DMT production plant and realisation by the new firm, SIMPE, of the planned investments in line CP3 with a view to replacing the original own-production DMT with a new raw material, purified terephthalic acid (PTA), to be acquired from outside sources ⁽⁵⁾;

(18) granting by Italy of financial support measures totalling EUR 20,87 million to support the investments in the raw material changeover. These measures are described below.

⁽⁴⁾ NGP would become a provider of technological, environmental and energy services and would continue to run the research centre.

⁽⁵⁾ The raw material initially produced and used by NGP (DMT) had high fixed costs which, at times of low demand, generated high unit costs. According to Italy, the new raw material, PTA, makes production costs more flexible and allows for a wider range of industrial applications.

⁽³⁾ N 715/1999 (OJ C 278, 30.9.2000, p. 26).

2.4. Financial support

- (19) The first measure consists of a grant of EUR 10,75 million, of which EUR 5 million to be provided by the Region of Campania and the remainder by the Ministry of Industry. The measure was granted on 18 May 2006.
- (20) The second measure consists of a soft loan of EUR 6,523 million provided by the Ministry of Industry at a reduced interest rate (36 % of the reference rate). The loan was granted on 18 May 2006.
- (21) The third measure consists of a temporary participation of EUR 3,6 million in the risk capital of SIMPE by Sviluppo Italia (9,8 % of the company capital). The injection was made on 5 May 2006. The two other shareholders in SIMPE, NGP and Montefibre, were required to buy the shares from Sviluppo Italia within a period of three to five years at a price equal to the nominal value plus annual interest on the basis of the official reference rate for medium- to long-term operations plus two percentage points.
- (22) All three measures were granted to SIMPE.

2.5. New developments

- (23) In February 2007 the Spanish multinational chemical company, La Seda de Barcelona, acquired the Montefibre shares in SIMPE and invested additional capital of EUR 20,7 million in the firm, thus becoming its major shareholder with 50,1 % of shares. The other shareholders were NGP with 43,6 % and Sviluppo Italia with 6,3 %.
- (24) The acquisition of SIMPE by La Seda de Barcelona also meant changes to the original restructuring plan. Whereas, according to the plan agreed in July 2005 (see above), SIMPE would continue in the same line of business as NGP, i.e. producing mainly polymer for textile applications, SIMPE now planned to concentrate production mostly on polymer for the market in PET (polyethylene terephthalate), a plastic material of which La Seda de Barcelona is one of the EU's largest producers.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

3.1. Restructuring aid

- (25) Italy notified the aid on the basis of the Community guidelines on State aid for rescuing and restructuring

firms in difficulty (hereafter the Community guidelines) ⁽⁹⁾. The Commission, in its decision to initiate the formal investigation procedure under Article 88(2) of the Treaty, stated that it had doubts as to whether the conditions of the Community guidelines were fulfilled.

- (26) The Commission expressed doubts as to the actual beneficiary of the aid and its eligibility. Italy had notified NGP as the beneficiary of the aid. However, all three measures were granted to the new firm SIMPE, which, as a newly created firm, was not eligible for restructuring aid (point 12 of the Community guidelines). The Commission, therefore, questioned whether NGP and SIMPE, as a group, could qualify for the aid: SIMPE had been created by NGP in the context of the restructuring of the polymerisation assets, for which the aid measures in question were granted. On the other hand, NGP was not a newly created firm within the meaning of the Community guidelines and, what is more, appeared to be a firm in difficulty and therefore eligible for restructuring aid.
- (27) However, even if NGP and SIMPE could be considered to form a single group eligible for aid, the Commission had doubts concerning the remaining criteria laid down in the Community guidelines. In particular, Italy had not submitted restructuring plans complying with all the requirements of Section 3.2.2 of the Community guidelines for either SIMPE or NGP. As regards SIMPE, the business plan submitted by Italy did not contain a detailed market survey or an analysis of the firm's specific weaknesses and strengths. Nevertheless, the Commission noted that SIMPE had in the meantime been sold to another firm, the consequences of which the Commission could not assess at that stage. Regarding NGP, Italy had not provided any indication of the costs of the restructuring measures to be implemented and their precise financing. On the basis of the information available, the Commission doubted whether the conditions relating to the restoration of viability were fulfilled.
- (28) Italy had also not indicated any compensatory measures with respect to SIMPE or NGP. The Commission therefore doubted whether the condition of avoidance of undue distortions of competition was respected. Similarly, it had no information concerning total restructuring costs or the beneficiary's contribution, and this would be necessary to determine whether the aid was limited to the minimum in compliance with the Community guidelines.

⁽⁹⁾ OJ C 244, 1.10.2004, p. 2.

- (29) Finally, Italy had at the outset notified the capital contribution by Sviluppo Italia as aid but later claimed that it was granted on market terms and was not aid. However, the Commission had doubts about this argument.

3.2. Guidelines on national regional aid

- (30) The Commission also assessed whether the aid could be considered compatible on the basis of the guidelines on national regional aid ⁽⁷⁾. SIMPE is located in an area eligible for regional aid pursuant to Article 87(3)(a) of the Treaty, where the regional aid ceiling is 35 % nge (net grant equivalent) of the eligible investments. The measures were intended to enable SIMPE to carry out the investment projects on line CP3. However, the Commission had no information that would allow it to assess whether the costs concerning the investments in line CP3 could be considered eligible for regional investment aid or whether the regional aid ceiling of 35 % had been respected.

4. COMMENTS FROM ITALY

- (31) Regarding the aid measures, Italy again stated that the temporary participation by Sviluppo Italia in the capital of SIMPE does not qualify as State aid because it is in line with the market economy investor principle. It maintained that the other two shareholders in SIMPE (NGP and La Seda de Barcelona) are required to buy the shares of Sviluppo Italia within a period of three to five years at a price equal to the nominal value plus annual interest on the basis of the official reference rate for medium- to long-term operations plus two percentage points. In addition, this commitment is backed by guarantees provided by NGP in respect of its assets. According to Italy, any private investor would have invested with such guarantees of a return on capital.
- (32) Italy also stated that the other two measures were granted to SIMPE under a national scheme — Italian Law 181/89 — approved by the Commission (N 214/2003) ⁽⁸⁾ and that both the eligible costs and the aid intensity complied with the conditions of that scheme, i.e. maximum regional aid intensity of 35 % nge. Italy argued that, even if it had notified the aid as restructuring aid to NGP, the aid could therefore, in its view, be considered as regional aid to SIMPE under this scheme.

The new restructuring plan

- (33) Italy argued that, if the Commission could not agree that the aid falls within scheme N 214/2003, it should, in the alternative, consider that the aid is compatible as restructuring aid.
- (34) Italy claimed that the beneficiary of the aid is NGP, which qualifies as a firm in difficulty.
- (35) Italy also submitted an amended restructuring plan for both NGP and SIMPE taking into account the new strategy of La Seda de Barcelona.
- (36) As explained above, according to this plan, SIMPE will produce mainly polyester polymer from line CP3 for the PET market. Italy submitted a market study showing that the plastic packaging material market is steadily expanding, with an increase in demand of about 7 % a year ⁽⁹⁾. In addition, SIMPE will continue to produce polyester polymer from lines CP1 and CP2 for Fidion, a company to which Montefibre has transferred its polyester fibre production.
- (37) NGP will remain in activity as a supplier of utilities and other services, such as research and laboratory services and treatment of waste water for the industrial businesses in Acerra, but will abandon all industrial production activities. Of the original 270 NGP employees, the firm will keep 54, with 76 of them being transferred to SIMPE.
- (38) The new restructuring plan includes investments of EUR 8,5 million by NGP for modernising the utilities infrastructure. As regards SIMPE, the firm will undertake investments totalling EUR 40,4 million, of which EUR 22 million will be for changing over to the new raw material (PTA) in line CP3, as proposed in the original plan, and the remainder for developing a new 'post-polymerisation' process necessary to complete the PET production cycle and for adapting lines CP1 and CP2 also to the use of PTA.
- (39) Italy supplied a table with details of the restructuring costs and sources of financing for both NGP and SIMPE. According to this table, the total restructuring costs amount to EUR 103,5 million.

⁽⁷⁾ OJ C 74, 10.3.1998, p. 9.

⁽⁸⁾ OJ C 284, 27.11.2003, p. 2.

⁽⁹⁾ 2004 figures.

- (40) The new plan presents a range of scenarios — best case, intermediate and worst case — for NGP and SIMPE respectively. NGP will become profitable — even under the worst case scenario — as early as 2009. As regards SIMPE, the results would not be positive until 2011 under a worst case scenario, by 2010 under the intermediate scenario; and as early as 2009 under the best case scenario.

5. COMMENTS BY THIRD PARTIES

- (41) NGP supported the comments made by Italy. The International Rayon and Synthetic Fibres Committee (CIRFS), one of the original complainants, noted that, if the aid is intended mainly for the PET market, it is of no relevance to synthetic fibre production.

6. ASSESSMENT

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

- (42) 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 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. Under the settled case law of the Court, the criterion of trade being affected is met if the beneficiary firm carries out an economic activity involving trade between Member States.
- (43) The grant and the loan were provided to SIMPE by the Ministry of Industry and the Region of Campania, two public authorities. The measures are thus financed through state resources and imputable to the State. The grant confers an advantage on the beneficiary. The loan also confers an advantage as it was granted at an interest rate below the reference rate for healthy businesses and no market economy investor would have granted assistance under these conditions.
- (44) As regards the capital contribution provided to SIMPE by Sviluppo Italia, Italy first notified the measure as State aid but then later claimed that it was not aid as it was in line with the market economy investor principle and did not confer an advantage on the firm.
- (45) However, contrary to the view of the Italian authorities, the Commission considers that the temporary participation by Sviluppo Italia in the capital of SIMPE constitutes aid within the meaning of Article 87(1).

Sviluppo Italia is a public development agency and therefore capital injections by this agency are imputable to the State and constitute state aid, unless it can be established that Sviluppo Italia behaved like a private investor operating under market economy conditions.

- (46) In this respect the Commission notes that the participation by Sviluppo Italia in the capital of SIMPE was part of the restructuring plan of NGP. As NGP was a firm in difficulty and as SIMPE was created only for the purposes of the restructuring of NGP, it can be considered that Sviluppo Italia decided to acquire shares in a firm in difficulty. Moreover, Sviluppo Italia's capital injection was combined, as part of the same operation, with two other measures which qualify as State aid under Article 87(1), namely a direct grant from the Region of Campania and the Ministry of Industry and a soft loan from the Ministry of Industry.
- (47) In previous decisions ⁽¹⁰⁾ the Commission has found that the market economy investor principle is respected in the case of public capital injections where the firm in question is a healthy firm. The market economy investor principle can also be fulfilled even if the firm is in difficulty. In this case, however, the State has to provide capital on the same terms as a private investor would do for such a high-risk firm: namely at a much higher interest rate than for healthy firms and with a clear prospect of a return to viability.
- (48) The Italian authorities have not provided evidence that a private investor would be prepared to acquire shares in the same circumstances. In fact, there is no evidence that the return on capital on the terms contracted by Sviluppo Italia (i.e. two percentage points above the reference rate) would be sufficient to trigger the interest of a private investor, bearing in mind that NGP had ceased activity and that there was no certainty (other than the fact that the investment was being supported by state aid) of a return to viability. In this respect, it should also be noted that La Seda de Barcelona acquired the participation in SIMPE only nine months after the capital injection by Sviluppo Italia and after the other forms of aid had been granted.
- (49) The Commission therefore concludes that the capital contribution by Sviluppo Italia conferred an advantage on the firm.

⁽¹⁰⁾ N 132/1999 Parco Navi, N 191/1998 Pomella and N 652/1999 Granarolo.

- (50) NGP and its successor SIMPE produce polyester polymer. As this product is widely traded across the European Union, the measures threaten to distort competition and to affect trade between Member States. The Commission thus concludes that the grant, the loan and the capital injection by Sviluppo Italia constitute State aid within the meaning of Article 87(1) of the EC Treaty and that their compatibility has thus to be assessed accordingly.

6.2. Legal basis

- (51) In its decision to initiate the formal investigation procedure, the Commission questioned whether the aid could be considered compatible under the Community guidelines on state aid for rescuing and restructuring firms in difficulty and under the guidelines on national regional aid.
- (52) Following the comments submitted by Italy, the Commission notes, however, that all the elements concerning a restructuring process seem to be present in this case. At the time the aid was granted, NGP was a firm in difficulty. The aid was granted with the aim of restoring the viability of the firm on the basis of a restructuring plan that the Italian authorities were committed to implement (see the terms of the *accordo di programma* in point 15 above). Further, even if, according to the Italian authorities, the aid was granted to SIMPE (and not NGP), SIMPE was created only for the purposes of the restructuring of NGP and is thus part of this restructuring plan. Finally, both NGP and SIMPE benefit from the aid.
- (53) The Commission also notes that, given the potential for distortion of competition that aid for the restructuring of firms in difficulty entails, the Community guidelines on State aid for rescuing and restructuring firms in difficulty contain specific criteria designed to ensure that the granting of aid is limited to the minimum required to restore a firm's viability, while limiting distortions of competition by the obligation imposed on the beneficiary to adopt compensatory measures. These criteria could be sidestepped should the measures be assessed, instead, under the guidelines on national regional aid, which in any event cannot apply to firms in difficulty ⁽¹¹⁾.
- (54) For the reasons explained above, the Commission concludes that the compatibility of the aid is to be assessed under the Community guidelines on state aid for rescuing and restructuring firms in difficulty (the Community guidelines).

6.3. Eligibility of the firm

- (55) According to Section 2.1 of the Community guidelines, the Commission considers a firm to be in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholder or creditor, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to go out of business in the short or medium term. The usual signs of a firm in difficulty are increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil asset value. In acute cases the firm may already have become insolvent or may be the subject of collective insolvency proceedings.
- (56) A newly created firm is not eligible for rescue and restructuring aid even if its financial position is insecure. A firm will normally be considered as newly created for the first three years following the start of operations in the relevant field of activity.
- (57) On the other hand, point 13 of the Community guidelines states that 'where a firm in difficulty creates a subsidiary, the subsidiary, together with the firm in difficulty controlling it, will be regarded as a group and may receive aid under the conditions laid down in this point.'
- (58) In the decision to initiate the formal investigation procedure, the Commission doubted whether NGP could be the beneficiary of the aid because it had been granted to SIMPE. In addition, SIMPE, as a newly created firm, was not eligible for restructuring aid pursuant to Section 2.1 referred to above. The Commission, however, looked into whether both firms could be considered together as a group and, as such, be eligible for the aid.
- (59) SIMPE was created by NGP in the context of the restructuring of the polymerisation assets for which the aid measures in question were granted and is therefore an emanation of the former. On the other hand, NGP was created in February 2003 and started operations in March 2003, i.e. more than three years before the granting of the aid measures in May 2006. It is therefore not a new firm within the meaning of the Community guidelines. Moreover, NGP displays the characteristics of a firm in difficulty. It recorded losses of EUR 29,68 million in 2003, its last year of full production, and losses of EUR 17,87 million in 2004. In 2005 it nevertheless recorded profits of EUR 5.27, largely due to extraordinary revenues.

⁽¹¹⁾ See point 4.4 of the guidelines on national regional aid (footnote 7 above).

- (60) Further, NGP was the majority shareholder of SIMPE at the time the aid was granted to this firm. The Commission therefore concludes that both NGP and SIMPE can be considered as a group eligible for aid under the Community guidelines.

6.4. Restoration of viability

- (61) The granting of aid is conditional on the implementation of a restructuring plan the duration of which must be as short as possible. The plan must restore the long-term viability of the firm within a reasonable time scale and on the basis of realistic assumptions as to the future operating conditions. Among other things, the restructuring plan must include a market survey and the improvement in viability must derive mainly from internal measures contained in it (point 35 of the Community guidelines).
- (62) The Commission considers that the amended restructuring plan reflecting the changes imposed by La Seda de Barcelona complies with the requirements of the Community guidelines. Italy provided a market analysis which shows that the market of polymer for PET is in full expansion. Adequate internal measures are taken within the restructuring to overcome problems inherited from the past (i.e. changeover to a new raw material), combined with significant new investments by the new owner La Seda de Barcelona that allow SIMPE to operate in the market of polymer for PET while continuing to supply molten polymer for textile purposes to Fidion. Moreover, Italy presented best case, worst case and intermediate scenarios based on variations in production volume which show that NGP and SIMPE can be expected to return to profitability within a reasonable period. Consequently, the Commission considers that the condition on restoration of viability is fulfilled.

6.5. Aid limited to the minimum: real contribution free of aid

- (63) The amount of aid must be limited to the strict minimum required to enable restructuring to be undertaken in the light of the existing financial resources of the firm and its shareholders. In addition, beneficiaries are expected to make a significant contribution to the restructuring costs from their own resources or external financing at market conditions. In the case of large undertakings, the Commission will normally consider a contribution of at least 50 % to be appropriate.
- (64) On the basis of the information provided by Italy, about 80 % of the costs of restructuring are financed by the group's own resources, thus complying with point 44 of the Community guidelines.

6.6. Avoidance of undue distortions of competition

- (65) In order to ensure that the adverse effects on trading conditions are minimised so that the positive effects pursued outweigh them, compensatory measures must be adopted. Otherwise the aid will be regarded as 'contrary to the common interest' and therefore incompatible with the common market (point 38 of the Community guidelines).
- (66) Italy proposes the following compensatory measures:
- SIMPE will limit the annual production of polyester polymer for PET to 110 000 tonnes from the date of the Commission decision approving the aid until 31 December 2012;
 - by the end of February of the following year Italy will provide the Commission with information on the quantities of polyester polymer produced and sold each year by SIMPE, and this until 31 December 2012;
 - Italy additionally undertakes to refrain from granting any type of state aid to SIMPE and NGP or to any other firm or going concern controlled or otherwise belonging to the same group, following the Commission decision authorising the aid, until 31 December 2012.

- (67) Italy explained that, under the restructuring plan, NGP (or its successor SIMPE) will refrain altogether from operating in the market in polyester polymer in granulated form for textiles as well as in special types of polyester polymer, thereby abandoning 20 % of the market. In turn, SIMPE expects to achieve a 4 % share of the EU market in PET.

- (68) Point 40 of the Community guidelines states that: 'The measures must be in proportion to the distortive effects of the aid and in particular (...) the relative importance of the firm on its market or markets. They should take place in particular in the market(s) where the firm will have a significant market position after restructuring.'

(69) The Commission notes in this respect that the core market for SIMPE is polyester for PET. Moreover, La Seda de Barcelona, which is the majority shareholder in SIMPE, is one of the largest EU producers of polyester polymer for PET. Therefore the aid is likely to create a significant distortion of competition in this market. The production cap of 110 000 tonnes therefore represents a significant restraint on market presence when compared with SIMPE's actual production capacity of polyester for PET, which is 160 000 tonnes a year. The fact that this limitation in production will be implemented until 2012 is also of significance considering that PET is a market in expansion. According to the market analysis provided by Italy, the increase in demand for this product in 2004 was 6,9 % and this trend is expected to continue.

(70) As regards the production of polyester polymer in molten state, which will be continued on lines CP1 and CP2, it is noted that the production volumes of this product have already been substantially reduced as part of the restructuring, from 105 000 tonnes a year to 60 000 tonnes a year, and will be intended exclusively for Fidion (formerly Montefibre). A further reduction in capacity in this product area would not be realistic and might jeopardise the firm's viability.

(71) Lastly, the Commission notes that Italy has undertaken to refrain from granting any additional State aid to SIMPE and NGP or to any other firm or going concern controlled or otherwise belonging to the same group, following the Commission decision authorising the aid, until 31 December 2012 in order to ensure that any distortion created by the present aid will not be aggravated by future aid.

(72) Accordingly, the Commission considers that the compensatory measures proposed by Italy are sufficient to mitigate the negative effects of the aid.

(73) The Commission concludes that the notified State aid for NGP and SIMPE in connection with the implementation of the above restructuring plan can be considered compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid granted which Italy has implemented for the restructuring plan of NGP/SIMPE, amounting to EUR 20,87 million, is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty, subject to the conditions set out in Article 2.

Article 2

Italy shall ensure that the following conditions are fulfilled:

- (a) SIMPE will limit the annual production of polyester polymer for PET to 110 000 tonnes from the date of the Commission decision approving the aid until 31 December 2012;
- (b) by the end of February of the following year, Italy will provide the Commission with information on the quantities of polyester polymer produced and sold each year by SIMPE, and this until 31 December 2012;
- (c) Italy undertakes to refrain from granting any type of State aid to SIMPE and NGP or to any other firm or going concern controlled or otherwise belonging to the same group, following the Commission decision authorising the aid, until 31 December 2012.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 16 July 2008.

For the Commission

Neelie KROES

Member of the Commission

COMMISSION DECISION

of 6 November 2008

concerning the financial contribution by the Community, for the year 2009, towards actions of the OIE in the area of animal identification and traceability

(2008/849/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field ⁽¹⁾, and in particular Article 20 thereof,

Whereas:

- (1) Pursuant to Decision 90/424/EEC, the Community may undertake, or assist the Member States or international organisations in undertaking the technical and scientific measures necessary for the development of Community veterinary legislation and for the development of veterinary education or training.
- (2) The World Organisation for Animal Health (OIE) is the intergovernmental organisation responsible for improving animal health worldwide and for setting standards for international trade of animals and their products. The OIE is currently developing guidelines on animal identification and traceability. When adopted, these guidelines will be an international reference standard according to the WTO agreement on Sanitary and Phytosanitary Measures (SPS). They will be the basis for any relevant legislation implemented by the OIE member countries including the EU Member States. Therefore, they will have a direct and considerable impact on the development of Community veterinary legislation. Considering the importance of trade in animals and animal products it is important for the EU to have the future OIE standards as close as possible to the current and future Community legislation.
- (3) The Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the regions on a new Animal Health Strategy for the EU (2007 to 2013) describes traceability as one of the main tools of the new animal health strategy. In this context it is appropriate to actively promote Community standards at international level.
- (4) The OIE is planning a Conference on Animal Identification and Traceability aiming at supporting the worldwide implementation of international standards for identification and traceability. This conference will

have a considerable influence on the further development of international standards for animal identification and traceability. It is therefore appropriate to make a Community financial contribution to the OIE conference.

- (5) The OIE has a de facto monopoly in its sector, as mentioned in Article 168(1)(c) of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 ⁽²⁾ laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities; hence a call for proposals is not required.
- (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 DECIDED AS FOLLOWS:

Article 1

A Community financial contribution, for the financing of the OIE Conference on Animal Identification and Traceability, organised by the OIE in 2009, of EUR 150 000 constituting a Community co-financing of at maximum 33 % of the total eligible costs is approved.

Article 2

The financial contribution provided for in Article 1 shall be financed through the budget line 17 04 02 01 of the budget of the European Communities for 2009.

A grant agreement for the financial contributions provided for in Article 1 will be awarded to the OIE without a call for proposals as the OIE is the intergovernmental organisation for improving animal health worldwide and got a de facto monopoly.

Done at Brussels, 6 November 2008.

For the Commission
Androulla VASSILIOU
Member of the Commission

⁽¹⁾ OJ L 224, 18.8.1990, p. 19.

⁽²⁾ OJ L 357, 31.12.2002, p. 1.

RECOMMENDATIONS

COMMISSION

COMMISSION RECOMMENDATION

of 15 October 2008

on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services

*(notified under document number C(2008) 5925)***(Text with EEA relevance)**

(2008/850/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services ⁽¹⁾, and in particular Article 19(1) thereof,

Whereas:

- (1) Under the regulatory framework for electronic communications networks and services, national regulatory authorities are obliged to contribute to the development of the internal market by cooperating with each other and with the Commission in a transparent manner in order to ensure the development of consistent regulatory practice and the consistent application of the directives making up the regulatory framework.
- (2) To ensure that decisions taken at national level do not have an adverse effect on the single market or on the objectives pursued by the regulatory framework, national regulatory authorities must notify the Commission and other national regulatory authorities of those draft measures stipulated in Article 7(3) of Directive 2002/21/EC.
- (3) As an additional requirement, national regulatory authorities must obtain Commission authorisation for

obligations covered by the second subparagraph of Article 8(3) of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities ⁽²⁾, which is a separate process.

- (4) The Commission will give national regulatory authorities, if they so request, the opportunity to discuss any draft measures, before formal notification of such measures under Article 7 of Directive 2002/21/EC and Article 8(3) of Directive 2002/19/EC. Where, pursuant to Article 7(4) of Directive 2002/21/EC, the Commission has indicated to the national regulatory authority that it considers that the draft measure would create a barrier to the single market or where it has serious doubts as to its compatibility with Community law, the national regulatory authority concerned should be given an early opportunity to express its views regarding the issues raised by the Commission.
- (5) Directive 2002/21/EC lays down certain binding time limits for the consideration of notifications under Article 7.
- (6) To ensure the effectiveness of cooperation and the consultation mechanism set out in Article 7 of Directive 2002/21/EC and to guarantee legal certainty, clear rules dealing with the main procedural aspects of the notifications made under Article 7 were put in place by Commission Recommendation 2003/561/EC of 23 July 2003 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC

⁽¹⁾ OJ L 108, 24.4.2002, p. 33.

⁽²⁾ OJ L 108, 24.4.2002, p. 7.

of the European parliament and of the Council on a common regulatory framework for electronic communications networks and services⁽¹⁾. Recommendation 2003/561/EC should be replaced by this Recommendation with a view to further simplifying and improving the notification process.

communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services⁽²⁾, notification of such a draft measure under Article 7 of Directive 2002/21/EC should be made by means of the short notification form.

- (7) To give further guidance to national regulatory authorities on the content of draft measures and to increase legal certainty on the completeness of a notification, certain minimum information should be provided on what a draft measure should contain in order to be properly assessed.
- (8) Account has to be taken of the need to ensure effective assessment, on the one hand, and to simplify administration as far as possible, on the other hand. In this respect, the notification mechanism should not involve any unnecessary administrative burden on the national regulatory authorities. It would also be beneficial to clarify procedural arrangements in the context of the second subparagraph of Article 8(3) of Directive 2002/19/EC.
- (9) To help simplify the examination of a notified draft measure and to make the process quicker, national regulatory authorities should use standard formats for notifications.
- (10) In order to improve the efficiency of the notification mechanism, to increase legal certainty for national regulatory authorities and market players and to ensure timely implementation of regulatory measures, it is desirable that a notification by a national regulatory authority covering a market analysis also includes the remedies proposed by the national regulatory authority to address the market failures identified. Where the draft measure relates to a market which is found to be competitive and remedies already exist in relation to that market, the notification should also include the proposals for withdrawing those obligations.
- (11) In general, a short notification form should be used for certain categories of draft measures in order to reduce the administrative burden on national regulatory authorities and the Commission. However, notification of these categories by way of the standard notification procedure remains possible.
- (12) Where a national regulatory authority intends to withdraw regulatory obligations in relation to markets not included in Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services⁽²⁾, notification of such a draft measure under Article 7 of Directive 2002/21/EC should be made by means of the short notification form.
- (13) Where a national regulatory authority carries out a review of a market that has been found to be effectively competitive in a previous review and finds once more that this market is effectively competitive, the notification should be made by means of the short notification form.
- (14) National regulatory authorities frequently amend technical details of the remedies imposed to take account of changes in economic indicators (such as equipment, labour, inflation, cost of capital, property rental rates, etc.), or to update forecasts or assumptions. Changes or updates of details which do not change the nature or the general scope of remedies (e.g. extension of reporting obligations, details of required insurance coverage, amounts of penalties, or delivery times) should be notified by means of the short notification form. Only material changes to the nature or scope of the remedies that have an appreciable impact on the market (such as price levels, amendments to the methodologies used to calculate costs or prices, determination of glide paths) should be notified by the standard notification procedure.
- (15) With regard to certain markets (in particular, voice call termination markets), national regulatory authorities may come to the same conclusion as in a previous review and wish to impose remedies on further operators (e.g. new entrants) with a similar customer base or total turnover to operators covered by a previous review which do not materially differ from draft measures already notified. The short notification form should be used for these draft measures.
- (16) A draft measure notified by means of a short notification form will in principle not give rise to comments by the Commission to the national regulatory authority in accordance with Article 7(3) of Directive 2002/21/EC.
- (17) In order to increase transparency on a notified draft measure and to facilitate the exchange of information about such measures between national regulatory authorities both the standard and the short notification forms should contain a summarised description of the main elements of the notified draft measure.

⁽¹⁾ OJ L 190, 30.7.2003, p. 13.

⁽²⁾ OJ L 344, 28.12.2007, p. 65.

(18) The European Regulators Group for Electronic Communications Networks and Services established by Commission Decision 2002/627/EC ⁽¹⁾ has recognised the need for these arrangements.

(19) To meet the objectives laid down in Article 8 of Directive 2002/21/EC, in particular the need to ensure consistent regulatory practices and consistent application of that Directive, full compliance with the notification mechanism laid down in Article 7 is essential.

(20) The Communications Committee has delivered its opinion in accordance with Article 22(2) of Directive 2002/21/EC,

HEREBY RECOMMENDS:

1. Terms defined in Directive 2002/21/EC and the specific directives have the same meaning when used in this Recommendation. In addition:

(a) 'recommendation on relevant markets' means Recommendation 2007/879/EC and any subsequent Recommendation on relevant markets;

(b) 'notification' means the notification to the Commission by a national regulatory authority of a draft measure pursuant to Article 7(3) of Directive 2002/21/EC or a request pursuant to the second subparagraph of Article 8(3) of Directive 2002/19/EC, accompanied by the standard notification form or short notification form as provided in this Recommendation (Annex I and Annex II).

2. Notifications should be made by electronic mail with a request for acknowledgement of receipt.

Documents sent by electronic mail will be presumed to have been received by the addressee on the day on which they were sent.

Notifications will be registered in the order in which they are received.

3. Notifications will become effective on the date on which the Commission registers them (date of registration). The date of registration will be the date on which a complete notification is received by the Commission.

Notice will be given on the Commission's website and by electronic means to all national regulatory authorities of the

date of registration of the notification, the subject matter of the notification and any supporting documentation received.

4. Notifications should be in any of the official languages of the Community. The standard notification form (Annex I) or the short notification form (Annex II) may be in an official language other than that of the draft measure in order to facilitate consultation by all other national regulatory authorities.

Any comments made or decisions adopted by the Commission pursuant to Article 7 of Directive 2002/21/EC will be in the language of the notified draft measure, translated where possible into the language used on the standard notification form.

5. Draft measures notified by a national regulatory authority should be accompanied by the documentation needed for the Commission to carry out its tasks. For those draft measures that fall under point 6 below and are notified by means of the short notification form, the Commission does not need in principle any additional documentation to carry out its tasks.

Draft measures should be duly substantiated.

6. The following draft measures should be made available to the Commission by means of the short notification form contained in Annex II:

(a) draft measures concerning markets which have been removed from or have not been previously listed in the Recommendation on relevant markets, either where the market is found to be competitive by the national regulatory authority, or where the national regulatory authority considers that the three cumulative criteria referred to in point 2 of the Recommendation on relevant markets for identifying markets that are susceptible to *ex ante* regulation are no longer met;

(b) draft measures concerning markets which, while included in the Recommendation on relevant markets in force, had been found to be competitive in a previous market review, and remain competitive;

(c) draft measures that change the technical details of previously imposed regulatory remedies and do not have an appreciable impact on the market (e.g. annual updates of costs and estimates of accounting models, reporting times, delivery times); and

⁽¹⁾ OJ L 200, 30.7.2002, p. 38.

- (d) draft measures concerning a relevant market that has already been analysed and notified in relation to other undertakings, where the national regulatory authorities imposes similar remedies on other undertakings, without materially changing the principles applied in the previous notification.
7. The Commission, in close cooperation with the national regulatory authorities, will monitor the practical consequences of the short notification procedure with a view to make any further adjustments as may be necessary or add other categories of draft measures that should be notified using the short notification form.
8. Draft measures not falling under point 6 should be made available to the Commission by means of the standard notification form set out in Annex I. The draft measures notified should include each of the following where applicable:
- (a) the relevant product or service market, in particular, a description of the products and services to be included in and excluded from the relevant market on the basis of demand-side and supply-side substitutability;
 - (b) the relevant geographic market, including a reasoned analysis of the competitive conditions on the basis of demand-side and supply-side substitutability;
 - (c) the main undertakings active on the relevant market;
 - (d) the results of the analysis of the relevant market, in particular the findings as to the presence or absence of effective competition, together with the reasons therefore. For these purposes, the draft measure should contain an analysis of the market shares of the different undertakings and a reference to other relevant criteria, as appropriate, such as barriers to entry, economies of scale and scope, vertical integration, control of infrastructure not easily duplicated, technological advantages or superiority, absence of or low countervailing buying power, easy or privileged access to capital markets/financial resources, overall size of the undertaking, product/services diversification, highly developed distribution and sales network, absence of potential competition and barriers to expansion;
 - (e) where appropriate, the undertakings to be designated as having, individually or jointly, significant market power within the meaning of Article 14 of Directive 2002/21/EC and the reasoning, evidence and any other relevant factual information in support of such designation;
 - (f) the results of the prior public consultation carried out by the national regulatory authority;
 - (g) the opinion issued by the national competition authority, where provided;
 - (h) evidence that, at the time of notification to the Commission, appropriate steps had been taken to notify the draft measures to the national regulatory authorities in all other Member States;
 - (i) in the case of notification of draft measures which fall within the scope of Articles 5 or 8 of Directive 2002/19/EC or Article 16 of Directive 2002/22/EC of the European Parliament and of the Council⁽¹⁾, the specific regulatory obligations proposed to address the lack of effective competition in the relevant market concerned or, in cases where a relevant market is found to be effectively competitive and such obligations have already been imposed in respect of that market, the draft measures proposed to withdraw those obligations.
9. Where, for the purposes of the market analysis, a draft measure defines a relevant market which differs from those in the Recommendation on relevant markets, national regulatory authorities should provide sufficient reasoning of the criteria used for such a market definition.
10. Notifications made in accordance with the second subparagraph of Article 8(3) of Directive 2002/19/EC should also contain adequate reasoning as to why obligations other than those listed in Articles 9 to 13 of the Directive should be imposed on operators with significant market power.
11. Notifications falling within the scope of Article 8(5) of Directive 2002/19/EC should also contain adequate reasoning as to why the intended draft measures are required to comply with international commitments.
12. Notifications made by means of the standard notification procedure that include the applicable information within the meaning of point 8 will be presumed to be complete. Where the information, including documents, contained in the notification is incomplete in any material respect, the Commission will inform the national regulatory authority concerned within five working days and specify to what extent it considers the notification to be incomplete. The notification will not be registered until the national regulatory authority concerned has provided the requisite information. In such cases, for the purposes of Article 7 of Directive 2002/21/EC, the notification will become effective on the date on which the Commission receives the complete information.

⁽¹⁾ OJ L 108, 24.4.2002, p. 51.

13. Without prejudice to point 8 above, following registration of a notification, the Commission, acting in accordance with Article 5(2) of Directive 2002/21/EC, may seek further information or clarification from the national regulatory authority concerned. National regulatory authorities should endeavour to provide the information requested within three working days, where this is readily available.
 14. The Commission will verify whether or not the draft measure made available by means of a short notification form falls within the categories listed under point 6. Where the Commission considers this not to be the case, it will inform the national regulatory authority concerned within five working days and ask the notifying regulatory authority to submit the draft measure by means of the standard notification procedure.
 15. Where the Commission makes comments in accordance with Article 7(3) of Directive 2002/21/EC, it will notify the national regulatory authority concerned by electronic means and publish such comments on its website.
 16. Where a national regulatory authority makes comments in accordance with Article 7(3) of Directive 2002/21/EC, it shall communicate those comments to the Commission and the other national regulatory authorities by electronic means.
 17. Where, in application of Article 7(4) of Directive 2002/21/EC, the Commission considers that a draft measure would create a barrier to the single market or it has serious doubts as to its compatibility with Community law and in particular the objectives referred to in Article 8 of Directive 2002/21/EC; or it subsequently withdraws its objections, or takes a decision requiring a national regulatory authority to withdraw a draft measure, it will notify the national regulatory authority concerned by electronic means and post a notice on its website.
 18. With regard to notifications made pursuant to the second subparagraph of Article 8(3) of Directive 2002/19/EC, the Commission, acting in accordance with Article 14(2) of that directive, will normally take a decision authorising or preventing the national regulatory authority from adopting the proposed draft measure within a period not exceeding three months. The Commission may decide to extend this period for a further two months in view of the difficulties raised.
 19. A national regulatory authority may decide at any time to withdraw the notified draft measure, in which case the notified measure will be removed from the register. The Commission will publish a notice to that effect on its website.
 20. Where a national regulatory authority adopts the draft measure after receiving comments from the Commission or another national regulatory authority made in accordance with Article 7(3) of Directive 2002/21/EC, it shall communicate to the Commission and other national regulatory authorities of the manner in which it took the utmost account of the comments made.
 21. When requested by a national regulatory authority, the Commission will informally discuss a draft measure prior to notification.
 22. In accordance with Regulation (EEC, Euratom) No 1182/71 of the Council ⁽¹⁾, any period of time referred to in Directive 2002/21/EC or in this Recommendation will be calculated as follows:
 - (a) where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs, the day during which that event occurs shall not be counted as falling within the period in question;
 - (b) a period expressed in weeks or in months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date as the day during which the event from which the period is to be calculated occurred. Where, in a period expressed in months the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;
 - (c) time periods shall include official holidays, Saturdays and Sundays.
 - (d) working days mean all days other than official and/or public holidays, Saturdays and Sundays.
- Should a time period end on a Saturday, Sunday or an official holiday, it shall be extended until the end of the first following working day. The list of official holidays as determined by the Commission is published in the *Official Journal of the European Union* before the beginning of each year.

⁽¹⁾ OJ L 124, 8.6.1971, p. 1.

23. The Commission, together with the national regulatory authorities, will evaluate the necessity of reviewing this Recommendation as appropriate after the date established in the review of the regulatory framework for the transposition by the Member States into national law.
24. This Recommendation is addressed to the Member States.

Done at Brussels, 15 October 2008.

For the Commission
Viviane REDING
Member of the Commission

ANNEX I

Standard form relating to notifications of draft measures pursuant to Article 7 of Directive 2002/21/EC*(Standard notification form)*

INTRODUCTION

The standard notification form specifies the summary information to be provided by national regulatory authorities to the Commission when notifying draft measures under the standard notification procedure in accordance with Article 7 of Directive 2002/21/EC.

The Commission intends to discuss issues relating to the implementation of Article 7 with national regulatory authorities, especially during pre-notification meetings. Accordingly, national regulatory authorities are encouraged to consult the Commission on any aspect of the standard notification form and in particular on the kind of information they are requested to supply or, conversely, the possibility of dispensing with the obligation to provide certain information in relation to the market analysis carried out pursuant to Articles 15 and 16 of Directive 2002/21/EC.

CORRECT AND COMPLETE INFORMATION

All information submitted by national regulatory authorities should be correct and complete and summarised on the standard notification form set out below. The standard notification form is not meant to replace the notified draft measure, but it should enable the Commission and the national regulatory authorities of other Member States to verify that the notified draft measure does indeed contain, by reference to the information contained in the standard notification form, all the information needed for the Commission to carry out its tasks under Article 7 of Directive 2002/21/EC within the time frame set therein.

The information required should be set out in the sections and paragraphs of the standard notification form, with cross-references to the body of the draft measure where this information is to be found.

LANGUAGE

The standard notification form should be completed in one of the official languages of the European Community and may be different from the language used in the notified draft measure. Any opinion issued or decision taken by the Commission in accordance with Article 7 of Directive 2002/21/EC will be in the language of the notified draft measure, translated where possible into the language used in the standard notification form.

Section 1*Market definition*

Please state where applicable:

- 1.1. The relevant product/service market. Is this market mentioned in the Recommendation on relevant markets?
- 1.2. The relevant geographic market.
- 1.3. A brief summary of the opinion of the national competition authority, where provided.
- 1.4. A brief overview of the results of the public consultation to date on the proposed market definition (e.g. how many comments were received, which respondents agreed with the proposed market definition, which respondents disagreed with it).
- 1.5. Where the relevant market is different from those listed in the Recommendation on relevant markets, a summary of the main reasons justifying the proposed market definition by reference to Section 2 of the Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services ⁽¹⁾, and the three main criteria mentioned in recitals 5 to 13 of the Recommendation on relevant markets and Section 2.2 of the accompanying Explanatory Note ⁽²⁾.

⁽¹⁾ OJ C 165, 11.7.2002, p. 6.

⁽²⁾ Explanatory Note accompanying the Commission Recommendation 2007/789/EC on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, C(2007) 5406 published at http://ec.europa.eu/information_society/policy/ecomms/doc/implementation_enforcement/article_7/sec_2007_1483_2.pdf

Section 2*Designation of undertakings with significant market power*

Please state where applicable:

- 2.1. The name of the undertakings designated as having, individually or jointly, significant market power.

Where applicable, the name of the undertakings considered no longer to have significant market power.

- 2.2. The criteria used to designate an undertaking as having significant market power, individually or jointly, or not.
- 2.3. The name of the main undertakings (competitors) active in the relevant market.
- 2.4. The market shares of the undertakings mentioned above and the basis for calculation of market share (e.g. turnover, number of subscribers).

Please provide a brief summary of:

- 2.5. The opinion of the national competition authority where provided.
- 2.6. The results of the public consultation to date on the proposed designation(s) as undertakings having significant market power (e.g. total number of comments received, numbers agreeing/disagreeing).

Section 3*Regulatory obligations*

Please state where applicable:

- 3.1. The legal basis for the obligations to be imposed, maintained, amended or withdrawn (Articles 9 to 13 of Directive 2002/19/EC).
- 3.2. The reasons for which the imposition, maintenance or amendment of obligations on undertakings is considered proportional and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC. Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found.
- 3.3. Where the remedies proposed are other than those set out in Articles 9 to 13 of Directive 2002/19/EC, please indicate what 'exceptional circumstances' within the meaning of Article 8(3) of that Directive justify the imposition of such remedies. Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found.

Section 4*Compliance with international obligations*

In relation to the third indent of the first subparagraph of Article 8(3) of Directive 2002/19/EC, please state where applicable:

- 4.1. Whether the proposed draft measure intends to impose, amend or withdraw obligations on market players as provided for in Article 8(5) of Directive 2002/19/EC.
- 4.2. The name of the undertakings concerned.
- 4.3. What international commitments entered into by the Community and the Member States are to be met.
-

ANNEX II

Short form relating to notifications of draft measures pursuant to Article 7 of Directive 2002/21/EC*(Short notification form)*

INTRODUCTION

The short notification form specifies the summary information to be provided by national regulatory authorities to the Commission when notifying draft measures under the short notification procedure in accordance with Article 7 of Directive 2002/21/EC.

It is not necessary to provide a copy of the draft regulatory measure or to attach any other document to the short notification form. However, it is necessary to indicate the Internet reference through which the draft measure can be accessible in the short notification form.

1. One or several markets which has/have been removed from or have not been previously listed in the Recommendation on relevant markets is/are found to be competitive or not to meet the three criteria	
Please briefly describe the content of the notified draft measure. In particular, please refer to the relevant market concerned and the reasons why you consider that the market is effectively competitive or the three criteria are not met:	
Please indicate the Article 7 notification reference of the previously notified draft measures:	
Does the NCA agree with the proposed draft measure as regards the analysis of the relevant market?	Yes No ☐ ☐ If no, please outline reasons:
Internet reference to the draft measure:	
Comments:	
2. One or several markets which was/were found to be competitive in a previous market review is/are still competitive:	
Please briefly describe the content of the draft measure, indicating the relevant market concerned:	
Please indicate the Article 7 notification reference of the previously notified draft measures:	
Are there changes: to the market definition, as compared with previously notified draft measures?	Yes No ☐ ☐ If yes, please describe briefly
Does the NCA agree with the proposed draft measure as regards the analysis of the relevant market?	Yes No ☐ ☐ If no, please outline reasons:
Internet reference to the draft measure:	
Comments:	
3. Changes to technical details of a previously imposed regulatory remedy.	
Please summarise the notified changes to the remedies indicating the relevant market concerned:	
Please justify your conclusion that the measure consists of a change on a technical detail of a remedy and does not change the nature or the general scope of a remedy:	
Please indicate the Article 7 notification reference of the previously notified draft measures:	
Internet reference to the draft measure:	
Comments:	

4. Imposition on further operators of remedies already analysed and notified in relation to other undertakings that are similar as regards their customer base or total turnover in telecoms markets, without changing the principles applied by the NRA in the previous notification.	
Please briefly summarise the content of the draft measure, indicating the relevant market concerned:	
Please indicate the Article 7 notification reference of the previously notified draft measures:	
Please list the operators on whom this draft measure imposes obligations:	
Does the NCA agree with the proposed draft measure as regards the analysis of the relevant market?	Yes No ☐ ☐ If no, please outline reasons
Internet reference to the draft measure:	
Comments:	

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL JOINT ACTION 2008/851/CFSP

of 10 November 2008

on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast

THE COUNCIL OF THE EUROPEAN UNION,

international law, all necessary means to repress acts of piracy and armed robbery at sea.

Having regard to the Treaty on European Union, and in particular Article 14, the third subparagraph of Article 25 and Article 28(3) thereof,

Whereas:

(1) In its Resolution 1814 (2008) on the situation in Somalia, adopted on 15 May 2008, the United Nations Security Council (UNSC) has called on States and regional organisations, in close coordination with one another, to take action to protect shipping involved in the transport and delivery of humanitarian aid to Somalia and in activities authorised by the United Nations.

(2) In its Resolution 1816 (2008) on the situation in Somalia, adopted on 2 June 2008, the UNSC expressed its concern at the threat that acts of piracy and armed robbery against vessels pose to the delivery of humanitarian aid to Somalia, the safety of commercial maritime routes and international navigation. The UNSC encouraged, in particular, States interested in the use of commercial maritime routes off the coast of Somalia to increase and coordinate their efforts, in cooperation with the Transitional Federal Government of Somalia (TFG), to deter acts of piracy and armed robbery at sea. It authorised, for a period of six months from the date of the resolution, States cooperating with the TFG, of which advance notification had been given by the TFG to the UN Secretary-General, to enter the territorial waters of Somalia and to use, in a manner consistent with relevant

(3) In its Resolution 1838 (2008) on the situation in Somalia, adopted on 7 October 2008, the UNSC commended the ongoing planning process towards a possible European Union (EU) naval operation, as well as other international or national initiatives taken with a view to implementing Resolutions 1814 (2008) and 1816 (2008), and urged States that have the capacity to do so, to cooperate with the TFG in the fight against piracy and armed robbery at sea in conformity with the provisions of Resolution 1816 (2008). The UNSC also urged States and regional organisations, in conformity with the provisions of Resolution 1814 (2008), to continue to take action to protect the World Food Programme (WFP) maritime convoys, which is vital to bring humanitarian assistance to the affected populations in Somalia.

(4) In its conclusions of 26 May 2008, the Council expressed its concern at the upsurge of piracy attacks off the Somali coast, which affect humanitarian efforts and international maritime traffic in the region and contribute to continued violations of the UN arms embargo. The Council also commended the sequenced initiatives of some Member States to provide protection to WFP vessels. It stressed the need for wider participation by the international community in these escorts in order to secure the delivery of humanitarian aid to the Somali population.

(5) On 5 August 2008, the Council approved a crisis management concept for action by the EU to help implement UNSC Resolution 1816 (2008) and for peace and international security in the region.

- (6) On 15 September 2008, the Council reaffirmed its serious concern at the acts of piracy and armed robbery off the Somali coast, deploring, in particular, their recent resurgence. As regards the EU's contribution to the implementation of UNSC Resolution 1816 (2008) on combating piracy off the Somali coast and to the protection, under Resolutions 1814 (2008) and 1816 (2008), of vessels chartered by the WFP and bound for Somalia, the Council decided to establish a coordination cell in Brussels with the task of supporting the surveillance and protection activities carried out by some Member States off the Somali coast. On the same day, it approved, on the one hand, a plan for the implementation of this military coordination action (EU NAVCO) and, on the other, a strategic military option for a possible EU naval operation for which those Member States wishing to cooperate with the TFG under Resolution 1816 (2008) would make available military resources for the deterrence and repression of acts of piracy and armed robbery off the Somali coast.
- (7) On 19 September 2008, the Council adopted Joint Action 2008/749/CFSP on the European Union military coordination action in support of UN Security Council Resolution 1816 (2008) (EU NAVCO) ⁽¹⁾.
- (8) On the launch of the Atalanta military operation, the tasks of the military coordination cell will be exercised under this Joint Action. The coordination cell should then be closed.
- (9) The Political and Security Committee (PSC) should exercise political control over the EU military operation in order to help deter acts of piracy off the Somali coast, provide it with strategic direction and take the relevant decisions in accordance with third subparagraph of Article 25 of the Treaty.
- (10) Under Article 28(3) of the Treaty, the operational expenditure, arising from this Joint Action, which has military or defence implications, should be borne by the Member States in accordance with Council Decision 2007/384/CFSP of 14 May 2007 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena) ⁽²⁾ (hereinafter referred to as 'Athena').
- (11) Article 14(1) of the Treaty calls for Joint Actions to lay down the means to be made available to the European Union. The financial reference amount, for a twelve-month period, for the common costs of the EU military operation constitutes the best current estimate and is without prejudice to the final figures to be

included in a budget to be approved in accordance with the rules laid down in the decision regarding Athena.

- (12) By letter dated 30 October 2008, the EU made an offer to the TFG, pursuant to point 7 of Resolution 1816 (2008), which contains proposals for States other than Somalia to exercise jurisdiction over persons captured in Somali territorial waters who have committed, or are suspected of having committed, acts of piracy or armed robbery.
- (13) In accordance with Article 6 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not participate in the elaboration and implementation of decisions and actions of the European Union which have defence implications. Denmark does not participate in the implementation of this Joint Action and therefore does not participate in the financing of the operation,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Mission

1. The European Union (EU) shall conduct a military operation in support of Resolutions 1814 (2008), 1816 (2008) and 1838 (2008) of the United Nations Security Council (UNSC), in a manner consistent with action permitted with respect to piracy under Article 100 *et seq.* of the United Nations Convention on the Law of the Sea signed in Montego Bay on 10 December 1982 (hereinafter referred to as 'the United Nations Convention on the Law of the Sea') and by means, in particular, of commitments made with third States, hereinafter called 'Atalanta' in order to contribute to:

- the protection of vessels of the WFP delivering food aid to displaced persons in Somalia, in accordance with the mandate laid down in UNSC Resolution 1814 (2008),
- the protection of vulnerable vessels cruising off the Somali coast, and the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast, in accordance with the mandate laid down in UNSC Resolution 1816 (2008),

2. The forces deployed to that end shall operate, up to 500 nautical miles off the Somali coast and neighbouring countries, in accordance with the political objective of an EU maritime operation, as defined in the crisis management concept approved by the Council on 5 August 2008.

⁽¹⁾ OJ L 252, 20.9.2008, p. 39.

⁽²⁾ OJ L 152, 13.6.2007, p. 14.

*Article 2***Mandate**

Under the conditions set by the relevant international law and by UNSC Resolutions 1814 (2008), 1816 (2008) and 1838 (2008), Atalanta shall, as far as available capabilities allow:

- (a) provide protection to vessels chartered by the WFP, including by means of the presence on board those vessels of armed units of Atalanta, in particular when cruising in Somali territorial waters;
- (b) provide protection, based on a case-by-case evaluation of needs, to merchant vessels cruising in the areas where it is deployed;
- (c) keep watch over areas off the Somali coast, including Somalia's territorial waters, in which there are dangers to maritime activities, in particular to maritime traffic;
- (d) take the necessary measures, including the use of force, to deter, prevent and intervene in order to bring to an end acts of piracy and armed robbery which may be committed in the areas where it is present;
- (e) in view of prosecutions potentially being brought by the relevant States under the conditions in Article 12, arrest, detain and transfer persons who have committed, or are suspected of having committed, acts of piracy or armed robbery in the areas where it is present and seize the vessels of the pirates or armed robbers or the vessels caught following an act of piracy or an armed robbery and which are in the hands of the pirates, as well as the goods on board;
- (f) liaise with organisations and entities, as well as States, working in the region to combat acts of piracy and armed robbery off the Somali coast, in particular the 'Combined Task Force 150' maritime force which operates within the framework of 'Operation Enduring Freedom'.

*Article 3***Appointment of the EU Operation Commander**

Rear admiral Phillip Jones is hereby appointed EU Operation Commander.

*Article 4***Designation of the EU Operational Headquarters**

The EU Operational Headquarters shall be located at Northwood, United Kingdom.

*Article 5***Planning and launch of the operation**

The Decision to launch the EU military operation shall be adopted by the Council following approval of the Operation Plan and the Rules of Engagement and in the light of the notification by the TFG to the Secretary-General of the United Nations of the offer of cooperation made by the EU pursuant to point 7 of UNSC Resolution 1816 (2008).

*Article 6***Political control and strategic direction**

1. Under the responsibility of the Council, the Political and Security Committee (hereinafter referred to as the 'PSC') shall exercise the political control and strategic direction of the EU military operation. The Council hereby authorises the PSC to take the relevant decisions in accordance with Article 25 of the EU Treaty. This authorisation shall include the powers to amend the planning documents, including the Operation Plan, the Chain of Command and the Rules of Engagement. It shall also include the powers to take decisions on the appointment of the EU Operation Commander and/or EU Force Commander. The powers of decision with respect to the objectives and termination of the EU military operation shall remain vested in the Council, assisted by the Secretary-General/High Representative (hereinafter referred to as the 'SG/HR').

2. The PSC shall report to the Council at regular intervals.

3. The PSC shall receive reports from the chairman of the EU Military Committee (EUMC) regarding the conduct of the EU military operation, at regular intervals. The PSC may invite the EU Operation Commander and/or EU Force Commander to its meetings, as appropriate.

*Article 7***Military direction**

1. The EUMC shall monitor the proper execution of the EU military operation conducted under the responsibility of the EU Operation Commander.

2. The EUMC shall receive reports from the EU Operation Commander at regular intervals. It may invite the EU Operation Commander and/or EU Force Commander to its meetings as appropriate.

3. The chairman of the EUMC shall act as the primary point of contact with the EU Operation Commander.

*Article 8***Coherence of EU response**

The Presidency, the SG/HR, the EU Operation Commander and the EU Force Commander shall closely coordinate their respective activities regarding the implementation of this Joint Action.

*Article 9***Relations with the United Nations, neighbouring countries and other actors**

1. The SG/HR, in close coordination with the Presidency, shall act as the primary point of contact with the United Nations, the Somali authorities, the authorities of neighbouring countries, and other relevant actors. Within the context of his contact with the African Union, the SG/HR shall be assisted by the EU Special Representative (EUSR) to the African Union, in close coordination with the presidency.

2. At operational level, the EU Operation Commander shall act as the contact point with, in particular, ship-owners' organisations, as well as with the relevant departments of the UN General Secretariat and the WFP.

Article 10

Participation by third States

1. Without prejudice to the decision-making autonomy of the EU or to the single institutional framework, and in accordance with the relevant guidelines of the European Council, third States may be invited to participate in the operation.

2. The Council hereby authorises the PSC to invite third States to offer contributions and to take the relevant decisions on acceptance of the proposed contributions, upon the recommendation of the EU Operation Commander and the EUMC.

3. Detailed modalities for the participation by third States shall be the subject of agreements concluded in accordance with the procedure laid down in Article 24 of the Treaty. The SG/HR, who shall assist the Presidency, may negotiate such agreements on behalf of the Presidency. Where the EU and a third State have concluded an agreement establishing a framework for the latter's participation in EU crisis management operations, the provisions of such an agreement shall apply in the context of this operation.

4. Third States making significant military contributions to the EU military operation shall have the same rights and obligations in terms of day-to-day management of the operation as Member States taking part in the operation.

5. The Council hereby authorises the PSC to take relevant decisions on the setting-up of a Committee of Contributors, should third States provide significant military contributions.

6. The conditions for the transfer to a State participating in the operation of persons arrested and detained, with a view to the exercise of jurisdiction of that State, shall be established when the participation agreements referred to in paragraph 3 are concluded or implemented.

Article 11

Status of EU-led forces

The status of the EU-led forces and their personnel, including the privileges, immunities and further guarantees necessary for the fulfilment and smooth functioning of their mission, who:

- are stationed on the land territory of third States,
- operate in the territorial or internal waters of third States,

shall be agreed in accordance with the procedure laid down in Article 24 of the Treaty. The SG/HR, who shall assist the Presidency, may negotiate such arrangements on behalf of the Presidency.

Article 12

Transfer of persons arrested and detained with a view to their prosecution

1. On the basis of Somalia's acceptance of the exercise of jurisdiction by Member States or by third States, on the one hand, and Article 105 of the United Nations Convention on the Law of the Sea, on the other hand, persons having committed, or suspected of having committed, acts of piracy or armed robbery in Somali territorial waters or on the high seas, who are arrested and detained, with a view to their prosecution, and property used to carry out such acts, shall be transferred:

- to the competent authorities of the flag Member State or of the third State participating in the operation, of the vessel which took them captive, or
- if this State cannot, or does not wish to, exercise its jurisdiction, to a Member States or any third State which wishes to exercise its jurisdiction over the aforementioned persons and property.

2. No persons referred to in paragraphs 1 and 2 may be transferred to a third State unless the conditions for the transfer have been agreed with that third State in a manner consistent with relevant international law, notably international law on human rights, in order to guarantee in particular that no one shall be subjected to the death penalty, to torture or to any cruel, inhuman or degrading treatment.

Article 13

Relations with the flag States of protected vessels

The conditions governing the presence on board merchant ships, particularly those chartered by the WFP, of units belonging to Atalanta, including privileges, immunities and other guarantees relating to the proper conduct of the operation, shall be agreed with the flag States of those vessels.

Article 14

Financial arrangements

1. The common costs of the EU military operation shall be administered by Athena.

2. The financial reference amount for the common costs of the EU military operation shall be EUR 8 300 000. The percentage of the reference amount referred to in Article 33(3) of Athena shall be 30 %.

*Article 15***Release of information to the United Nations and other third parties**

1. The SG/HR is hereby authorised to release to the United Nations and to other third parties associated with this Joint Action, classified EU information and documents generated for the purposes of the EU military operation up to the level of classification appropriate for each of them and in accordance with the Council's security regulations ⁽¹⁾.

2. The SG/HR is hereby authorised to release to the United Nations and to other third parties associated with this Joint Action, unclassified EU documents relating to Council deliberations on the operation which are covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council's Rules of Procedure ⁽²⁾.

*Article 16***Entry into force and termination**

1. This Joint Action shall enter into force on the date of its adoption.

2. Joint Action 2008/749/CFSP shall be repealed as from the date of closure of the coordination cell put in place by that Joint Action. It shall be closed on the launch date of the operation referred to in Article 6 of this Joint Action.

3. The EU military operation shall terminate 12 months after the initial operating capability is declared, subject to the prolongation of UNSC Resolutions 1814 (2008) and 1816 (2008).

4. This Joint Action shall be repealed following the withdrawal of the EU force, in accordance with the plans approved for the termination of the EU military operation, and without prejudice to the relevant provisions of Athena.

*Article 17***Publication**

1. This Joint Action shall be published in the *Official Journal of the European Union*.

2. The PSC's decisions on the appointment of an EU Operation Commander and/or EU Force Commander, as well as the PSC's decisions on the acceptance of contributions from third States and the setting-up of a Committee of Contributors shall likewise be published in the *Official Journal of the European Union*.

Done at Brussels, 10 November 2008.

For the Council

The President

B. KOUCHNER

⁽¹⁾ Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations (OJ L 101, 11.4.2001, p. 1).

⁽²⁾ Council Decision 2004/338/EC, Euratom of 22 March 2004 adopting the Council's Rules of Procedure (OJ L 106, 15.4.2004, p. 22).

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL DECISION 2008/852/JHA

of 24 October 2008

on a contact-point network against corruption

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29, Article 30(1), Article 31 and Article 34(2)(c) thereof,

Having regard to the initiative of the Federal Republic of Germany ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

(1) Article 29 of the Treaty states that the objective of the Union to provide citizens with a high level of safety within an area of freedom, security and justice is to be achieved by preventing and combating crime, organised or otherwise, including corruption and fraud.

(2) The European Union strategy for the beginning of the new millennium on the prevention and control of organised crime emphasises the need to develop a comprehensive EU policy against corruption.

(3) In its Resolution of 14 April 2005 concerning a comprehensive EU policy against corruption, which refers to the communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee of 28 May 2003 on a Comprehensive EU Policy against Corruption, the Council reaffirms the importance of the role and work of the Member States in developing a comprehensive, multi-faceted policy against corruption in both the public and private sectors, in partnership with all relevant players from civil society and business alike.

(4) The European Council welcomed the development in the Hague Programme ⁽³⁾ (point 2.7) of a strategic concept with regard to cross-border organised crime and corruption at EU level and asked the Council and the Commission to develop this concept further and make it operational.

(5) The heads and key representatives of EU Member States' national police monitoring and inspection bodies and those of their anti-corruption agencies with a wider remit met in November 2004 in Vienna at the AGIS conference on the Enhancement of Operational Cooperation in Fighting Corruption in the European Union. They emphasised the importance of further enhancing their cooperation, *inter alia*, through annual meetings, and welcomed the idea of a European anti-corruption network based upon existing structures. In the wake of the Vienna conference these European Partners Against Corruption (EPAC) met in Budapest in November 2006 for their sixth annual meeting, where with an overwhelming majority, they confirmed their commitment to supporting the initiative on setting up a more formal anti-corruption network.

(6) In order to build upon existing structures, the authorities and agencies to form part of the European anti-corruption network could include EPAC member organisations.

(7) The enhancement of international cooperation is generally ⁽⁴⁾ recognised as a key issue in the fight against corruption. The fight against all forms of corruption should be improved by cooperating effectively, identifying opportunities, sharing good practices and developing high professional standards. The establishment of an anti-corruption network at EU level is an important contribution to the improvement of such cooperation,

⁽¹⁾ OJ C 173, 26.7.2007, p. 3.

⁽²⁾ Opinion of 5 June 2008 (not yet published in the Official Journal).

⁽³⁾ The Hague Programme in strengthening freedom, security and justice in the European Union (OJ C 53, 3.3.2005, p. 1).

⁽⁴⁾ United Nations Convention against Corruption, adopted by General Assembly Resolution 58/4 of 31 October 2003.

HAS DECIDED AS FOLLOWS:

Article 1

Objective

In order to improve cooperation between authorities and agencies to prevent and combat corruption in Europe a network of contact points of the Member States of the European Union shall be set up (hereinafter referred to as the 'network'). The European Commission, Europol and Eurojust shall be fully associated with the activities of the Network.

Article 2

Composition of the network

The network shall consist of authorities and agencies of the Member States of the European Union charged with preventing or combating corruption. The members shall be designated by the Member States. The Member States shall each designate at least one, but not more than three organisations. The European Commission shall designate its representatives. Within their respective competencies, Europol and Eurojust may participate in the activities of the Network.

Article 3

Tasks of the network

1. The network shall in particular have the following tasks:
 1. it shall constitute a forum for the exchange throughout the EU of information on effective measures and experience in the prevention and combating of corruption;
 2. it shall facilitate the establishment and active maintenance of contacts between its members.

To these ends, *inter alia*, a list of contact points shall be kept up-to-date and a web site operated.

2. The members of the network shall, for the accomplishment of their tasks, meet at least once a year.

Article 4

Scope

Police and judicial cooperation between the Member States shall be governed by the relevant rules. The setting up of the network shall be without prejudice to such rules, and without prejudice to the role of CEPOL.

Article 5

Organisation of the network

1. The network shall organise itself, building upon existing informal collaboration between the EPAC.
2. The Member States and the European Commission shall bear all expenses of the members or representatives designated by them. The same rule shall apply to Europol and Eurojust.

Article 6

Entry into force

This Decision shall take effect on the day following that of its adoption.

Done at Luxembourg, 24 October 2008.

For the Council

The President

M. ALLIOT-MARIE

CORRIGENDA**Corrigendum to Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999**

(Official Journal of the European Union L 210 of 31 July 2006)

On page 43, Article 27(4)(f):

for: '(ii) the information required for *ex ante* verification of compliance with the additionality principle referred to in Article 15;'

read: '(iii) the information required for *ex ante* verification of compliance with the additionality principle referred to in Article 15;'

on page 64, Article 90(1)(a):

for: '(a) a period of three years following the closure of an operational programme as defined in Article 89(3);'

read: '(a) a period of three years following the closure of an operational programme as defined in Article 89(5);'

on page 65, Article 93(2):

for: 'For Member States whose GDP from 2001 to 2003 was below 85 % of the EU-25 average in the same period, as listed in Annex II, the deadline referred to in paragraph 1 shall be 31 December ...',

read: 'For Member States whose GDP from 2001 to 2003 was below 85 % of the EU-25 average in the same period, as listed in Annex III, the deadline referred to in paragraph 1 shall be 31 December ...';

on page 65, Article 95, second paragraph:

for: 'For that part of commitments still open on 31 December 2015, the time limit referred to in Article 93(2) ...',

read: 'For that part of commitments still open on 31 December 2015, the time limit referred to in Article 93(3) ...'.

Corrigendum to Council Joint Action 2008/796/CFSP of 13 October 2008 amending the mandate of the European Union Special Representative for the South Caucasus

(Official Journal of the European Union L 272 of 14 October 2008)

On page 19, recital 3:

for: '... a European Union Special Representative in Georgia ...',

read: '... a European Union Special Representative for the crisis in Georgia ...'.
