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⁽¹⁾ Text with EEA relevance

I

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

REGULATIONS

COMMISSION REGULATION (EC) No 1161/2008

of 21 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 22 November 2008.

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

Done at Brussels, 21 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	25,7
	MA	64,6
	TR	71,8
	ZZ	54,0
0707 00 05	JO	167,2
	MA	51,9
	TR	88,1
	ZZ	102,4
0709 90 70	MA	64,5
	TR	93,7
	ZZ	79,1
0805 20 10	MA	60,7
	ZZ	60,7
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	56,9
	HR	50,0
	IL	66,1
	TR	61,6
	ZZ	58,7
0805 50 10	MA	65,5
	TR	68,1
	ZA	71,5
	ZZ	68,4
0808 10 80	CA	87,1
	CL	67,1
	CN	55,8
	MK	33,4
	US	103,2
	ZA	118,8
	ZZ	77,6
0808 20 50	CN	41,1
	KR	112,1
	TR	106,0
	ZZ	86,4

⁽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'.

DIRECTIVES

DIRECTIVE 2008/98/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 November 2008

on waste and repealing certain Directives

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

(1) Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste ⁽⁴⁾ establishes the legislative framework for the handling of waste in the Community. It defines key concepts such as waste, recovery and disposal and puts in place the essential requirements for the management of waste, notably an obligation for an establishment or undertaking carrying out waste management operations to have a permit or to be registered and an obligation for the Member States to

draw up waste management plans. It also establishes major principles such as an obligation to handle waste in a way that does not have a negative impact on the environment or human health, an encouragement to apply the waste hierarchy and, in accordance with the polluter-pays principle, a requirement that the costs of disposing of waste must be borne by the holder of waste, by previous holders or by the producers of the product from which the waste came.

(2) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme ⁽⁵⁾ calls for the development or revision of the legislation on waste, including a clarification of the distinction between waste and non-waste, and for the development of measures regarding waste prevention and management, including the setting of targets.

(3) The Commission communication of 27 May 2003 towards a Thematic Strategy on the prevention and recycling of waste noted the need to assess the existing definitions of recovery and disposal, the need for a generally applicable definition of recycling and a debate on the definition of waste.

(4) In its resolution of 20 April 2004 on the abovementioned communication ⁽⁶⁾, the European Parliament called on the Commission to consider extending Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control ⁽⁷⁾ to the waste sector as a whole. It also asked the Commission to differentiate clearly between recovery and disposal and to clarify the distinction between waste and non-waste.

⁽¹⁾ OJ C 309, 16.12.2006, p. 55.

⁽²⁾ OJ C 229, 22.9.2006, p. 1.

⁽³⁾ Opinion of the European Parliament of 13 February 2007 (OJ C 287 E, 29.11.2007, p. 135), Council Common Position of 20 December 2007 (OJ C 71 E, 18.3.2008, p. 16) and Position of the European Parliament of 17 June 2008 (not yet published in the Official Journal). Council Decision of 20 October 2008.

⁽⁴⁾ OJ L 114, 27.4.2006, p. 9.

⁽⁵⁾ OJ L 242, 10.9.2002, p. 1.

⁽⁶⁾ OJ C 104 E, 30.4.2004, p. 401.

⁽⁷⁾ OJ L 257, 10.10.1996, p. 26. Directive replaced by Directive 2008/1/EC of the European Parliament and of the Council (OJ L 24, 29.1.2008, p. 8).

- (5) In its conclusions of 1 July 2004, the Council called on the Commission to bring forward a proposal for the revision of certain aspects of Directive 75/442/EEC, repealed and replaced by Directive 2006/12/EC, in order to clarify the distinction between waste and non-waste and that between recovery and disposal.
- (6) The first objective of any waste policy should be to minimise the negative effects of the generation and management of waste on human health and the environment. Waste policy should also aim at reducing the use of resources, and favour the practical application of the waste hierarchy.
- (7) In its Resolution of 24 February 1997 on a Community strategy for waste management ⁽¹⁾, the Council confirmed that waste prevention should be the first priority of waste management, and that re-use and material recycling should be preferred to energy recovery from waste, where and insofar as they are the best ecological options.
- (8) It is therefore necessary to revise Directive 2006/12/EC in order to clarify key concepts such as the definitions of waste, recovery and disposal, to strengthen the measures that must be taken in regard to waste prevention, to introduce an approach that takes into account the whole life-cycle of products and materials and not only the waste phase, and to focus on reducing the environmental impacts of waste generation and waste management, thereby strengthening the economic value of waste. Furthermore, the recovery of waste and the use of recovered materials should be encouraged in order to conserve natural resources. In the interests of clarity and readability, Directive 2006/12/EC should be repealed and replaced by a new directive.
- (9) Since most significant waste management operations are now covered by Community legislation in the field of environment, it is important that this Directive be adapted to that approach. An emphasis on the environmental objectives laid down in Article 174 of the Treaty would bring the environmental impacts of waste generation and waste management more sharply into focus throughout the life-cycle of resources. Consequently, the legal basis for this Directive should be Article 175.
- (10) Effective and consistent rules on waste treatment should be applied, subject to certain exceptions, to movable property which the holder discards or intends or is required to discard.
- (11) The waste status of uncontaminated excavated soils and other naturally occurring material which are used on sites other than the one from which they were excavated should be considered in accordance with the definition of waste and the provisions on by-products or on the end of waste status under this Directive.
- (12) Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption ⁽²⁾ provides, inter alia, for proportionate controls as regards the collection, transport, processing, use and disposal of all animal by-products including waste of animal origin, preventing it from presenting a risk to animal and public health. It is therefore necessary to clarify the link with that Regulation, avoiding duplication of rules by excluding from the scope of this Directive animal by-products where they are intended for uses that are not considered waste operations.
- (13) In the light of the experience gained in applying Regulation (EC) No 1774/2002, it is appropriate to clarify the scope of waste legislation and of its provisions on hazardous waste as regards animal by-products regulated by Regulation (EC) No 1774/2002. Where animal by-products pose potential health risks, the appropriate legal instrument to address these risks is Regulation (EC) No 1774/2002 and unnecessary overlaps with waste legislation should be avoided.
- (14) The classification of waste as hazardous waste should be based, inter alia, on the Community legislation on chemicals, in particular concerning the classification of preparations as hazardous, including concentration limit values used for that purpose. Hazardous waste should be regulated under strict specifications in order to prevent or limit, as far as possible, the potential negative effects on the environment and on human health due to inappropriate management. Furthermore, it is necessary to maintain the system by which waste and hazardous waste have been classified in accordance with the list of the types of waste as last established by Commission Decision 2000/532/EC ⁽³⁾, in order to encourage a harmonised classification of waste and ensure the harmonised determination of hazardous waste within the Community.

⁽²⁾ OJ L 273, 10.10.2002, p. 1.

⁽³⁾ Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (OJ L 226, 6.9.2000, p. 3).

⁽¹⁾ OJ C 76, 11.3.1997, p. 1.

- (15) It is necessary to distinguish between the preliminary storage of waste pending its collection, the collection of waste and the storage of waste pending treatment. Establishments or undertakings that produce waste in the course of their activities should not be regarded as engaged in waste management and subject to authorisation for the storage of their waste pending its collection.
- (16) Preliminary storage of waste within the definition of collection is understood as a storage activity pending its collection in facilities where waste is unloaded in order to permit its preparation for further transport for recovery or disposal elsewhere. The distinction between preliminary storage of waste pending collection and the storage of waste pending treatment should be made, in view of the objective of this Directive, according to the type of waste, the size and time period of storage and the objective of the collection. This distinction should be made by the Member States. The storage of waste prior to recovery for a period of three years or longer and the storage of waste prior to disposal for a period of one year or longer is subject to Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste ⁽¹⁾.
- (17) Waste collection schemes which are not conducted on a professional basis should not be subject to registration as they present a lower risk and contribute to the separate collection of waste. Examples of such schemes are waste medicines collected by pharmacies, take-back schemes in shops for consumer goods and community schemes in schools.
- (18) Definitions of prevention, re-use, preparing for re-use, treatment and recycling should be included in this Directive, in order to clarify the scope of these concepts.
- (19) The definitions of recovery and disposal need to be modified in order to ensure a clear distinction between the two concepts, based on a genuine difference in environmental impact through the substitution of natural resources in the economy and recognising the potential benefits to the environment and human health of using waste as a resource. In addition, guidelines may be developed in order to clarify cases where this distinction is difficult to apply in practice or where the classification of the activity as recovery does not match the real environmental impact of the operation.
- (20) This Directive should also clarify when the incineration of municipal solid waste is energy-efficient and may be considered a recovery operation.
- (21) Disposal operations consisting of release to seas and oceans including sea bed insertion are also regulated by international conventions, in particular the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, done at London on 13 November 1972, and the 1996 Protocol thereto as amended in 2006.
- (22) There should be no confusion between the various aspects of the waste definition, and appropriate procedures should be applied, where necessary, to by-products that are not waste, on the one hand, or to waste that ceases to be waste, on the other hand. In order to specify certain aspects of the definition of waste, this Directive should clarify:
- when substances or objects resulting from a production process not primarily aimed at producing such substances or objects are by-products and not waste. The decision that a substance is not waste can be taken only on the basis of a coordinated approach, to be regularly updated, and where this is consistent with the protection of the environment and human health. If the use of a by-product is allowed under an environmental licence or general environmental rules, this can be used by Member States as a tool to decide that no overall adverse environmental or human health impacts are expected to occur; an object or substance should be regarded as being a by-product only when certain conditions are met. Since by-products fall into the category of products, exports of by-products should meet the requirements of the relevant Community legislation; and
 - when certain waste ceases to be waste, laying down end-of-waste criteria that provide a high level of environmental protection and an environmental and economic benefit; possible categories of waste for which 'end-of-waste' specifications and criteria should be developed are, among others, construction and demolition waste, some ashes and slags, scrap metals, aggregates, tyres, textiles, compost, waste paper and glass. For the purposes of reaching end-of-waste status, a recovery operation may be as simple as the checking of waste to verify that it fulfils the end-of-waste criteria.
- (23) In order to verify or calculate if the recycling and recovery targets set in European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste ⁽²⁾, Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life

⁽¹⁾ OJ L 182, 16.7.1999, p. 1.

⁽²⁾ OJ L 365, 31.12.1994, p. 10.

vehicles ⁽¹⁾, Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE) ⁽²⁾ and Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators ⁽³⁾ as well as other relevant Community legislation are met, the amounts of waste which have ceased to be waste should be accounted for as recycled and recovered waste when the recycling or recovery requirements of that legislation are satisfied.

- (24) On the basis of the definition of waste, in order to promote certainty and consistency, the Commission may adopt guidelines to specify in certain cases when substances or objects become waste. Such guidelines may be developed *inter alia* for electrical and electronic equipment and vehicles.
- (25) It is appropriate that costs be allocated in such a way as to reflect the real costs to the environment of the generation and management of waste.
- (26) The polluter-pays principle is a guiding principle at European and international levels. The waste producer and the waste holder should manage the waste in a way that guarantees a high level of protection of the environment and human health.
- (27) The introduction of extended producer responsibility in this Directive is one of the means to support the design and production of goods which take into full account and facilitate the efficient use of resources during their whole life-cycle including their repair, re-use, disassembly and recycling without compromising the free circulation of goods on the internal market.
- (28) This Directive should help move the EU closer to a 'recycling society', seeking to avoid waste generation and to use waste as a resource. In particular, the Sixth Community Environment Action Programme calls for measures aimed at ensuring the source separation, collection and recycling of priority waste streams. In line with that objective and as a means to facilitating or improving its recovery potential, waste should be separately collected if technically, environmentally and economically practicable, before undergoing recovery operations that deliver the best overall environmental outcome. Member States should encourage the separation of hazardous compounds from waste streams if necessary to achieve environmentally sound management.

- (29) Member States should support the use of recyclates, such as recovered paper, in line with the waste hierarchy and with the aim of a recycling society, and should not support the landfilling or incineration of such recyclates whenever possible.
- (30) In order to implement the precautionary principle and the principle of preventive action enshrined in Article 174(2) of the Treaty, it is necessary to set general environmental objectives for the management of waste within the Community. By virtue of those principles, it is for the Community and the Member States to establish a framework to prevent, reduce and, in so far as is possible, eliminate from the outset the sources of pollution or nuisance by adopting measures whereby recognised risks are eliminated.
- (31) The waste hierarchy generally lays down a priority order of what constitutes the best overall environmental option in waste legislation and policy, while departing from such hierarchy may be necessary for specific waste streams when justified for reasons of, *inter alia*, technical feasibility, economic viability and environmental protection.
- (32) It is necessary, in order to enable the Community as a whole to become self-sufficient in waste disposal and in the recovery of mixed municipal waste collected from private households and to enable the Member States to move towards that aim individually, to make provision for a network of cooperation as regards disposal installations and installations for the recovery of mixed municipal waste collected from private households, taking into account geographical circumstances and the need for specialised installations for certain types of waste.
- (33) For the purposes of applying Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste ⁽⁴⁾, mixed municipal waste as referred to in Article 3(5) of that Regulation remains mixed municipal waste even when it has been subject to a waste treatment operation that has not substantially altered its properties.
- (34) It is important that hazardous waste be labelled in accordance with international and Community standards. However, where such waste is collected separately from households, this should not result in householders being obliged to complete the requisite documentation.

⁽¹⁾ OJ L 269, 21.10.2000, p. 34.

⁽²⁾ OJ L 37, 13.2.2003, p. 24.

⁽³⁾ OJ L 266, 26.9.2006, p. 1.

⁽⁴⁾ OJ L 190, 12.7.2006, p. 1.

- (35) It is important, in accordance with the waste hierarchy, and for the purpose of reduction of greenhouse gas emissions originating from waste disposal on landfills, to facilitate the separate collection and proper treatment of bio-waste in order to produce environmentally safe compost and other bio-waste based materials. The Commission, after an assessment on the management of bio-waste, will submit proposals for legislative measures, if appropriate.
- (36) Technical minimum standards concerning waste treatment activities not covered by Directive 96/61/EC may be adopted where there is evidence that a benefit would be gained in terms of protecting human health and the environment and where a coordinated approach to the implementation of this Directive would ensure the protection of human health and the environment.
- (37) It is necessary to specify further the scope and content of the waste management planning obligation, and to integrate into the process of developing or revising waste management plans the need to take into account the environmental impacts of the generation and management of waste. Account should also be taken, where appropriate, of the waste planning requirements laid down in Article 14 of Directive 94/62/EC and of the strategy for the reduction of biodegradable waste going to landfills, referred to in Article 5 of Directive 1999/31/EC.
- (38) Member States may apply environmental authorisations or general environmental rules to certain waste producers without compromising the proper functioning of the internal market.
- (39) According to Regulation (EC) No 1013/2006, Member States may take the measures necessary to prevent shipments of waste which are not in accordance with their waste management plans. By way of derogation from that Regulation, Member States should be allowed to limit incoming shipments to incinerators classified as recovery, where it has been established that national waste would have to be disposed of or that waste would have to be treated in a way that is not consistent with their waste management plans. It is recognised that certain Member States may not be able to provide a network comprising the full range of final recovery facilities within their territory.
- (40) In order to improve the way in which waste prevention actions are taken forward in the Member States and to facilitate the circulation of best practice in this area, it is necessary to strengthen the provisions relating to waste prevention and to introduce a requirement for the Member States to develop waste prevention programmes concentrating on the key environmental impacts and taking into account the whole life-cycle of products and materials. Such measures should pursue the objective of breaking the link between economic growth and the environmental impacts associated with the generation of waste. Stakeholders, as well as the general public, should have the opportunity to participate in the drawing up of the programmes, and should have access to them once drawn up, in line with Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment ⁽¹⁾. Waste prevention and decoupling objectives should be developed covering, as appropriate, the reduction of the adverse impacts of waste and of the amounts of waste generated.
- (41) In order to move towards a European recycling society with a high level of resource efficiency, targets for preparing for re-use and recycling of waste should be set. Member States maintain different approaches to the collection of household wastes and wastes of a similar nature and composition. It is therefore appropriate that such targets take account of the different collection systems in different Member States. Waste streams from other origins similar to household waste include waste referred to in entry 20 of the list established by Commission Decision 2000/532/EC.
- (42) Economic instruments can play a crucial role in the achievement of waste prevention and management objectives. Waste often has value as a resource, and the further application of economic instruments may maximise environmental benefits. The use of such instruments at the appropriate level should therefore be encouraged while stressing that individual Member States can decide on their use.
- (43) Certain provisions on the handling of waste, laid down in Council Directive 91/689/EEC of 12 December 1991 on hazardous waste ⁽²⁾, should be amended in order to remove obsolete provisions and to improve the clarity of the text. In the interests of simplifying Community legislation, they should be integrated into this Directive. In order to clarify the operation of the mixing ban laid down in Directive 91/689/EEC, and to protect the environment and human health, the exemptions to the mixing ban should additionally comply with best available techniques as defined in Directive 96/61/EC. Directive 91/689/EEC should therefore be repealed.
- ⁽¹⁾ OJ L 156, 25.6.2003, p. 17.
⁽²⁾ OJ L 377, 31.12.1991, p. 20.

- (44) In the interests of the simplification of Community legislation and the reflection of environmental benefits, the relevant provisions of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils ⁽¹⁾ should be integrated into this Directive. Directive 75/439/EEC should therefore be repealed. The management of waste oils should be conducted in accordance with the priority order of the waste hierarchy, and preference should be given to options that deliver the best overall environmental outcome. The separate collection of waste oils remains crucial to their proper management and the prevention of damage to the environment from their improper disposal.
- (45) Member States should provide for effective, proportionate and dissuasive penalties to be imposed on natural and legal persons responsible for waste management, such as waste producers, holders, brokers, dealers, transporters and collectors, establishments or undertakings which carry out waste treatment operations and waste management schemes, in cases where they infringe the provisions of this Directive. Member States may also take action to recover the costs of non-compliance and remedial measures, without prejudice to Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage ⁽²⁾.
- (46) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽³⁾.
- (47) In particular, the Commission should be empowered to establish criteria regarding a number of issues such as the conditions under which an object is to be considered a by-product, the end-of-waste status and the determination of waste which is considered as hazardous, as well as to establish detailed rules on the application and calculation methods for verifying compliance with the recycling targets set out in this Directive. Furthermore, the Commission should be empowered to adapt the annexes to technical and scientific progress and to specify the application of the formula for incineration facilities referred to in Annex II, R1. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

⁽¹⁾ OJ L 194, 25.7.1975, p. 23.

⁽²⁾ OJ L 143, 30.4.2004, p. 56.

⁽³⁾ OJ L 184, 17.7.1999, p. 23.

- (48) In accordance with paragraph 34 of the interinstitutional agreement on better law-making ⁽⁴⁾, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures and to make them public.
- (49) Since the objective of this Directive, namely the protection of the environment and human health, cannot be sufficiently achieved by the Member States and can therefore, by reasons of the scale or effects of the Directive, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

This Directive lays down measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use.

Article 2

Exclusions from the scope

1. The following shall be excluded from the scope of this Directive:
- (a) gaseous effluents emitted into the atmosphere;
 - (b) land (in situ) including unexcavated contaminated soil and buildings permanently connected with land;
 - (c) uncontaminated soil and other naturally occurring material excavated in the course of construction activities where it is certain that the material will be used for the purposes of construction in its natural state on the site from which it was excavated;

⁽⁴⁾ OJ C 321, 31.12.2003, p. 1.

(d) radioactive waste;

(e) decommissioned explosives;

(f) faecal matter, if not covered by paragraph 2(b), straw and other natural non-hazardous agricultural or forestry material used in farming, forestry or for the production of energy from such biomass through processes or methods which do not harm the environment or endanger human health.

2. The following shall be excluded from the scope of this Directive to the extent that they are covered by other Community legislation:

(a) waste waters;

(b) animal by-products including processed products covered by Regulation (EC) No 1774/2002, except those which are destined for incineration, landfilling or use in a biogas or composting plant;

(c) carcasses of animals that have died other than by being slaughtered, including animals killed to eradicate epizootic diseases, and that are disposed of in accordance with Regulation (EC) No 1774/2002;

(d) waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries covered by Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries ⁽¹⁾.

3. Without prejudice to obligations under other relevant Community legislation, sediments relocated inside surface waters for the purpose of managing waters and waterways or of preventing floods or mitigating the effects of floods and droughts or land reclamation shall be excluded from the scope of this Directive if it is proved that the sediments are non-hazardous.

4. Specific rules for particular instances, or supplementing those of this Directive, on the management of particular categories of waste, may be laid down by means of individual Directives.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

1. 'waste' means any substance or object which the holder discards or intends or is required to discard;

2. 'hazardous waste' means waste which displays one or more of the hazardous properties listed in Annex III;

3. 'waste oils' means any mineral or synthetic lubrication or industrial oils which have become unfit for the use for which they were originally intended, such as used combustion engine oils and gearbox oils, lubricating oils, oils for turbines and hydraulic oils;

4. 'bio-waste' means biodegradable garden and park waste, food and kitchen waste from households, restaurants, caterers and retail premises and comparable waste from food processing plants;

5. 'waste producer' means anyone whose activities produce waste (original waste producer) or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste;

6. 'waste holder' means the waste producer or the natural or legal person who is in possession of the waste;

7. 'dealer' means any undertaking which acts in the role of principal to purchase and subsequently sell waste, including such dealers who do not take physical possession of the waste;

8. 'broker' means any undertaking arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste;

9. 'waste management' means the collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as a dealer or broker;

10. 'collection' means the gathering of waste, including the preliminary sorting and preliminary storage of waste for the purposes of transport to a waste treatment facility;

⁽¹⁾ OJ L 102, 11.4.2006, p. 15.

11. 'separate collection' means the collection where a waste stream is kept separately by type and nature so as to facilitate a specific treatment;
12. 'prevention' means measures taken before a substance, material or product has become waste, that reduce:
- (a) the quantity of waste, including through the re-use of products or the extension of the life span of products;
 - (b) the adverse impacts of the generated waste on the environment and human health; or
 - (c) the content of harmful substances in materials and products;
13. 're-use' means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived;
14. 'treatment' means recovery or disposal operations, including preparation prior to recovery or disposal;
15. 'recovery' means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Annex II sets out a non-exhaustive list of recovery operations;
16. 'preparing for re-use' means checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing;
17. 'recycling' means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations;
18. 'regeneration of waste oils' means any recycling operation whereby base oils can be produced by refining waste oils, in particular by removing the contaminants, the oxidation products and the additives contained in such oils;
19. 'disposal' means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy. Annex I sets out a non-exhaustive list of disposal operations;
20. 'best available techniques' means best available techniques as defined in Article 2(11) of Directive 96/61/EC.

Article 4

Waste hierarchy

1. The following waste hierarchy shall apply as a priority order in waste prevention and management legislation and policy:

- (a) prevention;
- (b) preparing for re-use;
- (c) recycling;
- (d) other recovery, e.g. energy recovery; and
- (e) disposal.

2. When applying the waste hierarchy referred to in paragraph 1, Member States shall take measures to encourage the options that deliver the best overall environmental outcome. This may require specific waste streams departing from the hierarchy where this is justified by life-cycle thinking on the overall impacts of the generation and management of such waste.

Member States shall ensure that the development of waste legislation and policy is a fully transparent process, observing existing national rules about the consultation and involvement of citizens and stakeholders.

Member States shall take into account the general environmental protection principles of precaution and sustainability, technical feasibility and economic viability, protection of resources as well as the overall environmental, human health, economic and social impacts, in accordance with Articles 1 and 13.

*Article 5***By-products**

1. A substance or object, resulting from a production process, the primary aim of which is not the production of that item, may be regarded as not being waste referred to in point (1) of Article 3 but as being a by-product only if the following conditions are met:

- (a) further use of the substance or object is certain;
- (b) the substance or object can be used directly without any further processing other than normal industrial practice;
- (c) the substance or object is produced as an integral part of a production process; and
- (d) further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.

2. On the basis of the conditions laid down in paragraph 1, measures may be adopted to determine the criteria to be met for specific substances or objects to be regarded as a by-product and not as waste referred to in point (1) of Article 3. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 39(2).

*Article 6***End-of-waste status**

1. Certain specified waste shall cease to be waste within the meaning of point (1) of Article 3 when it has undergone a recovery, including recycling, operation and complies with specific criteria to be developed in accordance with the following conditions:

- (a) the substance or object is commonly used for specific purposes;
- (b) a market or demand exists for such a substance or object;
- (c) the substance or object fulfils the technical requirements for the specific purposes and meets the existing legislation and standards applicable to products; and

- (d) the use of the substance or object will not lead to overall adverse environmental or human health impacts.

The criteria shall include limit values for pollutants where necessary and shall take into account any possible adverse environmental effects of the substance or object.

2. The measures designed to amend non-essential elements of this Directive by supplementing it relating to the adoption of the criteria set out in paragraph 1 and specifying the type of waste to which such criteria shall apply shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 39(2). End-of-waste specific criteria should be considered, among others, at least for aggregates, paper, glass, metal, tyres and textiles.

3. Waste which ceases to be waste in accordance with paragraphs 1 and 2, shall also cease to be waste for the purpose of the recovery and recycling targets set out in Directives 94/62/EC, 2000/53/EC, 2002/96/EC and 2006/66/EC and other relevant Community legislation when the recycling or recovery requirements of that legislation are satisfied.

4. Where criteria have not been set at Community level under the procedure set out in paragraphs 1 and 2, Member States may decide case by case whether certain waste has ceased to be waste taking into account the applicable case law. They shall notify the Commission of such decisions in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services ⁽¹⁾ where so required by that Directive.

*Article 7***List of waste**

1. The measures designed to amend non-essential elements of this Directive relating to the updating of the list of waste established by Decision 2000/532/EC shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 39(2). The list of waste shall include hazardous waste and shall take into account the origin and composition of the waste and, where necessary, the limit values of concentration of hazardous substances. The list of waste shall be binding as regards determination of the waste which is to be considered as hazardous waste. The inclusion of a substance or object in the list shall not mean that it is waste in all circumstances. A substance or object shall be considered to be waste only where the definition in point (1) of Article 3 is met.

⁽¹⁾ OJ L 204, 21.7.1998, p. 37.

2. A Member State may consider waste as hazardous waste where, even though it does not appear as such on the list of waste, it displays one or more of the properties listed in Annex III. The Member State shall notify the Commission of any such cases without delay. It shall record them in the report provided for in Article 37(1) and shall provide the Commission with all relevant information. In the light of notifications received, the list shall be reviewed in order to decide on its adaptation.

3. Where a Member State has evidence to show that specific waste that appears on the list as hazardous waste does not display any of the properties listed in Annex III, it may consider that waste as non-hazardous waste. The Member State shall notify the Commission of any such cases without delay and shall provide the Commission with the necessary evidence. In the light of notifications received, the list shall be reviewed in order to decide on its adaptation.

4. The reclassification of hazardous waste as non-hazardous waste may not be achieved by diluting or mixing the waste with the aim of lowering the initial concentrations of hazardous substances to a level below the thresholds for defining waste as hazardous.

5. The measures designed to amend non-essential elements of this Directive relating to the revision of the list in order to decide on its adaptation pursuant to paragraphs 2 and 3 shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 39(2).

6. Member States may consider waste as non-hazardous waste in accordance with the list of waste referred to in paragraph 1.

7. The Commission shall ensure that the list of waste and any review of this list adhere, as appropriate, to principles of clarity, comprehensibility and accessibility for users, particularly small and medium-sized enterprises (SMEs).

CHAPTER II

GENERAL REQUIREMENTS

Article 8

Extended producer responsibility

1. In order to strengthen the re-use and the prevention, recycling and other recovery of waste, Member States may take legislative or non-legislative measures to ensure that any natural or legal person who professionally develops, manufactures, processes, treats, sells or imports products (producer of the product) has extended producer responsibility.

Such measures may include an acceptance of returned products and of the waste that remains after those products have been used, as well as the subsequent management of the waste and financial responsibility for such activities. These measures may include the obligation to provide publicly available information as to the extent to which the product is re-usable and recyclable.

2. Member States may take appropriate measures to encourage the design of products in order to reduce their environmental impacts and the generation of waste in the course of the production and subsequent use of products, and in order to ensure that the recovery and disposal of products that have become waste take place in accordance with Articles 4 and 13.

Such measures may encourage, inter alia, the development, production and marketing of products that are suitable for multiple use, that are technically durable and that are, after having become waste, suitable for proper and safe recovery and environmentally compatible disposal.

3. When applying extended producer responsibility, Member States shall take into account the technical feasibility and economic viability and the overall environmental, human health and social impacts, respecting the need to ensure the proper functioning of the internal market.

4. The extended producer responsibility shall be applied without prejudice to the responsibility for waste management as provided for in Article 15(1) and without prejudice to existing waste stream specific and product specific legislation.

Article 9

Prevention of waste

Following the consultation of stakeholders, the Commission shall submit to the European Parliament and the Council the following reports accompanied, if appropriate, by proposals for measures required in support of the prevention activities and the implementation of the waste prevention programmes referred to in Article 29 covering:

(a) by the end of 2011, an interim report on the evolution of waste generation and the scope of waste prevention, including the formulation of a product eco-design policy addressing both the generation of waste and the presence of hazardous substances in waste, with a view to promoting technologies focusing on durable, re-usable and recyclable products;

(b) by the end of 2011, the formulation of an action plan for further support measures at European level seeking, in particular, to change current consumption patterns;

(c) by the end of 2014, the setting of waste prevention and decoupling objectives for 2020, based on best available practices including, if necessary, a revision of the indicators referred to in Article 29(4).

Article 10

Recovery

1. Member States shall take the necessary measures to ensure that waste undergoes recovery operations, in accordance with Articles 4 and 13.

2. Where necessary to comply with paragraph 1 and to facilitate or improve recovery, waste shall be collected separately if technically, environmentally and economically practicable and shall not be mixed with other waste or other material with different properties.

Article 11

Re-use and recycling

1. Member States shall take measures, as appropriate, to promote the re-use of products and preparing for re-use activities, notably by encouraging the establishment and support of re-use and repair networks, the use of economic instruments, procurement criteria, quantitative objectives or other measures.

Member States shall take measures to promote high quality recycling and, to this end, shall set up separate collections of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors.

Subject to Article 10(2), by 2015 separate collection shall be set up for at least the following: paper, metal, plastic and glass.

2. In order to comply with the objectives of this Directive, and move towards a European recycling society with a high level of resource efficiency, Member States shall take the necessary measures designed to achieve the following targets:

(a) by 2020, the preparing for re-use and the recycling of waste materials such as at least paper, metal, plastic and glass from households and possibly from other origins as far as

these waste streams are similar to waste from households, shall be increased to a minimum of overall 50 % by weight;

(b) by 2020, the preparing for re-use, recycling and other material recovery, including backfilling operations using waste to substitute other materials, of non-hazardous construction and demolition waste excluding naturally occurring material defined in category 17 05 04 in the list of waste shall be increased to a minimum of 70 % by weight.

3. The Commission shall establish detailed rules on the application and calculation methods for verifying compliance with the targets set out in paragraph 2 of this Article, considering Regulation (EC) No 2150/2002 of the European Parliament and of the Council of 25 November 2002 on waste statistics⁽¹⁾. These can include transition periods for Member States which, in 2008, recycled less than 5 % of either categories of waste referred to in paragraph 2. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 39(2) of this Directive.

4. By 31 December 2014 at the latest, the Commission shall examine the measures and the targets referred to in paragraph 2 with a view to, if necessary, reinforcing the targets and considering the setting of targets for other waste streams. The report of the Commission, accompanied by a proposal if appropriate, shall be sent to the European Parliament and the Council. In its report, the Commission shall take into account the relevant environmental, economic and social impacts of setting the targets.

5. Every three years, in accordance with Article 37, Member States shall report to the Commission on their record with regard to meeting the targets. If targets are not met, this report shall include the reasons for failure and the actions the Member State intends to take to meet those targets.

Article 12

Disposal

Member States shall ensure that, where recovery in accordance with Article 10(1) is not undertaken, waste undergoes safe disposal operations which meet the provisions of Article 13 on the protection of human health and the environment.

⁽¹⁾ OJ L 332, 9.12.2002, p. 1.

*Article 13***Protection of human health and the environment**

Member States shall take the necessary measures to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular:

- (a) without risk to water, air, soil, plants or animals;
- (b) without causing a nuisance through noise or odours; and
- (c) without adversely affecting the countryside or places of special interest.

*Article 14***Costs**

1. In accordance with the polluter-pays principle, the costs of waste management shall be borne by the original waste producer or by the current or previous waste holders.
2. Member States may decide that the costs of waste management are to be borne partly or wholly by the producer of the product from which the waste came and that the distributors of such product may share these costs.

CHAPTER III

WASTE MANAGEMENT*Article 15***Responsibility for waste management**

1. Member States shall take the necessary measures to ensure that any original waste producer or other holder carries out the treatment of waste himself or has the treatment handled by a dealer or an establishment or undertaking which carries out waste treatment operations or arranged by a private or public waste collector in accordance with Articles 4 and 13.
2. When the waste is transferred from the original producer or holder to one of the natural or legal persons referred to in paragraph 1 for preliminary treatment, the responsibility for carrying out a complete recovery or disposal operation shall not be discharged as a general rule.

Without prejudice to Regulation (EC) No 1013/2006, Member States may specify the conditions of responsibility and decide in which cases the original producer is to retain responsibility for the whole treatment chain or in which cases the responsibility of

the producer and the holder can be shared or delegated among the actors of the treatment chain.

3. Member States may decide, in accordance with Article 8, that the responsibility for arranging waste management is to be borne partly or wholly by the producer of the product from which the waste came and that distributors of such product may share this responsibility.

4. Member States shall take the necessary measures to ensure that, within their territory, the establishments or undertakings which collect or transport waste on a professional basis deliver the waste collected and transported to appropriate treatment installations respecting the provisions of Article 13.

*Article 16***Principles of self-sufficiency and proximity**

1. Member States shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households, including where such collection also covers such waste from other producers, taking into account best available techniques.

By way of derogation from Regulation (EC) No 1013/2006, Member States may, in order to protect their network, limit incoming shipments of waste destined to incinerators that are classified as recovery, where it has been established that such shipments would result in national waste having to be disposed of or waste having to be treated in a way that is not consistent with their waste management plans. Member States shall notify the Commission of any such decision. Member States may also limit outgoing shipments of waste on environmental grounds as set out in Regulation (EC) No 1013/2006.

2. The network shall be designed to enable the Community as a whole to become self-sufficient in waste disposal as well as in the recovery of waste referred to in paragraph 1, and to enable Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.

3. The network shall enable waste to be disposed of or waste referred to in paragraph 1 to be recovered in one of the nearest appropriate installations, by means of the most appropriate methods and technologies, in order to ensure a high level of protection for the environment and public health.

4. The principles of proximity and self-sufficiency shall not mean that each Member State has to possess the full range of final recovery facilities within that Member State.

Article 17

Control of hazardous waste

Member States shall take the necessary action to ensure that the production, collection and transportation of hazardous waste, as well as its storage and treatment, are carried out in conditions providing protection for the environment and human health in order to meet the provisions of Article 13, including action to ensure traceability from production to final destination and control of hazardous waste in order to meet the requirements of Articles 35 and 36.

Article 18

Ban on the mixing of hazardous waste

1. Member States shall take the necessary measures to ensure that hazardous waste is not mixed, either with other categories of hazardous waste or with other waste, substances or materials. Mixing shall include the dilution of hazardous substances.

2. By way of derogation from paragraph 1, Member States may allow mixing provided that:

- (a) the mixing operation is carried out by an establishment or undertaking which has obtained a permit in accordance with Article 23;
- (b) the provisions of Article 13 are complied with and the adverse impact of the waste management on human health and the environment is not increased; and
- (c) the mixing operation conforms to best available techniques.

3. Subject to technical and economic feasibility criteria, where hazardous waste has been mixed in a manner contrary to paragraph 1, separation shall be carried out where possible and necessary in order to comply with Article 13.

Article 19

Labelling of hazardous waste

1. Member States shall take the necessary measures to ensure that, in the course of collection, transport and temporary storage, hazardous waste is packaged and labelled in accordance with the international and Community standards in force.

2. Whenever hazardous waste is transferred within a Member State, it shall be accompanied by an identification document, which may be in electronic format, containing the appropriate data specified in Annex IB to Regulation (EC) No 1013/2006.

Article 20

Hazardous waste produced by households

Articles 17, 18, 19 and 35 shall not apply to mixed waste produced by households.

Articles 19 and 35 shall not apply to separate fractions of hazardous waste produced by households until they are accepted for collection, disposal or recovery by an establishment or an undertaking which has obtained a permit or has been registered in accordance with Articles 23 or 26.

Article 21

Waste oils

1. Without prejudice to the obligations related to the management of hazardous waste laid down in Articles 18 and 19, Member States shall take the necessary measures to ensure that:

- (a) waste oils are collected separately, where this is technically feasible;
- (b) waste oils are treated in accordance with Articles 4 and 13;
- (c) where this is technically feasible and economically viable, waste oils of different characteristics are not mixed and waste oils are not mixed with other kinds of waste or substances, if such mixing impedes their treatment.

2. For the purposes of separate collection of waste oils and their proper treatment, Member States may, according to their national conditions, apply additional measures such as technical requirements, producer responsibility, economic instruments or voluntary agreements.

3. If waste oils, according to national legislation, are subject to requirements of regeneration, Member States may prescribe that such waste oils shall be regenerated if technically feasible and, where Articles 11 or 12 of Regulation (EC) No 1013/2006 apply, restrict the transboundary shipment of waste oils from their territory to incineration or co-incineration facilities in order to give priority to the regeneration of waste oils.

*Article 22***Bio-waste**

Member States shall take measures, as appropriate, and in accordance with Articles 4 and 13, to encourage:

- (a) the separate collection of bio-waste with a view to the composting and digestion of bio-waste;
- (b) the treatment of bio-waste in a way that fulfils a high level of environmental protection;
- (c) the use of environmentally safe materials produced from bio-waste.

The Commission shall carry out an assessment on the management of bio-waste with a view to submitting a proposal if appropriate. The assessment shall examine the opportunity of setting minimum requirements for bio-waste management and quality criteria for compost and digestate from bio-waste, in order to guarantee a high level of protection for human health and the environment.

CHAPTER IV

PERMITS AND REGISTRATIONS*Article 23***Issue of permits**

1. Member States shall require any establishment or undertaking intending to carry out waste treatment to obtain a permit from the competent authority.

Such permits shall specify at least the following:

- (a) the types and quantities of waste that may be treated;
- (b) for each type of operation permitted, the technical and any other requirements relevant to the site concerned;
- (c) the safety and precautionary measures to be taken;
- (d) the method to be used for each type of operation;

- (e) such monitoring and control operations as may be necessary;

- (f) such closure and after-care provisions as may be necessary.

2. Permits may be granted for a specified period and may be renewable.

3. Where the competent authority considers that the intended method of treatment is unacceptable from the point of view of environmental protection, in particular when the method is not in accordance with Article 13, it shall refuse to issue the permit.

4. It shall be a condition of any permit covering incineration or co-incineration with energy recovery that the recovery of energy take place with a high level of energy efficiency.

5. Provided that the requirements of this Article are complied with, any permit produced pursuant to other national or Community legislation may be combined with the permit required under paragraph 1 to form a single permit, where such a format obviates the unnecessary duplication of information and the repetition of work by the operator or the competent authority.

*Article 24***Exemptions from permit requirements**

Member States may exempt from the requirement laid down in Article 23(1) establishments or undertakings for the following operations:

- (a) disposal of their own non-hazardous waste at the place of production; or
- (b) recovery of waste.

*Article 25***Conditions for exemptions**

1. Where a Member State wishes to allow exemptions, as provided for in Article 24, it shall lay down, in respect of each type of activity, general rules specifying the types and quantities of waste that may be covered by an exemption, and the method of treatment to be used.

Those rules shall be designed to ensure that waste is treated in accordance with Article 13. In the case of disposal operations referred to in point (a) of Article 24 those rules should consider best available techniques.

2. In addition to the general rules provided for in paragraph 1, Member States shall lay down specific conditions for exemptions relating to hazardous waste, including types of activity, as well as any other necessary requirement for carrying out different forms of recovery and, where relevant, the limit values for the content of hazardous substances in the waste as well as the emission limit values.

3. Member States shall inform the Commission of the general rules laid down pursuant to paragraphs 1 and 2.

Article 26

Registration

Where the following are not subject to permit requirements, Member States shall ensure that the competent authority keeps a register of:

- (a) establishments or undertakings which collect or transport waste on a professional basis;
- (b) dealers or brokers; and
- (c) establishments or undertakings which are subject to exemptions from the permit requirements pursuant to Article 24.

Where possible, existing records held by the competent authority shall be used to obtain the relevant information for this registration process in order to reduce the administrative burden.

Article 27

Minimum standards

1. Technical minimum standards for treatment activities which require a permit pursuant to Article 23 may be adopted where there is evidence that a benefit in terms of the protection of human health and the environment would be gained from such minimum standards. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 39(2).

2. Such minimum standards shall cover only those waste treatment activities that are not covered by Directive 96/61/EC or are not appropriate for coverage by that Directive.

3. Such minimum standards shall:

- (a) be directed to the main environmental impacts of the waste treatment activity;
- (b) ensure that the waste is treated in accordance with Article 13;
- (c) take into account best available techniques; and
- (d) as appropriate, include elements regarding the quality of treatment and the process requirements.

4. Minimum standards for activities that require registration pursuant to points (a) and (b) of Article 26 shall be adopted where there is evidence that a benefit in terms of the protection of human health and the environment or in avoiding disruption to the internal market would be gained from such minimum standards, including elements regarding the technical qualification of collectors, transporters, dealers or brokers.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 39(2).

CHAPTER V

PLANS AND PROGRAMMES

Article 28

Waste management plans

1. Member States shall ensure that their competent authorities establish, in accordance with Articles 1, 4, 13 and 16, one or more waste management plans.

Those plans shall, alone or in combination, cover the entire geographical territory of the Member State concerned.

2. The waste management plans shall set out an analysis of the current waste management situation in the geographical entity concerned, as well as the measures to be taken to improve environmentally sound preparing for re-use, recycling, recovery and disposal of waste and an evaluation of how the plan will support the implementation of the objectives and provisions of this Directive.

3. The waste management plans shall contain, as appropriate and taking into account the geographical level and coverage of the planning area, at least the following:

- (a) the type, quantity and source of waste generated within the territory, the waste likely to be shipped from or to the national territory, and an evaluation of the development of waste streams in the future;
- (b) existing waste collection schemes and major disposal and recovery installations, including any special arrangements for waste oils, hazardous waste or waste streams addressed by specific Community legislation;
- (c) an assessment of the need for new collection schemes, the closure of existing waste installations, additional waste installation infrastructure in accordance with Article 16, and, if necessary, the investments related thereto;
- (d) sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations, if necessary;
- (e) general waste management policies, including planned waste management technologies and methods, or policies for waste posing specific management problems.

4. The waste management plan may contain, taking into account the geographical level and coverage of the planning area, the following:

- (a) organisational aspects related to waste management including a description of the allocation of responsibilities between public and private actors carrying out the waste management;
- (b) an evaluation of the usefulness and suitability of the use of economic and other instruments in tackling various waste problems, taking into account the need to maintain the smooth functioning of the internal market;
- (c) the use of awareness campaigns and information provision directed at the general public or at a specific set of consumers;

(d) historical contaminated waste disposal sites and measures for their rehabilitation.

5. Waste management plans shall conform to the waste planning requirements laid down in Article 14 of Directive 94/62/EC and the strategy for the implementation of the reduction of biodegradable waste going to landfills, referred to in Article 5 of Directive 1999/31/EC.

Article 29

Waste prevention programmes

1. Member States shall establish, in accordance with Articles 1 and 4, waste prevention programmes not later than 12 December 2013.

Such programmes shall be integrated either into the waste management plans provided for in Article 28 or into other environmental policy programmes, as appropriate, or shall function as separate programmes. If any such programme is integrated into the waste management plan or into other programmes, the waste prevention measures shall be clearly identified.

2. The programmes provided for in paragraph 1 shall set out the waste prevention objectives. Member States shall describe the existing prevention measures and evaluate the usefulness of the examples of measures indicated in Annex IV or other appropriate measures.

The aim of such objectives and measures shall be to break the link between economic growth and the environmental impacts associated with the generation of waste.

3. Member States shall determine appropriate specific qualitative or quantitative benchmarks for waste prevention measures adopted in order to monitor and assess the progress of the measures and may determine specific qualitative or quantitative targets and indicators, other than those referred to in paragraph 4, for the same purpose.

4. Indicators for waste prevention measures may be adopted in accordance with the regulatory procedure referred to in Article 39(3).

5. The Commission shall create a system for sharing information on best practice regarding waste prevention and shall develop guidelines in order to assist the Member States in the preparation of the Programmes.

*Article 30***Evaluation and review of plans and programmes**

1. Member States shall ensure that the waste management plans and waste prevention programmes are evaluated at least every sixth year and revised as appropriate and, where relevant, in accordance with Articles 9 and 11.

2. The European Environment Agency is invited to include in its annual report a review of progress in the completion and implementation of waste prevention programmes.

*Article 31***Public participation**

Member States shall ensure that relevant stakeholders and authorities and the general public have the opportunity to participate in the elaboration of the waste management plans and waste prevention programmes, and have access to them once elaborated, in accordance with Directive 2003/35/EC or, if relevant, Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment ⁽¹⁾. They shall place the plans and programmes on a publicly available website.

*Article 32***Cooperation**

Member States shall cooperate as appropriate with the other Member States concerned and the Commission to draw up the waste management plans and the waste prevention programmes in accordance with Articles 28 and 29.

*Article 33***Information to be submitted to the Commission**

1. Member States shall inform the Commission of the waste management plans and waste prevention programmes referred to in Articles 28 and 29, once adopted, and of any substantial revisions to the plans and programmes.

2. The format for notifying the information on the adoption and substantial revisions of those plans and programmes shall be adopted in accordance with the regulatory procedure referred to in Article 39(3).

⁽¹⁾ OJ L 197, 21.7.2001, p. 30.

CHAPTER VI

INSPECTIONS AND RECORDS*Article 34***Inspections**

1. Establishments or undertakings which carry out waste treatment operations, establishments or undertakings which collect or transport waste on a professional basis, brokers and dealers, and establishments or undertakings which produce hazardous waste shall be subject to appropriate periodic inspections by the competent authorities.

2. Inspections concerning collection and transport operations shall cover the origin, nature, quantity and destination of the waste collected and transported.

3. Member States may take account of registrations obtained under the Community Eco-Management and Audit Scheme (EMAS), in particular regarding the frequency and intensity of inspections.

*Article 35***Record keeping**

1. The establishments or undertakings referred to in Article 23(1), the producers of hazardous waste and the establishments and undertakings which collect or transport hazardous waste on a professional basis, or act as dealers and brokers of hazardous waste, shall keep a chronological record of the quantity, nature and origin of the waste, and, where relevant, the destination, frequency of collection, mode of transport and treatment method foreseen in respect of the waste, and shall make that information available, on request, to the competent authorities.

2. For hazardous waste, the records shall be preserved for at least three years except in the case of establishments and undertakings transporting hazardous waste which must keep such records for at least 12 months.

Documentary evidence that the management operations have been carried out shall be supplied at the request of the competent authorities or of a previous holder.

3. Member States may require the producers of non-hazardous waste to comply with paragraphs 1 and 2.

*Article 36***Enforcement and penalties**

1. Member States shall take the necessary measures to prohibit the abandonment, dumping or uncontrolled management of waste.

2. Member States shall lay down provisions on the penalties applicable to infringements of the provisions of this Directive and shall take all measures necessary to ensure that they are implemented. The penalties shall be effective, proportionate and dissuasive.

CHAPTER VII

FINAL PROVISIONS*Article 37***Reporting and reviewing**

1. Every three years, Member States shall inform the Commission of the implementation of this Directive by submitting a sectoral report in an electronic form. This report shall also contain information on the management of waste oil and on the progress achieved in the implementation of the waste prevention programmes and, as appropriate, information on measures as foreseen by Article 8 on extended producer responsibility.

The report shall be drawn up on the basis of a questionnaire or outline established by the Commission in accordance with the procedure referred to in Article 6 of Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment ⁽¹⁾. The report shall be submitted to the Commission within nine months of the end of the three year period covered by it.

2. The Commission shall send the questionnaire or outline to the Member States six months before the start of the period covered by the sectoral report.

3. The Commission shall publish a report on the implementation of this Directive within nine months of receiving the sectoral reports from the Member States in accordance with paragraph 1.

4. In the first report that intervenes by 12 December 2014, the Commission shall review the implementation of this Directive, including the energy efficiency provisions, and will present a proposal for revision if appropriate. The report shall also assess the existing Member State waste prevention

programmes, objectives and indicators and shall review the opportunity of Community level programmes, including producer responsibility schemes for specific waste streams, targets, indicators and measures related to recycling, as well as material and energy recovery operations that may contribute to fulfilling the objectives set out in Articles 1 and 4 more effectively.

*Article 38***Interpretation and adaptation to technical progress**

1. The Commission may develop guidelines for the interpretation of the definitions of recovery and disposal.

If necessary, the application of the formula for incineration facilities referred to in Annex II, R1, shall be specified. Local climatic conditions may be taken into account, such as the severity of the cold and the need for heating insofar as they influence the amounts of energy that can technically be used or produced in the form of electricity, heating, cooling or processing steam. Local conditions of the outermost regions as recognised in the fourth subparagraph of Article 299(2) of the Treaty and of the territories mentioned in Article 25 of the 1985 Act of Accession may also be taken into account. This measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 39(2).

2. The Annexes may be amended in the light of scientific and technical progress. Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 39(2).

*Article 39***Committee procedure**

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

⁽¹⁾ OJ L 377, 31.12.1991, p. 48.

Article 40

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 12 December 2010.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

Article 41

Repeal and transitional provisions

Directives 75/439/EEC, 91/689/EEC and 2006/12/EC are hereby repealed with effect from 12 December 2010.

However, from 12 December 2008, the following shall apply:

(a) Article 10(4) of Directive 75/439/EEC shall be replaced by the following:

‘4. The reference method of measurement to determine the PCB/PCT content of waste oils shall be fixed by the Commission. That measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(4) of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (*).

(*) OJ L 114, 27.4.2006, p. 9.’;

(b) Directive 91/689/EEC is hereby amended as follows:

(i) Article 1(4) shall be replaced by the following:

‘4. For the purpose of this Directive “hazardous waste” means:

— waste classified as hazardous waste featuring on the list established by Commission Decision

2000/532/EC (*) on the basis of Annexes I and II to this Directive. This waste must have one or more of the properties listed in Annex III. The list shall take into account the origin and composition of the waste and, where necessary, limit values of concentration. This list shall be periodically reviewed and, if necessary revised. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(4) of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (**),

— any other waste which is considered by a Member State to display any of the properties listed in Annex III. Such cases shall be notified to the Commission and reviewed with a view to adapting the list. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(4) of Directive 2006/12/EC.

(*) OJ L 226, 6.9.2000, p. 3.

(**) OJ L 114, 27.4.2006, p. 9.’;

(ii) Article 9 shall be replaced by the following:

‘Article 9

The measures necessary for adapting the Annexes of this Directive to scientific and technical progress and for revising the list of wastes referred to in Article 1(4), designed to amend non-essential elements of this Directive, inter alia by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(4) of Directive 2006/12/EC.’;

(c) Directive 2006/12/EC is hereby amended as follows:

(i) Article 1(2) shall be replaced by the following:

‘2. For the purposes of paragraph 1, point (a), Commission Decision 2000/532/EC (*) featuring the list of waste belonging to the categories listed in Annex I to this Directive shall apply. This list shall be periodically reviewed and, if necessary, revised. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(4).

(*) OJ L 226, 6.9.2000, p. 3.’;

(ii) Article 17 shall be replaced by the following:

'Article 17

The measures necessary for adapting the Annexes to scientific and technical progress, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(4).';

(iii) Article 18(4) shall be replaced by the following:

'4. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.'

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex V.

Article 42

Entry into force

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

Article 43

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 19 November 2008.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

J.-P. JOUYET

ANNEX I

DISPOSAL OPERATIONS

- D 1 Deposit into or on to land (e.g. landfill, etc.)
- D 2 Land treatment (e.g. biodegradation of liquid or sludgy discards in soils, etc.)
- D 3 Deep injection (e.g. injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.)
- D 4 Surface impoundment (e.g. placement of liquid or sludgy discards into pits, ponds or lagoons, etc.)
- D 5 Specially engineered landfill (e.g. placement into lined discrete cells which are capped and isolated from one another and the environment, etc.)
- D 6 Release into a water body except seas/oceans
- D 7 Release to seas/oceans including sea-bed insertion
- D 8 Biological treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations numbered D 1 to D 12
- D 9 Physico-chemical treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations numbered D 1 to D 12 (e.g. evaporation, drying, calcination, etc.)
- D 10 Incineration on land
- D 11 Incineration at sea (*)
- D 12 Permanent storage (e.g. emplacement of containers in a mine, etc.)
- D 13 Blending or mixing prior to submission to any of the operations numbered D 1 to D 12 (**)
- D 14 Repackaging prior to submission to any of the operations numbered D 1 to D 13
- D 15 Storage pending any of the operations numbered D 1 to D 14 (excluding temporary storage, pending collection, on the site where the waste is produced) (***)

(*) This operation is prohibited by EU legislation and international conventions.

(**) If there is no other D code appropriate, this can include preliminary operations prior to disposal including pre-processing such as, inter alia, sorting, crushing, compacting, pelletising, drying, shredding, conditioning or separating prior to submission to any of the operations numbered D1 to D12.

(***) Temporary storage means preliminary storage according to point (10) of Article 3.

ANNEX II

RECOVERY OPERATIONS

- R 1 Use principally as a fuel or other means to generate energy (*)
- R 2 Solvent reclamation/regeneration
- R 3 Recycling/reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes) (**)
- R 4 Recycling/reclamation of metals and metal compounds
- R 5 Recycling/reclamation of other inorganic materials (***)
- R 6 Regeneration of acids or bases
- R 7 Recovery of components used for pollution abatement
- R 8 Recovery of components from catalysts
- R 9 Oil re-refining or other reuses of oil
- R 10 Land treatment resulting in benefit to agriculture or ecological improvement
- R 11 Use of waste obtained from any of the operations numbered R 1 to R 10
- R 12 Exchange of waste for submission to any of the operations numbered R 1 to R 11 (****)
- R 13 Storage of waste pending any of the operations numbered R 1 to R 12 (excluding temporary storage, pending collection, on the site where the waste is produced) (*****)

(*) This includes incineration facilities dedicated to the processing of municipal solid waste only where their energy efficiency is equal to or above:

— 0,60 for installations in operation and permitted in accordance with applicable Community legislation before 1 January 2009,
 — 0,65 for installations permitted after 31 December 2008,

using the following formula:

Energy efficiency = $(E_p - (E_f + E_i)) / (0,97 \times (E_w + E_f))$

In which:

E_p means annual energy produced as heat or electricity. It is calculated with energy in the form of electricity being multiplied by 2,6 and heat produced for commercial use multiplied by 1,1 (GJ/year)

E_f means annual energy input to the system from fuels contributing to the production of steam (GJ/year)

E_w means annual energy contained in the treated waste calculated using the net calorific value of the waste (GJ/year)

E_i means annual energy imported excluding E_w and E_f (GJ/year)

0,97 is a factor accounting for energy losses due to bottom ash and radiation.

This formula shall be applied in accordance with the reference document on Best Available Techniques for waste incineration.

(**) This includes gasification and pyrolysis using the components as chemicals.

(***) This includes soil cleaning resulting in recovery of the soil and recycling of inorganic construction materials.

(****) If there is no other R code appropriate, this can include preliminary operations prior to recovery including pre-processing such as, inter alia, dismantling, sorting, crushing, compacting, pelletising, drying, shredding, conditioning, repackaging, separating, blending or mixing prior to submission to any of the operations numbered R1 to R11.

(*****) Temporary storage means preliminary storage according to point (10) of Article 3.

ANNEX III

PROPERTIES OF WASTE WHICH RENDER IT HAZARDOUS

- H 1 'Explosive': substances and preparations which may explode under the effect of flame or which are more sensitive to shocks or friction than dinitrobenzene.
- H 2 'Oxidizing': substances and preparations which exhibit highly exothermic reactions when in contact with other substances, particularly flammable substances.
- H 3-A 'Highly flammable'
- liquid substances and preparations having a flash point below 21 °C (including extremely flammable liquids), or
 - substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any application of energy, or
 - solid substances and preparations which may readily catch fire after brief contact with a source of ignition and which continue to burn or to be consumed after removal of the source of ignition, or
 - gaseous substances and preparations which are flammable in air at normal pressure, or
 - substances and preparations which, in contact with water or damp air, evolve highly flammable gases in dangerous quantities.
- H 3-B 'Flammable': liquid substances and preparations having a flash point equal to or greater than 21 °C and less than or equal to 55 °C.
- H 4 'Irritant': non-corrosive substances and preparations which, through immediate, prolonged or repeated contact with the skin or mucous membrane, can cause inflammation.
- H 5 'Harmful': substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may involve limited health risks.
- H 6 'Toxic': substances and preparations (including very toxic substances and preparations) which, if they are inhaled or ingested or if they penetrate the skin, may involve serious, acute or chronic health risks and even death.
- H 7 'Carcinogenic': substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce cancer or increase its incidence.
- H 8 'Corrosive': substances and preparations which may destroy living tissue on contact.
- H 9 'Infectious': substances and preparations containing viable micro-organisms or their toxins which are known or reliably believed to cause disease in man or other living organisms.
- H 10 'Toxic for reproduction': substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce non-hereditary congenital malformations or increase their incidence.
- H 11 'Mutagenic': substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce hereditary genetic defects or increase their incidence.
- H 12 Waste which releases toxic or very toxic gases in contact with water, air or an acid.
- H 13 (*) 'Sensitizing': substances and preparations which, if they are inhaled or if they penetrate the skin, are capable of eliciting a reaction of hypersensitization such that on further exposure to the substance or preparation, characteristic adverse effects are produced.
- H 14 'Ecotoxic': waste which presents or may present immediate or delayed risks for one or more sectors of the environment.

(*) As far as testing methods are available.

- H 15 Waste capable by any means, after disposal, of yielding another substance, e.g. a leachate, which possesses any of the characteristics listed above.

Notes

1. Attribution of the hazardous properties 'toxic' (and 'very toxic'), 'harmful', 'corrosive', 'irritant', 'carcinogenic', 'toxic to reproduction', 'mutagenic' and 'eco-toxic' is made on the basis of the criteria laid down by Annex VI, to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ⁽¹⁾.
2. Where relevant the limit values listed in Annex II and III to Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations ⁽²⁾ shall apply.

Test methods

The methods to be used are described in Annex V to Directive 67/548/EEC and in other relevant CEN-notes.

⁽¹⁾ OJ 196, 16.8.1967, p. 1.

⁽²⁾ OJ L 200, 30.7.1999, p. 1.

ANNEX IV

EXAMPLES OF WASTE PREVENTION MEASURES REFERRED TO IN ARTICLE 29**Measures that can affect the framework conditions related to the generation of waste**

1. The use of planning measures, or other economic instruments promoting the efficient use of resources.
2. The promotion of research and development into the area of achieving cleaner and less wasteful products and technologies and the dissemination and use of the results of such research and development.
3. The development of effective and meaningful indicators of the environmental pressures associated with the generation of waste aimed at contributing to the prevention of waste generation at all levels, from product comparisons at Community level through action by local authorities to national measures.

Measures that can affect the design and production and distribution phase

4. The promotion of eco-design (the systematic integration of environmental aspects into product design with the aim to improve the environmental performance of the product throughout its whole life cycle).
5. The provision of information on waste prevention techniques with a view to facilitating the implementation of best available techniques by industry.
6. Organise training of competent authorities as regards the insertion of waste prevention requirements in permits under this Directive and Directive 96/61/EC.
7. The inclusion of measures to prevent waste production at installations not falling under Directive 96/61/EC. Where appropriate, such measures could include waste prevention assessments or plans.
8. The use of awareness campaigns or the provision of financial, decision making or other support to businesses. Such measures are likely to be particularly effective where they are aimed at, and adapted to, small and medium sized enterprises and work through established business networks.
9. The use of voluntary agreements, consumer/producer panels or sectoral negotiations in order that the relevant businesses or industrial sectors set their own waste prevention plans or objectives or correct wasteful products or packaging.
10. The promotion of creditable environmental management systems, including EMAS and ISO 14001.

Measures that can affect the consumption and use phase

11. Economic instruments such as incentives for clean purchases or the institution of an obligatory payment by consumers for a given article or element of packaging that would otherwise be provided free of charge.
 12. The use of awareness campaigns and information provision directed at the general public or a specific set of consumers.
 13. The promotion of creditable eco-labels.
 14. Agreements with industry, such as the use of product panels such as those being carried out within the framework of Integrated Product Policies or with retailers on the availability of waste prevention information and products with a lower environmental impact.
 15. In the context of public and corporate procurement, the integration of environmental and waste prevention criteria into calls for tenders and contracts, in line with the Handbook on environmental public procurement published by the Commission on 29 October 2004.
 16. The promotion of the reuse and/or repair of appropriate discarded products or of their components, notably through the use of educational, economic, logistic or other measures such as support to or establishment of accredited repair and reuse-centres and networks especially in densely populated regions.
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ANNEX V

CORRELATION TABLE

Directive 2006/12/EC	This Directive
Article 1(1)(a)	Article 3(1)
Article 1(1)(b)	Article 3(5)
Article 1(1)(c)	Article 3(6)
Article 1(1)(d)	Article 3(9)
Article 1(1)(e)	Article 3(19)
Article 1(1)(f)	Article 3(15)
Article 1(1)(g)	Article 3(10)
Article 1(2)	Article 7
Article 2(1)	Article 2(1)
Article 2(1)(a)	Article 2(1)(a)
Article 2(1)(b)	Article 2(2)
Article 2(1)(b)(i)	Article 2(1)(d)
Article 2(1)(b)(ii)	Article 2(2)(d)
Article 2(1)(b)(iii)	Article 2(1)(f) and (2)(c)
Article 2(1)(b)(iv)	Article 2(2)(a)
Article 2(1)(b)(v)	Article 2(1)(e)
Article 2(2)	Article 2(4)
Article 3(1)	Article 4
Article 4(1)	Article 13
Article 4(2)	Article 36(1)
Article 5	Article 16
Article 6	—
Article 7	Article 28
Article 8	Article 15
Article 9	Article 23
Article 10	Article 23
Article 11	Articles 24 and 25
Article 12	Article 26
Article 13	Article 34
Article 14	Article 35
Article 15	Article 14
Article 16	Article 37
Article 17	Article 38
Article 18(1)	Article 39(1)

Directive 2006/12/EC	This Directive
—	Article 39(2)
Article 18(2)	—
Article 18(3)	Article 39(3)
Article 19	Article 40
Article 20	—
Article 21	Article 42
Article 22	Article 43
Annex I	—
Annex IIA	Annex I
Annex IIB	Annex II

Directive 75/439/EEC	This Directive
Article 1(1)	Article 3(18)
Article 2	Articles 13 and 21
Article 3(1) and (2)	—
Article 3(3)	Article 13
Article 4	Article 13
Article 5(1)	—
Article 5(2)	—
Article 5(3)	—
Article 5(4)	Articles 26 and 34
Article 6	Article 23
Article 7(a)	Article 13
Article 7(b)	—
Article 8(1)	—
Article 8(2)(a)	—
Article 8(2)(b)	—
Article 8(3)	—
Article 9	—
Article 10(1)	Article 18
Article 10(2)	Article 13
Article 10(3) and (4)	—
Article 10(5)	Articles 19, 21, 25, 34 and 35
Article 11	—
Article 12	Article 35
Article 13(1)	Article 34

Directive 75/439/EEC	This Directive
Article 13(2)	—
Article 14	—
Article 15	—
Article 16	—
Article 17	—
Article 18	Article 37
Article 19	—
Article 20	—
Article 21	—
Article 22	—
Annex I	—

Directive 91/689/EEC	This Directive
Article 1(1)	—
Article 1(2)	—
Article 1(3)	—
Article 1(4)	Articles 3(2) and 7
Article 1(5)	Article 20
Article 2(1)	Article 23
Article 2(2)-(4)	Article 18
Article 3	Articles 24, 25 and 26
Article 4(1)	Article 34(1)
Article 4(2)(3)	Article 35
Article 5(1)	Article 19(1)
Article 5(2)	Article 34(2)
Article 5(3)	Article 19(2)
Article 6	Article 28
Article 7	—
Article 8	—
Article 9	—
Article 10	—
Article 11	—
Article 12	—
Annexes I and II	—
Annex III	Annex III

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 2 July 2008

on State aid C 18/07 (ex N 874/06) which Germany is planning to implement for DHL

(notified under document number C(2008) 3178)

(Only the German text is authentic)

(Text with EEA relevance)

(2008/878/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

European Union ⁽²⁾. Germany submitted its comments by letter dated 26 September 2007.

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

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

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

- (3) The Commission called on interested parties to submit their comments. DHL and UPS Germany submitted their comments by letters dated 15 October and 26 October 2007 respectively. The observations of the third parties were submitted to Germany for comment by letters dated 16 November and 20 November 2007. Germany replied by letter dated 14 December 2007. The Commission requested additional information by e-mails of 12 February and 5 June 2008, to which Germany replied by letters dated 14 February, 31 March and 17 June 2008.

Whereas:

2. DESCRIPTION OF THE PROJECT

2.1. The beneficiary

1. PROCEDURE

- (1) By letter dated 21 December 2006, Germany notified the Commission of training aid for DHL.
- (2) By letter dated 27 June 2007, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid for DHL. The Commission decision to initiate the procedure was published in the *Official Journal of the*

- (4) DHL is one of the largest express parcel operators, with a worldwide turnover of EUR 18,2 billion in 2005. It is wholly owned by Deutsche Post AG.
- (5) DHL has built a new air logistics centre for delivery and airfreight in Leipzig-Halle, Germany, which was expected to become operational by the end of October 2007. The entire investment costs of this project amounted to EUR 250 million. In April 2004 DHL was granted some EUR 70 million in regional investment aid, which was approved by the Commission as State aid N 608/2003 with a maximum aid intensity of 28 %.

⁽¹⁾ OJ C 213, 12.9.2007, p. 28.

⁽²⁾ See footnote 1.

- (6) The delivery and airfreight centre is operated by the two beneficiary companies, DHL Hub Leipzig GmbH (DHL Hub) and European Air Transport Leipzig GmbH (DHL EAT), which are wholly owned by Deutsche Post AG through other subsidiaries. DHL Hub will provide ground handling services for the airfreight operation, whereas DHL EAT will be responsible for inspections of the DHL air fleet.
- (7) Both DHL Hub and DHL EAT are located in an area assisted under Article 87(3)(a) of the EC Treaty.

2.2. The training project

- (8) DHL provides all ground handling services as well as the pre-flight and ramp checks for arriving and departing aircraft at the logistics centre. For this purpose, the company plans gradually to employ around 1 500 people and to provide them with appropriate training. However, the notified aid relates only to training measures for 485 employees.
- (9) Germany notified a direct grant for the training measures from the Free State of Saxony (50 %) and the *Land* of Saxony-Anhalt (50 %) amounting to EUR 7 753 307.
- (10) The training which DHL is planning will be provided by DHL Hub (320 persons) and by DHL EAT (165 persons) ⁽³⁾.

2.2.1. DHL Hub

- (11) The training to be provided by DHL Hub is mainly general training intended to provide workers with the knowledge and ability to perform specific activities. It consists of theoretical training and practical on-the-job training. The training at DHL Hub relates to the following more detailed job descriptions for 320 employees:

Table 1

Job description	Number of employees	Tasks
Ramp Agent II	210	Loading and unloading of aircraft
Security Agent	110	Checks on individuals and freight
Managers (operations)	(110) (*)	Middle management tasks; personnel management and planning; leadership

(*) DHL will provide additional management training for 110 employees who have already participated in other training courses, i.e. Ramp Agent II, Security Agent or Technician/Mechanic.

(a) Ramp Agents II

- (12) The main activities of Ramp Agents are the loading and unloading of aircraft on the basis of a strict schedule. They also have to be able to manage the ground service equipment, to pass on flight documentation, to draw up reports and to communicate with pilots and the airport authorities.
- (13) The training of Ramp Agents comprises 19 courses plus practical on-the-job training for a total of 77 days, of which 47 days are for on-the-job training. The training is for workers with previous unrelated training. The theoretical training is to be provided before the hub becomes operational. The training includes one course, 'Unit load device build up', which is considered to be specific training as it deals with the building up of specific containers used only by DHL. The general training courses also concern:
- (a) general security training such as fire protection, cargo door operation, first aid, hazardous goods recognition and ramp safety;
 - (b) general technical training leading to the award of licences for activities such as apron driving, ground service equipment and forklift driving;
 - (c) other general technical training such as aircraft towing, aircraft de-icing and airside supervision;
 - (d) some general training such as environment management (ISO/DIN Standard 14001) or quality management and processes (ISO/DIN Standard 9001).
- (14) National and European legislation do not, in principle, set a minimum number of employees or provide for specific training requirements or licences for the activity of Ramp Agent II. However, Germany indicated that five of the planned courses (including fire protection, first aid, dangerous goods recognition and ramp safety) are compulsory under the existing rules for all employees ⁽⁴⁾ and that additional courses, including

⁽³⁾ For further details of the training project, see the decision initiating the procedure.

⁽⁴⁾ Personnel in direct contact with freight must, under the law, hold an accredited certificate for handling freight; all personnel employed in the non-public area of the airport must attend security training; personnel in contact with the aircraft must attend cargo door operation training; in addition, depending on the specific activity, the personnel must have qualifications for operating machines and vehicles.

relevant on-the-job training, must be attended by a minimum number of persons (around 70), i.e. cargo door operation and the general training for which licences are required. These persons could then transfer their knowledge to their colleagues at short instruction sessions.

- (15) Germany indicated that subcontracting was another possibility and provided a cost analysis.

(b) Security Agents

- (16) The activity of Security Agent involves carrying out checks on individuals and freight with the aim of preventing any disruption of operations. The training of Security Agents involves only general training:

(a) general security training such as fire protection, first aid and hazardous goods recognition;

(b) general technical security training required by law for security agents such as danger of terrorism, access security, control and searches, security of luggage and freight, weapons and secure areas;

(c) other general technical training involving the award of licences, such as apron driving;

(d) other general technical security training in fields such as law, the science of weapons and explosives, basics of control and reading of X-rays;

(e) some general training such as quality management and processes (ISO/DIN standard 9001).

- (17) The training measures are consistent with the relevant national and European legislation. DHL plans to provide all Security Agents with comprehensive training regarding safety aspects which will, however, in the absence of the State aid, be restricted to the minimum, i.e. general technical security training. Moreover, the other general technical security training will again be provided for a limited number of employees who will then pass on their knowledge to the other employees.

- (18) Here too, Germany presented subcontracting as an alternative solution the costs of which would be some [(15-30 %)] (*) lower than DHL's personnel costs.

(c) Middle management training

- (19) The training of operations middle management is intended for personnel at the logistics centre. The Commission is given to understand that they will undergo the above training before acquiring more in-depth knowledge of the areas they are supposed to manage. They will also be trained in subjects such as labour law, basic communications, human resource management and conflict management, languages and team building.

2.2.2. DHL EAT

- (20) The tasks performed by DHL EAT concern essentially aircraft maintenance before an aircraft is released to service, and the training provided relates to the following job descriptions for 165 employees:

Table 2

Job description	Number of employees	Tasks
Maintenance mechanic authorising release CAT A	97	Simple scheduled maintenance or simple defect rectification before release to service
Maintenance technician – mechanic authorising release CAT B 1	68	Maintenance including airframe structure, power plant and electrical systems before release to service

2.3. Eligible training costs and planned aid

- (21) In the notification Germany provided an overview of eligible costs which was reproduced in the decision initiating the procedure. The total eligible costs were EUR [(10-15)] million for the training project and EUR 7 753 000 for the planned training aid.

3. DECISION TO INITIATE THE FORMAL INVESTIGATION PROCEDURE

- (22) The formal investigation procedure was initiated because the Commission had doubts as to whether the training aid was compatible with the common market.

(*) Confidential information.

- (23) The Commission doubted in particular whether the aid was actually necessary for the implementation of the training project. It noted that training aid can be regarded as being compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty only where it is not directly required for the operational activities of the beneficiary. In this respect the Commission made reference to its previous decision-making practice⁽⁵⁾. It had reason to assume that the beneficiary would need to provide, at least up to a certain extent, similar training to its employees even in the absence of aid.
- (24) First, it was clear that DHL had invested massively in the logistics centre and wanted it to become operational. Germany confirmed that the workers in Belgium were, in principle, unwilling to move to Germany. Therefore DHL had to recruit new workers before it could start operations.
- (25) Second, it seemed that, in order to operate the logistics centre, the workforce required an amount of largely technical training in the following areas:
- (a) **Transmission of company-specific knowledge required for the operation of the business**, i.e. knowledge about specific, tailor-made freight systems of DHL.
 - (b) **Acquisition of certain qualifications required by law for the operation of the business**. In other words, a certain number of workers need to be acquainted with security concerns. This is required by law and needs some formal certification. This follows from the fact that the services provided by DHL intrinsically involve considerable safety and security risks.
 - (c) **Provision of general technical training directly required to operate the logistics centre**. This involves courses such as the Ramp Agent II training for aircraft towing, aircraft de-icing, apron driving, forklift driving and ramp safety.
 - (d) **Provision of on-the-job training required for the smooth operation of the hub**. Trainees will be acquainted with the work processes, something which is particularly important for airfreight operations as the loading of airplanes has to follow a strict timetable, since a single mistake can cause huge delays.
- (e) **Provision of other general knowledge** not covered by points (b) to (d).
- (26) Third, the Commission doubted whether DHL would be able to attract in sufficient numbers on the local or European labour market workers who had the above mentioned skills.
- (27) Fourth, the Commission had doubts whether the hiring of skilled workers would be an adequate alternative to in-house training. It assumed that at least the specific training and the security training have to be provided by DHL in any event as the former cannot be provided by outside trainers and as DHL must show that its security training is adequate.
- (28) Fifth, the Commission had doubts whether DHL would be able to dispense with some of the courses in the training package, in particular as regards Ramp Agent II, for which it was planned, as indicated in the notification, that even workers already in possession of a licence should undergo the entire training again. Moreover, it was doubtful whether only a limited number of people could be trained as this might adversely affect the smooth operation of services. In fact, DHL had intentionally already recruited the entire personnel with a view to being trained so that it did not make much sense to abandon the planned training and pay employees who were not engaged in any activity.
- (29) Sixth, the Commission was not sure about DHL's assertion that, in the absence of aid, various services would be contracted out so as to avoid the planned training given that, on the one hand, even then some training under points (a), (b) and (d) would also be necessary and, on the other, the specific aim of DHL's entire investment in Leipzig-Halle is to provide all services related to express parcel delivery using its own personnel and, as the Commission understood from the meeting with the German authorities, even to offer these services to competitors operating at the same airport.
- (30) However, the Commission had, with one exception, no doubt that the training costs had, in principle, been calculated correctly. The only misgivings expressed by the Commission concerned the observation that a large part of the training was to be on-the-job training, with the result that the training might have to be deducted from trainee costs as productive hours.

⁽⁵⁾ See Commission Decision 2007/612/EC of 4 April 2007, *General Motors Belgium in Antwerp* (OJ L 243, 18.9.2007, p. 71) and Commission Decision 2006/938/EC of 4 July 2006, *Ford Genk* (OJ L 366, 21.12.2006, p. 32).

4. COMMENTS FROM GERMANY

(31) Germany argues that the notified training aid fulfils all of the criteria laid down in Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ⁽⁶⁾. Germany first supplied sufficient information to show that no productive hours are involved in the on-the-job training.

(32) Second, Germany disputes the Commission's right to apply the necessity criterion in the present case as this would be in breach of the principle of non-discrimination. This new approach does not have a legal basis and is not in line with the relevant EC legislation or Commission decision-making practice.

(33) Germany argues that recital 11 to Regulation (EC) No 68/2001 specifies the three criteria which need to be assessed when determining whether aid is limited to the minimum necessary: the type of training provided, the size of the enterprise and its geographical location. These three criteria make it possible to determine whether the aid measures have an incentive effect and are proportional. According to the Framework on training aid ⁽⁷⁾, it is only in the case of specific training measures for large undertakings outside areas assisted under Article 87(3)(a) or (c) of the EC Treaty that the incentive effect is not presumed to exist. Since more than 80 % of the notified training project consists of general training measures and involves an undertaking in an area assisted under Article 87(3)(a), the training aid has an incentive effect. Also, since the notified aid does not exceed the maximum aid intensities, the positive effects of the assisted training measures are proportional to the distortion of competition, thereby fulfilling the proportionality criterion.

(34) Third, Germany underlines the fact that the Commission is required to apply the compatibility criteria specified in recital 32 also for projects not caught by the notification requirement. It argues that different compatibility criteria should not be applied to aid exempted from notification or to aid which exceeds the EUR 1 million threshold and should therefore be notified; projects which need to be notified must not be assessed in a more restrictive manner than projects exempted from notification. Therefore, training aid is compatible with the common market if it fulfils all the conditions set out in Regulation

(EC) No 68/2001. Germany claims that this interpretation has been borne out by the Commission in its long-standing decision-making practice, e.g. in the *Volvo Gent* case ⁽⁸⁾. It expressly states that the Commission should also bear in mind the fact that the DHL training project fulfils the criteria laid down in the *Webasto* decision ⁽⁹⁾.

(35) Fourth, the application of different assessment criteria contravenes the principles of legal certainty and equality of treatment.

(36) Fifth, Germany argues that the Commission decisions in the *Ford Genk* and *GM Antwerp* cases do not constitute suitable precedents since the facts of the cases were different from those of the present case. Whereas in the first two cases training aid was envisaged for the introduction of a new model and for the continued employment of personnel, the training aid for DHL is to be used for training newly recruited employees to operate a newly built logistics centre. The DHL project also differs from the other two cases in the following respects: general training makes up more than 80 % of the project; the undertaking is based in an area assisted under Article 87(3)(a) of the EC Treaty; DHL intends to create new jobs at the logistics centre; and, unlike the car sector, the air transport sector does not suffer from over-capacity but is expanding rapidly.

(37) Lastly, Germany provides additional information as regards the matters raised in the decision initiating the procedure. It explains that the relevant legal provisions lay down minimum standards for the level of training. However, they do not set a minimum number of qualified personnel which the undertaking has to recruit. On the other hand, Germany indicates how many employees are necessary for the logistics centre to start operating and concludes that the training measures for the additional employees go beyond what is necessary from an operational point of view. According to a study provided by Germany and drawn up by an external training consultant, DHL could successfully start operating in Leipzig-Halle with a smaller number of trained employees than envisaged in the notified training project.

⁽⁶⁾ OJ L 10, 13.1.2001, p. 20.

⁽⁷⁾ OJ C 343, 11.11.1998, p. 10.

⁽⁸⁾ Commission Decision of 11 March 2008 on State aid C 35/07, *Volvo Cars Gent* (not yet published).

⁽⁹⁾ Commission Decision of 16 May 2006 on State aid N 635/05, *Webasto Portugal* (OJ C 306, 15.12.2006, p. 12).

5. COMMENTS FROM INTERESTED PARTIES

- (38) Comments were also submitted by the beneficiary, DHL, which, like Germany, argues that the Commission diverges in its compatibility assessment from its general decision-making practice in earlier cases. In its view, the notified aid fulfils all the criteria set out in Regulation (EC) No 68/2001. The Commission's approach violates the principles of legal certainty and equality of treatment, which prohibit treatment different from that of previous training aid decisions where the necessity issue was not assessed in detail. Further, the *Ford Genk* and *GM Antwerp* decisions do not reflect general decision-making practice because the circumstances of these cases are different and cannot be applied by analogy to the case of DHL Leipzig. Instead, DHL invokes the criteria set out by the Commission in its decision of June 2006 approving training aid for *Webasto* and according to which the DHL training project must also be compatible with the common market. Finally, DHL reiterates that differential treatment of the notified training project leads to inadmissible discrimination against it.

- (39) DHL also provides additional information on the issues raised in the Commission decision to initiate the procedure. First, the relevant provisions of national, European and international legislation determine only the content of training and qualifications for the handling of freight and aircraft but do not specify a minimum number of employees. Second, the training measures planned not only fulfil the existing legal requirements but go beyond what is mandatory. Therefore, for all the measures exceeding the legal requirements alternative scenarios could be envisaged (e.g. outsourcing and subcontracting). However, since these alternative scenarios are only possible variants, DHL did not commission a detailed cost analysis which would include the costs for the mandatory and/or minimum training needed in any event and indicate the extra costs of subcontracting and/or recruiting skilled employees. DHL does not have any information on the degree of training normally provided in the sector.

- (40) UPS, a competitor of DHL, submitted comments supporting the Commission's position. First, it explains that the recruitment of new employees for DHL Hub and DHL EAT entails in any event certain training and instruction measures that should be carried out. Thus, the training measures are, to a certain extent, necessary and would need to be carried out by the undertaking even in the absence of aid.

- (41) Second, according to UPS, DHL is required under the relevant national and European legislation to provide a

minimum amount of training for its employees, e.g. regulated agents. Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security⁽¹⁰⁾ provides that regulated agents must be designated, approved and listed by the appropriate authority, here the Federal Aviation Authority. To this end, the Authority adopted guidelines and published a model training course (*Musterlehrplan*) which lay down the mandatory training measures to be provided. As regards the employees of DHL EAT, the mandatory training measures are spelt out in Commission Regulation (EC) No 2042/2003 of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks⁽¹¹⁾. Third, since DHL has received regional aid for job creation, it is not to be assumed that DHL would dispense with the training measures and recruit fewer people, and instead would subcontract or outsource.

6. ASSESSMENT OF THE AID

6.1. Existence of State aid

- (42) The Commission considers that the measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty that has been made available in the form of a grant financed by state resources. The measure is selective as it is limited to DHL. The selective grant threatens to distort competition by favouring DHL over other competitors not receiving aid. Finally, the market for express parcel delivery, on which DHL is a major player, is characterised by intensive trade between Member States.

- (43) Germany requests approval of the aid on the basis of Commission Regulation (EC) No 68/2001.

- (44) According to Article 5 of that Regulation, where the amount of aid granted to one enterprise for a single training project exceeds EUR 1 million, the aid is not exempted from the notification requirement pursuant to Article 88(3) of the EC Treaty. The Commission notes that the proposed aid in this case amounts to EUR 7 753 307 and is to be paid to one enterprise and that the training measures constitute a single project. It considers that the notification requirement therefore applies to the proposed aid and that it has been complied with by Germany.

⁽¹⁰⁾ OJ L 355, 30.12.2002, p. 1.

⁽¹¹⁾ OJ L 315, 28.11.2003, p. 1.

- (45) Recital 16 to Regulation (EC) No 68/2001 reiterates the rationale of Article 5 and explains that such aid cannot be exempted: 'It is appropriate that large amounts of aid remain subject to an individual assessment by the Commission before they are put into effect.'

- (46) Therefore, when assessing individual training aid which does not qualify for the exemption laid down in Regulation (EC) No 68/2001, the Commission must, in line with its previous decisions⁽¹²⁾, make an individual assessment⁽¹³⁾ on the basis of Article 87(3)(c) of the EC Treaty before approving implementation of the aid. For this individual assessment, it must, by analogy, base itself on the fundamental principles laid down in Regulation (EC) No 68/2001. This entails in particular verification of compliance with the formal exemption criteria laid down in Article 4 of that Regulation and of whether the aid is necessary as an incentive for the beneficiary to undertake the training activities.

6.2. Compatibility with the common market

- (47) In the decision initiating the procedure the Commission assessed compliance of the notified project with the exemption criteria laid down in Article 4 of Regulation (EC) No 68/2001.

- (48) First, it is to be noted that the indicated aid intensity does not exceed the ceilings laid down in Article 4(2) and (3) of Regulation (EC) No 68/2001, namely 35 % for specific training (35 % of [...] = [(approximately 5-25 %)]) and 60 % for general training (60 % of [...] = [(approximately 75-95 %)]). Germany may raise the ceilings of 25 % and 50 % by 10 percentage points given that the project is located in an area assisted under Article 87(3)(a) of the EC Treaty.

- (49) Second, the measure's eligible costs comply with Article 4(7) of Regulation (EC) No 68/2001. The investigation confirmed that the trainees' eligible personnel

costs were clearly limited to the total amount of the other eligible costs. Germany furnished proof that, although a large part of the training is on-the-job training, no productive hours are involved.

6.3. Necessity of the aid

- (50) The main argument in the decision initiating the procedure was that a training measure can be found compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty only when it is not directly required for the operational activities of the beneficiary. The Commission noted that the necessity of the aid is a general compatibility criterion and concluded that, where the aid does not lead to more measures being undertaken than would be the case with market forces alone, the aid cannot be expected to have positive effects offsetting the distortion of trade and cannot, therefore, be authorised. If the company would have undertaken the assisted measures in any event, and notably in the absence of aid, the training aid in question cannot be assumed to 'promote' economic development within the meaning of Article 87(3)(c) of the EC Treaty and, in accordance with recital 10 to Regulation (EC) No 68/2001, to help correct the market imperfection that results in enterprises generally underinvesting in the training of their workers⁽¹⁴⁾. This is without prejudice to aid exempted from the notification requirement under Regulation (EC) No 68/2001 where it is assumed *prima facie* that such aid serves to promote economic development.

- (51) The fact that the Commission is assessing whether an incentive effect exists and rejects the presence of such an effect where training is required by law is, in Germany's view, a novel approach that is not consistent with the EC rules, arbitrarily deviates from existing decision-making practice and prevents the granting of training aid for regional policy purposes. The Commission cannot accept these arguments for the reasons stated below.

⁽¹²⁾ See Commission decisions in *Ford Genk*, *General Motors Belgium*, *Auto-Europa Portugal* and *Volvo Cars Gent*.

⁽¹³⁾ This follows also from recital 16 to Regulation (EC) No 68/2001.

⁽¹⁴⁾ In the context of training aid, recital 10 to Regulation (EC) No 68/2001 states that 'Training usually has positive external effects for society as a whole since it increases the pool of skilled workers from which other firms may draw, improves the competitiveness of Community industry and plays an important role in employment strategy. In view of the fact that enterprises in the Community generally underinvest in the training of their workers, State aid might help to correct this market imperfection and therefore can be considered under certain conditions to be compatible with the common market and therefore exempted from prior notification.' Recital 11 adds that it must be 'ensure(d) that State aid is limited to the minimum necessary to obtain the Community objective which market forces alone would not make possible [...]'.

- (52) First, it should be recalled that training aid is assessed under Regulation (EC) No 68/2001, which states in recital 4 that it is 'without prejudice to the possibility for Member States to notify training aid. Such notifications will be assessed by the Commission *in particular* in the light of the criteria set out in this Regulation, or in accordance with the applicable Community guidelines and frameworks, if such guidelines and frameworks exist.'
- (53) Moreover, it is reiterated in recital 16 that 'It is appropriate that large amounts of aid remain subject to an individual assessment by the Commission before they are put into effect. Accordingly, aid exceeding a fixed amount, which should be set at EUR 1 million, is *excluded from the exemption provided for in this Regulation* and remains subject to the requirements of Article 88(3) of the Treaty.'
- (54) Finally, it is stipulated in recital 4 that 'The framework on training aid should be abolished from the date of entry into force of this Regulation, since its contents are replaced by this Regulation.'
- (55) As the planned aid exceeds EUR 1 million, there is no doubt that it must be notified and approved by the Commission. Moreover, it is clear that such aid must, in principle, comply with the exemption criteria laid down in Article 4 of Regulation (EC) No 68/2001.
- (56) However, Germany questions whether the Commission is also empowered to scrutinise whether the aid has an incentive effect. The Commission is of the opinion that the concept of State aid and in particular the criterion of the necessity of aid entail the existence of an incentive effect of the aid for the beneficiary. It cannot serve the common interest if the State supports measures (including training measures) that a beneficiary would undertake in any event. The Commission's recent decisions have specifically included an assessment of the incentive effect for training measures (*Ford Genk*, *GM Antwerp*), in line with Regulation (EC) No 68/2001, the State Aid Action Plan and Court rulings on the conditions for finding aid to be compatible with the common market.
- (57) In order to underline its position, Germany claims, first, that compatibility with the common market needs to be assessed in the light of the criteria laid down in the Regulation and, in this connection, cites recital 4 to Regulation (EC) No 68/2001 to the effect that the aid will 'be assessed by the Commission in particular in the light of the criteria set out in this Regulation'. Germany disregards the fact that the words 'in particular' mean precisely that the individual assessment is not limited to the aid assessment provided for in Regulation (EC) No 68/2001. Since recital 16 clearly indicates that such aid remains subject to an individual assessment, there can be no doubt that this assessment is not confined to the criteria laid down in the aforementioned Regulation and must be carried out directly on the basis of Article 87 of the EC Treaty.
- (58) Second, Germany argues that Regulation (EC) No 68/2001 should be interpreted in the light of the 1998 Framework on training aid, which was the predecessor of that Regulation and laid down the criteria for assessing the existence of an incentive effect in the case of substantial aid. In particular, it states that the Framework indicated that an incentive effect was to be assumed in the case of training taking place in an area assisted under Article 87(3)(a) or (c). However, the Commission cannot accept this argument as recital 4 to Regulation (EC) No 68/2001 leaves no doubt that the Framework on training aid was abolished on the date of entry into force of the Regulation. The intention of the Commission – and the effect of the Regulation – was to replace the Framework with the Regulation. On the one hand, this is apparent from other language versions where recital 4 to Regulation (EC) No 68/2001 makes it clear that the Framework is 'abolished' since its contents are 'replaced'. On the other hand, this is clearly stated in previous Commission decisions⁽¹⁵⁾. What is more, the Regulation did not take over the Framework's legal presumption of the existence of an incentive effect but instead deliberately stipulated in more general terms that, under certain conditions, training aid can be found to be compatible with the common market⁽¹⁶⁾. However, if an enterprise would have undertaken the assisted measures in any event, and notably in the absence of aid, the aid cannot be considered to have an incentive effect.
- (59) Third, Germany and in particular the beneficiary argue that an additional assessment of the necessity of the aid based on Article 87(3)(c) of the EC Treaty would mean that Regulation (EC) No 68/2001 would, in its entirety, be in breach of this provision of the Treaty. It is clearly assumed here that the necessity of the aid is not being assessed. The Commission cannot accept this argument either since it obviously disregards the fact that the necessity criterion is also assumed to be met in the case of aid not exceeding EUR 1 million that fulfils the criteria laid down in that Regulation.
- ⁽¹⁵⁾ See, for example, Commission Decision 2001/698/EC of 18 July 2001, *Sabena* (OJ L 249, 19.9.2001, p. 21), where recital 28 states that: '... the Framework has been superseded by Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid'.
- ⁽¹⁶⁾ Recital 50 provides more detail on the observations made in Regulation (EC) No 68/2001 regarding the incentive effect.

(60) Fourth, Germany asserts that the Commission is deviating from its practice in previous cases where it did not assess the existence of an incentive effect. This is correct. However, the Commission has indicated that it changed its practice on the basis of the refined economic approach. This change took place in the in-depth assessment of the *Ford Genk* and *GM Antwerp* aid cases and was explicitly acknowledged there. Nevertheless, Germany indicates that the Commission's practice lacks coherence since, after initiating the formal investigation procedure in the *Ford Genk* case, it took a decision in at least two cases, namely *BMW Austria* (Case N 304/2005) ⁽¹⁷⁾ and *Webasto* (Case N 653/2005), without undertaking a corresponding assessment or on the basis of another assessment. However, the Commission notes that these decisions were taken without an in-depth assessment and before completion of the first of the two in-depth assessments mentioned above, in which the Commission refined its approach. It is not disputed that the Commission can refine and change its approach if there are sufficient reasons to do so. This was the case with *Ford Genk* and *GM Antwerp* but not with earlier aid decisions. Hence the Commission could, prior to the final decision of *Ford Genk*, still rely on its previous decision-making practice.

(61) Fifth, Germany and the beneficiary challenge the argument that the Commission can rely on the *Ford Genk* and *GM Antwerp* decisions because the facts of these cases differ from those in the DHL case. Instead, the Commission should have relied on the *Webasto* decision. It can certainly not be argued that the aid for DHL should be treated differently because it does not concern, like the other two cases, the automotive sector. The decision in *Webasto*, on which Germany and the beneficiary base themselves, concerns the automotive sector. The only difference might be that the first two cases concern existing installations while DHL and *Webasto* concern new installations. Nevertheless, while it is not disputed that in the first two cases any support for measures that would have been undertaken in any event is operating aid, the Commission fails to see why no operating aid is involved in training measures in a new installation that would have been undertaken in any event. Here too, the company receives support for measures it would have to undertake in any event.

(62) What is more, training measures in the case of a new installation that would have been undertaken in any

event cannot be justified either by considerations underlying the granting of regional aid as regional disadvantages should be offset by regional investment aid and not by training aid. In this connection, Germany claims that the prospect of receiving State aid for necessary and comprehensive training measures played a crucial role in the final relocation decision taken by DHL. However, the Commission maintains that it is usual in the European Union for undertakings to take decisions in an attempt to reduce costs and increase profitability. Undertakings considering a relocation of their production often consider several competing sites in different Member States. The decision on location is ultimately influenced not only by expected operating costs (including training costs for newly recruited, often unskilled employees) and other economic advantages or disadvantages (e.g. local rules on operating schedules) but also, to a certain extent, by the possibility of receiving government support (i.e. regional aid). The Commission cannot accept Germany's argument since, unlike regional investment aid, the objective of training aid is not to influence the choice of location but to offset the under-investment in training in the Community. Lower skill levels in an assisted area are a regional problem which is to be resolved by regional investment aid.

(63) On the basis of the information provided, the Commission comes to the conclusion that DHL would need to provide much of the training for its employees in any event, i.e. even in the absence of aid. This follows from two main observations which are elaborated on below: first, training for employees is necessary in order to be able to start operating the logistics centre and, second, the training measures are, to a large extent, required by law.

(a) Training required for operation of the new installation

(64) As regards the necessity of training, the relocation of DHL to Leipzig-Halle, Germany, is similar in its effects to the establishment of a new undertaking in that DHL must employ new workers in order to start operations. Its operational needs can apparently be met in three ways: it could employ new workers who would need training; it could recruit skilled employees; or it could, in the absence of skilled employees, subcontract certain services.

⁽¹⁷⁾ OJ C 87, 11.4.2006, p. 4.

- (65) For one thing, Germany has not provided any additional information to allay the Commission's doubts as to whether DHL would be able to recruit a sufficiently trained workforce for its new location. Rather, it has confirmed that workers from Brussels, DHL's existing location, are basically unwilling to move to Germany. Moreover, DHL has not provided any proof that it would be able to attract skilled workers from the local or European labour market in sufficient numbers to satisfy its business needs. Apparently no such appropriately skilled workers exist on the local market and it seems quite difficult to find such workers on the European market for air transport services.
- (66) For another, Germany has not convincingly reinforced DHL's argument to the effect that, without the aid, several services would be subcontracted to local firms, with the result that the planned training measures could be dispensed with. Nor has it provided any proof of the availability of such service providers at Leipzig airport. Given that, first, even with subcontracting, some training measures would still be necessary and, second, the entire investment by DHL in Leipzig-Halle is intended precisely to provide all the services related to express parcel delivery using its own personnel and even to offer these services to competitors operating at the same airport, the Commission comes to the conclusion that subcontracting does not fit into the business plan and would involve additional costs.
- (67) Germany also argues that, since DHL will be creating new jobs in an area assisted under Article 87(3) of the EC Treaty, the aid is not simply operating aid as in the Belgian car cases, but aid for a new installation for which no trained workers are available. The Commission has to reject this argument as DHL would have had to undertake the training measures for the new operation elsewhere than in Brussels in any event and irrespective of the new location.
- (b) Training required by law**
- (68) According to the information at the Commission's disposal, most of the training measures are mandatory under national and European legislation. Given the specific nature of the services provided by DHL, which involve a considerable risk for safety and security, there are several minimum standards and safety requirements under national or European legislation for the handling of freight and the checks and technical inspections of aircraft.
- DHL EAT mechanics and technicians
- (69) This is the case with training measures relating to pre-flight and ramp checks to be carried out by DHL EAT mechanics and technicians. According to Regulation (EC) No 2042/2003, the personnel involved in aircraft maintenance must be licensed to issue release certificates. The conditions for obtaining such a licence are set out in the above mentioned Regulation and relate to the scope and content of the corresponding training measures.
- (70) The planned training measures comply with the mandatory requirements mentioned above and concern two vocational categories: Line Maintenance Certifying Mechanic (CAT A) and Maintenance Certifying Technician/Mechanic (CAT B1). The training for both careers consists of the following modules:
- (a) English courses, including technical English;
 - (b) Basic technical knowledge, such as electrics, electronics and aerodynamics;
 - (c) Practical implementation of the basic technical knowledge acquired;
 - (d) Further training for CAT B1.
- (71) All DHL EAT training measures are followed by on-the-job training days, which significantly outnumber the working days devoted to theoretical training.
- (72) Germany is aware that, without the adequately skilled and licensed personnel, DHL cannot operate its business. As the entire training programme is required by Regulation (EC) No 68/2001, the German authorities accept that DHL may not dispense with any of the training measures. However, they claim that, in the absence of aid, DHL would not provide any training at all but instead would recruit licensed employees from competitors or would have recourse to subcontracting.
- (73) According to the cost analysis provided by Germany, subcontracting costs are lower than the personnel costs, including training (about [(5-20 %)] for CAT A and about [(10-30 %)] for CAT B1). However, Germany did not provide any evidence of the existence or availability of appropriate service providers.

- (74) As regards the recruitment of skilled workers from competitors, Germany did not provide any proof of the availability of trained and qualified personnel on the European labour market who would be willing to move to Leipzig-Halle. It itself has acknowledged that the European labour market for air transport services is experiencing a shortage of trained and qualified mechanics and technicians.
- (75) Further, Germany has provided a cost analysis for the English language courses planned for the DHL EAT mechanics and technicians. It argues that these are general measures and additional to mandatory training. Therefore, for these courses it calculated eligible costs amounting to EUR [(0,5-1)] million. However, the Commission notes, first, that the courses concern technical English. Second, it observes that the technical checks on aircraft are standardised throughout Europe, so that DHL EAT mechanics and technicians must have a command of technical English. The Commission also understands that these technical English courses are part of the standardised, mandatory training programme. It takes the view therefore that DHL would, in any event, have to provide courses in technical English, even in the absence of aid.
- (76) The Commission accordingly concludes that the training measures mentioned above are both mandatory and necessary for the successful operation of DHL EAT and would be undertaken by the company in any event, even in the absence of aid. Consequently, it considers that the training costs for DHL EAT mechanics and technicians do not constitute eligible costs.
- (78) Under German law, in order to be allowed to work on the airport apron, Ramp Agents II must have been trained in the handling of ground service equipment (*Arbeitsschutzgesetz*) and in security (BGV C 10 FBO) and must be licensed to operate apron vehicles (BGG 925 – *Ausbildung und Beauftragung der Fahrer von Flurförderzeugen*). They must also be trained in the handling of hazardous goods and be aware of the potential associated risks (*Gefahrstoffverordnung*). Finally, they must undergo dangerous goods training, in conformity with the provisions of the IATA Dangerous Goods Regulation.
- (79) It will be seen from recitals 77 and 78 that the training courses provided for in the notified project are, to a large extent, mandatory aircraft towing and pushback; aircraft de-icing (basic course); aircraft de-icing (refresher course); apron driver licence; airside supervision; fire protection instruction; cargo door operation; first aid; forklift certificate; IATA PK 7/8; ground service equipment; ramp safety; safety instruction; and security awareness. The ULD build-up course is a specific training measure designed for the handling of DHL containers.
- (80) The only courses that are not mandatory are G25/41 occupational health checks (4 out of a total of 240 training hours), DIN EN 9001:2000 quality and processes and DIN EN 14001 environmental management and organisational structure (8 out of a total of 240 training hours). However, since Germany has emphasised that DHL intends itself to provide all hub-related services and even to offer them to competitors operating at Leipzig-Halle airport and since it has not established that, in the absence of aid, DHL would not provide these training courses, the courses apparently form part of the training package necessary for DHL employees to successfully start operating the airfreight centre, which, alongside Hong Kong (China) and Wilmington (USA), is DHL's main worldwide hub. In particular, the course on occupational health appears to be indispensable since it teaches staff to identify any employees who might represent a risk for their working environment, as the smooth operation of DHL depends on the prevention and elimination of any unforeseen delays. According to the information provided, Ramp Agents II attending such training will also be able to check the general professional aptitudes of future employees. In line with its assessment

Ramp Agents II

- (77) Ramp Agents II perform the following activities: managing the ground service equipment; loading and unloading aircraft; passing on flight documentation; drafting reports; and communicating with pilots and the airport authorities. The notified project envisages the training of 210 Ramp Agents II and eligible costs are put at EUR [(2-3)] million.

framework in recital 25, the Commission concludes that, although the training is not required by law, it is necessary for the smooth operation of the hub and so would be provided in any event by DHL. The training course on quality standards, although not itself mandatory, has been imposed on DHL branches by the general management of Deutsche Post. DHL has announced that the entire workforce of DHL would receive specific training with a view to obtaining the DIN EN 9001 certificate ⁽¹⁸⁾. Moreover, it has indicated that the DIN EN 14001 standard is to be introduced as from July 2008 ⁽¹⁹⁾. Therefore the training measures that are the subject of the present decision are clearly required to meet the standards imposed by the company's business strategy and so would, in any event, have been implemented in the absence of aid. Moreover, since DHL subsidiaries advertise the fact that they operate to the highest standards as evidenced by the relevant DIN certificates, DHL, as a leading service provider, can include these costs in its pricing strategy. Accordingly, the Commission considers that DHL would have provided the above training measures even in the absence of aid.

- (81) In view of this, the Commission concludes that, while some of the training measures for Ramp Agents II are mandatory, others form part of the company's quality strategy, with the result that, without exception, they are all necessary for the successful operation of the airfreight centre and would be undertaken by the company in any event, even in the absence of aid. The Commission considers therefore that the training costs for Ramp Agents II do not constitute eligible costs.

Security Agents

- (82) The relevant legislation in this area is Regulation (EC) No 2320/2002. Sections 8 and 9 of the German air safety law (*Luftsicherheitsgesetz*) require the airport operator and airfreight operators to train their security personnel and any other employees.

⁽¹⁸⁾ http://www.dpwn.de/dpwn?skin=hi&check=yes&lang=de_DE&xmlFile=2000910

⁽¹⁹⁾ http://www.dpwn.de/dpwn%3Ftab%3D1%26skin%3Dhi%26check%3Dyes%26lang%3Dde_DE%26xmlFile%3D2008898

- (83) To a large extent, the training courses for Security Agents planned by DHL correspond as regards both content and number of hours to the training measures provided for in the national legislation (*Musterlehrplan für Luftsicherheitskontrollkräfte für Personal- und Warenkontrollen*) implementing Regulation (EC) No 2320/2002. The training module IATA PK 7/8 is also mandatory under the IATA Dangerous Goods Regulation (*IATA Gefahrgutvorschriften*), which was transposed into German legislation by Nfl II-36/05. In addition, the first aid and fire protection courses are mandatory under the German law on safety at work (*Arbeitsschutzgesetz*).

- (84) Only the training courses for the apron driver licence and quality management (8 out of a total of more than 300 training hours in both cases) seem to be additional, i.e. are not required by law. Since, however, Germany emphasised that DHL wished to provide all hub-related services itself and did not demonstrate that, in the absence of aid, DHL would not provide these courses, the Commission considers that they form part of the overall training package. Also, the DIN EN 9001:2000 and DIN EN 14001 courses envisaged for Security Agents are part of Deutsche Post's usual business practice and hence indispensable for all DHL employees (see recital 80). Similarly, the apron driver licence course appears to be indispensable for Security Agents since they need to have access at all times to the airport taxiway and apron. It would not make sense for the smooth operation of the hub to be endangered because a Security Agent did not have access to the apron (as explained in recital 90 et seq., the training can be restricted to a given number of employees). As indicated in the assessment framework in recital 25, the Commission concludes that, although the training is not required by law, it is necessary for the smooth operation of the hub and would, therefore, be undertaken in any event by DHL. Accordingly, the Commission notes that these two training courses would remain unaffected even in the absence of aid.

- (85) Given the mandatory nature of the training courses for Security Agents referred to in recitals 83 and 84, the Commission cannot accept Germany's argument that DHL could employ only a minimum number of qualified personnel who would then train the other employees on the job. It is the Commission's understanding, on the basis of the information provided, that all Security Agents must complete the courses.

- (86) In view of the above, the Commission concludes that the training costs for Security Agents do not constitute eligible costs.

Operations management

- (87) It is only as regards operations management that the Commission reaches a different conclusion. The training for this category of employees consists of English courses, basic labour law, communication, presentation techniques, human resources management, basic coaching, conflict management, team building, interviewing of applicants and corporate behaviour. The notified project envisages the training of 110 operations managers, with the eligible costs amounting to EUR [(1-2)] million. Middle managers are supposed to be recruited from among the employees who have completed the other training (i.e. Ramp Agents II and Security Agents).

- (88) This management training follows on from that other training and does not seem indispensable to the smooth operation of the airfreight centre. It constitutes a promotion opportunity for DHL's existing employees with a view to developing their personal and social (soft) skills. The training measures are also general measures necessary in sectors besides the aviation sector and conferring skills that can be easily used in other undertakings, while also contributing to improving the working environment and interpersonal relations within the undertaking.

- (89) In view of the observations made in recitals 87 and 88, the Commission concludes that the operations management training is not required by law and goes beyond what is necessary for the smooth operation of the DHL airfreight centre in Leipzig-Halle. Therefore, the costs of these training measures are eligible for training aid.

(c) *Scope of the necessary training*

- (90) According to the cost study provided by Germany (see recital 37), 134 **Ramp Agents II** would ensure the

successful operation of the hub. By replacing in a six-person ground team the two Ramp Agents II acting as drivers with two Ramp Agents I, the legal requirements and operational needs would still be met. Germany claims that, as a result, the additional 76 Ramp Agents II would not need to be trained by DHL and would not be trained in the absence of training aid. The eligible costs for these additional 76 Ramp Agents II amount to EUR [(0,5-1,5)] million for general training measures and to EUR [(0,01-0,03)] million for specific training measures.

- (91) However, if DHL did replace the Ramp Agents II acting as drivers with Ramp Agents I, the latter would also need to be trained to a certain extent, in particular as regards the handling of ground service equipment (especially apron driving, airside supervision, forklift driving, ramp safety, fire protection instruction, first aid, etc.). According to Germany, the training costs for these additional Ramp Agents I amount to EUR [(0,1-0,5)] million for general training measures and to EUR [(0,01-0,03)] million for specific training measures.

- (92) In the Commission's view, the training costs which DHL would in any event have to cover for the additional Ramp Agent I training need to be deducted, with the eligible costs for the training of the additional 76 Ramp Agents II amounting to EUR [(0,4-1,0)] million. Since only these training measures go beyond the minimum necessary, which would in any event need to be covered by DHL, the Commission concludes that only this amount is eligible for aid.

- (93) As regards **Security Agents**, Germany also explains that the DHL airfreight centre could operate smoothly with only 70 instead of 110 employees, as notified initially. The difference of 40 employees could be easily offset by increased camera surveillance without security at the airfreight centre being impaired. The corresponding study adds up the absolute minimum number of persons needed to operate the security checks on individuals and freight and multiplies it by the number of shifts. The calculations also take into account the total number of working days in a week and any extra personnel needed to cover cases of holidays or illness, in order to ensure uninterrupted operation. The study concludes that eligible costs of EUR [(0,05-0,2)] million would be incurred for this additional training.

- (94) However, Germany also explains that DHL envisages employing 110 Security Agents because, as a worldwide undertaking with a high reputation, it needs to avoid any security-related incidents. Such incidents could have an impact on the quality of the delivery services and could cause severe delays and adversely affect relations with its clients. Hence, in order not to endanger the smooth operation of the delivery services, DHL has deliberately opted for 'oversecuring' (*Übersicherung*) the hub. Consequently, the Commission cannot accept Germany's argument that the hub could successfully operate with 70 Security Agents instead of 110. In line with its assessment framework in recital 25, the Commission concludes that, although the training is not required by law, it is necessary for the smooth operation of the hub and would therefore be undertaken in any event by DHL.
- (95) Accordingly, it can be concluded that all the training measures aimed at providing the 110 Security Agents with the skills necessary for the start-up of activities and successful operation of the airfreight centre would have been undertaken in any event. Consequently, the Commission considers that these costs are not eligible for training aid.

Table 3

Job description	Notified number	Mandatory training	Additional training
Ramp Agent II	210	134	76
Security Agent	110	110	0
Managers (operations)	110	0	110
Maintenance mechanicauthorising release CAT A	97	97	0
Maintenance technician – mechanic authorising release CAT B 1	68	68	0

- (96) On the basis of the cost analysis provided by Germany, the Commission calculated the training costs for the additional training measures as follows ⁽²⁰⁾:

Table 4

(EUR)

Category of expenditure	Ramp Agent II (*)	Middle Managers	Total
Trainer (theory and practice)	[...]	[...]	
Administrative costs	[...]	[...]	
Travel costs	[...] (**)	[...]	
Total costs: trainers	[...]	[...]	[...]
Personnel costs: trainees	[...]	[...]	[...] (only partly eligible)

Total eligible costs: [...]

Maximum aid intensity: 60 %

Aid: 1 578 109

(*) The amounts in the table are shown after deduction of the training costs for Ramp Agents I. These costs would be incurred in any event, i.e. also in the alternative scenario presented by Germany (replacement of a certain number of Ramp Agents II with less comprehensively trained Ramp Agents I).

(**) On the basis of the information provided by Germany, the travel costs shown do not take into consideration the travel costs incurred for specific training and amounting to EUR [...], which would be eligible for aid. It is the Commission's understanding that the German authorities have decided not to grant any aid in this respect.

⁽²⁰⁾ The additional training includes, to a large extent, general measures; only the training for Ramp Agents II includes specific measures costing EUR [...]. However, the training for Ramp Agents I, who — in the absence of aid — would replace the better-trained agents, also includes specific measures costing EUR [...], so that the two amounts cancel each other out.

(d) *Calculation of the admissible amount of aid*

(97) The notified measure (with EUR [(10-15)] million in notified eligible costs) includes costs of EUR [(8-12)] million which would have to be covered by DHL in any event, even in the absence of training aid. This part of the notified aid does not lead to additional training measures but covers the company's normal operating expenditure, thereby reducing costs normally borne by the undertaking. Accordingly, the aid cannot be approved.

(98) The remaining measures represent eligible costs of EUR [(2-3)] million. This corresponds to an aid amount of EUR 1 578 109. Only this part of the aid complies with the criteria for determining compatibility with the common market.

7. CONCLUSION

(99) The Commission concludes that the notified aid for DHL Leipzig relates, on the one hand, to costs amounting to EUR [(8-12)] million which have to be covered by DHL in any event, i.e. even in the absence of aid, and, on the other hand, to costs of EUR 2 630 182 for training measures which go beyond what is required by law or is necessary for operational reasons.

(100) Consequently, the Commission considers that the part of the notified aid which is not necessary for implementation of the training measures in question does not lead to additional training but covers normal operating expenditure of the company, thereby reducing costs normally borne by it. In its view, the aid would therefore, distort competition and affect trading conditions to an extent contrary to the common interest. Accordingly, the aid cannot be justified on the basis of Article 87(3)(c) of the EC Treaty. Since none of the other exemptions laid down in Article 87(2) and (3) of the EC Treaty can be applied either, the aid of EUR

6 175 198 does not comply with the criteria for determining compatibility with the common market.

(101) The remaining measures notified and representing eligible costs of EUR [(2-3)] million, for which aid of EUR 1 578 109 is planned, comply with the criteria for determining compatibility with the common market pursuant to Article 87(3)(c) of the EC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany is planning to implement for DHL is incompatible with the common market to the extent of EUR 6 175 198.

The rest of the State aid, amounting to EUR 1 578 109, which Germany is planning to implement for DHL is compatible with the common market pursuant to Article 87 of the EC Treaty.

Article 2

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

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 2 July 2008.

For the Commission

Neelie KROES

Member of the Commission

NOTE TO THE READER

The institutions have decided no longer to quote in their texts the last amendment to cited acts.

Unless otherwise indicated, references to acts in the texts published here are to the version of those acts currently in force.