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I

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

REGULATIONS

COMMISSION REGULATION (EC) No 837/2009**of 15 September 2009****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 16 September 2009.

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

Done at Brussels, 15 September 2009.

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	MK	32,7
	ZZ	32,7
0707 00 05	MK	27,4
	TR	103,3
	ZZ	65,4
0709 90 70	TR	101,0
	ZZ	101,0
0805 50 10	AR	79,9
	CL	134,9
	UY	81,3
	ZA	84,9
	ZZ	95,3
0806 10 10	EG	137,1
	IL	227,0
	TR	90,9
	ZZ	151,7
0808 10 80	AR	118,6
	BR	68,1
	CL	84,5
	NZ	85,2
	US	85,9
	ZA	77,0
	ZZ	86,6
0808 20 50	AR	160,8
	CN	70,8
	TR	99,4
	ZA	69,4
	ZZ	100,1
0809 30	TR	118,3
	US	228,1
	ZZ	173,2
0809 40 05	IL	126,2
	TR	113,9
	ZZ	120,1

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

COMMISSION REGULATION (EC) No 838/2009**of 15 September 2009****fixing the import duties in the cereals sector applicable from 16 September 2009**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

- (1) Article 136(1) of Regulation (EC) No 1234/2007 states that the import duty on products falling within CN codes 1001 10 00, 1001 90 91, ex 1001 90 99 (high quality common wheat), 1002, ex 1005 other than hybrid seed, and ex 1007 other than hybrids for sowing, is to be equal to the intervention price valid for such products on importation increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.

- (2) Article 136(2) of Regulation (EC) No 1234/2007 lays down that, for the purposes of calculating the import duty referred to in paragraph 1 of that Article, representative cif import prices are to be established on a regular basis for the products in question.

- (3) Under Article 2(2) of Regulation (EC) No 1249/96, the price to be used for the calculation of the import duty on products of CN codes 1001 10 00, 1001 90 91, ex 1001 90 99 (high quality common wheat), 1002 00, 1005 10 90, 1005 90 00 and 1007 00 90 is the daily cif representative import price determined as specified in Article 4 of that Regulation.

- (4) Import duties should be fixed for the period from 16 September 2009 and should apply until new import duties are fixed and enter into force,

HAS ADOPTED THIS REGULATION:

Article 1

From 16 September 2009, the import duties in the cereals sector referred to in Article 136(1) of Regulation (EC) No 1234/2007 shall be those fixed in Annex I to this Regulation on the basis of the information contained in Annex II.

Article 2

This Regulation shall enter into force on 16 September 2009.

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

Done at Brussels, 15 September 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 161, 29.6.1996, p. 125.

ANNEX I

Import duties on the products referred to in Article 136(1) of Regulation (EC) No 1234/2007 applicable from 16 September 2009

CN code	Description	Import duties ⁽¹⁾ (EUR/t)
1001 10 00	Durum wheat, high quality	0,00
	medium quality	0,33
	low quality	20,33
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	High quality common wheat, other than for sowing	0,00
1002 00 00	Rye	77,87
1005 10 90	Maize seed other than hybrid	40,71
1005 90 00	Maize, other than seed ⁽²⁾	40,71
1007 00 90	Grain sorghum other than hybrids for sowing	82,86

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

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

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

ANNEX II

Factors for calculating the duties laid down in Annex I

31.8.2009-14.9.2009

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

(EUR/t)

	Common wheat ⁽¹⁾	Maize	Durum wheat, high quality	Durum wheat, medium quality ⁽²⁾	Durum wheat, low quality ⁽³⁾	Barley
Exchange	Minneapolis	Chicago	—	—	—	—
Quotation	141,57	86,25	—	—	—	—
Fob price USA	—	—	146,19	136,19	116,19	58,65
Gulf of Mexico premium	—	17,34	—	—	—	—
Great Lakes premium	6,92	—	—	—	—	—

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

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

Freight costs: Gulf of Mexico–Rotterdam: 17,71 EUR/t

Freight costs: Great Lakes–Rotterdam: 20,51 EUR/t

COMMISSION REGULATION (EC) No 839/2009

of 15 September 2009

amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Accounting Standard (IAS) 39

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards ⁽¹⁾, and in particular Article 3(1) thereof,

Whereas:

- (1) By Commission Regulation (EC) No 1126/2008 ⁽²⁾ certain international standards and interpretations that were in existence at 15 October 2008 were adopted.
- (2) On 31 July 2008, the International Accounting Standards Board (IASB) published an Amendment to International Accounting Standard 39 *Financial Instruments: Recognition and Measurement* titled *Eligible Hedged Items*, hereinafter 'amendments to IAS 39'. The amendments to IAS 39 clarify the application of hedge accounting to the inflation component of financial instruments and to the option contracts when they are used as a hedging instrument.
- (3) The consultation with the Technical Expert Group (TEG) of the European Financial Reporting Advisory Group (EFRAG) confirms that the amendments to IAS 39 meet the technical criteria for adoption set out in Article 3(2) of Regulation (EC) No 1606/2002. In accordance with Commission Decision 2006/505/EC of 14 July 2006 setting up a Standards Advice Review

Group to advise the Commission on the objectivity and neutrality of the European Financial Reporting Advisory Group's (EFRAG's) opinions ⁽³⁾, the Standards Advice Review Group considered EFRAG's opinion on endorsement and advised the Commission that it is well-balanced and objective.

- (4) Regulation (EC) No 1126/2008 should therefore be amended accordingly.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Accounting Regulatory Committee,

HAS ADOPTED THIS REGULATION:

Article 1

In the Annex to Regulation (EC) No 1126/2008, International Accounting Standard (IAS) 39 *Financial Instruments: Recognition and Measurement* is amended as set out in the Annex to this Regulation.

Article 2

Each company shall apply the amendments to IAS 39, as set out in the Annex to this Regulation, at the latest, as from the commencement date of its first financial year starting after 30 June 2009.

Article 3

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

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

Done at Brussels, 15 September 2009.

For the Commission

Charlie McCREEVY

Member of the Commission

⁽¹⁾ OJ L 243, 11.9.2002, p. 1.

⁽²⁾ OJ L 320, 29.11.2008, p. 1.

⁽³⁾ OJ L 199, 21.7.2006, p. 33.

ANNEX

INTERNATIONAL ACCOUNTING STANDARDS

IAS 39	Eligible Hedged Items Amendment to IAS 39 Financial Instruments: Recognition and Measurement
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Eligible Hedged Items (Amendment to IAS 39 *Financial Instruments: Recognition and Measurement*)

In the Standard, paragraph 103G is added.

EFFECTIVE DATE AND TRANSITION

103G An entity shall apply paragraphs AG99BA, AG99E, AG99F, AG110A and AG110B retrospectively for annual periods beginning on or after 1 July 2009, in accordance with IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors*. Earlier application is permitted. If an entity applies *Eligible Hedged Items* (Amendment to IAS 39) for periods beginning before 1 July 2009, it shall disclose that fact.

In Appendix A *Application guidance*, paragraphs AG99BA, AG99E, AG99F, AG110A and AG110B are added.

Hedged items (paragraphs 78–84)*Qualifying items (paragraphs 78–80)*

AG99BA An entity can designate all changes in the cash flows or fair value of a hedged item in a hedging relationship. An entity can also designate only changes in the cash flows or fair value of a hedged item above or below a specified price or other variable (a one-sided risk). The intrinsic value of a purchased option hedging instrument (assuming that it has the same principal terms as the designated risk), but not its time value, reflects a one-sided risk in a hedged item. For example, an entity can designate the variability of future cash flow outcomes resulting from a price increase of a forecast commodity purchase. In such a situation, only cash flow losses that result from an increase in the price above the specified level are designated. The hedged risk does not include the time value of a purchased option because the time value is not a component of the forecast transaction that affects profit or loss (paragraph 86(b)).

Designation of financial items as hedged items (paragraphs 81 and 81A)

AG99E Paragraph 81 permits an entity to designate something other than the entire fair value change or cash flow variability of a financial instrument. For example:

- (a) all of the cash flows of a financial instrument may be designated for cash flow or fair value changes attributable to some (but not all) risks; or
- (b) some (but not all) of the cash flows of a financial instrument may be designated for cash flow or fair value changes attributable to all or only some risks (ie a 'portion' of the cash flows of the financial instrument may be designated for changes attributable to all or only some risks).

AG99F To be eligible for hedge accounting, the designated risks and portions must be separately identifiable components of the financial instrument, and changes in the cash flows or fair value of the entire financial instrument arising from changes in the designated risks and portions must be reliably measurable. For example:

- (a) for a fixed rate financial instrument hedged for changes in fair value attributable to changes in a risk-free or benchmark interest rate, the risk-free or benchmark rate is normally regarded as both a separately identifiable component of the financial instrument and reliably measurable;
- (b) inflation is not separately identifiable and reliably measurable and cannot be designated as a risk or a portion of a financial instrument unless the requirements in (c) are met;
- (c) a contractually specified inflation portion of the cash flows of a recognised inflation-linked bond (assuming there is no requirement to account for an embedded derivative separately) is separately identifiable and reliably measurable as long as other cash flows of the instrument are not affected by the inflation portion.

Hedge accounting (paragraphs 85–102)*Assessing hedge effectiveness*

AG110A Paragraph 74(a) permits an entity to separate the intrinsic value and time value of an option contract and designate as the hedging instrument only the change in the intrinsic value of the option contract. Such a designation may result in a hedging relationship that is perfectly effective in achieving offsetting changes in cash flows attributable to a hedged one-sided risk of a forecast transaction, if the principal terms of the forecast transaction and hedging instrument are the same.

AG110B If an entity designates a purchased option in its entirety as the hedging instrument of a one-sided risk arising from a forecast transaction, the hedging relationship will not be perfectly effective. This is because the premium paid for the option includes time value and, as stated in paragraph AG99BA, a designated one-sided risk does not include the time value of an option. Therefore, in this situation, there will be no offset between the cash flows relating to the time value of the option premium paid and the designated hedged risk.

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 16 July 2008

relating to State aid C 29/04 (ex N 328/03) that Italy is considering granting to the Villazor sugar refinery owned by Sadam ISZ

(notified under document C(2008) 3531)

(Only the Italian text is authentic)

(2009/704/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

having regard to the Treaty establishing the European Community and, in particular, Article 88(2)(1) thereof,

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

Whereas:

(5) The Commission received comments on this subject from interested parties. It forwarded them to Italy, giving it the opportunity to comment on them, and received Italy's comments by letter dated 18 May 2005.

(6) By letters dated 31 January 2008 and 14 April 2008, the Italian authorities forwarded to the Commission the information requested by letter dated 29 March 2007.

I. PROCEDURE

(1) By letter dated 22 July 2003, Italy notified the Commission of the aid to the Villazor sugar refinery owned by Sadam ISZ. By letters dated 19 September 2003 and 30 March 2004, Italy submitted the additional information to the Commission.

(2) By letter dated 8 September 2004, the Commission informed Italy of its decision to initiate the procedure referred to in Article 88(2) of the EC Treaty in respect of the aid in question.

(3) By letters dated 13 October 2004 and 7 April 2005, Italy forwarded to the Commission the Italian authorities' comments concerning the decision to initiate the formal investigation procedure.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽¹⁾. The Commission called on interested parties to submit their comments on the aid in question.

II. DESCRIPTION

(7) The recipient firm — the Villazor sugar refinery owned by Sadam ISZ — is a sugar beet processing facility. It is the only one in Sardinia (one of the largest islands in the Mediterranean).

(8) The Italian authorities are making EUR 3,5 million available to the refinery in order partially to compensate it for the losses it sustained following the slump in sugar production caused by the fall in sugar beet supplies following the drought in 2001-2002.

(9) Regarding sugar beet production, the competent authorities provided data showing a decrease in regional production and, consequently, of sugar beet supplies. Compared with the 1998-2000 reference period, the fall was 39 % in 2001 and 68 % in 2002 ⁽²⁾.

⁽¹⁾ OJ C 51, 1.3.2005, p. 9.

⁽²⁾ The Commission authorised the granting of aid (aid N 745/2000 and aid N 331/02) to Sardinian agricultural producers under point 11.3 of the Community guidelines for State aid in the agriculture sector (OJ C 28, 1.2.2000, p. 2) for the losses they sustained following the drought concerned.

- (10) The competent authorities calculated the loss sustained by the Villasor refinery on the basis of the data extracted from the company's balance sheets for the financial years 1998 to 2002 and estimated it at EUR 6 858 448 ⁽³⁾. The method for calculating the loss was as follows. The authorities calculated the proportion of the fixed costs in relation to one tonne of sugar during one reference period (1998-2000) and compared this figure to the ratio of fixed costs per tonne of sugar during the years 2001 and 2002. They viewed the following as fixed costs: permanent staff, handling (services provided by third parties, and warehousing levies), general expenditure, depreciation and financial charges ⁽⁴⁾. During the reference period, the effect of fixed costs on the product was EUR 166,61/tonne ⁽⁵⁾. For 2001-2002, the same calculation process gave rise to the following results: the effect of fixed costs on the product in 2001 was EUR 287,95/tonne ⁽⁶⁾ and, in 2002, EUR 569,18/tonne ⁽⁷⁾. The major effect of the fixed costs in relation to the reference period was obtained by subtracting the effect of the fixed costs for the reference period from the effect of the fixed costs for 2001 and 2002. The result in 2001 was EUR 121,34/tonne and, in 2002, EUR 402,58/tonne ⁽⁸⁾. In order to calculate the total loss sustained, total sugar production in 2001 and 2002 was multiplied by the index shown above. In 2001, the loss was quantified at EUR 2 427 278 and, in 2002, at EUR 4 431 170 ⁽⁹⁾, i.e. a total of EUR 6 858 448.
- (11) The amount of EUR 3,5 million granted by the Italian authorities would therefore correspond to 51 % of the loss sustained. The Italian authorities explained that the amount of the aid was dictated by budgetary imperatives.
- (12) This aid is not to be paid in conjunction with other forms of aid.
- (13) In order to demonstrate the exceptional nature of the drought affecting Sardinia in 2001-2002, the Italian authorities submitted a dossier, drawn up by Sardinia's Regional Agro-Meteorological Service (Italian acronym: SAR) ⁽¹⁰⁾. These data indicate, for example, the duration of the drought and the level of water reserves. There are also data concerning the agro-climatological situation in Sardinia in 2001-2002.
- (14) The Italian authorities also indicated that sugar beet growing had benefited from aid on a number of occasions. During the period 1990-2002, aid had been granted in 1995, 2000, 2001 and 2002.
- (15) The Italian authorities considered the aid to be compatible with the common market under the terms of point 11.3.1 of the Community Guidelines for State aid in the agriculture sector for the period 2000-2006 (henceforth referred to as the Guidelines) ⁽¹¹⁾ since, in their view, such aid is designed to make good the loss sustained by the sugar refinery following a decrease in sugar beet production caused by an adverse weather condition assimilated to a natural disaster.
- (16) The Italian authorities considered that this interpretation was in line with Commission practice in such matters ⁽¹²⁾ in cases where primary agricultural production and the procedures of agricultural processing were closely interdependent, and particularly in an instance where the agricultural processing undertaking concerned had no alternative sources of supply available to it.
- (17) With this in view, the Italian authorities maintained that, in the beet-based sugar industry, the agricultural and industrial components were closely linked and interdependent. The existence of a sugar beet processing facility depends on there being an appropriate supply basin, and the Villasor refinery's activity consists exclusively in converting the beet produced in Sardinia's 'supply basin' into sugar. The Italian authorities maintain that, because of its physiological characteristics, sugar beet grown in the Mediterranean basin has to be harvested over the short period of time in which the sugar content is at its highest. It also has to be transported to the processing facility quickly (within 36 hours of being harvested), otherwise it loses its sugar content and is attacked by fungi, making it unusable. For these reasons, supply basins are usually situated within a radius of 80 to 100 kilometres from processing facilities, and harvesting and processing periods are very short. The source of supply closest to the Villasor
- ⁽³⁾ The competent authorities sent the Commission the balance sheet and their estimate of the value of the loss by letter dated 27 November 2003.
- ⁽⁴⁾ The competent authorities deducted a rate of 27,2 % for depreciation for 2000-2002, equivalent to the percentage of aid received by Sadam Spa as State aid in relation to the investment made in restructuring the Villasor processing facility. State aid N 157/99, decision (2000) D/103781, 19 May 2000 (OJ C 175, 24.6.2000, p. 20).
- ⁽⁵⁾ For the complete reference period, the total fixed costs were EUR 15 762 413,37 and total sugar production was 94 609 tonnes (15 762 413,37/94 609 = EUR 166,61/tonne).
- ⁽⁶⁾ In 2001, fixed costs amounted to EUR 5 760 061,14 and sugar production to 20 004 tonnes (5 760 061,14/20 004 = EUR 287,95/tonne).
- ⁽⁷⁾ In 2002, fixed costs amounted to EUR 6 265 000,70 and sugar production to 11 007 tonnes (6 265 000,70/11 007 = EUR 569,18/tonne).
- ⁽⁸⁾ In 2001 (287,95 - 166,61) = EUR 121,34/tonne in 2002 (569,18 - 166,61) = EUR 402,58/tonne.
- ⁽⁹⁾ In 2001 (121,34 × 20 004) = EUR 2 427 278 in 2002 (EUR 402,58 × 11 007 tonnes) = EUR 4 431 170.
- ⁽¹⁰⁾ The SAR is Sardinia's public agro-meteorological service.
- ⁽¹¹⁾ OJ C 28, 1.2.2000, p. 1.
- ⁽¹²⁾ In this connection they cite the Commission decision of 5 December 2000, taken within the framework of State aid N 185/2000 (OJ C 19, 20.1.2001, p. 6). In this case, the Commission had considered the compensation paid to shellfish-cleaning enterprises following the mucilage pollution in 1997 to be compatible with Article 87(2)(b) of the Treaty.

refinery is in continental Italy, more than 250 km away (including 180 km across the sea).

powers for managing water resources and for having urgent infrastructure work done.

- (18) The Italian authorities pointed out that sugar production is regulated at Community level by the common organisation of the markets in the sugar sector (sugar CMO Regulation) ⁽¹³⁾. This stipulates that, in order to benefit from prices and revenues guaranteed by the CMO, refineries must enter into contracts with their supply basin's sugar beet producers for the 'A + B' sugar production quotas granted to them by the State. Sugar produced over and above the 'A + B' quotas can neither benefit from internal support measures nor be freely marketed within the common market. As a result, refineries and the farms that normally supply them factor into their cultivation contracts acreages that produce no more than the 'A + B' quotas granted by the State to the refineries. In this context, it is difficult for a refinery to obtain supplies from a sugar beet production basin other than its own because of the limited quantity of sugar beet available for processing outside the cultivation contracts and because of the need for supply agreements between sugar processing companies. In the Mediterranean Basin, moreover, alternative sugar beet basins have to be situated sufficiently close by to guarantee the supply of a usable product.
- (19) The Italian authorities were also willing to consider the possibility of the Villasor facility having been able to find its raw material for processing somewhere else, but the refinery is so far away from the production areas in continental Italy as to make it uneconomic to transport the sugar beet, quite apart from the fact that the raw material would arrive at its destination in an unusable condition.
- (20) The Italian authorities provided the Commission with simulations of the periods required for transporting sugar beet from an 'alternative' basin in continental Italy and of the costs of doing so. The period required for transporting sugar beet to Sardinia would be in the region of 2,5 days as from the time of loading. Given that the sugar beet necessarily has to be processed within 36 hours (1,5 days) of harvesting, it would arrive at its destination in an unusable condition. The cost of such an operation, as calculated by the competent authorities, would be approximately EUR 10 188 000 for the two periods.
- (21) With regard, specifically, to the drought and to the drought-related water management policy conducted in Sardinia, the Italian authorities indicated that a water emergency had been declared in 1995 and that a special administrator (*Commissario Governativo per l'Emergenza Idrica*) had been appointed, with special

- (22) The Italian authorities also indicated that Sardinia's regional development plan for 2000 to 2006 provided for specific measures for cultivating sugar beet. These measures included hydro-agricultural land development, the acquisition of irrigation equipment and installations by farms and the introduction of more modern machinery and of machinery for protecting plants and facilitating their fertilisation.

III. GROUNDS FOR INITIATING THE PROCEDURE

- (23) The Commission initiated the procedure laid down by Article 88(2) of the EC Treaty because it doubted that the measure was compatible with Article 87(2)(b) of the Treaty, according to which aid to make good the damage caused by natural disasters or exceptional occurrences is compatible with the common market. Because they constitute exceptions from the general principle of the incompatibility of State aid with the common market, laid down by Article 87(1) of the Treaty, the Commission has a restrictive interpretation of the notion of 'natural disaster' contained in Article 87(2)(b). Until now, the Commission has accepted that earthquakes, avalanches, landslides and floods may constitute natural disasters.
- (24) The Commission has consistently held that adverse weather conditions such as frost, hail, ice, rain or drought cannot of themselves be regarded as natural disasters within the meaning of Article 87(2)(b). However, because of the damage that such events may cause to agricultural production or the means of agricultural production, the Commission has accepted that such events may be treated as natural disasters once the level of damage reaches a certain threshold (which has been fixed at 20 % of normal production in less-favoured regions and 30 % in other regions). Point 11.3 of the Guidelines ⁽¹⁴⁾ states that aid designed to make good losses resulting from adverse weather conditions may only be paid for farmers or to a producer organisation of which the farmer is a member. The Commission regards the aid that comes under point 11.3 as being compatible with the common market under Article 87(3)(c) of the Treaty, provided that certain conditions are complied with.
- (25) The Commission has consistently held that the provisions of point 11.3 of the Guidelines are not applicable to agricultural processing undertakings that, in its view, have the flexibility necessary for managing their supplies. This may of course result in additional raw material costs and/or a loss of profitability, but it does not warrant the direct application of the rules applicable to agricultural production.

⁽¹³⁾ At the time of the notification, the market was governed by Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ L 178, 30.6.2001, p. 1).

⁽¹⁴⁾ See footnote 11.

(26) Since the Italian authorities have proposed no other legal basis for the assessment and possible approval of the aid, the Commission could not, at this stage of the procedure, exclude the possibility of the anticipated aid constituting operating aid, that is to say a form of aid that seeks to relieve enterprises of the costs they would normally have to bear as part of their day-to-day management or normal activities.

(27) Moreover, the information provided by the Italian authorities and the information available to the Commission appeared to suggest that Sadam ISZ and the companies to which it belonged directly or indirectly — in particular, Società Adriatica Marchigiana (SAM) ⁽¹⁵⁾ and FINBIETICOLA Spa ⁽¹⁶⁾ — could have absorbed the reduction in the facility's profitability.

(28) Finally, even if it had been considered acceptable (which was not the case at this stage of the procedure) to apply to Sadam ISZ the principle governing the payment of compensation under point 11.3 of the Guidelines, the reference period chosen by the Italian authorities for calculating the aid would have been incorrect.

IV. COMMENTS FROM INTERESTED PARTIES

(29) When the procedure was initiated, the Commission received comments from Sadam ISZ ⁽¹⁷⁾, the President of Sardinia Region ⁽¹⁸⁾ and Brumar Srl ⁽¹⁹⁾.

Sadam ISZ

(30) In its comments, Sadam ISZ repeated the reasons, expressed in points 12 to 36 of the letter initiating the formal investigation procedure, that had led the Italian authorities to consider granting the aid: the exceptional nature of the drought; the impossibility of obtaining supplies from other basins due to the particular structure of the organisation of the market in sugar; the impossibility of obtaining suitable transport due to the refinery's island location; and the importance of the agricultural sugar processing industry for Sardinia's economy. It also provided information about the changing ownership of Sadam ISZ, which is at present owned exclusively by the Eridania Sadam group, with Finbieticola's share having also been transferred to the Eridania Sadam group in October 2004 since Sviluppo Italia SpA's withdrawal in December 2003. Sadam ISZ provided a copy of the agreement concluded between the various private and public authorities with a view to

guaranteeing the continued production of sugar beet in Sardinia. Within this framework, Sardinia region committed itself to taking every initiative necessary for recommencing investment in the sugar beet sector — in particular, in water resource management — and to losing no time in obtaining the Commission's authorisation of the aforesaid EUR 3,5 million in aid to offset the losses due to the drought.

(31) Sadam ISZ considers that what it produces has no influence at all on the development of the European market, not only because it represents only 0,2 % of that market but also because 98 % of its production is intended for the Sardinian market, covering almost 50 % of that market's needs, whereas the Eridania Sadam group produces 35 % of Italian sugar, equal to 1,7 % of European sugar, and has 23 % of the national market, equal to 2,15 % of the European market.

President of Sardinia Region

(32) The President of Sardinia Region emphasised the quite exceptional nature of the situation characterising the years 2001-2002, stating that it could in no way constitute a precedent applicable in the future to other situations. The region's President stressed the bad effects that closure of the only Sardinian refinery would have on the island's economy, given the need for rational management of agricultural production as a whole (with sugar beet an important rotation crop) and given the importance of the sugar beet industry in Sardinia, the number of farms concerned (1 300 employing approximately 5 000 people) and the number of permanent and seasonal employees at the refinery (83 and almost 200, respectively), not counting the jobs created by the sugar beet industry (for hauliers, enterprises responsible for growing and harvesting the sugar beet and undertakings tasked with handling the facilities). The region's President pointed out the importance attached by the regional administration to the sugar beet industry and its commitment to safeguarding the industry.

Brumar Srl

(33) Brumar Srl stated that the Sadam refinery had not sustained losses since it had had the option of buying sugar in France, Germany, Slovenia and Croatia; that all Italian refineries had increased the price of white sugar by EUR 50 per tonne as from 1 October 2003, with a net profit of EUR 80 million in favour of the five sugar refineries on Italian territory. According to Brumar Srl, Sadam ISZ would have been the main recipient of this profit, given that it is responsible for most of Italy's sugar production. In its conclusion, Brumar Srl considered that aid should be granted both to sugar beet producers (to offset the losses sustained due to the failed harvest caused by the drought) and to the workers who had not been employed by the processing facilities.

⁽¹⁵⁾ SAM srl is a company controlled by Sadam Spa. The Sadam group accounts for 35 % of Italian sugar production.

⁽¹⁶⁾ FINBIETICOLA Spa's particular task is to play a part in those Italian sugar manufacturers in which it holds shares.

⁽¹⁷⁾ Letter dated 31 March 2005.

⁽¹⁸⁾ Letter dated 10 December 2004.

⁽¹⁹⁾ Fax dated 7 March 2005.

V. COMMENTS MADE BY ITALY

- (34) The Italian authorities sent their comments when the procedure was initiated by letters dated 13 October 2004 and 7 April 2005 and submitted their comments in response to the letter from Brumar Srl by letter dated 17 May 2005.
- (35) The Italian authorities contested Brumar Srl's comments in their entirety, deeming them to be of no relevance at all to the case in question, given that the Villasor refinery had never imported sugar from the countries listed by Brumar Srl and given that the increase in the prices of white sugar applied to Italy's production as a whole and related to the marketing year 2003, postdating the years for which the aid was to be granted. Finally, the authorities contested the calculations of the presumed profits made in 2003 by Italian sugar companies in general and by the Eridania Sadam group in particular. The Eridania Sadam group, of which Sadam ISZ is a part, produced 34 % of Italian sugar in 2003.
- (36) In their letter of 13 October 2004, the Italian authorities acknowledged that the Commission had been most thorough in presenting all the factors in the case and all the data supplied during the phase prior to the investigation procedure being initiated, particularly in relation to the legal basis, the compensatory nature of the measure proposed, the means of calculating the aid, the legal basis important for authorising the measure, the interdependence of the sugar beet industry's agricultural and industrial components, the impossibility of obtaining supplies from other production basins for Sardinia-based processing, and the importance of the sugar beet industry for Sardinia's economy.
- (37) The Italian authorities consider that the aid measure would have no impact on intra-Community trade, as its effects would not be felt beyond the region. Ninety-eight per cent of what is produced by the Villasor refinery is absorbed by the local market and is not therefore in competition with the production of other Community undertakings, whether in continental Italy's market or in the Community or international market. The Italian authorities consider that the Commission, in accordance with its Draft Communication on new guidelines for the evaluation of State aid with limited effects on intra-Community trade, should attach greater importance to the economic impact of the intervention concerned, in view in particular of its limited impact on trade. According to the Italian authorities, the Commission's statement⁽²⁰⁾ to the effect that Italy has an important position in sugar production should at least be seen in relation to the references to Italy's being only the fourth largest EU sugar producer and to the Eridania Sadam group's having, in this context, a market share of slightly more than 1,5 % of the European market, while Sadam ISZ's production amounted to 0,06 % (data for the marketing year 2002).
- (38) Regarding the legal basis for the measure, the Italian authorities cite a series of previous decisions by the Commission (in particular, State aid cases N 83/2000, N 185/2000, N 657/02 and N 729/02), in which the Commission authorised aid in the agricultural and agricultural processing sector on the basis of Article 87(2)(b) of the Treaty and in the light of the implementation criteria specified in point 11.3 of the Guidelines, maintaining that, in the case in question, the implementation criteria had been met.
- (39) The Italian authorities also draw the Commission's attention to point 3.4 of the Guidelines which stipulates that the fact that an aid measure is not in all points comparable to one of the possible cases listed in the Guidelines themselves does not exonerate the Commission from carrying out an examination on a case-by-case basis, taking into account the principles set out in Articles 87, 88 and 89 of the Treaty and the Community's common agricultural and rural development policies. Accordingly, the Italian authorities consider that if the Commission finds that Article 87(2)(b) is not applicable to the proposed measure, the measure should be allowed under Article 87(3)(c).
- (40) According to the Italian authorities, the proposed intervention would enable the refinery partially to offset the large losses sustained as a result of the absence of sugar production due to the lack of raw materials to be processed following the severe drought of 2001-2002. In Sardinia, a normal sugar beet harvest would enable the processing facility to achieve financial equilibrium. The support provided, again characterised as contingent and exceptional by the Italian authorities, would also allow completion of the whole restructuring project launched in 1999 and involving major investment at industrial and agricultural level⁽²¹⁾ (see measure 4.9 N in the regional development plan for Sardinia approved by the Commission), with benefits for the economic development of the region as a whole.
- ⁽²⁰⁾ See point 38 of the letter initiating the investigation procedure.
⁽²¹⁾ See footnote 4.

- (41) The Italian authorities maintain that the reference to the Sadam Eridania group's internal relations are not at all relevant to the assessment of the case in hand. In response to the large trading deficit in 2003, the Sadam Eridania group and FINBIETICOLA Spa recapitalised the company in December 2003 with a payment of EUR 5 039 393, thereby honouring their obligations towards the company they controlled, given the normal business risks borne by Sadam ISZ in 2003 (management year/normal production). Following this recapitalisation, Sviluppo Italia — the public shareholder — withdrew as it had not taken part in the recapitalisation. The Italian authorities do not consider that the controlling company might have an obligation, in the context of prudent planning of the group's business activities, to compensate by financial transfers within the group for losses caused by an event of an exceptional and unforeseeable nature. The Italian authorities maintain that the supervising shareholders' responsibility has to be limited to the requirements arising from the undertaking's normal activities.
- (42) With regard, finally, to the reference period established for calculating the compensation, the Italian authorities consider that they have complied with the principles laid down in point 11.3.2 of the Guidelines. Moreover, the amount of the difference between the value of the loss in fact borne by the company (EUR 6 858 448) and the amount of the aid proposed (EUR 3,5 million) excludes excessive compensation. The Italian authorities point out that the Commission has already accepted methods of calculating loss that are different from those indicated in the Guidelines, provided that the methods adopted were not in danger of providing excessive compensation for the losses sustained ⁽²²⁾.
- (43) In their latest letters of 2008, the Italian authorities have provided additional details at the Commission's request. In particular, the Italian authorities provided data (expressed in tonnes) on the subject of sugar production. These are presented in the table below:

Marketing year	Villasor prod.	Sadam group prod.	'A + B' quota, Sadam group	Deficit/excess
1999/2000	34 310,13	334 851,41	308 119,70	26 731,71
2000/2001	26 608,50	290 403,52	298 910,30	– 8 506,78
2001/2002	20 004,60	242 879,84	305 996,50	– 63 116,66
2002/2003	11 007,06	283 729,55	290 072,50	– 6 342,95
2003/2004	9 143,18	284 895,25	533 961,70	– 249 066,45
2004/2005	9 520,30	341 327,21	540 996,50	– 199 669,29
2005/2006	8 193,55	623 281,50	484 356,20	138 925,30

- (44) The Italian authorities also indicated that the Villasor refinery had definitively ceased its activities within the framework of a process of restructuring the sector because of the reform of the sugar CMO. In the light of this, Eridania Sadam submitted a 'restructuring plan for the Villasor refinery' to the Ministry of Agricultural, Food and Forestry Policy on 30 April 2007.
- (45) According to the Italian authorities, it will be possible for the aid that has been notified to be incorporated within the process of restructuring the industry and the company — a process that remains vital in terms of safeguarding jobs and outlets for the Sardinian agro-energy industry.

VI. ASSESSMENT OF THE AID

Market organisation

- (46) The measure considered is aid to be granted to a sugar refinery. In accordance with Article 36 of Council Regulation (EC) No 318/2006 of 28 February 2006 on the common organisation of the markets in the sugar sector ⁽²³⁾ and, prior to this, Article 45 of Regulation (EC) No 1260/2001, Articles 87, 88 and 89 of the EC Treaty apply to the products that come under these Regulations. Consequently, the sector to which the aid measure relates comes under the Community provisions on State aid.

⁽²²⁾ See State aid N 661/01, decision (2003) C/130, 13 February 2003 (OJ C 68, 21.3.2003, p. 17).

⁽²³⁾ OJ L 58, 28.2.2006, p. 1.

Prohibition of State aids within the meaning of Article 87(1) of the EC Treaty

- (47) Under Article 87(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market.
- (48) The measure in question corresponds to the definition of aid referred to in Article 87(1) of the Treaty, given that it confers an economic advantage (in the form of non-refundable financial aid) to a specified company (Sadam ISZ of Villasor), that it amounts to funding from (regional) public resources and that the aid concerned is likely to affect trade. Moreover, it emerges from the data supplied by Saddam after the investigation procedure had been initiated that the company is active not only in the Italian market but also in the intra-Community market (see recital 31, above). Even if the sugar produced in the Villasor refinery is intended almost exclusively for the Sardinian market, it is no less the case that the aid in question is likely to place a possible competitor in this market from another Member State at a disadvantage.
- (49) According to the case law of the European Court of Justice, an improvement in the competitive position of an undertaking as a result of State aid generally leads to distortion of competition in relation to competing undertakings not receiving such assistance⁽²⁴⁾. Case law has indicated that the relatively small size of aid or the relatively small size of the company that benefits from it does not as such exclude the possibility that trade between Member States might be affected⁽²⁵⁾.
- (50) A measure affects trade between Member States when it hinders imports from other Member States or facilitates exports to other Member States. The crucial factor is that intra-Community trade develops, or is in danger of developing, differently because of the measure in question.
- (51) The product benefiting from the aid scheme is the subject of trade between Member States⁽²⁶⁾ and is therefore exposed to competition.
- (52) The existence of a common organisation of the market in the sugar sector, as indicated in recital 46, is also proof of the importance of intra-Community trade in sugar and of the desire to ensure undistorted conditions of competition on the common market.

⁽²⁴⁾ European Court of Justice, Judgment of 17 September 1980, Case C-730/79 [1980] ECR 2671, paragraphs 11 and 12.

⁽²⁵⁾ Court of Justice, Judgment of 21 March 1990, Case-142/87 [1990] ECR I-959, paragraph 43, and Judgment of 14 September 1994, joined cases C-278/92 and C-80/92 [1994] ECR I-4103, paragraphs 40 to 42.

⁽²⁶⁾ Intra-Community trade is important in the sugar sector. In 2002, Italy imported 366 539 tonnes of sugar from other Member States (the EU-15), while exports amounted to 37 564 tonnes.

- (53) The draft Commission Communication on the new guidelines for the evaluation of State aid with limited effects on intra-Community trade to which the Italian authorities have referred (see recital 37) has not been adopted by the Commission and cannot undermine the foregoing reasoning.
- (54) The criteria concerning the effect on trade and the distortion of competition are therefore fully met.
- (55) The measure is in effect, therefore, State aid within the meaning of Article 87(1) of the EC Treaty.
- (56) The prohibition referred to in Article 87(1) of the EC Treaty is not unconditional. In order to be considered compatible with the common market, the proposed measure must benefit from one of the derogations provided for by Article 87(2) and (3) of the Treaty.

Derogations provided for by Article 87(2) of the EC Treaty

- (57) The provisions of Article 87(2)(b) of the EC Treaty invoked by the Italian authorities — declaring aid to make good the damage caused by natural disasters or exceptional occurrences to be compatible with the common market — are not applicable.
- (58) Since no definitions of the terms 'exceptional occurrence' and 'natural disaster' are given by the Treaty, it needs to be verified whether the drought affecting Sardinia can be considered a 'natural disaster' within the meaning of Article 87(2)(b) of the Treaty. The Commission has always adopted a restrictive interpretation of 'natural disasters' and 'exceptional occurrences' as referred to in Article 87(2)(b).
- (59) The need for such a restrictive interpretation has constantly been confirmed by the European Court of Justice⁽²⁷⁾.
- (60) Hitherto, the Commission has accepted earthquakes, avalanches, landslides and floods as natural disasters. Exceptional occurrences that have hitherto been accepted include war, internal disturbances or strikes and, with certain reservations and depending on their extent, major nuclear or industrial accidents and fires that result in widespread loss.
- (61) Because of the inherent difficulties in foreseeing such events, the Commission will continue to evaluate proposals to grant aid in accordance with Article 87(2)(b) on a case-by-case basis, having regard to its previous practice in this field. Such analysis is particularly necessary within the framework of aid to a sensitive sector, such as the sugar sector, where any intervention measure could come up against the measures laid down by the common organisation of the markets.

⁽²⁷⁾ European Court of Justice, 11 November 2004, *Spain v Commission*, Case C-73/03, paragraph 37; CJEC, 23 February 2006, Cases C-346/03 and C-529/03, *Giuseppe Atzeni and others*, paragraph 79.

- (62) The Commission has consistently held that adverse weather conditions such as frost, hail, ice, rain or drought cannot of themselves be regarded as natural disasters within the meaning of Article 87(2)(b) (see point 11.3.1 of the 2000-2006 Guidelines).
- (63) Drought, even on a large scale, has hitherto never been recognised as a natural disaster within the meaning of Article 87(2)(b) of the Treaty.
- (64) In general, an exceptional occurrence must at least present the characteristics of an occurrence that, by its nature and its effect on the operators concerned, is clearly distinguished from usual conditions and is outside the framework of the normal conditions under which a market operates.
- (65) Moreover, the data submitted by Italy lead to the conclusion not that the drought was of an exceptional character but, rather, that it is a recurring phenomenon. Since autumn 1999 (and with the exception of November 2001), there has been a long period of drought. The year 2001-2002 was characterised by lower, but not exceptionally lower, rainfall than average. During the period 1990-2000, there were in fact three years when the drought was more severe (1994-1995, 1998-1999 and 1999-2000). Since 1970 there has apparently been a general trend towards reduced rainfall ⁽²⁸⁾.
- (66) Another factor in the light of which drought may be considered a recurring phenomenon is the fact that a water emergency was declared in Sardinia in 1995 ⁽²⁹⁾ — a state of affairs that ended on 31 December 2004 ⁽³⁰⁾.
- (67) The fact that aid has been granted on four occasions to sugar beet producers to make good the losses due to drought in the period 1990-2002 also indicates that the drought was not exceptional.
- (68) Moreover, production subsequent to the period considered (2001-2002) shows a large decrease in production by the Villazor refinery, even though there was no drought during this period (see table in recital 43).
- (69) As a result, the aid proposed by the Italian authorities cannot be authorised on this legal basis.
- (71) In its interpretation of the aforesaid derogation relating to the agriculture sector, the Commission begins by verifying the applicability of Commission Regulation (EC) No 1/2004 (of 23 December 2003) on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products ⁽³¹⁾. If the aforesaid Regulation is inapplicable, the Commission proceeds on the basis of the Guidelines.
- (72) In the case in question, Regulation (EC) No 1/2004 is not applicable since the aid is intended for a processing company as a result of losses due to adverse weather conditions — a state of affairs not anticipated by the Regulation referred to. As a result, the Commission should evaluate the measure on the basis of the Guidelines.
- (73) Point 11.2 of the Guidelines regulates State aid designed to make good the damage caused by natural disasters or exceptional occurrences. This point will not be discussed below as it comes under the application of Article 87(2)(b) of the Treaty, already examined above.
- (74) Point 11.3 of the Guidelines regulates State aid designed to compensate farmers for losses due to adverse weather conditions such as frost, rain, ice or drought — occurrences that cannot of themselves be regarded as natural disasters within the meaning of Article 87(2)(b) of the Treaty.
- (75) When such events cause damage to agricultural production or to the means of agricultural production of a value greater than 20 % of normal production in less-favoured areas and greater than 30 % in other areas, the Commission treats the events as natural disasters and authorises the granting of aid to farmers, designed to offset the losses concerned under Article 87(3)(c) of the Treaty.
- (76) In general, drought may in fact be put on the same footing as a natural disaster, as happened in the case of Decision No 331/02 ⁽³²⁾ because the damage sustained by farmers or producer organisations exceeded a certain threshold. As pointed out in its letter initiating the investigation procedure, the Commission has, however, always considered that the provisions of point 11.3 of the Guidelines were not applicable to agricultural processing undertakings that, in its view, enjoy a degree of flexibility in the management of their supplies. This may of course result in additional raw material costs and/or a loss of profitability, but seems not to warrant the direct application of the rules applicable to agricultural production.

Derogations provided for by Article 87(3) of the EC Treaty

- (70) It needs to be examined whether the measure proposed may be considered to be compatible with the common market within the meaning of Article 87(3) of the Treaty. The provisions of point (c) are of more precise relevance. According to these, aid to facilitate the development of certain economic activities or of certain economic areas

⁽²⁸⁾ Data sources: SAR: *Le precipitazioni sulla Sardegna da Settembre 2001 ad Agosto 2002* [‘SAR: Rainfall in Sardinia from September 2001 to August 2002’].

⁽²⁹⁾ Prime Minister's Decree of 20 June 1995, *Dichiarazione dello stato di emergenza* [‘Declaration of the state of emergency’], on the basis of Act 225/92.

⁽³⁰⁾ <http://www.regione.sardegna.it/jj/v/138?s=1&v=9&va=3&c=1219>

⁽³¹⁾ OJ L 1, 3.1.2004, p. 1.

⁽³²⁾ Commission letter C(2002) 3211 of 2 September 2002, http://ec.europa.eu/community_law/state_aids/agriculture-2002/n331-02.pdf

This approach, referred to in point 11.3.8 of the Guidelines, was also confirmed in a recent judgment of the Court of First Instance ⁽³³⁾.

- (77) According, then, to point 11.3 of the agricultural Guidelines, aid designed to compensate agricultural processing undertakings from losses resulting from adverse weather conditions is incompatible with the common market.
- (78) The Italian authorities had based a part of their argument on the fact that the refinery concerned did not have the flexibility to manage its supplies and that, as a result and in view of the close link between sugar beet production and the refinery, the aid should be extended to include the refinery. In this context, the Italian authorities had referred to several Commission decisions as precedents. The first series of decisions referred to cannot be considered to be comparable as they refer to occurrences characterised in themselves as natural disasters (aid N 729/02 ⁽³⁴⁾ refers to compensation following flooding in the south-east of France) or exceptional occurrences (aid N 83/2000 ⁽³⁵⁾ relates to dioxin contamination in Belgium, aid N 185/2000 ⁽³⁶⁾ makes good the damage following the proliferation of algae in the Adriatic in Italy and aid N 657/02 ⁽³⁷⁾ relates to the Belgian forestry sector, damaged by an exceptional proliferation of bark beetles and fungi). As indicated previously, drought cannot in itself be characterised as a natural disaster or exceptional occurrence and, as a result, the decisions cited cannot be considered as precedents similar to the case in question.
- (79) The Italian authorities had also referred to decisions N 745/2000–C 4/01 ⁽³⁸⁾ and N 331/02 ⁽³⁹⁾. In these two cases, the Commission concluded that drought could be likened to a natural disaster because of the threshold of

damage exceeded. In both cases, the aid was granted to primary producers and to 'consorzi di bonifica' (land reclamation consortia). The Commission concluded that the agricultural Guidelines did not apply to these 'consorzi di bonifica' because of the fact that water is not a product that comes under Annex I of the Treaty.

- (80) However, these 'consorzi di bonifica' cannot be likened to normal undertakings, as is the case with the refinery in question. The 'consorzi di bonifica' are autonomous public undertakings that manage drainage areas. In exchange, they receive payments from farmers for the irrigation water provided. This difference between the 'consorzi di bonifica' and undertakings for processing or marketing agricultural products has also been confirmed by the fact that, in the aforesaid case N 745/2000–C 4/01, the Commission decided to initiate the investigative procedure for the portion of the aid concerning undertakings and cooperatives active in the processing and marketing of agricultural products while indicating that, in application of the agricultural Guidelines, aid to these processing undertakings could not be approved. Notification having subsequently been withdrawn, no final decision was taken where this case was concerned.
- (81) With regard to the refinery's difficulty in obtaining supplies from elsewhere, the Italian authorities put forward arguments aimed at demonstrating the inherent difficulties faced by every refinery in obtaining supplies from a sugar beet production basin different from its own because of a contract system linking the sugar beet producers to the refineries, because of the island location of the refinery concerned and because of the short period for which sugar beet can be preserved. The fact that it is impossible for refineries to obtain supplies from elsewhere is a result, however, of Regulation (EC) No 1260/2001 which introduced a system of contracts between sugar beet producers and refineries. The Italian authorities have themselves pointed out that, in normal conditions, it is not possible to obtain supplies from other sugar beet production basins intended for other undertakings without causing these other undertakings' final production to fall and therefore preventing them from achieving their quotas. The authorities have therefore indicated that, in general, it is not often that a refinery is able to obtain supplies from production basins other than its usual ones.
- (82) Because of the aforesaid Regulation (EC) No 1260/2001, any refinery, whatever its location, has the inherent inflexibility invoked as an argument by Italy. Such an argument would thus apply to all processing undertakings whose link with producers is an integral part of the organisation of the market in which they are active. Acceptance of this argument would go against a strict interpretation of the agricultural Guidelines — a strict interpretation that does need, moreover, to be applied since we are concerned here with an exception to the general rule concerning the incompatibility of aid.

⁽³³⁾ Judgment of the Court of First Instance of 14 December 2005, Case T-200/04, par. 46, according to which it may be seen from the wording and general economy of these provisions that point 11 of the Guidelines draws a distinction in principle between farmers and agricultural production, on the one hand, and processing undertakings and processing activity, on the other. Only aid designed to offset losses sustained by farmers, and this in the exercise of agricultural production, is likely to be approved on the basis of this point.

⁽³⁴⁾ Commission letter C(2003) 910 final of 2 April 2003, http://ec.europa.eu/community_law/state_aids/agriculture-2002/n729-02.pdf

⁽³⁵⁾ Commission letter SG(2000) D/103852 of 25 May 2000, http://ec.europa.eu/community_law/state_aids/agriculture-2000/n083-00.pdf

⁽³⁶⁾ Commission letter SG(2000) D/108955 of 5 December 2000, http://ec.europa.eu/community_law/state_aids/peche-2000/n185-00.pdf

⁽³⁷⁾ Commission letter of 6 December 2002, http://ec.europa.eu/community_law/state_aids/agriculture-2002/n657-02_fr.pdf

⁽³⁸⁾ Commission Decision of 2 February 2001 (OJ C 263, 19.9.2001, p. 16).

⁽³⁹⁾ Commission letter C(2002) 3211 of 2 September 2002, http://ec.europa.eu/community_law/state_aids/agriculture-2002/n331-02.pdf

(83) As a result, the aid proposed by the Italian authorities cannot be authorised on this legal basis.

(84) The Italian authorities had also referred to point 3.4 of the aforesaid agricultural Guidelines as the legal basis for the aid. In applying this point, the Commission will assess any aid measures that are not covered by the agricultural Guidelines on a case-by-case basis, taking account of the principles set out in Articles 87, 88 and 89 of the Treaty and of the Community's common agricultural and rural development policies. As indicated in the previous paragraphs, the aid measures concerned (aid to processing undertakings designed to make good the losses sustained due to adverse weather conditions) are specifically covered by point 11.3 of the Guidelines. These exclude such undertakings from the benefit of aid, with the result that point 3.4 does not apply.

(85) Concerned not to leave any avenue unexplored, the Commission has examined whether the guidelines for rescuing and restructuring firms in difficulty might not be applicable to the case in question. The first condition to be fulfilled by an undertaking if it is to benefit from rescuing or restructuring aid is that it should be considered as being in difficulty within the meaning of the guidelines on State aid for rescuing and restructuring firms in difficulty⁽⁴⁰⁾. It is not apparent from the information held by the Commission that the undertaking was in difficulty within the meaning of the above-mentioned guidelines when the aid was notified. The only known indication that it might have been so is the fact that it needed to be recapitalised because of a large trading deficit in 2003. The private shareholders intervened to recapitalise the company in December 2003, thereby making any public support for its restructuring superfluous. Moreover, the company had already received restructuring aid, approved by the Commission in 1999⁽⁴¹⁾. Since fewer than 10 years have elapsed since the end of the restructuring period, no new restructuring aid can be granted because of the 'one time, last time' principle referred to in point 3.2.3 of the guidelines on rescuing and restructuring. In any case, the Commission wishes to point out that it is up to the Member State concerned to fulfil the duty of cooperation it has towards the Commission by providing all the elements required for the Commission to be able to check that all the conditions of the derogation from which it is asking to benefit have been met⁽⁴²⁾. In the case in question, the Italian authorities have never called for the guidelines on rescuing and restructuring to be applied nor supplied any document enabling the Commission to assess the data in the light of these

guidelines, and this in spite of the information provided by the Commission in recital 44 of the decision to initiate the investigative procedure.

Other doubts expressed by the Commission when the procedure was initiated

(86) The data held by the Commission when the procedure was initiated seemed to indicate that Sadam ISZ and the companies to which Sadam ISZ directly or indirectly belonged — in particular, SAM and FINBIETICOLA Spa — would have been in a position to cope with the fall in Sadam ISZ's profitability.

(87) Sadam ISZ having passed entirely under the control of Eridania Sadam during the procedure, the Commission notes that the lead company has been in a position to honour its obligations towards the controlled company, enabling it to pursue its activity, partly because of the considerable investment made within the framework of the restructuring plan launched in 1999-2000 and of the recapitalisation that took place in 2003-2004. As indicated in recital 75, the undertaking seems not, therefore, to be in difficulty, meaning that the guidelines on rescuing and restructuring are not applicable.

(88) The decision to initiate the procedure also stated, as a subsidiary point, that, even if it were deemed acceptable (*quod non*, at this stage of the procedure) to apply the compensation principle described in point 11.3 of the Guidelines to Sadam ISZ, the reference period chosen by the Italian authorities for calculating the aid would be wrong. Since it was not deemed acceptable, for the reasons explained above, to apply point 11.3 of the Guidelines, there is no reason for examining this last doubt raised when the decision was taken to initiate the procedure.

VII. CONCLUSION

(89) In view of the foregoing considerations, the Commission considers that the State aid of EUR 3,5 million that Italy is considering granting to the Villazor sugar refinery belonging to Sadam ISZ is not compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid of EUR 3,5 million that Italy is considering granting to the Villazor sugar refinery belonging to Sadam ISZ is not compatible with the common market.

⁽⁴⁰⁾ OJ C 288, 9.10.1999, p. 2.

⁽⁴¹⁾ Commission letter SG(2000) D/103781 of 19 May 2000. http://ec.europa.eu/community_law/state_aids/agriculture-1999/n157-99.pdf

⁽⁴²⁾ Judgment of the Court of First Instance of 15 June 2005, *Regione autonoma della Sardegna v Commission*, Case T-171/02 [2005] ECR II-2123, paragraph 129.

Accordingly, the granting of the aid is not authorised.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 16 July 2008.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

COMMISSION DECISION
of 14 September 2009
setting up a European Consumer Consultative Group
(2009/705/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

of personal data by the Community institutions and bodies,

Having regard to the Treaty establishing the European Community,

HAS DECIDED AS FOLLOWS:

Whereas:

- (1) Within the framework of consumer protection as provided for in Article 153 of the Treaty it is appropriate for the Commission to consult consumers on problems concerning the protection of their interests at Community level.
- (2) Since 1973 the Commission has been assisted by a consultative group created for this purpose by consecutive Decisions, the latest one being Commission Decision 2003/709/EC of 9 October 2003 setting up a European Consumer Consultative Group ⁽¹⁾.
- (3) The work of the Group over an extensive period has shown the necessity to improve its efficiency, representativeness and openness. Therefore, provisions related to the creation of sub-groups and to the adoption of the Group opinions should be clarified and should embody best practices developed over the last years.
- (4) In this regard, it is further appropriate to revise the procedure for the appointment of members of the Group representing national consumer organisations and to introduce additional reporting obligations on Group members to better involve national consumer organisations in the work of the Group.
- (5) It is important to ensure that the Group and its members participate actively and effectively to bring a consumer perspective to the broad deliberations among interested stakeholders that are the norm for consultation in Europe today.
- (6) For reasons of data protection, it is necessary to make the processing of personal data relating to members of the Group subject to Community legislation on the protection of individuals with regard to the processing

Article 1

The European Consumer Consultative Group

A European Consumer Consultative Group, hereinafter referred to as 'the Group', is hereby set up.

Article 2

Task

1. The Group may be consulted by the Commission on all issues related to consumer interests at Community level.
2. The Group:
 - (a) constitutes a group for general discussions on issues related to consumer interests;
 - (b) prepares consumer input into other fora and participates as requested in groups advising the Commission on issues relevant to EU consumer policy;
 - (c) advises the Commission when it outlines policies and activities having an effect on consumers;
 - (d) may give an opinion on Community matters affecting consumers;
 - (e) informs the Commission of developments in consumer policy in the Member States;
 - (f) acts as a source of information and a sounding board on Community action for the national organisations.

Article 3

Membership

1. The Group shall be composed of:
 - (a) one member representing national consumer organisations for each Member State;

⁽¹⁾ OJ L 258, 10.10.2003, p. 35.

(b) one member for each European consumer organisation.

2. The national consumer organisations referred to in paragraph 1(a) must be representative, in accordance with national rules or practice, of consumers and active at national level.

3. The European consumer organisations referred to in paragraph 1(b) must meet one of the two following sets of criteria:

(a) be non-governmental, non-profit-making, independent of industry, commerce and business or other conflicting interests, and

(i) have as their primary objectives and activities the promotion and protection of the health, safety and economic interest of consumers in the Community,

(ii) have been mandated to represent the interests of consumers at Community level by national consumer organisations in at least half of the Member States that are representative in accordance with national rules or practice, of consumers and are active at regional or national level, and

(iii) have provided to the Commission satisfactory accounts of their membership, internal rules and sources of funding,

or

(b) be non-governmental, non-profit-making, independent of industry, commerce and business or other conflicting interests and

(i) have as their primary objectives and activities to represent consumer interests in the standardisation process at Community level and

(ii) have been mandated in at least two thirds of the Member States to represent the interests of consumers at Community level by:

— bodies representative, in accordance with national rules or practice, of national consumer organisations in the Member States, or

— in the absence of such bodies, by national consumer organisations in the Member States that are repre-

sentative, in accordance with national rules and practice, of consumers and are active at national level.

4. An indicative list of organisations which currently meet the criteria laid down in paragraph 3 is set out in the Annex.

Article 4

Appointment

1. The members of the Group representing national consumer organisations shall be appointed in accordance with paragraphs 2 and 3.

2. Each Member State shall propose a list of three candidates, through national bodies representing consumer organisations set up by that Member State, where they exist, or through the competent national authorities. Candidates shall be part of the most representative national consumer organisations according to national rules or practices.

3. The Commission shall appoint one member and one alternate per Member State in accordance with the following criteria:

(a) candidates shall have a broad competence and experience in EU consumer affairs;

(b) candidates who have not previously been members of this Group shall be given priority;

(c) gender balance.

4. The members of the group representing European consumer organisations and an alternate for each member shall be appointed by the Commission on a proposal from the European consumer organisations.

5. Alternates shall automatically replace members who are absent.

6. The Commission shall publish the list of members and alternates on the Internet site of the Health and Consumers Directorate-General and in the C series of the *Official Journal of the European Union*. The names of members and alternates shall be collected, processed and published in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁾.

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

*Article 5***Term of office**

1. The term of office of members and alternates shall be three years and shall be renewable in accordance with the procedure laid down in Article 4.

2. At the end of the three-year period, members and alternates shall remain in office until a replacement is found or until their term of office is renewed.

3. The term of office of members and alternates shall lapse before the end of the three-year period

- (a) in the event of their resignation, retirement or death;
- (b) if the national bodies or authorities which put them forward as candidates request their replacement;
- (c) if the Commission requests the replacement of members or alternates who are no longer capable of contributing effectively or who do not fulfil the obligations laid down in Article 7(6).

4. Members and alternates shall be replaced for the remainder of the three-year period in accordance with the procedure laid down in Article 4. Notwithstanding Article 4(2), if only one member or one alternate representing national consumer organisations is to be replaced, the national bodies or authorities shall propose two new candidates of whom the Commission shall appoint one in accordance with Article 4(3).

*Article 6***Associates and experts**

1. On the proposal of the Commission, the Group may invite representatives of other organisations which have the promotion of consumer interests as one of their principal objectives and actively work at European level to this end, to be associated to its work.

2. The Group may invite any person having special expertise on a point on the agenda to participate in its work as an expert.

*Article 7***Operation**

1. The Commission shall
- (a) determine the form and the timetable according to which the Group will meet;
 - (b) chair the meetings of the Group;
 - (c) provide secretarial services and organise the Group's work.

2. Sub-groups may be set up to examine specific questions under terms of reference established by the Group. Such groups shall be dissolved as soon as their mandates are fulfilled.

3. The Group may issue opinions at the request of the Commission or on a proposal from a member with the agreement of the Commission. When requesting an opinion, the Commission may fix the deadline within which the opinion is to be delivered. For each opinion, the Group may appoint one or more rapporteurs from amongst its members. The rapporteur shall have the overall responsibility for the preparation of the opinion.

4. The group shall adopt its own rules of procedure on the basis of a proposal made by the Commission.

5. The Commission shall publish on the Internet site of the Health and Consumers Directorate-General, in the original language of the document concerned, any opinion, summary, conclusion, or partial conclusion or working document of the group.

6. The members of the Group representing national consumer organisations shall inform and consult the associations they are representing in the Group. Each member shall put in place effective reporting mechanisms to systematically inform all consumer organisations at national level of the work of the Group and shall convey their views in return.

7. Each member shall produce a report to the Commission by 1 March on the work undertaken in the previous calendar year in pursuit of their obligation under paragraph 6. The content of this report will be further defined in the rules of procedure.

*Article 8***Confidentiality**

Without prejudice to Article 287 of the Treaty, the members and alternates of the Group shall not divulge any information obtained from their work in the Group or its sub-groups when the Commission informs them that the opinion requested or question raised is of a confidential nature.

*Article 9***Meeting expenses**

1. The Commission shall reimburse travel and, where appropriate, subsistence expenses for members in connection with the group's activities in accordance with the Commission's rules on the compensation of external experts.

2. Members shall not be remunerated for the services they render.
3. Meeting expenses shall be reimbursed within the limits of the annual budget allocated to the group by the responsible Commission services.

Article 10

Repeal

Decision 2003/709/EC is hereby repealed.

Done at Brussels, 14 September 2009.

For the Commission
Meglena KUNEVA
Member of the Commission

ANNEX

Organisations which currently meet the criteria laid down in Article 3(3) are:

- BEUC — Bureau Européen des Unions des Consommateurs;
- ANEC — European Association for the Co-ordination of Consumer Representation in Standardisation.

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL JOINT ACTION 2009/706/CFSP

of 15 September 2009

extending the mandate of the European Union Special Representative in the former Yugoslav Republic of Macedonia (FYROM)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 14, 18(5) and 23(2) thereof,

Whereas:

- (1) On 17 October 2005, the Council adopted Joint Action 2005/724/CFSP⁽¹⁾ appointing Mr Erwan FOUÉRE European Union Special Representative (EUSR) in the former Yugoslav Republic of Macedonia (FYROM).
- (2) On 16 February 2009, the Council adopted Joint Action 2009/129/CFSP⁽²⁾ extending the mandate of the EUSR until 30 September 2009.
- (3) On the basis of a review of Joint Action 2009/129/CFSP, the mandate of the EUSR should be extended for an additional 6-month period until 31 March 2010,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Joint Action 2009/129/CFSP is hereby amended as follows:

1. Article 1 shall be replaced by the following:

'Article 1

European Union Special Representative

The mandate of Mr Erwan FOUÉRE as the European Union Special Representative (EUSR) in the former Yugoslav Republic of Macedonia (FYROM) is hereby extended until 31 March 2010.;

2. Article 5(1) shall be replaced by the following:

'1. The financial reference amount intended to cover the expenditure related to the mandate of the EUSR in the period

from 1 March 2009 to 31 March 2010 shall be EUR 568 000.;

3. Article 13 shall be replaced by the following:

'Article 13

Review

The implementation of this Joint Action and its consistency with other contributions from the EU shall be kept under regular review. The EUSR shall present to the SG/HR, the Council and the Commission a comprehensive mandate implementation report before the end of January 2010. That report shall form a basis for evaluation of this Joint Action in the relevant working groups and by the PSC. In the context of overall priorities for deployment, the SG/HR shall make recommendations to the PSC concerning the Council's decision on the renewal, amendment or termination of the mandate.'

Article 2

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

Article 3

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

Done at Brussels, 15 September 2009.

For the Council

The President

C. BILDT

⁽¹⁾ OJ L 272, 18.10.2005, p. 26.

⁽²⁾ OJ L 46, 17.2.2009, p. 40.

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