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I

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

REGULATIONS

COUNCIL REGULATION (EC) No 1038/2009

of 19 October 2009

derogating from Regulation (EC) No 1234/2007 (Single CMO Regulation) as regards the 2009 and 2010 intervention periods for butter and skimmed milk powder

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament ⁽¹⁾,

Whereas:

(1) World market prices for dairy products have collapsed notably due to an increased world supply and a drop in demand in connection with the financial and economic crisis. Community market prices for dairy products have fallen significantly. As a result of a combination of market measures taken since the beginning of this year, Community prices have stabilised around support price levels. It is essential that these market support measures, notably public intervention, continue to apply as long as necessary in order to avoid further deterioration of prices and disturbance of the Community market.

(2) Article 11(e) of 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 ⁽²⁾ provides that for butter and skimmed milk powder public intervention is available from 1 March to 31 August.

(3) In view of the foreseeable market situation a continuation of the public intervention for butter and skimmed milk powder should be provided for beyond 31 August 2009, if necessary until 28 February 2010.

(4) Furthermore, where market prices are likely to fall significantly thereby disturbing or threatening to disturb the market, the Commission should be authorised to continue public intervention for butter and skimmed milk powder beyond 31 August 2010, if necessary until 28 February 2011,

HAS ADOPTED THIS REGULATION:

Article 1

By way of derogation from Article 11(e) of Regulation (EC) No 1234/2007, the 2009 period during which intervention for butter and skimmed milk powder is available shall expire on 28 February 2010.

Article 2

By way of derogation from Article 11(e) of Regulation (EC) No 1234/2007, the Commission may decide, in accordance with the procedure referred to in Article 195(2) of that Regulation, to continue public intervention for butter and skimmed milk powder through a tendering procedure beyond 31 August 2010, if necessary until 28 February 2011, if prices in the sector for milk and milk products on the Community market are likely to fall significantly thereby disturbing or threatening to disturb the market.

Article 3

The Commission shall take, in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007, the necessary measures to implement this Regulation.

⁽¹⁾ Opinion of 17 September 2009 (not yet published in the Official Journal).

⁽²⁾ OJ L 299, 16.11.2007, p. 1.

Article 4

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

It shall apply from 1 September 2009.

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

Done at Luxembourg, 19 October 2009.

For the Council
The President
E. ERLANDSSON

COMMISSION REGULATION (EC) No 1039/2009**of 3 November 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 4 November 2009.

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

Done at Brussels, 3 November 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	MA	45,5
	MK	28,8
	TR	50,7
	ZZ	41,7
0707 00 05	EG	123,8
	JO	161,3
	TR	122,5
	ZZ	135,9
0709 90 70	MA	70,2
	TR	85,3
	ZZ	77,8
0805 20 10	MA	91,3
	ZZ	91,3
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	AR	49,8
	HR	65,7
	TR	82,7
	UY	49,8
	ZZ	62,0
0805 50 10	AR	74,0
	TR	76,4
	ZA	84,7
	ZZ	78,4
0806 10 10	BR	238,2
	EG	85,0
	TR	121,9
	US	245,6
	ZZ	172,7
0808 10 80	AU	227,7
	CA	73,8
	MK	20,3
	NZ	101,2
	TR	91,6
	US	116,0
	ZA	82,8
0808 20 50	ZZ	101,9
	CN	39,9
	ZZ	39,9

⁽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 1040/2009**of 3 November 2009****amending Regulation (EC) No 428/2008 determining the intervention centres for cereals**

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⁾, and in particular Article 41 in conjunction with Article 4 thereof,

Whereas:

- (1) Belgium has requested amendments relating to some of the intervention centres listed in Annex I to Commission Regulation (EC) No 428/2008 ⁽²⁾ with a view to improving their location or responding better to the conditions required. That request should be acceded to.

- (2) Regulation (EC) No 428/2008 should be amended accordingly.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 428/2008 is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 3 November 2009.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 129, 17.5.2008, p. 8.

ANNEX

In Annex I to Regulation (EC) No 428/2008 the table headed 'BELGIUM' is replaced by the following:

1. The sign '+' indicates that the location shown is treated as an intervention centre for the cereal in question.
2. The sign '-' indicates that the location shown is not to be treated as an intervention centre for the cereal in question.

Intervention centre	Common wheat	Barley	Maize	Sorghum
BELGIUM				
Antwerpen	+	+	—	—
Brugge	+	+	—	—
Farciennes	+	+	—	—
Floreffe	+	+	—	—
Gent	+	+	—	—
Liège	+	+	—	—
Andenne	+	+	—	—
Tournai	+	+	—	—'

DIRECTIVES

COMMISSION DIRECTIVE 2009/135/EC

of 3 November 2009

allowing temporary derogations to certain eligibility criteria for whole blood and blood components donors laid down in Annex III to Directive 2004/33/EC in the context of a risk of shortage caused by the Influenza A(H1N1) pandemic

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Parliament and of the Council as regards certain technical requirements for blood and blood components ⁽⁴⁾ in order to increase the blood supply.

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2002/98/EC of the European Parliament and the Council of 27 January 2003 setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components and amending Directive 2001/83/EC ⁽¹⁾, and in particular point (d) of the second paragraph of article 29 thereof,

Whereas:

- (3) The relaxation of those criteria should be the last recourse measure after organisational measures to optimise the blood supply chain, communication campaigns towards donors and optimisation of the clinical use of blood reveal to be insufficient to compensate a blood shortage or to prevent such a shortage.
- (4) The WHO published on 11 October 2007 a recommendation on maintaining safe and adequate blood supply in the event of pandemic influenza ⁽⁵⁾, providing that any relaxation of eligibility criteria should be limited to pandemic period phase 6 according to the WHO's global influenza preparedness plan ⁽⁶⁾.

- (1) The ongoing pandemic, recognised by the World Health Organisation (WHO) in accordance with the International Health Regulations (2005), of Influenza A(H1N1), as defined in Commission Decision 2000/96/EC ⁽²⁾ as amended by Commission Decision 2009/539/EC ⁽³⁾ may temporarily put at risk at short term the supply of blood and blood components in the Member States by affecting both donors and the staff of national blood services. Contingency plans may therefore be necessary to secure a continuous supply of blood and blood components. Those plans should combine operational, communication and regulatory instruments.
- (2) The available regulatory instruments consist in easing, on an exceptional and temporary basis, some of the eligibility criteria for donors laid down in Annex III to Commission Directive 2004/33/EC of 22 March 2004 implementing Directive 2002/98/EC of the European

- (5) Haemoglobin thresholds of donors set out in point 1.2 of Annex III to Directive 2004/33/EC do not always reflect the actual iron stores of the donors and therefore are not always baseline reference values for diagnosis of anaemia. These are precautionary thresholds insofar as these reference values are lower in some Member States than in others, due to specific population related or regional circumstances. As a result persons who could donate safely are discarded due to haemoglobin rates below the regulatory standard. Therefore, in the context of the ongoing Influenza A(H1N1) pandemic, those levels could be reduced by a maximum of 5g/l for both women and men without putting at risk the health of the donors. In any case, the eligibility of each donor is assessed by qualified health professionals in accordance with Article 19 of Directive 2002/98/EC, who may, in appreciation of the effective risk situation, discard the donor concerned.

⁽¹⁾ OJ L 33, 8.2.2003, p. 30.

⁽²⁾ OJ L 28, 3.2.2000, p. 50.

⁽³⁾ OJ L 180, 11.7.2009, p. 22.

⁽⁴⁾ OJ L 91, 30.3.2004, p. 25.

⁽⁵⁾ Donor Selection Guidelines in Pandemic Situations (Blood Regulators Network) <http://www.who.int/bloodproducts/brn/DonorSelectioninCaseofPandemicSituations.pdf>

⁽⁶⁾ http://www.who.int/csr/resources/publications/influenza/WHO_CDS_CSR_GIP_2005_5/en/index.html

- (6) The European Commission asked the European Centre for Disease Control and Prevention (ECDC) to perform a risk assessment of a temporary reduction of the deferral period of donors after recovery of a flu-like episode in the context of the Influenza A(H1N1) pandemic. The assessment delivered on 9 October 2009 concluded that the increased risk with respect to both donors and recipients, if the deferral period is reduced to 7 days, is very low and in any case should be out-weighted by the risk of blood shortage.
- (7) As a matter of urgency, the Member States should therefore be allowed to derogate exceptionally and temporarily from those eligibility criteria, provided that the conditions set out in this Directive are met.
- (8) Having regard to the imminent nature of the risk of shortage caused by the ongoing Influenza A(H1N1) pandemic, this Directive should enter into force immediately so as to enable the Member States to transpose it and to put in place the necessary measures within the shortest time possible.
- (9) The measures provided for in this Directive are designed to respond to a temporary situation related to the specific Influenza A(H1N1) virus. This Directive should therefore apply until 30 June 2010. By then, the 2009/2010 peak period of the Influenza A(H1N1) pandemic should have elapsed, the risks of shortage should thus have at least lessened, and more detailed data on the epidemiology of the disease and on vaccination will be available.
- (10) The measures provided for in this Directive are in accordance with the opinion of the Committee set up by Article 28 of Directive 2002/98/EC,
- (b) by way of derogation from point 2.2.1 of Annex III to Directive 2004/33/EC, apply a deferral period of no less than 7 days after cessation of symptoms of a flu-like illness.
2. The implementation of the derogations referred to in paragraph 1 shall be subject to the following conditions:
- (a) the Member State concerned shall inform the Commission without delay of the measures it intends to take or has taken pursuant to paragraph 1;
- (b) the Member State shall communicate to the Commission justifications as to the necessity of those measures, notably as to the extent of the risk of shortage, or of the actual shortage, of blood and blood components, including a description of the criteria and methodology used to assess that necessity;
- (c) as soon as, according to the same criteria and methodology referred to in point (b), the supply of blood and blood components comes back to a sufficient level, the Member State concerned shall terminate the implementation of the temporary derogations referred to in paragraph 1 and inform the Commission thereof.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2009 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

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

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 3

Entry into force

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

Derogations to certain eligibility criteria for donors

1. Member States confronted with a serious risk of shortage or an actual shortage in the supply of blood and blood components directly due to the A(H1N1) Influenza pandemic, may, on a temporary basis:
- (a) by way of derogation from point 1.2 of Annex III to Directive 2004/33/EC, reduce the minimum haemoglobin levels in donors blood to no less than 120 g/l for females and 130 g/l for males;

and/or

It shall apply until 30 June 2010.

*Article 4***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 3 November 2009.

For the Commission

Androulla VASSILIOU

Member of the Commission

DECISIONS ADOPTED JOINTLY BY THE EUROPEAN PARLIAMENT AND THE COUNCIL

DECISION No 1041/2009/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 October 2009 establishing an audiovisual cooperation programme with professionals from third countries (MEDIA Mundus)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 150(4) and 157(3) 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) The audiovisual sector contributes to achieving the goals of the Lisbon Agenda, namely to boost competitiveness, skills, growth and jobs in a knowledge-based economy. It plays a major role in the context of the i2010 initiative — the policy umbrella for the European information society and media policies — in the framework of the Lisbon Agenda.
- (2) The European Parliament has consistently emphasised that the audiovisual sector makes an important contribution to the European creative and knowledge economy and plays a central role in promoting cultural diversity and pluralism, as well as being an important platform for freedom of speech.
- (3) The cultural and creative sectors contribute substantially to the European cultural economy and in 2004 creative

industries employed at least 5,8 million people, equivalent to 3,1 % of the total employed EU-25 population.

- (4) Community support to the audiovisual sector takes into account Article 151 of the Treaty, which states that the Community and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, and that the Community shall take cultural aspects into account in its action, in particular in order to respect and to promote the diversity of its cultures.
- (5) In its resolution of 16 November 2007 on a European Agenda for Culture ⁽⁴⁾, the Council considered that culture was a vital element of international relations and underlined the need to enhance its role in the EU's external relations and development policy. The European Parliament, in its resolution of 10 April 2008 on a European agenda for culture in a globalising world, also underlined, with respect to the Unesco Convention on the Protection and Promotion of the Diversity of Cultural Expressions, the importance of integrating a cultural dimension into all policies and programmes, including external policies and development.
- (6) On 21 November 2008 the Council and the Representatives of the Governments of the Member States, meeting within the Council, adopted conclusions on the promotion of cultural diversity and intercultural dialogue in the external relations of the Union and its Member States ⁽⁵⁾.
- (7) The Commission's communication of 8 June 2006 on 'Europe in the world' emphasises the inextricable link between the EU's internal and external policies, and stresses that Europe has the potential to share in the new opportunities created by emerging markets and globalisation, as it has an open society that can absorb people, ideas and new technologies.

⁽¹⁾ Opinion of 25 March 2009 (OJ C 228, 22.9.2009, p. 100).

⁽²⁾ Opinion of 21 April 2009 (OJ C 200, 25.8.2009, p. 51).

⁽³⁾ Opinion of the European Parliament of 7 May 2009 (not yet published in the Official Journal) and Council Decision of 14 September 2009.

⁽⁴⁾ OJ C 287, 29.11.2007, p. 1.

⁽⁵⁾ OJ C 320, 16.12.2008, p. 10.

- (8) The European Union was a major player in the process leading to the adoption of the Unesco Convention on the Protection and the Promotion of the Diversity of Cultural Expressions which entered into force on 18 March 2007, following the ratification by the European Community and 13 Member States on 18 December 2006. The Convention's aim is to strengthen international cooperation and solidarity so as to favour the cultural expressions of all countries. According to Article 12(e) of the Convention, parties to the Convention 'shall encourage the conclusion of co-production and co-distribution agreements'.
- (9) A number of Member State activities aim at increasing cooperation between European and third countries' audiovisual industries, such as international co-production funds and co-production treaties. Community support will be complementary to such actions.
- (10) The Charter of Fundamental Rights of the European Union, in Article 11, recognises freedom of expression and pluralism of the media.
- (11) The evaluation report of the MEDIA Plus programme identified the importance of international markets to overcoming the problems of the European audiovisual industry.
- (12) The international audiovisual landscape has changed significantly over the last two decades and is currently facing new challenges, notably under the impact of technological developments such as digital cinema projection, video on demand (VOD) or multi-channel digital television. This has created strong financial growth and promising investments and, consequently, a strong and growing demand for more audiovisual content, offering numerous opportunities to companies. Accordingly, there is a strong and increasing interest in developing projects relating to the various digital applications. In addition, there is a strong link between international cooperation on projects and the Union's ability to promote in the world its regulatory model on audiovisual issues and the convergence between audiovisual and electronic communications.
- (13) Given the increasing importance of the international dimension of audiovisual policy, the European Parliament, on 13 December 2007, adopted, in the 2008 budget, a preparatory action MEDIA International, that focuses on developing the Union's relations with third-country audiovisual markets and provides the opportunity for structuring and strengthening relations and networks between European and third-country professionals in the audiovisual sector, for the mutual benefit of the European industry and the third countries involved. The subsequent call for proposals attracted great interest from both European and third-country professionals. Eighteen projects were selected for support. The first year of the preparatory action MEDIA International thus confirmed the sector's interests and needs in the international field and the necessity for Community action.
- (14) The European Parliament renewed the preparatory action MEDIA International with an increased budget for 2009.
- (15) On 19 May 2008, at an informal gathering in Cannes, ministers responsible for audiovisual matters from a number of Member States welcomed the European Parliament's initiative on the preparatory action MEDIA International and encouraged the Commission 'to pursue the development of this initiative and to examine the desirability and the possibility of presenting a proposal for a support programme to promote cooperation between European audiovisual industry professionals and industry professionals in third countries for the mutual benefit of all participants'.
- (16) An open public consultation demonstrated strong support for strengthened cooperation between European and third-country professionals in the audiovisual sector, notably in the fields of training, the facilitation of co-productions, distribution and circulation of audiovisual works (including new platforms, such as VOD, and Internet protocol television (IPTV)) and film literacy.
- (17) Access to audiovisual markets in third countries should be facilitated by disseminating market knowledge among professionals operating in those markets and by creating networks between them. For those purposes, projects to provide training should be supported within the framework of a programme.
- (18) The distribution sector determines the diversity of audiovisual works on offer and consumer choice. European distributors are small companies, and because of the structure and fragmentation of the market, they are, unlike their large vertically-integrated competitors, ill equipped for gaining access to international markets. Furthermore, new players and distribution platforms have emerged, boosting or requiring more audiovisual content. It is therefore appropriate to take measures to improve the distribution, circulation and exhibition of European works in third countries and those of third countries within Europe.
- (19) There is therefore a need to establish a Community programme for the audiovisual sector, providing financial support to projects in the fields of information exchange and training, competitiveness, distribution, circulation and exhibition of audiovisual content.

- (20) In order to ensure the maximum mutual benefit and to simplify administration, projects under the programme should be proposed and implemented jointly by professionals from the European Union and from third countries and should promote international networking. In order to simplify administration, projects should be coordinated by a professional established in a country participating in the programme.
- (21) Appropriate measures should be drawn up and implemented to prevent irregularities and fraud and to recover funds which have been lost or transferred or used improperly.
- (22) It is appropriate to lay down, for the entire duration of the programme, a financial envelope constituting the prime reference for the budgetary authority, within the meaning of point 37 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management ⁽¹⁾.
- (23) The measures necessary for the implementation of this Decision 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 ⁽²⁾.
- (24) The arrangements for monitoring and evaluating the programme should include detailed annual reports as well as specific, measurable, achievable, relevant and time-bound objectives and indicators.
- (25) Since the objectives of this Decision cannot be sufficiently achieved by the Member States, given the transnational and international character of the proposed actions, and can therefore, by reason of the scale and effects of those actions, 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 Decision does not go beyond what is necessary in order to achieve those objectives,

HAVE DECIDED AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

Article 1

Establishment and aims of the programme

1. This Decision establishes the programme MEDIA Mundus (the programme) for the funding of projects for international

cooperation in the audiovisual sector for the period from 1 January 2011 to 31 December 2013.

2. The aims of the programme are to increase the competitiveness of the European audiovisual industry, to enable Europe to play its cultural and political role in the world more effectively and to increase consumer choice and cultural diversity. The programme will seek to improve access to third-country markets and to build trust and long-term working relationships.

Article 2

Scope of the programme

The programme is addressed to European and third-country professionals.

Article 3

Definitions

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

1. 'European professional' means a professional who:

(a) is a national of:

(i) an EU Member State; or

(ii) an EFTA State which is a member of the EEA, in accordance with the provisions of Part VI of the EEA agreement; or

(iii) a country referred to in Article 8, paragraphs 1 and 2, of Decision No 1718/2006/EC ⁽³⁾, and not already mentioned under point (ii), where the country:

— declares its willingness to be a member of the programme, and

— pays a contribution, calculated on the same basis as its contribution to the MEDIA 2007 programme;

or

⁽³⁾ Decision No 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007) (OJ L 327, 24.11.2006, p. 12).

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

- (b) is established as a legal person in one of the countries referred to in point (a)(i), or in a country fulfilling the requirements in points (a)(ii) or (iii), and is owned, whether directly or by majority participation, and continues to be owned by one or more of those countries or by one or more nationals from those countries until the end of the project;
2. 'third-country professional' means a professional that is not a European professional;
3. 'third country' means a country other than those referred to in point 1(a)(i), or those fulfilling the requirements set out in points 1(a)(ii) or (iii);
4. 'audiovisual work' means a set of moving images with or without sound. Examples of audiovisual works include feature films, documentaries and animation films;
5. 'European works' means audiovisual works originating in countries referred to in points 1(a)(i), (ii) or (iii).

Article 4

Conditions for participation in the programme

1. Projects shall be proposed and implemented jointly by European and third-country professionals in order to be eligible for funding under the programme.
2. Each project shall seek to promote international networking. To this end, each project shall have a minimum of three partners. However, projects with only two partners may be admitted where the necessary networking is guaranteed.
3. Each project shall be coordinated by a European professional and shall include at least one partner from a third country. The coordinator shall be responsible for the submission of the proposal, for the management of the project and for its financial administration and implementation.

CHAPTER II

SPECIFIC OBJECTIVES OF THE PROGRAMME

Article 5

Specific objective 1: Information exchange, training and market intelligence

In the field of information exchange and training, the operational objective of the programme shall be to strengthen the skills of European and third-country professionals, notably by:

- (a) improving professionals' understanding, in particular, of the operating conditions, legal frameworks (including in the

area of intellectual property rights), financing systems and cooperation possibilities of their respective audiovisual markets;

- (b) securing and facilitating audiovisual cooperation between professionals by improving their level of knowledge of audiovisual markets;
- (c) facilitating networking and the emergence of long-term working relationships, in particular through scholarships; or
- (d) supporting initial and continuous professional training.

Article 6

Specific objective 2: Competitiveness and Distribution

Regarding the improvement of the competitiveness of the European audiovisual industry and the distribution of European works outside Europe and those of third countries within Europe, the operational objectives of the programme shall be to:

- (a) facilitate the search for third-country partners for European works. The programme shall support the organisation of co-production markets and partner search events (pitching), aiming at bringing together possible partners (e.g. script writers, directors, actors, producers and distributors);
- (b) encourage international sales and promotion of European works in third-country markets and of audiovisual works from third countries in Europe. The programme shall encourage the conclusion of agreements between groupings of right-holders/sales agents/distributors to ensure distribution (e.g. in cinemas, on TV, IPTV, Web TV and on VOD platforms) and promotion.

Article 7

Specific objective 3: Circulation

In order to improve the circulation and visibility of European works in third countries and those of third countries within Europe and to increase public demand for culturally diverse audiovisual content, particularly amongst young people, the operational objectives of the programme shall be to:

- (a) encourage cinema operators in European and third countries to reciprocally increase the programming and exhibition conditions (duration of, exposure and number of screenings) of exclusive first releases of audiovisual works. The programme shall support projects presented by cinema networks with screens in Europe and in third countries that programme a significant number of audiovisual works on the territory/territories of their partner(s);

- (b) increase the supply of audiovisual content and improve broadcasting and distribution conditions for audiovisual works from third countries on European distribution channels (e.g. TV, IPTV, Web TV, VOD platforms) and for European works through international distribution channels. The programme shall support partnerships between broadcasters (or VOD platforms) and rights-holders aiming at broadcasting a package of works or at distributing a catalogue of works on VOD platforms;
- (c) facilitate the organisation of events and film literacy initiatives, notably aimed at young audiences, intended to internationally promote the diversity of audiovisual works and increase public demand for culturally diverse audiovisual content.

CHAPTER III

FINANCIAL PROVISIONS AND ARRANGEMENTS FOR THE IMPLEMENTATION OF THE PROGRAMME*Article 8***Financial provisions**

1. The measures financed under this Decision shall be implemented in accordance with Regulation (EC, Euratom) No 1605/2002 ⁽¹⁾.
2. In accordance with Article 176(2) and (4) of Regulation (EC, Euratom) No 2342/2002 ⁽²⁾, the Commission may decide, depending on the beneficiaries and the type of action, whether they may be exempted from verification of the professional competencies and qualifications required to successfully complete an action or work programme.
3. Depending on the type of action, financial aid may take the form of grants (reimbursable in respect of the programme's contribution, excluding support for dubbing/subtitling) or scholarships. The Commission may also award prizes for the programme's activities or projects. Depending on the nature of the activity, flat-rate financing or the use of scales of unit costs may be authorised in accordance with Article 181 of Regulation (EC, Euratom) No 2342/2002.
4. Funding awarded under the programme may not exceed 50 % of the final costs of the project to be funded. However, in the cases expressly provided for in the annual work programme and in the call for proposals, funding may be as high as 80 %.
5. In accordance with Article 113(1) of Regulation (EC, Euratom) No 1605/2002, in conjunction with Article 172(1) of Regulation (EC, Euratom) No 2342/2002, the beneficiaries'

⁽¹⁾ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1).

⁽²⁾ Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, p. 1).

contribution may be provided either entirely or partly in kind if the value of the contribution can be established on the basis of costs actually borne and duly supported by accounting documents, or costs generally accepted in the market in question. Premises made available for training or promotional purposes may be included in such contributions.

6. In accordance with Article 112(1) of Regulation (EC, Euratom) No 1605/2002, the Commission may, where provided for in the annual work programme and in the call for proposals, decide that costs directly linked with implementing the project are eligible for funding, even if they were partially incurred by the beneficiary before the selection procedure.

*Article 9***Implementation of the programme**

1. The Commission is responsible for implementing the programme in accordance with the provisions laid down in the Annex. The Commission shall take steps to ensure that the actions supported under the specific objectives as set out in Articles 5 to 7 complement each other.
2. The following measures for the implementation of the programme shall be adopted in accordance with the management procedure referred to in Article 10(2):
 - (a) an annual plan of work, including priorities;
 - (b) an annual internal breakdown of the programme resources, including the breakdown between measures in the different fields;
 - (c) the general guidelines for implementing the programme;
 - (d) the content of the calls for proposals, the definition of the criteria and the procedures for the selection of projects;
 - (e) selection of proposals for the allocation of Community funds in excess of:
 - EUR 200 000 per beneficiary per year, in the case of specific objective 1,
 - EUR 300 000 per beneficiary per year, in the case of specific objective 2,
 - EUR 300 000 per beneficiary per year, in the case of specific objective 3.

3. The Commission shall adopt selection decisions other than those listed in paragraph 2(e). The Commission shall provide the European Parliament and the committee referred to in Article 10 with all relevant information including the selection decisions taken in accordance with this paragraph within two working days of the adoption of these decisions.

Article 10

Committee procedure

1. The Commission shall be assisted by the committee established under Article 11 of Decision No 1718/2006/EC, composed of representatives of the Member States and chaired by the representative of the Commission.

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

3. The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at two months.

Article 11

Contribution of the programme to other Community policies and principles

The programme shall help to strengthen the Community's horizontal policies and principles by:

- (a) contributing to the debate on, and information about, the Union as an area of peace, prosperity and security;
- (b) promoting the fundamental principle of freedom of expression;
- (c) encouraging awareness of the importance of cultural diversity, common values, intercultural dialogue and multilingualism in the world;
- (d) enhancing the knowledge base of the European economy and contributing to strengthening the global competitiveness of the Union; and
- (e) helping to combat all forms of discrimination based on sex, race or ethnic origin, religion or beliefs, disabilities, age or sexual orientation.

Article 12

Consistency and complementarity

The Commission shall pay particular attention to consistency and complementarity between the programme and other relevant Community policies, instruments and actions, in particular coordination with, and implementation of, the MEDIA 2007 programme and external cooperation

programmes in the audiovisual and cultural sectors with third countries.

Article 13

Monitoring and evaluation

1. The Commission shall monitor the projects regularly. The results of the monitoring process shall be taken into account in the implementation of the programme.

2. The Commission shall ensure that the programme is evaluated, externally and independently.

3. The Commission shall present to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions:

- (a) a communication on the possible continuation of the programme, by 31 January 2012;
- (b) an *ex-post* evaluation report by 31 December 2015.

Article 14

The financial envelope

1. The financial envelope for the implementation of the programme for the period set out in Article 1(1) is fixed at EUR 15 000 000.

2. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial framework.

CHAPTER IV

ENTRY INTO FORCE

Article 15

Entry into force

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

It shall apply from 1 January 2011.

Done at Strasbourg, 21 October 2009.

For the European Parliament
The President
J. BUZEK

For the Council
The President
C. MALMSTRÖM

ANNEX

ACTIONS TO BE IMPLEMENTED

1. Specific objective 1: Information exchange, training and market intelligence*Operational objective*

Strengthen the skills of European and third-country professionals and improve their level of information and knowledge.

Actions to be implemented:

- Support the development and implementation of training modules including trainees and trainers from European and third countries, with a focus on the conditions of production, co-production, distribution, exhibition and dissemination of audiovisual works in the relevant international markets.
- Support the development and implementation of training modules including trainees and trainers from European and third countries, with a focus on the inclusion of new technologies for the production, post-production, distribution (including new distribution platforms such as VOD, IPTV, Web TV), marketing and archiving of audiovisual works.
- Encourage exchanges between the institutions and/or existing continuous training activities.
- Contribute to training for trainers.

2. Specific objective 2: Competitiveness and distribution*1. Operational objective*

Facilitate the search for partners for co-productions.

Actions to be implemented:

- Support the organisation of forums for the development, financing, co-production and pre-sales of international co-productions, in particular co-production markets and partner search events (pitching), aiming at bringing together possible partners (e.g. script writers, directors, actors, producers and distributors).

2. Operational objective

Encourage international sales and promotion of audiovisual works.

Actions to be implemented:

- Encourage the conclusion of agreements between groupings of European and third-country rights-holders/sales agents/distributors to ensure the distribution (e.g. in cinemas, on TV, IPTV, Web TV and on VOD platforms) of their respective audiovisual works on the territory/territories of their partner(s).
- Raise public awareness, through reinforced promotion campaigns, of the release of films from European countries worldwide, and the release of third-country films in Europe.
- Support dubbing and subtitling for the distribution and dissemination through all available channels of European and third-country audiovisual works for the benefit of producers, distributors and broadcasters.
- Encourage the creation and consolidation of networks of artistic and industrial cooperation between European and third-country rights-holders/sales agents/distributors.

3. Specific objective 3: Circulation

1. Operational objective

Encourage cinema operators in European and third countries to reciprocally increase the programming and exhibition conditions of exclusive first releases of audiovisual works.

Actions to be implemented:

- Support projects presented by European and third-country cinema owners in programming a significant share respectively of European and third-country films in commercial cinemas for exclusive first release for a minimum defined duration. The support granted will, in particular, be determined according to the duration of, exposure and number of screenings made by these cinemas for third-country films (or European films in the case of third-country cinema owners) over a reference period.
- Support the creation and the consolidation of European and third-country cinema owners' networks developing common actions for this type of programming.

2. Operational objective

Increase the supply of audiovisual content and improve broadcasting and distribution conditions for third countries' audiovisual works on European distribution channels and European works on third countries' distribution channels.

Actions to be implemented:

- Support partnerships between European and third-country broadcasters (or VOD platforms etc.) and rights-holders aiming at broadcasting a package of European and third countries' works or at distributing a catalogue of European works and third countries' works on VOD platforms.
- Build trust and long-term working relationships between European and third-country broadcasters, VOD platforms and rights-holders.

3. Operational objective

Facilitate the organisation of events and film literacy initiatives.

Actions to be implemented:

- Support networking of European and third-country film literacy initiatives, in particular those aimed at young audiences, to internationally promote the diversity of audiovisual works.
 - Support partnerships between European and third-country broadcasters for the broadcasting of audiovisual works dedicated to young audiences.
-

II

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

DECISIONS

COUNCIL

COUNCIL DECISION

of 9 October 2009

revoking the agreements between the European Coal and Steel Community and the Swiss Confederation

(2009/804/EC)

THE COUNCIL OF THE EUROPEAN UNION,

succeeded to the rights and obligations arising under the
aforementioned agreements.

Having regard to the Treaty establishing the European Community, and in particular Article 133, in conjunction with the first sentence of Article 300(3), thereof,

(3) Since the ECSC Treaty has expired, maintaining a special regime for coal and steel products is no longer justified.

Having regard to the proposal from the Commission,

(4) The revocation of the agreements between the ECSC and the Swiss Confederation forms part of the measures to improve Community legislation,

Whereas:

HAS DECIDED AS FOLLOWS:

(1) By virtue of Article 97 of the Treaty establishing the European Coal and Steel Community (ECSC), that Treaty expired on 23 July 2002.

Article 1

The following agreements between the European Coal and Steel Community and the Swiss Confederation shall be revoked by mutual agreement:

(2) Pursuant to Decision 2002/595/EC of the Representatives of the Governments of the Member States of the European Communities, meeting within the Council ⁽¹⁾, the rights and obligations arising under the international agreements concluded by the ECSC with third countries have been taken over by the European Community. By Council Decision 2002/596/EC ⁽²⁾, the Community

1. Consultation Agreement of 7 May 1956 between the Swiss Confederation and the High Authority of the European Coal and Steel Community ⁽³⁾;

2. Agreement of 22 July 1972 between the Member States of the European Coal and Steel Community and the Swiss Confederation ⁽⁴⁾;

⁽¹⁾ Decision 2002/595/EC of the Representatives of the Governments of the Member States, meeting within the Council, of 19 July 2002 on the consequences of the expiry of the European Coal and Steel Community (ECSC) Treaty on international agreements concluded by the ECSC (OJ L 194, 23.7.2002, p. 35).

⁽²⁾ Council Decision 2002/596/EC of 19 July 2002 on the consequences of the expiry of the Treaty establishing the European Coal and Steel Community (ECSC) on the international agreements concluded by the ECSC (OJ L 194, 23.7.2002, p. 36).

⁽³⁾ OJ 7, 21.2.1957, p. 85/57.

⁽⁴⁾ OJ L 350, 19.12.1973, p. 13.

3. Additional Agreement of 22 July 1972 concerning the validity, for the Principality of Liechtenstein, of the Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation ⁽¹⁾;

and all relevant supplementary and additional agreements and protocols.

Article 2

The Commission is hereby authorised to reply to the *Note verbale* of the Swiss Mission to the European Communities of 10 November 2004 by the *Note verbale* set out in the Annex to this Decision.

Done at Brussels, 9 October 2009.

For the Council
The President
Å. TORSTENSSON

⁽¹⁾ OJ L 350, 19.12.1973, p. 29.

ANNEX

NOTE VERBALE

The Commission of the European Communities presents its compliments to the Swiss Mission to the European Communities and has the honour to acknowledge receipt of its Note of 10 November 2004 on the revocation of several Agreements concluded between the Swiss Confederation and the European Coal and Steel Community, which was worded as follows:

The Swiss Mission to the European Communities presents its compliments to the Commission of the European Communities and, referring to the Consultation Agreement of 7 May 1956 between the Swiss Confederation and the High Authority of the European Coal and Steel Community, as well as the Agreement of 22 July 1972 between the Member States of the European Coal and Steel Community and the Swiss Confederation, and all relevant supplementary agreements, has the honour to inform the Commission of the following:

On 19 July 2002, the Council of the European Union decided that the European Community would take over the rights and obligations arising under the international agreements concluded by the European Coal and Steel Community (ECSC). Since the ECSC ceased to exist on 23 July 2002, the provisions of the Agreements binding it to the Swiss Confederation have lost all practical application. The Mission has the honour to propose to the Commission the revocation, by mutual consent, in accordance with Article 54(b) of the Vienna Convention on the Law of Treaties, of the following Agreements:

- Consultation Agreement of 7 May 1956 between the Swiss Confederation and the High Authority of the European Coal and Steel Community,
- Agreement of 22 July 1972 between the Member States of the European Coal and Steel Community and the Swiss Confederation,
- Additional Protocol of 17 July 1980 to the Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation following the accession of the Hellenic Republic to the Community,
- Additional Agreement of 22 July 1972 concerning the validity, for the Principality of Liechtenstein, of the Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation (with final act and declaration),
- Supplementary Protocol of 17 July 1980 to the Additional Agreement concerning the validity, for the Principality of Liechtenstein, of the Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation following the accession of the Hellenic Republic to the Community,
- Additional Protocol to the Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation following the implementation of the Harmonised Commodity Description and Coding System,
- Supplementary Protocol to the Additional Agreement concerning the validity, for the Principality of Liechtenstein, of the Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation following the implementation of the Harmonised Commodity Description and Coding System,
- Additional Protocol to the Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation following the accession of the Kingdom of Spain and the Portuguese Republic to the Community,
- Second Additional Protocol to the Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation following the accession of the Kingdom of Spain and the Portuguese Republic to the Community,
- Supplementary Protocol to the Additional Agreement concerning the validity, for the Principality of Liechtenstein, of the Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation following the accession of the Kingdom of Spain and the Portuguese Republic to the Community,

and all relevant supplementary and additional agreements.

If the Commission agrees with this proposal, the Mission proposes that this Note and the Commission's reply constitute an agreement revoking the aforementioned Agreements, which will take effect the day after notification of the Community's reply.

The Commission has the honour to notify the Mission that, pursuant to the Council Decision of 9 October 2009, it supports, on behalf of the European Community, the proposal to revoke the aforementioned Agreements.

The proposal of the Mission and this Note therefore constitute an agreement on the revocation of the aforementioned Agreements, which shall take effect the day after notification of this reply.

The Principality of Liechtenstein shall be informed of the revocation of these agreements.

The Commission avails itself of this opportunity to renew to the Mission the assurances of its highest consideration.

Brussels,

COUNCIL DECISION

of 19 October 2009

on the conclusion of the Agreement between the European Community and the Swiss Confederation amending Annex 11 to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products

(2009/805/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Articles 37, 133 and 152(4)(b), in conjunction with the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Commission has negotiated, on behalf of the Community, an Agreement between the European Community and the Swiss Confederation amending Annex 11 to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products.
- (2) The Agreement, together with the Final Act thereto, was signed, on behalf of the Community, on 23 December 2008 subject to its conclusion, in accordance with Council Decision 2008/979/EC ⁽¹⁾.
- (3) The Agreement should be approved,

Article 1

The Agreement between the European Community and the Swiss Confederation amending Annex 11 to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products ⁽²⁾, together with the Declaration attached to the Final Act thereto, is hereby approved on behalf of the Community.

Article 2

The President of the Council shall, on behalf of the Community, give the notification provided for in Article 2 of the Agreement ⁽³⁾.

Article 3

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

Done at Luxembourg, 19 October 2009.

For the Council

The President

E. ERLANDSSON

⁽¹⁾ OJ L 352, 31.12.2008, p. 23.

⁽²⁾ OJ L 352, 31.12.2008, p. 24.

⁽³⁾ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

COUNCIL DECISION**of 19 October 2009****on the signing of the Statute of the International Renewable Energy Agency (IRENA) by the European Community**

(2009/806/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) and the first subparagraph of Article 300(2),

Having regard to the proposal from the Commission,

Whereas

- (1) On 26 January 2009, the Statute of the International Renewable Energy Agency ⁽¹⁾ (the Statute) was signed at the Founding Conference in Bonn by 75 States, including 20 EU Member States.
- (2) According to the Statute, the objective of the International Renewable Energy Agency (IRENA) is 'to promote the widespread and increased adoption as well as the sustainable use of all forms of renewable energy, taking into account national and domestic priorities and benefits derived from a combined approach of renewable energy and energy efficiency measures, and the contribution of renewable energy to environmental preservation, through limiting pressure on natural resources and reducing deforestation, particularly tropical deforestation, desertification and biodiversity loss; to climate protection; to economic growth and social cohesion including poverty alleviation and sustainable development; to access to and security of energy supply; to regional development and to inter-generational responsibility'.
- (3) Both the European Community and its Member States have competences in the areas covered by the Statute. Certain provisions of the Statute might affect the arrangements laid down by Community acts adopted regarding the environment and energy.
- (4) In view of its entry into force only on the 13th day after the deposit of the 25th instrument of ratification, and in view of the Statute remaining open for signature until

that time, the Statute should be signed on behalf of the European Community in accordance with its Article XIX A. The Founding Conference of IRENA, on 26 January 2009, established a Preparatory Commission for IRENA ⁽²⁾. According to point 3 of the Resolution on Establishing a Preparatory Commission for IRENA, adopted by the Conference on the establishment of IRENA, the Preparatory Commission is composed of one representative of each of the signatories of the Statute. The Preparatory Commission is intended to ensure the rapid and effective establishment of IRENA, including by establishing an interim work programme and budget. It is considered beneficial to fully participate in IRENA activities from signature. Therefore, the Community should be represented and participate in the Preparatory Commission of IRENA from signature,

HAS DECIDED AS FOLLOWS:

Article 1

The President of the Council is hereby authorised to designate the person(s) empowered to sign on behalf of the European Community, the Statute of the International Renewable Energy Agency founded on 26 January 2009 in Bonn.

Article 2

By virtue of its signature, the Community will be represented in the Preparatory Commission of IRENA set up by the Conference on the establishment of IRENA.

Done at Luxembourg, 19 October 2009.

For the Council

The President

E. ERLANDSSON

⁽¹⁾ The Declaration of the Conference regarding authentic versions of the Statute forms an integral part of the Statute.

⁽²⁾ IRENA/FC/res.1: Resolution on Establishing a Preparatory Commission for IRENA, 26 January 2009, Bonn.

COUNCIL DECISION
of 21 October 2009
appointing one Spanish alternate member of the Committee of the Regions
(2009/807/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

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

Having regard to the proposal of the Spanish Government,

Whereas:

Article 1

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

— Mr Miguel LUCENA BARRANQUERO, Secretario General de Acción Exterior, Andalucía.

Article 2

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

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

Done at Luxembourg, 21 October 2009.

- (2) An alternate member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Enrique OJEDA VILA,

For the Council

The President

A. CARLGREN

⁽¹⁾ OJ L 56, 25.2.2006, p. 75.

COUNCIL DECISION
of 21 October 2009
appointing two Greek members of the Committee of the Regions
(2009/808/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Article 1

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

The following are hereby appointed to the Committee of the Regions as members for the remainder of the current term of office, which runs until 25 January 2010:

Having regard to the proposal of the Greek Government,

— Mr Konstantinos SIMITSIS, Mayor of the City of Kavala,

Whereas:

— Mr Theodoros GKOTSOPOULOS, Municipal Counsellor of the Municipality of Pallini, Attica.

Article 2

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

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

Done at Luxembourg, 21 October 2009.

(2) Two members' seats on the Committee of the Regions have become vacant following the death of Mr Christos PALEOLÓGOS and the end of the term of office of Mr Paris KOUKOULOPOULOS,

For the Council
The President
A. CARLGREN

⁽¹⁾ OJ L 56, 25.2.2006, p. 75.

COMMISSION

COMMISSION DECISION

of 8 July 2009

**on the groepsrentebox scheme which the Netherlands is planning to implement
(C 4/07 (ex N 465/06))**

(notified under document C(2009) 4511)

(Only the Dutch text is authentic)

(Text with EEA relevance)

(2009/809/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

the procedure laid down in Article 88(2) of the EC Treaty in respect of the part of the aid scheme related to lower taxation and deductibility of intra-group interest (measure A).

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,

- (3) In the same letter, the Commission also informed the Netherlands that it considered that the lower taxation on short-term deposits aimed at acquiring at least 5 % of a company (measure B) did not constitute State aid within the meaning of Article 87(1) of the EC Treaty.

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

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

Whereas:

- (5) The Dutch authorities provided their comments on the opening decision by letter dated 7 May 2007.

I. PROCEDURE

- (1) By letter dated 13 July 2006, the Dutch authorities notified the *groepsrentebox* 'group interest box' scheme, which provides for lower taxation and deductability of interest received or paid in the context of intra-group relations. The notification was made by the Dutch authorities only for the sake of legal certainty since they consider the scheme to be a general measure. Further information was provided by letters dated 5 September 2006 and 9 November 2006.

- (6) The Commission received comments from interested parties. It forwarded them to the Dutch authorities, who were given the opportunity to react; their comments were received by letter dated 29 June 2007.

- (2) By letter dated 7 February 2007, the Commission informed the Netherlands that it had decided to initiate

- (7) Additional information was received from the Dutch authorities by letters dated 8 November 2007 and 29 January 2008.

⁽¹⁾ OJ C 66, 22.3.2007, p. 30.

⁽²⁾ See footnote 1.

- (8) On 7 October 2008, the Dutch authorities provided a legal opinion from Ms Leigh Hancher, professor of European Law at the University of Tilburg, on the question whether the notified measure involved State aid.
- (9) By letter dated 18 December 2008, the Dutch authorities informed the Commission that they had decided to amend the tax scheme.

II. DETAILED DESCRIPTION OF THE MEASURE

II.1. Purpose

- (10) According to the Dutch authorities, the measure aims at reducing the difference in tax treatment between two instruments of intra-group financing, i.e. equity and debt.
- (11) In the current situation, when a company which is part of a group injects capital into another company which is part of the same group, it receives as remuneration dividends which are tax exempted by virtue of rules exempting shareholdings, whereas, when it lends money to a company which is part of the same group, the interest received is taxed at the standard corporate tax rate (25,5 %). At the level of the company which receives the funds, dividends paid on a capital injection are not deductible, whereas interest paid on a loan is deductible at the standard corporate tax rate.
- (12) The Netherlands points out that the choice of an organisational structure of legally independent organisations is usually prompted by company-law or economic reasons. The differences in civil law between equity and debt (liability, terms of repayment, security, voting rights, etc.) are largely irrelevant to group financing, whereas the tax consequences are significantly different. Within groups, financing conditions are chosen to achieve the lowest tax burden under the applicable tax system. As a result, the decision to provide loan capital or equity capital within groups is guided primarily by tax considerations.
- (13) In the legal opinion, Prof. Hancher underlines that the impact of the difference in the tax treatment of debt and equity at the corporate level, and the possible solutions to the adverse consequences this may have, are high on the policy agenda in many OECD countries. According to Prof. Hancher, calls for a fundamental reform of the Dutch corporation tax and for a neutral treatment of debt and equity financing within groups of companies have been repeatedly made in the Dutch tax literature.
- (14) The Dutch authorities emphasise that the differences in terms of tax treatment create forms of arbitrage between these two means of intra-group financing which are not economically desirable. Within a group the choice

between additional equity financing or (additional) debt financing is arbitrary, but the tax consequences of the two types of financing are different. This can lead to arbitrage which distorts the neutrality of the tax system. The measure therefore seeks to prevent arbitrage between debt and equity financing and to increase the neutrality of the Dutch tax system.

- (15) The introduction of the group interest box will help to ensure that the financing method used in a group context is determined primarily by economic considerations. It brings the tax treatment of intra-group interest much more closely into line with the tax treatment of intra-group dividends, and therefore makes for greater neutrality between intra-group debt and intra-group equity financing.
- (16) The arbitrage problem does not arise in the case of financing outside a group context. Here the different consequences arising in civil law are indeed important, so that this form of arbitrage does not occur. Given the inherent differences between the situations within groups and outside groups, tax neutrality for financing transactions outside groups is not a requirement. In the nature of things, therefore, the measure is limited to group loans.
- (17) The Dutch authorities also point out that in recent times Dutch enterprises have been deducting more and more inordinate amounts of interest. The different tax treatment of group loans and equity is more and more being exploited by enterprises at the expense of the Treasury.
- (18) The measure is designed to counter this erosion of tax revenues by encouraging companies to use equity instead of loans, and to limit the deduction of interest in the Netherlands. The scheme is thus complementary to the Dutch thin capitalisation rules that have a similar objective, in that it discourages excessive financing with loan capital and prevents artificial reduction of the tax base in the Netherlands.
- (19) In the Dutch authorities' opinion, the notified scheme constitutes a measure of a purely technical nature.

II.2. Legal basis

- (20) The legal basis of the measure is Article 12c of the 1969 Corporation Tax Act (*Wet op de vennootschapsbelasting 1969*). This provision was introduced with effect from 1 January 2007, but its entry into force has been postponed until the Commission has taken a position on compatibility with the State aid rules.

II.3. How the measure will work

- (21) In the Netherlands, corporation tax generally applies to company revenues at a rate of 25,5 % ⁽³⁾. The group interest box measure provides for different tax treatment for certain intra-group interest. Interest paid and received in the context of intra-group financing will not be subject to the standard corporate tax rate of 25,5 %. The positive balance between interest received and paid in the context of intra-group financing transactions will be taxed in a 'group interest box' at the rate of 5 %, instead of the 25,5 % standard corporate tax rate. If the balance of interest received and paid is negative it will be deductible, but at the reduced rate of 5 %, instead of the 25,5 % standard rate.
- (22) The amount that can be taxed or deducted at the reduced rate is limited to a percentage of the taxpayer's net assets for tax purposes (*fiscale vermogen*). This limitation aims to prevent undercapitalised undertakings from abusing the measure and ensures that the reduced rate applies only where the yield on group loans has been financed with equity capital.
- (23) The interest box measure has several other anti-misuse provisions. In particular, interest formally due to a third party (a bank), but actually paid to a group organisation, is deemed to be intra-group interest paid. This applies, for example, in the case of a back-to-back construction ⁽⁴⁾. Interest that is due to a third party (a bank) is also deemed to be intra-group interest with limited deductibility, if the resources obtained by means of the loan are injected into the capital of used in a subsidiary so as to generate low-tax intra-group interest in the subsidiary.
- (24) In their initial notification, the Dutch authorities indicated that the scheme would be optional for a period of minimum three years. If chosen by one company belonging to a group, the scheme would apply to all the other companies of the group located in the Netherlands. Eligible companies, as defined in the initial interest box scheme, are those that belong to the one group, as specifically defined in the scheme itself, which requires one company to hold more than 50 % in another company. In other words, a group must be composed of at least two companies, the parent company controlling more than 50 % of the shares of the subsidiary. Each company must be subject to

corporate tax in the Netherlands. This means that the scheme applies to any company established in the Netherlands or any company established outside the Netherlands with a permanent establishment in the Netherlands.

II.4. Amendments to the scheme

- (25) In the course of the proceedings, the Dutch authorities made it clear that they intended to make the scheme compulsory. This was confirmed by letter dated 18 December 2008. The group interest box would now apply to all entities subject to corporation tax in the Netherlands with respect to interest paid to group companies and interest received from group companies.
- (26) In that letter, the Dutch authorities also informed the Commission of two additional amendments to the scheme. The first amendment concerns a broader definition of a group for the purpose of the interest box scheme. The definition of related entities is amended to cover all arrangements whereby one entity has, directly or indirectly, effective control over the financing of the other entity, or whereby a third individual or entity has effective control over the financing of the two entities involved in the loan arrangement ⁽⁵⁾. The second amendment inserts a provision which would make it easier to step up a (second) company under Dutch civil law, so that the resulting group could benefit from the group interest box scheme. In particular, the current statutory minimum capital of EUR 18 000 for a limited liability company (*besloten vennootschap* — BV) would be abolished.

II.5. Budget

- (27) According to the initial notification, the annual budget of the notified measure was to amount to EUR 475 million. At a later stage, the Dutch authorities indicated that the compulsory interest box would be neutral from a budgetary point of view.

III. GROUNDS FOR INITIATING THE PROCEDURE

- (28) In its opening decision of 7 February 2007, the Commission expressed its doubts regarding the general nature of the measure. It stressed that only companies that were part of a group would take advantage of the lower taxation provided for by the scheme (*de jure* selectivity), and suspected that the scheme would benefit multinational groups, giving those groups a selective economic advantage (*de facto* selectivity).

⁽³⁾ A rate of 20 % applies to taxable income up to EUR 40 000 and 23,5 % to taxable income between EUR 40 000 and EUR 200 000.

⁽⁴⁾ There is a back-to-back construction if, from a legal point of view, a loan is issued by a bank, but the actual risk in respect of the debtors and the exchange rate is borne by a group company, for example via a guarantee issued to the bank in question.

⁽⁵⁾ Effective control is in any case present if one entity holds the majority of voting rights in another entity or if a third individual or entity holds the majority of voting rights in both entities involved in the loan arrangement.

- (29) The Commission indicated that in a purely national context, the measure would be likely to be neutral from a tax point of view. In the context of cross-border transactions, however, a Dutch company lending money to an affiliate established abroad would be subject to lower taxation at the rate of 5 %, while the affiliate abroad would not be subject to the Dutch rules limiting the deductibility of interest paid. The scheme would provide a *de facto* selective advantage, as only multinational groups of companies engaging in cross-border intra-group interest transactions in tax jurisdictions with a corporation tax rate superior to 5 % would have an incentive to use the scheme.
- (30) In so far as the measure was meant to constitute an exception to the application of the tax system, the Commission also doubted whether it was justified by the nature or general scheme of the tax system.
- (31) The Commission also considered that it could not be ruled out that the main beneficiaries of the scheme might be the former beneficiaries of the international financing activities scheme, which had been held to constitute incompatible State aid ⁽⁶⁾.
- (32) The Commission therefore took the view that the interest box scheme could be regarded as constituting aid in the sense of Article 87(1) of the EC Treaty, and that none of the exemptions laid down in Article 87(2) and (3) applied.
- received and the possible aid component in a reduced rate for intra-group interest paid must be assessed separately.
- (36) Thirdly, the Commission is wrong when it looks at the net effect on the payer and recipient together, and concludes that the net effect is probably neutral for national groups when both the payer and the recipient are established in the Netherlands, while a net advantage arises for multinational groups when the payer is a foreign group company and the recipient is a domestic one. According to the Dutch authorities an equation of this nature has no foundation in Dutch tax law. Dutch companies belonging to a group are consolidated for tax purposes only in the case of share ownership of 95 % or more.
- (37) Furthermore, the Dutch authorities are of the opinion that the group interest box cannot be regarded as a deviation from the standard method of taxation. It is an adjustment in which an analytical element is added to the tax system. This results in a new standard taxation method and, consequently, no advantage is conferred.
- (38) The Dutch authorities deny that there is any advantage for another reason too. The net variation caused by the group interest box to multinational groups by comparison with national groups can be to the advantage of the multinationals, but also to their disadvantage. A multinational with a Dutch affiliate may incur an advantage or a disadvantage depending on its objective position as debtor or creditor and the tax rates applicable in other Member States and in the Netherlands.

IV. COMMENTS FROM THE NETHERLANDS

- (33) The comments from the Netherlands on the opening decision were received on 7 May 2007 and were supplemented by additional notes in 2007 and 2008, including a legal opinion delivered by Prof. Hancher.
- (34) The Dutch authorities submit that the approach taken by the Commission in its decision is incorrect on three points. Firstly, the Commission merges the separate 'advantage' and 'selectivity' criteria into one criterion, i.e. 'selective advantage'. This is not consistent with normal Commission practice or with the case-law, which prescribe that the two must be applied separately.
- (35) Secondly, the Commission fails to assess the components of the group interest box separately. The possible aid component in a reduced rate for intra-group interest
- (39) Alternatively, if there is indeed an advantage, the Netherlands is of the opinion that the possible net advantage to multinational groups is the result not of a lower Dutch rate for intra-group interest received, but of unlimited deduction for intra-group interest paid abroad. This advantage is not imputable to the Dutch State and is not financed with Dutch State resources.
- (40) A possibly more advantageous net effect for multinational groups in comparison with national groups is not the consequence of the selective scope of the Dutch group interest box, but of a disparity resulting from different rules on the deductibility of group interest within the EU. The Netherlands is free to increase or decrease this difference by amending its tax system, as long as the amendments are generally applicable to all Dutch taxpayers who in the light of the objective pursued by the amendment in question are in a comparable legal and factual situation.

⁽⁶⁾ Commission Decision 2003/515/EC (OJ L 180, 18.7.2003, p. 52).

- (41) According to the Dutch authorities, the overall effect of tax amendments on multinational groups engaging in cross-border transactions will always be different from the effect on domestic groups conducting only domestic transactions. For purposes of State aid, this is of relevance only if the differences are caused by the measure of the Member State itself, e.g. where there is a lower tax rate only for foreign group interest income. It is not relevant in the case of a general measure applicable to all group interest income, domestic and foreign, which leads to cross-border differences.
- (42) The mere co-existence of non-harmonised tax systems can result in a situation where the net tax implications of cross-border transactions differ from the net effect of purely domestic transactions. This effect can be both disadvantageous (economic double taxation) and advantageous (economic non-taxation).
- (43) In the EC Treaty, Articles 94 and 95 offer a basis for directives or regulations aligning the existing arrangements if that is necessary for the establishment or the proper operation of the common market. Furthermore, Article 96 offers the Commission the opportunity to take action if a difference between the legislation in force in different Member States seriously distorts competition conditions in the common market.
- (44) In the further second alternative, the Dutch authorities are of the opinion that there is no selectivity. By assessing selectivity via a comparison of the foreign debtor and domestic creditor combination with the domestic debtor and domestic creditor combination, the Commission is choosing an incorrect reference framework. When assessing the selectivity of Dutch tax arrangements, the reference framework cannot extend beyond all Dutch taxpayers. In settled Commission practice, the reference framework cannot include companies that are not subject to tax in the Netherlands.
- (45) The Dutch authorities stress that the tax scheme is not restricted to certain undertakings, or certain activities or functions, or particular regions. In the scheme there is no distinction between resident and non-resident groups of companies. For qualification for the interest box, no eligibility thresholds linked to particular activities or functions apply.
- (46) In addition, in the light of the objective of the group interest box, only undertakings that form part of a group are in a comparable legal and factual situation. Only these undertakings would have the arbitrage problem described in section II.1.
- (47) The Netherlands points out that, within groups, financing decisions are designed to minimise the tax burden under the applicable tax system. The commercial distinction between equity and debt financing (terms of repayment, liability, security), as opposed to the tax distinction is largely irrelevant. Outside groups, the commercial differences between equity and debt financing are very relevant indeed, and may well overrule tax-driven motives.
- (48) The Dutch authorities insist that measures limited to groups are tax measures of a purely technical nature not constituting State aid: in a decision on a French taxation provision, they say, the Commission accepted that a measure which set aside the general rule that interest payments were deductible expenditure in inter-company loans was a general measure, but considered a further exception to that rule in favour of central corporate treasuries set up in France by multinational companies to be a selective advantage ⁽⁷⁾.
- (49) The Dutch authorities contend that broadening the scope for the group interest box would actually lead to selectivity. If interest received from third parties were also to be taxed at a reduced rate, this would result in an advantage to financial institutions.
- (50) It is also submitted that the assumption that specific tax rules for interest by themselves involve selectivity is incorrect. Financing within a group of organisations cannot be characterised as an economic activity, but simply an economic reality. Interest flows as such are not a separate economic activity or a line of business; they serve only to fund an economic activity or a line of business. Debt financing is a distinct activity in itself only in the case of financial institutions whose business consists of financing third parties. In addition, with respect to interest earned on short-term deposits aimed at acquiring at least 5 % of the shares of a company (measure B), the Commission itself considered in the opening decision that a lower tax rate for such interest did not by itself cause selectivity, since it was considered to be a general measure.
- (51) Furthermore, the Dutch authorities argue that there is no conceptual difference between dividends and interest. Both constitute compensation for using or granting funds, either equity or debt. In both situations, these funds are used by the recipient to finance business activities. Every tax system contains rules under which dividends and interest paid are deductible, or partly deductible, or not deductible, and rules under which dividends and interest are taxable, partly taxable or exempt. There is no international tax standard which determines how these components should be treated for tax purposes.

⁽⁷⁾ Commission Decision 2003/883/EC (OJ L 330, 18.12.2003, p. 23).

- (52) In the further alternative, limited taxation prevents an internal disparity within the Dutch system and, as such, is justified by the nature and purpose of the system. Limited taxation of interest received within a group is justified by the limited deduction of interest payments within the group. This allows undertakings organised as a group to avoid suffering the disadvantage of limited deduction and full taxation, while undertakings organised as a single entity have no internal interest payments, and therefore do not suffer any such disadvantage.
- (53) A fundamental principle of Dutch tax law is that income and expenses are treated symmetrically. Under the internal logic of the Dutch tax system, income and expenses are two sides of the same coin. To avoid double taxation, limited taxation is the logical consequence of limited deduction.
- (54) The proposed measure aims at ensuring the application of the neutrality principle in the Dutch tax system by eliminating arbitrage between debt and equity financing within groups. The measure reduces the difference between two types of intra-group financing, thereby enhancing the neutrality of the tax system. The limitation to group interest is therefore based on an economic rationale and is necessary and functional for the effectiveness of the tax system.
- (55) The Dutch authorities point out that the circle of undertakings that will utilise the group interest box will be much broader than the 87 undertakings that utilised the former international financing activities scheme. They further argue that the limiting conditions of that scheme, such as the two-continents or four-country requirement, are all absent from the group interest box. The interest box is a purely tax measure, which regulates tax pressure on capital as a factor of production. In addition, it applies to any incoming or outgoing group loan, and is completely separate from the business carried on the company in question. For all these reasons, the scope of the measure is completely impossible to compare with the scope of the international financing authorities scheme.
- (56) The compulsory nature of the measure for all taxpayers paying or receiving interest from affiliate companies underlines the objective of the interest box: enhancing the neutrality of the tax system, thereby reducing arbitrage and increasing Dutch corporation tax revenues. It also eliminates the element that might cause a selective benefit as a result of the interest box.
- (57) A compulsory interest box not only rewards the retention of capital in the Netherlands but at the same time provides a disincentive — similar to thin capitalisation rules — to the inflow of debt financing into the Netherlands. The Dutch thin capitalisation rules discourage an excess of loan capital financing within groups by limiting the deductibility of intra-group interest, while the group interest box offers a reduced rate for intra-group interest received, provided that it is financed by equity capital. The group interest box strengthens the Dutch tax base by encouraging a higher ratio of equity capital to loan capital, and contributes to preventing the outflow of equity capital, and thus of the tax base, from the Netherlands.
- (58) The interest box is a purely technical measure that changes the system's treatment of intra-group interest by increasing the tax burden on certain taxpayers and reducing the tax burden on other taxpayers, on the basis of horizontal and objective facts and circumstances. Once the possibility of opting out is removed, the interest box does not confer any economic advantage, as it merely shifts the tax burden between taxpayers on purely horizontal and objective criteria.
- (59) The Dutch authorities underline that *de facto* selectivity can arise only if there is a risk that, although the measure is general in nature, the effect in practice would be that it would always benefit an identifiable group. This type of selectivity might arise if the measure was optional, but not if the measure is made compulsory. Taxpayers that suffer a disadvantage in one year may enjoy an advantage in the next, and vice versa. The scheme therefore does not benefit a homogeneous category of taxpayers.
- (60) The Dutch authorities are also of the opinion that the new definition of group based on effective control is better aligned with the purpose of the scheme. If one company has effective control over the financing of another company, the latter company is no longer free to choose between financing via internal or external debt, nor is it free to choose between financing via debt or equity. The central management of the group decides how externally attracted funds — either external debt or external equity — are to be allocated within the group, either by internal debt or by internal equity. The fact that the tax consequences of the two instruments of intra-group financing are different provides an incentive to choose a particular instrument solely because of its tax implications.
- (61) Finally, the change in the law on limited liability companies will make it easy in future for a taxpayer to reorganise its legal structure in the form of a group, as the administrative burden and the capital requirements will be abolished or drastically alleviated.

V. COMMENTS FROM INTERESTED PARTIES

- (62) Comments were received from the Dutch confederation of industry VNO-NCW ⁽⁸⁾, from Belgium and Hungary. Comments from another party were received after the deadline and therefore could not be taken into account in the proceedings. The comments received from the third party in question would not in any event have affected the assessment and conclusions in this Decision.

V.1. Comments from the Dutch Confederation of Industry

- (63) The VNO-NCW considers that the scheme at issue cannot be an incompatible State aid in the meaning of Article 87(1) of the EC Treaty for the following reasons.
- (64) Firstly, the VNO-NCW considers the group interest box to be a general, tax-neutral and technical measure, because the objective of the scheme is to reduce tax arbitrage between equity financing and debt financing within a group of companies. Given the neutrality of the measure, the scheme does not result in favourable treatment of certain companies or production of certain goods within the meaning of Article 87(1) of the EC Treaty.
- (65) Secondly, the tax advantage to a multinational group of companies results from the disparities between Member States' tax treatment of intra-group interest, and cannot be ascribed to the Netherlands. A tax advantage is created because the interest can be deducted in another Member State at a tax rate higher than the one applicable to the interest box, whereas in a domestic situation the rate that applies is the group interest box rate, but this is a direct result of the disparities between the Member States' legal rules on the tax treatment of group interest. Should the Commission wish to abolish distortions that might result from the group interest box, the VNO-NCW suggests it use Article 94 or 96 of the EC Treaty.
- (66) Thirdly, the VNO-NCW considers that, in the light of the objective of the scheme at issue, which is to reduce tax arbitrage between equity and debt, companies belonging to a group are not in the same *de jure* and *de facto* situation as are companies not belonging to groups. The difference in tax treatment of equity and debt causes distortions particularly inside groups, since the parent company exercises some control over its subsidiaries, so that it can to a considerable extent determine their financing options, a choice often largely decided by tax considerations. In dealings with third parties the funding option is often determined largely

by factors other than tax considerations. As a consequence, it cannot be said that the scheme at issue is selective within the meaning of Article 87(1) of the EC Treaty. In addition, according to the VNO-NCW, if the mere fact that a tax facility is to a greater or lesser extent confined to group companies prompts the conclusion that this is a State aid measure, Member States' corporation tax systems will be at odds with Article 87(1) of the EC Treaty in many respects.

V.2. Comments from the Hungarian authorities

- (67) The Hungarian authorities consider that the scheme is not an aid measure, and put forward two arguments. Firstly, the fact that a scheme is confined to groups does not make it selective. In (international) taxation matters, rules for groups of companies are common practice and unavoidable. Many rules whose scope is limited to groups have been brought forward by the OECD (transfer pricing) and the Commission (e.g. the Interest and Royalty Directive). Secondly, Hungary recalls that direct taxation is a matter for Member States. Setting tax rates in relation to certain taxable events is within their domestic competence. Finally, Hungary finds it difficult to see how the Netherlands can be held responsible for the higher deduction generated by higher tax rates in other countries, in a situation where direct taxation has not been harmonised. The advantage described by the Commission is clearly a result of a disparity between tax systems.

V.3. Comments from the Belgian authorities

- (68) The Belgian authorities also support the view that the scheme is not State aid, and put forward arguments similar to those from other interested parties with regard to the absence of selectivity. Belgium underlines that it is logical that an undertaking that is not part of a group cannot by definition have intra-group financing activities. The Belgian authorities also argue that State aid rules are not applicable in situations where disparities between national tax systems exist due to the absence of harmonisation at EU level. As a consequence, the group interest scheme is a general measure not covered by the State aid rules, and in pursuing the case the Commission is using its powers improperly.

VI. REACTION FROM THE NETHERLANDS TO THIRD PARTIES' COMMENTS

- (69) The Dutch authorities note that the comments of all three parties support its point of view. Both Hungary and Belgium emphasise that in attempting to tackle disturbances that are the consequence of disparities between tax systems that have not been harmonised the Commission is abusing its State aid powers. This reinforces the Dutch view that the group interest box does not constitute an aid measure prohibited by Article 87 of the EC Treaty.

⁽⁸⁾ Verbond van Nederlandse Ondernemingen — Nederlands Christelijk Werkgeversverbond.

- (70) The Netherlands underlines that it fully agrees with the analysis drawn up by VNO-NCW. It attaches particular importance to the detailed argument concerning the institutional framework, which clearly explains the various disturbances in the single market that can be caused by national measures taken by Member States and the instruments available under the EC Treaty to eliminate such disturbances where necessary.
- (71) Finally, the Dutch authorities support the confederation's view that in order to establish whether there is selectivity, it must be ascertained whether certain undertakings or the production of certain goods are favoured over others that are *de jure* and *de facto* comparable in the light of the objective of the measure concerned. The restriction to group loans does not lead to selectivity, because the objective of the group interest box is to prevent arbitrage between financing from capital and financing from loans within groups. In financing between companies that are not connected in a group arbitrage plays no role whatsoever. The restriction to group loans is thus logical in the light of the scheme's objective, so that the relevant frame of reference consists of all companies that are part of a group.
- (75) According to the applicable case-law, in order to determine whether a measure is selective, it is appropriate to examine whether, within the context of a particular legal system, that measure constitutes an advantage for certain undertakings in comparison with others which are in a comparable legal and factual situation⁽⁹⁾. It may thus be that a taxation regime does not constitute State aid even though it does not correspond in all respects to the general system of corporate taxation of the Member State. The Court has also held on numerous occasions that Article 87(1) of the EC Treaty does not make a distinction according to the causes or aims of State aid measures, but defines them according to their effects⁽¹⁰⁾. In particular, tax measures which do not represent an adaptation of the general system to meet particular characteristics of certain undertakings, but have been put forward as a means of improving their competitiveness, are caught by Article 87(1) of the EC Treaty⁽¹¹⁾.
- (76) The concept of State aid does not apply, however, to state support measures which differentiate between undertakings where that differentiation arises from the nature or the overall structure of the system of which they form part. As explained in the Commission's notice on the application of the State aid rules to measures relating to direct business taxation⁽¹²⁾ (the taxation notice), 'some conditions may be justified by objective differences between taxpayers'.

VII. ASSESSMENT OF THE SCHEME

- (72) In order to ascertain whether the measure at hand constitutes aid within the meaning of Article 87(1) of the EC Treaty, the Commission has to assess whether it favours certain undertakings or the production of certain goods by granting an advantage of an economic nature, whether any such advantage distorts or threatens to distort competition, whether the advantage is granted through state resources, and whether the advantage affects trade between Member States.
- (73) To be considered State aid, a measure must be specific or selective, in that it favours only certain undertakings or the production of certain goods.
- (74) The Dutch authorities argue that the measure at issue is not limited to certain sectors, certain types of companies, or certain parts of Dutch territory. There are no further restrictions regarding the turnover, the size, the number of employees, membership of a multinational group, or the nature of the operations that the beneficiaries are authorised to perform.
- (77) Firstly, it should be clarified at which level (group level or undertaking level) the assessment is to be made. In the opening decision, the Commission indicated its preliminary view that this assessment should be made at group level, arguing that where the companies of a purely domestic group had opted for the group interest box, the advantage of a reduced taxation of the interest received by a Dutch financing company would be cancelled out by the lower deductibility of the interest paid by the Dutch-financed company⁽¹³⁾.

⁽⁹⁾ See, inter alia, Case C-487/06 P *British Aggregates v Commission*, 2008, not yet reported, paragraph 82; Case C-409/00 *Spain v Commission* [2003] ECR I-1487, paragraph 47; Case C-88/03 *Portugal v Commission* [2006] ECR I-7115, paragraph 54; and Joined Cases C-428/06 to C-434/06 *UGT-Rioja and Others*, 2008, not yet reported, paragraph 46.

⁽¹⁰⁾ See, for instance, Case C-56/93 *Belgium v Commission* [1996] ECR I-723, paragraph 79; Case C-241/94 *France v Commission* [1996] ECR I-4551, paragraph 20; Case C-75/97 *Belgium v Commission* [1999] ECR I-3671, paragraph 25; and Case C-409/00 *Spain v Commission* [2003] ECR I-10901, paragraph 46.

⁽¹¹⁾ See, for instance, Case C-66/02 *Italy v Commission* [2005] ECR I-10901, paragraph 101.

⁽¹²⁾ OJ C 384, 10.12.1998, p. 3, paragraph 24.

⁽¹³⁾ Paragraph 22 of the opening decision.

(78) The Dutch authorities consider that, because the measure is symmetric and would merely shift the tax burden between taxpayers, some companies will enjoy an advantage while others will suffer a disadvantage, depending on their objective position as debtor or creditor. Thus the group interest box does not involve aid.

(79) As the Dutch authorities pointed out in their letter of 18 December 2008, where one company has effective control over the financing of another, the latter company is no longer free to make decisions about its financing, or to choose between financing by means of debt or equity. The group's central management decides how externally attracted funds are to be allocated within the group, either by internal debt or by internal equity.

(80) The Commission notes, however, that the measure relates to a specific operation (the financing of related companies), and not to a consolidation at group level. Any reduced tax rate will be applied individually to companies on the basis of the balance of their interest boxes. Even if financing decisions can be expected to be taken in the best interest of the group as a whole, an analysis at the level of the group has no foundation in Dutch tax law, as the Dutch authorities have pointed out. Under Dutch law, tax consolidation occurs only in the case of a share ownership of 95 % or more. In other words, Dutch corporation tax is levied on individual entities, not on groups. To that extent, the name given to the 'group interest box' does not properly reflect the fact that it applies to individual entities, engaged in specific financing operations. The measure does not concern a cost/revenue balance consolidated at group level.

(81) Therefore, the Commission is of the opinion that the assessment of the scheme should be made at the level of individual companies. The scheme, as amended by the Dutch authorities, can be described as a reduced rate on a specific type of revenue (or cost) in the form of interest on a loan, when the transaction takes place between related companies ⁽¹⁴⁾.

(82) Furthermore, the Commission considers that the symmetry of the measure and its neutral impact at the level of the group is not sufficient to exclude the possibility of an advantage to individual companies. Similarly, taxing the interest of one entity in the group at a lower

rate cannot be justified by taxing another company — through reduced deductibility of interest — at a higher rate ⁽¹⁵⁾.

Analysis of the selective nature of the measure

(83) The Commission considers that, for the taxation of specific types of revenue, it may be important to determine whether a scheme covers broad categories of transactions in a non-discriminatory manner. Any discrimination that cannot be justified by objective differences between taxpayers may lead to a distortion of competition.

(84) In this regard, it is worth noting that it is a typical feature of many tax systems that there are analytical elements to complement the synthetic nature of the tax system. This is particularly the case where specific types of revenue such as interest or dividends are subject to differentiated tax treatment.

(85) This being said, it must be determined whether loan transactions between related companies may be objectively entitled to a reduced taxation rate. The Dutch authorities and the VNO-NCW have argued that it is only groups that there can be arbitrage between financing through capital injection and lending. In contrast to companies that are not part of a group (stand-alone companies), group companies are confronted with arbitrage between equity capital and loan capital within their group. Such an arbitrage is for the most part influenced by tax considerations rather than economic considerations.

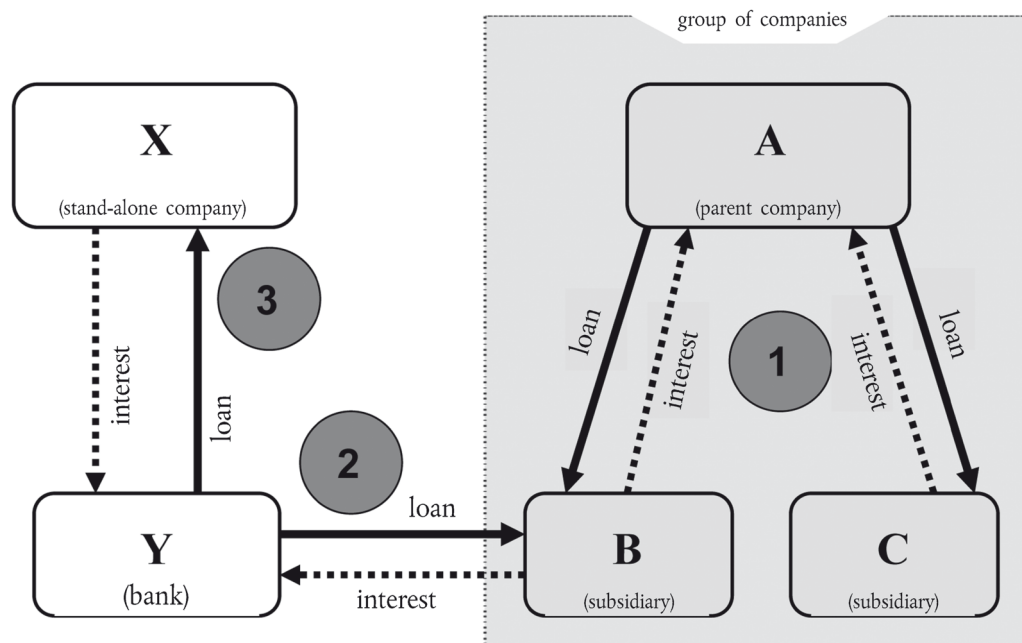
(86) The Commission is of the opinion that the measure at issue will have the effect of reducing this arbitrage (in a domestic situation), as the difference between the taxation of intra-group interests and the taxation of intra-group dividends will be reduced, thus reinforcing the technical neutrality of the tax system.

⁽¹⁴⁾ The expressions 'related companies' and 'group' are used throughout this Decision to refer, for convenience, to companies related through joint control, whether directly or indirectly — see recital 98.

⁽¹⁵⁾ In this regard, it must be observed that, in its assessment of the tax regime for coordination centres established in Belgium (see joined Cases C-182/03 and C-217/03 *Belgium v Commission* [2006] ECR I-5479, paragraphs 86 to 118), the Court of Justice considered that the flat-rate assessment of income under the cost-plus method constituted an economic advantage for the purposes of Article 87 of the EC Treaty and that 'that analysis cannot be called into question either by the fact that the inclusion of the financial charges could, in some cases, lead to a tax base that was unduly high or by the scale of the tax burden that might be imposed on the group, nor can it be called into question by the fact that a centre may be taxed when it has not made any profits'. The Court also considered that exempting the coordination centres from property tax gave them an economic advantage. 'The fact that only 5 % of the coordination centres benefit from it in practice, as all the others hold their buildings under lease, does not affect that assessment, since the choice between owning a building and leasing it is a matter entirely at the discretion of the centres.'

- (87) To illustrate this point, it is necessary to distinguish between three different types of situation (see figure 1 below) involving related companies and stand-alone companies (including financial institutions in their relations with independent third parties). Suppose that A-B-C is a corporate group, where A controls the financing of B and C; X is an entity that is not part of a group ('stand-alone' company), and Y is a credit institution, providing loans to independent parties.

Figure 1



- (88) The first situation is that of financial transactions between related companies. The parent company A provides liquidity to its subsidiaries B and C through either a loan or equity. These financial transactions will result in the payment (by B and C) of either interest or dividends.
- (89) The choice between loan and equity financing is made at the level of the parent company A in the best interest of the group of related companies as a whole. As a consequence, when the parent company A finances one of its subsidiaries (or affiliates), there will indeed be an arbitrage between loan and equity on the basis of several criteria. While a need for liquidity in the long term or an investment will generally require a capital injection, short-term financial requirements will require only the provision of a (short-term) loan. However, tax considerations may influence these economic considerations.
- (90) By reducing the difference in the tax treatment of intra-group loan revenues (interest) and intra-group capital revenues (dividend), the measure will have the effect of narrowing the tax arbitrage between the two types of transaction in a domestic situation. The second type of transaction is that of a loan transaction between a financial institution (bank Y) and one of the companies belonging to a group (company B). Such a situation arises in principle when financial requirements cannot be satisfied by the provision of liquidity within the group. In such a situation, there is no arbitrage for Y, as a capital injection into B is not an alternative for Y, which is simply carrying on its business of granting credit to third parties. Nor is there any arbitrage between loan and equity at the level of B (or at group level).
- (91) Financial institutions (that grant loans to independent parties) may be distinguished from group companies (providing liquidity to their affiliates) for another reason also. In the case of financial institutions, revenues from such loan transactions are generated by the institutions' regular business and may constitute a major part of their revenues. In the case of group companies, such revenues are recycled from transactions with independent market players and transformed into intra-group revenues, without generating any revenues at the level of the group. The interest paid by company B to the bank will constitute additional costs not only for company B but also for the group as a whole, while, in the first situation, the interest paid by company B (or C) to its parent will not constitute additional costs or revenues for the group.

- (92) In this respect, it is worth noting that financial institutions did not complain nor present any observations following the publication of the opening decision in the *Official Journal of the European Union* about the scope of the interest box scheme.
- (93) If we consider the situation from the debtor's point of view (B vis-à-vis Y), the company may be more readily compared to a stand-alone company such as company X when it concludes a loan with bank Y.
- (94) The third situation is that of a loan transaction between a financial institution (bank Y) and a stand-alone company (X). As in the previous situation, Y is not confronted with any arbitrage, as a capital injection into B is not an alternative for Y.
- (95) Although, in some circumstances, the financial requirements of company X might be satisfied through the provision of a loan or capital injection from individual shareholders, this situation is not comparable with the first one, as the potential liquidity providers (natural persons) are not subject to corporate taxation. In addition, incorporating such transactions with private investors into the scope of the measure (by reducing the deductibility of interest paid by company X to its shareholders and by simultaneously reducing the taxation of such interest at the level of the individual shareholder) would be extremely difficult, as individual taxation does not follow the same logic as corporate taxation ⁽¹⁶⁾.
- (96) If, from a debtor's perspective, company X's financial requirements can be satisfied only by having recourse to borrowing from a financial institution, the resulting transaction with Y will be similar to the loan transaction between company B and Y.
- (97) Since stand-alone companies that are not credit or financial institutions are in principle not engaged in the regular business of granting loans to independent parties, they are not discriminated against with regard to loan transactions, as compared with related companies granting loans to affiliated companies.
- (98) Finally, the Netherlands have changed the definition of 'group' for the purpose of the interest box measure. The Dutch authorities argue that this change is the result of a refining of its approach to avoid tax arbitrage.
- (99) In the new proposal, entities will be related, entitling them to enter interest in the interest box, where one entity directly or indirectly has effective control over the financing of the other entity. The Commission considers this change important, since if one company has effective control over the financing of the other company, the latter is no longer free to choose between financing via internal or external debt, nor is it free to choose between financing via debt or equity. The arbitrage is carried out by the central management in the best interest of the group as a whole.
- (100) The relationship between A and B has to do with the allocation of funds within the group of related companies, whereas the relationship between Y and B (or X and Y) has to do primarily with commercial financing.
- (101) The Commission is therefore of the opinion that the notion of 'direct or indirect effective control' over the financing of the other entity (or effective control by a third entity) of the two entities involved in the loan transaction is relevant determination of the aid character of the measure, having regard to the aim of reducing incentives for arbitrage between financing through a capital injection and a loan, and ensuring tax neutrality in this regard.
- (102) Turning to the question whether any advantage is conferred by the measure in question, it is clear that a distinction has to be made between different situations at the level of the individual companies. First of all, any taxpayer in the Netherlands involved in a debt financing transaction with unrelated companies is treated in exactly the same manner, and taxed at the same rate (25 %). This includes companies that are part of a group. Secondly, when a company obtains a loan from a related company, it actually suffers less advantageous tax treatment than a company engaged in a loan relationship with a non-related company (deduction at only 5 %). Thirdly — and this is the only situation where there may be any tax advantage — a company providing a loan to a related company will be taxed on the ensuing interest payments at a rate lower than the rate charged on a transaction with a non-related company.

⁽¹⁶⁾ For example, the payment of dividends, while not being deductible at the level of the paying company, is subject to taxation at the level of individual shareholders.

- (103) In terms of the measure's consequences, however, the advantage conferred on a company providing a loan to a related company cannot be considered discriminatory, since a loan to a related company cannot be compared with a loan to an unrelated company. With respect to debt financing activities, related companies are not in a legal and factual situation comparable to that of unrelated companies. The reason is that related companies, unlike unrelated companies, are not engaged in a merely commercial transaction when they try to obtain loan or equity financing within the group. The parent and the subsidiary share the same interests, which is not the case in a commercial transaction with a third-party provider of finance, where each party tries to maximise its profits at the expense of the other. There is no competitive pressure from company Y on company A when providing a loan to company B, for the simple reason that company A controls any decision of company B as regards financing.
- (104) The requirement that control be exercised over another company is thus criterion that applies across the board to all companies regardless of size, sector or any other distinction. A different rate of taxation for debt financing between related companies merely reflects objective differences and does not affect tax neutrality.
- (105) While, in the design of tax rules, Member States are bound by the rules on free movement of goods, services and capital and freedom of establishment, by the prohibition of discrimination on grounds of nationality, and by State aid rules, the Commission has to acknowledge that Community law leaves the Member States considerable scope for manoeuvre in the field of taxation. As underlined at paragraph 13 of the taxation notice, State aid rules do not restrict the power of Member States to decide on the economic policy which they consider most appropriate and, in particular, to spread the tax burden as they see fit across the different factors of production.
- (106) In this context, the restriction of the existing arbitrage between intra-group debt and equity financing (as well as the prevention of any abuse of the deduction of intra-group interest) may well be a legitimate concern for Member States. In particular, the Commission observes that arbitrage between equity and debt may lead to situations where a company is forced by its parent to take an intra-group loan instead of equity, and thereby to have its leverage increased, in order to minimise its corporation tax. However, from an economic point of view, high debt leveraging or the obligation to pay interest, rather than benefiting from longer-term financing in the form of capital, may not always be desirable. In addition, the Netherlands seems to have lost tax revenues as a result of debt/equity arbitrage.
- (107) The measure is open to any company subject to corporation tax and receiving or paying interest in the context of intra-group relations, and does not include any discriminatory element such as a limitation regarding the country in which the transaction is to take place.
- (108) The fact that the scheme introduced is to be compulsory ensures that it will apply to all group companies (with intra-group loan transactions) without any possibility of opting out and without any differentiated treatment between group companies. In addition, the new definition of group companies for the purpose of the measure, based on control rather than a minimum stake), reduces potential elements of *de jure* selectivity by broadening the scope of the measure.
- (109) In this respect, the Commission notes that following the publication of the opening decision it did not receive any complaints or observations from representatives of Dutch employers complaining that small and medium-sized enterprises would not be able to take advantage of the measure.
- Cross-border versus national context*
- (110) In its opening decision, the Commission made a distinction between a purely national situation where all the companies belonging to a group were established in the Netherlands, and a cross-border situation where a Dutch company lent money to an affiliate established abroad. In a purely national context, the Commission said the measure would be likely to be neutral from a tax point of view. But, in cross-border transactions, the Dutch company would be subject to lower taxation at the rate of 5 %, while the affiliate company established abroad would not be subject to Dutch rules limiting the deductibility of interest paid. The Commission concluded that the scheme could provide a *de facto* selective advantage, as only multinational group of companies engaging in cross-border intra-group interest transactions in tax jurisdictions with a corporate tax superior to 5 % would have an incentive to use the scheme.
- (111) The Commission considers that its final assessment should not make any distinction between purely national situations and cross-border situations.
- (112) Firstly, the specific provisions of the scheme remain the same in both national and cross-border situations. The scheme does not contain any provision that differentiates between domestic and foreign revenues or costs.

(113) Secondly, as rightly pointed out by the Dutch authorities and the interested parties, any advantage obtained in a cross-border context that beyond the advantage obtained in a national context is the result not of the lower Dutch rate for intra-group interest received, but the result of unlimited deduction for intra-group interest paid abroad.

(114) Corporate tax rates are not harmonised in the EU, and the Netherlands are not in control of the rates applied by other countries. If undertakings manage to take advantage of the difference in tax rates, i.e. of the lack of harmonisation, the Netherlands is not responsible. As confirmed by the Court of Justice⁽¹⁷⁾, undertakings are free to take advantage of differences in taxation levels in Member States.

(115) The Commission agrees that any advantage resulting from an international context owing to a low taxation rate in the Netherlands which is not mirrored by a low rate of deduction in the Netherlands but instead corresponds to a normal deduction rate abroad, is not imputable to the Netherlands⁽¹⁸⁾.

(116) It should also be underlined that the advantage resulting from deduction at the normal rate abroad will not be financed through Dutch resources, and, in the country concerned, the deduction at the normal rate will stem only from the application of the normal tax system (and not from a specific measure departing from it).

(117) As a consequence, the Commission considers that any advantages at the level of a multinational group that would result from a cross-border situation, as described in the opening decision, are the result of tax disparities between different tax jurisdictions and should therefore be excluded from the scope of the State aid assessment.

The financial sector

(118) In general, and as for any tax measure, it cannot be ruled out that companies belonging to a group that are operating in specific sectors may benefit more from the measure because of the higher intensity of financial transactions in their sector. This is particularly true for

companies in the financial sector, whose main activity is lending, and which might well increase lending to related companies as a result of the measure. However, it must be noted first that in order to avoid any abuse of the measure the Dutch measure includes a provision limiting the amount that can be taxed or deducted at a reduced rate (see section II.3). This limitation will apply in particular to companies in the financial sector, thus limiting any risk of abuse. Furthermore, the Commission's taxation notice indicates that 'the fact that some firms or some sectors benefit more than others from some of these tax measures does not necessarily mean that they are caught by the competition rules governing State aid'⁽¹⁹⁾.

Comparison with the scope of the former international financing activities scheme

(119) In the opening decision, the Commission considered that it could not be ruled out that the main beneficiaries of the scheme might be the former beneficiaries of the international financing activities scheme, which had been held to constitute incompatible State aid.

(120) It must be noted that in order to qualify for the international financing activities scheme, companies had to meet the following conditions, among others:

- the company benefiting had to carry out financing activities for parts of the group in at least four countries or on at least two continents,

- only financing operations that could be conducted independently of the Netherlands were eligible,

- no more than 10 % of the total capital (debt and equity) used by the company for its financial activities could be applied, directly or indirectly, in group companies based in the Netherlands.

⁽¹⁷⁾ Case C-196/04 *Cadbury Schweppes v Commissioners of Inland Revenue* [2006] ECR I-7995, see in particular paragraphs 36 and 37.

⁽¹⁸⁾ See, also, the judgment of the Court of First Instance in Case T-308/00 *Salzgitter v Commission* [2004] ECR II-1933, where the Court held that comparison of the tax rules applicable in all of the Member States, or even some of them, would inevitably distort the aim and functioning of the provisions on the monitoring of State aid.

(121) In view of these requirements, and the limited number of beneficiaries (87), the Commission considered the international financing activities scheme to be a selective measure.

⁽¹⁹⁾ Footnote 8, paragraph 14.

- (122) As pointed out by the Dutch authorities, there are no such requirements in the interest box measure. In addition, the body of undertakings that will benefit from the group interest box will be much broader than the 87 undertakings that utilised the international financing activities scheme.
- (123) In this respect, it cannot be argued that large (multinational) companies will have easier access to the scheme than small and medium-sized enterprises (SMEs) and will thus benefit disproportionately from it. According to the statistics provided by the Dutch authorities, which draw an unambiguous distinction between SMEs and large enterprises, 200 000 enterprises (out of 335 000) have one or more group affiliates, and thus can receive or pay intra-group interest. 50 000 of these enterprises have one or more companies belonging to the group abroad, of which 47 000 (95 %) are SMEs. This clearly indicates that SMEs will not be discriminated against by the measure.

Conclusion on the State aid character of the measure

- (124) It has been demonstrated in paragraphs 83 to 123 that the measure does not confer an advantage in a discriminatory manner on undertakings in similar situations, and should in fact enhance tax neutrality.
- (125) It has also been found that the *de facto* advantage for multinational companies that may result from the existence of disparities between tax systems in a cross-border situation falls outside the scope of the State aid rules, because such disparities are not imputable to the Netherlands.
- (126) In any event, the Commission considers that the measure is genuinely open to any undertaking in the Netherlands, since there are no legal or economic obstacles to the establishment of a group.
- (127) The last amendment introduced by the Dutch authorities will make it easier to create a company in the Netherlands, by abolishing the statutory capital requirement of EUR 18 000 for a limited liability company. This will allow any company easily to create a (second) company in the Netherlands, and hence a

group. As a consequence, the interest box measure will be accessible to any individual company without requiring a certain economic strength or significant capital resources. As the creation of a group will become a mere matter of organisation, without disproportionate costs, the requirement that it must be part of a corporate group will no longer constitute an obstacle for any undertaking wishing to benefit from the group interest box.

VIII. CONCLUSION

- (128) The Commission finds that the group interest box measure that the Netherlands is planning to implement does not confer a selective advantage that may be imputable to the Netherlands on companies established in the Netherlands that are part of a group or on foreign companies belonging to a group with a permanent establishment in the Netherlands, and accordingly does not constitute State aid within the meaning of Article 87(1) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The 'group interest box' which the Netherlands is planning to implement with respect to the taxation of intra-group flows of interest does not constitute aid within the meaning of Article 87(1) of the Treaty.

Implementation of the scheme is accordingly authorised.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 8 July 2009.

For the Commission

Neelie KROES

Member of the Commission

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