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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 825/2010

of 20 September 2010

laying down form and content of the accounting information to be submitted to the Commission for the purpose of the clearance of the accounts of the EAGF and EAFRD as well as for monitoring and forecasting purposes

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy ⁽¹⁾, and in particular Article 42 thereof,

Whereas:

(1) Article 8(1) of Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD ⁽²⁾ provides that the form and content of the accounting information referred to in Article 7(1)(c) of that Regulation and the way it is to be forwarded to the Commission are to be established.

(2) The form and content of the accounting information to be submitted to the Commission for the purpose of the clearance of the accounts of the European Agricultural Guarantee Fund (EAGF) and of the European Agricultural Fund for Rural Development (EAFRD) as well as for monitoring and forecasting purposes are presently laid down in Commission Regulation (EC) No 884/2009 ⁽³⁾.

(3) The Annexes to Regulation (EC) No 884/2009 cannot be used for their intended purposes in the financial year 2011. Regulation (EC) No 884/2009 should therefore be repealed and replaced by a new regulation setting out the form and content of the accounting information for that financial year.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Agricultural Funds Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The form and content of the accounting information referred to in Article 7(1)(c) of Regulation (EC) No 885/2006 and the way it is to be forwarded to the Commission shall be as set out in Annexes I (X Table), II (Technical specifications for the transfer of computer files to the EAGF and EAFRD), III (Aide-mémoire) and IV (Structure of EAFRD budget codes [F109]) to this Regulation.

Article 2

Regulation (EC) No 884/2009 is repealed with effect from 16 October 2010.

Article 3

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

It shall apply from 16 October 2010.

⁽¹⁾ OJ L 209, 11.8.2005, p. 1.

⁽²⁾ OJ L 171, 23.6.2006, p. 90.

⁽³⁾ OJ L 254, 26.9.2009, p. 10.

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

Done at Brussels, 20 September 2010.

For the Commission

The President

José Manuel BARROSO

ANNEX I

X-TABLE

FINANCIAL YEAR 2011

2010	2011	A ↓	F100	F101	F103	F105	F105B	F105C	F106	F106A	F107	F108	F109	F110	F200	F201	F202A	F202B	F202C	F205	F207	F211	F212	F213	F214	F217	F218	F220	F221	F222B	F222C	F300	F300B	F301
05020101	05020101	1000	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05020101	05020101	1001	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05020101	05020101	1003	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05020102	05020102	1011																																
05020102	05020102	1012																																
05020102	05020102	1013																																
05020102	05020102	1014																																
05020103	05020103	1021	X	X	X				X		X	X	X	X	X	X	X	X	X		X										X			
05020103	05020103	1022	X	X	X				X		X	X	X		X	X	X	X	X		X										X			
05020199	05020199	1090	X	X					X		X	X	X		X	X	X	X	X												X	X		
05020201	05020201	1850	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05020202	05020202	1851																																
05020202	05020202	1852																																
05020202	05020202	1853																																
05020202	05020202	1854																																
05020299	05020299	0000	X	X	X				X		X	X	X		X	X	X	X	X												X	X		
05020299	05020299	1890	X	X					X		X	X	X		X	X	X	X	X												X	X		
05020300	05020300	3000	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05020300	05020300	3010	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05020300	05020300	3011	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05020300	05020300	3012	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05020300	05020300	3013	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05020300	05020300	3014	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05020401	05020401	3100	X	X	X				X		X	X	X		X	X	X	X	X												X			
05020499	05020499	0000	X	X		X		X	X		X	X	X		X	X	X	X	X															
05020499	05020499	3110	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05020499	05020499	3112	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05020499	05020499	3113	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05020499	05020499	3119	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05020501	05020501	1100	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			

2010	2011	A ↓	F304	F305	F306	F307	F402	F500	F502	F503	F508A	F508B	F509A	F510	F511	F515	F517	F518	F519	F519B	F519C	F520	F521	F522	F523	F531	F532	F533	F600	F601	F602	F602B	F603	F700
05020101	05020101	1000		X	X			X							X														X		X		X	
05020101	05020101	1001		X	X			X							X														X		X		X	
05020101	05020101	1003		X	X			X							X														X		X		X	
05020102	05020102	1011																																
05020102	05020102	1012																																
05020102	05020102	1013																																
05020102	05020102	1014																																
05020103	05020103	1021	X			X			X					X																				
05020103	05020103	1022	X	X	X	X	X	X	X	X				X	X																			
05020199	05020199	1090						X	X																									
05020201	05020201	1850		X	X			X							X														X		X		X	
05020202	05020202	1851																																
05020202	05020202	1852																																
05020202	05020202	1853																																
05020202	05020202	1854																																
05020299	05020299	0000						X	X																									
05020299	05020299	1890						X	X																									
05020300	05020300	3000		X	X			X							X														X		X		X	
05020300	05020300	3010		X	X			X							X														X		X		X	
05020300	05020300	3011		X	X			X							X														X		X		X	
05020300	05020300	3012		X	X			X							X														X		X		X	
05020300	05020300	3013		X	X			X							X														X		X		X	
05020300	05020300	3014		X	X			X							X														X		X		X	
05020401	05020401	3100	X			X			X					X																				
05020499	05020499	0000						X	X																									
05020499	05020499	3110		X	X			X							X														X		X		X	
05020499	05020499	3112		X	X			X							X														X		X		X	
05020499	05020499	3113		X	X			X							X														X		X		X	
05020499	05020499	3119		X	X			X							X														X		X		X	
05020501	05020501	1100		X	X			X							X														X		X		X	

2010	2011	A ↓	F100	F101	F103	F105	F105B	F105C	F106	F106A	F107	F108	F109	F110	F200	F201	F202A	F202B	F202C	F205	F207	F211	F212	F213	F214	F217	F218	F220	F221	F222B	F222C	F300	F300B	F301
05020503	05020503	1112	X	X	X	X		X	X		X	X	X		X	X	X	X	X													X		
05020508	05020508	0000																																
05020599	05020599	0000	X	X	X				X		X	X	X	X	X	X	X	X	X													X		
05020599	05020599	1113	X	X	X				X		X	X	X	X	X	X	X	X	X													X		
05020599	05020599	1119	X	X	X				X		X	X	X	X	X	X	X	X	X													X		
05020603	05020603	1239	X	X	X				X		X	X	X		X	X	X	X	X		X											X		X
05020605	05020605	1211	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X		X											X	X	
05020699	05020699	0000	X	X					X		X	X	X		X	X	X	X	X															
05020699	05020699	1210	X	X	X	X		X	X		X	X	X		X	X	X	X	X													X		
05020699	05020699	1240	X	X	X				X		X	X	X	X	X	X	X	X	X													X	X	
05020701	05020701	1401	X	X	X				X		X	X	X	X	X	X	X	X	X		X											X	X	
05020701	05020701	1403	X	X	X				X		X	X	X	X	X	X	X	X	X		X											X	X	
05020701	05020701	1409	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X		X											X		
05020702	05020702	1410	X	X	X	X		X	X		X	X	X		X	X	X	X	X		X											X	X	
05020703	05020703	0000	X	X	X	X		X	X		X	X	X		X	X	X	X	X		X											X	X	
05020801	05020801	1500	X	X	X	X		X	X		X	X	X		X	X	X	X	X													X		
05020801	05020801	1510	X	X	X	X		X	X		X	X	X		X	X	X	X	X													X		
05020803	05020803	0000	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X		X											X	X	
05020803	05020803	1502	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X		X											X	X	
05020809	05020809	1515	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X		X											X	X	
05020811	05020811	0000	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X		X											X	X	
05020811	05020811	1509	X	X		X		X	X		X	X	X	X	X	X	X	X	X		X											X	X	
05020812	05020812	0000	X	X	X				X		X	X	X	X	X	X	X	X	X		X											X		
05020899	05020899	0000	X	X					X		X	X	X		X	X	X	X	X															
05020802	05020899	1501	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X		X											X	X	
05020899	05020899	1507	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X		X										X	X		
05020806	05020899	1511	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X		X											X	X	
05020807	05020899	1512	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X		X											X	X	
05020808	05020899	1512	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X		X											X	X	
05020808	05020899	1513	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X		X											X	X	

2010	2011	A ↓	F304	F305	F306	F307	F402	F500	F502	F503	F508A	F508B	F509A	F510	F511	F515	F517	F518	F519	F519B	F519C	F520	F521	F522	F523	F531	F532	F533	F600	F601	F602	F602B	F603	F700
05020503	05020503	1112	X	X	X	X	X	X	X	X				X	X																			
05020508	05020508	0000																																
05020599	05020599	0000	X			X			X	X				X	X																			
05020599	05020599	1113	X			X			X	X				X	X																			
05020599	05020599	1119	X			X			X	X				X	X																			
05020603	05020603	1239	X			X		X	X	X				X																				
05020605	05020605	1211	X			X		X	X	X					X															X	X	X		X
05020699	05020699	0000						X	X																									
05020699	05020699	1210		X	X			X							X															X		X		X
05020699	05020699	1240	X			X		X	X						X															X	X			
05020701	05020701	1401	X			X		X	X	X																								
05020701	05020701	1403	X			X		X	X	X																								
05020701	05020701	1409	X			X		X																										
05020702	05020702	1410	X			X			X						X																			
05020703	05020703	0000	X			X			X	X				X	X																			
05020801	05020801	1500		X	X			X							X															X		X		X
05020801	05020801	1510		X	X			X							X															X		X		X
05020803	05020803	0000	X			X	X																											
05020803	05020803	1502	X			X	X																											
05020809	05020809	1515	X			X	X	X	X	X					X																			
05020811	05020811	0000	X			X																												
05020811	05020811	1509	X			X																												
05020812	05020812	0000	X			X		X	X	X				X	X																			
05020899	05020899	0000						X	X																									
05020802	05020899	1501	X			X		X	X	X					X																			
05020899	05020899	1507	X			X	X	X	X	X					X															X	X	X		X
05020806	05020899	1511	X			X	X	X	X	X					X																			
05020807	05020899	1512	X			X	X	X	X	X					X																			
05020808	05020899	1512	X			X	X	X	X	X					X																			
05020808	05020899	1513	X			X	X	X	X	X					X															X	X	X		X

2010	2011	A ↓	F702	F703	F703A	F703B	F703C	F704	F704A	F704B	F704C	F706	F706A	F706B	F706C	F707	F707A	F707B	F707C	F800	F800B	F801	F802	F802B	F804	F805	F808	F809	F812	F814	F816	F816B
05020503	05020503	1112																														
05020508	05020508	0000																														
05020599	05020599	0000																														
05020599	05020599	1113																														
05020599	05020599	1119																														
05020603	05020603	1239																														
05020605	05020605	1211																														
05020699	05020699	0000																														
05020699	05020699	1210																		X	X	X	X	X	X	X	X	X	X	X	X	X
05020699	05020699	1240																														
05020701	05020701	1401																														
05020701	05020701	1403																														
05020701	05020701	1409																														
05020702	05020702	1410																														
05020703	05020703	0000																														
05020801	05020801	1500																		X	X	X	X	X	X	X	X	X	X	X	X	X
05020801	05020801	1510																		X	X	X	X	X	X	X	X	X	X	X	X	X
05020803	05020803	0000																														
05020803	05020803	1502																														
05020809	05020809	1515																														
05020811	05020811	0000																														
05020811	05020811	1509																														
05020812	05020812	0000																														
05020899	05020899	0000																														
05020802	05020899	1501																														
05020899	05020899	1507																														
05020806	05020899	1511																														
05020807	05020899	1512																														
05020808	05020899	1512																														
05020808	05020899	1513																														

2010	2011	A ↓	F702	F703	F703A	F703B	F703C	F704	F704A	F704B	F704C	F706	F706A	F706B	F706C	F707	F707A	F707B	F707C	F800	F800B	F801	F802	F802B	F804	F805	F808	F809	F812	F814	F816	F816B
05020810	05020899	3140																														
05020901	05020901	1600																		X	X	X	X	X	X	X	X	X	X	X	X	X
05020902	05020902	1610																														
05020903	05020903	1611																														
05020903	05020903	1612																														
05020904	05020904	1620																														
05020904	05020904	1621																														
05020904	05020904	1622																														
05020904	05020904	1623																														
05020904	05020904	1625																														
05020905	05020905	1630																														
05020906	05020906	1640																														
05020907	05020907	1650																														
05020908	05020908	0000																														
05020909	05020909	0000																														
05020999	05020999	1690																														
05021001	05021001	3800																														
05021001	05021001	3801																														
05021099	05021099	0000																														
05021101	05021101	1300																														
	05021103	0000																														
05021104	05021104	0000																														
05021104	05021104	3200																														
05021104	05021104	3201																														
05021104	05021104	3210																														
05021104	05021104	3211																														
05021104	05021104	3220																														
05021104	05021104	3221																														
05021104	05021104	3230																														
05021104	05021104	3231																														

2010	2011	A ↓	F100	F101	F103	F105	F105B	F105C	F106	F106A	F107	F108	F109	F110	F200	F201	F202A	F202B	F202C	F205	F207	F211	F212	F213	F214	F217	F218	F220	F221	F222B	F222C	F300	F300B	F301
05021105	05021105	1751	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X		X											X	X	
05021199	05021199	0000	X	X					X		X	X	X		X	X	X	X	X												X	X		
05021199	05021199	1710	X	X	X				X		X	X	X	X	X	X	X	X	X		X										X			
05021201	05021201	2000	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05021201	05021201	2001	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05021201	05021201	2002	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05021201	05021201	2003	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05021202	05021202	2011																																
05021202	05021202	2012																																
05021202	05021202	2013																																
05021202	05021202	2014																																
05021203	05021203	2020	X	X		X		X	X		X	X	X		X	X	X	X	X		X										X			
05021203	05021203	2024	X	X		X		X	X		X	X	X		X	X	X	X	X		X										X			
05021204	05021204	2030	X	X	X				X		X	X	X		X	X	X	X	X							D	D							X
05021204	05021204	2031																																
05021204	05021204	2032																																
05021204	05021204	2033																																
05021204	05021204	2034																																
05021205	05021205	2040	X	X					X		X	X	X		X	X	X	X	X		X										X		X	
05021206	05021206	2050	X	X	X				X		X	X	X		X	X	X	X	X		X					D	D							X
05021208	05021208	3120	X	X	X				X		X	X	X	X	X	X	X	X	X		X										X			
05021299	05021299	0000																																
05021299	05021299	2099	X	X					X		X	X	X		X	X	X	X	X															
05021301	05021301	2100	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05021302	05021302	2110	X	X	X				X		X	X	X	X	X	X	X	X	X		X										X			
05021303	05021303	2126	X	X	X				X		X	X	X		X	X	X	X	X		X										X			
05021304	05021304	2101	X	X	X	X		X	X		X	X	X		X	X	X	X	X												X			
05021399	05021399	2129	X	X					X		X	X	X		X	X	X	X	X															
05021399	05021399	2190	X	X					X		X	X	X		X	X	X	X	X												X	X		
05021401	05021401	2210	X	X	X				X		X	X	X		X	X	X	X	X		X										X		X	

2010	2011	A ↓	F304	F305	F306	F307	F402	F500	F502	F503	F508A	F508B	F509A	F510	F511	F515	F517	F518	F519	F519B	F519C	F520	F521	F522	F523	F531	F532	F533	F600	F601	F602	F602B	F603	F700
05021105	05021105	1751	X			X		X																					X	X	X		X	
05021199	05021199	0000						X	X																									
05021199	05021199	1710	X			X		X	X					X	X														X	X	X		X	
05021201	05021201	2000		X	X			X							X														X		X		X	
05021201	05021201	2001		X	X			X							X														X		X		X	
05021201	05021201	2002		X	X			X							X														X		X		X	
05021201	05021201	2003		X	X			X							X														X		X		X	
05021202	05021202	2011																																
05021202	05021202	2012																																
05021202	05021202	2013																																
05021202	05021202	2014																																
05021203	05021203	2020	X			X		X	X	X				X	X																			
05021203	05021203	2024	X			X		X	X	X				X	X																			
05021204	05021204	2030						X	X	X				X																				
05021204	05021204	2031																																
05021204	05021204	2032																																
05021204	05021204	2033																																
05021204	05021204	2034																																
05021205	05021205	2040	X			X		X	X	X				X	X																			
05021206	05021206	2050						X	X	X				X																				
05021208	05021208	3120	X			X		X	X	X				X	X																			
05021299	05021299	0000																																
05021299	05021299	2099						X	X																									
05021301	05021301	2100		X	X			X							X														X		X		X	
05021302	05021302	2110	X			X		X	X	X				X																				
05021303	05021303	2126	X			X			X	X				X	X																			
05021304	05021304	2101		X	X			X							X														X		X		X	
05021399	05021399	2129	X			X		X	X																									
05021399	05021399	2190						X	X																									
05021401	05021401	2210	X			X		X	X	X				X																				

[illegible]

2010	2011	A ↓	F304	F305	F306	F307	F402	F500	F502	F503	F508A	F508B	F509A	F510	F511	F515	F517	F518	F519	F519B	F519C	F520	F521	F522	F523	F531	F532	F533	F600	F601	F602	F602B	F603	F700	
05021499	05021499	2290						X	X																										
05021501	05021501	2300		X	X			X							X															X		X		X	
05021502	05021502	2301	X			X		X	X	X				X																					
05021503	05021503	2302	X			X			X	X																									
05021504	05021504	2310		X	X			X							X															X		X		X	
05021505	05021505	2311		X	X			X							X															X		X		X	
05021506	05021506	2320	X			X																													
05021507	05021507		X			X																													
05021599	05021599	2390						X	X																										
05021601	05021601	0000	X			X		X	X	X					X															X	X	X		X	
05021602	05021602																																		
05030101	05030101	0000	X			X					X	X	X																	X	X	X		X	X
05030102	05030102	0000	X			X					X	X	X																	X	X	X		X	
05030103	05030103	0000	X						X	X																				X	X	X		X	
05030104	05030104	0000	X			X			X	X	X	X	X		X															X	X	X		X	
	05030105	0000	A			A			A	A																				A	A	A		A	
05030199	05030199		X			X		X	X	X	X	X	X		X															X	X	X		X	
05030201	05030201	0000	X								X	X	X																	X	X	X		X	
05030201	05030201	1060	X								X	X	X																	X	X	X		X	
05030201	05030201	1062	X								X	X	X																	X	X	X		X	
05030204	05030204	0000	X								X	X	X		X															X	X	X		X	
05030205	05030205	1800	X			X		X	X	X	X	X	X		X															X	X	X		X	
05030206	05030206	2120	X			X			X	X																				X	X	X		X	
05030207	05030207	2121	X			X			X	X																									
05030208	05030208	2122	X			X			X	X																				X	X	X		X	
05030209	05030209	2124	X			X			X	X																				X	X	X		X	
05030210	05030210	2124	X			X			X	X																				X	X	X		X	
05030213	05030213	2220	X			X			X	X																				X	X	X		X	
05030214	05030214	2221	X			X			X	X																									
05030218	05030218	0000	X			X			X	X					X															X	X	X		X	

2010	2011	A ↓	F304	F305	F306	F307	F402	F500	F502	F503	F508A	F508B	F509A	F510	F511	F515	F517	F518	F519	F519B	F519C	F520	F521	F522	F523	F531	F532	F533	F600	F601	F602	F602B	F603	F700
05030219	05030219	1858	X								X	X	X		X														X	X	X		X	
05030221	05030221	1210	X			X		X	X	X	X	X	X		X														X	X	X		X	
05030222	05030222	1710	X			X		X	X		X	X	X		X														X	X	X		X	
05030223	05030223	1810	X			X		X	X		X				X														X	X	X		X	
05030224	05030224	0000	X								X	X	X		X														X	X	X		X	
05030225	05030225	0000	X								X	X	X		X														X	X	X		X	
05030226	05030226	0000	X								X	X	X		X														X	X	X		X	
05030227	05030227	0000	X								X	X	X		X														X	X	X		X	
05030228	05030228	1420	X			X		X	X	X					X																			
05030236	05030236	0000	X			X																							X	X	X		X	
05030239	05030239	0000	X			X			X	X																			X	X	X		X	
05030240	05030240	0000	X			X			X	X	X	X	X		X														X	X	X		X	
05030241	05030241	0000	X			X		X	X	X	X	X	X		X														X	X	X		X	
05030242	05030242	0000	X			X		X	X	X	X	X	X		X														X	X	X		X	
05030243	05030243	0000	X			X					X	X	X		X														X	X	X		X	
	05030244	0000	A			A			A	A																			A	A	A		A	
05030250	05030250	0000	X			X		X																					X	X	X		X	
05030250	05030250	3201	X			X		X																					X	X	X		X	
05030250	05030250	3211	X			X		X																					X	X	X		X	
05030250	05030250	3221	X			X		X																					X	X	X		X	
05030251	05030251	0000	X								X	X	X																X	X	X		X	
05030252	05030252	0000	X			X		X																					X	X	X		X	
05030252	05030252	3231	X			X		X																					X	X	X		X	
05030299	05030299	0000	X						X	X	X	X	X		X														X	X	X		X	
05030299	05030299	1310	X								X	X	X		X														X	X	X		X	
05030299	05030299	1508	X			X	X	X	X	X					X																			
05030299	05030299	1513	X			X		X	X	X					X																			
05030299	05030299	2123	X			X			X	X																								
05030299	05030299	2125	X			X			X	X																			X	X	X		X	
05030299	05030299	2128	X			X			X	X																			X	X	X		X	

2010	2011	A ↓	F100	F101	F103	F105	F105B	F105C	F106	F106A	F107	F108	F109	F110	F200	F201	F202A	F202B	F202C	F205	F207	F211	F212	F213	F214	F217	F218	F220	F221	F222B	F222C	F300	F300B	F301
05030299	05030299	2222	X	X		X	X	X	X		X	X	X		X	X	X	X	X		X											X	X	
05030299	05030299	3900	X	X					X		X	X	X		X	X	X	X	X		X											X	X	
05030299	05030299	3910	X	X	X	X	X	X	X		X	X	X		X	X	X	X	X		X											X	X	
05030300	05030300	0000	X	X	X				X		X	X	X		X	X	X	X	X		X											X	X	
05040114	05040114	0000	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X		X											D	D	
05040400	05040400	0000	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X		X							X	X	X	X	X	X	
05040501	05040501		X	X	X	X	A	X	X	X	X	X	X	X	X	X	X	X	X	X	X							X	X	X	X	X	X	X
05070106	05070106	0000																																
05070106	05070106	3701																																
05070107	05070107	0000																																
05070200	05070200																																	
67010000	67010000	0000																																
67020000	67020000	0000	X	X					X		X	X	X		X	X	X	X	X															
67030000	67030000	2071	X	X	X				X		X	X	X	X	X	X	X	X	X		X	D	D	D	D									
68010000	6801		X	X					X		X	X	X		X	X	X	X	X															
68020000	68020000	0000	X	X					X		X	X	X		X	X	X	X	X															
6803	6803																																	

ANNEX II

Technical specifications for the transfer of computer files to the EAGF and EAFRD from 16 October 2010**INTRODUCTION**

These technical specifications apply in respect of the financial year 2010, which commenced on 16 October 2009.

1. Transfer Medium

The coordinating body of the Member State must transfer the computer files and the relating documentation to the Commission through STATEL/eDAMIS. The Commission will only support one installation of STATEL/eDAMIS per Member State. The latest eDAMIS client and more information on the use of STATEL/eDAMIS shall be downloaded from the CIRCA web-site of the agricultural funds.

2. Computer file structure

2.1. The Member State must create a computer record for each individual component of the EAGF/EAFRD payments and receipts. These components are the individual items of which the payment (receipt) to (from) the beneficiary consists.

2.2. The records must have a flat file structure. If fields have more than one value, separate records containing all data fields are required. Make sure that no double counting occurs ⁽¹⁾.

2.3. All information for the same category of payments or receipts must be contained in the same computer file. Separate files relating to the same payments (e.g. for traders or inspections, or for basic and measure data) are not allowed.

2.4. The computer files must have the following characteristics:

- (1) The first record in the file (header row) contains the file description. The field names comprise an 'F' followed by the field number used in Annex I (the 'X-table'). Only field names existing in this Annex are allowed.
- (2) The following records in the file are data (data rows), in the order indicated by the first record describing the file structure.
- (3) The fields are separated by a semicolon (;). The header row and data rows shall all contain the same number of semicolons. In the data rows, empty fields appear as a double semicolon (;;) within the record, or as a single semicolon (;) at the end of the record.
- (4) Records vary in length. Each record ends with a code 'CR LF' or 'Carriage Return – Line Feed' (in hexadecimal: '0D 0A'). The header row never ends on a ';'. Data rows only end on a ';' if the last field is empty.
- (5) The file is in ASCII coding according to following table. Other codes (such as EBCDIC, TAR, ZIP, etc.) are not accepted:

Code	Member State
ISO 8859-1	BE, DK, DE, ES, FR, IE, IT, LU, NL, AT, PT, FI, SE and GB
ISO 8859-2	CZ, HU, PL, RO, SI and SK
ISO 8859-3	MT
ISO 8859-5	BG
ISO 8859-7	GR and CY
ISO 8859-13	EE, LV and LT

⁽¹⁾ Note: You should first read the preliminary remark concerning 'quantities' in chapter 5 of Annex III.

(6) Numeric fields:

- (a) Decimal separator: ‘.’
- (b) The symbol (+’ or -’) appears on the far left, followed immediately by the figures. For positive numbers, the ‘+’ sign is optional.
- (c) Fixed number of decimals (the details are set out in the Annex III hereto).
- (d) No spaces between digits. No spaces or other signs between thousands.

(7) Date field: ‘YYYYMMDD’ (year in four digits, month in two digits, day in two digits).

(8) Budget code (field F109) required format without spaces: ‘99999999999999’ (where ‘9’ stands for any figure between 0 and 9).

(9) Quotation marks (‘ ’) are not allowed at the beginning or at the end of the records. The semicolon field separator ‘;’ must not be used in data in text format.

(10) All fields: no spaces at the beginning or end of a field.

(11) Files satisfying these rules will look like the following (example for financial year 2004):

F100;F101;F106;F107;F108;F109

BE01;154678;+152.50;EUR;20030715;050201011000001

BE01;024578;-1000.00;EUR;20030905;050208031502002

BE01;154985;9999.20;EUR;20030101;050205011100001

BE01;100078;+152.75;EUR;20030331;050208091515002

BE01;215452;+0.50;EUR;20030615;050201011000002 (Please note +0.50 and not +.50)

BE01;123456;21550.15;EUR;20030101;050805013810001

etc.

(other data rows with the fields in the same order).

2.5. Data files with the characteristics as described under 2.4 shall be sent with consignment type ‘X-TABLE-DATA’ (see ‘eDAMIS client’).

2.6. The computer program for checking the format of computer files before sending them to the Commission (‘WinCheckCsv’) is included in the data transfer program (‘eDAMIS client’). The paying agencies are invited to download the check program from CIRCA separately for offline validation purposes.

3. Annual declaration

3.1. The coordinating body of the Member State must send either one annual declaration file for all paying agencies or separate annual declaration files for each paying agency. An annual declaration file should contain the total amounts by paying agency together with the budget and currency codes, for both EAGF and EAFRD measures ⁽¹⁾.

⁽¹⁾ See Article 6 (b) and (c) of Regulation (EC) No 885/2006.

3.2. The files should have the characteristics as described under 2.4. Each line should contain the following fields (in this order):

- (a) F100: paying agency code
- (b) F109: budget code
- (c) F106: amount expressed in the currency code F107
- (d) F107: currency code

3.3. Files satisfying the rules will look like the following (example for financial year 2007):

F100;F109;F106;F107

BE01;050205011100014;218483644.90;EUR

BE01;050212012003012;29721588.82;EUR

BE01;050212012000022;26099931.75;EUR

BE01;050208031502013;20778423.44;EUR

BE01;050212052040001;16403776.45;EUR

BE01;050405011132001;8123456.45;EUR

etc. ⁽¹⁾

3.4. Annual declaration files shall be sent through STATEL/eDAMIS with consignment type 'ANNUAL-DECLARATION'.

4. Explanation of Differences

4.1. In the case of differences between the annual declaration and monthly or quarterly declaration or X-table data the coordinating body of the Member State should send either one 'difference-explanation' file for all paying agencies or separate 'difference-explanation' files for each paying agency. Such file(s) should explain, through standard codes, the difference by budget code between the annual declaration and monthly declaration (T104) or between annual declaration and quarterly declaration (SFC2007) or between annual declaration and the sum of the records (Σ F106) of the X-table data.

4.2. The files should have the characteristics as described under 2.4. Each line should contain the following fields (in this order):

- (a) F100: paying agency code
- (b) F109: budget code
- (c) Exco: explanation-reconciliation code
- (d) F106: amount of the explained difference in EURO

4.3. The explanation-reconciliation code must be expressed only once per budget code (F109) by a three-character code corresponding to the following code list:

Code EAGF	A) Type of difference [Annual Declaration to (=MINUS) Monthly Declaration (T104)]
A01	Administrative error (outstanding amounts to be recovered at the end of the financial year and credited to the EAGF via the Annual Declaration)

⁽¹⁾ Budget codes, for which no expenditure is declared, should not be included in the Annual Declaration file.

A02	Rounding error
A03	Misposting error (data input on wrong budget code)
A04	Cut-off error (amount in Annual Declaration but not reported in T104)
A05	Cut-off error (amount in T104 but not declared in Annual Declaration)
A06	Payment error (payment pending in the bank)
A07	Late payment correction
A08	Ceiling error (correction because expenditure passed ceiling)
A09	Off-set of irrecoverable amount
A10	Off-set of irrecoverable amount (50/50 rule)
A11	Correction due to recovery of outstanding debts
A12	Correction due to double entry of expenditure
A13	Reallocation of expenditure by Fund (national or community)
A20	Conformity corrections
A21	Adjustments on entitlements
A22	Modulation not declared
A23	Exchange rate corrections
A99	Other error
Code EAFRD	B) Type of difference [Annual Declaration to (=MINUS) Quarterly Declaration (SFC2007)]
B01	Administrative error (outstanding amounts actually recovered but not yet deducted in the Quarterly Declarations during the reference period and credited to the EAFRD via the Annual Declaration)
B02	Rounding error
B03	Misposting error (data input on wrong budget code)
B04	Cut-off error (amount in Annual Declaration but not reported in Quarterly Declaration)
B05	Cut-off error (amount in Quarterly Declaration but not declared in Annual Declaration)
B06	Payment error (payment pending in the bank)
B11	Correction due to recovery of outstanding debts
B12	Correction due to double entry of expenditure
B13	Reallocation of expenditure by Fund (national or community)
B14	Co-financing rate error (amount with wrong co-financing rate in Annual Declaration)
B15	Co-financing rate error (amount with wrong co-financing rate in Quarterly Declaration)
B16	Difference due to co-financing rate in Quarterly Declaration

B23	Exchange rate corrections
B99	Other error
Code X-table	C) Type of difference [Annual Declaration to (=MINUS) X-table (EAGF and EAFRD)]
C01	Administrative error (outstanding amounts to be recovered at the end of the financial year and credited to the EAGF via the Annual Declaration)
C02	Rounding error
C03	Misposting error (data input on wrong budget code)
C04	Cut-off error (amount in Annual Declaration but not reported in X-table)
C05	Cut-off error (amount in X-table but not declared in Annual Declaration)
C06	Payment error (payment pending in the bank)
C07	Late payment correction in AD
C08	Ceiling error (correction in AD because expenditure passed ceiling)
C09	Off-set of irrecoverable amount
C10	Off-set of irrecoverable amount (50/50 rule)
C11	Correction due to recovery of outstanding debts
C12	Correction due to double entry of expenditure
C13	Reallocation of expenditure by Fund (national or community)
C14	EAFRD: Co-financing rate error (amount with wrong co-financing rate in Annual Declaration)
C15	EAFRD: Co-financing rate error (amount with wrong co-financing rate in X-table)
C20	Conformity corrections
C21	Adjustments on entitlements
C22	Modulation not declared
C23	Exchange rate corrections
C24	EAGF – 25 % retention on amounts resulting from cross-compliance (R1782/2003, Art. 9)
C25	EAGF – 20 % retention on amounts recovered following irregularities (R1290/2005, Art. 32)
C98	Not required X-table data
C99	Other error

4.4. Files satisfying the rules will look like the following (example for financial year 2008):

F100;F109;Exco;F106

AT01;050207011401006;A03;+505.90

The amount declared in the Annual Declaration is EUR 505.90 higher than the amount (wrongly) declared in the monthly declarations [Tables 104].

AT01;050207011403006;A03;-505.90

The amount declared in the Annual Declaration is EUR 505.90 smaller than the amount (wrongly) declared in the monthly declarations [Tables 104].

AT01;050302180000004;A01;-125.80

The amount declared in the Annual Declaration is EUR 125.80 lower than the amount declared in the monthly declarations [Tables 104] due to the correction on 'administrative errors'.

AT01;050302270000001;C04;+31.05

The amount declared in the Annual Declaration is EUR 31.05 higher than the amount reported in the X-table due to a cut-off problem.

AT01;050302270000001;C05;-81.00

AT01;050405011321001;B02;+3.04

AT01;050405013211001;C15;+3075.07

AT01;050405013211001;B02;-0.80

AT01;050405013211001;C14;-688.23

etc.

4.5. The 'difference-explanation' files shall be sent through STATEL/eDAMIS with consignment type 'DIFFERENCE-EXPLANATION'.

5. Documentation (code list)

5.1. In case where codes are used for fields, for which Annex III does not enforce standard codes, the coordinating body of the Member State must transfer a code list for each paying agency through STATEL/eDAMIS in order to explain all these used codes.

5.2. This code list can have the look and feel of an ordinary letter. The identity of the paying agency and the name or administrative unit of the addressee shall be clearly marked.

5.3. The eDAMIS client includes a specific consignment type for this kind of tabular transfer i.e. 'CODE-LIST'.

6. Data Transfer

The coordinating body must send the computer files completely and only once.

If the coordinating body notices that false data were transmitted or a problem occurred with the data transfer, the Commission has to be informed immediately. All files, which contain incorrect information, are to be indicated. Therefore, the Commission is to be asked to delete these files. Thereafter, in order to avoid an overlapping of computer records or data files, the coordinating body must send the corrected computer files to replace entirely the previous incorrect information.

ANNEX III

'AIDE-MÉMOIRE'

FINANCIAL YEAR 2011

General remark: significance of the X, A and D codes used in Annex I

All the information marked 'X' or 'A' is obligatory.

'X' = data element already included in the previous version of this Regulation.

'A' = data element to be added compared to the previous version of this Regulation.

'D' = data element to be deleted compared to the previous version of this Regulation.

Where a data request makes no sense under particular circumstances or is not applicable for the Member States concerned, then put NULL value, which shall be represented by two consecutive semicolons (;) in the CSV format data file.

1. Data relating to payments

Preliminary remark: In this section, the term 'payment' refers to both the EAGF and EAFRD payments and the receipts.

1.1. F100: name of paying agency

Required format: to be expressed by a code (see the code list F100 kept up-to-date on CAP-ED):

<https://webgate.ec.europa.eu/agriportal/awaiportal/>

1.2. F101: reference number of payment

The reference number identifying the payment clearly in the paying agency's accounts. Removals relating to food aid shall not be considered as sales of intervention products. In this particular case field F101 can be ignored.

1.3. F103: type of payment

Required format: to be expressed by a one-character code corresponding to the following code list:

Code	Significance
0	Food Aid
1	Advance or partial payment
2	Final payment (first and single payment, or settlement of the balance after advance payment, or normal export refund payment)
3	Recovery/reimbursement (following a sanction)/correction
4	Receipt of amounts (not preceded by an advance or final payment)
5	Pre-financing payment export refund
6	No financial transaction

1.4. F105: payment with sanction

Required format: yes = 'Y'; no = 'N'.

1.5. *F105B: Cross-Compliance: reduction or exclusion from payments*

For EAGF, the field F105B must be used to indicate the amount reduced or excluded (negative amount) on the basis of Article 23 of Council Regulation (EC) No 73/2009 ⁽¹⁾. This negative amount (in EURO) resulting from cross-compliance control system must only be shown once per beneficiary under direct aids. It concerns the 100 % reduction to the farmer i.e. without the 25 % retention provided for in Article 25 of Council Regulation (EC) No 73/2009.

For EAFRD, the field must be used to indicate the amount reduced or excluded (negative amount) on the basis of Article 51 of Council Regulation (EC) No 1698/2005 ⁽²⁾. This negative amount (in EURO) resulting from cross-compliance control system must only be shown once per beneficiary under the corresponding EAFRD budget codes.

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for any number from 0 to 9 inclusive.

1.6. *F105C: amount (EUR) not paid: reduction or exclusion from payments as a result of administrative and/or on-the-spot checks*

The field must be used to indicate the amount reduced or excluded on the basis of administrative and/or on-the-spot checks pursuant to the sector relevant regulation. This (negative) amount resulting from administrative and/or on-the-spot checks must be reported in field F105C for each budget post for which a reduction or exclusion has been made. This negative amount (in EURO) must only be shown once per beneficiary.

The amount resulting from Cross-Compliance should be reported in field F105B and consequently, should not form part of the (negative) amount to be reported in field F105C.

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for any number from 0 to 9 inclusive.

1.7. *F106: amount in EUR*

Amount of each individual item of payment in EURO.

The amounts in field F106 relate to the EAGF and EAFRD expenditure only. National expenditure shall not appear under this heading.

For EAGF, the sum of these amounts (F106) by budget code (F109) shall in principle correspond with the amounts declared in table 104.

For EAFRD, the sum of these amounts (F106) by budget code (F109) shall in principle correspond with the amounts calculated in the quarterly declarations of expenditure for the same period.

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for a digit from 0 to 9.

1.8. *F106A: public expenditure in EUR*

Amount of any public contribution to the financing of operations whose origin is the budget of the State, of regional and local authorities, of the European Communities and any similar expenditure.

The sum of these amounts (F106A) by budget code (F109) shall in principle correspond with the certified public expenditure declared in the EAFRD table.

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for a digit from 0 to 9.

1.9. *F107: currency unit*

Required format: EUR

1.10. *F108: date of payment*

The date determining the month of declaration to the EAGF/EAFRD.

Required format: 'YYYYMMDD' (year in four digits, month in two digits, day in two digits).

⁽¹⁾ OJ L 30, 31.1.2009, p. 16.

⁽²⁾ OJ L 277, 21.10.2005, p. 1.

1.11. *F109: budget code*

For EAGF, the full code of the Activity Based Budgeting structure must be given, including the title, chapter, Article, item and sub-item.

For EAFRD budget line 05040501, the budget sub-items must be given according to Annex IV.

Required ABB-format without spaces: '99999999999999', where 9 stands for a digit from 0 to 9. Missing positions shall be filled with zeroes (e.g. 05020901160 becomes 050209011600000).

1.12. *F110: marketing year or period*

For intervention products the Commission needs to know the marketing year to which the product corresponds or the quota period it is to be set off against.

2. **Data relating to beneficiary (applicant)**

Preliminary remark: The fields F200, F201, F202A, F202B and F202C must always be used to identify the beneficiary of a payment i.e. the final beneficiary. The fields F220, F221, F222B and F222C may only be used if a payment is made to the beneficiary through an intermediate organisation.

The field F207 is only related to the field F200.

2.1. *F200: identification code*

The individual unique identifier allocated to each applicant at Member State level.

2.2. *F201: name*

The applicant's last name and first name, or the business name.

2.3. *F202A: applicant's address (street and number)*

2.4. *F202B: applicant's address (international post code)*

2.5. *F202C: applicant's address (municipality or city)*

2.6. *F205: holding in less-favoured region*

In the case of support for a holding in a less-favoured area, this must be indicated here.

Required format: yes = 'Y'; no = 'N'.

2.7. *F207: region and sub-region in the Member State*

Region and sub-region code (NUTS 3) is defined by the main activities of the holding of the beneficiary to which the payment is assigned.

The code 'Extra Region' (MSZZZ) should only be indicated in cases e.g. where no NUTS 3 code exists.

Required format: NUTS 3 code as specified in the code list F207 on CAP-ED: <https://webgate.ec.europa.eu/agriportal/awaiportal/>

2.8. *F220: identification code of the intermediate organisation*

The individual unique identifier allocated to intermediate organisations at Member State level.

The payment is made to the beneficiary via the intermediate organisation i.e. via each intermediate institution or directly to this organisation.

2.9. *F221: name of the intermediate organisation*

The organisation's name.

2.10. F222B: *organisation's address (international post code)*

2.11. F222C: *organisation's address (municipality or city)*

3. **Data relating to declaration/application**

3.1. F300: *number of declaration/application*

This must enable the declaration/application to be traced through the Member States' files.

3.2. F300B: *date of application*

The date of receipt of the application by the paying agency (including any divisional or regional offices thereof).

In the case of payments under the national support programmes in the wine sector, the date of application shall be the one specified in Article 37(b) of Commission Regulation (EC) No 555/2008 ⁽¹⁾.

Required format: 'YYYYMMDD' (year in four digits, month in two digits, day in two digits).

3.3. F301: *number of contract/project (where applicable)*

For EAFRD measures and programmes, a unique identification number must be allocated to each project.

3.4. F304: *authorising office*

This is the office responsible for administrative control and authorisation, e.g. the region. The more decentralised the management of the scheme is, the more important this information becomes.

3.5. F305: *number of certificate/licence*

'N' = no, if not applicable.

3.6. F306: *date of issue of the certificate/licence*

This field must be completed when a number of certificate/license is indicated in field F305.

Required format: 'YYYYMMDD' (year in four digits, month in two digits, day in two digits).

3.7. F307: *office holding supporting documents*

Only where this is not the same as that specified in field F304.

4. **Data relating to security**

4.1. F402: *amount of processing security (others than tender securities) in EURO*

In the case of advance payments in the wine sector (budget post 05020908) the amount of the security lodged must be indicated.

Required format: + 99 ... 99.99 or - 99 ... 99.99, where 9 stands for a digit from 0 to 9.

5. **Data relating to products**

Preliminary remark concerning quantities: as a basic rule, quantities, areas and numbers of animals must only be shown once. In the case of an advance payment followed by a balance payment, the quantity must be shown in the record of the advance payment. This is also true for cases where the advance payment and balance payment are booked on different budget sub-posts (advances and balance). Adjustments to quantities, areas and numbers of animals must be shown in the records covering the balance or subsequent payments. In the case of sums recovered, if the amount applied for is reduced because of incorrect quantities, areas or numbers of animals, the adjustments to the quantities must be indicated by a minus sign.

5.1. F500: *product code/rural development sub-measure code*

The Member States must draw up their own lists of codes, to be detailed in the explanatory note to the payment file(s).

In the case of rural development measures under EAFRD budget post 05040501, indicate where applicable, a code per sub-measure implemented (e.g. type of agri-environmental measure).

⁽¹⁾ OJ L 170, 30.6.2008, p. 1.

In the case of rural development expenditure in the new Member States (budget post 050404000000) a one-character or two-character code corresponding to the following list must be expressed:

Code	Significance
A	Investment in farms
B	Start-up assistance for young farmers
C	Training
D	Early retirement
E	Less-favoured areas and areas with environmental restrictions
F	Agri-environment and animal welfare
G	Improving the processing and marketing of agricultural products
H	Afforestation of agricultural land
I	Other forestry measures
J	Land improvement
K	Reparcelling
L	Setting up farm relief and farm management services, setting-up consulting services in farms and agricultural vulgarisation
M	Marketing of quality agricultural products
N	Basic services for the rural economy and population
O	Renovation and development of villages and protection and conservation of the rural heritage
P	Diversifying agricultural activities and activities close to agriculture to provide multiple activities or alternative sources of income
Q	Managing agricultural water resources
R	Developing and improving infrastructure connected with the development of agriculture
S	Encouraging tourist and craft activities
T	Protecting the environment in connection with agriculture, forestry and landscape management and improving animal welfare
U	Restoring agricultural production potential damaged by natural disasters and introducing appropriate prevention instruments
V	Financial engineering
X	Respect of standards
Y	Recourse of consulting services regarding respect of standards
Z	Voluntary participation of farmers in food quality systems
AA	Measures of producer groups in the area of food quality

Code	Significance
AB	Semi-subsistence farms in the restructuring process
AC	Producer groups
AD	Technical assistance
AE	Complements to direct payments
AF	Complements to State aid in Malta
AG	Full-time farmers in Malta
SA	Financing of Sapard projects

In the case of export refunds: F500 is only required if F804 contains ingredients for which export refund is fixed. Then in F500, the code of the goods (in principle the CN code declared in box 33 of the SAD; 8 digits) must be indicated for non-annex 1 goods, or the product code for the final processed agricultural products.

5.2. *F502: quantity paid (number of animals, hectares, etc.)*

See preliminary remarks in heading 5 (data relating to products).

For the wine sector, the products obtained after distillation shall be expressed by alcoholic strength.

For all other sectors, the quantity paid shall be expressed in the unit which is laid down in the Regulation as the basis for the premium payment.

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for a digit from 0 to 9. With a possibility to increase the number of decimals if significant. (max 6).

5.3. *F503: quantity covered by payment application lodged (quantity claimed)*

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for a digit from 0 to 9. With a possibility to increase the number of decimals if significant. (max 6).

5.4. *F508A: area covered by payment application lodged*

The area covered by the application.

For budget post 050404000000 (Rural Development in the new Member States) this field is required only for the measures E, F and H.

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for a digit from 0 to 9.

5.5. *F508B: area covered by payment made*

See preliminary remark in heading 5 (data relating to products).

The area on which the payment is made.

For budget post 050404000000 (Rural Development in the new Member States) this field is required only for the measures E, F and H.

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for a digit from 0 to 9.

5.6. *F509A: area wrongly declared*

The difference between the area declared and that found. Overstatement being the area declared exceeding the area found and reported with a positive figure. Understatement being the area found exceeding the area declared and reported with a negative figure.

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for a digit from 0 to 9.

5.7. *F510: Community regulation and article number*

In the case of intervention goods, the ad hoc instrument published in the *Official Journal of the European Union* is required.

5.8. *F511: EAGF rate of aid (€) per unit of measurement*

The field F511 must be used if data is reported in one of the required quantity fields F502, F508B and F800. The rate of aid must be expressed in the same unit of measurement as the reported quantity.

Required format: 9 ... 9.999999, where 9 stands for a digit from 0 to 9.

The use of six decimal places may seem odd but some regulations like Council Regulation (EC) No 660/1999 ⁽¹⁾ fix the premium with up to five decimals even when using €. To cover all possibilities the number of decimals has been raised to six.

5.9. *F531: total alcoholic strength by volume*

Expressed in %vol/hl.

Required format: 99.99, where 9 stands for a digit from 0 to 9.

5.10. *F532: natural alcoholic strength by volume*

Expressed in %vol/hl.

Required format: 99.99, where 9 stands for a digit from 0 to 9.

5.11. *F533: wine growing zone*

Wine growing zone as defined in the appendix to annex XIb of Council Regulation (EC) No 1234/2007 ⁽²⁾.

Required format: to be expressed by one of the following codes: A, B, CI, CII, CIIIA, CIIIB.

6. **Data relating to inspections**

The Commission needs to know the number of inspections carried out and the number of cases where penalties have been applied as a result. Where the premium is withheld or recovered in full, zero payments must be indicated with the date of the decision in F108.

6.1. *F600: on-the-spot inspection*

The 'on-the-spot checks' mentioned here are those referred to in the relevant regulations ⁽³⁾. They include the physical visits of the farm (code 'F' or code 'C') and/or checks by remote sensing (code 'T') and, the physical spot checks of goods (code 'G'), the substitution checks (code 'S') and the specific substitution checks (code 'U') for export refunds.

Field F601 needs to be completed only if an on-farm inspection or control on cross-compliance ('F' or 'C') is indicated in field F600.

Field F602 needs to be completed where an on-the-spot check ('F', 'C', 'T', 'G', 'S' or 'U') is indicated in field F600.

Field F602B needs to be completed only if the additional levy payable has been recalculated.

In the case of multiple visits concerning the same measure and the same producer only report once. Every record, be it the advance or balance payment or other, that can be related to a particular inspection, shall have the appropriate code (see below) in field F600.

⁽¹⁾ OJ L 83, 27.3.1999, p. 10.

⁽²⁾ OJ L 299, 16.11.2007, p. 1.

⁽³⁾ Commission Regulation (EC) No 1975/2006 [rural development].
Council Regulation (EC) No 73/2009 [direct support schemes].
Commission Regulation (EC) No 1122/2009 [direct support schemes].
Commission Regulation (EEC) No 2159/89 [nuts].
Commission Regulation (EC) No 1621/1999 [dried grapes].
Commission Regulation (EC) No 1276/2008 [export refunds].
Commission Regulation (EC) No 968/2006 [sugar restructuring fund].

Administrative checks, within the meaning of the above-mentioned regulations (see footnote below), shall not be mentioned in F600. Nevertheless, sanctioned claims shall be identified in field F105 (code 'Y') and reduced or excluded amounts shall be reported in field F105C (negative amount), whether they originate from an administrative check or on-the-spot check.

Required format: 'N' = no inspection, 'F' = on-farm inspection, 'C' = controls on cross-compliance, 'T' = inspection by remote sensing, 'G' = on-the-spot check of goods, 'S' = substitution check and 'U' = specific substitution check.

In case of a combination of on-farm inspection and cross-compliance and/or inspection by remote sensing one of the corresponding codes 'FT', 'CT', 'CF' or 'FTC' must be shown.

In the case of a combination of checks for export refunds one of the corresponding codes 'GS', 'GSU', 'GU' or 'SU' must be reported.

6.2. F601: date of inspection

This field must be completed when an on-farm inspection or control on cross-compliance ('F' or 'C') is indicated in field F600. The date of inspection is not required for remote sensing checks.

Required format: 'YYYYMMDD' (year in four digits, month in two digits, day in two digits).

6.3. F602: application reduced

If the application has been reduced as a result of an inspection, this must be indicated here. This field must be completed when an on-the-spot inspection is indicated in field F600.

Required format: yes = 'Y'; no = 'N'.

6.4. F603: reason for reduction

Where there is more than one reason indicate the one justifying the highest penalty. This field must be completed when the application has been reduced as a result of an on-the-spot inspection.

Required format: to be expressed by a code; the codes must be explained in the accompanying letter.

7. Data relating to payment entitlements

Preliminary remark:

The Commission needs to know the total amount for each kind of entitlement as defined in Title III of Regulation (EC) No 73/2009.

Furthermore, the Commission needs to know financial information on the amounts not paid following administrative or on-the-spot-checks (IACS controls).

7.1. F700: amount of payment entitlement in EUR

Amount of payment entitlement in EURO i.e. the total amount to be paid in respect of the payment entitlements as defined in Title III of Regulation (EC) No 73/2009 after performing the IACS controls.

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for a digit from 0 to 9.

7.2. F702: area covered by payment made

For payment entitlements based on areas: The area on which the payment is made.

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for a digit from 0 to 9.

If a payment is composed of normal entitlements and entitlements subject to special conditions, then the requested information under section A) and B) has to be filled in as appropriate. If a section is not applicable, then put NULL value in that section.

Payment entitlements mentioned below are those referred to in Title III of Regulation (EC) No 73/2009:

7.3. A) *Payment entitlements based on areas (normal entitlements)*

7.4. F703: *amount in EURO of payment entitlement*

The total amount in EURO of the payment entitlement as lodged in the claim.

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for a digit from 0 to 9.

7.5. F703A: *area covered by payment application lodged*

The 'activated' area covered by the aid application: For payment entitlements based on areas, this is the area 'activated' i.e. maximum area subject to payment (see also Article 57(2) of Commission Regulation (EC) 1122/2009 ⁽¹⁾).

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for a digit from 0 to 9.

7.6. F703B: *area determined*

The area determined as a result of administrative or on-the-spot checks.

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for a digit from 0 to 9.

7.7. F703C: *area not found*

The difference between the 'activated' area declared in the aid application and the one found as a result of administrative or on-the-spot checks.

Overstatement being the area declared exceeding the area found and reported as a positive figure. Understatement being the area found exceeding the area declared and reported as a negative figure.

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for a digit from 0 to 9.

7.8. B) *Payment entitlements subject to special conditions*

7.9. F707: *amount in EUR of payment entitlement*

The total amount in EURO of the payment entitlement as lodged in the claim.

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for a digit from 0 to 9.

7.10. F707A: *number of livestock units (LU) in the reference period*

This number represents the agricultural activity exercised in the reference period expressed in LU according to Article 44(2) of Regulation (EC) No 73/2009.

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for a digit from 0 to 9.

7.11. F707B: *number of livestock units (LU) declared*

This field must indicate the exact number of LU declared for the calendar year concerned (Article 44(2) of Regulation (EC) No 73/2009).

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for a digit from 0 to 9.

7.12. F707C: *number of livestock units (LU) determined*

The number of LU determined as a result of administrative or on-the-spot checks, in order to check the compliance with Article 44(2) of Regulation (EC) No 73/2009.

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for a digit from 0 to 9.

8. **Additional data relating to export refunds**

8.1. F800: *net weight/quantity*

See preliminary remark in heading 5 (data relating to products).

⁽¹⁾ OJ L 316, 2.12.2009, p. 65.

The weight or the quantity shall be expressed in the unit of measurement

In the case of processed products (non-annex I goods or processed agricultural products): the quantity of the ingredient eligible for funding. If the code of the goods (F500) contains more than one ingredient eligible for funding (F804), then multiple records with corresponding amounts (F106) and quantities (F800) must be created.

Required format: + 99 ... 99.99 or – 99 ... 99.99, where 9 stands for a digit from 0 to 9. With a possibility to increase the number of decimals if significant. (max 6).

8.2. F800B: unit of measurement for field F800

Required format: to be expressed by a one-character code corresponding to the following table:

Code	Meaning
K	Kilogram
L	Litre
P	Piece (item)

8.3. F801: application number (export refunds: SAD)

The more detailed the application number is given, the more important this information becomes. For instance, an extension to the application number such as the indication of the ingredient number will allow more precise identification of export refund data.

8.4. F802: customs office of placing under customs supervision

The Member States must use the Transit Customs Office List (COL ⁽¹⁾). This is the list of authorised customs offices for Community/common transit operations. It may be that due to its objective of 'transit operations' some of the customs offices might be missing although this will be the exception. In that case the Member State shall provide the name of the customs office in full.

Required format: The format of the COL code consists of two positions to denote the country (ISO code of a Member State) followed by a six-character code that define the customs office. For instance 'EE1000EE'.

8.5. F802B: customs office of exit

Indicate the customs office, which certifies that products covered by refund applications have left the customs territory of the Community. The Member States must use the Transit Customs Office List (COL ⁽²⁾). This is the list of authorised customs offices for Community/common transit operations. It may be that due to its objective of 'transit operations' some of the customs offices might be missing although this will be the exception. In that case the Member State shall provide the name of the customs office in full.

This information is vital for the auditors concerning substitution checks. The information is available in T5 or equivalent documents.

Required format: The format of the COL code consists of two positions to denote the country (ISO code of a Member State) followed by a six-character code that define the customs office. For instance 'GB000392'.

8.6. F804: export refund code

In the case of non-processed agricultural products: The 12 digit product code, for which export refund is fixed.

In cases of processed products (non-annex I goods or processed agricultural products): the CN code(s) of the ingredient(s) for which export refund is fixed. In this case, F500 must be completed with the code of the final product. See also the explanatory note to F800 for the procedure to follow where more than one ingredient of a processed product is eligible for refund.

⁽¹⁾ http://ec.europa.eu/taxation_customs/dds/csr/home_en.htm

⁽²⁾ http://ec.europa.eu/taxation_customs/dds/csr/home_en.htm

8.7. *F805: code for destination*

Required format: 'XX', where X stands for a letter between A and Z (codes of the nomenclature of countries and territories for the external trade statistics of the Community. See Commission Regulation (EC) No 2020/2001 ⁽¹⁾ of 15 October 2001 and subsequent updates).

In view of harmonisation, the Member States shall also use the miscellaneous category (codes Q*) of the nomenclature of countries and territories for the external trade statistics. It is known that that nomenclature does not cover all special export refund cases but the Commission does not require that kind of detail. Member States shall therefore convert their special national codes to the broader categories of the nomenclature of countries and territories for the external trade statistics before sending their data to the Commission.

8.8. *F808: date of advance fixing*

If fixed in advance, the date on which the rate of refund was set.

Required format: 'YYYYMMDD' (year in four digits, month in two digits, day in two digits).

8.9. *F809: last day of validity (advance fixing)*

Required format: 'YYYYMMDD' (year in four digits, month in two digits, day in two digits).

8.10. *F812: reference of the invitation to tender if applicable (advance fixing)*

The procedure stipulated in Article 5 of Commission Regulation (EC) No 1501/95 ⁽²⁾ or similar procedure for other sectors. The Commission needs the reference of the invitation to tender.

8.11. *F814: day of acceptance of payment declaration (COM-7)*

For the beef sector: in the case of pre-financing, complete field F814 only (disregarding fields F816 and F816B); if pre-financing is not involved, complete fields F816 and F816B (disregarding field F814).

Required format: 'YYYYMMDD' (year in four digits, month in two digits, day in two digits).

8.12. *F816: date of acceptance of export declaration*

Date within the meaning of Article 5(1) of Commission Regulation (EC) No 612/2009 ⁽³⁾.

Required format: 'YYYYMMDD' (year in four digits, month in two digits, day in two digits).

8.13. *F816B: date of export from the EU territory*

Date of export as indicated on the export declaration or on the T5. See also Article 7(1) of Commission Regulation (EC) No 612/2009.

Required format: 'YYYYMMDD' (year in four digits, month in two digits, day in two digits).

9. **(Not used)**

⁽¹⁾ OJ L 273, 16.10.2001, p. 6.

⁽²⁾ OJ L 147, 30.6.1995, p. 7.

⁽³⁾ OJ L 186, 17.7.2009, p. 1.

ANNEX IV

Structure of EAFRD budget codes (F109)**INTRODUCTION**

For EAFRD, there is only one budget heading defined in the budget nomenclature: '05040501'.

As the budget codes can be up to 15 figures long, the remaining 7 figures can be used for identifying the programs and measures. This will allow reconciliation of the data from the different sources on financial year, paying agency, measure and program level.

1. BUDGET CODE STRUCTURE

The budget codes must have the following structure:

- The first 8 figures are constant: '05040501'.
- The following 3 figures indicate the measure, according to the attached list.
- The next 1 digit can have the following values (increasing with increasing co-financing rate:
 - 1 non-convergence region
 - 2 convergence region
 - 3 outermost region
 - 4 voluntary modulation
 - 5 additional contribution for Portugal
 - 6 additional funds from Article 69(5a) of Council Regulation (EC) No 1698/2005, non-convergence region
 - 7 additional funds from Article 69(5a) of Council Regulation (EC) No 1698/2005, convergence region
- The next digit indicates 0 = Operational Program or 1= Network Program.
- The last 2 figures indicate the program number: figures between '01' and '99' are allowed.

2. EXAMPLE

F109 = '050405011132001' means: budget heading '05040501' (EAFRD), measure '113' (early retirement), convergence region ('2'), Operational program ('0') and program number '01'.

3. LIST OF THE EAFRD MEASURES

AXIS 1 IMPROVING THE COMPETITIVENESS OF THE AGRICULTURAL AND FORESTRY SECTOR

Code	Measure
111	Vocational training and information actions
112	Setting up of young farmers
113	Early retirement
114	Use of advisory services
115	Setting up of management, relief and advisory services

Code	Measure
121	Modernisation of agricultural holdings
122	Improvement of the economic value of forests
123	Adding value to agricultural and forestry products
124	Cooperation for development of new products, processes and technologies in the agriculture and food sector and the forestry sector
125	Infrastructure related to the development and adaptation of agriculture and forestry
126	Restoring agricultural production potential damaged by natural disasters and introducing appropriate prevention actions
131	Meeting standards based on Community legislation
132	Participation of farmers in food quality schemes
133	Information and promotion activities
141	Semi-subsistence farming
142	Producer groups
143	Provision of farm advisory and extension services in Bulgaria and Romania
144	Holdings undergoing restructuring due to a reform of a common market organisation

AXIS 2 IMPROVING THE ENVIRONMENT AND THE COUNTRYSIDE THROUGH LAND MANAGEMENT

Code	Measure
211	Natural handicap payments to farmers in mountain areas
212	Payments to farmers in areas with handicaps, other than mountain areas
213	Natura 2000 payments and payments linked to Directive 2000/60/EC (WFD)
214	Agri-environment payments
215	Animal welfare payments
216	Non-productive investments
221	First afforestation of agricultural land
222	First establishment of agroforestry systems on agricultural land
223	First afforestation of non-agricultural land
224	Natura 2000 payments
225	Forest-environment payments
226	Restoring forestry potential and introducing prevention actions
227	Non-productive investments

AXIS 3 IMPROVING THE QUALITY OF LIFE IN RURAL AREAS AND ENCOURAGING DIVERSIFICATION OF ECONOMIC ACTIVITY

Code	Measure
311	Diversification into non-agricultural activities
312	Business creation and development
313	Encouragement of tourism activities
321	Basic services for the economy and rural population
322	Village renewal and development
323	Conservation and upgrading of the rural heritage
331	Training and information
341	Skills acquisition, animation and implementation of local development strategies

AXIS 4 LEADER

Code	Measure
411	Implementing local development strategies. Competitiveness
412	Implementing local development strategies. Environment/land management
413	Implementing local development strategies. Quality of life/diversification
421	Implementing cooperation projects
431	Running the local action group, acquiring skills and animating the territory as referred to in article 59

5 Technical Assistance

Code	Measure
511	Technical assistance

6 Complement to direct payment for Bulgaria and Romania

Code	Measure
611	Complement to direct payment

COMMISSION REGULATION (EU) No 826/2010**of 20 September 2010****derogating from Regulation (EU) No 1272/2009 as regards buying-in and sales of butter and skimmed milk powder**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 43(f) and (j) in conjunction with Article 4 thereof,

Whereas:

- (1) In accordance with Article 4(1)(b) of Commission Regulation (EC) No 884/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the financing by the European Agricultural Guarantee Fund (EAGF) of intervention measures in the form of public storage operations and the accounting of public storage operations by the paying agencies of the Member States ⁽²⁾, the EAGF finances expenditure on the physical operations referred to in Annex V to that Regulation on the basis of standard amounts, provided the corresponding expenditure has not been fixed under the applicable sectoral agricultural legislation.
- (2) The standard amounts set and notified to the Member States for 2010 were calculated on the basis of the rules applicable before 1 March 2010. On that date the rules regarding the buying-in and the sales of products for and from intervention, including the costs to be borne by intervention agencies and operators, laid down in Commission Regulation (EU) No 1272/2009 of 11 December 2009 laying down common detailed rules for the implementation of Council Regulation (EC) No 1234/2007 as regards buying-in and selling of agricultural products under public intervention ⁽³⁾ became applicable for the dairy sector.
- (3) In order to take account of this situation regarding sales, Commission Regulation (EU) No 569/2010 ⁽⁴⁾ introduced a derogation from Regulation (EU) No

1272/2009 on the relevant rules for the sales by tender of butter and skimmed milk powder for tenders submitted until 21 September 2010 at 11:00 (Brussels time).

- (4) In order to ensure a harmonised calculation of the standard amounts, it is necessary to provide the time Member States need to determine the costs related to unloading/loading and to communicate them to the Commission. Furthermore, the uniform application of the rules regarding the costs to be borne by the intervention agencies and operators regarding the buying-in and the sales of butter and skimmed milk powder for and from intervention should be further examined and finalised. Due to the time limits and the procedural requirements these additional elements will not be available on time in order to be taken into account in the decision for fixing the standard amounts for the accounting year 2011. Therefore, the derogation from Regulation (EU) No 1272/2009 should be provided for until the end of the accounting year 2011.
- (5) In order to react swiftly and to apply without interruption the derogation from Regulation (EU) No 1272/2009 until the end of the accounting year 2011, this Regulation should enter into force on the date of its publication.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

1. By way of derogation from the third subparagraph of Article 28(3) of Regulation (EU) No 1272/2009, the cost incurred in unloading the butter and the skimmed milk powder at the loading bay of the storage place shall be borne by the paying agency.

2. By way of derogation from Article 42(1)(e) of Regulation (EU) No 1272/2009, the price in euro shall be tendered for the product, supplied on pallets at the loading bay for the place of storage or, if necessary, supplied on pallets loaded onto the means of transport, where this concerns a lorry or a railway wagon.

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 171, 23.6.2006, p. 35.

⁽³⁾ OJ L 349, 29.12.2009, p. 1.

⁽⁴⁾ OJ L 163, 30.6.2010, p. 32.

3. By way of derogation from Article 52(1) of Regulation (EU) No 1272/2009, the product shall be made available to operators on pallets at the loading bay for the place of storage or, if necessary, supplied on pallets loaded onto the means of transport, where this concerns a lorry or a railway wagon.

4. By way of derogation from Article 52(3) of Regulation (EU) No 1272/2009, the costs, depending on the case, for the movement of the products to the loading bay or onto the means of transport shall be borne by the paying agency and any stowage or depalettising charges shall be borne by the purchaser.

Article 2

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

Paragraphs 2, 3 and 4 of Article 1 shall apply to special invitations to tender for butter and skimmed milk powder opened in accordance with Article 40 of Regulation (EU) No 1272/2009, for tenders submitted from 21 September 2010 at 11:00 (Brussels time) until 20 September 2011 at 11:00 (Brussels time).

It shall expire on 30 September 2011.

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

Done at Brussels, 20 September 2010.

For the Commission

The President

José Manuel BARROSO

COMMISSION REGULATION (EU) No 827/2010**of 20 September 2010****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 21 September 2010.

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

Done at Brussels, 20 September 2010.

*For the Commission,
On behalf of the President,**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	93,7
	MK	63,2
	TR	64,0
	XS	58,9
	ZZ	70,0
0707 00 05	MK	57,0
	TR	139,0
	ZZ	98,0
0709 90 70	TR	121,0
	ZZ	121,0
0805 50 10	AR	128,4
	CL	142,8
	IL	126,1
	TR	135,6
	UY	138,1
	ZA	114,0
	ZZ	130,8
0806 10 10	EG	75,0
	TR	124,1
	US	185,0
	ZZ	128,0
0808 10 80	AR	60,4
	BR	74,7
	CL	126,5
	CN	55,0
	NZ	107,5
	US	124,5
	ZA	86,3
0808 20 50	ZZ	90,7
	AR	157,0
	CN	84,3
	ZA	106,2
0809 30	ZZ	115,8
	TR	143,0
0809 40 05	ZZ	143,0
	BA	59,1
	IL	178,5
	ZZ	118,8

⁽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 (EU) No 828/2010**of 20 September 2010****on the issue of import licences for applications submitted in the first seven days of September 2010
under the tariff quota for high-quality beef administered by Regulation (EC) No 620/2009**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽²⁾, and in particular Article 7(2) thereof,

Whereas:

- (1) Commission Regulation (EC) No 620/2009 of 13 July 2009 providing for the administration of an import tariff quota for high-quality beef ⁽³⁾ sets out detailed rules for the submission and issue of import licences.
- (2) Article 7(2) of Regulation (EC) No 1301/2006 provides that in cases where quantities covered by licence appli-

cations exceed the quantities available for the quota period, allocation coefficients should be fixed for the quantities covered by each licence application. The applications for import licences submitted pursuant to Article 3 of Regulation (EC) No 620/2009 between 1 and 7 September 2010 exceed the quantities available. Therefore, the extent to which import licences may be issued and the allocation coefficient should be determined,

HAS ADOPTED THIS REGULATION:

Article 1

Import licence applications covered by the quota with order number 09.4449 and submitted between 1 and 7 September 2010 in accordance with Article 3 of Regulation (EC) No 620/2009, shall be multiplied by an allocation coefficient of 75,767209 %.

Article 2

This Regulation shall enter into force on the 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, 20 September 2010.

*For the Commission,
On behalf of the President,*

Jean-Luc DEMARTY
*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 238, 1.9.2006, p. 13.

⁽³⁾ OJ L 182, 15.7.2009, p. 25.

COMMISSION REGULATION (EU) No 829/2010**of 20 September 2010****on the issue of import licences for applications lodged during the first seven days of September 2010 under the tariff quotas opened by Regulation (EC) No 533/2007 for poultrymeat**

THE EUROPEAN COMMISSION,

Whereas:

Having regard to the Treaty on the Functioning of the European Union,

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 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽²⁾, and in particular Article 7(2) thereof,

Having regard to Commission Regulation (EC) No 533/2007 of 14 May 2007 opening and providing for the administration of tariff quotas in the poultrymeat sector ⁽³⁾, and in particular Article 5(6) thereof,

(1) Regulation (EC) No 533/2007 opened tariff quotas for imports of poultrymeat products.

(2) The applications for import licences lodged during the first seven days of September 2010 for the subperiod from 1 October to 31 December 2010 relate, for some quotas, to quantities exceeding those available. The extent to which import licences may be issued should therefore be determined by establishing the allocation coefficient to be applied to the quantities requested,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which import licence applications have been lodged under Regulation (EC) No 533/2007 for the subperiod from 1 October to 31 December 2010 shall be multiplied by the allocation coefficients set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 21 September 2010.

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

Done at Brussels, 20 September 2010.

*For the Commission,
On behalf of the President,*

Jean-Luc DEMARTY
*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 238, 1.9.2006, p. 13.

⁽³⁾ OJ L 125, 15.5.2007, p. 9.

ANNEX

Group No	Order No	Allocation coefficient for import licence applications lodged for the subperiod from 1.10.2010-31.12.2010 (%)
P1	09.4067	2,100854
P3	09.4069	0,589982

COMMISSION REGULATION (EU) No 830/2010**of 20 September 2010****on the issue of import licences for applications lodged during the first seven days of September 2010 under the tariff quotas opened by Regulation (EC) No 539/2007 for certain products in the egg sector and for egg albumin**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽²⁾, and in particular Article 7(2) thereof,Having regard to Commission Regulation (EC) No 539/2007 of 15 May 2007 opening and providing for the administration of tariff quotas in the egg sector and for egg albumin ⁽³⁾, and in particular Article 5(6) thereof,

Whereas:

- (1) Regulation (EC) No 539/2007 opened tariff quotas for imports of egg products and egg albumin.
- (2) The applications for import licences lodged during the first seven days of September 2010 for the subperiod from 1 October to 31 December 2010 relate, for some quotas, to quantities exceeding those available. The extent to which import licences may be issued should therefore be determined by establishing the allocation coefficient to be applied to the quantities requested,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which import licence applications have been lodged under Regulation (EC) No 539/2007 for the subperiod from 1 October to 31 December 2010 shall be multiplied by the allocation coefficients set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 21 September 2010.

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

Done at Brussels, 20 September 2010.

*For the Commission,
On behalf of the President,*

Jean-Luc DEMARTY
*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 238, 1.9.2006, p. 13.

⁽³⁾ OJ L 128, 16.5.2007, p. 19.

ANNEX

Group No	Order No	Allocation coefficient for import licence applications lodged for the subperiod from 1.10.2010-31.12.2010 (%)
E2	09.4401	25,714205

COMMISSION REGULATION (EU) No 831/2010**of 20 September 2010****on the issue of import licences for applications lodged during the first seven days of September 2010 under the tariff quota opened by Regulation (EC) No 1385/2007 for poultrymeat**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽²⁾, and in particular Article 7(2) thereof,

Having regard to Commission Regulation (EC) No 1385/2007 of 26 November 2007 laying down detailed rules for the application of Council Regulation (EC) No 774/94 as regards opening and providing for the administration of certain Community tariff quotas for poultrymeat ⁽³⁾, and in particular Article 5(6) thereof,

Whereas:

The applications for import licences lodged during the first seven days of September 2010 for the subperiod from 1 October to 31 December 2010 relate, for some quotas, to quantities exceeding those available. The extent to which import licences may be issued should therefore be determined by establishing the allocation coefficient to be applied to the quantities requested,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which import licence applications have been lodged for the subperiod from 1 October to 31 December 2010 under Regulation (EC) No 1385/2007 shall be multiplied by the allocation coefficients set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 21 September 2010.

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

Done at Brussels, 20 September 2010.

*For the Commission,
On behalf of the President,*

Jean-Luc DEMARTY
*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 238, 1.9.2006, p. 13.

⁽³⁾ OJ L 309, 27.11.2007, p. 47.

ANNEX

Group No	Order No	Allocation coefficient for import licence applications lodged for the subperiod from 1.10.2010-31.12.2010 (%)
1	09.4410	0,376287
3	09.4412	0,453791
4	09.4420	0,653701
6	09.4422	0,676375

DECISIONS

COMMISSION DECISION

of 25 May 2010

concerning national provisions notified by Denmark on the addition of nitrite to certain meat products*(notified under document C(2010) 3301)***(Only the Danish text is authentic)**

(2010/561/EU)

THE EUROPEAN COMMISSION,

of a renewed notification — that the application of the levels laid down in Directive 2006/52/EC do not achieve the required level of protection and would lead to an unacceptable risk to human health.

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114(6) thereof,

Whereas:

I. FACTS AND PROCEDURE

(1) By letter of 21 November 2007 and pursuant to Article 95(4) of the EC Treaty (now Article 114(4) of the Treaty on the Functioning of the European Union — TFEU), the Kingdom of Denmark (Denmark) notified to the Commission its national provisions on the addition of nitrites to certain meat products, contained in Order No 22 of 11 January 2005 on food additives (*Bekendtgørelse nr 22 af 11.1.2005 om tilsætningsstoffer til fødevarer*) and the Danish positive list of permitted food additives (*Liste over tilladte tilsætningsstoffer til fødevarer, 'Positivlisten'*)⁽¹⁾. Denmark considered necessary to maintain these provisions and therefore not to transpose Directive 2006/52/EC of the European Parliament and of the Council of 5 July 2006 amending Directive 95/2/EC on food additives other than colours and sweeteners and Directive 94/35/EC on sweeteners for use in foodstuffs⁽²⁾ into national law in so far as it relates to the use of nitrites in meat products.

(2) By Commission Decision 2008/448/EC⁽³⁾, these national provisions were approved until 23 May 2010, pending the demonstration by the Danish authorities — by means

(3) Accordingly, by letter of 20 November 2009, which reached the Commission on 26 November 2009, Denmark notified the Commission of its intention to continue not to transpose Directive 2006/52/EC into national law in so far as it relates to the use of nitrites in certain meat products and instead maintain its existing national legislation in this respect, i.e. Order No 22 of 11 January 2005 on food additives (*Bekendtgørelse nr 22 af 11.1.2005 om tilsætningsstoffer til fødevarer*) and the Danish positive list of permitted food additives (*Liste over tilladte tilsætningsstoffer til fødevarer, 'Positivlisten'*). In support of its notification, Denmark submitted additional information that includes data on consumption of meat products, imports of meat products, and analysis of nitrite in meat products on the Danish market.

1. UNION LEGISLATION

1.1. ARTICLE 114(4) AND (6) TFEU

(4) Article 114(4) TFEU provides that, '[i]f, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 36, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.'

(5) According to Article 114(6) TFEU, the Commission shall, within 6 months of the notification, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

⁽¹⁾ The notification related to E249 potassium nitrite and E250 sodium nitrite.

⁽²⁾ OJ L 204, 26.7.2006, p. 10.

⁽³⁾ OJ L 157, 17.6.2008, p. 98.

1.2. DIRECTIVE 2006/52/EC

- (6) Under the general principles of Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives⁽¹⁾, the approval of a food additive is subject to a reasonable technological need, its acceptability from a health point of view and its use not being misleading for the consumer. The latter Regulation repealed, as of 20 January 2010, Council Directive 89/107/EEC of 21 December 1988 on the approximation of the laws of the Member States concerning food additives authorised for use in foodstuffs intended for human consumption⁽²⁾, which set out the same general principles.
- (7) Nitrites have been used in meat products for many decades, inter alia, to secure, in conjunction with other factors, the preservation and microbiological safety of meat products, in particular cured meat products, inhibiting, amongst other things, the multiplication of *Clostridium botulinum*, the bacteria responsible for life-threatening botulism. At the same time, it is recognised that the presence of nitrites in meat products can give rise to the formation of nitrosamines, which have been found to be carcinogenic. Legislation in this field must, therefore, strike a balance between the risk of the formation of nitrosamines through the presence of nitrites in meat products, on the one hand, and the protective effects of nitrites against the multiplication of bacteria, in particular those responsible for botulism.
- (8) Pursuant to Articles 33 and 34 of Regulation (EC) No 1333/2008, European Parliament and Council Directive No 95/2/EC on food additives other than colours and sweeteners⁽³⁾ is repealed as of 20 January 2010, with the exception of certain provisions, including Annexes I to VI thereto, which continue to apply. Directive 95/2/EC, as it was adopted originally, laid down maximum residual levels of nitrites and nitrates for various meat products as well as 'indicative ingoing amounts'. Annex I(3)(c) to Directive 2006/52/EC amends Annex III Part C to Directive 95/2/EC in relation to E249 potassium nitrite and E250 sodium nitrite.
- (9) By contrast, as a general rule, Directive 2006/52/EC contains maximum amounts for E249 potassium nitrite and E250 sodium nitrite that may be added during manufacture. The maximum added amount is 150 mg/kg for most meat products in general and 100 mg/kg for sterilised meat products. For a few specified cured meat products made traditionally in specific Member States the maximum amount is 180 mg/kg.
- (10) This approach follows opinions from the Scientific Committee for Food (hereinafter 'SCF') of 1990⁽⁴⁾ and 1995⁽⁵⁾ as well as from the European Food Safety Authority (hereinafter 'EFSA') of 26 November 2003⁽⁶⁾, which established that the ingoing amount of nitrite, rather than the residual amount, contributes to the inhibitory effect against *C. botulinum* and recommended to replace 'indicative ingoing amounts' with 'maximum ingoing amounts'. It also takes account of the Court's ruling in Case C-3/00 *Denmark/Commission* relating to a previous Danish request under Article 95(4) of the EC Treaty (now Article 114(4) TFEU) and in which the Court held that, when rejecting the Danish request in relation to the use of nitrites in meat products, the Commission did not take sufficient account of the SCF's opinions of 1990 and 1995, which cast doubt on the appropriateness of the amounts of nitrite authorised by Directive 95/2/EC⁽⁷⁾.
- (11) By way of exception to the general rule, Directive 2006/52/EC contains maximum residual levels for certain specified traditional cured meat products, which are produced through traditional manufacturing methods. There are maximum residual levels of 50 mg/kg, 100 mg/kg and 175 mg/kg applying to different groups of such products, e.g. 175 mg/kg for *Wiltshire bacon*, *dry cured bacon* and similar products, and 100 mg/kg for *Wiltshire ham* and similar products. In relation to these products maximum residual values have been established since it is not possible to control the ingoing amount of curing salts absorbed by the meat due to the nature of the manufacturing process associated with these products. The production process of these specific products is described in the Directive to enable identification of 'similar products' and to make clear what products are covered by the different maximum levels. The table below contains the maximum levels established by Directive 2006/52/EC.
- (1) OJ L 354, 31.12.2008, p. 16.
 (2) OJ L 40, 11.2.1989, p. 27.
 (3) OJ L 61, 18.3.1995, p. 1.
 (4) Opinion on nitrates and nitrites expressed on 19 October 1990, European Commission — Reports of the Scientific Committee for Food (twenty-sixth series), p. 21.
 (5) Opinion on nitrates and nitrite expressed on 22 September 1995, European Commission — Reports of the Scientific Committee for Food (thirty eighth series), p. 1.
 (6) Opinion of the Scientific Panel on Biological Hazards on a request from the Commission related to the effects of Nitrites/Nitrates on the Microbiological Safety of Meat Products, *The EFSA Journal* (2003) 14, p. 1.
 (7) Case C-3/00, *Kingdom of Denmark v Commission of European Communities*, ECR [2003] I-2643, in particular points 109-115.

E No	Name	Foodstuff	Maximum amount that may be added during manufacture (expressed as NaNO ₃)	Maximum residual level (expressed as NaNO ₃)
E 249	Potassium nitrite (*)	Meat product	150 mg/kg	
E 250	Sodium nitrite (*)	Sterilised meat products (Fo > 3,00) (**)	100 mg/kg	
		Traditional immersion cured meat products (1):		
		Wiltshire bacon (1.1); Entrecosta, entrecosto, chispe, orelheira e cabeça (salgados) Toucinho fumado (1.2); and similar products		175 mg/kg
		Wiltshire ham (1.1); and similar products		100 mg/kg
		Rohschinken, nassgepökelt (1.6); and similar products		50 mg/kg
		Cured tongue (1.3)		50 mg/kg
		Traditional dry cured meat products (2):		
		Dry cured bacon (2.1); and similar products		175 mg/kg
		Dry cured ham (2.1); Jamón curado, paleta curada, lomo embuchado y cecina (2.2); Presunto, presunto da pá and paio do lombo (2.3); and similar products		100 mg/kg
		Rohschinken, trockengepökelt (2.5); and similar products		50 mg/kg
		Other traditionally cured meat products (3):		
		Vysočina Selský salám Turistický trvanlivý salám Poličan Herkules Lovecký salám Dunajská klobása Paprikáš (3.5); and similar products	180 mg/kg	

E No	Name	Foodstuff	Maximum amount that may be added during manufacture (expressed as NaNO ₃)	Maximum residual level (expressed as NaNO ₃)
		Rohschinken, trocken-/nassgepökelt (3.1); and similar products Jellied veal and brisket (3.2)		50 mg/kg

(*) When labelled 'for food use', nitrite may be sold only in a mixture with salt or a salt substitute.

(**) Fo-value 3 is equivalent to 3 minutes heating at 121 °C (reduction of the bacterial load of one billion spores in each 1 000 cans to one spore in 1 000 cans).

(12) As recommended in the relevant opinions of the SCF and EFSA, Directive 2006/52/EC is based on the establishment of maximum added amounts and reflects the ranges referred to in these scientific opinions by specifying that up to 100 mg/kg of nitrite are permitted in sterilised meat products and 150 mg/kg in other meat products. Given the vast variety of (cured) meat products and manufacturing methods within the European Union, the Union legislator held that it was, for the moment, not possible to specify the appropriate level of nitrite for each product.

(13) The exceptions to the rule of applying maximum added amounts have a limited character. They apply to specific products which are traditionally manufactured in certain Member States and for which it is not possible to control the ingoing amount of curing salts absorbed by the meat due to the nature of the manufacturing process associated with these products. The traditional products to which they apply are defined, in particular, through a description of the production method.

(14) Directive 2006/52/EC was due to be transposed by the Member States by 15 February 2008 in order to permit trade in and the use of products complying with this Directive by 15 February 2008 and prohibit trade in and use of products which are not in compliance by 15 August 2008.

(15) On 23 November 2007, pursuant to Article 95(4) EC Treaty (now Article 114(4) TFEU), Denmark requested to maintain its national provisions on the addition of nitrites to meat products contained in Order No 22 of 11 January 2005 on food additives (*Bekendtgørelse nr 22 af 11.1.2005 om tilsætningsstoffer til fødevarer*) and the Danish positive list of permitted food additives (*Liste over tilladte tilsætningsstoffer til fødevarer, 'Positivlisten'*), which are more stringent than those of Directive 2006/52/EC.

(16) By means of Commission Decision 2008/448/EC and in accordance with Article 95(6) EC Treaty (now Article 114(6) TFEU) the Commission approved these

national measures until 23 May 2010, pending the demonstration by the Danish authorities that the application of the levels laid down in Directive 2006/52/EC do not achieve the required level of protection and would lead to an unacceptable risk to human health. In order to be able to submit such data in a renewed application, Denmark was required to monitor the situation in particular with regard to the control of botulism, the share of meat products covered by the 60 mg/kg limit in the overall consumption of meat products in Denmark, including any other risk factor of typical dietary habits as relevant, as well as imports of meat products from other Member States.

2. NATIONAL PROVISIONS NOTIFIED

(17) The national provisions notified by Denmark on 20 November 2009 are Order No 22 of 11.1.2005 on food additives (*Bekendtgørelse nr 22 af 11.1.2005 om tilsætningsstoffer til fødevarer*) and the Danish positive list of permitted food additives (*Liste over tilladte tilsætningsstoffer til fødevarer, 'Positivlisten'*). In the context of Decision 2008/448/EC, the Commission has already assessed the more stringent rules applied by Denmark with respect to E249 and E250.

(18) Order No 22 contains the principle that only additives contained in a positive list may be used for the foodstuffs under specified conditions, and with the specified objectives and restrictions⁽¹⁾. It further provides that, unless otherwise specified, the maximum values set out in the positive list refer to the maximum amounts of the additive which may be present in a foodstuff in the form in which it is sold⁽²⁾. As a consequence, only foodstuffs which are in compliance with the requirements of Order No 22 and the positive list may be sold on the Danish market. The positive list established by the Danish Veterinary and Food Administration on the basis of Order No 22 states which additives may be used for the individual foodstuffs, and in what amounts. The version notified applies with effect from 29 January 2005.

⁽¹⁾ See paragraph 13 of Order No 22 'Use of additives'.

⁽²⁾ See paragraph 20 of Order No 22.

- (19) With regard to the use of nitrites E249 (potassium nitrite) and E250 (sodium nitrite) in meat products, the Danish positive list sets out exclusively added amounts and contains the following maximum level.

Foodstuff	Amount of nitrites added (mg/kg)
8.2.1. Non-heat-treated meat products derived from whole pieces of meat, including slices of products (in general)	60
Bacon of the Wiltshire type and related cuts, including salt-cured ham	150
8.2.2. Heat-treated meat products derived from whole pieces of meat, including slices of products (in general)	60
Rullepølse (rolled meat sausage)	100
Entirely preserved or semi-preserved products, bacon of the Wiltshire type and cuts thereof, including salt-cured ham	150
8.3.1. Non-heat-treated meat products derived from minced meat, including slices of products (in general)	60
Fermented salamis	100
Entirely preserved or semi-preserved non-heat-treated meat products derived from minced meat	150
8.3.2. Heat-treated meat products derived from minced meat	60
Meatballs and liver paté (kødboller and leverpostej) (*)	0
Entirely preserved or semi-preserved heat-treated meat products derived from minced meat	150

(*) Pursuant to Article 20 of Regulation (EC) No 1333/2008 read in conjunction with Annex IV thereto, Denmark may continue to prohibit the use of certain categories of food additives, including preservatives, in the traditional Danish 'Kødboller' (meatballs) and Traditional Danish 'Leverpostej' (liver paté).

- (20) Therefore, the limit 60 mg/kg applies for many types of meat products, whereas the corresponding maximum limits of Directive 2006/52/EC are 100 or 150 mg/kg.

- (21) However, as regards 'entirely preserved or semi-preserved heat-treated meat products derived from minced meat', the notified provisions provide for a maximum limit of 150 mg/kg, whereas the corresponding maximum limits of Directive 2006/52/EC for 'sterilised meat products' is set at 100 mg/kg.

3. PROCEDURE

- (22) By letter of 20 November 2009, which reached the Commission on 26 November 2009, Denmark notified to the Commission its intention to continue not to transpose Directive 2006/52/EC into Danish law in so far as it relates to the use of E249 potassium nitrite and E 250 sodium nitrite in meat products. In support of its notification, Denmark submitted a Report of the Danish Ministry of Food, Agriculture and Fisheries on consumption and import of meat products in Denmark, as well as a Report of the National Food Institute (NFI) on 'Nitrites as food additives — Health aspects and EU Regulation'.
- (23) By letter of 21 December 2009, the Commission confirmed that it had received the notification and that the 6-month period for its examination under Article 114(6) TFEU started on 27 November 2009, the day following the day on which the notification was received. By means of the same letter, the Commission requested the Danish authorities to provide the latest version of the positive list of permitted food additives ('Positivlisten').
- (24) By letter of 7 January 2010, Denmark provided the additional requested information.
- (25) The Commission published a notice regarding the notification in the *Official Journal of the European Union* ⁽¹⁾ in order to inform other interested parties of Denmark's national provisions, as well as the grounds invoked to support the request. By letter of 25 January 2010, the Commission also informed the other Member States and the EEA States on the notification and gave them the opportunity to submit comments thereon within 30 days. The Commission received comments within this deadline from the Czech Republic, Poland, the United Kingdom and Norway ⁽²⁾.

— The Czech Republic agrees to the maintaining of more stringent national measures but only until the adoption of the annexes to Regulation (EC) No 1333/2008. Following the adoption of the annexes on the use of additives in foodstuffs, the same conditions of use must apply to all Member States.

— Poland has no comments on the notification, but stressed the need to reconsider the levels of nitrites laid down in Directive 2006/52/EC, following a re-evaluation by EFSA.

⁽¹⁾ OJ C 7, 13.1.2010, p. 1.

⁽²⁾ In addition, the Commission received comments from Latvia and Lithuania on 1 March 2010 and 25 March 2010 respectively, i.e. outside the time limit fixed by the Commission.

— The United Kingdom refers to Denmark's stated motivation for maintaining national levels for use of nitrites in meat products to prevent its population from being exposed to an increased level of nitrosamines. It stresses that the same preservation of meat products, ensuring there are no outbreaks of botulism, relies upon a complex interaction between a number of factors including not only nitrites but also salt, pH and temperature control. In its view, the possibility of consumers being exposed to nitrosamines is not the only issue to be considered in deciding the appropriate levels of nitrites. In that respect, it emphasises that the framework agreed by 26 of the Member States, as part of the European Commission's High Level Group on Nutrition and Physical Activity, recommends a 16 % salt reduction in meat products to be achieved over 4 years (2008 to 2012). Therefore, it questions how it would be possible to simultaneously reduce salt and nitrite levels whilst still ensuring the production of safe meat products.

— Norway considers that the Danish measure is well documented and therefore has no objection to Denmark's request to maintain national provisions on the use of nitrites as additives in meat products. Against this background, it also encourages the Commission to re-examine Directive 2006/52/EC in relation to the use of nitrites in meat products.

- (26) A further meeting took place between the Commission services and Denmark on 19 March 2010. By means of a letter dated 12 April 2010, Denmark provided additional clarifications with respect to the different categories of meat products covered by the notified provisions as well as the carrying out of controls of imported meat products.

4. REQUEST TO EFSA

- (27) By letter of 29 January 2010, the Directorate-General for Health and Consumers requested EFSA to assess the data provided by the Danish authorities and in particular whether this information or any other new scientific developments indicate that there is scientific evidence for a revision of the maximum limits on nitrites adopted in Directive 2006/52/EC.
- (28) In its Opinion adopted on 11 March 2010 ⁽¹⁾, the EFSA Panel on Food Additives and Nutrient Sources added to Foods (ANS Panel) concluded that the data provided by the Danish authorities do not provide a basis to revise the 'acceptable daily intake' (ADI) of 0,07 mg/kg bw/day for nitrite, established by the Joint FAO/WHO Expert Committee on Food Additives (JECFA) in 2002. It also noted that this ADI might be exceeded by children. Finally, the ANS Panel concluded, in line with what had been concluded by the SCF in 1995, that exposure

to preformed nitrosamines in food should be minimised by appropriate technological practices, such as lowering the levels of nitrate and nitrite added to foods to the minimum required to achieve the necessary preservative effect and to ensure microbiological safety.

- (29) With regard to the effects of nitrites/nitrates on the microbiological safety of meat products, the ANS Panel noted that this had been addressed in the Opinion of EFSA Scientific Panel on Biological Hazards of 26 November 2003. In that Opinion, it was stated that several factors contribute to the safety of meat products (cooking process, salt/concentration, water activity etc. and that the ingoing amount of nitrites is important for microbiological safety, which is why ingoing amounts should be controlled (rather than the residual amount). Moreover, the Scientific Panel on Biological Hazards agreed with the view of the Scientific Committee for Food (SCF) that 50-100 mg added nitrite per kg of meat products may suffice for many products and in other products, especially those with a low salt content and having a prolonged shelf-life, addition of between 50-150 mg/kg nitrite is necessary to inhibit growth of *C. botulinum*. However, no detailed analysis per category of meat products was provided.

II. ASSESSMENT

1. ADMISSIBILITY

- (30) Under Article 114(4) and (6) TFEU a Member State may, after the adoption of a harmonisation measure, maintain its more stringent national provisions on grounds of major needs referred to in Article 36 TFEU, or relating to the protection of the environment or the working environment, provided that it notifies these national provisions to the Commission and the Commission approves these measures.
- (31) The Danish notification relates to national provisions derogating from those of Annex I (3) (c) to Directive 2006/52/EC amending Annex III Part C to Directive 95/2/EC in relation to E249 potassium nitrite and E250 sodium nitrite. The current Danish provisions already existed at the time of the adoption of Directive 2006/52/EC.
- (32) The Danish Order No 22 and the Danish positive list allows the addition of E249 potassium nitrite and E250 sodium nitrite to meat products only in so far as specific added amounts are not exceeded. Depending on the products in question these maximum amounts are 0, 60, 100 or 150 mg/kg, which are lower for certain products than, or differ from the ones laid down in Directive 2006/52/EC. Moreover, unlike Directive 2006/52/EC, the Danish provisions do not contain any

⁽¹⁾ Scientific Opinion on nitrite in meat products of the EFSA Panel on Food Additives and Nutrient Sources added to Food, *EFSA Journal* 2010, 8(3):1538.

exceptions to the principle of fixing maximum added amounts for nitrites, thereby not permitting the placing on the market of certain traditionally manufactured meat products from other Member States.

- (33) The Danish provisions are therefore more stringent than, or differ from the provisions of Directive 2006/52/EC in that they lay down lower maximum added amounts than Directive 2006/52/EC for several types of products (in many cases 60 mg/kg) and in so far as they do not, unlike Directive 2006/52/EC, allow the placing on the market of certain traditional meat products on the basis of maximum residual values.
- (34) In accordance with Article 114(4) TFEU, the notification was supplemented by a description of the grounds relating to one or more of the major needs referred to in Article 36 TFEU, in this case the protection of health and life of humans. An accompanying Report of the Danish Ministry of Food, Agriculture and Fisheries provides additional data on the consumption and import of meat products as well as an analysis of nitrite in meat products on the Danish market. Finally, the Danish authorities have submitted a Report of the National Food Institute (NFI) on 'Nitrites as food additives — Health aspects and EU Regulation', dated 30 October 2007. According to submitted information, the latter report was re-evaluated in September 2009 and no new comments or knowledge has been added.
- (35) In light of the foregoing, the Commission considers that the application submitted by Denmark with a view to obtaining authorisation to maintain its national provisions on the use of nitrites in meat products is admissible under Article 114(4) TFEU.

2. ASSESSMENT OF MERITS

- (36) In accordance with Article 114(4) and (6), first subparagraph, TFEU, the Commission must ascertain that all the conditions enabling a Member State to maintain its national provisions derogating from a Union harmonisation measure provided for in that Article are fulfilled.
- (37) In particular, the Commission has to assess whether or not the national provisions are justified by the major needs referred to in Article 36 TFEU or relating to the protection of the environment or the working environment and do not exceed what is necessary to attain the legitimate objective pursued. In addition, when the Commission considers that the national provisions fulfil the above conditions, it must verify, pursuant to Article 114(6) TFEU, whether or not the

national provisions are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they constitute an obstacle to the functioning of the internal market.

- (38) It has to be noted that, in the light of the time frame established by Article 114(6) TFEU, the Commission, when examining whether the national measures notified under Article 114(4) TFEU are justified, has to take as a basis 'the grounds' put forward by the notifying Member State. This means that, according to the provisions of the Treaty, the responsibility of proving that the national measures are justified lies with the requesting Member State that seeks to maintain them. Given the procedural framework established by Article 114(4) and (6) TFEU, including in particular a strict deadline for a decision to be adopted, the Commission normally has to limit itself to examining the relevance of the elements, which are submitted by the requesting Member State, without having to seek itself possible reasons of justifications.
- (39) However, where the Commission is in possession of information in the light of which the Union harmonisation measure from which the notified national provisions derogate may need to be reviewed, it can take such information into consideration in the assessment of the notified national provisions.

2.1. THE POSITION OF DENMARK

- (40) Denmark claims that its legislation ensures a higher level of protection of health and life of human in that it lays down lower maximum added amounts of E249 potassium nitrite and E250 sodium nitrite than the ones provided for in Directive 2006/52/EC, and does not allow the placing on the market of traditional meat products for which no ingoing amounts can be established. Denmark considers that the Danish provisions are fully consistent with the recommendations which the Scientific Committee on Food (SCF) made in 1990 and 1995, as well as with the opinion of EFSA of 26 November 2003.
- (41) Denmark also considers that regulating the nitrite amounts used on the basis of whether they were considered to involve an intake in excess of the established relevant ADI does not provide the necessary protection of human health. The ADI established for nitrites does not take into account the formation of nitrosamines, which are associated with the use of nitrites in meat products. According to scientific evaluations, nitrosamines are genotoxic; as such, it is not possible to establish a limit under which they are not carcinogenic. Denmark further emphasises that the formation of nitrosamines depends on the nitrite amounts that are added, and not on the much lower residual amounts, which, due to the substance's transformation in the foodstuff, are typically present in the product at the time of consumption.

- (42) Thus, in its opinion, the overall scientific assessment demonstrates that (a) the use of nitrites and nitrates should be regulated in terms of the amounts that are added rather than the residual amounts, (b) their use should be reduced as far as possible by using differentiated amounts in line with the technical needs related to different foodstuffs, and (c) the necessary preservation is achieved by using the amounts recommended by EFSA. In that respect, Denmark considers that its national provisions systematically follow these recommendations, whereas Directive 2006/52/EC does not as far as nitrites are concerned.
- (43) Denmark also stresses that its national provisions have been in place for many years and have never given rise to problems with the preservation of the products concerned. Moreover, it has a relatively low rate of botulism compared with other EU Member States, and not a single case caused by the consumption of meat products has been recorded since 1980. Following Decision 2008/448/EC, which required Denmark to monitor the situation with respect to, inter alia, botulism, Denmark notes that no cases of botulism have been recorded in Denmark since 2006. Thus, the Danish provisions on the use of nitrite in meat products are still considered as providing comprehensive protection against food poisoning.
- (44) As regards consumption patterns, the Report of the Danish Ministry of Food, Agriculture and Fisheries provides additional data on the consumption and import of meat products as well as an analysis of nitrite in meat products on the Danish market. According to the Danish authorities, this Report demonstrates that the consumption of meat products to which nitrites may be added has increased over the years, especially among children. Moreover, the meat products covered by the 60 mg/kg limit are by far the most frequently consumed products in Denmark. This demonstrates that any amendment to the national provisions to raise the maximum added amounts in accordance with Directive 2006/52/EC to 150 mg/kg could result in a significant rise in the intake of nitrite and thereby nitrosamines.
- (45) Furthermore, Denmark maintains that its provisions on nitrite do not act as an obstacle to trade, referring to figures showing that imports of meat products from other Member States have been taking place and have even increased since 2006.
- (46) Denmark also stresses that maintaining nitrite use to a minimum is justified in order to adhere to the ADI for nitrite in foodstuffs. Furthermore, Denmark refers to the 2007 Report of the Danish National Food Institute (NFI) on 'Nitrites as food additives — Health aspects and EU Regulation'. The latter report, which was re-evaluated in 2009, states that the implementation of Directive 2006/52/EC in Denmark could lead to an increase in nitrite intake by a factor of 2,3-2,4, which may imply a corresponding rise in the intake of preformed nitrosamines.
- (47) In sum, Denmark considers it legitimate to reduce the risk to human health stemming from the exposure to nitrosamines beyond the requirements of Directive 2006/52/EC through the continued application of its legislation. According to Denmark, the monitoring, which it undertook pursuant to Decision 2008/448/EC, demonstrates that the health considerations previously taken into account are still valid. Finally, it contends that the latest data available show that the Danish provisions do not constitute an obstacle to trade in the products concerned.
- ## 2.2. EVALUATION OF THE DANISH POSITION
- ### 2.2.1. *Justification on grounds of major needs referred to in Article 36 TFEU*
- (48) The Danish legislation aims to achieve a higher level of protection of health and life of humans with regard to exposure to nitrites and the possible formation of nitrosamines in meat products, by specifying lower maximum added amounts of nitrite in relation to certain meat products, when compared with the maximum levels provided under Directive 2006/52/EC and not allowing the placing on the market of products for which only maximum residual levels can be established. Moreover, the notified provisions set a maximum amount of 150 mg/kg as regards 'entirely preserved or semi-preserved heat-treated meat products derived from minced meat', which is higher than that specified for 'sterilised meat products' in Directive 2006/52/EC, i.e. 100 mg/kg.
- (49) When assessing whether the Danish legislation is actually adequate and necessary for achieving this objective a number of factors need to be taken into account. In particular, two health risks need to be balanced, the one related to the presence of nitrosamines in meat products, on the one hand, and the microbiological safety of meat products, on the other hand. The latter aspect is more than a mere technological need, but a highly relevant health concern in its own right. While it is recognised that the levels of nitrites in meat products need to be limited, lower levels of nitrite in meat will not automatically lead to a higher protection of human health. The most appropriate level of nitrite

depends on a number of factors acknowledged in the relevant opinions of the SCF and EFSA, e.g. the addition of salt, moisture, pH, shelf-life of the product, hygiene, temperature control etc.

(50) In the light of the preceding considerations and those under recitals 11 and 12 above, the Commission considers that, in principle, Directive 2006/52/EC constitutes an adequate response to the challenge of reconciling two conflicting health risks in light of the diversity of meat products across the Union.

(51) On the other hand, the Commission has to evaluate the specific choices made by the Danish regulator and the experience made with these rules, which have been in force for a considerable period of time. Through the figures it provided on the occurrence of food poisoning and, in particular, botulism, Denmark has demonstrated that it has so far achieved satisfactory results with its legislation. These data show that the maximum levels specified in the Danish legislation appear to have been sufficient to ensure the microbiological safety of the meat products currently made in Denmark and the production methods currently used in Denmark.

(52) The Commission notes that the Danish legislation is compatible with the relevant scientific opinions of the Union's scientific bodies. It is based on a regulation of maximum added values and respects the ranges of added amounts of nitrite referred to in these opinions, i.e. 50-150 mg/kg. At the same time, Denmark has established more specific maximum added amounts for particular groups of meat products, compared with the Directive, in light of the types of meat products and manufacturing methods prevailing in Denmark.

(53) In addition, it must be considered that, according to information provided by Denmark, the bulk of the meat products consumed by the Danish population, relates to meat products for which there is currently a limit of 60 mg/kg and which would have to be replaced with a limit of 100 or 150 mg/kg. Since Danish manufacturers, like manufacturers in other Member States, would not be obliged to raise the amounts of nitrites currently added to their products to the maximum levels referred to in Directive 2006/52/EC, it is unlikely that the actual exposure of the Danish population to nitrites in meat products would increase to the extent suggested in the Danish submission, i.e. by a factor of 2,3-2,4. However, an increase of the actual exposure of the Danish population, to nitrites cannot be excluded.

(54) On the basis of the information available at the moment, the Commission considers that the request to maintain the notified measures can be temporarily accepted on grounds of protection of public health in Denmark.

2.2.2. *Absence of any arbitrary discrimination, any disguised restriction of trade between Member States or any obstacle to the functioning of the internal market*

2.2.2.1. *Absence of arbitrary discrimination*

(55) Article 114(6) TFEU obliges the Commission to verify that the envisaged measures are not a means of arbitrary discrimination. According to the jurisprudence of the Court of Justice, in order for there to be no discrimination, similar situations must not be treated in different ways and different situations must not be treated in the same way.

(56) The Danish national rules apply to both domestic products and products made in other Member States. In the absence of any evidence of the contrary, it can be concluded that the national provisions are not a means of arbitrary discrimination.

2.2.2.2. *Absence of a disguised restriction on trade*

(57) National measures which restrict the use of products to a greater extent than a Union Directive would normally constitute a barrier to trade, in so far as products that are legally placed on the market and used in the rest of the Union are not expected, as a result of the prohibition on use, to be placed on the market in the Member State concerned. The pre-conditions laid down in Article 114(6) TFEU are intended to prevent restrictions based on the criteria set out in paragraphs (4) and (5) thereof from being applied for inappropriate reasons, and constituting in effect economic measures to impede the importation of products from other Member States, that is to say, a means of indirectly protecting national production.

(58) Given that the Danish rules impose stricter standards on the addition of nitrites to certain meat products and for specific categories of meat products ('entirely preserved or semi-preserved heat-treated meat products derived from minced meat') a higher maximum added amount of nitrites than that of Directive 2006/52/EC also on operators based in other Member States in an otherwise harmonised area, they are liable to constitute a disguised restriction of trade or an obstacle to the functioning of the internal market. It is recognised, however, that Article 114(6) TFEU must be read in the sense that only national measures constituting a *disproportionate* obstacle to the internal market may not be approved. In this connection, Denmark has submitted figures which indicate that imports of meat products from other Member States not only have been taking place in spite of its legislation, but they have even increased in the recent years.

- (59) In the absence of any evidence suggesting that the national provisions constitute in effect a measure intended to protect national production, it can be concluded that they are not a disguised restriction to trade between Member States.

2.2.2.3. Absence of obstacles to the functioning of the internal market

- (60) This condition cannot be interpreted in such a way that it precludes the approval of any national measure likely to affect the establishment of the internal market. Indeed, any national measure derogating from a harmonisation measure aiming at the establishment and operation of the internal market constitutes in substance a measure likely to affect the internal market. Consequently, in order to preserve the useful character of the procedure laid down in Article 114 TFEU, the concept of obstacle to the functioning of the internal market must, in the context of Article 114(6) TFEU, be understood as a disproportionate effect in relation to the pursued objective.
- (61) Given the health benefits invoked by the Danish government in relation to the reduction of exposure to nitrites in meat products and the fact that, on the basis of currently available figures, trade does appear not to be affected at all or only to a very limited extent, the Commission considers that the notified Danish rules may be temporarily maintained on grounds relating to the protection of health and life of humans having regard to the fact that they are not disproportionate and do, therefore, not constitute an obstacle to the functioning of the internal market in the sense of Article 114(6) TFEU.
- (62) In the light of this analysis, the Commission considers that the condition relating to the absence of obstacles to the functioning of the internal market is fulfilled.

2.2.3. Limitation in time

- (63) The above conclusions are based on the currently available information and, in particular, on figures indicating that Denmark has been able to control botulism despite lower maximum levels of nitrite added to particular types of meat products and a higher maximum level as regards 'entirely preserved or semi-preserved heat-treated meat products derived from minced meat', while not disrupting trade in a disproportionate fashion.
- (64) Another important factor is the rate of consumption in Denmark of meat products in relation to which the application of Directive 2006/52/EC could lead to an increase of the exposure of the Danish population to nitrites and thereby nitrosamines.

- (65) Denmark would need to systematically monitor the situation and collect data on whether the application of the levels laid down in Directive 2006/52/EC achieve the required level of protection and if not, whether it would lead to an unacceptable risk to human health. The data collected should focus in particular on the control of botulism, the share of meat products covered by the 60 mg/kg limit in the overall consumption of meat products in Denmark, including any other risk factor of typical dietary habits as relevant, as well as imports of meat products from other Member States. Denmark would be required to report the collected data to the Commission every 2 years from the date of adoption of the present Decision.
- (66) Moreover, the Commission would have to monitor the implementation of Directive 2006/52/EC in the Member States as regards in particular the use of nitrites by the industry in the different categories of meat products and the organisation of national controls. Appropriate consultations must also be carried out with the Member States, stakeholders as well as with EFSA. On the basis of the collected information, the Commission would examine Directive 2006/52/EC, under the terms of Article 114(7) TFEU, to consider whether it is appropriate to propose an adaptation to the latter Directive, with respect to the maximum levels of nitrites that may be added to certain meat products.
- (67) Against this background, the Commission considers that the national provisions, to the extent specified above, can be approved for a limited period of 5 years. The approval should extend to the time needed to gather and to carefully evaluate the necessary information.
- (68) Denmark remains obliged to transpose the other provisions of Directive 2006/52/EC into its national law.

III. CONCLUSION

- (69) In the light of the above considerations, and taking account of comments provided by Member States on the notification submitted by the Danish authorities, the Commission is of the opinion that the request by Denmark, received by the Commission on 26 November 2009, for maintaining its national provisions on the addition of nitrites, which differ for 'entirely preserved or semi-preserved heat-treated meat products derived from minced meat' and are more stringent for all other meat products than those of Directive 2006/52/EC, can be approved for a period of 5 years from the date of adoption of the present Decision. Denmark would be required to systematically collect and report data to the Commission on whether the application of the levels laid down in Directive 2006/52/EC achieve the required level of protection and if not, whether it would lead to an unacceptable risk to human health,

HAS ADOPTED THIS DECISION:

Article 1

The national provisions on the addition of nitrites to meat products contained in Order No 22 of 11.1.2005 on food additives (*Bekendtgørelse nr 22 af 11.1.2005 om tilsætningsstoffer til fødevarer*) and the Danish positive list of permitted food additives (*Liste over tilladte tilsætningsstoffer til fødevarer, 'Positivlisten'*), which the Kingdom of Denmark notified to the Commission by letter of 20 November 2009, pursuant to Article 114(4) TFEU, are approved.

Article 2

This Decision shall expire on 25 May 2015.

Article 3

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 25 May 2010.

For the Commission

John DALLI

Member of the Commission

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2010 OF THE JOINT CARIFORUM-EU COUNCIL SET UP BY THE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE CARIFORUM STATES, OF THE ONE PART, AND THE EUROPEAN COMMUNITY AND ITS MEMBER STATES, OF THE OTHER PART,

of 17 May 2010

concerning the adoption of the Rules of Procedure of the Joint CARIFORUM-EU Council, the CARIFORUM-EU Trade and Development Committee and the Special Committees

(2010/562/EU)

THE JOINT CARIFORUM-EU COUNCIL,

HAS DECIDED AS FOLLOWS:

Article 1

Having regard to the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part (hereinafter the 'Agreement'), signed in Bridgetown, Barbados on 15 October 2008, and in particular Articles 227, 228(3), 229(1), 230(2) and 230(4) thereof,

The Rules of Procedure of the Joint Council and of the Trade and Development Committee are established as set out in Annexes I and II respectively.

Article 2

Whereas:

1. The Rules of Procedure set out in Annex III shall be applicable to the Special Committee on Customs Cooperation and Trade Facilitation as well as to any other Special Committee which may be established pursuant to Article 230(4) of the Agreement.

(1) The Agreement provides that the Joint CARIFORUM-EU Council (hereinafter the 'Joint Council') shall adopt its Rules of Procedure and establish those of the CARIFORUM-EU Trade and Development Committee (hereinafter the 'Trade and Development Committee').

2. These Rules are without prejudice to any special rules provided for in the Agreement or which may be decided by the Joint Council.

Article 3

(2) The Joint Council and the Trade and Development Committee shall be assisted in the performance of their duties by the Special Committee on Customs Cooperation and Trade Facilitation, which is established in accordance with Article 36 of the Agreement, and by Special Committees which may be established pursuant to Article 230(4) of the Agreement. It is also appropriate to establish Rules of Procedure for these Special Committees,

This Decision shall enter into force on 17 May 2010.

Done at Madrid on 17 May 2010.

For the CARIFORUM States

M. McCLEAN

For the EU Party

K. DE GUCHT

ANNEX I

RULES OF PROCEDURE OF THE JOINT CARIFORUM-EU COUNCIL

set up by the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part

*Article 1***Composition and Chair**

1. The Joint CARIFORUM-EU Council (hereinafter the 'Joint Council') is composed as provided for in Article 228(1) of the Agreement.
2. The representative of the CARIFORUM States acting collectively, provided for in Article 228(2) of the Agreement shall be referred to as the 'CARIFORUM High Representative'. The designation of the CARIFORUM High Representative and any change thereto shall be notified to the Chairperson of the Joint Council.
3. Reference to 'the Parties' in the Rules of Procedure shall be in accordance with the definition provided for in Article 233(3) of the Agreement.
4. The Joint Council shall be chaired, at least at Ministerial level, alternately for periods of 12 months, by a representative of the Council of the European Union and a representative of the European Commission on behalf of the EU Party, and by a representative of the CARIFORUM States. However, the period of the first Chair shall begin on the date of the first meeting of the Joint Council and shall end on 31 December of the following year. The Chair shall be held first by a representative of the CARIFORUM States.

*Article 2***Representation**

1. In accordance with Article 228(5) of the Agreement, the members of the Joint Council may arrange to be represented.
2. A member wishing to be represented by an alternate representative shall notify the Chairperson of the Joint Council of the name of his or her alternate representative before the meeting at which he or she is to be so represented. The alternate representative of a member of the Joint Council shall exercise all the rights of that member.

*Article 3***Observers**

1. The Joint Council may decide to admit observers on a permanent basis.
2. The Joint Council may decide to invite additional observers on an ad hoc basis.
3. The Joint Council may decide to invite representatives of the CARIFORUM-EU Parliamentary Committee and of the CARIFORUM-EU Consultative Committee to inform the Joint Council of the work undertaken in the respective Committees.

*Article 4***Meetings**

1. The Joint Council shall meet at regular intervals, not exceeding a period of two years, and shall hold extraordinary meetings whenever circumstances so require, if the Parties so agree.
2. Each session of the Joint Council shall be held at a date and place agreed by both Parties.
3. The meetings of the Joint Council shall be convened by the Secretary of the Joint Council by a notice issued no later than 35 days prior to the start of the session, except where an extraordinary meeting is called.

*Article 5***Delegations**

The members of the Joint Council may be accompanied by officials. Before each meeting, the Chairperson of the Joint Council shall be informed of the intended composition of the delegations of the Signatory CARIFORUM States, the EU Party and of any observers.

*Article 6***Secretariat**

The General Secretariat of the Council of the European Union and a CARIFORUM State shall act alternately for periods of 12 months as Secretary of the Joint Council. These periods shall coincide with the holding of the Chair by the EU Party and the CARIFORUM States respectively.

*Article 7***Documents**

Where the deliberations of the Joint Council are based on written supporting documents, such documents shall be numbered and circulated by the Secretary as documents of the Joint Council.

*Article 8***Correspondence**

1. All correspondence addressed to the Joint Council shall be directed to the Secretary of the Joint Council.
2. The Secretary shall ensure that correspondence addressed to the Joint Council is forwarded to the Chairperson of the Council and circulated, where appropriate as documents referred to in Article 7, to the other members of the Joint Council. Correspondence circulated shall be sent to the Secretariat-General of the European Commission, the Permanent Representations of the Member States of the European Union in Brussels, the CARIFORUM Coordinator and the Coordinators of each Signatory CARIFORUM State provided for under Article 234(1) of the Agreement.
3. Correspondence from the Chairperson of the Joint Council shall be sent to the recipients by the Secretary and circulated, where appropriate as documents referred to in Article 7, to the other members of the Joint Council through the addressees provided for in paragraph 2 of this Article.

*Article 9***Agenda for the meetings**

1. A provisional agenda for each meeting shall be drawn up by the Secretary of the Joint Council on the basis of proposals made by the Parties and the Signatory CARIFORUM States. It shall be forwarded, together with the relevant documents, by the Secretary of the Joint Council to the addressees referred to in Article 8(2) no later than 21 days before the beginning of the meeting.
2. The provisional agenda shall include items for which the Secretary has received a request for inclusion in the agenda, together with the relevant documents, no later than 28 days before the beginning of the meeting.
3. The agenda shall be adopted by the Joint Council at the beginning of each meeting. Items other than those appearing on the provisional agenda may be placed on the agenda if the Parties so agree.
4. The Chairperson of the Joint Council may, in agreement with the Parties, invite experts to attend its meetings in order to provide information on specific subjects.
5. With the agreement of the Parties, the Secretary may abridge the time limits specified in paragraphs 1 and 2 in order to take account of the requirements of a particular case.

*Article 10***Minutes**

1. Draft minutes of each meeting shall be drawn up by the Secretary, normally within a month of the meeting.
2. The minutes shall, as a general rule, summarise each item on the agenda, specifying where applicable:
 - (a) all documents submitted to the Joint Council;
 - (b) any statement that a member of the Joint Council has asked to be entered; and
 - (c) the decisions taken, recommendations made, statements agreed upon and conclusions adopted on specific items.

3. The minutes shall also include a list of members of the Joint Council or their alternate representatives who took part in the meeting, a list of the members of the delegations accompanying them and a list of any observers to the meeting.

4. The minutes shall be approved in writing by both Parties within three months of the date of the meeting. Once approved, two copies of the minutes shall be signed by the Secretary and each of the Parties shall receive one original of these authentic documents. Copies of the signed minutes shall be forwarded to each of the addressees referred to in Article 8(2).

Article 11

Decisions and recommendations

1. The Joint Council shall adopt decisions and recommendations by agreement, as provided for in Article 229 of the Agreement.

2. The Joint Council may decide to submit any general matter of an ACP-EU interest arising under the Agreement to the ACP-EU Council of Ministers as defined in Article 15 of the Cotonou Agreement.

3. In the period between meetings, the Joint Council may adopt decisions or recommendations by written procedure if both Parties so agree. The written procedure shall consist of an exchange of notes between the Parties. The CARIFORUM High Representative shall have the power to exchange such notes and to confirm the agreement of the Signatory CARIFORUM States on any decision, after receiving the individual Signatory CARIFORUM States' confirmation of their agreement on any decision, as necessary.

4. Decisions and recommendations of the Joint Council within the meaning of Article 229 of the Agreement shall be entitled 'Decision' or 'Recommendation' respectively, and shall be followed by a serial number, their date of adoption and a description of their subject-matter. Each decision shall provide for the date of its entry into force.

5. Decisions and recommendations adopted by the Joint Council shall be authenticated by a representative of the European Commission on behalf of the EU Party, and by the CARIFORUM High Representative on behalf of the CARIFORUM States.

6. Decisions and recommendations shall be forwarded to each of the addressees referred to in Article 8(2) as documents of the Joint Council.

Article 12

Publicity

1. Unless otherwise decided, meetings of the Joint Council shall not be public.

2. Each Party or Signatory CARIFORUM State may decide on the publication of the decisions and recommendations of the Joint Council in its respective official publication.

Article 13

Languages

1. The working languages of the Joint Council shall be the official languages common to the Parties, namely, English, Spanish, French and Dutch.

2. The Joint Council shall base its deliberations and adopt decisions and recommendations on documentation and proposals prepared in one of the languages referred to in paragraph 1.

Article 14

Expenses

1. Each Party shall meet any expenses it incurs as a result of participating in the meetings of the Joint Council, both with regard to staff, travel and subsistence expenditure and with regard to postal and telecommunications expenditure.

2. Expenditure in connection with the organisation of meetings and reproduction of documents shall be borne by the Party hosting the meeting.

3. Expenditure in connection with the provision of interpretation services at meetings, and translation of documents into, or from, any of the working languages of the Joint Council, shall be borne by the Party hosting the meeting. Expenditure associated with the provision of interpretation services regarding other official languages of the institutions of the European Union, and translation of documents into, or from, those languages shall be borne by the EU Party.

ANNEX II

RULES OF PROCEDURE OF THE CARIFORUM-EU TRADE AND DEVELOPMENT COMMITTEE

set up by the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part

*Article 1***Composition and Chair**

1. The CARIFORUM-EU Trade and Development Committee (hereinafter the 'Trade and Development Committee') is established in accordance with Article 230 of the Agreement for the purposes of assisting the Joint CARIFORUM-EU Council (hereinafter the 'Joint Council') in the performance of its duties and of taking on the responsibility for the general implementation of the Agreement.
2. As provided for in Article 230(1) of the Agreement, the Trade and Development Committee shall be composed of representatives of the members of the Council of the European Union and representatives of the European Commission, on the one hand, and of representatives of the Signatory CARIFORUM States, on the other hand, normally at senior officials level.
3. The representative of the CARIFORUM States acting collectively, provided for in Article 230(1) of the Agreement, shall be referred to as the 'CARIFORUM Senior Representative'. The designation of the CARIFORUM Senior Representative and any change thereto shall be notified to the Chairperson of the Trade and Development Committee.
4. The Trade and Development Committee shall be chaired alternately for periods of 12 months by senior officials of the European Commission, on behalf of the EU Party, and by senior officials of the CARIFORUM States on their behalf. The period of the first Chair shall coincide with the period of the first Chair of the Joint Council. For that period and thereafter for each 12-month period, the Trade and Development Committee shall be chaired by the Party holding the Chair in the Joint Council. The Chair shall be held first by a representative of the CARIFORUM States.
5. In addition to performing the specific tasks conferred upon it by the Agreement, the Trade and Development Committee shall prepare the meetings and deliberations of the Joint Council, monitor implementation of the decisions and recommendations of the Joint Council where appropriate and, in general, ensure continuity of the proper functioning of the Agreement. It shall consider any matter referred to it by the Joint Council as well as any other matter which may arise in the course of the day-to-day implementation of the Agreement.
6. In cases where the Agreement refers to possible consultations, such consultations may take place within the Trade and Development Committee. The consultations may continue in the Joint Council if the Parties so agree, except where otherwise provided for in the Agreement.

*Article 2***Representation**

1. The members of the Trade and Development Committee may arrange to be represented.
2. A member wishing to be represented by an alternate representative shall notify the Chairperson of the Trade and Development Committee of the name of his or her alternate representative before the meeting at which he or she is to be so represented. The alternate representative of a member of the Trade and Development Committee shall exercise all the rights of that member.

*Article 3***Observers**

1. The Trade and Development Committee may decide to admit observers on a permanent basis.
2. The Trade and Development Committee may decide to invite additional observers on an ad hoc basis.
3. The Trade and Development Committee may decide to invite representatives of the CARIFORUM-EU Parliamentary Committee and of the CARIFORUM-EU Consultative Committee to inform the Trade and Development Committee of the work undertaken in the respective Committees.

*Article 4***Meetings**

1. The Trade and Development Committee shall meet once a year or when circumstances so require, with the agreement of both Parties. If both Parties agree, the meetings of the Trade and Development Committee may be held by video or teleconference. In such case, the Parties shall agree on how to share any costs associated with holding a meeting by such means.

2. Each meeting of the Trade and Development Committee shall be convened by the Secretary at a date and place agreed by both Parties. The convening notice of the meeting shall be issued no later than 35 days prior to the start of the session, except in cases of urgency.

Article 5

Delegations

Before each meeting, the Chairperson of the Trade and Development Committee shall be informed of the intended composition of the delegations attending the meeting.

Article 6

Secretariat

The European Commission and a CARIFORUM State shall act alternatively for periods of 12 months as Secretary of the Trade and Development Committee. These periods shall coincide with the holding of the Chair by the EU Party and the CARIFORUM States respectively.

Article 7

Documents

Where the deliberations of the Trade and Development Committee are based on written supporting documents, such documents shall be numbered and circulated by the Secretary as documents of the Trade and Development Committee.

Article 8

Correspondence

All correspondence with the Chairperson of the Trade and Development Committee shall be forwarded to the Secretary of the Trade and Development Committee for circulation to the members of the Committee and the Secretary and the Chairperson of the Joint Council and, where appropriate, to the members of the Joint Council.

Article 9

Agenda for the meetings

1. A provisional agenda for each meeting shall be drawn up by the Secretary of the Trade and Development Committee. It shall be forwarded, together with the relevant documents, to the members of the Trade and Development Committee as well as the Chairperson and Secretary of the Joint Council no later than 21 days before the beginning of the meeting.
2. The provisional agenda shall include items in respect of which the Secretary of the Trade and Development Committee has received a request for inclusion in the agenda, together with the relevant documents, no later than 28 days before the beginning of the meeting.
3. The agenda shall be adopted by the Trade and Development Committee at the beginning of each meeting. Items other than those appearing on the provisional agenda may be placed on the agenda if the Parties so agree.
4. The Chairperson of the Trade and Development Committee may, in agreement with the Parties, invite experts to attend its meetings in order to provide information on specific subjects.
5. The Chairperson of the Trade and Development Committee may, in agreement with the Parties, abridge the time periods specified in paragraphs 1 and 2 in order to take account of the requirements of a particular case.

Article 10

Minutes

1. Draft minutes of each meeting shall be drawn up by the Secretary, normally within a month of the meeting.
2. The minutes shall, as a general rule, indicate in respect of each item on the agenda:
 - (a) the documents submitted to the Trade and Development Committee;
 - (b) any statement that a member of the Trade and Development Committee has asked to be entered; and
 - (c) the decisions taken, recommendations made, statements agreed upon and conclusions adopted on specific items.

3. The minutes shall also include a list of members of the Trade and Development Committee or their alternate representatives who took part in the meeting, a list of the members of the delegations accompanying them and a list of any observers to the meeting.

4. The minutes shall be approved in writing by the CARIFORUM Senior Representative and the senior European Commission official(s) who participated in the meeting within two months of the date of the meeting. Once approved, two copies of the minutes shall be signed by the Secretary and each of the Parties shall receive one original of these authentic documents. Copies of the signed minutes shall be forwarded to the members of the Trade and Development Committee and to the Chairperson and Secretary of the Joint Council.

Article 11

Decisions and Recommendations

1. Where the Trade and Development Committee is empowered under the Agreement to adopt decisions or recommendations, such acts shall be entitled 'Decision' or 'Recommendation' respectively, and shall be followed by a serial number, their date of adoption and a description of their subject-matter. Each decision shall provide for the date of its entry into force.

2. Whenever the Trade and Development Committee takes a decision, Article 11 of the Rules of Procedure of the Joint Council shall apply *mutatis mutandis*.

3. Decisions and recommendations of the Trade and Development Committee shall be forwarded to the addressees referred to in Article 8.

Article 12

Publicity

1. Unless otherwise decided, the meetings of the Trade and Development Committee shall not be public.

2. Each Party or Signatory CARIFORUM State may decide on the publication of the decisions and recommendations of the Trade and Development Committee in its respective official publication.

Article 13

Languages

1. The working languages of the Trade and Development Committee shall be the official languages common to the Parties, namely, English, Spanish, French and Dutch.

2. The Trade and Development Committee shall base its deliberations and adopt decisions and recommendations on documentation and proposals prepared in one of the languages referred to in paragraph 1.

Article 14

Expenses

1. Each Party shall meet any expenses it incurs as a result of participating in the meetings of the Trade and Development Committee, both with regard to staff, travel and subsistence expenditure and with regard to postal and telecommunications expenditure.

2. Expenditure in connection with the organisation of meetings and reproduction of documents shall be borne by the Party hosting the meeting.

3. Expenditure in connection with the provision of interpretation services at meetings and translation of documents into, or from, any of the working languages of the Trade and Development Committee shall be borne by the Party hosting the meeting. Expenditure associated with the provision of interpretation services regarding other official languages of the institutions of the European Union, and translation of documents into, or from, those languages shall be borne by the EU Party.

ANNEX III

RULES OF PROCEDURE OF THE SPECIAL COMMITTEES

set up by the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part

*Article 1***Composition and Chair**

1. Unless otherwise specified in the Agreement or agreed by the CARIFORUM-EU Trade and Development Committee (hereinafter the 'Trade and Development Committee'), a Special Committee shall be composed of representatives of the European Commission and representatives of the members of the Council of the European Union for the EU Party, on the one hand, and of representatives of the Signatory CARIFORUM States, on the other.
2. The CARIFORUM States shall mandate one of their representatives to act on their behalf and present their position on all matters under this Agreement for which they have agreed to act collectively. Such representative shall be referred to as the 'CARIFORUM Representative'. The designation of the CARIFORUM Representative and any change thereto shall be notified to the Chairperson of the Special Committee.
3. The meetings of a Special Committee shall be chaired alternately by an official of the European Commission and by an official of a CARIFORUM State.

*Article 2***Representation**

1. The members of a Special Committee may arrange to be represented.
2. A member wishing to be represented by an alternate representative shall notify the Chairperson of the Special Committee of the name of his or her alternate representative before the meeting at which he or she is to be so represented. The alternate representative of a member of the Special Committee shall exercise all the rights of that member.

*Article 3***Observers**

1. A Special Committee may decide to admit observers on a permanent basis.
2. A Special Committee may decide to invite additional observers, including representatives of the CARIFORUM-EU Parliamentary Committee and of the CARIFORUM-EU Consultative Committee, on an ad hoc basis.

*Article 4***Meetings**

1. Unless otherwise specified in the Agreement, a Special Committee shall meet upon request of either Party at a date and place agreed in advance between the Parties. If both Parties agree, the meetings of a Special Committee may be held by video or teleconference. In such case, the Parties shall agree on how to share any costs associated with holding a meeting by such means.
2. Each meeting of a Special Committee shall be convened by the Secretary of that Special Committee by a notice issued no later than 35 days prior to the start of the session, except in cases of urgency.

*Article 5***Delegations**

Before each meeting, the Chairperson of a Special Committee shall be informed of the intended composition of the delegations attending the meeting.

*Article 6***Secretariat**

The European Commission and a CARIFORUM State shall act alternately for periods of 12 months as Secretary of the Special Committees. These periods shall coincide with the holding of the Chair by the EU Party and the CARIFORUM States respectively.

*Article 7***Documents**

Where the deliberations of a Special Committee are based on written supporting documents, such documents shall be numbered and circulated by the Secretary as documents of that Special Committee.

*Article 8***Correspondence**

All correspondence with the Chairperson of a Special Committee shall be forwarded to the Secretary of that Special Committee for circulation to the members of the Special Committee, to the Secretary and the Chairperson of the Trade and Development Committee as well as, where appropriate, to the members of the Trade and Development Committee.

*Article 9***Agenda for the meetings**

1. A provisional agenda for each meeting shall be drawn up by the Secretary of the Special Committee. It shall be forwarded, together with the relevant documents, to the members of the Special Committee as well as the Chairperson and Secretary of the Trade and Development Committee no later than 21 days before the beginning of the meeting.
2. The provisional agenda shall include those items in respect of which the Secretary of the Special Committee has received a request for inclusion in the agenda, together with the relevant documents, no later than 28 days before the beginning of the meeting.
3. The agenda shall be adopted by the Special Committee at the beginning of each meeting. Items other than those appearing on the provisional agenda may be placed on the agenda if the Parties so agree.
4. The Chairperson of the Special Committee may, in agreement with the Parties, abridge the time limits specified in paragraphs 1 and 2 in order to take account of the requirements of a particular case.
5. The Chairperson of the Special Committee may, in agreement with the Parties, invite experts to attend its meetings in order to provide information on particular subjects.

*Article 10***Minutes**

1. Draft minutes of each meeting shall be drawn up by the Secretary, normally within a month of the meeting.
2. The minutes shall, as a general rule, indicate in respect of each item on the agenda:
 - (a) the documents submitted to the Special Committee;
 - (b) any statements that a member of the Special Committee has asked to be entered; and
 - (c) the decisions taken, recommendations made, statements agreed upon and conclusions adopted on specific items.
3. The minutes shall also include a list of members of the Special Committee or their alternate representatives who took part in the meeting, a list of the members of the delegations accompanying them and a list of any observers to the meeting.
4. The minutes shall be approved in writing by the CARIFORUM Representative and the European Commission official who participated in the meeting within one month of the date of the meeting. Once approved, two copies of the minutes shall be signed by the Secretary and each of the Parties shall receive one original of these authentic documents. Copies of the signed minutes shall be forwarded to the members of the Special Committee and the Chairperson and Secretary of the Trade and Development Committee.

*Article 11***Decisions and recommendations**

1. Where a Special Committee is empowered under the Agreement, or under the Joint Council decision establishing it, to adopt decisions or recommendations, such acts shall be entitled 'Decision' or 'Recommendation' respectively, and shall be followed by a serial number, their date of adoption and a description of their subject-matter. Each decision shall specify the date of its entry into force.

2. Whenever a Special Committee makes a recommendation or takes a decision, Article 11 of the Rules of Procedure of the Joint Council shall apply *mutatis mutandis*.

3. Decisions and recommendations of Special Committees shall be forwarded to the addressees referred to in Article 8.

Article 12

Publicity

1. Unless otherwise decided, the meetings of the Special Committees shall not be public.

2. Each Party or Signatory CARIFORUM State may decide on the publication of the decisions and recommendations of a Special Committee in its respective official publication.

Article 13

Languages

1. The working languages of the Special Committees shall be the official languages common to the Parties, namely, English, Spanish, French and Dutch.

2. The Special Committees shall base their deliberations and adopt decisions and recommendations on documentation and proposals prepared in one of the languages referred to in paragraph 1.

Article 14

Expenses

1. Each Party shall each meet any expenses it incurs as a result of participating in the meetings of the Special Committees, both with regard to staff, travel and subsistence expenditure and with regard to postal and telecommunications expenditure.

2. Expenditure in connection with the organisation of meetings and reproduction of documents shall be borne by the Party hosting the meetings.

3. Expenditure in connection with the provision of interpretation services at meetings and the translation of documents into, or from, any of the working languages of the Special Committee shall be borne by the Party hosting the meeting. Expenditure associated with the provision of interpretation services regarding other official languages of the institutions of the European Union, and translation of documents into, or from, those languages shall be borne by the EU Party.

Article 15

Reporting

The Special Committees shall report to the Trade and Development Committee.

**DECISION No 2/2010 OF THE JOINT CARIFORUM-EU COUNCIL SET UP BY THE AGREEMENT
ESTABLISHING AN ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE CARIFORUM
STATES, OF THE ONE PART, AND THE EUROPEAN COMMUNITY AND ITS MEMBER
STATES, OF THE OTHER PART,**

of 17 May 2010

**concerning the adoption of the Rules of Procedure for Dispute Settlement and the Code of Conduct
for Arbitrators and Mediators**

(2010/563/EU)

THE JOINT CARIFORUM-EU COUNCIL,

Article 2

Having regard to the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part (hereinafter referred to as the 'Agreement'), signed in Bridgetown, Barbados on 15 October 2008, and in particular Articles 216 and 221(2) thereof,

The European Union shall bear the expenses derived from all organisational matters regarding consultations, mediation and arbitration, with the exception of the remuneration and expenses to be paid to the mediators and arbitrators, which shall be shared ⁽¹⁾.

Article 3

This Decision shall enter into force on 17 May 2010.

HAS DECIDED AS FOLLOWS:

Done at Madrid, 17 May 2010.

Article 1

The Rules of Procedure for Dispute Settlement and the Code of Conduct for Arbitrators and Mediators under the Agreement are established as set out in Annexes I and II respectively.

For the CARIFORUM States

M. McCLEAN

For the EU Party

K. DE GUCHT

⁽¹⁾ It is understood that the remuneration of officials, representatives or advisers of any Party involved in the organisation of the hearings shall not form part of the expenses deriving from organisational matters.

ANNEX I

RULES OF PROCEDURE FOR DISPUTE SETTLEMENT*Article 1***General provisions**

1. In Part III (Dispute Avoidance and Settlement) of the Agreement and under these Rules:
 - ‘adviser’ means a person retained by a Party to advise or assist that Party in connection with the arbitration panel proceeding,
 - ‘assistant’ means a person who, under the terms of appointment of a member of an arbitration panel, conducts research or provides assistance to that member,
 - ‘complaining Party’ means any Party that requests the establishment of an arbitration panel under Article 207 of the Agreement,
 - ‘Party complained against’ means the Party that is alleged to be in violation of the provisions referred to in Article 203 of the Agreement,
 - ‘arbitration panel’ means a panel established under Article 207 of the Agreement,
 - ‘representative of a Party’ means an employee or any person appointed by a government department or agency or any other public entity of a Party,
 - ‘day’ means a calendar day, unless otherwise specified,
2. The Party complained against shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organisation of hearings, unless otherwise agreed.
3. The Parties shall exchange a list of dates of their official holidays and rest days on the first Monday of every December for the following year. If a period referred to in these Rules of Procedure ends on an official holiday or rest day of either of the Parties, the period shall be deemed to expire on the next business day. No documents, notifications or requests of any kind shall be deemed to be received on an official holiday or rest day.

*Article 2***Notifications**

1. The Parties and the arbitration panel shall transmit any request, notice, written submission or other document by e-mail, with a copy submitted on the same day by facsimile transmission, registered post, courier, delivery against receipt or any other means of telecommunication that provides a record of the sending thereof. Unless proven otherwise, an e-mail message shall be deemed to be received on the day it is sent.
2. A Party shall provide an electronic copy of each of its written submissions to the other Party and to each of the arbitrators. A paper copy shall also be provided.
3. The designated point of contact for all notifications for the CARIFORUM States shall be the CARIFORUM Coordinator, provided for under Article 234(1) of the Agreement, and for the EU Party shall be the Directorate General of Trade of the European Commission. The Parties shall immediately inform each other of any change in the designated point of contact.
4. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceeding may be corrected by delivery of a new document clearly indicating the changes.
5. Depending on the object of the provisions under dispute, all requests and notifications addressed to the CARIFORUM-EU Trade and Development Committee shall also be copied to the other relevant sub-committees established under the Agreement.

*Article 3***Commencing the arbitration**

1. Unless the Parties agree otherwise, they shall meet the arbitration panel within ten days of its establishment in order to determine such matters that the Parties or the arbitration panel deem appropriate, including the remuneration and expenses to be paid to the arbitrators, which shall be in accordance with WTO standards. Members of the arbitration panel and representatives of the Parties may take part in this meeting via telephone or video conference.

2.

(a) Unless the Parties agree otherwise, within seven days from the date of the establishment of the panel, the terms of reference of the arbitration panel shall be:

'to examine, in the light of the relevant provisions of the Agreement, the matter referred to in the request for establishment of the arbitration panel, to rule on the compatibility of the measure in question with the provisions of the Agreement identified in the Request for Establishment and to make a ruling in accordance with Article 209 of the Agreement.'

(b) The Parties shall notify the agreed terms of reference to the arbitration panel within five days of their agreement.

*Article 4***Initial submissions**

The complaining Party shall deliver its initial written submission no later than twenty days after the date of establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than twenty days after the date of delivery of the initial written submission.

*Article 5***Operation of arbitration panels**

1. The chairperson of the arbitration panel shall preside at all its meetings. An arbitration panel may delegate to the chairperson authority to make administrative and procedural decisions.

2. Unless otherwise provided, the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.

3. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit its assistants to be present at its deliberations.

4. The drafting of any ruling shall remain the exclusive responsibility of the arbitration panel and shall not be delegated.

5. Where a procedural question arises that is not covered by the provisions of the Agreement or these Rules, the arbitration panel, after consulting the Parties, may adopt an appropriate procedure compatible with the Agreement and these Rules, which ensures an equal treatment of the Parties.

6. When the arbitration panel considers that there is a need to modify any time limit applicable in the proceedings or to make any other procedural or administrative adjustment, it shall inform the Parties in writing of the reasons for the modification or adjustment and of the period or adjustment needed. The arbitration panel may adopt such modification or adjustment after consulting the Parties. The time limits in Article 209 of the Agreement shall not be modified.

*Article 6***Replacement**

1. If an arbitrator is unable to participate in the proceeding, withdraws, or must be replaced, a replacement shall be selected in accordance with Article 207(3) of the Agreement.

2. Where a Party considers that an arbitrator does not comply with the requirements of the Code of Conduct for Arbitrators and Mediators (hereinafter the 'Code of Conduct') and for this reason should be replaced, that Party should notify the other Party within fifteen days from the time at which it came to know of the circumstances underlying the arbitrator's material violation of the Code of Conduct.

Where a Party considers that an arbitrator other than the chairperson does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, shall dismiss the arbitrator and select a replacement following the procedure set out in Article 207(3) of the Agreement.

If the Parties fail to agree on the need to replace an arbitrator, any Party may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final.

If the chairperson finds that an arbitrator does not comply with the requirements of the Code of Conduct, she or he shall select a new arbitrator by lot from the list of individuals referred to under Article 221 of the Agreement in which the original arbitrator appeared. If the original arbitrator was chosen by the Parties pursuant to Article 207(2) of the Agreement, the replacement shall be selected by lot from the lists of individuals that have been proposed by the complaining Party and by the Party complained against under Article 221 of the Agreement. The selection of the new arbitrator shall be made within five days of the date of submission of the request to the chairperson of the arbitration panel.

3. Where a Party considers that the chairperson of the arbitration panel does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, replace the chairperson and select a replacement following the procedure set out in Article 207(3) of the Agreement.

If the Parties fail to agree on the need to replace the chairperson, any Party may request that such matter be referred to one of the remaining members of the list of individuals selected to act as chairperson under Article 221(1) of the Agreement. Her or his name shall be drawn by lot by the chairperson of the CARIFORUM-EU Trade and Development Committee, or the chairperson's delegate. The decision by that person on the need to replace the chairperson shall be final.

If that person decides that the original chairperson does not comply with the requirements of the Code of Conduct, she or he shall select a new chairperson by lot from the remaining list of individuals referred to under Article 221(1) of the Agreement who may act as chairpersons. This selection of the new chairperson shall be made within five days of the date of submission of the request referred to in this paragraph.

4. The arbitration panel proceedings shall be suspended for the period taken to carry out the procedures provided for in this Article.

Article 7

Hearings

1. The chairperson shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitration panel, and confirm this in writing to the Parties. This information shall also be made publicly available by the Party in charge of the logistical administration of the proceedings if the hearing is open to the public. Unless a Party disagrees, the arbitration panel may decide not to convene a hearing.

2. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is the CARIFORUM States and in the territories of the CARIFORUM States if the complaining Party is the EU Party. If the dispute concerns a measure maintained by a Signatory CARIFORUM State, the hearing shall take place in the territory of that State unless the State gives written notice to the panel within ten days of its establishment that another venue should be used.

3. The arbitration panel may convene one additional hearing only in exceptional circumstances. No additional hearing shall be convened for the procedures established under Articles 211(2), 212(2) and 214(2) of the Agreement.

4. All arbitrators shall be present during the entirety of any hearings.

5. The following persons may attend the hearing, irrespective of whether the proceedings are open to the public or not:

(a) representatives of the Parties;

(b) advisers to the Parties;

(c) administrative staff, interpreters, translators and court reporters; and

(d) arbitrators' assistants.

Only the representatives and advisers of the Parties may address the arbitration panel.

6. No later than seven days before the date of a hearing, each Party shall deliver to the arbitration panel a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.

7. Pursuant to Article 216 of the Agreement, the hearings of the arbitration panels shall be open to the public, unless the arbitration panel decides otherwise. However, the arbitration panel shall meet in closed session when the submission and arguments of a Party contain confidential commercial information. The panel shall, in consultation with the Parties, decide on appropriate logistical arrangements and procedures to ensure that hearings which are open are managed in an effective way. These procedures could include the use of live web-broadcasting or of closed-circuit television.

8. The arbitration panel shall conduct the hearing in the following manner:

Arguments:

(a) arguments of the complaining Party

(b) arguments of the Party complained against.

Rebuttal Arguments:

(a) arguments of the complaining Party

(b) counter-reply of the Party complained against.

9. The arbitration panel may direct questions to either Party at any time during the hearing.

10. The arbitration panel shall arrange for a transcript of each hearing to be prepared and delivered as soon as possible to the Parties.

11. Each Party may deliver a supplementary written submission concerning any matter that arose during the hearing within fourteen days of the date of the hearing.

Article 8

Questions in writing

1. The arbitration panel may at any time during the proceedings address questions in writing to one or both Parties. Each of the Parties shall receive a copy of any questions put by the arbitration panel.

2. A Party shall also provide the other Party with a copy of its written response to the questions of the arbitration panel. Each Party shall be given the opportunity to provide written comments on the other Party's reply within seven days of the date of receipt.

Article 9

Confidentiality

The Parties shall maintain the confidentiality of the arbitration panel hearings where the hearings are held in closed session, in accordance with Article 7(7). Each Party shall treat as confidential any information submitted by the other Party to the arbitration panel which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitration panel, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public no later than fifteen days after the date of either the request or the submission, whichever is later. Nothing in these Rules shall preclude a Party from disclosing statements of its own positions to the public.

*Article 10***Ex parte contacts**

1. The arbitration panel shall not meet or contact a Party in the absence of the other Party.
2. No member of the arbitration panel may discuss any aspect of the subject matter of the proceedings with one Party or both Parties in the absence of the other arbitrators.

*Article 11***Amicus curiae submissions**

1. Pursuant to Article 217 of the Agreement, the arbitration panel may receive unsolicited written submissions, provided that they are made within fifteen days of the date of establishment of the arbitration panel, that they are concise and in no case longer than fifteen typed pages, including any annexes, and that they are directly relevant to the issues under consideration by the arbitration panel.
2. The submission shall contain a description of the person making the submission, whether natural or legal, including the nature of that person's activities and the source of that person's financing, and specify the nature of the interest that the person has in the arbitration proceeding. It shall be drafted in the languages chosen by the Parties in accordance with Article 218 of the Agreement and Article 14 of these Rules of Procedure.
3. The arbitration panel shall list in its ruling all the submissions it has received that conform to the requirements in paragraphs 1 and 2. The arbitration panel shall not be obliged to address in its ruling the arguments made in such submissions. Any submission obtained by the arbitration panel under this rule shall be submitted to the Parties for their comments.

*Article 12***Information or technical advice**

Where, pursuant to Article 217 of the Agreement, a panel solicits information or technical advice from persons or entities other than the Parties, it shall notify the Parties of its intention to seek such information or technical advice and provide them with the opportunity to submit comments. The panel shall take into consideration the comments of the Parties on any information or technical advice received in cases where the panel takes into consideration such information or technical advice in the preparation of its ruling.

*Article 13***Urgent cases**

In cases of urgency referred to in Chapter 2 of Part III of the Agreement, the arbitration panel, after consulting the Parties, shall adjust the time limits referred to in these Rules as appropriate and shall notify the Parties of such adjustments.

*Article 14***Translation and interpretation**

1. During the consultations referred to in Article 204 of the Agreement, and no later than the meeting referred to in Article 3(1) of these Rules, the Parties shall endeavour to agree on a common working language for the proceedings before the arbitration panel.
2. If the Parties are unable to agree on a common working language by that date, the rules set out in Article 218(2) of the Agreement shall apply.
3. The Party complained against shall arrange for the interpretation of oral submissions into the languages chosen by the Parties.
4. Arbitration panel rulings shall be notified in the language or languages chosen by the Parties.
5. Any Party may provide comments on any translated version of a document drawn up in accordance with these Rules.

*Article 15***Calculation of time-limits**

Where, by reason of the application of Article 1(3) of these Rules, a Party receives a document on a date other than the date on which the document is received by the other Party, any period of time that is calculated on the basis of the date of receipt of that document shall be calculated from the last date of receipt of that document.

*Article 16***Other procedures**

1. These Rules of Procedure are also applicable to procedures established under Articles 211(2), 212(2) and 214(2) of the Agreement. However, the time-limits laid down in these Rules shall be adjusted in line with the special time-limits provided for the adoption of a ruling by the arbitration panel in those other procedures.
 2. In the event of the original panel, or some of its members, being unable to reconvene for the procedures established under Articles 211(2), 212(2) and 214(2) of the Agreement, the procedures set out in Article 207 of the Agreement shall apply. The time-limit for the notification of the ruling shall be extended by fifteen days.
-

ANNEX II

CODE OF CONDUCT FOR ARBITRATORS AND MEDIATORS*Article 1***Definitions**

In this Code of Conduct:

- (a) 'member' or 'arbitrator' means a member of an arbitration panel established under Article 207 of the Agreement;
- (b) 'mediator' means a person who conducts a mediation in accordance with Article 205 of the Agreement;
- (c) 'candidate' means an individual whose name is on the list of arbitrators referred to in Article 221 of the Agreement and who is under consideration for selection as a member of an arbitration panel under Article 207 of the Agreement;
- (d) 'assistant' means a person who, under the terms of appointment of a member, conducts research or provides assistance to the member;
- (e) 'proceeding', unless otherwise specified, means an arbitration panel proceeding under the Agreement;
- (f) 'staff', in respect of a member, means persons under the direction and control of the member, other than assistants.

*Article 2***Responsibilities to the process**

Every candidate and member shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. Former members shall comply with the obligations established in Articles 6 and 7 of this Code of Conduct.

*Article 3***Disclosure obligations**

1. Prior to confirmation of her or his selection as a member of the arbitration panel under the Agreement, a candidate shall disclose any interest, relationship or matter that is likely to affect her or his independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters. These disclosure requirements shall not extend to the identification of matters whose relevance to the issues to be considered in the proceedings would be insignificant. They shall take into account the need to respect the personal privacy of those to whom this Code applies and shall not be so administratively burdensome as to make it impracticable for otherwise qualified persons to serve on panels.
2. A candidate or member shall only communicate matters concerning actual or potential violations of this Code of Conduct to the CARIFORUM-EU Trade and Development Committee for consideration by the Parties.
3. Once selected, a member shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 1 and shall disclose them. The disclosure obligation is a continuing duty which requires a member to disclose any such interests, relationships or matters that may arise during any stage of the proceeding. The member shall disclose such interests, relationships or matters by informing the CARIFORUM-EU Trade and Development Committee, in writing, for consideration by the Parties.

*Article 4***Duties of members**

1. Upon selection, a member shall perform her or his duties thoroughly and expeditiously throughout the course of the proceeding, and shall do so with fairness and diligence.
2. A member shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.

3. A member shall take all appropriate steps to ensure that her or his assistant and staff are aware of, and comply with, Articles 2, 3 and 7 of this Code of Conduct.
4. A member shall not engage in *ex parte* contacts concerning the proceeding.

Article 5

Independence and impartiality of members

1. A member shall be independent and impartial and avoid creating an appearance of impropriety or bias and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.
2. A member shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of her or his duties.
3. A member shall not use her or his position on the arbitration panel to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence her or him.
4. A member shall not allow financial, business, professional, family or social relationships or responsibilities to influence her or his conduct or judgment.
5. A member shall avoid entering into any relationship or acquiring any financial interest that is likely to affect her or his impartiality or that might reasonably create an appearance of impropriety or bias.

Article 6

Obligations of former members

All former members shall avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decision or ruling of the arbitration panel.

Article 7

Confidentiality

1. No member or former member shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of that proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interest of others.
2. A member shall not disclose an arbitration panel ruling or parts thereof prior to its publication in accordance with the Agreement.
3. A member or former member shall not at any time disclose the deliberations of an arbitration panel, or any member's view.

Article 8

Expenses

Each member shall keep a record and render a final account of the time devoted to the procedure and the expenses incurred.

Article 9

Mediators

The disciplines described in this Code of Conduct as applying to members or former members shall apply, *mutatis mutandis*, to mediators.

IV

(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

COMMISSION DECISION

of 28 October 2009

on aid scheme C 61/03 (ex NN 42/01) implemented by Italy for the aeronautical industry

(notified under document C(2009) 8097)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2010/564/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

(1) The measure under assessment concerns individual aid for two R&D projects in the aeronautical industry (A139/AB139 and BA609). The aid was granted by Italy on the basis of Act No 808/1985 'Interventi per lo sviluppo e l'accrescimento di competitività delle industrie operanti nel settore aeronautico (Measures to develop and boost the competitiveness of the aeronautical industry)' (hereinafter 'Act 808/85'). The Act was adopted by the Italian Parliament on 24 December 1985. The Commission approved the scheme in 1986⁽²⁾. Aid for these two projects was omitted from the scope of Commission Decision 2008/806/EC⁽³⁾ because they raised the issue of the applicability of Article 296 of the EC Treaty and at the time the Commission did not have sufficient information to reach a conclusion on its assessment.

1. PROCEDURE

(2) On 1 October 2003, following the submission of a complaint and after evaluation by independent experts, the Commission initiated the formal investigation

procedure (hereinafter 'the first opening decision') with regard to six aid schemes for R&D projects that had not been individually notified by Italy. For the six cases, the Commission raised doubts about their compatibility with the rules applicable to R&D aid⁽⁴⁾.

(3) By decision of 22 June 2005⁽⁵⁾, the Commission decided to extend the scope of the procedure (hereinafter the 'second opening decision') to the entire application of Act 808/85, including projects that Italy claimed to fall within the scope of Article 296. On 12 October 2005 the second decision was published⁽⁶⁾.

(4) By letter of 17 June 2005, the Italian authorities pointed out that the scope of the two opening decisions touched on issues that were sensitive for national security.

(5) The Commission replied to the letter of 17 June 2005 by letter of 15 July 2005, in which it stated that the Commission's investigations would be confined to civil aspects and that the purpose of assessing projects that were a matter of national security was precisely to exclude them from the scope of the final decision.

(6) On 11 March 2008, the Commission adopted Decision 2008/806/EC on several individual R&D projects financed by Italy.

(7) Paragraph 419 of Decision 2008/806/EC reads as follows: 'The Commission cannot reach a conclusion, however, on the two projects regarding whose military character it expressed doubts in the second initiating decision. The Commission reserves the right to ask Italy for further information on these projects with a view to a decision in the near future.'

⁽¹⁾ OJ C 16, 22.1.2004, p. 2 and OJ C 252, 12.10.2005, p. 10.

⁽²⁾ Case N 281/84, letter SG(86)5685 of 14 May 1986.

⁽³⁾ OJ L 284, 28.10.2008, p. 1.

⁽⁴⁾ The 1996 Community Framework for State aid for R&D (OJ C 45, 17.2.1996, p. 5) or the 1986 Community Framework for State aid for R&D (OJ C 83, 11.4.1986, p. 2).

⁽⁵⁾ C(2005) 1813 final.

⁽⁶⁾ OJ C 252, 12.10.2005, p. 10.

- (8) In several of the letters submitted to the Commission during the examination procedure, the Italian authorities also included references to the above two projects. By letter of 24 April 2007, the Italian authorities provided two detailed memos on the two projects.
- (9) On 4 May 2007, a meeting took place at the premises of the Italian Permanent Representation to the European Union, where the Italian authorities allowed a delegation from the Commission to consult documents on the two projects, which were classified for national security reasons.
- (10) The Commission requested additional information on the two projects by letter of 5 May 2008.
- (11) Italy submitted information on the two projects on 9 July 2008.
- (12) On 29 September 2008, the Italian authorities hosted a site visit for two Commission officials at the military base of [...] (*) where the BA609 is undergoing tests and at the head offices of AgustaWestland in Cascina Costa (in the province of Varese).
- (13) By letter of 7 October 2008, Italy provided a record of the site visit, with a detailed list of the military facilities visited and the evidence provided about the project under assessment.
- (14) By letter of 9 October 2008, Italy announced that it would be submitting further documentation on the projects. It also stated its willingness to continue its collaboration with the Commission, even if the projects were relevant for national security purposes and thus fell within the scope of Article 296.
- (15) By letter of 29 October 2008, Italy provided additional information on the BA609 project.
- (16) By letters of 31 March, 7 May and 24 July 2009, Italy submitted further information on the project under way involving the BA609, including the latest financial developments. The Commission replied by letter of 22 April 2009.
- (18) As regards the A139 project, the Commission noted for instance that AgustaWestland's website⁽¹⁾ gave the following list of applications for this product: Emergency Medical Service, Fire Fighting, Harbour Pilot Shuttle, Law Enforcement, Offshore, Search and Rescue, and VIP/Corporate. The Commission considered that none of these applications was military.
- (19) As regards the BA609, the Commission noted for instance that Bell Agusta's website⁽²⁾ contained a list of Frequently Asked Questions, where, to the question 'Does the BA609 carry both civil and military configurations?', the company replied 'The BA609 is currently being planned in civil configurations only. The closest to a military configuration would be the SAR [Search and Rescue] configuration for the Coast Guard type aircraft. No military configurations are available at this time'.
- (20) Based on the information available when Decision 2008/806/EC was taken, the Commission was still unable to reach a conclusion on the two projects. It reserved the right to put further questions to Italy in order to clarify certain aspects of the projects before taking a decision. Therefore, it excluded the two projects from the scope of that decision.

3. COMMENTS BY THIRD PARTIES ON THE TWO PROJECTS

2. REASONS FOR OPENING THE FORMAL INVESTIGATION

- (17) In the second opening decision, the Commission expressed serious doubts that the AB139 (or A139, hereinafter 'A139') and BA609 projects could be classified as military as the Italian authorities claimed.
- (21) The observations submitted by an anonymous third party (hereinafter 'third party') after the second opening decision and during the proceeding contained a number of specific comments on the two projects under assessment.
- (22) The third party doubted that the two projects under assessment could be considered military. In its view, the AW139 was a purely civil helicopter because it had no military application. The fact that a few helicopters had been bought by armies in various parts of the world did not alter the civil nature of the AW139.
- (23) The third party noted that the distinction between military and civil helicopters is made at the certification stage, usually when the project is first certified. It added that the typical characteristics of military programmes would involve a phase for defining military specifications; a development contract with the Ministry of Defence; and an industrialisation contract with the Ministry of Defence. According to the third party such steps would be public and referred to in the national defence budget.
- (24) As regards the BA609, the third party quoted the public information provided by Agusta, which at that time only mentioned civil applications for the tilt-rotor.

(*) Confidential information related to the protection of essential interests of national security or business secrets.

⁽¹⁾ http://www.agustawestland.com/products01_01.asp?id_product=15

⁽²⁾ http://www.bellagusta.com/air_ba_fa_q.cfm#8

(25) The third party also submitted that to develop the two projects Agusta needed substantial sums of money, which it could only have obtained as a result of generous state support.

(26) In particular, the third party argued that an investment of at least EUR 700 million would have been needed to develop the A139. The third party further argued that Agusta's participation in the joint project with Bell on the BA609 would have cost at least EUR 200 million.

(27) The third party maintained that, according to the information available to the public, Agusta's R&D expenditure did not cover these costs.

4. DESCRIPTION OF THE PROJECTS BY ITALY

(28) In the second opening decision the Commission raised doubts whether the two projects brought to its attention — A139 and BA609 — could be classified as military, as the Italian authorities claimed.

(29) As indicated in Decision 2008/806/EC, the Commission was unable to reach a conclusion on the two projects on the basis of the information available to it.

(30) The beneficiary of the projects under assessment is Agusta⁽¹⁾, a member of the Finmeccanica group. Agusta specialises in helicopters. In its submissions, Italy indicated that its observations were presented together with Finmeccanica.

(31) First, it is worth recalling that the Italian Government has used Act 808/85 to fund projects in both the civil and the military field. According to the figures provided by the Italian authorities (recitals 171-172 of Decision 2008/806/EC), out of a total of some EUR 3 billion, EUR 1 311 million had been used for projects relating to national security.

(32) Italy also provided a table listing the programmes relating to national security that were funded under this scheme.

The use of a civil law for military projects explains why some projects are not mentioned in the national defence budget.

(33) In particular, Italy claimed that the support granted to the two projects was justified on the grounds of national security objectives and it invoked Article 296 of the EC Treaty.

4.1. A139 project

(34) According to the Italian authorities, after initial discussions in the NATO context, the A139 project began life as a cooperation project with the Russian firm Kamov, but this ended in 1997. Subsequently the Italian Government issued an official request via the Italian Ministry of Defence concerning a tactical transport helicopter in support of combat operations.

(35) The Italian authorities showed the Commission the official request for a feasibility study dated [...], with the military requirements.

(36) They also showed the technical specifications for the military helicopter, dated [...].

(37) Italy indicated that the work carried out by Agusta until 1999 consisted of providing the initial design and the technical feasibility solutions needed to comply with the request for a tactical transport helicopter for combat support. It carried out tests and validation activities on a demonstrator, such as: [...] (in 1998) and [...] (in 1999).

(38) In 2000, according to Italy, the activities continued with [...].

(39) According to the Italian authorities the project funded under Act 808/85 ended with the development of a military demonstrator.

(40) The Italian Government's decision to grant support to the A139 dated from 1998. The government support was paid to the company in [...] instalments, as follows:

Table 1

Financial support to the A139 project

(in EUR)

Year	Amount awarded per year	Combined total
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]

⁽¹⁾ Now AgustaWestland, following its merger with Westland.

(in EUR)

Year	Amount awarded per year	Combined total
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]

- (41) Italy's explanation for the delays in the development of the military helicopter was that the precise operational needs for the A139 were further adjusted by the Ministry of Defence to take into account the experience of military peace-keeping missions abroad (Albania, Bosnia, Macedonia, Timor, and Kosovo). These adjustments concerned [...].
- (42) Italy further indicated that the A139 was intended to replace the existing fleet of Bell 212, 205 and 412 helicopters. However, Italy added that the events of 11 September 2001 had forced it to rethink its planning, in order to have [...].
- (43) According to Italy, the A139 project was different from the subsequent AW139 civil helicopter. Instead, the A139 project under examination by the Commission was at the basis of the development of the AW149 military helicopter.
- (44) Italy provided a comparison of the technical characteristics of the two helicopters: AW139 and AW149. According to Italy, the comparison showed that:
- the AW139 has all the characteristics of a civil helicopter,
 - the AW149 has all the characteristics of a military helicopter,
 - the spill-over effects in terms of know-how between the two helicopters are very limited because they are fundamentally different aircraft.
- (45) The following table was compiled from the information provided by Italy. The third column includes a comparison between the two helicopters, i.e. whether the parts developed for the AW149 are different from those of the AW139.

Table 2

Comparison between the AW139 and AW149 projects

	Civil version AW139	Military version AW149	AW149 versus AW139
Main rotor diameter	13,8 m	14,6 m	New
Tail rotor diameter	2,7 m	2,8 m	New
Cockpit size		Width + 3 cm	New structure design

	Civil version AW139	Military version AW149	AW149 versus AW139
Cabin		Length + 30 cm Width + 26 cm	New structure design
Landing gear	Not crashworthy Ground clearance 42 cm	Crashworthy (based on military standards) Ground clearance 50 cm	New design
Tail boom		+ 45 cm	Modification or new
Take-off weight	6 400 kg; civil certification JAR/FAR 29	6 800-7 000 kg (without mission equipments); certification AR 56 (utility version) and DEF STAN 00-970 (UK Ministry of Defence)	New
Engines	Basic PW PT6-67C	PW PT6-67C powered (according to Italy)	New
Transmission		+ 25 % torque available	New mechanical elements with same housing
Auxiliary Power Unit	No	Accessory Drive Module	New
Fuel system	Crashworthy according to civil standards JAR/FAR29	Crashworthy according to military standards; self-sealing	New design
Weapons	No	Guns 7,62 mm; equipped to install a launcher 7 × 70 mm; machine guns 20 mm	New
External loads	Standard for utility (search and rescue)	Winglets to bear loads according to NATO standards	New design
Ballistic protection	No	Yes	New
Avionic system	Normal civil systems	Flexible system able to integrate new instruments for missions, communications and navigation according to military requirements	New

(46) Italy also provided information on the development of the AW139. A Ground Test Vehicle was developed in 2000 and a demonstrator/prototype capable of flying was assembled in 2001. In 2000 and 2001 the first prototypes were made, and development and certification was started. In June 2003 the helicopter was certified by EASA (later by the FAA in the US). In 2004 a new certification was issued which allowed the first deliveries in a basic version. In 2005 there was further certification of auxiliary installations for a more complete helicopter, with more avionics such as meteorological radar, infrared, emergency floaters, auxiliary tanks, etc.

(47) Italy also provided clarifications on Agusta's financial situation and its funding of R&D projects. It has provided the list of risk and revenue sharing partners

involved in the development of the AW139, which allowed Agusta to reduce its initial investment in the project significantly.

(48) Italy provided the overall figures for Agusta's R&D expenditure. In particular, according to Italy, Agusta's investment in R&D amounted to some [20-30] % of its annual turnover (average of EUR [550-700] million in the period 1998-2000). Military projects funded under Act 808/85 accounted for [...] % of total R&D expenditure. The rest was spent either on civil projects co-funded by the State (10,30 %, financed under Act 808/85) or on R&D projects with own funding ([35-45] %). Funding for the R&D project that became the AW139 reached a level of EUR [...] million per year ([...] % of the [...] %).

(49) Italy also provided a statement by Agusta's auditors (PricewaterhouseCoopers) dated 15 September 2006, according to which:

— data concerning costs for materials, equipment and other external costs are correctly extrapolated from the company's analytical industrial accounting for the project,

— cost of labour is determined on the basis of standard hourly rates, which are not above those set by the Ministry of Defence, and

— the data on funding correspond to the amounts granted by the Ministry for Industry under Act 808.

(50) Finally, as regards the allegation by the third party that the first certification is essential for defining the nature of the R&D project, the Italian authorities replied that certification is not a sufficient condition to decide on the nature of a helicopter. To back up their argument, the Italian authorities provided a long list of helicopters that had first received military certification and then civil certification, or vice versa, or even underwent two parallel certification processes.

(51) Italy further argued that it has recently become normal practice to require military helicopters to be certified by the civil authorities as well and then limit the military certification just to some elements (such as avionics and armaments).

(52) In conclusion, Italy maintained that civil certification does not rule out the original development of a helicopter having been funded for military purposes (as the Italian authorities claim was the case for the A139) and the subsequent development and certification of a civil version being funded entirely by the company through its own funds.

4.2. BA609 project

(53) The BA609 project concerns the development of a tilt-rotor aircraft, which is an aircraft that can take off and land as a helicopter and fly like an aeroplane. The rotors on the wings are placed vertically during take-off and landing and then horizontally during flight. It combines the flexibility of a helicopter in taking off and landing in small spaces with the capacity to fly longer distances at much higher speeds. At the same time, given its size and characteristics, compared with other helicopters, it still needs to land on prepared ground (cement platform) which means it is unsuitable for missions in the desert, or for landing on oil platforms.

(54) The BA609 project is led by the US company, Bell. According to Italy, the origins of the BA609 derive from the V22, a tilt-rotor aircraft used by the US Government.

(55) Italy maintains that the civil version is developed by Bell together with Agusta, with their own funding, through BellAgusta, which is 60 % controlled by Bell and 40 % by Agusta.

(56) According to Italy, the parallel development of the two versions of the BA609 would be as follows.

Table 3

Stages in the BA609 project

Year	Stages in the development of the BA609 civil helicopter	Stages in the development of the BA609 military helicopter
1996	Bell starts development	
October 1998	Agreement Bell Agusta	[...]
October 1998		[...]
December 2002	First ground tests of the BA609 prototype	
March 2003	First flight of first prototype	
2004		[...]
September 2005		[...]

Year	Stages in the development of the BA609 civil helicopter	Stages in the development of the BA609 military helicopter
July 2006	First flight of second civil prototype	
2012	Certification expected to be issued	

- (57) In May 2007 the Italian authorities showed the Commission the documents concerning the military requirements.
- (58) Italy also provided letters from the Navy expressing its strategic interest in the development of the BA609. Italy indicated its intention that [...] should also be able to carry tilt-rotor aircraft on board.
- (59) According to Italy, the work carried out by Agusta in Italy on the BA609, which is the project Italy says that it is supporting, concerns a military version of the BA609, separate and different from the civil version of the BA609 currently under development in Bell's US plants.
- (60) Italy provided detailed information on the technical characteristics of the two versions — military and civil — which according to the Italian authorities confirms that a military version exists:
- the military version is heavier (8 t versus 7,6 t) and has a heavier take-off weight (18 000 lb versus 16 800 lb),
 - in the military version the structural cell is reinforced in order to have sliding doors, ballistic protection, specific reinforcements where additional loads are added, and energy absorption in the fuselage, responding to more stringent requisites for crashworthiness,
 - the engine for the military version is the higher-powered PWC PT6C-67 (rather than the PWC PT6C-67A),
 - the military version has an auxiliary power unit (APU) to provide power while the engines are stopped and increase the operational capacity of the aircraft; the civil version does not have an APU,
 - the landing gear for the military version is designed for hard landings and impacts, typical of military use; the civil version is equipped with retractable landing gear,
 - the military version is equipped with a crashworthy fuel system which is self-sealing and which can be refilled during flight, in line with military requirements for other helicopters; the civil version of the fuel system has more limited crashworthiness,
 - the military version has other specific characteristics which are not present in the civil version: it is equipped with 20 mm machine guns and rocket launchers; it allows for additional external loads for military use (to allow entry and exit of troops, etc.); it is equipped with ballistic protection for wings and rotors, with armoured cockpits, etc.
- (61) On 29 September 2008 Commission officials made a site visit at the invitation of the Italian authorities. The Italian authorities showed them the military base where the BA609 is undergoing testing and Agusta's head offices, with its R&D departments.
- (62) The Italian authorities showed them:
- the Telemetry Control Room and information about ongoing operations on a test flight of the BA609,
 - the flight and the landing by the second prototype of the BA609 ⁽¹⁾, including the tilting of the rotors from aircraft to helicopter mode,
 - the BA609 itself, with a presentation by its pilot,
 - the third prototype of the BA609, which is under development in a hangar at the military base.
- ⁽¹⁾ The first prototype is being tested at the Bell Agusta Aerospace Company in Texas.

- (63) While at the military base, Agusta's CEO gave a detailed presentation of the BA609. A representative from the Italian Ministry of Defence gave some details on the military configuration and missions with respect to that Ministry's requirements.
- (64) Evidence was also produced about the concerns raised by the US authorities responsible for the V22, [...] ⁽¹⁾.
- (65) Information was also provided about the evolution from the basic avionics of the tilt-rotor technology to the military mission configurations [...].
- (66) In the security segregated area at Agusta's head offices in Cascina Costa, the Commission officials were shown the following items directly related to the BA609:
- a one-to-one scale mock-up of the BA609 in its [...] configuration, with relevant mission equipment [...],
- the mission system integration laboratory, where it was possible to see simulated missions with [...].
- (67) Italy provided information on the support granted to the BA609, under two aid decisions. The first decision concerned the period from 1998 to 2000, and amounted to around EUR [...] million.
- (68) The second decision covered activities in the period 2001-2004, and amounted to a further EUR [...] million. These activities are still in progress because the project has encountered major delays, and the latest instalments were paid by the Italian Government in [...].
- (69) Italy provided a detailed table on the amount of support ⁽²⁾.

Table 4

Financial support for the BA609 project

(in million EUR)

	1998	1999	2000	2001	2002	2003	2004	Total
Military technologies of the platform								
Tilt rotor simulation code	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Power transfer system tech.	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Flight control system	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Flight test HW and SW	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Sub-total	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Further military and security configuration of the BA609								
Architecture	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Airframe	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Systems	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Avionics	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Sub-total	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

⁽¹⁾ [...]⁽²⁾ It should be noted that there is a slight discrepancy between the amounts indicated by Italy in the table and the information provided by Italy on the amounts in the two aid decisions.

- (70) Italy has also provided information on the R&D expenditure by Agusta (see recital 48. Expenditure on the civil BA609 in the period 1998-2000 was EUR [...] million per year on average ([...] % of the [...] % mentioned above).
- (71) As stated in recital 49, for the A139, Italy has provided a statement by Agusta's auditors (PricewaterhouseCoopers).
- (72) According to Italy there has been no technological spillover from the military project to the civil project developed by BellAgusta. Furthermore, Italy maintains that even if there were a transfer of know-how, it would be very difficult to quantify the technological spillover.
- (73) Italy recognises that the basic technology of helicopters is always essentially dual, and the same would apply to the tilt rotor. Italy further notes, however, that in the case under assessment, the matter is even more complex as the project concerns a very innovative aircraft, born out of a much larger-scale military project.
- (74) Finally, Italy notes that the development of the tilt-rotor aircraft would have no impact on competition, since there are no alternative and comparable projects in Europe or indeed the world.
- (75) By way of conclusion, Italy states that the only R&D project concerning a tilt-rotor that it had intended to support, the BA609, concerns an aircraft intended for military use.
- (79) If the measure adopted by the Italian Government in support of the two projects does not fall within the scope of Article 296 of the EC Treaty, as the third party contends, the Commission would need to assess them on the basis of Article 87 of the EC Treaty, and in particular the rules applicable to the assessment of aid for R&D projects. If, on the contrary, the Italian measures fall within the scope of Article 296 of the EC Treaty, competition rules would not apply ⁽¹⁾.
- (80) The information submitted by Italy and the site visit have enabled the Commission to reach a conclusion on the two projects and on the measures taken by the Italian Government in support thereof.
- (81) It should be recalled from the outset that the military nature and purpose of equipment is, in itself, insufficient to justify an exemption from Community rules on the basis of Article 296 of the EC Treaty. Such a measure must also be necessary for the protection of a Member State's essential security interests. According to the case law of the European Court of Justice, Article 296 of the EC Treaty must be interpreted in a restrictive way and limited to exceptional, clearly defined cases. Moreover, the burden of proof as to whether the conditions for application of the exemption are met lies with the Member States.
- (82) First, therefore, the assessment must start by verifying the nature of the two research projects.
- (83) Second, the assessment must examine whether Italy has demonstrated that the measures taken were considered necessary for the protection of its essential security interests, as regards the production of or trade in arms, munitions and war material — in other words whether Article 296 of the EC Treaty applies.
- (84) Third, the assessment will also examine whether such support may have affected the conditions of competition in the common market as regards the development of civil helicopters by Agusta.
- (85) In assessing the two projects, it is important to stress that the measures under examination concern the R&D phases. It is not only the nature of the final products per se which matters, but also the nature of the work carried out during the R&D phase. Further, it should be noted that the projects under assessment were limited to the R&D phase, and it is not possible to assess them on the basis of an industrialisation contract, as the third party requires, which takes place at a later stage.

4.3. Conclusions by Italy on the two projects

- (76) For both aircraft, the Italian authorities therefore invoke Article 296 of the EC Treaty. Accordingly, they ask the Commission to close the current investigation procedure as it serves no purpose because the measures at issue fall outside the scope of Articles 87 and 88 of the EC Treaty.
- (77) As mentioned in several submissions, the Italian authorities also indicate that, if the Commission has competition concerns related to the measures adopted by the Italian Government, then it should examine these measures together with Italy on the basis of Article 298 (1) of the EC Treaty.

5. ASSESSMENT

- (78) In essence, the purpose of the Commission's assessment is to establish whether the support granted by Italy to the above two projects falls within the scope of Article 296 of the EC Treaty.

⁽¹⁾ See Case T-26/01 *Fiocchi munizioni SpA v Commission* [2003] ECR II-3951, paragraph 59.

- (86) Italy has submitted significant evidence on the two projects and has allowed a site visit to a military base. figures are compatible with the financing of only the initial development of a demonstrator.
- (87) Finally, it should be recalled that Italy has used the same legal basis, Act 808/85, to support both civil and military projects. As noted in Decision 2008/806/EC the use of a civil law as a legal basis to support military projects on the one hand contributed to the uncertainty about the nature of the projects financed, but on the other hand explains why such projects were absent from the defence budget.
- (95) Italy provided a statement from the company's auditors, which certifies that the expenditure for the A139 project was recorded as military expenditure and corresponds to the parameters set by the Italian Ministry of Defence.
- (96) The missions defined for the AW149 primarily involve air support activities for battlefield operations, which are essential for national security.
- (97) The information provided by Italy therefore points to the conclusion that the AW149 is a helicopter that is essential for the national security purposes defined by the Ministry of Defence and subsequently adapted on the basis of experience gained from the Italian Army's operational missions ⁽²⁾.
- (98) The information provided by Italy shows that the support measures taken by the Italian authorities for the A139 project were considered necessary for the protection of Italy's essential security interests as it allowed it to respond to military needs and to finance the development of arms production technologies, in this case military helicopters, which are included in the list referred to in Article 296(2). Therefore the assessment of this measure is that on the basis of the information available it is not possible to conclude that Italy had wrongly invoked Article 296.
- (99) Italy argues that the A139 project would have been of no benefit to the development of the AW139 civil helicopter.
- (100) At the same time, it is clear, however, that the company's use of the same acronym (A139) for a civil helicopter (AW139) raised doubts about the nature of the project.
- (101) Italy has provided detailed information on the two helicopters and on their equipment. This has made it possible to conclude that the A139 civil helicopter (AW139) and the AW149 are two different helicopters.
- (102) Italy's support was granted at the beginning of the R&D phase for the development of a helicopter with features that met specific strategic requirements of Italian defence.
- (88) The documentation provided by the Italian authorities show that the A139 R&D project supported by the Italian Government was intended for uses linked to national security.
- (89) In particular, in the case of the A139, the project under assessment concerned only the development of a demonstrator, which is one of the very first phases of the development of a helicopter. Italy has explained that the demonstrator served only for the development of the AW149 military helicopter.
- (90) Italy has shown the military documents which defined the missions to be accomplished by the military helicopter (see recital 35).
- (91) Italy has also shown the military document containing the technical specifications of the project under development (see recital 36). These specifications are the result of the R&D project. According to the third party, military requirements and military technical specifications are two steps that characterise the development of military programmes.
- (92) According to the information provided and the evidence produced by Italy, this demonstrator would be used to develop the AW149 helicopter, whose final development has taken much longer than initially planned.
- (93) It should be noted that the aims and characteristics of the AW149 are indeed those of a military helicopter ⁽¹⁾.
- (94) Italy has also provided information on the overall public funding granted to the project under assessment, and on general investment in R&D activities by Augusta. These

⁽¹⁾ According to the information available to the public, for instance, on the company website, the AW149 is suited to battlefield support, combat SAR, reconnaissance, surveillance, medical evacuation, search and rescue, and command and control support roles.

⁽²⁾ In the field of national security Member States frequently start projects in order to explore new technologies without necessarily reaching the industrialisation phase. It is inconceivable for military R&D projects to fall outside the scope of Article 296 of the EC Treaty because they were not successful or because there was no decision to exploit the results of the projects. Therefore, the existence of industrialisation contracts by the Ministry of Defence was not considered to be a necessary step for the application of Article 296 of the EC Treaty to R&D projects.

- (103) The information provided by Italy on the military characteristics of the A139 project and the arguments by the third party on the civil nature of the AW139 are consistent. On the other hand, it is possible, and indeed likely, that the R&D activities carried out under the A139 assisted project have been of benefit to the development of the AW139 civil helicopter ⁽¹⁾.
- (104) It should be recalled that helicopters have features that allow dual use. According to Italy, it is not infrequent in this sector for companies to exploit R&D projects for military helicopters in order to develop civil helicopters.
- (105) It is therefore possible to conclude that, while the Italian authorities have not been wrong in invoking Article 296 of the EC Treaty, it also appears that these measures had the effect of distorting the conditions of competition in the common market because they were also of benefit to the development of the AW139 civil helicopter.
- (106) On the basis of Article 298(1), the Commission will therefore examine, together with the Italian authorities, how such measures can be adjusted to the rules laid down in the Treaty.

5.2. BA609 project

- (107) As regards the BA609, the Italian authorities have provided sufficient information to prove that a military version of the tilt-rotor aircraft is under development.
- (108) The Italian authorities have given a detailed presentation of the missions required from the BA609. They have produced evidence of the demand by the Ministry of Defence for such an aircraft. This is a step that the third party considers to be necessary for military projects.
- (109) The Italian authorities also organised a site visit to a military base. The visit provided an opportunity to see actual prototypes of the aircraft under development and life-size mock-ups of the equipment and to verify that they are indeed for military use (see recitals 62 to 66).
- (110) The Italian authorities have also provided information on the funding for the development of the aircraft.
- (111) They have also provided a statement by the auditors, certifying that the sums paid by the Italian Government were used entirely by the company for military projects.
- (112) Furthermore, the Italian authorities have explained that features of the tilt-rotor allow a strategic use of the aircraft for national security purposes, such as sea surveillance, which is of particular relevance for Italy given its geographic location in the central Mediterranean area.
- (113) The demonstration of the development of the avionics systems, in particular, gave an idea of the potential

national security missions that the tilt-rotor could carry out.

- (114) The information provided by Italy shows that the support measures taken by the Italian authorities for the BA609 project were considered necessary for the protection of Italy's essential security interests as it allowed it to respond to military needs and to finance the development of arms production technologies, in this case military helicopters, which are included in the list referred to in Article 296(2). Therefore the assessment of these measures is that on the basis of the information available it is not possible to conclude that Italy has wrongly invoked Article 296 of the Treaty.
- (115) On the other hand, it should also be noted that the parallel development of two versions of an aircraft, even if it is a very innovative aircraft like the BA609, inevitably brings a transfer of know-how from one part of the project to the other. Even if, as Italy has shown, there are substantial differences in the aircraft designed for military development compared with the version for the civil market, it is highly likely that the technological spillover from the work carried out on the military aircraft were of benefit to the civil version.
- (116) This is particularly the case with the initial work carried out by Agusta on the tilt-rotor mechanisms.
- (117) In order to assess this initial work correctly, it must also be acknowledged that such work — mainly carried out at the end of the 1990s — is very far removed from the final product, which will only be put on the market in 2013, according to the most recent forecasts — if not later ⁽²⁾.
- (118) The information submitted by Italy on the military nature of the BA609 project is consistent with the information submitted by the third party about the civil nature of the BA609 aircraft. Italy recognises that there are two parallel developments. It is therefore possible, and indeed likely, that the work carried out under the funded BA609 project has benefited the civil aircraft currently under development ⁽³⁾.
- (119) It is therefore possible to conclude that while the Italian authorities have not been incorrect in invoking of Article 296 of the EC Treaty, it also appears that these measures had the effect of distorting the conditions of competition in the common market because they were also of benefit to the development of the BA609 civil aircraft.
- (120) On the basis of Article 298(1) of the EC Treaty, the Commission will therefore examine together with the Italian authorities how such measures can be adjusted to the rules laid down in the Treaty.

⁽¹⁾ For instance through reduced R&D costs or through the use of technology initially developed under the A139 military project but then immediately used in the AW139 civil product.

⁽²⁾ The fact that the project is still under development has two further implications: there are no technical specifications finalised yet, as the project concerns a completely new technology which will require a complex certification process; and there cannot be an industrialisation contract, since the R&D project is far from being finished.

⁽³⁾ For instance through reduced R&D costs for the civil project, or through the use of technology initially developed for the BA609 military project and used at the same time in the BA609 civil project.

6. CONCLUSION

- (121) In the light of all the above factors, the Commission is able to conclude that the support granted by the Italian Government under Act 808/85 to the two R&D projects, A139 and BA609, falls within the scope of Article 296.
- (122) Consequently, there is no purpose in pursuing this procedure under Article 88(2) and it can be terminated.
- (123) However, the Commission's examination has also shown that the measures have altered the conditions of competition in the common market as regards products not intended for specifically military purposes.
- (124) For these reasons, pursuant to Article 298(1), the Commission must examine together with the Italian authorities in a separate proceeding how these measures can be adjusted to the rules laid down in the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The measures adopted by Italy on the basis of Act 808/1985 in favour of two R&D projects, A139 and BA609, fall within the scope of Article 296 of the EC Treaty. Therefore there is no reason to pursue the current procedure.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 28 October 2009.

For the Commission

Neelie KROES

Member of the Commission

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