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### Information and Notices

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<sup>(1)</sup> Text with EEA relevance

## I

(Resolutions, recommendations and opinions)

## OPINIONS

## EUROPEAN CENTRAL BANK

## OPINION OF THE EUROPEAN CENTRAL BANK

of 5 October 2007

**on a proposal for a regulation amending Commission Regulation (EC) No 1749/96 on initial implementing measures for Council Regulation (EC) No 2494/95 concerning harmonised indices of consumer prices**

(CON/2007/30)

(2007/C 248/01)

**Introduction and legal basis**

On 5 September 2007 the European Central Bank (ECB) received a request from the European Commission for an opinion on a proposal for a Commission regulation amending Regulation (EC) No 1749/96 of 9 September 1996 on initial implementing measures for Council Regulation (EC) No 2494/95 concerning harmonised indices of consumer prices (hereinafter the 'draft regulation').

The ECB's competence to deliver an opinion is based on the first indent of Article 105(4) of the Treaty establishing the European Community. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

**1. General observations**

1.1 The ECB welcomes the draft regulation as it clarifies and strengthens the principles underlying the harmonised index of consumer prices (HICP) and its sampling, replacement and quality adjustment procedures, thereby ensuring its comparability and accuracy. By introducing the concept of the 'consumption segment by purpose' as the fixed objects to be followed by the price index, the draft regulation clarifies the conceptual basis of the HICP. Also, by providing a framework and common terminology on sampling, product replacement and quality adjustment, it may facilitate further harmonisation in these areas.

1.2 The development of product-specific standards for quality adjustment methods promises important improvements. The ECB endorses the approach adopted by the draft regulation for setting standards for quality adjustment on a case-by-case basis, and for the classification of alternative methods for quality adjustment according to their appropriateness. Nevertheless, such standards may still leave room for divergent practices between national HICPs, so the full harmonisation of quality adjustment methods should be the ultimate aim. Moreover, as the implementation of agreed and effective standards is crucial, the ECB strongly recommends accompanying the implementation of the draft regulation by regular reporting on the progress of its implementation by the Member States and by strict compliance monitoring by the European Commission. This monitoring should aim at urging Member States to effectively apply A-methods for quality adjustments, since this is the best way to enhance both the HICP's accuracy and its comparability across Member States. If it were to be shown that such measures are not sufficient to lead to the required degree of comparability, the ECB would welcome the adoption of measures, as foreseen in Article 1(3) of the draft regulation, to make product-specific standards for quality adjustment legally binding.

- 1.3 The ECB also welcomes the specific rules included in the draft regulation for quality adjustment and related practices for updating the sample. However, given the current divergent national practices for updating HICP samples, it may be difficult to achieve full comparability of HICPs as regards representativeness and quality adjustment. The ECB therefore encourages the European Commission to continue working towards the establishment of standards for comparable sample updating for the HICP.

Done at Frankfurt am Main, 5 October 2007.

*The President of the ECB*  
Jean-Claude TRICHET

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## II

*(Information)*

## INFORMATION FROM EUROPEAN UNION INSTITUTIONS AND BODIES

## COMMISSION

**Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty****Cases where the Commission raises no objections***(Text with EEA relevance)**(2007/C 248/02)*

Date of adoption of the decision	25.9.2007
Reference number of the aid	N 197/07
Member State	Germany
Region	—
Title (and/or name of the beneficiary)	Methode zur Berechnung des Beihilfelements von Bürgschaften
Legal basis	—
Type of measure	Aid scheme
Objective	Regional development
Form of aid	Guarantee
Budget	—
Intensity	—
Duration	25.9.2007-31.12.2013
Economic sectors	All sectors
Name and address of the granting authority	—
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

[http://ec.europa.eu/community\\_law/state\\_aids/](http://ec.europa.eu/community_law/state_aids/)

**Non-opposition to a notified concentration****(Case COMP/M.4671 — UTC/Initial ESG)**

(Text with EEA relevance)

(2007/C 248/03)

On 25 June 2007, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- from the Europa competition website (<http://ec.europa.eu/comm/competition/mergers/cases/>). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
- in electronic form on the EUR-Lex website under document number 32007M4671. EUR-Lex is the on-line access to European law (<http://eur-lex.europa.eu>).

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**Non-opposition to a notified concentration****(Case COMP/M.4682 — INEOS/Lanxess' Engineering Thermoplastic Resins Business)**

(Text with EEA relevance)

(2007/C 248/04)

On 8 August 2007, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- from the Europa competition website (<http://ec.europa.eu/comm/competition/mergers/cases/>). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
  - in electronic form on the EUR-Lex website under document number 32007M4682. EUR-Lex is the on-line access to European law (<http://eur-lex.europa.eu>).
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**Explanatory Notes to the Combined Nomenclature of the European Communities**

(2007/C 248/05)

Pursuant to Article 9(1)(a), second indent, of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff <sup>(1)</sup>, the Explanatory Notes to the Combined Nomenclature of the European Communities <sup>(2)</sup> are amended as follows:

On page 296, the following text is inserted:

**‘7318 11 00 Coach screws**

Coach screws are a special kind of unslotted wood screw which have a hexagonal or a square head and may have a fixed cap.

There are two types of coach screws:

- screws used to secure railway lines to sleepers of wood which are, in principle, large wood screws (see example A),
- screws used for assembling rafters and for similar heavy woodwork, which in view of their use, have a diameter of the shank which is more than 5 mm (see example B).



Example A



Example B'

On page 337, the following text is inserted:

**‘8525 80 30 Digital cameras**

Digital cameras of this subheading are always capable of still image recording, whether on an internal storage medium or on interchangeable media.

Most cameras of this subheading have the design of a traditional photographic camera and do not have a foldable viewfinder.

These cameras may also have video-capture capability to record sequences of video. Cameras remain classified in this subheading unless they are capable, using the maximum storage capacity, of recording, in a quality of 800 × 600 pixels (or higher) at 23 frames per second (or higher) at least 30 minutes in a single sequence of video.

<sup>(1)</sup> OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Regulation (EC) No 733/2007 (OJ L 169, 29.6.2007, p. 1).

<sup>(2)</sup> OJ C 50, 28.2.2006, p. 1.

Compared to the video camera recorders of subheadings 8525 80 91 and 8525 80 99, many digital cameras (when functioning as video cameras) do not offer an optical zoom function during video recording. Unaffected by the storage capacity, some cameras automatically terminate the recording of video after a certain period of time.

**8525 80 91  
and**

**8525 80 99**

**Video camera recorders**

Video camera recorders of these subheadings are always capable of recording sequences of video, whether on an internal storage medium or on interchangeable media.

In general, the digital video camera recorders of these subheadings have the design which differs from digital cameras of subheading 8525 80 30. They often have a foldable viewfinder and are frequently presented together with a remote control. They always offer an optical zoom function during video recording.

These digital video camera recorders may also have still image recording capability.

Digital cameras are excluded from these subheadings if they are not capable, using the maximum storage capacity, of recording, in a quality of 800 × 600 pixels (or higher) at 23 frames per second (or higher) at least 30 minutes in a single sequence of video.'

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## IV

(Notices)

## NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

## COMMISSION

Euro exchange rates <sup>(1)</sup>

22 October 2007

(2007/C 248/06)

1 euro =

Currency	Exchange rate	Currency	Exchange rate
USD US dollar	1,4166	RON Romanian leu	3,3980
JPY Japanese yen	161,40	SKK Slovak koruna	33,693
DKK Danish krone	7,4549	TRY Turkish lira	1,7628
GBP Pound sterling	0,69750	AUD Australian dollar	1,6120
SEK Swedish krona	9,2145	CAD Canadian dollar	1,3866
CHF Swiss franc	1,6650	HKD Hong Kong dollar	10,9798
ISK Iceland króna	87,60	NZD New Zealand dollar	1,9136
NOK Norwegian krone	7,7335	SGD Singapore dollar	2,0778
BGN Bulgarian lev	1,9558	KRW South Korean won	1 299,09
CYP Cyprus pound	0,5842	ZAR South African rand	9,7485
CZK Czech koruna	27,215	CNY Chinese yuan renminbi	10,6367
EEK Estonian kroon	15,6466	HRK Croatian kuna	7,3476
HUF Hungarian forint	253,55	IDR Indonesian rupiah	12 940,64
LTL Lithuanian litas	3,4528	MYR Malaysian ringgit	4,7803
LVL Latvian lats	0,7014	PHP Philippine peso	62,472
MTL Maltese lira	0,4293	RUB Russian rouble	35,3360
PLN Polish zloty	3,6888	THB Thai baht	44,608

<sup>(1)</sup> Source: reference exchange rate published by the ECB.

### New national sides of euro circulation coins

(2007/C 248/07)

On 10 July 2007, the Council of the European Union decided that the Republic of Cyprus fulfils the necessary conditions for the adoption of the euro on 1 January 2008 <sup>(1)</sup>.

From 1 January 2008, the Republic of Cyprus will therefore issue euro coins, subject to the approval by the ECB of the volume of the issue (cf. Article 106(2) of the Treaty establishing the European Community).

Euro circulation coins have legal tender status throughout the euro area. The Commission publishes all new euro coin designs <sup>(2)</sup> with a view to informing all parties required to handle coins in the course of their work as well as the public at large.

The 10-, 20- and 50-cent coins and the 1- and 2-euro coins will be issued by the Republic of Cyprus with the new common sides of the euro coins <sup>(3)</sup>. The lowest denominations (1-, 2- and 5-cent) will be issued with the original common side, since the common side of these denominations has not been modified.



1 EURO CENT



2 EURO CENT



5 EURO CENT



10 EURO CENT



20 EURO CENT



50 EURO CENT



1 EURO



2 EURO

**Issuing State:** Republic of Cyprus

**Start of issuing:** January 2008

**Description of the designs:**

1 EURO CENT — 2 EURO CENT — 5 EURO CENT

The centre of the coin depicts a couple of moufflons, the most characteristic species of the country's wildlife. Flanking the year mark, the name of the island in Greek and Turkish is engraved in a semicircle on the right hand side above the animals: 'ΚΥΠΡΟΣ 2008 KIBRIS'. The image and the inscription are surrounded by the twelve stars of the European flag.

<sup>(1)</sup> Council Decision of 10 July 2007 in accordance with Article 122(2) of the Treaty on the adoption by Cyprus of the single currency on 1 January 2008 (OJ L 186, 18.7.2007, p. 29).

<sup>(2)</sup> See OJ C 373, 28.12.2001, p. 1, and OJ C 254, 20.10.2006, p. 6 for a reference to the other euro coins.

<sup>(3)</sup> See OJ C 225, 19.9.2006, p. 7.

## 10 EURO CENT — 20 EURO CENT — 50 EURO CENT

The centre of the coin depicts the ship of Kyrenia (4th century B.C.) representing the island's relationship with the sea and its importance in trade and maritime activities. Flanking the year mark, the name of the island in Greek and Turkish is engraved in a semicircle on the right hand side above the ship: 'ΚΥΠΡΟΣ 2008 KIBRIS'. The image and the inscription are surrounded by the twelve stars of the European flag.

## 1 EURO — 2 EURO

The inner circle of the coin depicts a cross-shaped idol dating back to the chalcolithic period (3000 B.C.), from the village of Pomos which is a characteristic example of Cypriot prehistoric art. The name of the island in Greek and Turkish 'ΚΥΠΡΟΣ KIBRIS' is engraved in an interrupted semicircle on each upper side of the idol. The year mark 2008 appears on the bottom right hand side. The twelve stars of the European flag are positioned on the outer ring of the coin.

Edge lettering of the 2-euro coin: '2 ΕΥΡΩ 2 EURO' repeated twice.

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### New national sides of euro circulation coins

(2007/C 248/08)

On 10 July 2007, the Council of the European Union decided that the Republic of Malta fulfils the necessary conditions for the adoption of the euro on 1 January 2008 <sup>(1)</sup>.

From 1 January 2008, the Republic of Malta will therefore issue euro coins, subject to the approval by the ECB of the volume of the issue (cf. Article 106(2) of the Treaty establishing the European Community).

Euro circulation coins have legal tender status throughout the euro area. The Commission publishes all new euro coin designs <sup>(2)</sup> with a view to informing all parties required to handle coins in the course of their work as well as the public at large.

The 10-, 20- and 50-cent coins and the 1- and 2-euro coins will be issued by the Republic of Malta with the new common sides of the euro coins <sup>(3)</sup>. The smallest denomination coins (1-, 2- and 5-cent) will be issued with the original common side, since the common side of these denominations has not been modified.



1 EURO CENT



2 EURO CENT



5 EURO CENT



10 EURO CENT



20 EURO CENT



50 EURO CENT



1 EURO



2 EURO

**Issuing State:** Republic of Malta

**Start of issuing:** January 2008

**Description of the designs:**

1 EURO CENT — 2 EURO CENT — 5 EURO CENT

The centre of the coin depicts the altar at the prehistoric temple of Imnajdra on a horizontal decorative strip in the background. The name of the country 'MALTA' and the year mark '2008' are engraved under the altar. The engraver's initials 'NGB' are positioned on the right hand side under the decorative strip. The image and the inscription are surrounded by the twelve stars of the European flag.

<sup>(1)</sup> Council Decision 2007/503/EC of 10 July 2007 in accordance with Article 122(2) of the Treaty on the adoption by Malta of the single currency on 1 January 2008 (OJ L 186, 18.7.2007, p. 32).

<sup>(2)</sup> See OJ C 373, 28.12.2001, p. 1, and OJ C 254, 20.10.2006, p. 6 for a reference to the other euro coins.

<sup>(3)</sup> See OJ C 225, 19.9.2006, p. 7.

## 10 EURO CENT — 20 EURO CENT — 50 EURO CENT

The centre of the coin depicts the emblem of Malta. The name of the country 'MALTA' and the year mark '2008' are engraved in an interrupted semicircle on the upper left- and right- hand sides of the emblem respectively. The image and the inscription are surrounded by a ring of concentric circles on which appear the twelve stars of the European flag.

## 1 EURO — 2 EURO

The inner circle of the coin depicts the eight-pointed Maltese cross, on a background of vertical stripes. The letters of 'MALTA' appear between the six upper points of the cross, and the year mark '2008' between the two lower points. The twelve stars of the European flag are positioned on the outer ring of the coin.

Edge lettering of the 2-euro coin: 2 ★★, repeated six times, alternately upright and inverted, where ★ stands for an eight-pointed Maltese cross.

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## V

(Announcements)

## ADMINISTRATIVE PROCEDURES

## EUROPEAN PERSONNEL SELECTION OFFICE (EPSO)

**NOTICE OF OPEN COMPETITION EPSO/AD/99/07**

(2007/C 248/09)

The European Personnel Selection Office (EPSO) is organising the following open competition:

EPSO/AD/99/07 — Administrators (AD5) in the buildings sector:

Field 1. Buildings acquisition and management

Field 2. Civil engineering, specialised technologies or architecture

Field 3. Buildings environmental technology management

The competition notice is published in English, French and German only, in Official Journal C 248 A of 23 October 2007.

Full details can be found on the EPSO website: <http://europa.eu/epso>

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PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION  
POLICY

COMMISSION

**Invitation to submit comments on the draft Commission Regulation on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products**

(2007/C 248/10)

Interested parties may submit their comments within one month of the date of publication of this draft Regulation to:

European Commission  
Directorate-General for Fisheries and Maritime Affairs  
DG FISH-D3 (Legal issues)  
Rue Joseph II, 99  
B-1049 Brussels  
Fax (32-2) 295 19 42  
E-mail: fish-aidesdetat@ec.europa.eu

The text will also be available on the following website:

[http://ec.europa.eu/fisheries/legislation/state\\_aid\\_en.htm](http://ec.europa.eu/fisheries/legislation/state_aid_en.htm)

**DRAFT COMMISSION REGULATION (EC) No .../...**

**of ...**

**on application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid<sup>(1)</sup>, and in particular Article 1(1)(a)(i) thereof,

Having published a draft of this Regulation<sup>(2)</sup>,

Having consulted the Advisory Committee on State aid,

Whereas:

(1) Regulation (EC) No 994/98 empowers the Commission to declare, in accordance with Article 87 of the Treaty, that, under certain conditions, aid to small and medium-sized enterprises is compatible with the common market and not subject to the notification requirement of Article 88(3) of the Treaty.

(2) Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises<sup>(3)</sup> does not apply to activities linked to the production, processing or marketing of fishery and aquaculture products covered by Council Regulation (EC) No 104/2000 on the common organisation of the markets in fishery and aquaculture products<sup>(4)</sup>.

<sup>(3)</sup> OJ L 10, 13.1.2001, p. 33. Regulation as last amended by Regulation (EC) No 1857/2006 (OJ L 358, 16.12.2006, p. 3).

<sup>(4)</sup> OJ L 17, 21.1.2000, p. 22. Regulation as last amended by Regulation (EC) No 1759/2006 (OJ L 335, 1.12.2006, p. 3).

<sup>(1)</sup> OJ L 142, 14.5.1998, p. 1.

<sup>(2)</sup> OJ C 248, 23.10.2007, p. 13.

- (3) The Commission has applied Articles 87 and 88 of the Treaty in numerous decisions to small and medium-sized enterprises active in the production, processing and marketing of fisheries products and has also stated its policy, most recently in the Guidelines for the examination of State aid to fisheries and aquaculture <sup>(1)</sup> (hereafter referred to as the 'Fisheries Guidelines'). In the light of the Commission's considerable experience in applying those Articles to small and medium-sized enterprises active in the production, processing and marketing of fisheries products, it is appropriate, with a view to ensuring efficient supervision and simplifying administration without weakening Commission monitoring, that the Commission should make use of the powers conferred by Regulation (EC) No 994/98 also for small and medium-sized enterprises active in the production, processing and marketing of fisheries products, insofar as Article 89 of the Treaty has been declared applicable to such products.
- (4) The compatibility of State aid in the fisheries sector is assessed by the Commission on the basis of the objectives of both the Competition Policy and the Common Fisheries Policy (CFP).
- (5) This Regulation should cover types of aid granted in the fisheries sector which have been routinely approved by the Commission for many years. This aid does not require a case by case assessment of its compatibility with the common market from the Commission, provided that it complies with the conditions laid down in Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund <sup>(2)</sup> and with certain other conditions. Although Regulation (EC) No 1198/2006 has only been in force from 4 September 2006, the Commission has gained on the basis of existing Fisheries Guidelines sufficient experience in applying similar conditions for the type of measures concerned in order to establish that the conditions of that Regulation are sufficiently accurate to justify not requiring case by case assessment.
- (6) This Regulation should be without prejudice to the possibility for Member States of notifying aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products. Such notifications should be assessed by the Commission in the light of this Regulation and on the basis of the Fisheries Guidelines.
- (7) Aid that Member States intend to grant in the fisheries sector but which do not fall within the scope of this Regulation, or of other Regulations adopted pursuant to Article 1 of Regulation (EC) No 994/98, should remain subject to the notification requirement of Article 88(3) of the Treaty. Such aid will be assessed in the light of this Regulation and the Fisheries Guidelines.
- (8) This Regulation should exempt any aid that meets all the requirements it lays down, and any aid scheme, provided that any aid that could be granted under such scheme meets all the relevant requirements of this Regulation. Aid schemes and individual grants outside any aid scheme should contain an express reference to this Regulation.
- (9) In the interests of coherence with Community-financed support measures, the ceilings of aid covered by this Regulation should be equal to those fixed for the same kind of aid in Annex II to Regulation (EC) No 1198/2006.
- (10) It is essential that no aid is granted in circumstances where Community law, and in particular rules of the Common Fisheries Policy, are not complied with. An aid can therefore only be granted by a Member State in the fisheries sector if the measures financed and their effects comply with Community law. Before granting any aid, Member States should ensure that beneficiaries of State aid comply with the rules of the Common Fisheries Policy.
- (11) With a view to ensuring that aid is proportionate and limited to the amount necessary, thresholds should, whenever possible, be expressed in terms of aid intensities in relation to a set of eligible costs. For the purpose of calculating aid intensities, aid payable in several instalments should be discounted to its value at the moment of granting. The interest rate to be used for discounting purposes and for calculating the aid amount in aid not taking the form of a grant, should be the reference rate applicable at the time of grant. Because it is based on a form of aid for which eligible costs are difficult to identify, the threshold with regard to aid in the form of risk capital should be formulated in terms of maximum aid amounts.
- (12) In view of the need to strike the appropriate balance between minimising distortions of competition in the aided sector and the objectives of this Regulation, it should not exempt individual grants which exceed a fixed maximum amount, whether or not made under an aid scheme exempted by this Regulation.
- (13) This Regulation should not apply to export-related activities or aid favouring domestic over imported products. In particular, it should not apply to aid financing the establishment and operation of a distribution network in other countries. Aid towards the cost of participating in trade fairs, or of studies or consultancy services needed for the launch of a new or existing product on a new market does not normally constitute export aid.

<sup>(1)</sup> OJ C 229, 14.9.2004, p. 5.

<sup>(2)</sup> OJ L 223, 15.8.2006, p. 1.



- (14) Aid granted to undertakings in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(1)</sup> should be assessed under those Guidelines in order to avoid circumvention of these guidelines.
- (15) The Commission has to ensure that authorised aid does not alter trading conditions in a way contrary to the general interest. Therefore, aid in favour of a beneficiary which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the common market, should be excluded from the scope of this Regulation.
- (16) In order to eliminate differences that might give rise to distortions of competition and to facilitate coordination between different Community and national initiatives concerning small and medium-sized enterprises, the definition of 'small and medium-sized enterprises' used in this Regulation should be that laid down in Annex I to Regulation (EC) No 70/2001.
- (17) For the purpose of transparency, equal treatment and effective monitoring, this Regulation should apply only to aid which is transparent. Transparent aid is aid for which it is possible to calculate precisely the gross grant equivalent *ex ante* without a need to undertake a risk assessment.
- (18) Having regard to Article 87(3)(c) of the Treaty, aid should not normally have the sole effect of continuously or periodically reducing the operating costs which the beneficiary would normally have to bear, and should be proportionate to the handicaps that have to be overcome in order to secure the socio-economic benefits deemed to be in the Community interest. State aid measures which simply seek to improve the financial situation of producers but which in no way contribute to the development of the sector, and in particular aid which is granted solely on the basis of price, quantity, unit of production or unit of the means of production are considered to constitute operating aid which are incompatible with the common market. Furthermore, such aid is also likely to interfere with the mechanisms of the common organisations of the markets. It is therefore appropriate to limit the scope of this Regulation to aid for investments, as well as to aid for certain socio-economic measures.
- (19) In order to ensure that the aid is necessary and acts as an incentive to develop certain activities, this Regulation should not apply to aid for activities in which the beneficiary would already engage under market conditions alone.
- (20) In order to determine whether the individual notification thresholds and the maximal aid intensities laid down in this Regulation are respected, the total amount of public support for the aided activity or project should be taken into account, regardless of whether that support is financed from local, regional, national or Community sources.
- (21) This Regulation should cover the following aid: aid for permanent and temporary cessation of fishing activities, aid for the financing of socio-economic measures, aid for productive investments in aquaculture, aid for aqua-environmental measures, aid for public health and animal health measures, aid for inland fishing, aid for processing and marketing of fisheries and aquaculture products, aid for measures of common interest which are implemented with the active support of operators themselves or by organisations acting on behalf of producers or other organisation recognised by the Member States, aid for measures of common interest intended to protect and develop aquatic fauna and flora while enhancing the aquatic environment, aid for investments in public or private fishing ports, landing sites and fishing shelters, aid for measures of common interest intended to implement a policy of quality and value enhancement, development of new markets or promotional campaigns for fisheries and aquaculture products, aid for pilot projects, aid for modification for reassignment of fishing vessels, and aid for technical assistance.
- (22) For the purpose of legal certainty, tax exemptions applicable to the whole fisheries sector which Member States may introduce pursuant to Article 15 of the sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment <sup>(2)</sup>, or to Article 14 or Article 15 of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity <sup>(3)</sup> should, to the extent they constitute State aid, be declared compatible with the common market and exempt from the notification requirement of Article 88(3) of the Treaty. Tax exemption which Member States are obliged to introduce according to those provisions do not constitute State aid.
- (23) In order to ensure transparency and effective monitoring, in accordance with Article 3 of Regulation (EC) No 994/98, it is appropriate to establish a standard format in which Member States should provide the Commission with summary information whenever, in pursuance of this Regulation, an aid scheme or individual aid is implemented. The Commission will attribute an identification number to each aid measure which is communicated to it. The fact that such number is attributed to an aid measure does not imply that the Commission has examined whether the aid fulfils the conditions of this Regulation. It creates therefore no legitimate expectations for the Member State or beneficiary as regards the compatibility of the aid measures with this Regulation.

<sup>(1)</sup> OJ C 244, 1.10.2004, p. 2.

<sup>(2)</sup> OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2006/18/EC (OJ L 51, 22.2.2006, p. 12).

<sup>(3)</sup> OJ L 283, 31.10.2003, p. 51. Directive as last amended by Directive 2004/75/EC (OJ L 159, 2.6.2004, p. 31).

- (24) For the same reasons, the Commission should establish specific requirements as regards the form and the content of the annual reports to be submitted to the Commission by Member States. Moreover, it is appropriate to establish rules concerning the records that Member States should keep regarding the aid schemes and individual aid exempted by this Regulation.
- (25) Having regard to the expiry date of Regulation (EC) No 1198/2006 and the fact that the conditions for granting aid under this Regulation have been aligned with the conditions established for the application of the European Fisheries Fund, it is appropriate to limit the period of application of this Regulation to the date on which Regulation (EC) No 1198/2006 expires. Should this Regulation expire without being extended, aid schemes already exempted by this Regulation should continue to be exempted for six months.
- (26) It is appropriate to lay down transitional provisions for notifications pending on the date of entry into force of this Regulation and for aid which was granted before the entry into force of this Regulation and was not notified in breach of the obligation in Article 88(3) of the Treaty, as well as for aid fulfilling the conditions of Commission Regulation (EC) No 1595/2004 of 8 September 2004 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products <sup>(1)</sup>,
- (d) aid granted to undertakings in difficulty;
- (e) aid schemes which do not explicitly exclude the payment of individual aid in favour of a beneficiary which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the common market, as well as individual aid in favour of the same beneficiary;
- (f) *ad hoc* individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the common market.
3. This Regulation shall not apply to aid for individual projects with eligible expenses in excess of EUR 2 million, or where the amount of aid exceeds EUR 1 million per beneficiary per year.
4. This Regulation shall only apply to aid which has an incentive effect. This shall be the case for activities or projects which the beneficiary would not have carried out as such in the absence of that aid.

## Article 2

### Definitions

HAS ADOPTED THIS REGULATION:

#### CHAPTER I

#### GENERAL PROVISIONS

##### Article 1

##### Scope

1. This Regulation shall apply to transparent aid granted to small and medium-sized enterprises active in the production, processing or marketing of fisheries products.
2. This Regulation shall not apply to:
- (a) aid the amount of which is fixed on the basis of price or quantity of products put on the market;
- (b) aid to export-related activities, namely aid directly linked to the quantities exported aid to the establishment and operation of a distribution network or to other current expenditure linked to the export activity of Member States;
- (c) aid contingent upon the use of domestic over imported goods;

For the purpose of this Regulation:

- (a) 'aid' means any measure fulfilling all the criteria laid down in Article 87(1) of the Treaty;
- (b) 'aid scheme' means any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount;
- (c) 'aid intensity' means the aid amount expressed as a percentage of the eligible costs;
- (d) 'fisheries product' means both products caught at sea or in inland waters and the products of aquaculture listed in Article 1 of Regulation (EC) No 104/2000;
- (e) 'processing and marketing' means all operations, including handling, treatment, production and distribution, between the time of landing or harvesting and the end-product stage;
- (f) 'small and medium-sized enterprises' ('SMEs') means enterprises as defined in Annex I to Regulation (EC) No 70/2001;
- (g) 'transparent aid' means aid in respect of which it is possible to calculate precisely the gross grant equivalent *ex ante* without need to undertake a risk assessment.

<sup>(1)</sup> OJ L 291, 14.9.2004, p. 3.

## Article 3

**Conditions for exemption**

1. Individual aid outside any scheme, fulfilling all the conditions of this Regulation, shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the summary information provided for in Article 24(1) has been submitted and that it contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Union*.

2. Aid schemes fulfilling all the conditions set out in this Regulation shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) any aid that could be awarded under such scheme fulfils all the conditions set out in this Regulation;
- (b) the scheme contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Union*;
- (c) the summary information provided for in Article 24(1) has been submitted.

3. Aid granted under the schemes referred to in paragraph 2 shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the aid granted directly fulfils all the conditions of this Regulation.

4. Before granting any aid under this Regulation, Member States shall verify that the measures financed and their effects comply with Community law. During the grant period, Member States shall verify that the beneficiaries of the aid comply with the rules of the Common Fisheries Policy. If during that period it is found that the beneficiary does not comply with rules of the Common Fisheries Policy, the grant must be reimbursed in proportion to the gravity of the infringement.

## Article 4

**Transparency of aid**

1. This Regulation shall apply only to transparent aid. In particular, the following types of aid shall be considered to be transparent:

- (a) aid comprised in loans where the gross grant equivalent has been calculated on the basis of market interest rates prevailing at the time of the grant and taking into account

the existence of normal securities and/or abnormal risk associated with the loan;

- (b) aid comprised in guarantee schemes where the methodology to calculate the gross grant equivalent has been accepted following notification of this methodology to the Commission and the approved methodology explicitly addresses the type of guarantees and the type of underlying transactions at stake in the context of the application of this Regulation;
- (c) aid comprised in fiscal measures shall be considered as transparent when the measures provides for a cap ensuring that the applicable ceiling is not exceeded.

2. The following types of aid shall not be considered to be transparent:

- (a) aid comprised in capital injections;
- (b) aid comprised in risk capital measures.

3. Aid in the form of repayable advances shall only be considered to be transparent aid if the total amount of repayable advance does not exceed the applicable threshold under this Regulation. If the threshold is expressed in terms of aid intensity, the total amount of the repayable advance, expressed as a percentage of the eligible costs, shall not exceed the applicable aid intensity.

## Article 5

**Cumulation**

1. In determining whether the individual notification thresholds laid down in Article 1 and the maximum aid intensities laid down in Chapter II are respected, the total amount of public support for the aided activity or project shall be taken into account, regardless of whether that support is financed from local, regional, national or Community sources.

2. Aid exempted under this Regulation may be cumulated with any other aid exempted under this Regulation as long as those aid measures concern different identifiable eligible costs.

Where the identifiable eligible costs of different aid measures exempted under this Regulation partly or fully overlap, the common portion will be subject to the highest aid intensity or aid amount applicable under this Regulation.

3. Aid exempted under this Regulation shall not be cumulated with any other State aid within the meaning of Article 87(1) of the Treaty, other support measures including aid fulfilling the conditions laid down in Commission Regulation (EC) No 1860/2004<sup>(1)</sup> or with other Community funding in relation to the same eligible costs if such cumulation would result in exceeding the highest aid intensity or aid amount applicable to this aid under this Regulation.

<sup>(1)</sup> OJ L 325, 28.10.2004, p. 4.

## CHAPTER II

## CATEGORIES OF AID

*Article 6***Aid for permanent cessation of fishing activities**

Aid for the permanent cessation of fishing activities of fishing vessels shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Article 23 of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 7***Aid for temporary cessation of fishing activities**

Aid for temporary cessation of fishing activities for fishers and owners of fishing vessels shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Article 24 of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 8***Aid for socio-economic compensation for the management of the fleet**

Aid for the financing of socio-economic measures shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 26(3) and 27 of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 9***Aid for productive investments in aquaculture**

Aid for productive investments in aquaculture shall be compatible with the common market within the meaning of

Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 28 and 29 of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 10***Aid for aqua-environmental measures**

Aid for compensation for the use of aquaculture production methods helping to protect and improve the environment and conserve nature shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 28 and 30 of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 11***Aid for public health measures**

Aid for compensation to mollusc farmers for the temporary suspension of harvesting of farmed mollusc shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 28 and 31 of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 12***Aid for animal health measures**

Aid for animal health measures shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 28 and 32 of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 13***Aid for inland fishing**

Aid for inland fishing shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Article 33 of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 14***Aid for processing and marketing**

Aid for processing and marketing of fisheries products shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Article 34 and 35 of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 15***Aid for collective actions**

Aid for measures of common interest which are implemented with the active support of operators themselves or by organisations acting on behalf of producers or other organisation recognised by the Member States shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 36 and 37 of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 16***Aid for measures intended to protect and develop aquatic fauna and flora**

Aid for measures of common interest intended to protect and develop aquatic fauna and flora while enhancing the aquatic environment shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 36 and 38 of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 17***Aid for investments in fishing ports, landing sites and shelters**

Aid for investments in public or private fishing ports, landing sites and fishing shelters shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 36 and 39 of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 18***Aid for development of new markets and promotional campaigns**

Aid for measures of common interest intended to implement a policy of quality and value enhancement, development of new markets or promotional campaigns for fisheries and aquaculture products shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 36 and 40 of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 19***Aid for pilot projects**

Aid for pilot projects shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 36 and 41 of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 20***Aid for modification for reassignment of fishing vessels**

Aid for modification for reassignment of fishing vessels, under the flag of a Member State and registered in the Community for training or research purposes inside the fisheries sector or for other activities outside fishing shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 36 and 42 of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 21***Aid for technical assistance**

Aid for technical assistance shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Article 46(2) and (3) of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 22***Tax exemptions in accordance with Directive 77/388/EEC and 2003/96/EC**

Tax exemptions applicable to the whole fisheries sector which Member States introduce pursuant to Article 15 of Directive 77/388/EEC or pursuant to Article 14 or Article 15 of Directive 2003/96/EC shall, to the extent that they constitute State aid, be compatible with the common market and exempt from the notification requirement of Article 88(3) of the Treaty.

## CHAPTER III

**COMMON AND FINAL PROVISIONS***Article 23***Steps preceding grant of aid**

In order to qualify for exemption under this Regulation, aid shall only be granted in respect of activities undertaken or services received after the aid scheme has been set up and published in accordance with this Regulation.

If the aid scheme creates an automatic right to receive the aid, requiring no further action at administrative level, the aid itself may only be granted after the aid scheme has been set up and published in accordance with this Regulation.

*Article 24***Transparency and monitoring**

1. At the latest 10 working days before the entry into force of an aid scheme or the granting of individual aid outside any aid scheme, Member States shall forward to the Commission a summary of the information regarding such aid in electronic form, in the form laid down in Annex I, with a view to its publication in the *Official Journal of the European Union* and on the Commission's website. Within 10 working days of receipt of that summary, the Commission shall send an acknowledgment of receipt to the Member State with the identification number of the aid measure concerned.

2. As soon as an aid scheme enters into force, or an individual aid is granted on the basis of this Regulation, Member States shall publish on the internet the full text of such aid measure with the identification number provided by the Commission pursuant to paragraph 1, indicating the criteria and conditions under which such aid is granted and the identity of the granting authority. The address of the website shall be communicated to the Commission together with the summary of the information regarding the aid required pursuant to paragraph 1. It shall also be contained in the annual report submitted pursuant to paragraph 4.

3. Member States shall refer to the identification number provided by the Commission pursuant to paragraph 1 in each aid granting decision addressed to a final beneficiary.

4. In accordance with Chapter III of Commission Regulation (EC) No 794/2004<sup>(1)</sup>, Member States shall compile a report in electronic form on the application of this Regulation in respect of each whole year or each part of the year during which this Regulation applies.

5. Member States shall maintain detailed records regarding any individual aid or aid scheme exempted under this Regulation. Such records shall consist of transparent and itemised documentary evidence and shall contain all information necessary to establish that the conditions laid down in this Regulation, are fulfilled, including information on the status of any undertaking whose entitlement to aid or a bonus depends on its status as an SME, information on the incentive effect of aid and information making it possible to establish the precise amount of eligible costs for the purpose of applying this Regulation.

6. Records regarding individual aid shall be maintained for 10 years from the date on which the aid was granted. Records regarding an aid scheme shall be maintained for 10 years from the date on which the last aid was granted under such scheme.

<sup>(1)</sup> OJ L 140, 30.4.2004, p. 1.

7. The Commission shall regularly monitor aid measures of which it has been informed pursuant to paragraph 1.

8. On written request, the Member State concerned shall provide the Commission within a period of 20 days or such longer period as may be fixed in the request, with all the information which the Commission considers necessary to monitor the application of this Regulation.

If such information is not provided within that period or a commonly agreed period, the Commission shall send a reminder setting a new deadline for the submission of the information. If, despite such reminder, the Member State concerned does not provide the information requested, the Commission may, after having provided the Member State concerned with the possibility to make its views known, adopt a decision stating that all future individual aid measures adopted on the basis of the scheme are to be notified to the Commission.

#### *Article 25*

##### **Transitional Provisions**

1. Notifications pending at the time of entry into force of this Regulation shall be assessed in accordance with its provisions. Where the conditions of this Regulation are not fulfilled, the Commission shall examine such pending notifications under the Community guidelines for State aid in the fisheries sector.

Aid notified before the entry into force of this Regulation or granted before that date in the absence of a Commission authorisation and in breach of the notification requirement of

Article 88(3) of the Treaty, shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt if it fulfils the conditions laid down in Article 3 of this Regulation, except the requirements in paragraphs 1 and 2(b) of that Article that express reference be made to this Regulation. Any aid which does not fulfil those conditions shall be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.

2. Any aid granted before the entry into force of this Regulation which does not fulfil the conditions laid down in this Regulation but fulfils the conditions laid down in Regulation (EC) No 1595/2004, shall be deemed compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall therefore be exempt from the notification requirement of Article 88(3) of the Treaty.

3. Aid schemes exempted under this Regulation shall remain exempt during an adjustment period of six months following the date provided for in the second paragraph of Article 26.

#### *Article 26*

##### **Entry into force and applicability**

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

It shall apply until 31 December 2013.

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

Done at Brussels, [...]

*For the Commission*

[...]

*Member of the Commission*

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## ANNEX I

**Form of summary information to be provided whenever an aid scheme exempted by this Regulation is implemented and whenever an individual aid exempted by this Regulation is granted outside any aid scheme**

1. Member State:
2. Region/Authority granting the aid:
3. Title of aid scheme/name of company receiving an individual aid:
4. Legal basis (indicate the precise national legal reference):
5. Annual expenditure planned under the scheme or amount of individual aid granted:
6. Maximum aid intensity:
7. Date of entry into force:
8. Duration of the scheme or individual aid award (not later than 31 December 2013); indicate:
  - under the scheme: the date until which aid may be granted:
  - in the case of an individual aid: the expected date of the last instalment to be paid:
9. Objective of aid:
10. Indicate which of Article(s) 4 to 20 is used:
11. Activity concerned:
12. Name and address of the granting authority:
13. Web-address where the full text of the scheme or the criteria and conditions under which individual aid is granted outside of an aid scheme can be found:
14. Motivation: Indicate why a State aid scheme has been established instead of assistance under the European Fisheries Fund:

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## ANNEX II

**Form of the periodic report to be provided to the Commission**

For their reporting obligations to the Commission under group exemption regulations adopted on the basis of Council Regulation (EC) No 994/98, Member States shall provide the information mentioned below concerning all aid measures covered by this Regulation, in computerised form, in the format communicated by the Commission to the Member States.

1. Member State:
2. Title:
3. Aid number:
4. Year of expiry:
5. Objective of the aid:
6. Number of beneficiaries:
7. Category of aid (e.g. direct grant, loan with reduced interest rate, etc.):
8. Total annual expenditure:
9. Remarks:

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**Prior notification of a concentration**  
**(Case COMP/M.4801 — OEP/Schoeller/SAS)**  
**Candidate case for simplified procedure**

(Text with EEA relevance)

(2007/C 248/11)

1. On 10 October 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 <sup>(1)</sup> by which the undertakings One Equity Partners II, L.P. ('OEP', USA), belonging to the JPMorgan Chase group, and Schoeller Holding GmbH ('Schoeller', Germany) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Schoeller Arca Systems Holding BV ('SAS', The Netherlands) by way of purchase and transfer of shares.

2. The business activities of the undertakings concerned are:

- for OEP: private equity fund,
- for Schoeller: packaging, logistics and process-technological systems,
- for SAS: manufacture, distribution and marketing of transport packaging products.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of Regulation (EC) No 139/2004. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 <sup>(2)</sup> it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax ((32-2) 296 43 01 or 296 72 44) or by post, under reference number COMP/M.4801 — OEP/Schoeller/SAS, to the following address:

European Commission  
Directorate-General for Competition  
Merger Registry  
J-70  
B-1049 Bruxelles/Brussel

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<sup>(1)</sup> OJ L 24, 29.1.2004, p. 1.

<sup>(2)</sup> OJ C 56, 5.3.2005, p. 32.

**Prior notification of a concentration**  
**(Case COMP/M.4890 — Arcelor/SFG)**

(Text with EEA relevance)

(2007/C 248/12)

1. On 16 October 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 <sup>(1)</sup> by which the undertaking Arcelor Luxembourg S.A. ('Arcelor Luxembourg', Luxembourg) controlled by the ArcelorMittal group ('ArcelorMittal', Luxembourg) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Saar Ferngas AG ('SFG', Germany) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

- for Arcelor Luxembourg: production of steel and provision of related services,
- for ArcelorMittal: production of steel and provision of related services,
- for SFG: purchase, transport, storage and supply of natural gas to local wholesalers, industrial customers and power stations and provision of related services.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of Regulation (EC) No 139/2004. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax ((32-2) 296 43 01 or 296 72 44) or by post, under reference number COMP/M.4890 — Arcelor/SFG, to the following address:

European Commission  
Directorate-General for Competition  
Merger Registry  
J-70  
B-1049 Bruxelles/Brussel

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<sup>(1)</sup> OJL 24, 29.1.2004, p. 1.

**STATE AID — ROMANIA****State aid C 46/07 (ex NN 59/07) — Privatisation of Automobile Craiova (former Daewoo)****Invitation to submit comments pursuant to Article 88(2) of the EC Treaty****(Text with EEA relevance)**

(2007/C 248/13)

By means of the letter dated 10 October 2007 reproduced in the authentic language on the pages following this summary, the Commission notified Romania of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the above-mentioned aid measures.

Interested parties may submit their comments on the aid measure in respect of which the Commission is initiating the procedure within one month of the date of publication of this summary and the following letter, to:

European Commission  
Directorate-General for Competition  
State aid Greffe  
B-1049 Brussels  
Fax (32-2) 296 12 42

These comments will be communicated to Romania. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

**TEXT OF SUMMARY**

EUR 675 million) and to purchase a minimum amount of components and services from the Romanian market (allegedly valued at EUR 1 billion).

**PROCEDURE**

By letter of 17 January 2007, the Commission requested from the Romanian authorities information on several undertakings undergoing privatisation, including Automobile Craiova. Following the subsequent exchange of letters, the Commission by letters of 5 July 2007 and 30 July 2007 urged the Romanian authorities to abolish specific conditions attached to the privatisation contract of Automobile Craiova, indicating at the same time that the failure to suspend any unlawful aid might lead the Commission to adopt a decision on the basis of Article 88(2) EC Treaty and of Article 11(1) of Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (suspension injunction).

**DESCRIPTION**

Automobile Craiova, a former subsidiary of Daewoo, is a large State-owned undertaking active in the production of cars and spare parts. Essentially due to its unclear debt situation, the privatisation of Automobile Craiova had failed in the past. As the result of a new attempt to sell the company, a sales contract was concluded in September 2007 with Ford Motors Company. A special law seems to have been passed by the government containing measures related to the debt situation of Automobile Craiova. The Commission assumes that the measures consist in writing off the debts of the purchased company.

AVAS attached specific conditions to the privatisation contract, at least the resuming of the car making activity and the achievement of a minimum production level by the fourth year of production. It is likely that further conditions have been attached, among others an obligation to significantly increase the employment level (from about 3 500 to about 7 000), to provide for a minimum amount of investments (about

**ASSESSMENT**

The privatisation of Automobile Craiova through a tender to which conditions were attached has most likely resulted in a lower sales price than in case of an unconditional tender and involves therefore State aid. The beneficiaries of this aid are the economic activity that is privatised and, potentially, the buyer. Conditions such as the resuming of a former loss-making activity and the achievement of a minimum production ensure that a certain level of economic activity will be maintained by the new owner and do therefore provide an advantage to the privatised company. Together with other conditions, these measures also ultimately have the effect of relieving the purchased company from part of the competitive pressure.

Further, if the purchaser was offered a debt write-off which had not been offered to the other interested parties, it is possible that other potential bidders refrained from making a binding offer which might have been higher than the offer by Ford. Indeed, the unclear debt situation of Automobile Craiova was allegedly a reason for other interested parties not to make a final offer.

In both cases, these advantages are paid for by the foregone revenue of the State in the sale.

The Commission considers that the non notified aid entailed by the conditions attached to the privatisation contract and the debt related measures most likely constitute State aid. They are financed through State resources, lead to an advantage to the beneficiaries, are selective, are apt to distort competition and have an effect on trade.

The privatisation contract, including the conditions attached and the special law, has not been notified to the Commission. It seems that the aid was put into effect in breach of Article 88(3) EC Treaty. Consequently, the measure seems to constitute unlawful aid.

The Commission has decided to open the procedure under Article 88(2) EC Treaty in order to assess the compatibility of the aid with the common market, and to issue a suspension injunction, enjoining Romania in accordance with Article 11(1) of the Council Regulation (EC) No 659/1999 to suspend any unlawful aid until the Commission has taken a decision on the compatibility of the aid.

#### TEXT OF LETTER

‘Comisia dorește să informeze România că, în urma examinării atât a informațiilor furnizate de autoritățile țării dumneavoastră cu privire la cazul menționat anterior, cât și a informațiilor disponibile din alte surse, a decis să inițieze procedura prevăzută la articolul 88 alineatul (2) din Tratatul CE și să impună României, în temeiul articolului 11 alineatul (1) din Regulamentul (CE) nr. 659/1999 al Consiliului, suspendarea acordării oricărui ajutor ilegal până la adoptarea de către Comisie a unei decizii privind compatibilitatea ajutorului cu piața comună.

#### I. PROCEDURĂ

1. La 17 ianuarie 2007, Comisia a solicitat informații generale cu privire la mai multe întreprinderi, inclusiv S.C. Automobile Craiova S.A. (denumită în continuare «Automobile Craiova»), fostă Daewoo Craiova, în contextul procesului național de privatizare. România a transmis informațiile prin scrisoarea din 15 februarie 2007. Comisia a solicitat informații suplimentare, la 8 martie 2007 și la 22 mai 2007, pe care România le-a transmis prin scrisorile din 21 martie 2007, 25 mai 2007 și 31 mai 2007. La 3 mai 2007 a avut loc o întâlnire cu autoritățile române.
2. Prin scrisoarea din 5 iulie 2007, Comisia a solicitat autorităților române să elimine condițiile specifice incluse în contractul de privatizare a Automobile Craiova, indicând în același timp faptul că nesuspendarea acordării oricărui ajutor ilegal ar putea conduce la adoptarea de către Comisie a unei decizii în baza articolului 88 alineatul (2) din Tratatul CE și a articolului 11 alineatul (1) din Regulamentul (CE) nr. 659/1999 al Consiliului de stabilire a normelor de aplicare a articolului 93 din Tratatul CE (ordin de suspendare).
3. Prin scrisoarea din 18 iulie 2007, autoritățile române au informat Comisia cu privire la faptul că privatizarea Automobile Craiova va fi notificată Comisiei. Prin scrisoarea din 20 august 2007, Comisia a amintit României că privatizarea Automobile Craiova va trebui să fie notificată înainte de aplicarea oricărui act care impune obligații autorităților publice.
4. În septembrie 2007, Comisia a aflat din presă că România a semnat, se pare, un contract de vânzare-cumpărare cu Ford și că Guvernul României a adoptat o «lege specială» privind anularea datoriilor întreprinderii Automobile Craiova.

#### II. DESCRIERE

##### 2.1. Întreprinderea în cauză

5. Automobile Craiova este o societate aflată în proporție de 100 % în proprietatea statului, situată în Craiova, zonă eligibilă pentru acordarea de ajutoare regionale în conformitate cu articolul 87 alineatul (3) litera (a) din Tratatul CE. Automobile Craiova a fost o filială a grupului Daewoo, Daewoo Craiova. Daewoo a intrat în faliment în anul 2000. Daewoo Craiova avea datorii mari față de statul român și de alți creditori, cum ar fi alte filiale Daewoo. În timp ce majoritatea filialelor Daewoo au fost achiziționate de General Motors în anul 2002, pentru Daewoo Craiova nu s-a putut găsi niciun cumpărător din cauza posibilelor obligații de plată a unor datorii mari. Prin urmare, Autoritatea pentru Valorificarea Activelor Statului (denumită în continuare «AVAS») a cumpărat întreprinderea în anul 2006 pentru a o revinde unui alt investitor.
6. Valoarea datoriilor întreprinderii Automobile Craiova către bugetul de stat nu este cunoscută. Valoarea datoriilor către alte foste filiale Daewoo este estimată de către presă la o sumă de aproximativ 220 milioane EUR.
7. Conform informațiilor aflate la dispoziția Comisiei, Automobile Craiova nu produce în prezent niciun fel de vehicule, ci activează numai în comerțul cu piese de schimb.

##### 2.2. Privatizarea

8. Documentația de licitație pentru Automobile Craiova a cuprins o serie de condiții care au determinat formularea unor îndoeli de către Comisie. AVAS a atașat contractului de privatizare condiții specifice privind un nivel minim de investiții și producție (minim 200 000 de autovehicule în al patrulea an). În cazul în care condițiile nu sunt îndeplinite, AVAS își rezervă dreptul de a anula contractul de privatizare și/sau de a pretinde plata unor penalități și despăgubiri. Ford Motors Company (denumită în continuare «Ford»), General Motors Corporation și Russian Machines au depus oferte neangajante de cumpărare a acțiunilor deținute de stat la Automobile Craiova. Cu toate acestea, Ford a fost singura întreprindere care a depus și o ofertă angajantă, câștigând astfel licitația. Negocierile tehnice și financiare cu Ford au demarat în iulie 2007.
9. Conform informațiilor din presă, România și Ford au semnat un contract de vânzare-cumpărare la 12 septembrie 2007, prin care Ford achiziționează pachetul majoritar de acțiuni la Automobile Craiova la prețul de 57 milioane EUR. Din informațiile prezentate de România, Comisia înțelege că Ford va avea o participație de aproximativ 72 %, care corespunde acțiunilor deținute de AVAS.
10. Conform unor informații suplimentare din presă, Ford va produce 48 000 de unități în primul an de producție, 245 000 de unități în 2011 și 300 000 de unități în 2013. În plus, Ford s-a angajat să realizeze investiții directe în valoare de 675 milioane EUR pentru modernizarea lucrărilor și să mărească numărul personalului de la 3 500 la 7 000. De asemenea, Ford și-a asumat obligația de a cumpăra componente și servicii în valoare de 1 miliard EUR de pe piața românească.

11. În plus, presa a relatat că Guvernul României a adoptat o lege specială pentru privatizarea Automobile Craiova. Se pare că legea prevede o anulare a datoriilor producătorului de autovehicule și o garanție privind plata datoriilor către celelalte foste filiale Daewoo. Această anulare a datoriilor nu fusese oferită tuturor ofertanților potențiali în cadrul procedurii de licitație.

### III. EVALUARE

#### 3.1. Existența ajutorului de stat în sensul articolului 87 alineatul (1) din Tratatul CE

12. Articolul 87 alineatul (1) din tratat prevede că, în cazul în care nu există o dispoziție contrară în tratat, orice ajutor acordat de către un stat membru sau din resurse de stat care denaturează sau amenință să denatureze concurența favorizând anumite întreprinderi sau producerea anumitor bunuri este incompatibil cu piața comună, în măsura în care este afectat comerțul între statele membre.
13. Bazându-se pe informațiile de care dispune, Comisia consideră în prezent că acele condiții atașate contractului de vânzare, precum și măsurile referitoare la datorii au ca rezultat acordarea unui ajutor de stat în sensul articolului 87 alineatul (1) din Tratatul CE care nu a fost notificat de autoritățile române și, astfel, ar constitui un ajutor ilegal.

##### 3.1.1. Acordarea unui avantaj

14. O întreprindere beneficiază de un avantaj în cazul în care obține din partea statului un lucru pe care nu l-ar fi putut obține în condiții normale de piață. În acest scop, trebuie să se evalueze mai întâi dacă statul a acționat în rolul său de proprietar al unei societăți comerciale într-o economie de piață sau în rolul de stat care a vândut o societate în condiții care nu corespund unor condiții normale de piață.
15. În această privință, Comisia are îndoieli serioase atât cu privire la condițiile atașate contractului de privatizare, cât și cu privire la măsurile referitoare la datorii. În conformitate cu principiul vânzătorului în economia de piață și cu principiile Comisiei privind privatizarea<sup>(1)</sup>, se poate considera că statul acționează ca proprietar al societății comerciale în economia de piață numai în cazul în care vinde societatea comercială sau, respectiv, acțiuni ale acesteia la cel mai mare preț posibil, printr-o licitație deschisă, transparentă și nediscriminatorie, ofertantului care oferă cel mai mult.
16. Prețul cel mai mare poate fi obținut în mod obișnuit în cazul în care nu există condiții atașate care ar putea să reducă prețul de vânzare și care nu ar fi acceptabile pentru un operator economic în cadrul unei economii de piață. În cazul de față, Comisia nu cunoaște cu exactitate care dintre angajamentele asumate de Ford prezentate în presă fac parte din contractul de vânzare-cumpărare. Dat fiind faptul că licitația a inclus deja un nivel minim de producție, Comisia presupune că vânzarea a fost condiționată cel puțin de realizarea acestei producții minime și, eventual, de îndeplinirea altor cerințe. Întrucât un vânzător în economia

de piață nu i-ar cere în mod normal cumpărătorului să realizeze o producție minimă, iar o astfel de cerință poate avea un impact negativ asupra prețului de vânzare, Comisia consideră că, foarte probabil, privatizarea Automobile Craiova nu îndeplinește criteriul vânzătorului în economia de piață.

17. În plus, este posibil ca în vânzare să fi fost incluse și alte angajamente, cum ar fi creșterea numărului de angajați (de la 3 500 la aproximativ 7 000), o investiție minimă pentru modernizarea fabricii (675 milioane EUR) și o achiziție minimă de componente și servicii de pe piața românească (în valoare de 1 miliard EUR). Este posibil ca și aceste angajamente să fi influențat prețul de achiziție.
18. De asemenea, Comisia are mari îndoieli că presupusa anulare a datoriilor societății comerciale și presupusa garanție cu privire la datoriile către alte foste filiale Daewoo ar îndeplini criteriul vânzătorului/creditorului în economia de piață. În economia de piață, vânzătorul ar calcula cu atenție consecințele diferitelor posibilități (inclusiv al lichidării) și ar alege soluția care ar aduce venitul cel mai mare (sau pierderea cea mai mică). Comisia se îndoiește că România a analizat în prealabil dacă anularea datoriilor publice și garantarea unei părți a datoriilor către creditori privați reprezintă sau nu soluția cea mai avantajoasă. În plus, probabil că nu este îndeplinit nici criteriul creditorului în economia de piață, deoarece cel puțin o parte dintre ceilalți creditori (privați) nu și-au anulat datoriile, însă beneficiază de o garanție de stat.
19. Astfel, Comisia ajunge la concluzia provizorie că, atunci când a privatizat Automobile Craiova, statul român a acționat în rolul său de stat, și nu de jucător obișnuit pe piață<sup>(2)</sup>.
20. Este posibil ca termenii contractului de privatizare să fi acordat un avantaj atât pentru Automobile Craiova, cât și pentru Ford.
21. Un avantaj pentru Automobile Craiova poate proveni din condiția unei producții minime și din orice altă condiție adăugată, eventual, la vânzare, precum o obligație de creștere a numărului de angajați, o obligație de a cumpăra componente și servicii în valoare de 1 miliard EUR de pe piața românească, obligații privind investițiile sau obligații privind exportul. Automobile Craiova nu mai producea niciun fel de autovehicule. Măsurile de privatizare pot garanta reluarea fostelor activități care produceau pierderi, menținerea unei activități de piață minime și reducerea presiunii concurențiale. Aceste avantaje ar fi finanțate de către stat printr-un preț de vânzare mai mic, adică prin renunțarea la venituri. Întreaga operațiune pare să reprezinte o restructurare a societății sprijinită de stat.
22. Anularea datoriilor publice ale Automobile Craiova și garantarea plății unei părți a datoriilor către creditori privați oferă un avantaj pentru Automobile Craiova. Această măsură scutește imediat societatea de o parte din datorii și reduce presiunea de plată a unei alte părți a datoriilor.

<sup>(1)</sup> Cel de-al XXIII-lea Raport privind politica în domeniul concurenței, 1993, p. 255.

<sup>(2)</sup> A se vedea, de exemplu, cauza C-344/99 Germania/Comisie (Gröditz Stahlwerke), hotărârea Curții din 28 ianuarie 2003; cauzele conexe C-278/92, C-279/92 și C-280/92 Spania/Comisie (Hytasa), hotărârea Curții din 14 septembrie 1994.

23. În plus, nu se poate exclude faptul că și cumpărătorul, în calitate de nou proprietar al întreprinderii vândute, va beneficia de avantajele acordate de stat. Prin urmare, Comisia nu poate exclude acordarea de ajutor de stat pentru cumpărător, respectiv Ford. Se pare că cerința privind anularea datoriilor a fost introdusă după lansarea licitației. Dintre cele trei părți interesate inițial, Ford a fost singura care a depus o ofertă angajantă. Comisia presupune în prezent că și alte părți interesate ar fi putut depune oferte angajante, în cazul în care ar fi avut cunoștință de posibilitatea de a beneficia de o anulare a datoriilor. Relațiile din presă indică în mod clar acest lucru. Prin urmare, în această fază, nu se poate exclude faptul că s-ar fi putut depune o ofertă financiară mai mare decât cea formulată de Ford. În acest caz, prețul plătit de Ford nu ar reprezenta prețul de piață.

### 3.1.2. Alte condiții prevăzute în articolul 87 alineatul (1) din Tratatul CE

24. În al doilea rând, măsura este selectivă, întrucât favorizează numai Automobile Craiova și noul cumpărător, respectiv Ford.
25. În al treilea rând, agenția română de privatizare, AVAS, a fost cea care a atașat condițiile la contractul de privatizare. Reluarea și menținerea unui nivel ridicat de activitate economică și finanțarea unui preț de vânzare mai scăzut sunt suportate prin renunțarea la venituri de către stat. Prin urmare, ajutorul provine din resurse de stat și este imputabil statului.
26. În al patrulea rând, Automobile Craiova este producător de autovehicule și de piese de schimb, toate aceste produse fiind comercializate pe scară largă în Uniunea Europeană. În plus, după cum relatează presa, cea mai mare parte a producției este destinată exportului. Astfel, măsura amenință să denatureze concurența și afectează comerțul dintre statele membre.
27. În această fază, Comisia concluzionează, prin urmare, că respectivele condiții atașate privatizării Automobile Craiova par să constituie un ajutor, iar compatibilitatea măsurilor trebuie evaluată în mod corespunzător.

### 3.2. Ajutor de stat ilegal

28. Întrucât contractul de vânzare a fost deja semnat, incluzând condițiile atașate, Comisia consideră că ajutorul a fost deja acordat. Dat fiind că măsurile sunt cuprinse într-o lege specială, Comisia presupune că legea trebuie să fie adoptată de către Parlamentul României înainte de a deveni obligatorie. Cu toate acestea, pe baza informațiilor disponibile, Comisia trebuie să presupună că statul român nu se mai poate retrage din contractul de privatizare din proprie inițiativă. Prin urmare, Comisia consideră măsurile incluse în privatizare și în legea specială ca fiind *qvasi-acordate* și este de părere că orice notificare transmisă după adoptarea legii speciale de către Guvernul României nu mai poate fi considerată notificare *ex ante*.
29. Întrucât autoritățile române nu au notificat contractul de privatizare și nu au suspendat încheierea acestui contract, se pare că măsura de ajutor a fost pusă în aplicare, încăl-

cându-se articolul 88 alineatul (3) din Tratatul CE. În consecință, măsura pare să constituie un ajutor ilegal.

### 3.3. Derogări în temeiul articolului 87 alineatele (2) și (3) din Tratatul CE

30. După ce s-a stabilit că este vorba despre un ajutor de stat în sensul articolului 87 alineatul (1) din Tratatul CE, este necesar să se analizeze dacă măsura ar putea fi compatibilă cu piața comună.
31. Excepțiile prevăzute la articolul 87 alineatul (2) din Tratatul CE nu se aplică în cazul de față. În ceea ce privește excepțiile în baza articolului 87 alineatul (3) din Tratatul CE, poate fi aplicată numai excepția prevăzută la articolul 87 alineatul (3) litera (c) din Tratatul CE, care permite acordarea ajutorului de stat pentru a se promova dezvoltarea anumitor activități economice, atunci când acest ajutor nu aduce atingere condițiilor comerciale într-o măsură contrară interesului comun. În ceea ce privește ajutorul acordat pentru Automobile Craiova în calitate de beneficiar, se pare că măsura ar putea viza refacerea viabilității pe termen lung a unei întreprinderi aflate în dificultate. În ceea ce privește potențialul ajutor pentru Ford, în această fază Comisia nu vede niciun motiv care să justifice compatibilitatea ajutorului cu piața comună.
32. Prin urmare, ajutorul pentru Automobile Craiova ar putea fi considerat compatibil în temeiul articolului 87 alineatul (3) litera (c) din Tratatul CE numai în cazul în care sunt respectate condițiile prevăzute în Liniile directoare Orientările privind ajutorul de stat pentru salvarea și restructurarea întreprinderilor aflate în dificultate <sup>(3)</sup> (denumite în continuare «Liniile directoare»).
33. În primul rând, în conformitate cu Liniile directoare, o întreprindere se află în dificultate atunci când este incapabilă să obțină fondurile de care are nevoie din resurse proprii sau de la acționari sau prin împrumuturi și când este aproape sigur că fără intervenția autorităților publice își va înceta activitatea. Automobile Craiova a acumulat în ultimii ani datorii mari, pe care în mod evident nu le putea plăti. Valoarea exactă a acestora nu este cunoscută în prezent Comisiei. În orice caz, se pare că Automobile Craiova îndeplinește condițiile pentru a fi considerată întreprindere aflată în dificultate.
34. Cu toate acestea, autoritățile române nu au prevăzut un plan de restructurare care să vizeze refacerea viabilității pe termen lung a activității economice.
35. În plus, în conformitate cu Liniile directoare, ajutorul trebuie să se limiteze la minimumul necesar, iar beneficiarul trebuie să aducă o contribuție semnificativă la restructurarea din resurse proprii sau din finanțări comerciale externe. Liniile directoare indică în mod clar că o parte semnificativă din finanțarea restructurării trebuie să provină din resurse proprii, inclusiv din vânzarea de active care nu sunt esențiale pentru supraviețuirea întreprinderii și din finanțări externe în condițiile pieței. În această fază, Comisia nu deține nicio dovadă că ajutorul ar fi limitat la minimumul necesar. În plus, Comisia nu are nicio informație cu privire la vreo contribuție proprie a beneficiarului.

<sup>(3)</sup> JO C 244, 1.10.2004, p. 2.

36. În al treilea rând, ajutorul nu trebuie să denatureze concurența în mod necorespunzător. Acest lucru implică de obicei o limitare a prezenței de care poate beneficia societatea pe piețele sale la sfârșitul perioadei de restructurare. Limitarea sau reducerea obligatorie a prezenței societății pe piața relevantă reprezintă un factor compensator în favoarea concurenților săi. Această limitare sau reducere trebuie să fie proporțională cu efectul de denaturare pe care îl are ajutorul și cu importanța relativă a întreprinderii pe piața sau piețele sale. Autoritățile române nu au propus nicio măsură compensatorie; dimpotrivă, impunându-i cumpărătorului obligația de a crește în mod semnificativ producția în următorii patru ani, statul asigură îmbunătățirea poziției pe piață a Automobile Craiova.
37. În al patrulea rând, Comisia are în această fază îndoieli cu privire la faptul că Automobile Craiova nu a beneficiat de ajutor pentru salvare și/sau restructurare în decursul ultimilor zece ani. În acest caz, un alt ajutor pentru restructurare ar încălca principiul «pentru prima și ultima dată».
38. În concluzie, întrucât măsura de ajutor nu pare să se încadreze în niciuna dintre excepțiile prevăzute de tratat, Comisia are îndoieli serioase cu privire la compatibilitatea acesteia cu piața comună.

#### IV. ORDIN DE SUSPENDARE

39. În ciuda faptului că s-au transmis mai multe scrisori prin care s-a cerut imperativ autorităților române să elimine toate condițiile și să notifice *ex ante* contractul de privatizare, autoritățile române au continuat procedura de licitație și au semnat contractul de vânzare cu Ford. Prin scrisorile din 5 iulie 2007 și 30 iulie 2007, Comisia a insistat ca autoritățile române să transmită această notificare *ex ante*, în caz contrar Comisia urmând să emită un ordin de suspendare în conformitate cu articolul 11 alineatul (1) din Regulamentul (CE) nr. 659/1999 al Consiliului (\*). Până în prezent nu a fost transmisă nicio notificare.
40. În cazul în care Comisia ajunge la concluzia că ajutorul ilegal acordat de autoritățile române nu este compatibil cu piața comună, aceasta urmează să hotărască emiterea unui ordin de recuperare, printr-o decizie negativă definitivă. Acest lucru înseamnă că autoritățile române ar fi obligate să recupereze ajutorul incompatibil, eventual să anuleze contractul de vânzare și să organizeze o a doua licitație, fără elemente de ajutor de stat. Deoarece se pare că a fost deja încheiat contractul de vânzare și că legea specială a fost deja adoptată de guvern, orice alte măsuri în cadrul procedurii de vânzare ar putea conduce la o situație aproape ireversibilă sau ar putea provoca alte pagube statului român, noului proprietar sau unor terți. Prin urmare, Comisia consideră că este imperios necesar să se

suspende imediat orice acțiune viitoare care ar agrava situația actuală și care ar putea genera alte efecte obligatorii din punct de vedere legal (de exemplu, adoptarea legii speciale de către Parlament, înregistrarea proprietății, încetarea activității comerciale, încheierea de contracte de muncă etc.).

41. Prin urmare, Comisia a decis că este necesară emiterea unui ordin de suspendare în conformitate cu articolul 11 alineatul (1) din Regulamentul (CE) nr. 659/1999 al Consiliului.

#### V. DECIZIE

42. Comisia are îndoieli serioase cu privire la faptul că privatizarea s-a realizat în absența unui ajutor de stat și că măsurile de ajutor de stat ar fi compatibile cu piața comună. În plus, întrucât ajutorul nu a fost notificat Comisiei, acesta constituie ajutor ilegal.

Având în vedere considerațiile menționate anterior, Comisia, acționând în conformitate cu procedura prevăzută la articolul 88 alineatul (2) din Tratatul CE, solicită României să își prezinte observațiile și să furnizeze toate informațiile care ar putea contribui la evaluarea ajutorului, în termen de o lună de la data primirii prezentei scrisori. Comisia solicită autorităților țării dumneavoastră să transmită de îndată o copie a prezentei scrisori către eventualii beneficiari ai ajutorului.

Comisia dorește să amintească României că articolul 88 alineatul (3) din Tratatul CE are efect suspensiv și să atragă atenția asupra articolului 14 din Regulamentul (CE) nr. 659/1999 al Consiliului, care prevede că orice ajutor ilegal poate fi recuperat de la beneficiar.

În conformitate cu articolul 11 alineatul (1) din regulamentul Consiliului menționat anterior, Comisia cere imperativ României să suspende acordarea oricărui ajutor ilegal până la adoptarea de către Comisie a unei decizii privind compatibilitatea ajutorului cu piața comună (ordin de suspendare). Comisia solicită României să înceteze imediat orice acțiune de punere în aplicare în continuare a contractului de privatizare, inclusiv orice acțiune legată de legea specială.

Comisia comunică României că va informa părțile interesate prin publicarea prezentei scrisori și a unui rezumat relevant al acesteia în *Jurnalul Oficial al Uniunii Europene*. De asemenea, Comisia va informa Autoritatea de Supraveghere a AELS prin transmiterea unei copii a prezentei scrisori. Toate părțile interesate vor fi invitate să își prezinte observațiile în termen de o lună de la data publicării.'

(\* ) JOL 83, 27.3.1999, p. 1.