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### Information and Notices

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**Note to the reader** (see page 3 of the cover)



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

## 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***(2008/C 317/01)*

Date of adoption of the decision	10.7.2007
Reference number of the aid	N 322/A/06
Member State	Italy
Region	—
Title (and/or name of the beneficiary)	Misure urgenti per la prevenzione dell'influenza aviaria
Legal basis	Decreto Ministero delle politiche agricole e forestali del 2 maggio 2006
Type of measure	Investment aid, aid for closing production capacity, aid to combat epizootic diseases
Objective	To prevent and combat avian influenza
Form of aid	Direct grants
Budget	EUR 100 million (for all measures laid down in the Decree)
Intensity	Varies depending on the measures
Duration	26.8.2005-31.12.2006
Economic sectors	Poultry sector
Name and address of the granting authority	Ministero delle politiche agricole e forestali Via XX Settembre 20 I-00187 Roma
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/)

**Commission communication on the enquiry and registration under Regulation (EC) No 1907/2006 (REACH) of substances that were lawfully on the market before 1 June 2008 but which do not have phase-in status**

(Text with EEA relevance)

(2008/C 317/02)

Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) requires that substances that do not fall under the definition of 'phase-in substance' that are manufactured or imported into the Community, on their own, in preparations or in articles, in quantities of one tonne or more per year are registered as from 1 June 2008 in accordance with Article 10 of the REACH Regulation.

Prior to the registration of non phase-in substances, an enquiry to the European Chemicals Agency — as foreseen under Article 26 of the REACH Regulation — is required. It is noted that the provisions of the REACH Regulation governing the enquiry process entered into force on 1 June 2008. It follows that it was impossible in practice for a non phase-in substance to be registered on 1 June 2008. In addition, it is also noted that the regulation containing the test methods for use under REACH, in accordance with Article 13(3) of Regulation (EC) No 1907/2006, was only adopted on 30 May 2008.

Some substances that have been lawfully manufactured and/or placed on the market before 1 June 2008 may not qualify as 'phase-in substances' under Article 3(20) of the REACH Regulation. To avoid disruptions of trade and manufacturing activities regarding such substances, and provided that it is demonstrated that the substance was legally on the Community market before 1 June 2008, potential registrants are reminded of the obligation to submit an enquiry to the European Chemicals Agency. For any specific information item missing, the registrant will provide a justification. The missing information will be submitted without undue delay.

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**Communication in accordance with Article 12(5)(a) of Council Regulation (EEC) No 2913/92 on the information provided by the customs authorities of the Member States concerning the classification of goods in the customs nomenclature**

(2008/C 317/03)

Binding Tariff Information ceases to be valid from this day if it becomes incompatible with the interpretation of the customs nomenclature as a result of the following international tariff measures:

Amendments to the Harmonized System Explanatory Notes and the Compendium of Classification Opinions, approved by the Customs Cooperation Council (CCC doc. NC1310) — report of the 41st Session of the HS Committee):

**AMENDMENTS TO THE EXPLANATORY NOTES TO BE DONE UNDER ARTICLE 8 PROCEDURE OF THE HS CONVENTION AND CLASSIFICATION OPINIONS EDITED BY THE HS COMMITTEE OF THE WORLD CUSTOMS ORGANIZATION**

(41st SESSION OF THE HSC IN MARCH 2008)

DOC. NC1310

**Amendments of the Explanatory Notes of the Nomenclature annexed to the HS Convention**

17.01	N/13
28.01 General Explanatory Note	N/5
28.14	N/16
29.16	N/8
Chapter 29 List II	N/8
30.02	N/11
33.01	N/12
41.01	N/14
4101.20 Subheading Explanatory Note	N/14
57.02	N/23
84.36	N/26
85.08	N/26
90.06	N/29
90.21	N/28
90.25	N/15
90.27	N/15

**Classification Opinions approved by the HS Committee**

0210.99/1	N/17
0902.20/1	N/18
1517.90/3	N/19
2208.90/3	N/20
3504.00/1	N/21
3907.20/3	N/22
6110.30/1	N/24
6211.33/1	N/25
8504.40/2-5	N/27
9503.00/4	N/30
9503.00/7	N/30

Information regarding the contents of these measures can be obtained from the Directorate-General for Taxation and Customs Union of the European Commission (rue de la Loi/Wetstraat 200, B-1049 Brussels) or can be downloaded from the Internet site of this Directorate-General:

[http://europa.eu.int/comm/taxation\\_customs/customs/customs\\_duties/tariff\\_aspects/harmonised\\_system/index\\_en.htm](http://europa.eu.int/comm/taxation_customs/customs/customs_duties/tariff_aspects/harmonised_system/index_en.htm)

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**Non-opposition to a notified concentration****(Case COMP/M.5317 — IBM/ILOG)**

(Text with EEA relevance)

(2008/C 317/04)

On 10 November 2008, 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 32008M5317. 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.5241 — American Express/Fortis/Alpha Card)**

(Text with EEA relevance)

(2008/C 317/05)

On 3 October 2008, 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 32008M5241. EUR-Lex is the on-line access to European law (<http://eur-lex.europa.eu>).
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## IV

(Notices)

## NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

## COUNCIL

**European Union guidelines on the implementation of the consular Lead State concept**

(2008/C 317/06)

**Introduction**

1. Following on from the Council guidelines on consular protection for EU citizens in third countries of 16 June 2006 (footnote: document 10109/2/06 Rev 2) and document 10715/07 approved by the PSC, the present guidelines seek to implement the conclusions of the General Affairs and External Relations Council meeting on 18 June 2007 which aim to 'strengthen consular cooperation between EU Member States through the implementation of the consular Lead State concept'. Those conclusions state that 'in the event of a major consular crisis and without prejudice to the primary responsibility of Member States to protect their nationals, the Lead State will endeavour to ensure that all European Union citizens are assisted and will coordinate between Member States on the ground'.
2. These guidelines have been drawn up as part of the obligation arising under Article 20 of the Treaty establishing the European Community and of the cooperation tasks as stipulated under Article 20 of the Treaty on European Union. A Member State would take on the role of Lead State on a voluntary basis, with the active support and participation of all Member States. In all cases, other Member States will continue to monitor the situation of their nationals on the ground, share intelligence and situation assessments and provide reinforcements and additional resources as required.
3. In accordance with document 10715/07 approved by the PSC, at the end of the current trial period, which should *inter alia* enable further exercises to be organised, and on the basis of practical experience, the Member States will consider the option of formalising this framework through a legal decision.
4. These guidelines do not exclude other additional forms of cooperation or coordination initiatives, given the specific situations that may arise in the event of a major consular crisis in third countries.
5. These guidelines are not legally binding and are addressed solely to the Member States, the European Commission and the Council General Secretariat. These guidelines will be published in the *Official Journal of the European Union*.

**1. Declaration of the Lead State**

- 1.1. A Member State which wishes to assume the task of Lead State in a third country will notify this through the COREU network. Missions and posts in the third country will be informed at a local coordination meeting.



- 1.2. If two Member States wish to assume jointly the task of Lead State in a third country, they will notify this jointly through the COREU network. Where there is more than one Lead State, responsibilities will be shared as appropriate and coordination arrangements clearly defined.
- 1.3. If there is no objection from another Member State within 30 days or unless it renounces the task through the COREU network, the Member State will be declared the Lead State in the third country concerned.
- 1.4. A list of third countries in which a Member State assumes the role of Lead State will be updated by the Council General Secretariat upon notification of a declaration or renunciation by a Lead State. The list will be published on the website hosted by the SITCEN and distributed to Member States on a regular basis.
- 1.5. In the event of a major consular crisis in a third country where no Lead State has been declared, one or more Member States may assume this mission immediately if they notify this through the COREU network or by other appropriate means. Member States may decline the Lead State's offer as provided for in point 2.2.

## 2. **Lead State Missions**

### 2.1. The Lead State will take on the following tasks:

- (a) outside of times of crisis, the Lead State, through its accredited head of mission or post in the third country, and in collaboration with the Member State holding the local presidency of the European Union, will coordinate the most appropriate preparatory measures. The Lead State will draw up an evacuation plan for the beneficiaries defined in point 3.1 and will give information about the plan to representations of the Member States and the local delegation of the European Commission;
- (b) in the event of a major consular crisis, the Lead State will implement assistance measures for the beneficiaries defined in point 3.1. The Lead State will inform the Member States concerned by the crisis of developments in the situation. Locally, it will be the responsibility of the head of mission or post of the Lead State to facilitate cooperation on the ground between Member States which have sent additional personnel, financial resources, equipment, and medical assistance teams, in accordance with point 5.2. The head of mission or post of the Lead State will also be in charge of coordinating and leading assistance and assembly operations, and if necessary, evacuation to a place of safety, with the support of the other Member States concerned.

2.2. If the Lead State deems it necessary to evacuate the beneficiaries defined in point 3.1, it will inform the Member States concerned at local level and in the capitals. The Member States concerned will inform the Lead State in return regarding their national position on the evacuation, and regarding their wish to benefit or not from the assistance of the Lead State in the matter. If a Member State declines the assistance of the Lead State, it will be in charge of providing assistance to its nationals and to other potential beneficiaries of its consular assistance. Its nationals and other potential beneficiaries of its consular assistance remain, in accordance with the principle of non-discrimination, eligible to receive assistance from the Lead State. The possible consequences of the decision of the Member State to decline the assistance of the Lead State cannot be attributed to the Lead State.

2.3. Participation of beneficiaries in an evacuation is voluntary. In the event of an evacuation, the Lead State's mission will end when the evacuees arrive at the Lead State's designated place of safety. It is not part of the Lead State's mission to take evacuees anywhere other than the designated place of safety.

2.4. If the Lead State, unlike other Member States, considers that it is not yet the right time for evacuation, it should, where possible, provide support to and coordinate assistance carried out by the other Member States.

## 3. **Beneficiaries**

3.1. All persons who would be given consular assistance by their Member State may seek assistance from the Lead State.

#### 4. **Exchange of information** <sup>(1)</sup>

- 4.1. To ensure the proper conduct of the mission of the Lead State as defined in point 2.1, Member States will communicate the information that is strictly necessary (need to know) to carry out the mission, including as defined in Annexes I, II and III of the guidelines of 16 June 2006.
- 4.2. The Lead State will undertake to use such information only in the strict framework of its tasks as the Lead State.
- 4.3. Such information will be communicated locally to the Lead State's head of mission or post by the accredited heads of mission or post in the third country, in accordance with locally agreed communication processes.
- 4.4. If a Member State has not appointed an accredited head of mission or post in the third country, it will communicate the necessary information to the Lead State in accordance with locally agreed communication processes.
- 4.5. Absence or incompleteness of the information provided by a Member State to the Lead State will affect the ability of the Lead State to carry out its tasks, as defined in point 2.1. In such a case, the Lead State will assume its task of assistance only to the extent allowed by the information available.

#### 5. **Contributions to the Lead State's mission**

- 5.1. Having regard to the principle of European solidarity, and in accordance with the primary responsibility of Member States to protect their nationals, Member States will contribute to the proper conduct of the mission of the Lead State.
- 5.2. On that basis, the Lead State may call on other Member States for the voluntary provision of logistical and human resources during times of crisis. Representatives of the Member States, working within the national crisis teams, may provide local support for the Lead State. The Lead State may also, if appropriate, seek support from instruments such as the Community Civil Protection Mechanism, the crisis management structures of the General Secretariat of the Council and logistical support from the local delegation of the European Commission. This role of the Commission should be agreed in the planning phase between the Lead State and the Commission delegation concerned. Commission staff will not undertake consular work.
- 5.3. The Lead State will submit to the Member States a balance sheet of expenditure incurred by the Lead State and by the contributing States mentioned in point 5.2.
- 5.4. The Lead State may request reimbursement of expenses generated by its mission. Upon request, the Member States will contribute to expenses generated by the Lead State's mission on a pro rata basis depending on the number of assisted persons. This contribution will be determined after deduction, where appropriate, of the expenditure mentioned in point 5.2. The Member State may obtain repayment of expenses from assisted persons, on the basis of the undertakings to repay collected as far as possible by the Lead State at the time of evacuation, in accordance with Decision 95/553/EC regarding protection for citizens of the European Union by diplomatic and consular representations.
- 5.5. If a beneficiary of assistance from the Lead State claims compensation for damage suffered during an assistance mission of the Lead State, the Lead State and the Member State of the beneficiary will consult each other and consider further action in accordance with their national law and procedures and international law.

#### 6. **Publicity**

- 6.1. Member States will take appropriate steps to bring these guidelines to the attention of all persons eligible to receive consular assistance from them, in particular via travel advice websites.

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<sup>(1)</sup> As regards personal data collected and recorded for the purposes of these guidelines, the relevant EU rules shall apply, in particular Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

# COMMISSION

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

11 December 2008

(2008/C 317/07)

1 euro =

Currency	Exchange rate	Currency	Exchange rate		
USD	US dollar	1,3215	TRY	Turkish lira	2,0504
JPY	Japanese yen	120,67	AUD	Australian dollar	1,9889
DKK	Danish krone	7,4503	CAD	Canadian dollar	1,6383
GBP	Pound sterling	0,88690	HKD	Hong Kong dollar	10,2417
SEK	Swedish krona	10,5800	NZD	New Zealand dollar	2,3990
CHF	Swiss franc	1,5737	SGD	Singapore dollar	1,9704
ISK	Iceland króna		KRW	South Korean won	1 800,54
NOK	Norwegian krone	9,2065	ZAR	South African rand	13,3991
BGN	Bulgarian lev	1,9558	CNY	Chinese yuan renminbi	9,0540
CZK	Czech koruna	25,965	HRK	Croatian kuna	7,1818
EEK	Estonian kroon	15,6466	IDR	Indonesian rupiah	14 602,58
HUF	Hungarian forint	264,45	MYR	Malaysian ringgit	4,7138
LTL	Lithuanian litas	3,4528	PHP	Philippine peso	63,130
LVL	Latvian lats	0,7092	RUB	Russian rouble	36,7912
PLN	Polish zloty	3,9865	THB	Thai baht	46,345
RON	Romanian leu	3,9138	BRL	Brazilian real	3,1663
SKK	Slovak koruna	30,175	MXN	Mexican peso	17,5615

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

**Communication from the Commission providing guidance on State aid complementary to Community funding for the launching of the motorways of the sea**

(Text with EEA relevance)

(2008/C 317/08)

**INTRODUCTION**

1. The White Paper 'European transport policy for 2010: time to decide' of 2001 <sup>(1)</sup> introduced the concept of 'motorways of the sea' as high quality transport services based on short sea shipping. Motorways of the sea are composed of infrastructure, facilities and services spanning at least two Member States. The motorways of the sea aim to shift significant shares of freight transport from road to sea. Their successful implementation will help achieving two main objectives of the European transport policy, that is, reduction of congestion on the roads and a reduced environmental impact of freight transport. The mid-term review of the White Paper <sup>(2)</sup> points to the increasing problem of road congestion, costing the Community about 1 % of GDP, and to the threat of greenhouse gasses emissions from transport with respect to Kyoto targets and reconfirms the importance of the motorways of the sea.

**COMPLEMENTARY STATE AID FOR MARCO POLO II 'MOTORWAYS OF THE SEA' PROJECTS**

2. Chapter 10 of the Community Guidelines on State aid to maritime transport <sup>(3)</sup> allow, under certain conditions, for start-up aid to new or improved short sea shipping services with a maximum duration of three years and a maximum intensity of 30 % of operational cost and 10 % of investments costs.
3. The second 'Marco Polo' programme (further referred to as Marco Polo II) established by Regulation (EC) No 1692/2006 of the European Parliament and of the Council of 24 October 2006 establishing the second 'Marco Polo' programme for the granting of Community financial assistance to improve the environmental performance of the freight transport system (Marco Polo II) and repealing Regulation (EC) No 1382/2003 <sup>(4)</sup> is one of the two Community funding instruments directly and explicitly supporting the motorways of the sea, as one out of the five actions that are supported for avoiding traffic or shifting traffic away from road. Marco Polo II provides support mainly to the services part of the motorways of the sea. That support is attributed through yearly calls for proposals directed to the industry players. The allocated financial support is constrained by the grants available under the Marco Polo programme. Funding to the motorways of the sea can also be provided through the Regional Policy.
4. Under Article 5(1)(b) of Regulation (EC) No 1692/2006, in the framework of Marco Polo II programme 'Motorways of the Sea Actions' are, under certain conditions, eligible to Community financial assistance with a maximum intensity of 35 % of the total cost for establishing and operating the transport service and a maximum duration of 60 months, as fixed by Annex I, points 1(a) and 2(a) of column B.
5. Article 7 of Regulation (EC) No 1692/2006 reads: *Community financial assistance for the actions covered by the Programme shall not prevent those actions from being granted State aid at national, regional or local level, insofar as such aid is compatible with the State-aid arrangements laid down in the Treaty and within the cumulative limits established for each type of action set out in Annex I.*
6. According to Article 7 of Regulation (EC) No 1692/2006, therefore, Member States' authorities may complement Community financing by allocating their own financial resources to projects selected according to the criteria and procedures laid down in that Regulation, within the ceilings set out in the Regulation. The objective of Article 7 of Regulation (EC) No 1692/2006 is to make it possible for undertakings interested in a project to count on a predetermined amount of public funding irrespective

<sup>(1)</sup> COM(2001) 370.

<sup>(2)</sup> COM(2006) 314 final: Communication from the Commission to the Council and the European Parliament 'Keep Europe moving — Sustainable mobility for our continent — Mid-term review of the European Commission's 2001 Transport White Paper'.

<sup>(3)</sup> Commission Communication C(2004) 43 (OJ C 13, 17.1.2004, p. 3).

<sup>(4)</sup> OJ L 328, 24.11.2006, p. 1.

of its origin. As a matter of fact, it may be the case that the Community financial resources allocated by the Regulation (EC) No 1692/2006 are not sufficient to provide all the selected projects with the maximum possible support. Actually, if a large number of valid projects are presented in a given year, some projects may be granted limited amounts of Community funding. While the fact of having a large number of selected projects would be a sign of success for Marco Polo II, this success would be jeopardised if the involved undertakings were to withdraw their submission or were discouraged from future submissions because of the lack of public funding, necessary for the start-up of the relevant services. Moreover, fixing a pre-determined amount of public funding that can be relied on is essential for potential bidders.

7. Against this background, the Commission has noticed that amongst stakeholders and Member States' authorities there are doubts about the possibility for the latter to grant complementary State aid to Marco Polo II projects going beyond what is allowed for short sea shipping under Chapter 10 of the Community Guidelines on State aid to maritime transport. Actually, the eligibility conditions for schemes under the Guidelines on State aid to maritime transport are slightly different from those of Marco Polo II. The Guidelines provide for a maximum intensity of 30 % of operational costs (35 % of the total expenditure in Marco Polo II) and a maximum duration of three years (in comparison to five years under Marco Polo II). Such differences have probably confused potential bidders for motorways of the sea actions.
8. For the above reasons, the Commission considers that maximum duration and intensity of State aid and Community funding for projects which have been selected under the Regulation should be the same. Therefore, on the basis of Article 87(3)(c) of the Treaty, in the absence of Community funding, or to the extent not covered by Community funding, the Commission will authorise State aid to the start-up of Marco Polo II 'Motorways of the Sea' projects with a maximum intensity of 35 % of operational costs and a maximum duration of five years <sup>(1)</sup>. The same will apply to projects selected under Marco Polo II but for which funding is finally provided through the European Regional Development Fund (ERDF) <sup>(2)</sup> or the Cohesion Fund <sup>(3)</sup>.
9. Start-up aid to operational costs may not exceed the above-mentioned duration and intensity, irrespective of the source of funding. Aid can not be cumulated with public service compensation. The Commission also recalls that the same eligible costs cannot benefit from two Community financial instruments.
10. Member States will have to notify to the Commission State aid that they intend to grant on the basis of the present communication to projects selected under Regulation (EC) No 1692/2006.

#### COMPLEMENTARY STATE AID FOR TEN-T 'MOTORWAYS OF THE SEA' PROJECTS

11. Article 12a of Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network <sup>(4)</sup> provides for the setting up of 'Motorways of the Sea' concentrating flows of freight on sea-based logistical routes in such a way as to improve existing maritime links or to establish new viable regular and frequent maritime links for the transport of goods between Member States so as to reduce road congestion and/or to improve access to peripheral and islands regions and State. The trans-European network of motorways of the sea must consist of facilities and infrastructure concerning at least two ports in two different Member States.
12. The Community guidelines for the development of the trans-European transport network concern Community support for the development of infrastructure, including in the case of the motorways of the sea. However, second indent of Article 12a(5) of Decision No 1692/96/EC, includes a possibility of

<sup>(1)</sup> It should be noticed that the clause contained in Annex I(2)(b) of the Marco Polo II Regulation (about the limits to funding based on freight actually shifted from road) applies to Community funding, but not to complementary State aid addressed in the present communication.

<sup>(2)</sup> Regulation (EC) No 1080/2006 of 5 July 2006 (OJ L 210, 31.7.2006, p. 1).

<sup>(3)</sup> Regulation (EC) No 1084/2006 of 11 July 2006 (OJ L 210, 31.7.2006, p. 79).

<sup>(4)</sup> OJ L 228, 9.9.1996, p. 1.

granting Community support for start-up aid to a project, without prejudice to Articles 87 and 88 of the Treaty. This support may be granted to the extent it is *deemed necessary for the financial viability of the project*. In fact, the case may arise that the proposing consortium of ports and operators incurs start-up losses within the launching period of the motorways of the sea services.

13. Start-up support under the Community guidelines for the development of the trans-European transport network is limited to 'duly justified capital costs', to be understood as investment support. This may include the depreciation of ships allocated to the service <sup>(1)</sup>. Under the Community guidelines for the development of the trans-European transport network, start-up support is limited to two years with a maximum intensity of 30 %.
14. In the framework of TEN-T projects, financial resources may be provided by Member States to the extent that Community funding is not available. In the case of start-up aid to shipping services, however, the second indent of Article 12a(5) of Decision No 1692/96/EC makes a reference to the provisions on State aid of the Treaty. Therefore, Member States may provide complementary aid to the extent that Community funding is not available, but they have to respect the rules on State aid while doing so. Since in the matter of aid to short sea shipping, guidance on the application of State aid rules has been provided by Chapter 10 of the Guidelines on State aid to maritime transport, the latter applies to complementary State aid. The Community Guidelines on State aid to maritime transport, however, allow for aid to investment with a maximum intensity of 10 % during three years. As a result, if a motorway of the sea project is selected as a TEN-T project, but it is not granted the maximum Community support to investment, i.e. 30 % during two years, it may happen that public support will not achieve the maximum possible amount, if national State aid may not go beyond the 10 % over three years authorised by the Community Guidelines on State aid to maritime transport. Furthermore, the difference in the maximum duration of the two schemes (two years under Decision No 1692/96/EC and three years under the Community Guidelines on State aid to maritime transport) is capable of generating uncertainty and confusion. For the sake of clarity and in order to allow for a pre-determined public support to undertakings taking part in a motorway of the sea TEN-T project, the maximum intensity and duration of complementary State aid to be provided by Member States should be the same as the maximum intensity and duration of Community funding.
15. For the above reasons, on the basis of Article 87(3)(c) of the Treaty, in the absence of Community funding for start-up aid or for the part not covered by Community funding, the Commission will authorise State aid to investment with a maximum intensity of 30 % and a maximum duration of two years to projects corresponding to Article 12a of Decision 1692/96/EC and selected in accordance with the procedure laid down in Regulation (EC) No 680/2007 of the European Parliament and of the Council of 20 June 2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks <sup>(2)</sup>. The same will apply where the Member States decide to fund the project through the European regional development Fund or the Cohesion Fund.
16. Start-up aid to investment may not exceed the duration and intensity referred to in this point, irrespective of the source of funding. It can not be cumulated with public service compensation. Also for this case, the Commission recalls that the same eligible costs cannot benefit from two Community financial instruments.
17. Member States will have to notify to the Commission State aid that they intend to grant on the basis of the present communication to projects selected under Regulation (EC) No 680/2007.

#### APPLICATION

18. The Commission will apply the guidance provided for in this communication from the day following that of its publication in the Official Journal.

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<sup>(1)</sup> Vademecum of 28 February 2005 issued in conjunction with the call for proposals for the TEN-T 2005; paragraph 4.3 (Start-up aid related to capital costs).

<sup>(2)</sup> OJ L 162, 22.6.2007, p. 1.

## V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION  
POLICY

COMMISSION

STATE AID — FRANCE

**State aid C 31/08 (ex N 681/06) — Rescue aid for the company ‘Volailles du Périgord’**

**Invitation to submit comments pursuant to Article 88(2) of the EC Treaty**

(2008/C 317/09)

By means of the letter dated 16 July 2008 and reproduced in the authentic language on the pages following this summary, the Commission notified France of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the abovementioned aid.

Interested parties may submit their comments within one month of the date of publication of this summary and the following letter, to:

European Commission  
Directorate-General for Agriculture and Rural Development  
Directorate M. Agricultural legislation  
Unit M.2. Competition  
Rue de la Loi 130 5/94A  
B-1049 Brussels  
Fax (32-2) 296 76 72

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

SUMMARY

By e-mail of 13 October 2006, France notified the Commission of its intention to grant rescue aid to the general partnership company (SNC) ‘Volailles du Périgord’, which is 100 % owned by the Gaye family and, with 236 employees in 2006, is the main employer in the Terrasson region. The company’s turnover in 2006 was about EUR 52 million. At the time of the Commission’s decision the company was engaged in slaughtering chickens and turkeys. After being hit by the bird flu crisis the company became structurally loss-making in 2007.

By letter C(2007) 3564 of 19 July 2007, the Commission authorised the aid for a period of six months. The amount of the aid was EUR 1 million in the form of repayable advances. The interest rate was the Commission reference rate applicable at the time of payment of the advance.

When the rescue aid was notified, the French authorities undertook to submit to the Commission a restructuring plan and a liquidation plan or proof that the advance had been reimbursed in full not later than six months after the rescue aid measure was authorised by the Commission.

By letter C(2007) 3564 of 19 July 2007, the Commission decided that the aid was compatible with the common market under Article 87(3)(c) of the Treaty.

The Commission examined the aid in the light of the guidelines applicable on the date of notification, i.e. the Community guidelines for State aid in the agriculture sector 2000/C 28/02 and the Community guidelines on State aid for rescuing and restructuring firms in difficulty 2004/C 244/02.

Under point 25(a) of the Community guidelines on State aid for rescuing and restructuring firms in difficulty, the aid must consist of liquidity support in the form of loan guarantees or loans, at an interest rate at least comparable to those observed for loans to healthy firms, and in particular the reference rates adopted by the Commission. Any loan must be reimbursed and any guarantee must come to an end within a period of not more than six months after the disbursement of the first instalment to the firm.

The aid approved was to take the form of a repayable advance at an annual interest rate equal to the Commission reference rate applicable at the time the advance was paid (4,62 % from 1 July 2007). The French authorities indicated that the loan would be reimbursed within six months of the first payment of the amounts lent to the company. In accordance with point 25(c) of the guidelines, which provides that a restructuring plan or a liquidation plan or proof that the loan had been reimbursed in full must be communicated to the Commission not later than six months after the rescue aid measure has been authorised or, in the case of non-notified aid, not later than six months after the first implementation of the aid measure in question, the French government undertook to communicate to the Commission a restructuring plan or a liquidation plan or proof that the loan had been reimbursed in full not later than six months after the rescue aid was authorised by the Commission.

The six-month time-limit expired on 19 January 2008 without the Commission having received the required documents. The Commission reminded France of its undertaking by letter of 7 May 2008. To date the French authorities have sent neither a restructuring plan nor a liquidation plan nor proof that the loan has been reimbursed in full.

France has failed to forward the documents required under point 27 of the guidelines.

For all the foregoing reasons the Commission believes at this stage that the State aid approved and granted to the company 'Volailles du Périgord' was probably unlawfully extended beyond the six months' time-limit, and it has doubts as to whether the measure is compatible with the common market.

As a result, in accordance with point 27 of guidelines 2004/C 244/02, the Commission has decided to initiate the proceedings provided for in Article 88(2) of the Treaty.

In accordance with Article 14 of Council Regulation (EC) No 659/1999, all unlawful aid may be subject to recovery from the recipient.

#### TEXT OF LETTER

'Par la présente, la Commission a l'honneur d'informer la France qu'après avoir examiné les informations sur l'aide citée en objet, elle a décidé d'ouvrir la procédure prévue à l'article 88, paragraphe 2, du traité CE.

## 1. PROCÉDURE

- (1) Par e-mail du 13 octobre 2006, enregistré le jour même, la Représentation permanente de la France auprès de l'Union européenne a notifié la mesure citée en objet à la Commission, conformément à l'article 88, paragraphe 3, du traité. Des renseignements complémentaires ont été envoyés par courriers électroniques du 21 mars 2007 et du 31 mai 2007, enregistrés le jour même.
- (2) Par lettre C(2007) 3564 du 19 juillet 2007 la Commission a autorisé l'aide susmentionnée. La durée de cette aide a été fixée à six mois.
- (3) Lors de la notification de l'aide au sauvetage les autorités françaises se sont engagées à ce qu'un plan de restructuration, un plan de liquidation ou la preuve que l'avance a été intégralement remboursée soit soumis à la Commission au plus tard six mois après l'autorisation de l'aide au sauvetage par la Commission. Ce délai a expiré le 19 janvier 2008 sans que la Commission ait reçu un des documents requis.
- (4) Par lettre du 7 mai 2008 la Commission a demandé à la France de produire les documents requis dans les plus brefs délais et a annoncé qu'à défaut elle sera obligée d'ouvrir la procédure prévue à l'article 88, paragraphe 2 du traité, en conformité avec le point 27 des lignes directrices communautaires concernant les aides d'État au sauvetage et à la restructuration d'entreprises en difficulté <sup>(1)</sup>.
- (5) La France a omis de communiquer un plan de restructuration ou un plan de liquidation ou la preuve que l'avance a été remboursée intégralement jusqu'à ce jour.

## 2. DESCRIPTION DE LA MESURE

### 2.1. Intitulé de l'aide

- (6) Aide au sauvetage de la société "Volailles du Périgord".

### 2.2. Durée

- (7) Six mois.

### 2.3. Budget

- (8) 1 million d'euros.

### 2.4. Bénéficiaires

- (9) Société en nom collectif (SNC). La société a été créée en 1910. Selon les informations fournies par les autorités françaises lors de la notification le 13 octobre 2006 et des courriers électroniques du 21 mars 2007 et du 31 mai 2007, elle est détenue à 100 % par la famille Gaye.
- (10) La société employait début 2006 236 salariés et réalisait un chiffre d'affaires annuel de quelque 52 millions d'euros. Selon les informations fournies en 2006, elle est le premier employeur de la zone de Terrasson.

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



- (11) Selon les informations fournies, Volailles du Périgord est active dans l'abattage de poulets et dindes. La société vend la majeure partie de ses produits aux grandes et moyennes surfaces (GMS) en France (dont 60 % sous sa marque propre "Le Croquant" et 40 % sous marques de distributeurs). 70 % de ses produits sont vendus comme découpes, le reste comme volailles entières et prêtes à cuire. Le poulet constitue 46 % de ses produits vendus (dont 80 % en label rouge). L'export de la société est marginal.
- (12) La Société SNC Volailles du Périgord avait connu une croissance rapide au cours de la décennie 1990-2000 et atteignait en 2001/2002 avec quelques 280 salariés et 50 millions d'euros de chiffres d'affaires un résultat d'exploitation de 1,8 million d'euros.
- (13) Selon les mêmes informations cette croissance avait été pourtant mal contrôlée, en raison, notamment, d'un management sous dimensionné et d'une orientation commerciale vers le Hard Discount. D'après les autorités françaises, ces fragilités se sont exprimées pleinement à l'occasion du retournement de conjoncture qui a eu pour effet que la société était devenue structurellement déficitaire.
- (14) Les pertes d'exploitation cumulées sur les trois exercices 2002/2003-2004/2005 s'étaient élevées à 5,3 millions d'euros. La direction de l'entreprise avait réagi en agissant sur la productivité, en maîtrisant mieux la masse salariale et le recours au personnel extérieur et en comprimant des services et charges externes. D'après ces mêmes informations, ces mesures prises avaient permis un résultat d'exploitation équilibré pour le dernier semestre 2005. Parallèlement, les actionnaires avaient injecté 3 millions d'euros en comptes courants pour soutenir la trésorerie.
- (15) La crise de la grippe aviaire a fortement frappé l'entreprise déjà fragile. Le chiffre d'affaires net a baissé de quelques 5 millions d'euros sur l'exercice 2005/2006 par rapport à l'exercice précédent. La perte de l'exploitation s'est élevée à quelques 168 000 EUR. D'après les informations fournies par les autorités françaises, la trésorerie a continué à se dégrader en raison de la perte et de l'accroissement des stocks de volailles congelées. Le stock en volailles congelées s'élevait au 30 juillet 2006 à quelques 0,9 million d'euros, soit presque 12 % de l'actif total.
- (16) Dans leur e-mail du 21 mars 2007, les autorités françaises ont indiqué que la société avait pu se financer depuis le 1<sup>er</sup> semestre 2006 par un recours au découvert bancaire qui, au 28 février 2007, s'était élevé à 1 986 460 EUR. Selon les informations fournies dans le même courrier électronique, ce découvert avait été consenti dans l'attente du versement de l'aide au sauvetage. En cas de non versement de cette aide, il serait devenu exigible et aurait entraîné la déclaration de cessation de paiements et le dépôt de bilan de la société.
- (17) Selon le plan de trésorerie pour le deuxième semestre 2007 le besoin en trésorerie de la société avait atteint quelques 1,2 millions d'euros au mois de juillet et devait, selon les prévisions, légèrement baisser pendant la seconde moitié de l'année 2007.

### 2.5. Base juridique

- (18) Circulaire du ministre de l'agriculture et de la pêche DPEI/SDEPA/C2006-4019 du 15 mars 2006.

### 2.6. Description de l'aide

- (19) L'aide de 1 million d'euros devait être apportée par des avances remboursables et versées, pour partie, par l'État (850 000 EUR) et, pour partie, par le Conseil régional d'Aquitaine (150 000 EUR).
- (20) Les autorités françaises ont confirmé que le taux d'intérêt appliqué serait le taux de référence de la Commission applicable à l'époque de l'attribution de l'avance.

### 3. APPRÉCIATION

- (21) La Commission a examiné l'aide à la lumière des lignes directrices applicables à la date de la notification, c'est-à-dire les lignes directrices de la Communauté concernant les aides d'État dans le secteur agricole 2000/C 28/02 <sup>(2)</sup> et les lignes directrices communautaires concernant les aides d'État au sauvetage et à la restructuration d'entreprises en difficulté 2004/C 244/02 <sup>(3)</sup>.
- (22) Par lettre C(2007) 3564 du 19 juillet 2007 elle a décidé de considérer l'aide comme compatible avec le marché commun en application de l'article 87, paragraphe 3, point c) du traité.
- (23) Selon le point 25(a) des lignes directrices communautaires concernant les aides d'État au sauvetage et à la restructuration d'entreprises en difficulté les aides doivent consister en des aides de trésorerie sous forme de garanties de crédits ou de crédits, soumis à un taux au moins comparable aux taux observés pour des prêts à des entreprises saines, et notamment aux taux de référence adoptés par la Commission. Tout prêt doit être remboursé et toute garantie doit prendre fin dans un délai de six mois au maximum à compter du versement de la première tranche à l'entreprise.
- (24) L'aide approuvée devait prendre la forme d'une avance remboursable soumise à un taux d'intérêt annuel égal au taux de référence de la Commission applicable au moment de l'attribution de l'avance (4,62 % à partir du 1<sup>er</sup> juillet 2007).
- (25) Les autorités françaises ont indiqué que le prêt serait remboursé dans les six mois à compter du premier versement de sommes prêtées à l'entreprise. En conformité avec les dispositions du point 25 c) des lignes directrices, qui prévoient que soit un plan de restructuration, soit un plan de liquidation soit la preuve que le prêt a été intégralement remboursé soit soumis à la Commission au plus tard six mois après l'autorisation de l'aide au sauvetage ou, dans le cas d'une aide non notifiée, à compter de la première mise en œuvre de la mesure en question, le gouvernement français s'était engagé à ce qu'un plan de restructuration, un plan de liquidation ou la preuve que l'avance a été intégralement remboursée soit soumis à la Commission au plus tard six mois après l'autorisation de l'aide au sauvetage par la Commission.

<sup>(2)</sup> JO C 28 du 1.2.2000.

<sup>(3)</sup> JO C 244 du 1.10.2004.

- (26) Le délai de six mois a expiré le 19 janvier 2008 sans que la Commission ait reçu les documents requis. La Commission a rappelé à la France son engagement par lettre du 7 mai 2008. Jusqu'à ce jour les autorités françaises n'ont envoyé ni un plan de restructuration, ni plan de liquidation, ni preuve que l'avance a été intégralement remboursée.
- (27) La France a donc omis de communiquer les documents requis par le point 27 des lignes directrices.

#### 4. CONCLUSION

Pour l'ensemble de ces raisons, à ce stade, la Commission pense qu'il est probable que l'aide d'État approuvée accordée à la société "Volailles du Périgord" ait été illégalement prolongée au-delà du délai de 6 mois, et a des doutes sur la compatibilité de la mesure en cause avec le marché commun.

En conséquence, la Commission a décidé d'ouvrir la procédure formelle d'examen au sens de l'article 88, paragraphe 2, du traité CE et du Règlement (CE) n° 659/1999 du Conseil.

- (28) La Commission invite la France, dans le cadre de la procédure de l'article 88, paragraphe 2, du traité CE, à présenter ses observations et à fournir des informations sur la situation actuelle de la société "Volailles du Périgord" et à fournir soit un plan de restructuration, soit un plan de liquidation ou la preuve que le prêt a été intégralement remboursé, dans un délai d'un mois à compter de la date de réception de la présente.
- (29) Elle invite vos autorités à transmettre immédiatement une copie de cette lettre au bénéficiaire de l'aide.
- (30) La Commission rappelle à la France l'effet suspensif de l'article 88, paragraphe 3, du traité CE et se réfère à l'article 14 du règlement (CE) n° 659/1999 du Conseil qui prévoit que toute aide illégale pourra faire l'objet d'une récupération auprès de son bénéficiaire.
- (31) Par la présente, la Commission avise la France qu'elle informera les intéressés par la publication de la présente lettre et d'un résumé de celle-ci au *Journal Officiel de l'Union Européenne*. Elle informera également les intéressés dans les pays de l'AELE signataires de l'accord EEE par la publication d'une communication dans le supplément EEE du Journal officiel, ainsi que l'autorité de surveillance de l'AELE en leur envoyant une copie de la présente. Tous les intéressés susmentionnés seront invités à présenter leurs observations dans le délai d'un mois à compter de la date de cette publication.'

**Prior notification of a concentration**  
**(Case COMP/M.5324 — Centrica/Segebel)**  
**Candidate case for simplified procedure**

(Text with EEA relevance)

(2008/C 317/10)

1. On 4 December 2008, 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 Centrica Overseas Holdings Limited ('Centrica', United Kingdom) (belonging to the group Centrica plc, United Kingdom) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Segebel S.A. ('Segebel', Belgium) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

- for Centrica: electricity and gas production, energy product supply and trading, gas shipping and gas storage,
- for Segebel: electricity generation and supply of electricity and gas.

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.5324 — Centrica/Segebel, to the following address:

European Commission  
Directorate-General for Competition  
Merger Registry  
J-70  
B-1049 Brussels

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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.5385 — Avnet/Abacus)**

(Text with EEA relevance)

(2008/C 317/11)

1. On 4 December 2008, 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 Avnet Inc. ('Avnet', United States) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Abacus Group plc ('Abacus', United Kingdom) by way of a public bid announced on 10 October 2008.

2. The business activities of the undertakings concerned are:

- for Avnet: distribution of electronic components (including semiconductors, interconnect, passive, electromechanical devices and embedded products), computer products and technology services,
- for Abacus: distribution of electronic components (including semiconductors, interconnect, passive, electromechanical devices and embedded products) as well as manufacturing/assembly of components.

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.5385 — Avnet/Abacus, to the following address:

European Commission  
Directorate-General for Competition  
Merger Registry  
J-70  
B-1049 Brussels

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

**NOTE TO THE READER**

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

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