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Information and Notices

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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COUNCIL

MULTI-ANNUAL EUROPEAN E-JUSTICE ACTION PLAN 2009-2013

(2009/C 75/01)

I. INTRODUCTION

1. In June 2007 the JHA Council decided that work should be carried out with a view to developing at European level the use of information and communication technologies (ICT) in the field of justice, particularly by creating a European portal.

2. The use of such new technologies would help to rationalise and simplify judicial procedures. The use of an electronic system in this area would reduce procedural deadlines and operating costs, to the benefit of citizens, undertakings, legal practitioners and the administration of justice. Access to justice would thus be facilitated.

3. According to studies carried out by the Commission ([1]), about 10 million people are currently involved in cross-border civil proceedings. This figure is destined to rise as a result of the increase in the movement of persons within the EU.

4. Over the last 18 months the Council Working Party on Legal Data Processing (e-Justice) has been carrying out considerable work in response to the successive mandates given to it by the Council. In this context, some Member States have developed pilot projects, in particular the one concerning the European e-Justice portal.

5. On 2 June 2008 the Commission published a communication to the Council, the European Parliament and the European Economic and Social Committee entitled 'Towards a European e-Justice Strategy' ([2]).

6. The European Parliament has also launched discussions on e-Justice. An own-initiative report is due to be adopted before the end of 2008.

7. At its meeting on 5 and 6 June 2008, the Council invited the Working Party on Legal Data Processing (e-Justice), in the light of the Commission's communication ([3]), to examine aspects relating to the creation of a coordination and management structure capable of developing multiple projects on a large scale and within a reasonable timeframe in the field of e-Justice, and to launch discussions on the establishment of a multi-annual work programme.

8. At its meeting on 19 and 20 June 2008 the European Council welcomed the initiative to 'progressively establish a uniform EU e-Justice portal by the end of 2009.'

II. CONTEXT FOR THE DEVELOPMENT OF E-JUSTICE AT EUROPEAN LEVEL

9. The development of e-Justice must be situated in a threefold context:

1. e-Justice work already carried out

10. Work prior to that of the Working Party on e-Justice has already been carried out in the European Union framework, specifically to ensure access to European information (websites of the European institutions). More specific work has been or is in the process of being carried out either in the context of implementing instruments adopted by the Council in civil law matters (European Judicial Network in civil and commercial matters) or in criminal law matters (e.g. the European Judicial Network in criminal law matters or the interconnection of criminal records) or on the basis

([1]) 10285/08 ADD 1 JURINFO 45 JAI 305 JUSTCIV 119 COPEN 118 CRIMORG 87.

([2]) 10285/08 JURINFO 45 JAI 305 JUSTCIV 119 COPEN 118 CRIMORG 87.

([3]) It should be noted that the European Parliament has launched discussions on e-Justice.

of initiatives of the legal professions (e.g. the European network of registers of wills), and in yet another context, such as, for instance, work on the networking of business registers interconnected through EBR and land registers interconnected through EULIS.

11. The inclusion of these initiatives in the e-Justice multi-annual programme must therefore take place in consultation with those who are responsible for their implementation.

2. **The e-Government context**

12. The European e-Justice system must be designed while respecting the principle of the independence of the judiciary.

13. However, from a technical viewpoint, e-Justice must take into account the more general framework of e-Government ([1]). A solid body of expertise concerning projects involving secure infrastructure and the authentication of documents already exists and must be put to use. In full cooperation with the Commission, the European interoperability framework (EIF) developed within the IDABC programme ([2]) should be promoted. European work on e-Signature and e-Identity ([3]) is particularly relevant in judicial matters, where the authentication of acts is essential.

14. It is in this general context that the multi-annual programme should thus be defined. The latter must aim to provide a response not only in the short term, but also in the medium and long term, thus contributing, via the use of ICT, towards the development of a European area of freedom, security and justice.

3. **A horizontal approach**

15. E-Justice matters are not confined to certain legal fields. They arise in many areas of civil, criminal and administrative law. E-Justice therefore has horizontal relevance in the context of European cross-border proceedings.

III. **ACTION PLAN**

1. **Scope**

16. The European dimension of the e-Justice project should be highlighted. Thus, e-Justice should be renamed European e-Justice.

17. The Member States naturally remain free, with due regard for the powers laid down by the Treaties, to set up projects among themselves that may concern e-Justice, but not necessarily European e-Justice. However, such projects could also qualify for European status, and particularly Community funding, under certain conditions.

18. Given the horizontal dimension of European e-Justice, the Working Party on e-Justice will assume a coordinating role in considering technical issues raised during discussions in other subordinate Council bodies. Legislative work, on the other hand, will be a matter for the competent Council working parties such as, for instance, the Working Party on Cooperation in Criminal Matters or the Committee on Civil Law Matters.

19. A European system of e-Justice should be accessible to citizens, businesses, legal practitioners and the judicial authorities, which will make use of existing modern technologies. Three criteria should be established:

(a) *A European dimension*

20. European e-Justice is a step on the way to the creation of a European judicial area, using information and communication technologies. The projects developed under European e-Justice must therefore have the potential to involve all the Member States of the European Union.

(b) *Support for the construction of the European judicial area*

21. The projects must be of use in implementing the legislative instruments already adopted by the European Community and the European Union in the field of justice, without, however, ruling out the other projects that contribute to the creation of a European judicial area.

22. European e-Justice should also serve as a tool for use by legal practitioners and judicial authorities by providing a platform and individual functionalities for effective and secure exchanges of information.

(c) *A construction at the service of European citizens*

23. It is essential that European e-Justice should be developed so as to be of direct service to European citizens, who would benefit from its added value, specifically via the portal. In the choice of the projects or in the order in which they are implemented, it should be ensured that citizens can rapidly reap the practical benefits of the e-Justice tools. Thus, various projects ought to be launched as soon as possible, in accordance with the annex and without prejudice to other projects that may be added following the conditions set out in the current action plan.

24. All the projects enabling European citizens to become more aware of their rights meet this objective. This must also be the case for projects enabling them to make use of those rights (legal aid, mediation, translation, etc.).

([1]) E-Government is defined as the application of ICT to all administrative procedures.

([2]) http://ec.europa.eu/idabc/ Preliminary Study on mutual recognition of e-Signatures for e-Government applications (2007) and eID Interoperability for PEGS (2007).

([3]) Standardisation aspects of e-Signature (2007) http://ec.europa.eu/information_society/eeurope/i2010/docs/esignatures/e_signatures_standardisation.pdf

2. **The functions of European e-Justice**

25. The work carried out by the Working Party on e-Justice and the Commission communication provide a clear definition of the functionalities of the future European e-Justice system. The following three basic functions should be established:

(a) *Access to information in the field of justice*

26. This information concerns in particular European legislation and case law ([1]) as well as that of the Member States.

27. European e-Justice will also provide access via interconnections to the information managed by the Member States in the framework of the public administration of justice (for instance, and without prejudice to the functioning rules of this project, the interconnection of the databases of Member States' criminal records).

(b) *Dematerialisation of proceedings*

28. The dematerialisation of cross-border judicial and extrajudicial proceedings (for example e-mediation) involves electronic communication between a court and the parties to the proceedings, in particular in order to implement European instruments adopted by the Council ([2]).

(c) *Communication between judicial authorities*

29. Simplifying and encouraging communication between the judicial authorities and the Member States, more specifically in the framework of instruments adopted in the European judicial area, is of particular importance (e.g. videoconferencing or secure electronic networks).

3. **The European e-Justice portal**

30. The uniform European e-Justice portal, called for by the European Council by the end of 2009, has been the focus of considerable work within the Working Party on e-Justice. A pilot project was also carried out by a group of Member States as part of that work. The portal should follow on from work to date on this pilot project.

31. The portal will provide access to the whole European e-Justice system, i.e. to European and national information websites and/or services. However, the e-Justice portal cannot merely be a collection of links.

32. It will permit by means of a uniform authentication procedure to open up for members of the legal professions the various functionalities reserved for them, to which they will have differentiated access rights. It should be advisable to provide for such a possibility for authentication for non-professionals also.

33. It will also provide access to national functionalities by means of a user-friendly multilingual interface, making them understandable to the European citizens.

34. The content of the functionalities accessible via the portal, as well as its management, will obviously depend on the choices by the Council regarding both the functions of the European e-Justice and the arrangements for its management.

4. **Technical aspects**

35. The establishment of the European e-Justice system implies resolving a number of horizontal technical issues that have been identified, particularly in the report approved by the Council of 5 June 2007 ([3]).

(a) *A decentralised technical system*

36. At their informal meeting in Dresden in January 2007, a large majority of Ministers of Justice expressed the desire to create a decentralised system at European level which interlinked the systems existing in the Member States.

(b) *Standardisation of exchanges of information*

37. The highest possible degree of compatibility between the various technical and organisational measures selected for the judicial system applications must be ensured, while guaranteeing that the Member States have maximum flexibility. It is, however, necessary to reach agreement on standardised communication formats and protocols in line with relevant European or international standards, allowing for interoperable, effective, secure and rapid exchanges at the lowest possible cost.

(c) *Authentication mechanisms*

38. One of the essential conditions for the effective use of e-Justice across national borders is the development of uniform standards or interfaces for the use of authentication technologies and the components of electronic signatures. This requirement is at the very least essential for any European e-Justice functionalities going beyond merely making legal information available to the public. The various legal requirements in force in the Member States, as well as the technologies used by the latter, should therefore continue to be examined. On the basis of the results and experience obtained, the introduction of an electronic exchange of documents between Member States that is as secure as possible from a legal viewpoint could be determined.

([1]) A link will be made to EUR-Lex and N-Lex.
([2]) Regulation (EC) No 1896/2006; Regulation (EC) No 861/2007.
([3]) Document 10393/07 JURINFO 21 of 5 June 2007.

(d) *Security of the system and data protection*

39. When European e-Justice services are created, enabling information to be communicated between judicial authorities or between the latter and citizens or members of the legal professions, those data will have to be exchanged in a secure environment. Here, too, the preparatory work carried out in the framework of the IDABC could be taken into account.

40. Furthermore, since such data are for the most part of a personal nature within the meaning of European legislation, compliance with the principles laid down by that legislation will have to be ensured.

5. **Linguistic aspects**

41. The fact that twenty-three different languages are used in the European Union institutions, and the concern that European citizens should be able to enjoy user-friendly access to the European e-Justice system, will mean that measures focusing on translation and interpretation in judicial matters will have to be considered.

42. In this regard, it would be an illusion to think that facilitating access for citizens to the European e-Justice website of a Member State other than their own could be an adequate solution: the language barrier would make such access largely pointless.

43. One specific solution to this linguistic challenge could be to use automated translation systems, particularly for the content of forms used in European instruments, and to place national translation resources online.

44. Also, a working method needs devising which ensures faithful translation, in the European Community's twenty-three official languages, of the legal concepts which exist within Member States' legal systems, taking into consideration questions relating to semantics.

6. **The need for a work infrastructure**

45. All these aspects certainly make it necessary to lay down a procedure for choosing the technical standards that could be used to enable Member States' systems to be interoperable and to define, as is customary in the case of ICT-related projects, the separation between:

(a) the project management function, i.e. decision-making regarding the structure and functioning of the European e-Justice system and the projects to be developed. This function may sometimes call for work of a legal nature, as shown by the work carried out on the interconnection of criminal records;

(b) the project implementation function, i.e. development of the various European e-Justice services such as devising multilingual user interfaces, in close collaboration with the Member States, and systems development. Management will also comprise full maintenance of the system.

46. Such a structure should no doubt be composed of ICT experts, on the one hand, and have translation capabilities, on the other hand. Several possibilities, not necessarily mutually exclusive, are conceivable:

(a) one or more Member States offer to take responsibility for managing such a structure, working in close consultation with the other Member States within the framework of the Working Party on e-Justice;

(b) this function is performed by the European Commission, according to arrangements as yet to be defined;

(c) a European agency is created. There are several possible models for this, depending on the size and degree of autonomy of the agency. However, this is an option that is lengthy and complex to put into practice, and could be considered only in the medium term, possibly as and when work progressed.

7. **Financing**

47. The development of European e-Justice involves raising considerable financial resources, intended mainly to:

(a) encourage the setting up of e-Justice systems at national level to pave the way for European e-Justice;

(b) enable projects at European level to be developed, including the setting up and development of the European e-Justice portal.

48. Recourse could be had to the civil and criminal justice financial programmes for up to EUR 45 million in 2008-2009. This amount would have to be increased significantly over the coming years. The other amounts available in the European Union budget that could be allocated immediately to European e-Justice would also have to be defined clearly.

49. In addition, as proposed by the Commission, a single horizontal programme covering both civil and criminal law matters would have to be devised as soon as possible. The budgetary resources would have to be increased considerably in order to meet the costs of implementing European e-Justice at both national and Community levels. It would also be necessary for the selection criteria currently in force in the civil and criminal justice programmes to be clarified and harmonised in order to take account of the European e-Justice criteria set out in section III of this document.

50. e-Justice related projects within the meaning of this action plan which are not covered by paragraph 49 may be funded under other existing Community programmes inasmuch as they meet the criteria laid down in those programmes.

IV. THE PRESIDENCY'S PROPOSALS

51. Drawing up a multi-annual action plan presupposes:

(a) determining, for the development of the e-Justice functions, with due regard for the Financial Regulation applicable to the general budget of the European Communities, the tasks to be carried out, defining their priorities and, as far as possible, the deadlines to be met. Some degree of flexibility is necessary, however, to ensure suitable adaptability to developments taking place in this sector;

(b) allocating the tasks among the Council, the Member States, the European Commission and a structure for developing/coordinating certain technical tasks which should be determined. This allocation should also concern the arrangements for selecting future projects;

(c) determining a method for rigorous monitoring and assessment of the development of the action plan.

52. This means that the Council should take, acting with due regard for each Institution's autonomy and in accordance with Articles 5 and 7 of the EC Treaty, a number of decisions on the issues dealt with in this document, and specifically:

(a) on the working structure to be set up at European Union level to carry out the European e-Justice projects and to supervise their implementation and progress;

(b) on assigning the tasks to the various players: Council, European Commission, Member States.

53. In this respect, the Presidency would point out that the limited experience of existing e-Justice systems (launch of the website of the European Judicial Network in criminal matters, interconnection of criminal records) shows that the initiative of one or more Member States has often been decisive in launching projects.

54. However, beyond a certain stage of development, the participation of a larger number of Member States further complicates the work. It then becomes necessary to give a European dimension to the development, management and progress of the project.

55. Moreover, the various technical aspects examined above clearly show that certain horizontal tasks would gain by being managed at European level. Considerable economies of scale could be expected as the number of the European e-Justice services available increases.

1. For a European e-Justice

56. The Presidency proposes that the e-Justice programme be named 'European e-Justice'.

2. Towards the creation of a working structure

57. In the light of the developments set out in this action plan, and in order to devise a multi-annual programme for developing European e-Justice, the Presidency proposes that the following overall working structure be put in place:

(a) *Management function*

58. Following the guidelines defined in the action plan the Council would follow up implementation of the multi-annual programme. It would take all decisions necessary to achieve the objectives set in this action plan. In particular, it would be responsible, on the basis of the criteria defined in section III and in close association with the Commission, for establishing a list of new projects proposed by the Council, by the Member States (point (c) below) or by the Commission.

59. The Commission would undertake any study which it considered appropriate either on its own initiative or at the Council's request.

60. The Council would be able to determine the functional specifications for the projects.

61. Regarding Community financing, the Commission, in compliance with the procedures applicable, would take full account of the guidelines and decisions adopted by the Council.

(b) *Implementation function*

62. The European Commission would make available to the Council an implementation structure responsible for:

(i) ensuring the technical conditions for the European e-Justice system in accordance with the procedure laid down in paragraph 58;

(ii) at the request of the Council, carrying out, in close association with the Member States and on the basis of the Community financing available, those European e-Justice projects defined by the multi-annual action programme, or any complementary projects;

(iii) developing a first version of the European e-Justice portal by the end of 2009, following the principles laid down in the pilot project worked out by the Working Party on e-Justice and acting on the decisions which the Council is called upon to take. On the basis of that first version, further functionalities developed under specific pilot projects would be phased in.

With a view to complementary use of Member States' competences and those of the Commission, the latter would set up a working party composed of technical experts, including those of Member States, which would meet at regular intervals to follow up ongoing projects and decide on the technical options to be implemented.

The Commission would also keep the Council informed of progress of work in hand and of matters discussed by the working party of experts, thereby ensuring adequate follow-up by the Member States and enabling them to secure the input of their methodological and technological advances into the proceedings.

(c) *The Member States*

63. Without prejudice to the rules in point (a) above, and possibly via the Community financing available, the Member States may propose and launch new Europe e-Justice projects, in accordance with the technical specifications defined by the Council in close consultation with the Commission, specifically for compliance with technical standards and the development of multilingual interfaces.

3. **Review clause**

64. The Working Party on e-Justice would assess the implementation structure's activities in the first half of 2010 and would, if necessary, make any suggestions, which it considers appropriate to improve its functioning, to the Council.

3. **A multi-annual programme**

65. The annexed multi-annual programme will be regularly updated as work progresses.

V. **CONCLUSIONS**

66. Coreper/Council is asked to approve the European e-Justice action plan.

ANNEX

ACTION PLAN

Annex to the multiannual European e-Justice action plan for 2009-2013

Introduction

Projects have been classified by type of project, in the following categories:

— support for instruments adopted to develop the European judicial area,

— interconnection of national registers,

— horizontal issue,

— exchange of best practice.

Project	Stage reached	Action to be taken	Responsibility for action	Timetable	Comments	Type of project
European e-Justice portal	— a prototype portal established by a group of Member States — DIM system elaborated by certain Member States in the framework of the e-Justice Working Party	— authentication and identification	— Group of Member States and the Commission	2009-2011 Launching the portal in 2008, opening up the portal to the public in December 2009 (see European Council conclusions of 18 and 19 June 2008)	Reflections ongoing The accessible websites will be determined on the basis of the projects eligible and the criteria laid down by the Council	Horizontal issues
	— the prototype was made available to members of the e-Justice Working Party in April 2008	— security — multilingual interface and translation work — technical standards	— Commission in full cooperation with the group of Member States participating in the pilot project	The portal will be improved and added to as the other projects advance		
		— paperless communication between judicial authorities via a secure network. Work under way under the IDABC programme and in the e-Justice Working Party	— feasibility study by the Commission			

Project	Stage reached	Action to be taken	Responsibility for action	Timetable	Comments	Type of project
Interconnection of criminal records	— as part of the pilot project, interconnection in 2006 of the criminal records of ES, BE, DE and FR, extended in January 2008 to CZ and LU	— formulation of a reference implementation to facilitate access of new Member States to interconnection	Council (work on the ECRIS draft followed up by the COPEN Working Party) and Commission (formulation of the reference implementation and EU co-financing)	— reference implementation available in 2009	To date, work has been followed up by the COPEN Working Party	Interconnection of national registers and support for instruments adopted to develop the European judicial area
	— this project is currently operational among 6 Member States; 14 Member States are currently partners — political agreement at the June 2007 JHA Council on the draft framework decision on the organisation and content of the exchange of information extracted from criminal records between Member States — general approach on the draft Decision of the Council on 24 October 2008 on ECRIS laying down the basic features of the format for the electronic exchange of information between the 27 Member States	— establishment of EU co-financing to prepare for connection to national criminal records		— co-financing underway		
European order for payment procedure	— Regulation of 30 December 2006, making it possible to use electronic methods	— continue discussions and work on the prototype — create dynamic forms	— Group of Member States then Commission	2009-2011		Support for instruments adopted to develop the European judicial area
	— prototype automated procedure devised by certain Member States	— introduction of the e-application	— Group of Member States then Commission			
	— feasibility study launched by the Commission		— Commission			

Project	Stage reached	Action to be taken	Responsibility for action	Timetable	Comments	Type of project
Legal aid	Council Directive of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid	— adding information relating to legal aid to the portal — request and obtain online legal aid: launching a feasibility study	Commission	2009-2013		Support for instruments adopted to develop the European judicial area
European small claims procedure	Regulation of 11 July 2007 — making it possible to use electronic methods	— Commission to launch a feasibility study — create dynamic forms — introduction of the e-application	— Commission — Group of Member States and Commission — Group of Member States and then the Commission	2009-2013		Support for instruments adopted to develop the European judicial area
Translation	EUROVOC pilot project SYSTRAN automated translation system in use since 1976 questionnaire distributed by Austria Work on semantic interoperability and tables (as an aid for comprehension)	— gradual compilation of comparative multilingual vocabulary — financing for legal translation tools in all European language pairs — interconnection of legal translators and interpreters databases — creation of a legal glossary — elaboration of tables of semantic concordance in different fields	— Commission (Publications Office) — Commission (Translation Service) — Group of Member States then Commission — Commission and Member States — SEMIC-EU	2009-2013 2009-2013 2009-2013 2009-2013		Horizontal issues

Project	Stage reached	Action to be taken	Responsibility for action	Timetable	Comments	Type of project
Better use of videoconferencing technology	— booklet prepared under the Slovenian Presidency	— finalise and place booklet online on the portal	— Commission in cooperation with the Member States	— 2008-2009	Involve both judicial networks in the work	Support for instruments adopted to develop the European judicial area and exchange of best practice
	— user manual being drawn up	— finalise the manual and place online		— end 2009 at the latest		
	— circulation of a questionnaire on videoconferencing equipment and the legal conditions for its use	— place online the updated information on videoconferencing equipment in courts and the legal conditions for its use	— Member States — Manager of the European judicial network on civil and commercial matters — Manager of the European criminal judicial network	— online some time in 2009 at the latest		
	— establishing a reservation system: evaluation of its feasibility and relevance	— devise an online reservation system	— Commission in cooperation with the Member States	— Launch in 2009		
Mediation	Directive of 21 May 2008 to be transposed by 21 May 2011	— adding information relating to mediation to the portal — launching a feasibility study	Commission	2011-2013	The timetable depends on the date on which the Directive is transposed	Support for instruments adopted to develop the European judicial area
Electronic signature [1]	— work begun (IDABC [2])		Commission	2009-2011	The project IDABC is being carried out by DG SANCO	Horizontal issues
Service of judicial and extrajudicial documents (by electronic means)	Council Regulation of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters	— feasibility study	Commission	2010-2011		Support for instruments adopted to develop the European judicial area

Project	Stage reached	Action to be taken	Responsibility for action	Timetable	Comments	Type of project
Online payment of procedural costs	Enable procedural costs to be paid online	Commence work	Member States	2011-2013		Support for instruments adopted to develop the European judicial area
Interconnection of insolvency registers	— a prototype covering data from the insolvency registers of certain Member States	— add data from the insolvency registers of other Member States — create a multilingual interface — create a legal and semantic glossary	Group of Member States then Commission	Continuation in 2009 at the initiative of the Member States. Incorporation in the portal		Interconnection of national registers
Interconnection of land registers (inegration of EULIS)	— work undertaken by EULIS	— 1st phase: link to EULIS — 2nd phase: reflection on the possibility for partial integration of EULIS into the portal Authentication of the user via the portal	Commission	2009-2010	Link with work in other Council configurations	Interconnection of national registers
Interconnection of commercial registers (integration of EBR	— work undertaken by EBR	— 1st phase: link to EBR — 2nd phase: reflection on the possibility for partial integration of EBR into the portal Authentication of the user via the portal	Commission	2009-2010	Link with work in other Council configurations	Interconnection of national registers
Interconnection of registers of wills	— pilot project: effective interconnection between France and Belgium	— determine the possibilities for cooperation with ENWRA (CNUE) — feasibility study by the Commission	JHA Council and ENWRA (CNUE)	2011-2013	Link with the future instrument on inheritances to be presented by the Commission in 2009	Interconnection of national registers

Project	Stage reached	Action to be taken	Responsibility for action	Timetable	Comments	Type of project
Training of legal practitioners	— discussions on e-Learning under way in the EJTN	— development of e-Learning tools	— European Judicial Training Network	2010-2012		Exchange of best practice
	— Justice Forum created by the Commission	— organisation de annual meetings on e-Justice topics in the Justice Forum	— Commission			
	— discussion of various national practices in a small working party	— training in the use of videoconferencing	— Member States at national level and, if appropriate, the European Judicial Training Network at European level			

(1) See also work undertaken in the field of authentication and identification as described under the project 'e-Justice portal'.
(2) Whilst ensuring the autonomous nature of the European e-Justice.

COMMISSION

Euro exchange rates [1]

30 March 2009

(2009/C 75/02)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,3193	AUD	Australian dollar	1,9386
JPY	Japanese yen	127,93	CAD	Canadian dollar	1,6533
DKK	Danish krone	7,4488	HKD	Hong Kong dollar	10,2250
GBP	Pound sterling	0,92910	NZD	New Zealand dollar	2,3448
SEK	Swedish krona	10,9662	SGD	Singapore dollar	2,0055
CHF	Swiss franc	1,5159	KRW	South Korean won	1 848,04
ISK	Iceland króna		ZAR	South African rand	12,8433
NOK	Norwegian krone	8,9510	CNY	Chinese yuan renminbi	9,0893
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,4850
CZK	Czech koruna	27,469	IDR	Indonesian rupiah	15 244,51
EEK	Estonian kroon	15,6466	MYR	Malaysian ringgit	4,8560
HUF	Hungarian forint	308,65	PHP	Philippine peso	63,980
LTL	Lithuanian litas	3,4528	RUB	Russian rouble	44,8913
LVL	Latvian lats	0,7096	THB	Thai baht	47,257
PLN	Polish zloty	4,7260	BRL	Brazilian real	3,0608
RON	Romanian leu	4,2238	MXN	Mexican peso	19,1611
TRY	Turkish lira	2,2352	INR	Indian rupee	67,9640

[1] *Source:* reference exchange rate published by the ECB.

ADMINISTRATIVE COMMISSION OF THE EUROPEAN COMMUNITIES ON SOCIAL SECURITY FOR MIGRANT WORKERS

Rates for conversion of currencies pursuant to Council Regulation (EEC) No 574/72

(2009/C 75/03)

Article 107(1), (2) and (4) of Regulation (EEC) No 574/72

Reference period: January 2009

Application period: April, May and June 2009

01-2009	EUR	BGN	CZK	DKK	EEK	LVL	LTL	HUF	PLN
1 EUR =	1	1,95580	27,1693	7,45194	15,6466	0,704329	3,45280	279,859	4,23002
1 BGN =	0,511300	1	13,8917	3,81017	8,00010	0,360123	1,76542	143,092	2,16281
1 CZK =	0,0368062	0,0719856	1	0,274278	0,575892	0,0259237	0,127084	10,3005	0,155691
1 DKK =	0,134193	0,262455	3,64594	1	2,09967	0,0945162	0,463343	37,5551	0,567640
1 EEK =	0,0639116	0,124998	1,73644	0,476266	1	0,0450148	0,220674	17,8862	0,270347
1 LVL =	1,41979	2,77683	38,5748	10,5802	22,2149	1	4,90226	397,341	6,00575
1 LTL =	0,289620	0,566439	7,86878	2,15823	4,53157	0,203988	1	81,0526	1,22510
1 HUF =	0,00357323	0,00698853	0,0970824	0,0266275	0,0559090	0,00251673	0,0123377	1	0,0151148
1 PLN =	0,236406	0,462362	6,42298	1,76168	3,69894	0,166507	0,816261	66,1601	1
1 RON =	0,236107	0,461778	6,41487	1,75946	3,69427	0,166297	0,815230	66,0766	0,998737
1 SEK =	0,093228	0,182335	2,53294	0,694729	1,45870	0,0656631	0,321897	26,0906	0,394356
1 GBP =	1,08910	2,13005	29,5900	8,11587	17,0406	0,767081	3,76043	304,793	4,60690
1 NOK =	0,108502	0,212209	2,94793	0,808552	1,69769	0,0764212	0,374636	30,3653	0,458966
1 ISK =	**0,00609146**	**0,0119137**	**0,165501**	**0,0453932**	**0,0953106**	**0,00429039**	**0,0210326**	**1,70475**	**0,0257670**
1 CHF =	0,669583	1,30957	18,1921	4,98969	10,4767	0,471606	2,31194	187,389	2,83235

01-2009	RON	SEK	GBP	NOK	ISK	CHF
1 EUR =	4,23537	10,7264	0,918193	9,21640	—	1,49347
1 BGN =	2,16554	5,48441	0,469472	4,71235	—	0,763609
1 CZK =	0,155888	0,394798	0,0337952	0,339221	—	0,0549688
1 DKK =	0,568358	1,43941	0,123215	1,23678	—	0,200413
1 EEK =	0,270689	0,685542	0,0586832	0,589036	—	0,0954499
1 LVL =	6,01334	15,2293	1,30364	13,0854	—	2,12041
1 LTL =	1,22665	3,10658	0,265927	2,66926	—	0,432538
1 HUF =	0,0151340	0,038328	0,00328092	0,0329324	—	0,00533651
1 PLN =	1,00126	2,53578	0,217066	2,17881	—	0,353064
1 RON =	1	2,53258	0,216792	2,17606	—	0,352618
1 SEK =	0,394854	1	0,0856012	0,859226	—	0,139233
1 GBP =	4,61272	11,6821	1	10,0375	—	1,62653
1 NOK =	0,459547	1,16384	0,0996259	1	—	0,162044
1 ISK =	**0,0257996**	**0,0653394**	**0,00559313**	**0,0561414**	**1**	**0,00909739**
1 CHF =	2,83593	7,18222	0,614806	6,17115	—	1

1. Regulation (EEC) No 574/72 determines that the rate for the conversion into a currency of amounts denominated in another currency shall be the rate calculated by the Commission and based on the monthly average, during the reference period specified in paragraph 2, of reference rates of exchange of currencies published by the European Central Bank.

2. The reference period shall be:

   — the month of January for rates of conversion applicable from 1 April following,

   — the month of April for rates of conversion applicable from 1 July following,

   — the month of July for rates of conversion applicable from 1 October following,

   — the month of October for rates of conversion applicable from 1 January following.

   The rates for the conversion of currencies shall be published in the second *Official Journal of the European Union* ('C' series) of the months of February, May, August and November.

Opinion of the Advisory Committee on mergers given at its meeting of 5 December 2008 regarding a draft decision relating to Case COMP/M.5046 — Friesland Foods/Campina

Rapporteur: Sweden

(2009/C 75/04)

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of the Council Regulation (EC) No 139/2004.

2. The Advisory Committee agrees with the Commission that the notified operation has a community dimension within the meaning of Regulation (EC) No 139/2004.

3. The Advisory Committee agrees with the Commission that, for the purpose of assessing the present operation, the definitions of the relevant product markets are:

   (a) procurement of raw milk separated into procurement of conventional raw milk and procurement of organic raw milk;

   (b) fresh basic dairy products separated into fresh milk, fresh buttermilk and plain yoghurt;

   (c) long-life basic dairy products;

   (d) organic fresh basic dairy products;

   (e) Dutch type cheese to specialized cheese wholesalers and to modern types of retail, respectively;

   (f) dairy bulk butter separated into basic butter, fractionated butter oil and non-fractionated butter oil and dairy packet butter separated into sales to the Out of Home (OOH) and the retail segments;

   (g) value-added yoghurts and quarks sold to the OOH segment;

   (h) branded non-health fresh flavoured dairy drinks, separated into sales to the OOH and the retail segments;

   (i) long-life flavoured dairy drinks separated into long-life chocolate-flavoured dairy drinks and long-life fruit-flavoured dairy drinks;

   (j) fresh custard and porridge separated into sales to the OOH and the retail segments;

   (k) dairy liquid cream separated into sales to the Out of Home, industrial and the retail segments;

   (l) spray cream separated into dairy and non-dairy spray cream and into sales to the OOH and the retail segments;

   (m) coffee milk separated into sales to the OOH and the retail segments and coffee cream separated into sales to the OOH and the retail segments;

   (n) spray dried emulsions separated into creamers, foamers and toppings;

   (o) food grade lactose;

   (p) pharma grade lactose separated into pharmaceutical lactose and Dry Powder Inhalation (DPI) lactose.

4. The Advisory Committee agrees with the Commission that, for the purpose of assessing the present operation, the definitions of the relevant geographic markets are:

   (a) national (the Netherlands) for all markets in procurement of raw milk;

   (b) national (the Netherlands) for all markets of fresh basic dairy products;

   (c) wider than national (including Belgium, Germany and the Netherlands) for long-life basic dairy products;

   (d) national (the Netherlands) for organic fresh basic dairy products;

(e) national (the Netherlands) for all markets of Dutch type cheese (except rindless cheese);

(f) EEA-wide for all markets of bulk butter and wider than national (including at least Belgium, Germany and the Netherlands) for all markets of packet butter;

(g) national (the Netherlands) for value-added yoghurts and quarks sold to the OOH segment;

(h) national (the Netherlands) for all markets of branded non-health fresh flavoured dairy drinks;

(i) national (the Netherlands and Belgium) or alternatively wider than national (including Belgium, Germany and the Netherlands) for all markets of long life flavoured dairy drinks;

(j) national (the Netherlands) for all markets of fresh custard and porridge;

(k) wider than national (including at least Belgium, Germany and the Netherlands) for all markets of liquid cream;

(l) wider than national (including at least Belgium, Germany and the Netherlands) for all markets of spray cream;

(m) wider than national (including Belgium, Germany and the Netherlands) for all markets of coffee milk and coffee cream;

(n) EEA-wide for all markets of spray dried emulsions;

(o) EEA-wide or worldwide for food grade lactose;

(p) EEA-wide or worldwide for all markets of Pharma grade lactose.

5. The Advisory Committee agrees with the Commission that the proposed concentration is likely to result in a significant impediment to effective competition in the common market or in a substantial part of it on the following markets:

(a) procurement of conventional raw milk in the Netherlands;

(b) all markets of fresh basic dairy products in the Netherlands;

(c) all markets of Dutch type cheese in the Netherlands;

(d) value added yoghurts and quarks sold to the OOH segment in the Netherlands;

(e) all markets of branded non-health fresh flavoured dairy drinks in the Netherlands;

(f) all markets of long-life dairy drinks in the Netherlands and Belgium or alternatively in a wider region including Belgium, Germany and the Netherlands;

(g) all markets of fresh custard and porridge in the Netherlands.

6. The Advisory Committee agrees with the Commission that the proposed concentration is not likely to result in a significant impediment to effective competition in the common market or in a substantial part of it on the following markets:

(a) procurement of organic raw milk in the Netherlands;

(b) long-life basic dairy products;

(c) organic fresh basic dairy products;

(d) rindless cheese;

(e) all markets of bulk butter and packet butter;

(f) all markets of liquid cream;

(g) all markets of spray cream;

(h) all markets of coffee milk and coffee cream;

(i) all markets of spray-dried emulsions;

(j) all markets of food grade lactose;

(k) all markets of Pharma grade lactose (including DPI).

7. The Advisory Committee agrees with the Commission that the commitments are sufficient to remove the significant impediments to competition in the following markets:

(a) procurement of conventional raw milk in the Netherlands;

(b) all markets of fresh basic dairy products in the Netherlands;

(c) all markets of Dutch type cheese in the Netherlands;

(d) value added yoghurts and quarks sold to the OOH segment in the Netherlands;

(e) all markets of branded non-health fresh flavoured dairy drinks in the Netherlands;

(f) all markets of long-life dairy drinks in the Netherlands and Belgium or alternatively in a wider region including Belgium, Germany and the Netherlands;

(g) all markets of fresh custard and porridge in the Netherlands.

8. The Advisory Committee agrees with the Commission that, subject to full compliance with the commitments offered by the parties, and considered all commitments together, the proposed concentration does not significantly impede effective competition in the common market or in a substantial part of it.

9. The Advisory Committee agrees with the Commission's view that the notified concentration should be declared compatible with the Common Market and the EEA Agreement in accordance with Articles 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.

10. The Advisory Committee recommends the publication of its Opinion in the *Official Journal of the European Union*.

Final Report [1] in Case COMP/M.5046 — Friesland/Campina

(2009/C 75/05)

INTRODUCTION

On 12 June 2008, the Commission received a notification of a proposed concentration [2] whereby the cooperatives Zuivelcoöperatie Campina U.A. and Zuivelcoöperatie Friesland Foods U.A. (the 'Parties') merge by way of full legal merger.

The Commission initiated proceedings on 17 July 2008 on the basis that the concentration raised serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement [3].

PROCEDURE

Extension of deadline

The Commission extended the procedure by five working days in Phase II, following agreement with the Parties [4].

Statement of Objections and reply

The Commission issued a Statement of Objections ('SO') on 3 October 2008. In the SO it came to the preliminary conclusion that the transaction would raise serious competition concerns on the following 14 product markets: sales of fresh milk, fresh buttermilk and plain yoghurt; sales of branded non-health fresh dairy drinks separated according to distribution channel into retail and Out of Home ('OOH'); sales of value-added yoghurts and quark in the OOH segment; sales of fresh custard and porridge (together 'fresh dairy'); sales of long-life dairy drinks; sales of Dutch-type cheese to specialized wholesalers and to modern types of retail; procurement of conventional raw milk (insofar as this is linked to competition concerns on downstream markets); and sales of pharmaceutical and DPI lactose.

The Parties replied to the SO on 17 October 2008.

Access to file

Access to file was granted to the Parties on 6 October 2008.

Subsequently, they obtained on several occasions access to documents that had been added to the file after the notification of the SO.

Involvement of third parties

The following third parties were admitted to the procedure after having submitted reasoned requests to me: Superunie C.I.V. B.A., Albert Heijn B.V., Arla Foods AmbA and CBC Co., Ltd.

Oral Hearing

An Oral Hearing was held on 21 October 2008. It was attended by the Parties, two out of the four admitted third parties (Albert Heijn B.V. and Arla Foods AmbA) and 11 Member States. The comments of the Parties led the Commission to carry out further investigations.

Commitments

Already before the Hearing, the Parties submitted draft remedies covering fresh dairy products. In a state of play meeting with the Parties after the Hearing the Commission informed them that the draft remedies would not address all objections identified in the SO. In order to enable the Parties to submit a viable remedy proposal, the Commission extended the procedure by one working day, following agreement by the Parties [4].

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[1] Pursuant to Articles 15 and 16 of Commission Decision 2001/462/EC, ECSC of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings (OJ L 162, 19.6.2001, p. 21).
[2] Pursuant to Article 4 of Council Regulation (EC) No 139/2004 ('EC Merger Regulation').
[3] Cf. Article 6(1)(c) of Regulation (EC) No 139/2004.
[4] In accordance with Article 10(3) second subparagraph of the EC Merger Regulation.

A first set of binding commitments was offered by the Parties thereafter which was later complemented. The remedy package mainly consists of the divestiture of fresh dairy, cheese, long-life dairy activities and access to raw milk. The ensuing market test showed that significant improvements were needed. As a consequence the Parties submitted a revised commitments package.

The second market test showed that improvements were still needed in regard of procurement of raw milk to ensure competition in the downstream markets for fresh dairy products and cheese.

On 27 November 2008 the parties submitted a final commitments package.

Regarding the commitments, the Parties informed me about their concern that the Commission had violated their rights of defence. Allegedly the Commission required them to offer a remedy on the market for the procurement of raw milk which in their view did not find a basis in the SO.

In this regard I note that the Commission neither in the draft Decision nor previously in the SO concludes that the strong market position of the merged entity in the market for the procurement of raw milk would in itself result in a significant impediment of effective competition. Rather, competition concerns flow from the increased market power of the Parties on downstream markets. The commitments proposed by the Parties with respect to the procurement of raw milk serve to ensure, together with the commitments regarding fresh dairy products and cheese, that effective competition on these downstream markets is restored by allowing purchasers of the divestment business and competitors on downstream markets to secure adequate supplies of raw milk on a lasting basis. Accordingly, once the concerns on the downstream markets are remedied, the concern on the market for the procurement of raw milk is automatically also remedied.

I understand that, subsequently, during a state of play meeting the Commission services addressed potential misunderstandings of previous communications and confirmed to the Parties that the concern in the market for the procurement of raw milk relates to barriers of entry and/or expansion on the downstream markets and therefore the commitments concerning access to raw milk are needed in order to address competition concerns on the downstream markets.

The Parties did not further pursue this matter with me.

THE DRAFT DECISION

In the draft Decision, the Commission has come to the conclusion that the commitments as submitted on 27 November 2008 ensure that the proposed merger would not significantly impede effective competition in the markets for sales of fresh milk, fresh buttermilk and plain yoghurt; sales of branded non-health fresh dairy drinks separated according to distribution channel in retail and OOH; sales of value-added yoghurts and quark in the OOH segment; sales of fresh custard and porridge (together with all aforementioned markets 'fresh dairy'); sales of long-life dairy drinks; sales of Dutch-type cheese to specialized wholesalers and to modern types of retail; and therefore also for procurement of raw milk.

Contrary to its preliminary assessment, the Commission has determined that the concentration will not lead to a significant impediment of effective competition as regards pharmaceutical lactose and DPI lactose. It has come to the overall conclusion that the proposed concentration is to be declared compatible with the common market and the functioning of the EEA Agreement conditional on full compliance with the commitments set out in the annex to the decision.

Apart from the above mentioned submission of the Parties no queries or submissions have been made to me by them or any third party. In view thereof and taking into account the observations mentioned above I consider that this case does not call for any particular comments with regard to the right to be heard.

Brussels, 12 December 2008.

Michael ALBERS

SUMMARY OF COMMISSION DECISION

of 17 December 2008

declaring a concentration compatible with the common market and the functioning of the EEA Agreement

(Case COMP/M.5046 — Friesland Foods/Campina)

(notified under document number C(2008) 8459)

(Only the English version is authentic)

(Text with EEA relevance)

(2009/C 75/06)

On 17 December 2008 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, and in particular Article 8(2) of that Regulation. A non-confidential version of the full Decision can be found in the authentic language of the case and in the working languages of the Commission on the website of the Directorate-General for Competition, at the following address:

http://ec.europa.eu/comm/competition/index_en.html

I. THE PARTIES

(1) Friesland Foods counts 9 417 members (2007) and sells dairy products for consumers in Europe, the Middle East, Asia and Africa and ingredients for professional and industrial customers worldwide.

(2) Campina is a dairy cooperative with 6 885 farmers as members (2007), with activities in fresh dairy products, cheese, butter, fresh and long life flavoured drinks, and emulsions in various countries in Europe, North and South America and Asia.

II. THE OPERATION

(3) On 12 June 2008, the Commission received a formal notification pursuant to Article 4 of the Merger Regulation by which the cooperatives Zuivelcoöperatie Campina U.A. (hereinafter 'Campina') and Zuivelcoöperatie Friesland Foods U.A. (hereinafter 'Friesland Foods') merge by way of full legal merger. Campina and Friesland Foods are hereinafter collectively referred to as the 'notifying parties'.

III. SUMMARY

(4) After examination of the notification, the Commission adopted on 17 July 2008 a decision where it concluded that the operation falls within the scope of the EC Merger Regulation and raises serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement and initiated proceedings pursuant to Article 6(1)(c) of the EC Merger Regulation.

(5) On 3 October 2008, a Statement of Objections was sent to the notifying parties pursuant to Article 18 of the EC Merger Regulation. Friesland Foods and Campina replied to the Statement of Objections on 17 October 2008. On 21 October 2008, at the request of the notifying parties, an Oral Hearing took place.

(6) On 28 October 2008, the notifying parties offered commitments with a view to rendering the proposed concentration compatible with the common market. These commitments were modified and the final version of the commitments was submitted to the Commission on 27 November 2008.

IV. EXPLANATORY MEMORANDUM

(7) The dairy sector comprises a series of interrelated product markets, reflecting the wide variety of milk-based end products. The typical business model for dairy companies, notably dairy co-operatives, is to valorise the raw milk collected from farmers into a wide variety of dairy products. The common raw material, raw milk, means that prices of dairy products follow similar trends.

(8) Raw milk consists of several nutritional components: fat, proteins, lactose (= milk sugar) and minerals. For some dairy products only the non-fat components (notably proteins and lactose) are used. Other products, notably butter and cream, are based on the fat from the milk. Many key products such as cheese and milk contain a mix of fat and non-fat components. Some products — in particular cream, buttermilk and whey — are in essence by-products resulting from the production of the primary dairy products such as drinking milk and cheese.

A. **THE RELEVANT MARKETS**

1. **Procurement of raw milk**

(9) With respect to the relevant *product market*, the market investigation confirmed that on the demand side organic raw milk and conventional raw milk are not substitutable for milk processors. On the supply side, organic dairy farmers do not have incentives to switch to produce conventional raw milk, in view of the price premium they obtain and the investments they have made to produce organic raw milk. Switching to organic raw milk is possible for a conventional dairy farmer but it requires significant investments in grasslands (more extensive use) and on average a 2-year transition period. Therefore, it has been concluded that procurement of conventional and procurement of organic raw milk constitute separate product markets.

(10) In relation to the relevant *geographic market* (for both conventional and organic milk), It has been found that the parties' activities overlap only in the Netherlands. The volumes transported annually by Campina from Germany and Belgium to the Netherlands are negligible in comparison with the total volume of raw milk purchased by the notifying parties in the Netherlands (more than 8 000 million kg per year). It has therefore been considered that the merger has no significant impact on the procurement market outside the territory of the Netherlands and the assessment has been focused on the Netherlands.

2. **Basic dairy products**

(11) In relation to the relevant *product market*, it has been concluded that a distinction between fresh and long-life basic dairy is necessary. Within each category, a further distinction between organic and non-organic products can be made.

(12) Within non-organic and organic fresh basic dairy products, because of a lack of substitution by customers and the lack of supply-side substitutability, fresh milk, fresh buttermilk, plain yoghurt and custard are separate relevant product markets. Custard will be discussed in the fresh dairy desserts section, In fresh milk, fresh buttermilk, plain yoghurt, private label and branded products belong to the same product market upstream. A possible distinction, with regard to the distribution channel, into retail/OOH (Out of Home), is left open for non-organic fresh basic dairy, while in organic fresh basic dairy OOH and retail belong to the same market.

(13) In relation to the relevant *geographic market*, it has been concluded that such market is national for the upstream market of (organic and non-organic) fresh milk, fresh buttermilk and plain yoghurt.

(14) Since in long-life basic dairy products the only overlap arises in long-life milk and neither demand nor supply-side substitutability prevail, the relevant product market is long-life milk with no distinction between private label and branded products. A possible distinction with regard to the distribution channel into retail/OOH is left open. The relevant geographic market is wider than national and includes Belgium, Germany and the Netherlands.

3. **Dutch type cheese**

(15) In relation to the relevant *product market*, separate product markets for the sale of Dutch type cheese to specialised cheese wholesalers and to modern types of retail (supermarkets, hypermarkets, discounters) should be delineated. Any further distinction of the sale of Dutch type cheese to specialised cheese wholesalers (Gouda/Maasdam/Edam, nature/rindless, 15 day old nature cheese/other nature cheese) and of the sale of Dutch type cheese to modern types of retail (Gouda/Maasdam/Edam, nature/rindless) is left open as it would not have a material impact on the competitive assessment.

(16) With respect to the relevant *geographic market*, the markets for the sale of Dutch type cheese to specialised cheese wholesalers and modern types of retail (including all narrower segmentations except for rindless) are national in scope while the markets for the sale of rindless Dutch type cheese (including all narrower segmentations) to specialised cheese wholesalers and modern types of retail are wider than national and include at least the Netherlands and Germany.

4. **Butter**

(17) It has been found that the relevant *product market* for butter should, in the first place, be divided into separate markets for bulk butter and packet butter. Dairy bulk butter belongs to a separate market than bulk vegetable fats. In addition, it can be divided in basic butter (82 % fat content), non-fractionated butter oil (or, simply, butter oil, with a 99,8 % fat content) and fractionated butter oil (or, simply, fractionated butter, sorted according to its melting point). With respect to packet butter, dairy butter and vegetable fats belong to separate markets and the market for dairy packet butter must be further separated into packet butter sold to retailers and packet butter sold to OOH customers. It has been left open whether branded and private label packet butter belong to the same market, as the distinction would not have an impact on the competitive assessment.

(18) As to the relevant *geographic market*, the markets for bulk butter, fractionated butter oil and non-fractionated butter oil are EEA-wide. The relevant geographic market for packet butter includes at least the Netherlands, Belgium and Germany. The question whether the relevant geographic market for packet butter is EEA-wide can be left open as this conclusion is not such to have a determinant effect on the competitive assessment.

5. **Value added yoghurts and quarks**

(19) With respect to the relevant *product market*, there are separate markets for value added yoghurt and quark according to the distribution channel. A separation into value added yoghurt on the one hand and quark on the other, a separation into health/indulgence as well as into private label and branded products can be left open as it would not affect the competitive assessment. As Friesland Foods is not active in the health segment, health value added yoghurt and quark have not been further discussed.

(20) With respect to the relevant *geographic market*, such market is national for the upstream market of value added yoghurt and quark to OOH wholesalers and wider than national for the upstream market of value added yoghurt and quark to retailers.

6. **Flavoured dairy drinks**

(21) In this market a preliminary distinction was drawn between fresh flavoured dairy drinks and long-life flavoured dairy drinks.

(22) With respect to the relevant *product market*, there are separate relevant product markets for health related fresh flavoured dairy drinks and non-health related fresh flavoured dairy drinks, which can be further separated into the supply of branded and private label products and according to the distribution channel (retail/OOH). As the proposed merger would not lead to an impediment of effective competition in the market for health related fresh flavoured dairy drinks and the private label market would not be affected, the competitive assessment focuses on the branded non-health related market for fresh flavoured dairy drinks.

(23) With respect to long-life flavoured dairy drinks, chocolate-flavoured dairy drinks and fruit-flavoured dairy drinks were found to belong to distinct product markets. There is no need to conclude whether sourcing of branded and private label long-life dairy drinks belong to different product markets. A distinction according to the distribution channel between retail and OOH can also be left open.

(24) With respect to the relevant *geographic market*, such market is national for the upstream market of non-health related fresh flavoured dairy drinks. For long-life flavoured dairy drinks, it was found that on a market including private label and branded products, the geographic scope is wider than national and includes the Netherlands, Belgium and Germany. If the product market at upstream level is limited to branded products, given that brands differ to a large extent between countries, these markets have a national scope.

7. **Fresh dairy desserts**

(25) With respect to the relevant *product market*, separate relevant product markets exist for fresh custard, porridge and portion pack desserts. For custard a separation into private label/branded products is not necessary. Whether the market has to be further separated according to the distribution channel can be left open as it would not affect the competitive assessment;

(26) In relation to the relevant *geographic market*, such market is national for the markets of custard and porridge.

8. **Cream**

(27) It was found that the relevant *product market* for cream should, in the first place, be divided into separate markets for liquid cream and spray cream. In relation to liquid cream, a distinction exists between dairy and non-dairy liquid cream and, within each segment, between liquid cream sold through the retail, the OOH and the industrial sales channel. The market for dairy liquid cream includes both low fat and high fat liquid cream. Within the market for dairy liquid cream, the distinction between fresh cream and long-life cream has been left open, as it would not have an impact on the competitive assessment. Similarly, the question as to the difference between branded and private label liquid cream has been left open as it would not have an impact on the final conclusion on the effects of the transaction. Finally, as the parties' activities do not overlap in the market for non-dairy liquid cream, the assessment focused on dairy liquid cream.

(28) With respect to spray cream, two relevant product markets exist: dairy spray cream sold to retail and dairy spray cream sold to OOH customers. The retail spray market includes both branded and private label products, while the questions as to the distinction between branded and private labels can be left open for the OOH market, as it would not have an impact on the competitive assessment.

(29) The relevant *geographic market* for dairy liquid cream sold to OOH, to retail and to industrial customers and for spray cream sold to retail and OOH customers exceed the national boundaries and include at least the Netherlands, Belgium and Germany.

9. **Liquid coffee whiteners**

(30) With respect to the relevant *product market*, there are separate relevant product markets for coffee milk and coffee cream. No separation into private label/branded products is necessary for these products. A distinction with regard to the distribution channel into retail/OOH should also be made.

(31) With respect to the relevant *geographic market*, the relevant geographic markets for coffee milk and coffee cream are wider than national and include the Netherlands, Belgium and Germany.

10. **Spray-dried emulsions (SDEs)**

(32) With respect to the relevant *product market*, liquid emulsions and SDEs are separate product markets. In addition, different categories of SDEs, such as creamers, foamers and toppings belong to separate product markets. As Campina is not active in fat concentrates and encapsulated nutritional oils and Friesland Foods is not present in the batter stabilisers segment, the precise product market definition for these three products is not addressed.

(33) With respect to the relevant *geographic market*, the markets for creamers, foamers, toppings and batter stabilisers are EEA-wide in scope.

11. **Lactose**

(34) With respect to the relevant *product market*, food grade lactose and pharmaceutical grade lactose form two distinct relevant product markets. In relation to pharmaceutical lactose, excipients such as starch, Mannitol, MCC are not effective sources of alternative supply for the customers and can hence not be a competitive constraint. Furthermore, as the transaction would not lead to competition concerns on the market for pharmaceutical lactose nor on the narrower possible markets for direct compression pharmaceutical grade lactose and wet granulation pharmaceutical lactose, should these be defined, the distinction is left open. Ultimately, a separate relevant product market should be defined for DPI lactose. Within DPI lactose a separate relevant market should be defined for sophisticated DPI lactose and less sophisticated DPI lactose.

(35) With respect to the relevant *geographic market*, in food grade lactose, it is not necessary to conclude since no competition concerns arise irrespective of relevant geographic market definition. In pharmaceutical and DPI lactose, the geographic market definition was left open. Indeed, on the worldwide market both for pharmaceutical grade lactose and DPI pharmaceutical lactose, the position of the combined entity would be virtually the same as on an EEA-wide market. The transaction would not significantly impede effective competition on the worldwide markets and EEA-wide markets for pharmaceutical and DPI lactose, irrespectively of the exact definition of the geographic scope of the markets.

B. **COMPETITIVE ASSESSMENT**

1. **Introduction**

(36) A thorough investigation as to the structure and the functioning of the dairy markets concerned by the proposed merger was carried out. As a result of such investigation, it was found that the merger is not likely to determine a significant impediment of effective competition in the markets for long-life milk, organic fresh basic dairy products, bulk and packet butter, liquid and spray cream, liquid coffee whiteners, SDEs, food grade lactose, pharmaceutical and DPI lactose.

(37) The proposed merger would lead to a significant impediment of effective competition in the markets for procurement of raw milk, fresh basic dairy products, cheese, value added yoghurt and quark, fresh flavoured dairy drinks, long-life dairy drinks ('LLDDs') and fresh custard and porridge.

2. **Procurement of raw milk**

(38) With respect to the procurement of raw milk, the merger would bring together the two main purchasers of raw milk in the Netherlands which would control roughly [70-80 %] of the market.

(39) The competitive concern is not that the merged entity would be able to exert market power in the upstream market and lower prices of milk paid to farmers. Rather, the market power that the new operator would have on downstream markets would enable it to raise additional profits and therefore pay higher prices to farmers. Consequently, the merged entity would be in a position to attract more farmers and maintain and/or strengthen its farmers' base. This situation would increase barriers to entry and/or to expansion on the primary downstream dairy markets where Dutch raw milk is needed to compete effectively.

3. **Fresh dairy products**

(40) The notion of fresh dairy products includes fresh basic dairies (fresh milk, fresh buttermilk and plain yoghurt), value added yoghurt and quark, fresh flavoured dairy drinks, fresh custard and porridge.

(41) The proposed transaction would significantly impede effective competition as a result of the creation of a dominant position on the market for fresh milk, fresh buttermilk, plain yoghurt in the Netherlands, a substantial part of the Common Market regardless of whether this market should be further segmented according to the distribution channel. The conclusion was based, inter alia, on the parties' high combined market share, on the fact that they were regarded as the closest competitors, on the difficulty for customers to switch to alternative suppliers and on the difficulty for customers to expand production in case of a price increase.

(42) For the same reasons set out above, the notified concentration would significantly impede effective competition as a result of the creation of a dominant position on the market for value added yoghurt and quark in the Netherlands supplied to the OOH segment and on the market for branded non-health fresh flavoured dairy drinks in the Netherlands, separated according to the distribution channel in retail and OOH.

(43) In the markets for fresh desserts, the notified concentration would be likely to significantly impede effective competition on (i) the market for fresh custard in the Netherlands; and (ii) the market for porridge in the Netherlands, which are a substantial part of the common market, regardless of whether these markets need to be further segmented according to the distribution channel. Also in this case, the conclusion was based, inter alia, on the parties' market position, on the fact that they were regarded as the closest competitors and it was thus difficult for customers to switch to alternative suppliers.

4. **Dutch type cheese**

(44) The concentration would lead to a significant impediment of effective competition on the markets for the sale of Dutch type cheese to specialised cheese wholesalers (including narrower segmentations into nature, Gouda and 15 day old cheese) and to modern types of retail (including narrower segmentations into nature and Gouda cheese) in the Netherlands. Each of these markets constitutes a substantial part of the Common Market.

(45) As regards sales to specialised cheese wholesalers, this assessment is based, inter alia, on the high market shares of the parties ([40-70 %] %), the closeness of competition between the parties, the limited abilities of specialised cheese wholesalers to switch to alternative domestic or foreign suppliers, the limited prospects for entry and expansion in the near future and the fact that all countervailing factors put forward by the parties (e.g. decreased demand and increase of re-imports/sales of cheese originally destined for exports in case of price increases, alleged dependence on wholesalers' storage and maturing capacity) are insufficient to prevent the merging parties from increasing prices.

(46) As regards sales to modern types of retail, this assessment is based, inter alia, on the high market shares of the parties ([60-70 %]), the closeness of competition between the parties, the limited degree of competition between the parties and specialised cheese wholesalers, the limited possibilities of modern types of retail to switch to alternative domestic or foreign suppliers, the limited prospects for entry and expansion in the near future and the fact that all countervailing factors put forward by the parties (e.g. buyer power, increase of re-imports/sales of cheese originally destined for exports and increased use of rindless cheese in case of price increases) are insufficient to prevent the merging parties from increasing prices.

(47) No competition concerns were identified on the markets for the sale of Maasdam and rindless Dutch type cheese (including narrower subsegmentations) to specialised cheese wholesalers and modern types of retailers in the Netherlands.

5. **LLDDs**

(48) With respect to the market for LLDDs, that the notified concentration is likely to significantly impede effective competition on the market for branded long-life chocolate-flavoured dairy drinks in the Netherlands, the market for branded long-life fruit-flavoured dairy drinks in the Netherlands, the market for branded long-life chocolate-flavoured dairy drinks in Belgium, the market for branded long-life fruit-flavoured dairy drinks in Belgium, the market for branded and private label long-life chocolate-flavoured dairy drinks in the Netherlands, Belgium and Germany and the market for branded and private label long-life fruit-flavoured dairy drinks in the Netherlands, Belgium and Germany, regardless of whether these markets need to be further segmented according to the distribution channel.

(49) This conclusion rests upon the finding that, inter alia, merging firms have large market shares, are regarded as closest competitors and own strong brands. In addition, the market investigation indicated that customers are unlikely to switch and new entry to the market is unlikely to occur.

6. **Commitments offered by the notifying parties**

(50) In order to remove the identified competition concerns arising from the transaction, Campina and Friesland Foods have proposed commitments under Article 8(2) of the EC Merger Regulation. The first set of commitments was submitted on 28 October 2008, complemented on 5 November 2008 with a view of obtaining a clearance of the operation from the Commission. The remedy package consists of divestment businesses in fresh dairy, cheese, long-life dairy drinks and access to raw milk.

(51) Subsequently the Commission market tested the commitments. The results of the first market test showed that significant improvements were needed. As a consequence, the parties submitted on 19 November a revised commitments package, which appropriately addressed the weaknesses identified in the first remedy package concerning the fresh dairy divestment business, the cheese divestment business and the long-life dairy drinks package as such. However, the Commission still had concerns that the lack of access to raw milk would create a significant impediment of effective competition on the downstream markets for fresh basic dairy products and Dutch type cheese in the Netherlands in general and resulting in a lack of viability for the downstream divestment businesses in particular. The market testing of the second package confirmed that improvements were needed in this respect.

(52) Subsequently, on 27 November 2008 the parties submitted a final commitments package.

(53) Against the above background, the final commitment package includes:

(54) The entire fresh dairy business of Friesland Foods in the Netherlands covering the products fresh milk, fresh buttermilk, plain yoghurt, value added yoghurts and quark, fresh custard, porridge, fresh flavoured dairy drinks, fresh cream and organic fresh basic dairy products (hereinafter, the 'Fresh Divestment Business').

(55) An exclusive, renewable 5 year license to use the Friesche Vlag brand name in the Netherlands for the current FF Fresh product portfolio, followed by a perpetual black out period.

(56) The ownership of Campina's Melkunie brand and the ownership of all Friesche Vlag sub-brand names and all brands that are specific to the products of FF Fresh (with the exception of the Friesche Vlag brand itself) are included in the divestiture.

(57) The divestment of Campina's Bleskensgraaf production facility and the carve out of a sales team and other employees for R&D, planning and logistics and general support from the sales organisation of the merged entity (hereinafter referred to as the Cheese Divestment Business).

(58) For long-life dairy drinks, the divestiture of Campina's brand in the chocolate flavoured segment Choco Choco and the divestiture of the fruit-flavoured brand Yogho Yogho in the Netherlands.

(59) The divestment businesses includes, inter alia, all tangible and intangible assets (including intellectual property rights), which contribute to the current operation. Furthermore all licences, permits and authorisations issued by any governmental organisation are included as well as all contracts, leases, commitments and customer orders of the divestment businesses as well as all customers, credit and other records of the divestment businesses. The personnel is also included.

(60) Three elements aim at ensuring access to raw milk for downstream competitors, including the divestment businesses. First, there is a transitional supply agreement ensuring raw milk for both production facilities. Under this transitional supply agreement the Divestment Businesses can source raw milk from the merged entity at the 'guaranteed price' (which is the price that the merged entity guarantees to its farmers) minus 1 %.

(61) Secondly, following the period covered by the transitional supply agreement, a foundation (Dutch Milk Fund, DMF) will be set up to ensure access to raw milk to a maximum volume of 1,2 billion kg of raw milk per year. This will be based on a system of drawing rights for downstream competitors. The Fresh Divestment Business and the Cheese Divestment Businesses will have preferential drawing rights as set out in the improved commitments, i. e. up to the volume representing the total production capacity of those businesses. Likewise, the price for raw milk through this arrangement will be the 'guaranteed price' minus 1 % during the first five years.

(62) The third element aims at structural change. Exit barriers for farmers of the merged entity are reduced, in order to ensure (i) sourcing of raw milk independent of the merged entity and (ii) the ability for the downstream divestment businesses to set up a long-term structural solution for the sourcing of raw milk. It consists of an exit payment (Start Up Payment) of EUR 5/100 kg to be paid to any member exiting the merged entity until members representing a volume of 1,2 billion kg of raw milk have left FrieslandCampina.

V. **CONCLUSION**

(63) For the reasons mentioned above, the decision concludes that the proposed concentration will not significantly impede effective competition in the Common Market or in a substantial part of it.

(64) Consequently the concentration should be declared compatible with the Common Market and the functioning of the EEA Agreement, in accordance with Article 2(2) and Article 8(2) of the EC Merger Regulation and Article 57 of the EEA Agreement.

NOTICES FROM MEMBER STATES

Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 1857/2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001

(2009/C 75/07)

Aid No: XA 271/08

Member State: Federal Republic of Germany

Region: Freistaat Sachsen

Title of aid scheme or name of company receiving individual aid:

Gemeinsames Umsetzungsdokument zum Programm Ziel 3/Cíl 3 zur Förderung der grenzübergreifenden Zusammenarbeit 2007-2013 zwischen dem Freistaat Sachsen und der Tschechischen Republik im Rahmen des Ziels 'Europäische territoriale Zusammenarbeit'

Legal basis:

Beihilfen werden nach Maßgabe

— des gemeinsamen Programmdokuments (Operationelles Programm CCI-Code: 2007CB163PO017),

— des Gemeinsamen Umsetzungsdokumentes und

— der Verordnung (EG) Nr. 1857/2006 der Kommission vom 15. Dezember 2006 über die Anwendung der Artikel 87 und 88 EG-Vertrag auf staatliche Beihilfen an kleine und mittlere in der Erzeugung von landwirtschaftlichen Erzeugnissen tätige Unternehmen und zur Änderung der Verordnung (EG) Nr. 70/2001,

in der jeweils geltenden Fassung, gewährt.

Die Förderung wird darüber hinaus nach Maßgabe der §§ 23 und 44 der Haushaltsordnung für den Freistaat Sachsen (Sächsische Haushaltsordnung — SäHO, SächsGVBl. 2001, S. 154) sowie der hierzu ergangenen Verwaltungsvorschriften des Sächsischen Staatsministeriums der Finanzen, in der jeweils geltenden Fassung, mit den im Umsetzungsdokument normierten abweichenden bzw. besonderen Regelungen gewährt

Annual expenditure planned under the scheme or overall amount of individual aid granted to the company: EUR 1 million *per annum*

Maximum aid intensity: 50 %

Date of implementation: After publication of the summary information by the Commission

Duration of scheme or individual aid award: 31.12.2013

Objective of aid: The specific objectives of the aid are the following:

— shaping and implementing cross-border economic and environmental activities in the Saxony-Czech assisted area by developing common strategies for sustainable territorial development,

— sustainably increasing in the competitiveness of the region within Europe,

— realising, in a targeted manner, the development potential of the assisted area through efficient cross-border cooperation.

The following provisions of Regulation (EC) No 1857/2006 will be applied for this:

— Article 5: Conservation of traditional landscapes and buildings, particularly for measures concerning the tourist infrastructure (No 2.2.2.1 of the implementation document) and concerning climate, forest, environmental and scenery consevation (No 2.3.1.1 of the implementation document) exclusively measures for implementing NATURA 2000,

— Article 15: Provision of technical support in the agricultural sector, particularly for measures to promote economic and scientific cooperation networks (No 2.2.1.1(a) to (c) of the implementation document) and to promote environmental awareness, environmental education and environmental management (No 2.3.1.3(b) and (c) of the implementation document).

The provisions of Articles 5 and 15 of Regulation (EC) No 1857/2006 also apply to the eligibility of expenditure for assistance

Economic sectors: Agriculture (growing of non-perennial crops, growing of perennial crops, running nurseries, livestock farming, mixed farming, providing agricultural services)

Name and address of the granting authority:

Sächsische Aufbaubank — Förderbank
Pirnaische Straße 9
01069 Dresden
DEUTSCHLAND

Website:

http://www.ziel3-cil3.eu/servlet/PB/show/1042655_l1/Umsetzungsdok_DE.pdf

Other information:

Sächsisches Staatsministerium für Wirtschaft und Arbeit
Referat 36, Verwaltungsbehörde des EU-Programms „Grenzübergreifende Zusammenarbeit"
Wilhelm Buck Straße 2
01097 Dresden
DEUTSCHLAND

Thomas TREPMANN
Referatsleiter
Sächsisches Staatsministerium für Umwelt und Landwirtschaft

Aid No: XA 373/08

Member State: Federal Republic of Germany

Region: All regions

Title of aid scheme or name of company receiving individual aid:

Grundsätze für eine nationale Rahmenrichtlinie zur Gewährung staatlicher Zuwendungen zur Bewältigung von durch widrige Witterungsverhältnisse verursachte Schäden in der Landwirtschaft

Legal basis:

Grundsätze für eine nationale Rahmenrichtlinie zur Gewährung staatlicher Zuwendungen zur Bewältigung von durch Naturkatastrophen oder widrige Witterungsverhältnisse verursachte Schäden in Landwirtschaft, Binnenfischerei und Aquakultur

Annual expenditure planned under the scheme or overall amount of individual aid granted to the company: EUR 10 million

Maximum aid intensity: 80 % or 90 % in less-favoured areas

Date of implementation: The aid will be granted from the time of internet publication of the summary information on the aid scheme at the earliest

Duration of scheme or individual aid award: Until 30 June 2014

Objective of aid: Article 11: Aid for losses in the agricultural sector due to adverse weather.

Aid for losses caused by (a) natural disasters in the agricultural sector or for losses in the (b) inland water fishing and aquaculture sector is subject to a special notification procedure:

(a) Provisional No 1630, N 568/2008 in SANI;

(b) Provisional No 1546 in SANI

Sector(s) concerned: All agricultural subsectors.

The recipients are companies which, regardless of their chosen legal character, are small and medium-sized enterprises within the meaning of Commission Recommendation 2003/361/EC, whose business activities include the primary production of agricultural products, including beekeeping and transhumance

Name and address of the granting authority:

Minister für Ernährung und Ländlichen Raum des Landes Baden-Württemberg
Postfach 10 34 44
70029 Stuttgart
DEUTSCHLAND

Bayerischen Staatsminister für Landwirtschaft und Forsten
Postfach 22 00 12
80535 München
DEUTSCHLAND

Senatsverwaltung für Gesundheit, Umwelt und Verbraucherschutz
Brückenstr. 6
10179 Berlin
DEUTSCHLAND

Minister für Ländliche Entwicklung, Umwelt und Verbraucherschutz des Landes Brandenburg
Postfach 60 11 50
14411 Potsdam
DEUTSCHLAND

Senator für Wirtschaft und Häfen der Freien Hansestadt Bremen
Postfach 10 15 29
28015 Bremen
DEUTSCHLAND

Senator für Wirtschaft und Arbeit der Freien und Hansestadt Hamburg
Postfach 11 21 09
20421 Hamburg
DEUTSCHLAND

Minister für Umwelt, ländlichen Raum und Verbraucherschutz des Landes Hessen
Postfach 31 09
65021 Wiesbaden
DEUTSCHLAND

Minister für Landwirtschaft, Umwelt und Verbraucherschutz des Landes Mecklenburg-Vorpommern
Postfach
19048 Schwerin
DEUTSCHLAND

Minister für Ernährung, Landwirtschaft, Verbraucherschutz und Landesentwicklung des Landes Niedersachsen
Postfach 2 43
30002 Hannover
DEUTSCHLAND

Minister für Umwelt und Naturschutz, Landwirtschaft und Verbraucherschutz des Landes Nordrhein-Westfalen
Postfach
40190 Düsseldorf
DEUTSCHLAND

Minister für Wirtschaft, Verkehr, Landwirtschaft und Weinbau des Landes Rheinland-Pfalz
Postfach 3269
55022 Mainz
DEUTSCHLAND

Minister für Umwelt des Saarlandes
Postfach 10 24 61
66024 Saarbrücken
DEUTSCHLAND

Sächsischen Staatsminister für Umwelt und Landwirtschaft
Postfach
01076 Dresden
DEUTSCHLAND

Ministerin für Landwirtschaft und Umwelt des Landes Sachsen-Anhalt
Postfach 37 62
39012 Magdeburg
DEUTSCHLAND

Minister für Landwirtschaft, Umwelt und ländliche Räume des Landes Schleswig-Holstein
Postfach 5009
24062 Kiel
DEUTSCHLAND

Minister für Landwirtschaft, Naturschutz und Umwelt des Freistaates Thüringen
Postfach 90 03 65
99106 Erfurt
DEUTSCHLAND

Website:

http://www.bmelv.de/SharedDocs/downloads/04-Landwirtschaft/Foerderung/Beihilfen/Beihilfe__Naturereignisse.html

Other information: State subsidies, which should reach those affected as soon as possible, support undertakings' crisis management. In the past there were delays in establishing compensation schemese and having them authorised by the European Commission. These principles for national subsidey schemes are submitted to ensure that aid can be provided promptly in the event of acute problems.

This procedure is in line with the Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013. These recommend that Member States set up aid schemes for use in the event of losses caused by exceptional natural events in time, i.e. before the occurrence of such an event, so that in acute cases, the Community authorisation procedures for State aid do not delay the provision of aid.

It should be noted that this is a prophylactic scheme, which covers an event that could occur in the future. The experiences from the floods of 2002 (Elbe and Danube) and 2005 (Danube and its tributaries, particularly in the Alpine area and foothills of the Alps in Bavaria) and the drought of 2003 have been taken into consideration in the estimation of the total annual amount provided for under the scheme

Commission communication pursuant to Article 17(5) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council on common rules for the operation of air services in the Community

Invitation to tender in respect of the operation of scheduled air services in accordance with public service obligations

(Text with EEA relevance)

(2009/C 75/08)

Member State	Italy
Concerned routes	Cuneo Levaldigi-Rome Fiumicino and *vice versa*
Period of validity of the contract	24 months (from 4 August 2009 to 3 August 2011
Deadline for submission of tenders	62 days after the date of publication of this notice
Address where the text of the invitation to tender and any relevant information and/or documentation related to the pubic tender and the public service obligation can be obtained	E.N.A.C. (Ente Nazionale per l'Aviazione Civile) Direzione centrale regolazione economica Direzione trasporto aereo Viale del Castro Pretorio 118 00185 Roma ITALIA www.enac-italia.it E-mail: osp@enac.rupa.it

Commission communication pursuant to Article 17(5) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council on common rules for the operation of air services in the Community

Invitation to tender in respect of the operation of scheduled air services in accordance with public service obligations

(Text with EEA relevance)

(2009/C 75/09)

Member State	Italy
Concerned routes	Pantelleria-Trapani and *vice versa*, Pantelleria-Palermo and *vice versa*, Lampedusa-Palermo and *vice versa*, Lampedusa-Catania and *vice versa*
Period of validity of the contract	12 months (from 25 August 2009 to 24 August 2010)
Deadline for submission of tenders	2 months after the publication of this notice
Address where the text of the invitation to tender and any relevant information and/or documentation related to the pubic tender and the public service obligation can be obtained	Ente Nazionale per l'Aviazione Civile (ENAC) Direzione centrale regolazione economica Direzione trasporto aereo Viale del Castro Pretorio 118 00185 Roma ITALIA www.enac-italia.it E-mail: trasporto.aereo@enac.rupa.it

V

(Announcements)

ADMINISTRATIVE PROCEDURES

COMMISSION

Call for proposals under the annual work programme for grants in the field of the Trans-European Transport Network (TEN-T) for 2009

(Commission Decision C(2009) 2179

(2009/C 75/10)

The European Commission, Directorate-General for Energy and Transport, is hereby launching a call for proposals in order to award grants to projects in accordance with the priorities and objectives defined in the annual work programme for grants in the field of the Trans-European Transport Network for 2009.

The maximum amount available under this call for proposals, for 2009, is **EUR 80 million**.

The call is closing on **15 May 2009**.

The complete text of the call for proposals is available on:

http://ec.europa.eu/transport/infrastructure/ten_t_ea/call_for_proposals_2009_en.htm

Call for proposals under the multi-annual work programme 2009 for grants in the field of the Trans-European Transport Network (TEN-T) for the period 2007-2013

(Commission Decision C(2009) 2178)

(2009/C 75/11)

The European Commission, Directorate-General for Energy and Transport is hereby launching a call for proposals, under the multi-annual work programme for the Trans-European Transport Network (TEN-T) for the period 2007-2013, in order to award grants to:

— Field No 8:

TEN-T Priority Project No 21 — **Motorways of the Sea**. The maximum total amount available for the selected proposals, for 2009, is EUR 30 million.

— Field No 9:

projects in the field **Intelligent Transport Systems for Road Traffic**. The maximum total amount available for the selected proposals, for 2009, is EUR 100 million.

— Field No 10:

projects in the field of **European Rail Traffic Management Systems (ERTMS)**. The maximum total amount available for the selected proposals, for 2009, is EUR 240 million.

The call is closing on **15 May 2009**.

The complete text of the call for proposals is available on:

http://ec.europa.eu/transport/infrastructure/ten_t_ea/call_for_proposals_2009_en.htm

Call for proposals under the work programme for grants in the field of the Trans-European Transport Network (TEN-T) as foreseen in the European Economic Recovery Plan

(Commission Decision C(2009) 2183)

(2009/C 75/12)

The European Commission, Directorate-General for Energy and Transport, is hereby launching a call for proposals in order to award grants to projects in accordance with the priorities and objectives defined in the work programme for grants in the field of the Trans-European Transport Network as foreseen in the European Economic Recovery Plan.

The maximum amount available under this call for proposals, for 2009, is **EUR 500 million**.

The call is closing on **15 May 2009**.

The complete text of the call for proposals is available on:

http://ec.europa.eu/transport/infrastructure/ten_t_ea/call_for_proposals_2009_en.htm

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION POLICY

COMMISSION

Prior notification of a concentration

(Case COMP/M.5500 — General Motors/Delphi Steering Business)

(Text with EEA relevance)

(2009/C 75/13)

1. On 23 March 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 [1] by which the undertaking General Motors Corporation ('GM', USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the global steering business ('Delphi Steering Business') of Delphi Corporation (USA) by way of purchase of shares and assets.

2. The business activities of the undertakings concerned are:

— for GM: manufacture and sale of motor vehicles,

— for Delphi Steering Business: manufacture and sale of steering products and half-shaft components for automotive vehicles.

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 22964301 or 2967244) or by post, under reference number COMP/M.5500 — General Motors/Delphi Steering Business, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
1049 Brussels
BELGIQUE/BELGIË

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[1] OJ L 24, 29.1.2004, p. 1.

OTHER ACTS

COMMISSION

Publication of an application pursuant to Article 6(2) of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs

(2009/C 75/14)

This publication confers the right to object to the application pursuant to Article 7 of Council Regulation (EC) No 510/2006 ([1]). Statements of objection must reach the Commission within six months from the date of this publication.

SINGLE DOCUMENT

COUNCIL REGULATION (EC) No 510/2006

'RISO DEL DELTA DEL PO'

EC No: IT-PGI-0005-0712-15.07.2008

PGI (X) PDO ( )

1. **Name**

'Riso del Delta del Po'

2. **Member State or Third Country**

Italy

3. **Description of the agricultural product or foodstuff**

3.1. *Type of product (Annex II):*

Class 1.6: Fruit, vegetables and cereals, fresh or processed — Rice

3.2. *Description of the product to which the name in (1) applies:*

The indication 'Riso del Delta del Po' refers exclusively to Japonica Superfino grade rice of the Carnaroli, Volano, Baldo and Arborio varieties.

Riso del Delta del Po grains are large, translucent and compact, with a high protein content, and can be white or whole-grain.

Its high absorption capacity, low loss of starch and good cooking firmness, together with organoleptic characteristics such as its particular aroma and flavour, mean that it is especially favoured for enhancing the best risotto dishes.

([1]) OJ L 93, 31.3.2006, p. 12.

To be released for consumption, all varieties of Riso del Delta del Po must have a protein content of over 6,60 % of dry matter and when cooked a glutinosity value (in g/cm) above a threshold which varies according to variety: Baldo > 4,5; Carnaroli > 1,5; Volano > 3,0; Arborio > 3,5.

3.3. *Raw materials (for processed products only):*

Not applicable.

3.4. *Feed (for products of animal origin only):*

Not applicable.

3.5. *Specific steps in production that must take place in the identified geographical area:*

Because of the particular conditions that characterise the growing of the rice, the production phase must take place within the geographical area indicated at point 4.

The Carnaroli variety needs predominantly clayey soil and may be grown only in soil with a pH of more than 7,5.

The rice can be sown by scattering in water or on dry tilled land which must then be immediately drenched.

3.6. *Specific rules concerning slicing, grating, packaging, etc.:*

Drying must be carried out in dryers that leave no combustion residues or foreign odours on the glumellae. Indirect or direct fire dryers may be used if fuelled by methane or LPG.

The moisture content of the dried paddy rice may not exceed 14 %.

Processing must take place in plants and according to procedures that are such as to ensure that the Riso del Delta del Po retains the characteristics described at point 3,2.

The rice must be put in boxes or bags suitable for food use, in volumes of 0,5 kg, 1 kg, 2 kg or 5 kg, and may be packed in vacuum or controlled atmosphere conditions.

The containers must be sealed so as to prevent the contents from being removed without breaking the packaging.

3.7. *Specific rules concerning labelling:*

The containers must bear the logo of the PGI measuring at least 40 mm × 30 mm and, in suitably large characters (min. height 5 mm), the term 'Riso del Delta del Po' followed by 'Indicazione Geografica Protetta' or the abbreviation 'PGI'.

The packaging must bear the name of the variety ('Arborio', 'Carnaroli', 'Volano' or 'Baldo').

It must also bear the name/company name and address of the packager.

Text other than the words 'Riso del Delta del Po — Indicazione Geografica Protetta' must appear in a font size no more than one third of that used for 'Riso del Delta del Po'.

The official 'Riso del Delta del Po' logo consists of a white oval shape with a green border. On the upper half of the oval appear the words 'RISO DEL DELTA DEL PO' and on the lower half 'INDICAZIONE GEOGRAFICA PROTETTA', in both cases in capitals and in green.

The central part of the oval features, in a cream colour against a green background, images typical of the Po Delta (stylised reeds and birds) either side of a stylised yellow figure of a woman holding a sheaf of rice.

4. Concise definition of the geographical area

The typical area for growing Riso del Delta del Po extends over the easternmost cone of the Po valley in the Veneto and Emilia Romagna regions, on the land formed by residue and deposits from the River Po. The area is bordered to the east by the Adriatic Sea, to the north by the Adige River and to the south by the Ferrara-Porto Garibaldi Canal.

In Veneto, Riso del Delta del Po is grown in the province of Rovigo, in the municipalities of Ariano nel Polesine, Porto Viro, Taglio di Po, Porto Tolle, Corbola, Papozze, Rosolina and Loreo.

In Emilia Romagna, production takes place in the province of Ferrara, in the municipalities of Comacchio, Goro, Codigoro, Lagosanto, Massa Fiscaglia, Migliaro, Migliarino, Ostellato, Mesola, Jolanda di Savoia and Berra.

5. Link with the geographical area

5.1. *Specificity of the geographical area:*

Environmental factors

The characteristic soils, temperate climate and closeness to the sea are the main factors that influence and characterise the production of Riso del Delta del Po in this area. The land is ideally suited to growing the rice, which is the only form of cultivation possible in areas that are permanently semi-submerged.

The alluvial soils of the Po Delta come from sediment left by the river at the end of its course and are especially fertile due to their high content of minerals, particularly potassium, which is such that there is no need to use potassium fertilisers.

Also, the soils, though of varying consistency, are characterised by high salinity levels (EC of over 1 mS/cm), due to a very high water table.

The specific coastal location of the area also provides a micro-climate that is particularly favourable to rice thanks to the constant breezes and consequent low levels of humidity, limited temperature ranges (lows hardly drop below 0 °C in the winter and highs in the summer have not exceeded 32 °C for 30 years) and annual rainfall of less than 700 mm, generally evenly distributed over the year. These specific climatic conditions serve to limit the spread of pathogenic fungi and thus also the need to use fungicides.

Historical and human factors

The first records of rice being grown in Polesine, in particular in the Po Delta region, date from a few decades after the spread of the activity in the Po Valley (1450): it was closely linked to the draining of the area as it accelerated the process whereby the salty land could then be used under crop rotation (as evidenced by a law of the Venetian Republic from 1594). The late 1700s saw a number of Venetian patricians starting to cultivate rice in the drained areas on a systematic basis.

Riso del Delta del Po is now grown on about 9 000 hectares of rice fields. The influence of rice-growing can be seen in the local culture and in the social development of the area; the rice has for years been packaged and marketed by numerous firms under the name 'Riso del Delta del Po' and thanks to its particular organoleptic characteristics, which set it apart from other types of rice produced in Italy, it is recognised and highly regarded by consumers across the country. Lastly, its reputation is also linked with the traditional fairs and festivals that take place in the area each year, such as the famous Riso del Delta del Po festival in Jolanda di Savoia (Ferrara Province), and with the Porto Tolle Fair.

5.2. *Specificity of the product:*

The special characteristics of Riso del Delta del Po are related to its high protein content, the size of the grains, high absorption capacity, low rate of starch loss and superior quality, all of which give it a good cooking firmness.

It also has a particular flavour and aroma which distinguish it from rice not grown in brackish water.

5.3. *Causal link between the geographical area and the quality or characteristics of the product (for PDO) or a specific quality, the reputation or other characteristic of the product (for PGI):*

The salt deposits on this area of drained land, coupled with the specific nature of the water used and the existence of a high table of saltwater, influence the character of the rice organoleptically and as a traded commodity — as a result, it is instantly recognisable and held in high esteem on the market.

The alluvial soils, highly fertile because of the presence of minerals (particularly potassium), are conducive to a high protein content and enhanced cooking firmness.

Also, the soils, though of varying consistency, are characterised by high salinity levels (EC of over 1 mS/cm) which gives the rice its special flavour and aroma.

The constant sea-breeze radically reduces humidity levels in the micro-climate of the rice fields, thus also strongly diminishing the need for fungicides and helping to produce rice of a high quality.

Reference to publication of the specification

The Government has launched the national objection procedure with the publication of the proposal for recognising 'Riso del Delta del Po' as a protected geographical indication in the Official Gazette of the Italian Republic.

The full text of the product specification is available on the internet via the following link:

www.politicheagricole.it/DocumentiPubblicazioni/Search_Documenti_Elenco.htm?txtTipoDocumento=Disciplinare%20in%20esame%20UE&txtDocArgomento=Prodotti%20di%20Qualit%E0>Prodotti%20Dop,%20Igp%20e%20Stg

or

— on the home page of the Ministry (www.politicheagricole.it) by clicking on *'Prodotti di Qualità'* (on the left of the screen) and then on *'Disciplinari di Produzione all'esame dell'UE (Reg CE 510/2006)'*.

Publication of an application pursuant to Article 6(2) of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs

(2009/C 75/15)

This publication confers the right to object to the application pursuant to Article 7 of Council Regulation (EC) No 510/2006 ([1]). Statements of objection must reach the Commission within six months from the date of this publication.

SUMMARY

COUNCIL REGULATION (EC) No 510/2006

'SOBAO PASIEGO'

EC No: ES-PGI-005-0478-28.06.2005

PDO ( ) PGI (X)

This summary sets out the main elements of the product specification for information purposes.

1. **Responsible department in the Member State:**

Name: Subdirección General de Calidad Diferenciada y Agricultura Ecológica, Dirección General de Industria y Mercados Alimentarios, Ministerio de Medio Ambiente y Medio Rural y Marino — España

Address: Paseo de la Infanta Isabel, nº 1
28071 — Madrid
ESPAÑA

Tel. +34 913475394

Fax +34 913475410

E-mail: —

2. **Group:**

Name: Asociación de Fabricantes de Sobaos Pasiegos y Quesadas de Cantabria

Address: C/ Augusto González de Linares, 8 — bajo
39006- Santander
ESPAÑA

Tel. +34 942290572

Fax +34 942290573

E-mail: afasque@viaflavia.com

Composition: Producers/processors (X) Other ( )

Sobao and quesada producers

3. **Type of product:**

Class 2.4: Bread, pastry, cakes, confectionery and other baker's wares

4. **Specification:**
(Summary of requirements under Article 4(2) of Regulation (EC) No 510/2006)

4.1. *Name:*

'Sobao Pasiego'

([1]) OJ L 93, 31.3.2006, p. 12.

4.2. *Description:*

'Sobao Pasiego' is made from a dough of wheat flour, butter, sugar, eggs and a number of minor ingredients and additives; its characteristics are as follows:

Technical characteristics:

(a) organoleptic properties: strong yellow crumbs and toast-coloured surface; dense, spongy texture; sweet flavour; prominent buttery aroma;

(b) morphological: sobaos come in three different weights:

— large (130 to 180 g), medium (40 to 80 g) and small (20 to 40 g);

(c) presentation: 'Sobao Pasiego' is put up in a rectangular-based paper casing, the edges of which are folded up in a characteristic wing shape.

Physical and chemical characteristics:

These are as follows, within the values indicated:

Moisture (15-20 %), proteins (4 % or more), fat content using acid hydrolysis (24-32 %), glucose (45 % or more), ash (1;70 % or less); water activity (0;7-0;9 %).

Microbiological characteristics:

The product must comply with requirements under technical health legislation.

4.3. *Geographical area:*

The geographical area consists of the following municipalities in Cantabria: Anievas, Arenas de Iguña, Astillero (El), Bárcena de Pie de Concha, Camargo, Cartes, Castañeda, Cieza, Corrales de Buelna (Los), Corvera de Toranzo, Entrambasaguas, Liérganes, Luena, Marina de Cudeyo, Medio Cudeyo, Miengo, Miera, Molledo, Penagos, Piélagos, Polanco, Puente Viesgo, Reocín, Ribamontán al Mar, Ribamontán al Monte, Riotuerto, San Felices de Buelna, San Pedro del Romeral, San Roque de Riomiera, Santa Cruz de Bezana, Santa María de Cayón, Santander, Santillana del Mar, Santiurde de Toranzo, Saro, Selaya, Suances, Torrelavega, Vega de Pas, Villacarriedo, Villaescusa, Villafufre.

4.4. *Proof of origin:*

Proof that the sobaos are produced in the designated geographical area is provided by the following:

— the characteristics of the sobao: 'Sobao Pasiego' has specific characteristics, as set out in Sections 4.2 and 4.5, due to its particular production conditions,

— control arrangements guaranteeing traceability and thus also the origin of the sobao.

Elements to be taken into account:

— the sobaos are produced and packaged only in processing plants listed in the Register of Bakeries (*Registro de Obradores*) for the Protected Geographical Indication,

— the bakeries have to undergo an initial inspection before being registered and periodic inspections thereafter in order to remain on the PGI Register,

— the sobaos must be produced according to the method described in Section 4.5,

— Sobaos may be marketed with a guarantee of origin only if the production process has been subject to all the controls and the products bear a label or secondary label with a serial number,

— the inspection body will carry out periodic controls and assessments of the production and marketing process,

— any infringements will be subject to the penalty arrangements provided for in its rules, as appropriate,

— product testing will consist of physico-chemical, organoleptic and microbiological analyses.

Once all the relevant controls and assessments have been carried out, the inspection body identified in Section 4.7 will authorise the use of numbered labels or secondary labels, thus ensuring the traceability of the product.

4.5. *Method of production:*

1. 'Sobao Pasiego' is produced from the following ingredients: butter (26 % ± 3 %), sugar (26 % ± 4 %) (sucrose), fresh eggs (19 % ± 6 %), wheat flour (26 % ± 4 %). Minor ingredients: dextrose, glucose and salt (0,3 % ± 0,3 %); grated lemon peel, anis or rum may also be added.

2. Additives. Use of the following additives is permitted:

   Raising agent: (1,5 % ± 1,5 %), preservative: potassium sorbate (maximum 1,5 g per kilogram of dough, butter flavouring and moistening agent.

The steps in the production of the sobaos are as follows:

1. preparation of the mixture;
2. batching;
3. baking;
4. cooling;
5. packaging; the finished product is dispatched and transported from the bakeries in suitable packaging or wrapping with appropriate labels and markings;
6. preservation: the product may not be preserved by freezing.

4.6. *Link:*

Historical factors

Various authors (García Lomas and Vega Ruiz) have said that the sobao was a cake made crudely from bread dough (to use up scraps), sugar and butter. This old version of sobao was improved by the addition of eggs, grated lemon peel and anis or rum.

The big change in the production method came when high-quality wheat flour was used instead of bread dough and adjustments were made to the quantities of other ingredients used. In his book *Los Pasiegos* (1986), García Lomas attributes the creation of the new *sobao moderno* to the cook Eusebia Hernández Martín, a letter from whose son includes the following passage: 'I knew that my late mother invented the sobao that we know now, i.e. as made from flour, as a variation on the old bread dough version. This was before 1896, the year in which she married my father, Joaquín Laso; she was then 19 years old and died in Vega in 1902 at the age of 25, leaving three sons and a daughter; I was her first child, born in 1897'.

Finally, in a 1946 study on terms used in the high valleys of Santander province but not included in the *Diccionario de la Lengua Española*, J Calderón Escalada records the term *Sobau*, defining it as follows: 'Cake made from flour, eggs, sugar and butter, baked in the oven in paper folded into a special shape; given as a favour on her wedding day by the bride to her friends'.

Current reputation: The *Gran Enciclopedia de Cantabria* refers to the sobao as a product 'going back at least a century and as enjoying enormous popularity'.

The *Inventario Español de Productos Tradicionales*, edited by the Spanish Ministry of Agriculture, Fisheries and Food, notes that 'Sobao Pasiego' is one of the products most typical of Cantabria, originating in Vega de Pas but known throughout Spain.

Human factors

By dint of their skill and professionalism, the producers have been able to maintain the distinctive character of 'Sobao Pasiego' over time and throughout the protected area.

Sobao embodies the coming together of wheat and butter, eggs and sugar, to produce a dish that reflects all aspects of the region's culture, as typified by the butter.

Causal relation between the geographical area and the characteristics or reputation of the product

The link between 'Sobao Pasiego' and the geographical area in which it is produced is based above all on the reputation and characteristics described in Section 4.2, which stem from the traditional method of production.

There are many references, such as those cited above, demonstrating that 'Sobao Pasiego' is a typical product of the Pasiego region. It is human factors that have helped over the years to make the product so well known and give it a reputation that has grown and been passed down from one generation to the next: a level of know-how which thus forms part of the region's heritage, to the extent that the product is named after, and recognised as coming from, the region.

The fact that the product has become so well known and well regarded has meant that, while for decades it was customary for individuals to make it at home to mark special occasions (weddings, festivals, market days, etc.), it is now a basic component of the local economy, which is responsible for over 90 % of sobaos produced in the region as a whole.

'Sobao Pasiego' started to be produced in greater quantities and, as a consequence, to be recognised more widely, from the second half of the last century when producers looked beyond the immediate area of Vega de Pas to use more developed communication channels to improve sales, and moved closer to more populated centres so as to be better able both to sell the product there and transport it to other parts of the region.

In addition, the Pasiego region has traditionally been characterised by dairy products — cheeses, ice-cream, butter, etc. — enjoying, as it does, farming and climatic conditions that are very favourable to milk production. Butter, in particular, is a basic ingredient of 'Sobao Pasiego', and is what is most responsible for its specific character, setting it apart from similar confectionery products made with other fats such as margarine, thus showing again how the geographical area contributes to the reputation and specificity of the product.

The extent and quality of the reputation of 'Sobao Pasiego' was reflected in a recent survey of consumers in various parts of Spain which found that nine out of ten interviewees were familiar with the product and over 73 % felt that it had a very good reputation; there was also a high level of awareness as to the origin of the product, with over 80 % tracing it to Cantabria and, despite its small size, over 35 % referring to the Pasiego region itself.

4.7. *Inspection body:*

Name: Oficina de Calidad Alimentaria de Cantabria (ODECA)

Address: C/Héroes del 2 de Mayo, 27
39600 Muriedas (Cantabria)
ESPAÑA

Tel. +34 942 26 98 55

Fax +34 942 26 98 56

E-mail: odeca@odeca.es

Nature and characteristics: Public authority

4.8. *Labelling:*

In addition to the obligatory markings laid down in general regulations, labels must feature the following:

— the name of the geographical indication: 'Sobao Pasiego',

— the term 'Indicación Geográfica Protegida' or 'IGP'.

These terms must appear together in the same visual field in visible, legible and indelible characters larger than those used for other text on the label.

The same label or secondary label must also bear the following, as previously authorised by the inspection body and not obscuring the label required under the general regulations:

— the PGI logo,

— the control number issued by the inspection body,

— the name of the inspection body.

CORRIGENDA

Corrigendum to Invitation to submit comments pursuant to Article 1(2) in Part I of Protocol 3 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice on State aid with regard to taxation of captive insurance companies in Liechtenstein

(This text annuls and replaces that published in Official Journal of the European Union C 72 of 26 March 2009, p. 50)

(2009/C 75/16)

'Invitation to submit comments pursuant to Article 1(2) in Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice on state aid with regard to taxation of captive insurance companies in Liechtenstein

By means of Decision No 620/08/COL of 24 September 2008, reproduced in the authentic language on the pages following this summary, the EFTA Surveillance Authority initiated proceedings pursuant to Article 1(2) in Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice. The Liechtenstein authorities have been informed by means of a copy of the decision.

The EFTA Surveillance Authority hereby gives the EFTA States, EU Member States and interested parties notice to submit their comments on the measure in question within one month from the publication of this notice to:

EFTA Surveillance Authority
Registry
Rue Belliard 35
1040 Bruxelles/Brussel
BELGIQUE/BELGIË

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

SUMMARY

The case was initiated by the Authority sending a request for information to the Liechtenstein authorities 14 March 2007.

By virtue of Act of 18 December 1997 on the amendment of the Liechtenstein Tax Act ([1]), the Liechtenstein authorities introduced special tax rules applicable to captive insurance companies.

Pursuant to Article 82a) paragraph 1 of the Tax Act, captive insurance companies pay a capital tax of 1 ‰ on the company's own capital. For capital exceeding 50 million, the tax rate is reduced to 0,75 ‰ and for the capital in excess of 100 million, to 0,5 ‰. The normal capital tax rate is 2 ‰.

Article 82a read in conjunction with Article 73 of the Act, implies that captive insurance companies do not pay any income tax.

Moreover, by virtue of Article 88d)3) of the Tax Act, shares or parts of captive insurance companies are exempted from payment of the coupon tax, which is normally levied at the rate of 4 %.

In the preliminary view of the Authority, captive insurance companies are undertakings in the meaning of Article 61(1) of the EEA Agreement. They provide services to one or a specifically confined group of companies. Providing insurance is a service, which, in principle, is an economic activity. A captive insurance company would normally earn an income for services it provides. That the service is delivered only to one customer or a limited group of customers does not prevent it from being an economic activity.

([1]) Act of 18 December 1997 on the amendment of the Liechtenstein Tax Act, Law Gazette 1998, No 36.

The relief from income tax and the reduced capital tax fulfil also, in the preliminary view of the Authority, the other conditions that would classify them as state aid in the meaning of Article 61(1) of the EEA Agreement.

Partial or full tax exemption implies a drain on state recourses. Advantages are accorded to the companies as they are relieved of charges that would normally be borne out of their budgets. The eligible companies provide services which are traded between the Contracting Parties to the EEA Agreement and thus are open to cross-border competition. The measures are selective as they are applicable only to a designated group of undertakings. The Authority has not found that this selectivity could be said to represent an inherent logic of the tax system.

For the coupon tax, similar reasoning to the above would apply. There is, however, a difference stemming from the fact that the coupon tax is a withholding tax. The exemption from the coupon tax thus confers advantages upon the owners of captive insurance companies. Such owners are normally (large) undertakings. These kinds of undertakings will thus be the direct beneficiaries of the aid measure. Further, the captive insurance companies could be considered to benefit indirectly form coupon tax exemption. They will be more attractive for investors and the measure would therefore make capital more easily accessible.

Support measures caught by Article 61(1) of the EEA Agreement are generally incompatible with the functioning of the EEA Agreement, unless they qualify for a derogation in Article 61(2) or (3) of the EEA Agreement. In the preliminary opinion of the Authority, none of the derogations foreseen under these provisions seem to be applicable to the taxation of captive insurance companies in Liechtenstein. As the measures were enacted after Liechtenstein joined the EEA Agreement, any incompatible aid would normally have to be recovered.

Conclusion

In the light of the foregoing considerations, the Authority decided to open the formal investigation procedure in accordance with Article 1(2) of the EEA Agreement. Interested parties are invited to submit their comments within one month from publication of this Decision in the *Official Journal of the European Union*.

EFTA SURVEILLANCE AUTHORITY DECISION

No 620/08/COL

of 24 September 2008

to initiate the procedure provided for in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement with regard to the taxation of captive insurance companies according to the Liechtenstein Tax Act

(Liechtenstein)

THE EFTA SURVEILLANCE AUTHORITY ([1]),

Having regard to the Agreement on the European Economic Area ([2]), in particular to Article 61 to 63 and Protocol 26 thereof,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ([3]), in particular to Article 24 thereof,

Having regard to Article 1(2) of Part I and Article 4(4) and 6 of Part II of Protocol 3 to the Surveillance and Court Agreement ([4]),

([1]) Hereinafter referred to as the Authority.
([2]) Hereinafter referred to as "the EEA Agreement".
([3]) Hereinafter referred to as "the Surveillance and Court Agreement".
([4]) Hereinafter referred to as "Protocol 3".

Having regard to the Authority's Guidelines ([1]) on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular the chapter dealing with the application of State aid rules to measures relating to direct business taxation ([2]),

Having regard to the Authority's Decision of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3 ([3]),

Whereas:

I. FACTS

1. Procedure

By letter dated 14 March 2007 (Event No 393563), the Authority sent a request for information to the Liechtenstein authorities, inquiring about various tax derogations for certain company types under the Liechtenstein Tax Act. The Liechtenstein authorities replied by letter dated 30 May 2007 (Event No 423398).

By letter dated 12 July 2007 (Event No 428102), the Authority requested more information. In this letter the Authority also informed the Liechtenstein authorities that if the Authority found that the preferential taxation in favour of captive insurance companies constituted State aid within the meaning of Article 61(1) of the EEA Agreement, this aid might constitute unlawful aid within the meaning of Article 1(f) in Part II of Protocol 3. The Authority informed the Liechtenstein authorities that unlawful aid might be subject to recovery according to Article 14 in Part II of Protocol 3.

The Liechtenstein authorities provided a response by letter dated 29 August 2007 (Event No 437041). On 31 October 2007, the case was discussed by the Authority and the Liechtenstein authorities. The Liechtenstein authorities submitted further information by letter dated 3 December 2007 (Event No 456325). The Liechtenstein authorities presented further information in another meeting with the Authority on 18 December. The Authority requested further information on 20 December 2007 (Event No 458438). The Liechtenstein authorities responded by letter dated 1 February 2008 (Event No 463410). Further clarifications were submitted by the Liechtenstein authorities by email.

2. Scope of this decision

The current investigation only concerns the treatment of captive insurance companies under the Liechtenstein Tax Act (*Gesetz über die Landes- und Gemeindesteuern*, hereinafter: "the Tax Act") ([4]). Other tax measures referred to by the Authority in its letter of 14 March 2007 are not covered by the present procedure.

3. Description of the Liechtenstein taxes on companies

3.1. General provisions

3.1.1. *Income and capital tax*

Part 4, heading A — The company taxes ("*Die Gesellschaftssteuern*") — Sections 73 to 81 of the Tax Act comprises two taxes relating to companies:

— a business **income tax** (*Ertragssteuer*). According to Section 77 of the Tax Act this tax is assessed on the entire annual net income. Taxable net income is the entire revenues minus company expenditures (including write-offs and other provisions). The income tax rate depends on the ratio of net income to taxable capital and lies between 7,5 % and 15 % ([5]). This tax rate may be increased by 1 percentage point to, at most, 5 percentage points depending on the relation between dividends and taxable capital. The maximum income tax is therefore 20 %,

([1]) Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3, adopted and issued by the Authority on 19 January 1994, published in the *Official Journal of the European Union* (hereinafter referred to as OJ L 231, 3.9.1994, p. 1) and EEA Supplement No 32 of 3 September 1994, p. 1. Hereinafter referred to as the State Aid Guidelines. The updated version of the State Aid Guidelines is published on the Authority's website: http://www.eftasurv.int/fieldsofwork/fieldstateaid/guidelines/

([2]) This Chapter was introduced with Authority's Decision No 149/99/COL of 30 June 1999, published in OJ L 137, 8.6.2000, p. 26 and EEA Supplement No 26 of 8 June 2000, p. 11.

([3]) Decision 195/04/COL of 14 July 2004 published in OJ C 139, 25.5.2006, p. 57 and EEA Supplement No 26 of 25 May 2006, p. 1 as amended by Decision 319/05/COL of 14 December 2005 published in OJ C 286, 23.11.2006, p. 9 and EEA Supplement No 57 of 23 November 2006, p. 31.

([4]) Liechtensteinisches Landesgesetzblatt 1961, Nr. 7, with subsequent amendments.

([5]) The net profit is set in relation to the taxable capital. The tax rate is then set at half the percentage which the net profit constitutes of the taxable capital. However, there is a minimum level of 7,5 % and a maximum ceiling of 15 %, see Section 79(2) of the Tax Act.

— a **capital tax** (*Kapitalsteuer*). According to Section 76 of the Tax Act the basis for this tax is the paid-up capital stock, joint stock, share capital, or initial capital as well as the reserves of the company constituting company equity. Taxes are assessed at the end of the company's business year (generally on 31 December). The tax rate for the capital tax is 2 ‰.

Pursuant to Section 73 of the Tax Act, legal persons operating commercial businesses in Liechtenstein pay income and capital taxes. Foreign companies operating a branch in Liechtenstein are also subject to the income and capital tax, see Section 73(e) of the Tax Act.

3.1.2. *Coupon tax*

Part 5 of the Tax Act concerns the so-called **coupon tax**. According to Section 88(a)(1) of the Tax Act, Liechtenstein levies a tax on coupons. Further details are given in Section 88(b)-(e). The coupon tax is levied on the coupons of securities (or documents equal to securities) issued by "a national". This notion covers any person who has the place of residence, domicile or statutory seat in Liechtenstein. It also covers undertakings that are registered in the public register of Liechtenstein.

The coupon tax applies to companies the capital of which is divided into shares, and it is levied at the rate of 4 % on any distribution of dividends or profit shares (including distributions in the form of shares).

The coupon tax is a withholding tax, which falls on the investor as the ultimate tax payer (Steuerträger), but is withheld on the level of the company. According to Section 88(i) of the Tax Act, the person liable to pay for a coupon is liable to pay the tax ([1]). Section 88(k) of the Tax Act stipulates that the sum paid out for a coupon must be reduced by the amount of the tax levied on such coupons ([2]). Thus, as the Liechtenstein authorities have confirmed, ultimately it is the investor entitled to payment of the coupon tax the one bearing the financial burden of the tax.

3.2. **Special tax provisions concerning captive insurance companies**

3.2.1. *The introduction of specific legislation on captive insurance companies*

By virtue of Act of 18 December 1997 on the amendment of the Liechtenstein Tax Act ([3]), the Liechtenstein authorities introduced special tax rules applicable to captive insurance companies. Section 82(a) and 88(d)(3) were introduced into the Tax Act with effect from 1998 onward and still apply today. The Liechtenstein authorities have stated that the provision was introduced in order to establish and develop the captive insurance sector as a new field of economic activity in Liechtenstein.

Captive insurance companies are however not defined in the Tax Act. There is a reference in Article 82(a) according to which captive insurance companies are "*[i]nsurance companies in accordance with the definition of the Insurance Supervision Law, which exclusively engage in captive insurance ("Eigenversicherung")*". In general, the notion of a captive insurer describes a subsidiary company formed to insure or reinsure the risks of its parent and or associated group companies. According to Article 2(b) of Directive 2005/68/EC, the so-called Reinsurance Directive ([4]), "*captive reinsurance undertaking means a reinsurance undertaking owned either by a financial undertaking other than an insurance or a reinsurance undertaking or a group of insurance or reinsurance undertakings to which Directive 98/78/EC applies, or by a non-financial undertaking, the purpose of which is to provide reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which the captive reinsurance undertaking is a member.*"

According to the Liechtenstein authorities, approximately 13 captive insurance companies have profited from the specific tax regime. Currently, 11 out of these 13 companies still fall under Section 82(a) of the Tax Act.

3.2.2. *Income and capital tax*

Part 4, heading B of the Tax Act — Special company taxes ("*Besondere Gesellschaftssteuern*") — Sections 82 to 88 of the Tax Act contains special tax provisions for certain company forms such as insurance companies, holding companies, domiciliary companies and investment undertakings. Section 82(a) of the Tax Act refers to captive insurance companies.

([1]) Article 88(i) of the Tax Act reads: "[s]teuerpflichtig ist der Schuldner des Coupons oder der steuerbaren Leistung".
([2]) Article 88(k) of the Tax Act reads: "Der Betrag, mit dem der Coupon eingelöst wird, oder die steuerbare Leistung ist bei der Auszahlung, überweisung, Gutschrift oder Verrechnung ohne Rücksicht auf die Person des Glüabigers um die Steuer zu kürzen."
([3]) By virtue of Act of 18 December 1997 on the amendment of the Liechtenstein Tax Act, Law Gazette 1998, No 36.
([4]) Incorporated into the EEA Agreement by OJ Decision No 59/2006 of 2 June 2006. It entered into force on 1 June 2007.

Pursuant to Article 82(a) paragraph 1 of the Tax Act, *"[i]nsurance companies in accordance with the definition of the Insurance Supervision Law, which exclusively engage in captive insurance ("Eigenversicherung"), pay a capital tax of 1 ‰ on the company's own capital, cf. Section 82(a)(1) of the Tax Act. For the capital exceeding 50 million the tax rate is reduced to 0,75 ‰ and for the capital in excess of 100 million to 0,5 ‰"* ([1]).

In other words, instead of paying the normal 2 ‰ capital tax, captive insurance companies are only obliged to pay 1 ‰ hereof, and this rate is even further reduced for amounts exceeding CHF 50 and CHF 100 million.

By virtue of paragraph 2 of Article 82(a) of the Tax Act, insurance companies which engage in captive insurance and ordinary insurance activities for third parties are nevertheless liable to regular capital and income tax according to Sections 73 to 81 of the Tax Act for that part of their activities which concerns third party insurance.

As Article 82(a) of the Tax Act constitutes a *lex specialis* with respect to Article 73 of the same Act, it can *a contrario* be concluded that captive insurance companies do not pay income tax ([2]).

In conclusion, captive insurance companies only pay a reduced capital tax as described in Section 82(a)(1) of the Tax Act and no income tax.

3.2.3. *Coupon tax*

By virtue of Article 88(d)(3) of the Tax Act, shares or parts of captive insurance companies are exempted from payment of the coupon tax.

4. **Comments by the Liechtenstein authorities**

The Liechtenstein authorities underline that captive insurance companies as such do not profit from the tax exemption. The tax exemptions only apply to those parts of the insurance companies dealing with the captive insurance. In contrast, income and capital tax are fully levied for the part which concerns third party insurance.

From that, the Liechtenstein authorities draw the following conclusions: Firstly, that a captive insurance company is not a financial vehicle designed to generate profits, but is limited to managing internal risks. For that reason, the captive insurance company does not exercise any economic activity and does not constitute an undertaking within the meaning of Article 61(1) of the EEA Agreement. There is no market for captive insurance companies as this kind of activity can only be offered to the respective parent and its group members.

Secondly, no advantage would be involved as the activity is limited to the administration of risks and holding funds. Third, in certain countries — like Germany — the income generated by a captive insurance company is taxed at the level of the parent company. In other words, if the company was also taxed in Liechtenstein, there would be a double taxation problem, so the non-taxation in Liechtenstein does not lead to an advantage. It is further argued that the taxation of captive insurance companies is a result of the nature and general scheme of Liechtenstein taxation. The generation of profits is not the primary objective of captive insurance companies. The Liechtenstein authorities also point to EU Member States which offer a favourable regulatory environment for captive insurance companies.

Fourthly, the tax benefits are not selective as there is no preferential treatment of undertakings which find themselves in a comparable factual and legal situation with others. In the view of the Liechtenstein authorities captive insurance activities cannot be compared to the activities of other insurance companies.

In any event, there would be no distortion of competition as the captive insurance companies do not compete with other insurers for business. Article 5(1) of the EU Merger Regulation establishes that intra group turnover must not be taken into account in assessing whether a transaction reaches a Community dimension. In the opinion of the government, this illustrates that internal transactions do not affect competition.

([1]) Translation made by the services of the Authority.
([2]) See also letter of 30 May 2007 from the Liechtenstein authorities.

II. **ASSESSMENT**

1. **The presence of State aid**

Article 61(1) of the EEA Agreement reads as follows:

"Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement."

1.1. **Income and capital tax**

1.1.1. *Presence of State resources*

The aid measures must be granted by the State or through State resources.

Whereas the capital tax rate in Liechtenstein is currently set at 2 ‰, captive insurance companies are subject to a reduced capital tax of 1 ‰ (0,75 ‰ for the capital exceeding CHF 50 million and 0,5 ‰ for the capital in excess of CHF 100 million). Moreover, captive insurance companies are further fully exempted from payment of income tax.

The granting of a full or partial tax exemption involves a loss of tax revenues for the State which is equivalent to consumption of State resources in the form of fiscal (tax) expenditure ([1]). The State in Liechtenstein foregoes revenues corresponding to the non-payment of income tax and the payment of a reduced capital tax rate.

For these reasons, the Authority considers that the special provisions on income and capital tax applicable to captive insurance companies are granted through State resources.

1.1.2. *Favouring certain undertakings or the production of certain goods*

1.1.2.1. Undertaking

According to the European Court of Justice, the notion of an undertaking in the sense of Article 87 EC, which corresponds to Article 61(1) of the EEA Agreement, encompasses "*every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed*" ([2]). Even economic activities without profit motives can constitute economic activities where the entities carrying out the activity are competing with other profit seeking undertakings ([3]).

In general, captive insurance companies provide various kinds of insurance services to a limited and defined group of entities seeking insurance coverage and not to the public at large. They are in this sense "captive". Often there may be a large corporation that establishes such a company to provide it with insurance coverage instead of alternatively requesting insurance on the general market for such services. In addition to provide insurance for the parent company the captive insurer may also provide insurance to other undertakings in the same company group. It may also provide insurance to undertakings which are not in the same ownership group but which are affiliated for example through a vertical relationship. It may also be that various independent undertakings go together and establish a captive insurance company. This could be the case for example for various cooperative undertakings, housing associations or companies in the same branch of industry seeking insurance coverage for certain specific risks.

For their services the captive insurance companies would need to charge premiums, establish an adequate capital base, fulfil solvency requirements and other requirements according to EEA and national legislation. In their business activity they would, as other insurance companies, seek reinsurance or they may themselves be reinsurance undertakings.

([1]) See point 3(3) on the Authority's State Aid Guidelines to Business Taxation.
([2]) Joined Cases C-180/98 to C-184/98 Pavlow [2000] ECR I-6451, paragraph 75.
([3]) Case C-222/04 Cassa di Resparmio di Firenze SpA [2006] ECR I-289 paragraph 123; see also Commission Decision of 16 September 1997 on State aid for Gemeinnützige Abfallverwertung GmbH (OJ L 159, 3.6.1998, p. 58).

In its decision on an aid scheme for captive insurance companies in Åland, the Commission took the view that captive insurance companies were offsetting the risks on the insurance market through internal reinsurance. In that respect, reinsurance of subsidiaries did not constitute a separate insurance market since subsidiaries could normally be insured by other companies operating on the open market. ([1]) Liechtenstein has not pointed to factual differences compared to the situation in Finland, but merely argues that the Commission is wrong in its assessment.

Providing insurance is a service, which in principle is an economic activity. Even in cases where a captive insurance company only offers its insurance services against remuneration to a parent company, in which case the service is not delivered on an open market, the service in question would still be a financial service. A captive insurance company is set up as any other company and would normally charge for the services it provides. A captive insurance company would thus earn an income for services it provides which is an element that indicates that the activity is of an economic nature.

The company deciding to buy its services from a captive insurance company would presumably only do so if that is more economically advantageous than buying the service from other insurance companies. The captive insurance company is therefore subject to competitive pressure from the market in its delivery of its services since, if its prices would increase, the buyer of the service would turn elsewhere for the procurement of the service. The fact that the service may, in many cases, be delivered to only one customer does not remove it from being an economic activity provided on a market. Many companies in different markets have only one buyer of its service, which does not mean that they are not undertakings for the purposes of EEA competition law. Services or goods are provided on the market even if the purchaser may be only one.

Moreover, the Liechtenstein authorities have not claimed that Liechtenstein law prohibits a captive insurer to provide services to several different companies belonging to the same group, being in some way affiliated or being completely independent of each other. Indeed, Liechtenstein law does not seem to limit the captive insurance companies to supply its services to only one buyer, the parent company, or for that matter a group of companies receiving the captive services. As far as the Authority understands, the captives insurance companies are free to offer their services to any other company. The only limitation is that for tax purposes, services offered to other entities will be subject to normal taxation. The captive insurance companies are thus free to offer their services on the market, in addition to providing insurance to its parent company or a closed circle of companies. The aid scheme in question therefore benefits undertakings that perform an economic activity in competition on the market.

Finally, the aid may also potentially benefit the groups to which the captive insurance companies belong. Such groups will normally be undertakings.

For these reasons, in the preliminary view of the Authority, captive insurance companies are undertakings in the meaning of Article 61(1) of the EEA Agreement.

1.1.2.2. Advantage

The measure confers the captive insurances falling under Section 82(a) of the Tax Act an advantage by relieving them of charges (non-payment of income tax and only a reduced payment of a capital tax) that would normally be borne from their budgets.

The payment of taxes is an operating cost related to purchases in the normal course of an undertakings' economic activity, which is normally borne by the undertaking itself. In general, a lower rate of taxation than what normally would be due or an exemption from paying taxes confers an advantage on the eligible companies. They are granted an advantage because the operating costs which those undertakings will have to put up with are reduced in accordance with the amount of exempted tax rate.

The preliminary view of the Authority is therefore that the special tax rules applicable to captive insurance companies which fully or partially exempt them from taxes therefore entail the granting of an economic advantage. The same rules could also constitute an advantage to the groups to which they belong.

1.1.2.3. Selectivity

For a measure to be aid it must be selective in that it favours "*certain undertakings or the production of certain goods*".

([1]) Commission Decision of 10 July 2002 on the aid scheme implemented by Finland for Åland Islands captive insurance companies, OJ 2002, L 329/22, paragraph 45.

Section 82(a) of the Tax Act lists captive insurance companies as eligible to profit from a lower capital tax rate than the generally applicable rate which other undertakings, including third party insurers, are subject to. Similarly, the captive companies benefit from a full exemption from income tax.

As the Tax Act provides for a further tax reduction for those captive companies which have capital exceeding CHF 50 million or CHF 100 million respectively, an additional tax advantage is granted to larger captive companies.

For these reasons, the Authority preliminary considers that the tax rules in favour of captive insurance companies are materially selective.

A specific tax measure can nevertheless be justified by the logic of the tax system if it is consistent with it ([1]). Measures intended partially or wholly to exempt firms in a particular sector from the charges arising from the normal application of the general system may constitute State aid if there is no justification for this exemption on the basis of the nature and logic of the general system ([2]). Therefore, even if being materially selective, the specific tax rules applicable to captive insurance companies will not be selective in the sense of Article 61(1) of the EEA Agreement if the rule is justified by the nature and general scheme of the Liechtenstein tax system.

For this assessment, the Authority must consider whether the special tax rules applicable to captive insurance companies meet the objectives inherent in the tax system itself, or whether it pursues other objectives not enshrined therein. The Authority must analyse the national tax system of Liechtenstein irrespective of whether captive insurance companies enjoy similar tax advantages in other EEA States.

According to constant case law, it is for the EFTA State that has introduced a differentiation between undertakings in relation to charges to show that it is actually justified by the nature and general scheme of the system in question ([3]).

The Liechtenstein authorities have stated that this tax concession was introduced in order to establish and develop the captive insurance sector as a new field of economic activity in Liechtenstein. In the view of the Authority, this is an economic purpose not inherent to taxation which therefore does not fall within the logic of a tax system ([4]).

The Liechtenstein authorities have however argued that taxation of captive insurance companies would lead to double taxation of the same earnings. They quote the example of the profits of captive insurance companies being taxed in Germany, which might lead to a double taxation if the same profits were taxed in Liechtenstein.

The avoidance of double taxation is nowhere reflected in the Liechtenstein Tax Act or in the history of its introduction. To the contrary, in the Authority's view, the following aspects indicate that the logic behind the tax exemptions neither has the effect nor the purpose of avoiding double taxation. First, the reduced tax is not limited to situations where a double taxation would occur. Second, the tax is not reduced to zero where the taxation in another State would exceed the normally applicable tax rate in Liechtenstein. Third, the captive insurance companies are partially exempted from the general capital tax in Liechtenstein simply because they carry out their specific services in the given organisational form. Fourth, the particular capital taxation for captives is digressive in nature as the tax rate decreases when the taxable capital exceeds certain thresholds. In the Authority's view, had the purpose of introducing a differentiated taxation for captive insurance companies been to avoid double taxation, degressivity would not seem to be the appropriate tool to achieve such an objective.

At this stage of the procedure, the Authority cannot see that the various tax exemptions can be considered to be inherent in the nature and general scheme of the Liechtenstein tax system. The preliminary view of the Authority is therefore that these measures are selective in the meaning of Article 61(1) of the EEA Agreement.

([1]) Case E-6/98 Norway v EFTA Surveillance Authority, [1999] EFTA Court Report, p. 76, paragraph 38; Joined Cases E-5/04, E-6/04 and E-7/04 Fesil and Finnfjord, PIL and Others and Norway v EFTA Surveillance Authority, [2005] EFTA Court Report, p. 117, paragraphs 84-85; Joined Cases T-127/99, T-129/99 and T-148/99 Territorio Histórico de Alava et a v Commission [2002] ECR II-1275, paragraph 163, Case C-143/99 Adria-Wien Pipeline [2001] ECR I-8365, paragraph 42; Case T-308/00 Salzgitter v Commission [2004] ECR II-1933 paragraph 42, Case C-172/03 Wolfgang Heiser [2005] ECR I-1627, paragraph 43.

([2]) Case E-6/98 Norway v EFTA Surveillance Authority, cited above, paragraph 38; Joined Cases E-5/04, E-6/04 and E-7/04 Fesil and Finnfjord, PIL and others and Norway v EFTA Surveillance Authority, cited above, paragraphs 76-89; Case 173/73 Italy v Commission [1974] ECR 709, paragraph 16.

([3]) Case E-6/98 Norway v EFTA Surveillance Authority, mentioned above, paragraph 67, Case C-159/01 Netherlands v Commission, ECR [2004] I-4461, paragraph 43.

([4]) See for a similar argumentation, Commission Decision of 17 February 2003 on the State aid implemented by the Netherlands for international financing activities paragraph 95.

1.1.3. *Distortion of competition and effect on trade between Contracting Parties*

In order to fall under Article 61(1) of the EEA Agreement, the measure must distort or threaten to distort competition and affect trade between the Contracting Parties.

For a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition and that the measure concerned affects intra-Community trade by financially strengthening the position of an undertaking compared with other undertakings competing in intra-Community trade ([1]).

The grant of a tax reduction to captive insurance companies strengthens and reinforces their position towards other companies offering insurance services in the European Economic Area. As the Commission pointed out in the above mentioned Åland decision, the insurance market is an open market and companies belonging to a group can normally insure their risks with non-affiliated insurers ([2]).

Since the insurance services which the eligible companies carry out are activities which are the subject of trade between the Contracting Parties, intra-EEA trade is equally deemed to be affected ([3]). In addition, trade is deemed to be affected as the measure could also benefits the groups to which the captive insurers belong, which may be active in markets open to cross-border competition.

1.2. **Coupon tax**

1.2.1. *Presence of State resources*

As mentioned above, the aid measures must be granted by the State or through State resources.

The granting of a tax exemption involves a loss of tax revenues for the State which is equivalent to consumption of State resources in the form of fiscal (tax) expenditure ([4]). By exempting shares or parts of captive insurance companies from payment of coupon tax, the State in Liechtenstein foregoes revenues corresponding to the non-payment of coupon taxes.

Thus, the coupon tax exemption is granted through State resources.

1.2.2. *Favouring certain undertakings or the production of certain goods*

First, the aid measure must confer on the beneficiaries advantages that relieve them of charges that are normally borne from their budget. Second, the aid measure must be selective in that it favours "*certain undertakings or the production of certain goods*".

The measure confers the investors in captive insurance companies an advantage by relieving them of charges (non payment of coupon tax) they would normally be subject to. By exempting shares or parts of captive insurance companies from payment of the coupon tax, the Liechtenstein legislation makes it more attractive to invest in captive insurance companies than in other undertakings, where their investments are subject to payment of coupon tax. Therefore, investors in captive insurance companies are granted an advantage. A lower rate of taxation than what normally would be due or an exemption from paying taxes confers an advantage to the undertakings investing in captive insurance companies ([5]).

The preliminary view of the Authority is therefore that the exemption from payment of coupon tax applicable to shares or parts of captive insurance companies entails the granting of an economic advantage to the undertakings owning them.

As mentioned above, this tax exemption also grants an indirect advantage to the captive insurance companies which become more attractive for investors and thus makes capital more easily accessible for the former ([6]).

([1]) Case T-214/95 Het Vlaamse Gewest v Commission [1998] ECR II-717, Case 730/79 Philip Morris v Commission [1980] ECR 2671, paragraph 11.
([2]) Commission Decision of 10 July 2002 on the aid scheme implemented by Finland for Åland Islands captive insurance companies, published on OJ L 329, 5.12.2002, p. 22, paragraphs 44 and 46.
([3]) Commission Decision of 10 July 2002 on the aid scheme implemented by Finland for Åland Islands captive insurance companies, cited above, paragraph 47.
([4]) See point 3(3) on the Authority's State Aid Guidelines to Business Taxation.
([5]) In case of investors which are private persons, the grant of a tax exemption does not constitute State aid within the meaning of Article 61(1) of the EEA Agreement.
([6]) Commission Decision of 21 January 1998 on tax concessions under § 52(8) of the German Income Tax Act, published on OJ L 212, 30.7.1998, p. 50. Case C-156/98 Germany v Commission ECR [2000] I-6857, paragraph 26.

Second, the measure is selective since it only concerns undertakings that have created or invested in a captive insurance company as well as the insurance companies themselves. As the European Commission held in its decision regarding the treatment of captive insurance companies in Åland ([1]), the creation of this type of companies requires an economic strength and is therefore normally undertaken mainly by large companies or groups of companies. Normally, the group needs to be large enough to generate a turnover that will allow the captive insurance company to generate a high enough turnover to cover the fixed costs and obtain a profit. The measure therefore favours larger companies to the detriment of companies which cannot afford the establishment of captive insurance companies.

For these reasons, the Authority preliminary considers that the exemption from coupon tax on dividends and profit shares from captive insurance companies is materially selective.

As mentioned above, a specific tax measure can nevertheless be justified by the logic of the tax system if it is consistent with it ([2]).

The arguments presented above in relation to income and capital tax applies equally to the exemption from coupon tax.

At this stage of the procedure, the Authority is therefore of the preliminary opinion that the exemption from payment the coupon tax is selective in the meaning of Article 61(1) of the EEA Agreement.

1.2.3. *Distortion of competition and effect on trade between Contracting Parties*

In order to fall under Article 61(1) of the EEA Agreement, the measure must distort or threaten to distort competition and affect trade between the Contracting Parties.

For a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition and that the measure concerned affects intra-Community trade by financially strengthening the position of an undertaking compared with other undertakings competing in intra-Community trade ([3]).

In addition to the reasons mentioned above under Section II.1.1.3, the Authority notes that the undertakings that own captive insurance companies are normally large companies or groups of companies that naturally compete offering goods and/or services in the European Economic Area.

The Authority's preliminary view is that the exemption from paying a coupon tax distorts competition and has an effect on trade between the Contracting Parties within the meaning of Article 61(1) of the EEA Agreement.

1.3. **Conclusion**

Against the background of the above, the Authority is of the preliminary view that the special tax rules applicable to captive insurance companies in Liechtenstein constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

2. **Procedural requirements**

Pursuant to Article 1(3) of Part I of Protocol 3, "*the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. […]. The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision*".

The special rules regarding the capital, income and coupon taxes applicable to captive insurance undertakings were introduced into the Tax Act in 1998, i.e. after the entry into force of the EEA Agreement. The Liechtenstein authorities did not notify this amendment of the Tax Act to the Authority. The Authority therefore draws the preliminary conclusion that the Liechtenstein authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

([1]) Commission Decision of 10 July 2002 on the aid scheme implemented by Finland for Åland Islands captive insurance companies, published on OJ L 329, 5.12 2002, p. 22.

([2]) Case E-6/98 Norway v EFTA Surveillance Authority, cited above, paragraph 38; Joined Cases E-5/04, E-6/04 and E-7/04 Fesil and Finnfjord, PIL and others and Norway v EFTA Surveillance Authority, cited above, paragraphs 84-85; Joined Cases T-127/99, T-129/99 and T-148/99 Territorio Histórico de Alava et a v Commission [2002] ECR II-1275, paragraph 163, Case C-143/99 Adria-Wien Pipeline [2001] ECR I-8365, paragraph 42; Case T-308/00 Salzgitter v Commission [2004] ECR II-1933 paragraph 42, Case C-172/03 Wolfgang Heiser [2005] ECR I-1627, paragraph 43.

([3]) Case T-214/95 Het Vlaamse Gewest v Commission [1998] ECR II-717, Case 730/79 Philip Morris v Commission [1980] ECR 2671, paragraph 11.

3. **Compatibility of the aid**

Support measures caught by Article 61(1) of the EEA Agreement are generally incompatible with the functioning of the EEA Agreement, unless they qualify for a derogation in Article 61(2) or (3) of the EEA Agreement.

The derogation of Article 61(2) is not applicable to the aid in question, which is not designed to achieve any of the aims listed in this provision. Nor does Article 61(3)(a) or Article 61(3)(b) of the EEA Agreement apply to the case at hand.

The aid in question is not linked to any investment in production capital. It just reduces the costs which companies would normally have to bear in the course of pursuing their day-to-day business activities and is consequently to be classified as operating aid. Operating aid is normally not considered suitable to facilitate the development of certain economic activities or of certain regions as provided for in Article 61(3)(c) of the EEA Agreement. Operating aid is only allowed under special circumstances (e.g. for certain types of environmental or regional aid), when the Authority's Guidelines provide for such an exemption. None of these Guidelines apply to the aid in question.

The Authority therefore doubts that the special tax rules applicable to captive insurance companies can be justified under the State aid provisions of the EEA Agreement.

4. **Conclusion**

Based on the information submitted by the Liechtenstein authorities, the Authority cannot exclude the possibility that the tax rules applicable to captive insurance companies (full exemption from payment of income and coupon tax and partial exemption from payment of capital tax) constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

Furthermore, as stated above, the Authority has doubts that these measures can be regarded as compatible under the State aid provisions of the EEA Agreement, in particular Article 61(3)(c) thereof.

Consequently, and in accordance Article 4(4) of Part II of Protocol 3, the Authority is obliged to open the procedure provided for in Article 1(2) of Part I of Protocol 3. The decision to open proceedings is without prejudice to the final decision of the Authority, which may conclude that the measures in question are compatible with the functioning of the EEA Agreement.

In light of the foregoing considerations, the Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Liechtenstein authorities to submit their comments within one month of the date of receipt of this Decision.

The Authority further requests the Liechtenstein authorities to provide all documents, information and data needed for assessment of the compatibility of the above-mentioned aid measure, within the same deadline.

It invites the Liechtenstein authorities to forward a copy of this decision to the potential aid recipients of the aid immediately.

The Authority would like to remind the Liechtenstein authorities that, according to Article 14 in Part II of Protocol 3, any incompatible aid unlawfully put at the disposal of the beneficiaries will have to be recovered, unless this recovery would be contrary to the general principal of law. At this stage of the procedure, the Authority considers that neither Liechtenstein nor the beneficiaries of the aid measure under assessment can validly argue the existence of legitimate expectations. According to the case law of the Court of Justice, a diligent trader should himself be able to verify that new aid has been put into effect in accordance with the applicable procedural rules, notably Article 88 EC, corresponding to Article 1 in Part I of Protocol 3 to the Surveillance and Court Agreement. For that reason, the beneficiary of new aid, granted in contravention of that provision, can only in exceptional circumstances claim that he had legitimate expectations barring the repayment of the aid ([1]).

([1]) Cf. Case C-169/95 Spain v Commission [1997] ECR I-135, paragraph 51; Case C-24/95 Alcan Deutschland [1997] ECR I-1591, paragraph 25; and Case T-55/99 Confederación Española de Transporte de Mercancías (CETM) [2000] ECR II-3207, paragraph 121 to 131.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided to open the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3 against Liechtenstein regarding the tax derogations in favour of captive insurance companies introduced in 1998.

Article 2

The Liechtenstein authorities are invited, pursuant to Article 6(1) of Part II of Protocol 3, to submit their comments on the opening of the formal investigation procedure within one month from the notification of this Decision.

Article 3

This Decision is addressed to the Principality of Liechtenstein.

Article 4

Only the English version is authentic.

Done at Brussels, 24 September 2008.

For the EFTA Surveillance Authority

Per SANDERUD	Kurt JAEGER
President	*College Member'*