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(¹) Text with EEA relevance

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⁽¹⁾ Text with EEA relevance

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COUNCIL

Revised Code of Conduct for the effective implementation of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises

(2009/C 322/01)

THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL,

HAVING REGARD to the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (the 'Arbitration Convention'),

ACKNOWLEDGING the need both for Member States, as Contracting States to the Arbitration Convention, and for taxpayers to have more detailed rules to implement efficiently the Arbitration Convention,

NOTING the Commission Communication of 14 September 2009 on the work of the EU Joint Transfer Pricing Forum (JTPF) in the period March 2007 to March 2009, based on the reports of the JTPF on penalties and transfer pricing, and on the interpretation of some provisions of the Arbitration Convention,

EMPHASISING that this Code of Conduct is a political commitment and does not affect the Member States' rights and obligations or the respective spheres of competence of the Member States and the European Union resulting from the Treaty on European Union and the Treaty on the Functioning of the European Union,

ACKNOWLEDGING that the implementation of this Code of Conduct should not hamper solutions at a more global level,

TAKING NOTE of the conclusions of the JTPF report on penalties,

HEREBY ADOPT THE FOLLOWING REVISED CODE OF CONDUCT:

Without prejudice to the respective spheres of competence of the Member States and the European Union, this revised Code of Conduct concerns the implementation of the Arbitration Convention and certain related issues concerning mutual agreement procedures under double taxation treaties between Member States.

1. Scope of the Arbitration Convention**1.1. EU triangular transfer pricing cases**

- (a) For the purpose of this Code of Conduct, a EU triangular case is a case where, in the first stage of the Arbitration Convention procedure, two EU competent authorities cannot fully resolve any double

taxation arising in a transfer pricing case when applying the arm's length principle because an associated enterprise situated in (an)other Member State(s) and identified by both EU competent authorities (evidence based on a comparability analysis including a functional analysis and other related factual elements) had a significant influence in contributing to a non-arm's length result in a chain of relevant transactions or commercial/financial relations and is recognised as such by the taxpayer suffering the double taxation and having requested the application of the provisions of the Arbitration Convention.

- (b) The scope of the Arbitration Convention includes all EU transactions involved in triangular cases among Member States.

1.2. *Thin capitalisation* ⁽¹⁾

The Arbitration Convention makes clear reference to profits arising from commercial and financial relations but does not seek to differentiate between these specific profit types. Therefore, profit adjustments arising from financial relations, including a loan and its terms, and based on the arm's length principle are to be considered within the scope of the Arbitration Convention.

⁽¹⁾ Reservations: Bulgaria holds the view that profit adjustments arising from an adjustment to the price of a loan (i.e. the interest rate) fall within the scope of the Arbitration Convention. On the contrary, Bulgaria considers that the Arbitration Convention does not cover cases of profit adjustments based on adjustments to the amount of financing. In principle the grounds for such adjustments lay in the domestic legislation of Member States. The operation of varying national rules and the absence of an internationally recognized arms' length set of guidelines to be applied to a 'business' capital structure, to a great extent challenge the arms' length character of profit adjustments based on adjustments to the amount of a loan.

The Czech Republic shall not apply the mutual agreement procedure under the Arbitration Convention in case that is a subject to the anti-abuse rules under the domestic law.

The Netherlands endorses the view that an adjustment of the interest rate (pricing of the loan) which is based on national legislation based on the arm's length principle falls within the scope of the Arbitration Convention. Adjustments of the amount of the loan as well as adjustments of the deductibility of the interest based on a thin capitalization approach under the arm's length principle or adjustments based on anti-abuse legislation based on the arm's length principle are considered to fall outside the scope of the Arbitration Convention. The Netherlands will preserve its reservation until there is guidance from the OECD on how to apply the arm's length principle to thin capitalization of associated enterprises.

Greece considers that adjustments which fall within the scope of Arbitration Convention are those of the interest rate of a loan. Adjustments concerning the amount of a loan and the deductibility of accrued interest related to a loan should not apply to Arbitration Convention, due to domestic legislation limitations in force.

Hungary considers only those cases fall within the scope of the AC where double taxation is due to the adjustment of the interest rate of the loan and the adjustment is based on the ALP.

Italy considers that the Arbitration Convention may be invoked in case of double taxation due to a price adjustment of a financial transaction not in accordance with the arm's length principle. Conversely, it cannot be invoked to solve double taxation arising from adjustments to the amount of loans, or double taxation occurred because of the differences in domestic rules on the allowed amount of financing or on interest deductibility.

Latvia's understanding is that the Arbitration Convention cannot be invoked in case of double taxation arising as a result of application of general national legislation on adjustments of the amount of a loan or on deductibility of interest payments, that is not based on the arm's length principle provided for in Article 4 of the Arbitration Convention.

Therefore, Latvia considers that only adjustments of interest deductions performed under national legislation based on the arm's length principle are within the scope of the Arbitration Convention.

Poland considers that procedure stipulated by Arbitration Convention may be applicable only in the case of interest adjustments. While adjustments concerning amount of a loan should not be covered by the Convention. In our opinion it is quite impossible to define how capital structure should look in practice in order to be in line with arm's length principle.

Portugal considers that the Arbitration Convention cannot be invoked to resolve cases of double taxation caused by adjustments to profits arising either from corrections to the amount of a loan contracted between associated companies or to interest payments based on domestic anti-abuse measures. Nevertheless, Portugal admits to review its position once consensus is reached at international level, namely through guidance from the OECD, on the application of the arm's length principle to the amount of debts (involving thin capitalisation situations) between associated companies.

Slovakia is of the opinion that an adjustment of the interest rate which is based on national legislation based on the arm's length principle should fall within the scope of the Arbitration Convention but the adjustments to profits arising as a result of the application of anti-abuse rules under domestic legislation should fall outside the scope of the Arbitration Convention.

2. Admissibility of a case

On the basis of Article 18 of the Arbitration Convention, Member States are recommended to consider that a case is covered by the Arbitration Convention when the request is presented in due time after the date of entry into force of accession by new Member States to the Arbitration Convention, even if the adjustment applies to earlier fiscal years.

3. Serious penalties

As Article 8(1) provides for flexibility in refusing to give access to the Arbitration Convention due to the imposition of a serious penalty, and considering the practical experience acquired since 1995, Member States are recommended to clarify or revise their unilateral declarations in the Annex to the Arbitration Convention in order to better reflect that a serious penalty should only be applied in exceptional cases like fraud.

4. The starting point of the three-year period (deadline for submitting the request according to Article 6(1) of the Arbitration Convention)

The date of the 'first tax assessment notice or equivalent which results or is likely to result in double taxation within the meaning of Article 1 of the Arbitration Convention, e.g. due to a transfer pricing adjustment' ⁽¹⁾, is considered as the starting point for the three-year period.

As far as transfer pricing cases are concerned, Member States are recommended to apply this definition also to the determination of the three-year period as provided for in Article 25.1 of the OECD Model Tax Convention on Income and on Capital and implemented in the double taxation treaties between Member States.

5. The starting point of the two-year period (Article 7(1) of the Arbitration Convention)

- (a) For the purpose of Article 7(1) of the Arbitration Convention, a case will be regarded as having been submitted according to Article 6(1) when the taxpayer provides the following:
- (i) identification (such as name, address, tax identification number) of the enterprise of the Member State that presents its request and of the other parties to the relevant transactions;
 - (ii) details of the relevant facts and circumstances of the case (including details of the relations between the enterprise and the other parties to the relevant transactions);
 - (iii) identification of the tax periods concerned;
 - (iv) copies of the tax assessment notices, tax audit report or equivalent leading to the alleged double taxation;
 - (v) details of any appeals and litigation procedures initiated by the enterprise or the other parties to the relevant transactions and any court decisions concerning the case;
 - (vi) an explanation by the enterprise of why it considers that the principles set out in Article 4 of the Arbitration Convention have not been observed;
 - (vii) an undertaking that the enterprise shall respond as completely and quickly as possible to all reasonable and appropriate requests made by a competent authority and have documentation at the disposal of the competent authorities; and

⁽¹⁾ Reservation: The tax authority Member from Italy considers 'the date of the first tax assessment notice or equivalent reflecting a transfer pricing adjustment which results or is likely to result in double taxation within the meaning of Article 1' as the starting point of the three-year period, since the application of the existing Arbitration Convention should be limited to those cases where there is a transfer pricing 'adjustment'.

(viii) any specific additional information requested by the competent authority within two months upon receipt of the taxpayer's request.

- (b) The two-year period starts on the latest of the following dates:
- (i) the date of the tax assessment notice, i.e. a final decision of the tax administration on the additional income, or equivalent;
 - (ii) the date on which the competent authority receives the request and the minimum information as stated under point (a).

6. Mutual agreement procedures under the Arbitration Convention

6.1. General provisions

- (a) The arm's length principle will be applied, as advocated by the OECD, without regard to the immediate tax consequences for any particular Member State.
- (b) Cases will be resolved as quickly as possible having regard to the complexity of the issues in the particular case in question.
- (c) Any appropriate means for reaching a mutual agreement as expeditiously as possible, including face-to-face meetings, will be considered. Where appropriate, the enterprise will be invited to make a presentation to its competent authority.
- (d) Taking into account the provisions of this Code of Conduct, a mutual agreement should be reached within two years of the date on which the case was first submitted to one of the competent authorities in accordance with point 5(b) of this Code of Conduct. However, it is recognised that in some situations (e.g. imminent resolution of the case or particularly complex transactions, or triangular cases), it may be appropriate to apply Article 7(4) of the Arbitration Convention (providing for time limits to be extended) to agree a short extension.
- (e) The mutual agreement procedure should not impose any inappropriate or excessive compliance costs on the person requesting it, or on any other person involved in the case.

6.2. EU triangular transfer pricing cases

- (a) As soon as the competent authorities of the Member States have agreed that the case under discussion is to be considered a EU triangular case, they should immediately invite the other EU competent authority(ies) to take part in the proceedings and discussions as (an) observer(s) or as (an) active stakeholder(s) and decide together which is their favoured approach. Accordingly, all information should be shared with the other EU competent authority(ies) through for example exchanges of information. The other competent authority(ies) should be invited to acknowledge the actual or possible involvement of 'their' taxpayer(s).
- (b) One of the following approaches may be adopted by the competent authorities involved to resolve double taxation arising from EU triangular cases under the Arbitration Convention:
 - (i) the competent authorities can decide to take a multilateral approach (immediate and full participation of all the competent authorities concerned); or
 - (ii) the competent authorities can decide to start a bilateral procedure, whereby the two parties to the bilateral procedure are the competent authorities that identified (based on a comparability analysis including a functional analysis and other related factual elements) the associated enterprise situated in another Member State that had a significant influence in contributing to a non-arm's length result in the chain of relevant transactions or commercial/financial relations, and should invite the other EU competent authority(ies) to participate as (an) observer(s) in the mutual agreement procedure discussions; or

- (iii) the competent authorities can decide to start more than one bilateral procedure in parallel and should invite the other EU competent authority(ies) to participate as (an) observer(s) in the respective mutual agreement procedure discussions.

Member States are recommended to apply a multilateral procedure to resolve such double taxation cases. However this should always be agreed by all the competent authorities, based on the specific facts and circumstances of the case. If a multilateral approach is not possible and a two or more parallel bilateral procedures are started, all relevant competent authorities should be involved in the first stage of the Arbitration Convention procedure either as Contracting States in the initial Arbitration Convention application or as observers.

- (c) The status of observer may change to that of stakeholder depending on the development of the discussions and evidence presented. If the other competent authority(ies) want(s) to participate in the second stage (arbitration), it (they) has (have) to become (a) stakeholder(s).

The fact that the other EU competent authority(ies) remain(s) throughout as (a) party(ies) to the discussions as (an) observer(s) only has no consequences for the application of the provisions of the Arbitration Convention (e.g. timing issues and procedural issues).

Participation as (an) observer(s) does not bind the other competent authority(ies) to the final outcome of the Arbitration Convention procedure.

In the procedure, any exchange of information must comply with the normal legal and administrative requirements and procedures.

- (d) The taxpayer(s) should, as soon as possible, inform the tax administration(s) involved that (an) other party(ies), in (an) other Member State(s), could be involved in the case. That notification should be followed in a timely manner by the presentation of all relevant facts and supporting documentation. Such an approach will not only lead to quicker resolution but also guard against the failure to resolve double taxation issues due to differing procedural deadlines in the Member States.

6.3. *Practical functioning and transparency*

- (a) In order to minimise costs and delays caused by translation, the mutual agreement procedure, in particular the exchange of position papers, should be conducted in a common working language, or in a manner having the same effect, if the competent authorities can reach agreement on a bilateral (or multilateral) basis.
- (b) The enterprise requesting the mutual agreement procedure will be kept informed by the competent authority to which it made the request of all significant developments that affect it during the course of the procedure.
- (c) The confidentiality of information relating to any person that is protected under a bilateral tax convention or under the law of a Member State will be ensured.
- (d) The competent authority will acknowledge receipt of a taxpayer's request to initiate a mutual agreement procedure within one month from the receipt of the request and at the same time inform the competent authority(ies) of the other Member State(s) involved in the case attaching a copy of the taxpayer's request.
- (e) If the competent authority believes that the enterprise has not submitted the minimum information necessary for the initiation of a mutual agreement procedure as stated under point 5(a), it will invite the enterprise, within two months upon receipt of the request, to provide it with the specific additional information it needs.
- (f) Member States undertake that the competent authority will respond to the enterprise making the request in one of the following forms:

- (i) if the competent authority does not believe that profits of the enterprise are included, or are likely to be included, in the profits of an enterprise of another Member State, it will inform the enterprise of its doubts and invite it to make any further comments;
 - (ii) if the request appears to the competent authority to be well-founded and it can itself arrive at a satisfactory solution, it will inform the enterprise accordingly and make as quickly as possible such adjustments or allow such reliefs as are justified;
 - (iii) if the request appears to the competent authority to be well-founded but it is not itself able to arrive at a satisfactory solution, it will inform the enterprise that it will endeavour to resolve the case by mutual agreement with the competent authority of any other Member State concerned.
- (g) If a competent authority considers a case to be well-founded, it should initiate a mutual agreement procedure by informing the competent authority(ies) of the other Member State(s) of its decision and attach a copy of the information as specified under point 5(a) of this Code of Conduct. At the same time it will inform the person invoking the Arbitration Convention that it has initiated the mutual agreement procedure. The competent authority initiating the mutual agreement procedure will also inform — on the basis of information available to it — the competent authority(ies) of the other Member State(s) and the person making the request whether the case was presented within the time limits provided for in Article 6(1) of the Arbitration Convention and of the starting point for the two-year period of Article 7(1) of the Arbitration Convention.

6.4. Exchange of position papers

- (a) Member States undertake that when a mutual agreement procedure has been initiated, the competent authority of the country in which a tax assessment, i.e. a final decision of the tax administration on the income, or equivalent has been made, or is intended to be made, which contains an adjustment that results, or is likely to result, in double taxation within the meaning of Article 1 of the Arbitration Convention, will send a position paper to the competent authority(ies) of the other Member State(s) involved in the case setting out:
- (i) the case made by the person making the request;
 - (ii) its view of the merits of the case, e.g. why it believes that double taxation has occurred or is likely to occur;
 - (iii) how the case might be resolved with a view to the elimination of double taxation together with a full explanation of the proposal.
- (b) The position paper will contain a full justification of the assessment or adjustment and will be accompanied by basic documentation supporting the competent authority's position and a list of all other documents used for the adjustment.
- (c) The position paper will be sent to the competent authority(ies) of the other Member State(s) involved in the case as quickly as possible taking account of the complexity of the particular case and no later than four months from the latest of the following dates:
- (i) the date of the tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent;
 - (ii) the date on which the competent authority receives the request and the minimum information as stated under point 5(a).

- (d) Member States undertake that, where a competent authority of a country in which no tax assessment or equivalent has been made, or is not intended to be made, which results, or is likely to result, in double taxation within the meaning of Article 1 of the Arbitration Convention, e.g. due to a transfer pricing adjustment, receives a position paper from another competent authority, it will respond as quickly as possible taking account of the complexity of the particular case and no later than six months after receipt of the position paper.
- (e) The response should take one of the following two forms:
- (i) if the competent authority believes that double taxation has occurred, or is likely to occur, and agrees with the remedy proposed in the position paper, it will inform the other competent authority(ies) accordingly and make such adjustments or allow such relief as quickly as possible;
 - (ii) if the competent authority does not believe that double taxation has occurred, or is likely to occur, or does not agree with the remedy proposed in the position paper, it will send a responding position paper to the other competent authority(ies) setting out its reasons and proposing an indicative time scale for dealing with the case taking into account its complexity. The proposal will include, whenever appropriate, a date for a face-to-face meeting, which should take place no later than 18 months from the latest of the following dates:
 - (aa) the date of the tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent;
 - (bb) the date on which the competent authority receives the request and the minimum information as stated under point 5(a).
- (f) Member States will further undertake any appropriate steps to speed up all procedures wherever possible. In this respect, Member States should envisage to organise regularly, and at least once a year, face-to-face-meetings between their competent authorities to discuss pending mutual agreement procedures (provided that the number of cases justifies such regular meetings).

6.5. *Double taxation treaties between Member States*

As far as transfer pricing cases are concerned, Member States are recommended to apply the provisions of points 1, 2 and 3 also to mutual agreement procedures initiated in accordance with Article 25(1) of the OECD Model Convention on Income and on Capital, implemented in the double taxation treaties between Member States.

7. Proceedings during the second phase of the Arbitration Convention

7.1. *List of independent persons*

- (a) Member States commit themselves to inform without any further delay the Secretary-General of the Council of the names of the five independent persons of standing, eligible to become a member of the advisory commission as referred to in Article 7(1) of the Arbitration Convention and inform, under the same conditions, of any alteration of the list.
- (b) When transmitting the names of their independent persons of standing to the Secretary-General of the Council, Member States will join a curriculum vitae of those persons, which should, among other things, describe their legal, tax and especially transfer pricing experience.
- (c) Member States may also indicate on their list those independent persons of standing who fulfil the requirements to be elected as Chairman.
- (d) The Secretary General of the Council will address every year a request to Member States to confirm the names of their independent persons of standing or give the names of their replacements.

- (e) The aggregate list of all independent persons of standing will be published on the Council's website.
- (f) Independent persons of standing do not have to be nationals of or resident in the nominating State, but do have to be nationals of a Member State and resident within the territory to which the Arbitration Convention applies.
- (g) Competent authorities are recommended to draw up an agreed declaration of acceptance and a statement of independence for the particular case, to be signed by the selected independent persons of standing.

7.2. *Establishment of the advisory commission*

- (a) Unless otherwise agreed between the Member States concerned, the Member State that issued the first tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent which results, or is likely to result, in double taxation within the meaning of Article 1 of the Arbitration Convention, takes the initiative for the establishment of the advisory commission and arranges for its meetings, in agreement with the other Member State(s).
- (b) Competent authorities should establish the advisory commission no later than six months following expiry of the period referred to in Article 7 of the Arbitration Convention. Where one competent authority does not do this, another competent authority involved is entitled to take the initiative.
- (c) The advisory commission will normally consist of two independent persons of standing in addition to its Chairman and the representatives of the competent authorities. For triangular cases, where an advisory commission is to be set up under the multilateral approach, Member States will have regard to the requirements of Article 11(2) of the Arbitration Convention, introducing as necessary additional rules of procedure, to ensure that the advisory commission, including its Chairman, is able to adopt its opinion by a simple majority of its members.
- (d) The advisory commission will be assisted by a secretariat for which the facilities will be provided by the Member State that initiated the establishment of the advisory commission unless otherwise agreed by the Member States concerned. For reasons of independence, this secretariat will function under the supervision of the Chairman of the advisory commission. Members of the secretariat will be bound by the secrecy provisions as stated in Article 9(6) of the Arbitration Convention.
- (e) The place where the advisory commission meets and the place where its opinion is to be delivered may be determined in advance by the competent authorities of the Member States concerned.
- (f) Member States will provide the advisory commission before its first meeting, with all relevant documentation and information and in particular all documents, reports, correspondence and conclusions used during the mutual agreement procedure.

7.3. *Functioning of the advisory commission*

- (a) A case is considered to be referred to the advisory commission on the date when the Chairman confirms that its members have received all relevant documentation and information as specified in point 7.2(f).
- (b) The proceedings of the advisory commission will be conducted in the official language or languages of the Member States involved, unless the competent authorities decide otherwise by mutual agreement, taking into account the wishes of the advisory commission.
- (c) The advisory commission may request from the party from which a statement or document emanates to arrange for a translation into the language or languages in which the proceedings are conducted.

- (d) Whilst respecting Article 10 of the Arbitration Convention, the advisory commission may request Member States and in particular the Member State that issued the first tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent, which resulted, or may result, in double taxation within the meaning of Article 1 of the Arbitration Convention, to appear before the advisory commission.
- (e) The costs of the advisory commission procedure, which will be shared equally by the Member States concerned, will be the administrative costs of the advisory commission and the fees and expenses of the independent persons of standing.
- (f) Unless the competent authorities of the Member States concerned agree otherwise:
 - (i) the reimbursement of the expenses of the independent persons of standing will be limited to the reimbursement usual for high ranking civil servants of the Member State which has taken the initiative to establish the advisory commission;
 - (ii) the fees of the independent persons of standing will be fixed at EUR 1 000 per person per meeting day of the advisory commission, and the Chairman will receive a fee higher by 10 % than that of the other independent persons of standing.
- (g) Actual payment of the costs of the advisory commission procedure will be made by the Member State which has taken the initiative to establish the advisory commission, unless the competent authorities of the Member States concerned decide otherwise.

7.4. *Opinion of the advisory commission*

Member States would expect the opinion to contain:

- (a) the names of the members of the advisory commission;
- (b) the request; the request contains:
 - (i) the names and addresses of the enterprises involved;
 - (ii) the competent authorities involved;
 - (iii) a description of the facts and circumstances of the dispute;
 - (iv) a clear statement of what is claimed;
- (c) a short summary of the proceedings;
- (d) the arguments and methods on which the decision in the opinion is based;
- (e) the opinion;
- (f) the place where the opinion is delivered;
- (g) the date on which the opinion is delivered;
- (h) the signatures of the members of the advisory commission.

The decision of the competent authorities and the opinion of the advisory commission will be communicated as follows:

- (i) Once the decision has been taken, the competent authority to which the case was presented will send a copy of the decision of the competent authorities and the opinion of the advisory commission to each of the enterprises involved.

- (ii) The competent authorities of the Member States can agree that the decision and the opinion may be published in full. They can also agree to publish the decision and the opinion without mentioning the names of the enterprises involved and with deletion of any further details that might disclose the identity of the enterprises involved. In both cases, the enterprises' consent is required and prior to any publication the enterprises involved must have communicated in writing to the competent authority to which the case was presented that they do not have objections to publication of the decision and the opinion.
- (iii) The opinion of the advisory commission will be drafted in three (or more in the case of triangular cases) original copies, one to be sent to each competent authority of the Member States involved and one to be transmitted to the Secretariat-General of the Council for archiving. If there is agreement on the publication of the opinion, the latter will be rendered public in the original language(s) on the website of the Commission.

8. Tax collection and interest charges during cross-border dispute resolution procedures

- (a) Member States are recommended to take all necessary measures to ensure that the suspension of tax collection during cross-border dispute resolution procedures under the Arbitration Convention can be obtained by enterprises engaged in such procedures under the same conditions as those engaged in a domestic appeals or litigation procedure although these measures may imply legislative changes in some Member States. It would be appropriate for Member States to extend these measures to the cross-border dispute resolution procedures under double taxation treaties between Member States.
- (b) Considering that, during mutual agreement procedure negotiations, a taxpayer should not be adversely affected by the existence of different approaches to interest charges and refunds during the time it takes to complete the mutual agreement procedure, Member States are recommended to apply one of the following approaches:
 - (i) tax to be released for collection and repaid without attracting any interest; or
 - (ii) tax to be released for collection and repaid with interest; or
 - (iii) each case to be dealt with on its merits in terms of charging or repaying interest (possibly during the mutual agreement procedure).

9. Accession of new Member States to the Arbitration Convention

Member States will endeavour to sign and ratify the conventions on accession of new Member States to the Arbitration Convention as soon as possible and in any event no later than two years after their accession to the EU.

10. Final provisions

In order to ensure the even and effective application of this Code of Conduct, Member States are invited to report to the Commission on its practical functioning every two years. On the basis of these reports, the Commission intends to report to the Council and may propose a review of the provisions of this Code of Conduct.

COMMISSION

Explanatory Notes to the Combined Nomenclature of the European Communities

(2009/C 322/02)

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

Page 79

Between the title of heading 1806 (Chocolate and other food preparations containing cocoa) and **1806 20 10**, the following text is inserted:

‘Only products containing cocoa beans, cocoa paste or cocoa powder are considered to contain cocoa within the meaning of heading 1806.’

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Chapter 19

The following third paragraph is added to ‘General’:

‘In the case of products containing caffeine or theobromine from sources other than cocoa, these additional amounts of caffeine or theobromine should not be taken into account in calculating the cocoa content.’

Between the title of heading 1901 (Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included) and 1901 20 00, the following text is inserted:

‘Only products containing cocoa beans, cocoa paste or cocoa powder are considered to contain cocoa within the meaning of heading 1901’

The following second paragraph is added to the CN Explanatory Note to heading 1904 (Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals (other than maize (corn)) in grain form or in the form of flakes or other worked grains (except flour, groats and meal), pre-cooked or otherwise prepared, not elsewhere specified or included):

‘Only products containing cocoa beans, cocoa paste or cocoa powder are considered to contain cocoa within the meaning of heading 1904’

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The following third paragraph is added to the CN Explanatory Note to heading 1905 (Bread, pastry, cakes, biscuits and other bakers’ wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products):

‘Only products containing cocoa beans, cocoa paste or cocoa powder are considered to contain cocoa within the meaning of heading 1905’

⁽¹⁾ OJ L 256, 7.9.1987, p. 1.

⁽²⁾ OJ C 133, 30.5.2008, p. 1.

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The following eighth paragraph is added to the CN Explanatory Note to heading **2105 00** (Ice cream and other edible ice, whether or not containing cocoa):

‘Only products containing cocoa beans, cocoa paste or cocoa powder are considered to contain cocoa within the meaning of heading 2105 00’

Non-opposition to a notified concentration**(Case COMP/M.5421 — Panasonic/Sanyo)****(Text with EEA relevance)**

(2009/C 322/03)

On 29 September 2009, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- in the merger section of the Competition website of the Commission (<http://ec.europa.eu/competition/mergers/cases/>). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
 - in electronic form on the EUR-Lex website (<http://eur-lex.europa.eu/en/index.htm>) under document number 32009M5421. EUR-Lex is the on-line access to the European law.
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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

EUROPEAN PARLIAMENT

**Conference of Community and European Affairs Committees of Parliaments of the European Union
(COSAC)****Contribution of the XLII COSAC****Stockholm, 4-6 October 2009**

(2009/C 322/04)

1. Institutional issues and the Treaty of Lisbon

- 1.1. Having reached its 20th anniversary, COSAC is pleased to have its role enhanced as a forum for parliamentary cooperation and a place for the expression of deliberative democracy within the European Union, giving more possibilities for national parliaments to have a dialogue with the EU Institutions and to make any appropriate contribution to the European Parliament, the Council and the Commission.
- 1.2. Noting the progress achieved during the past five years in developing cooperation between national parliaments and the European Union Institutions, COSAC wishes to thank Ms Margot Wallström, Vice-president of the European Commission, for her dedicated work towards this end.
- 1.3. Given the approval of the Treaty of Lisbon by all chambers of the European Union national parliaments after due deliberation and debate, although pending formal approval by the Irish chambers, following the referendum on 2 October 2009, COSAC holds that the democratic legitimacy of this process cannot be questioned and should be recognised by all parties. While respecting the constitutional requirements of all Member States, COSAC calls for the entry into force of the Treaty of Lisbon as soon as possible.

COSAC looks forward to cooperation with the European Union Institutions as reconstituted under the Treaty. COSAC welcomes the strengthened role of national parliaments laid down in the Treaty and emphasises the importance of the full, immediate and efficient implementation of the new Treaty once it comes into force, observing the time period set out in the Treaties to allow for full and effective scrutiny by national parliaments and by the European Parliament.

- 1.4. COSAC underlines the importance of establishing well-functioning procedures between the European Union Institutions and national parliaments for the subsidiarity checks and for the parliamentary oversight of Europol and evaluation of Eurojust. In this context, COSAC reiterates the contribution of the XLI COSAC in Prague.
- 1.5. COSAC stresses that openness and accessibility remain crucial for the sense of participation of European citizens. Increased transparency in the European Union Institutions as well as in national parliaments is an important element in gaining acceptance of European Union measures.

2. The economic and financial crisis

- 2.1. COSAC notes that, while there are hopeful signs of recovery, it remains necessary to continue dealing with the financial and economic crisis, safeguarding longer-term growth and employment potential. The effects of the current decline have to be mitigated and measures promoted that facilitate a rapid yet sustainable recovery. Further efforts are necessary to improve the functioning of credit and capital markets. In the long term, Europe needs a renewed strategy for sustainable growth and employment - a revitalised Lisbon Strategy to transform the Union into an economy ready to reap the benefits of globalisation, while meeting the social and environmental challenges it presents. Efforts to prevent and limit job losses should take the form of measures with a sustainable positive effect on employment.
- 2.2. COSAC supports the European Council's response to the crisis in the conclusions of its June 2009 meeting and welcomes the comprehensive preparations, with the extra informal summit on 17 September 2009, for the G20 meeting in Pittsburgh on 24 September 2009.
- 2.3. COSAC notes with satisfaction that thorough preparations enabled the European Union to play an active role in Pittsburgh. The Union contributed to a result which constitutes a step forward on the main features of a common regulatory framework and a more sustainable financial system, including measures countering unsound bonus practices.
- 2.4. COSAC welcomes the Commission's recent proposals on a new architecture for European financial supervision and underlines that the intended rapid conclusion of the negotiations should not hamper the necessary parliamentary scrutiny.
- 2.5. With a view to the upcoming European Council on 29-30 October 2009, COSAC reiterates its warning against any kind of economic protectionism. Openness of world markets and a successful conclusion of the Doha Round remain one of the keys to overcoming the global crisis.

3. The Climate challenge — the road to Copenhagen

- 3.1. COSAC reiterates its conviction that the economic situation must not lead the European Union to lower its ambitions in terms of sustainable development and the climate strategy as adopted by the European Council. This includes being ready to give its fair share to supporting the least developed countries in their efforts to cut carbon emissions and contribute to the fight against climate change. An effective and sustainable architecture for financing this fight against climate change is essential.
- 3.2. The negotiations relating to the UN Climate Conference — COP15 — in Copenhagen in December 2009 are extremely complex. COSAC welcomes in general the strengthening of the European Union as a global actor and notes with satisfaction that the Union stands out as an ambitious, decisive and influential party to the Climate negotiations. The outcome of the Pittsburgh summit underlines that it is necessary for the European Union to keep a leading role in the run-up to and during the Climate Summit. COSAC urges all the European Union Institutions and Member States to contribute towards creating a strong platform for this leading role.

4. The Stockholm Programme

- 4.1. COSAC notes that the Eurobarometer and other opinion polls suggest that citizens expect European initiatives in the area of freedom, security and justice. This includes asylum and immigration policy as well as the fight against human trafficking and other cross-border crimes. Stressing that citizens should be at the heart of the new multi-annual programme, COSAC emphasises the need to keep the balance between law enforcement measures and measures to safeguard individual rights and the rule of law.
- 4.2. COSAC notes that these areas of fundamental importance to European citizens are at the core of parliaments' responsibility. COSAC emphasises the importance of parliamentary scrutiny and active participation during the negotiations of the Stockholm Programme and of all parts and elements to be decided subsequently, noting that the broad Programme is scheduled to be adopted by the European Council on 10-11 December 2009.

5. Regional strategies and neighbourhood policy

- 5.1. The proposed Strategy for the Baltic Sea Region aims not only at tackling the region's ecological and other specific challenges, but also at serving as a pilot project for macro-regional strategies. The model could in the future be applied in other regions with their regional challenges, such as the Danube region. COSAC looks forward to the scheduled adoption of the Baltic Sea Strategy by the European Council on 29-30 October 2009.
- 5.2. COSAC reiterates its long-term support for the European Neighbourhood Policy, including the Eastern Dimension. COSAC welcomes the meeting to be organised by the Committee on Foreign Affairs of the Swedish *Riksdag* on 21 October 2009 regarding the shaping of the parliamentary dimension of the Eastern Partnership.
- 5.3. COSAC also reiterates its support for the establishment of the Union for the Mediterranean as an essential tool for ensuring peace, stability and security in the Mediterranean Area and in the Middle East, notably for addressing immigration and energy.

6. Enlargement

- 6.1. COSAC underlines the strategic importance of the continued European Union enlargement process and welcomes Iceland's application for membership. Recognising that a clear membership perspective is a major incentive for reform, COSAC stresses the necessity for the European Union to stand by its commitments and established principles in this area, particularly the requirement to fulfil the Copenhagen Criteria for accession. COSAC notes with satisfaction recent positive developments in already ongoing enlargement negotiations.
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COMMISSION

Euro exchange rates ⁽¹⁾

29 December 2009

(2009/C 322/05)

1 euro =

Currency	Exchange rate	Currency	Exchange rate		
USD	US dollar	1,4433	AUD	Australian dollar	1,6069
JPY	Japanese yen	132,44	CAD	Canadian dollar	1,4999
DKK	Danish krone	7,4415	HKD	Hong Kong dollar	11,1938
GBP	Pound sterling	0,90270	NZD	New Zealand dollar	2,0057
SEK	Swedish krona	10,3550	SGD	Singapore dollar	2,0245
CHF	Swiss franc	1,4882	KRW	South Korean won	1 690,93
ISK	Iceland króna		ZAR	South African rand	10,6927
NOK	Norwegian krone	8,3285	CNY	Chinese yuan renminbi	9,8569
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,3050
CZK	Czech koruna	26,413	IDR	Indonesian rupiah	13 624,39
EEK	Estonian kroon	15,6466	MYR	Malaysian ringgit	4,9541
HUF	Hungarian forint	272,54	PHP	Philippine peso	66,700
LTL	Lithuanian litas	3,4528	RUB	Russian rouble	43,3316
LVL	Latvian lats	0,7092	THB	Thai baht	48,120
PLN	Polish zloty	4,1463	BRL	Brazilian real	2,5034
RON	Romanian leu	4,2157	MXN	Mexican peso	18,8058
TRY	Turkish lira	2,1758	INR	Indian rupee	67,3800

⁽¹⁾ Source: reference exchange rate published by the ECB.

Commission communication in the framework of the implementation of the Commission Directive 96/60/EC of 19 September 1996 implementing Council Directive 92/75/EEC with regard to energy labelling of household combined washer-driers

(Text with EEA relevance)

(Publication of titles and references of harmonized standards under the Directive)

(2009/C 322/06)

ESO ⁽¹⁾	Reference and title of the standard (and reference document)	Reference of the superseded standard	Date of cessation of use of the superseded standard Note 1
Cenelec	EN 50229:2001 Electric clothes washer-driers for household use — Methods of measuring the performance	EN 50229:1997	Date expired (1.5.2004)
Cenelec	EN 50229:2007 Electric clothes washer-driers for household use — Methods of measuring the performance	EN 50229:2001 Note 2.1	1.6.2010

⁽¹⁾ ESO: European Standards Organisation:

— CEN: Avenue Marnix 17, 1000 Brussels, BELGIUM. Tel. +32 25500811. Fax +32 25500819 (<http://www.cen.eu>),

— Cenelec: Avenue Marnix 17, 1000 Brussels, BELGIUM. Tel. +32 25196871. Fax +32 25196919 (<http://www.cenelec.eu>),

— ETSI: 650 route des Lucioles, 06921 Sophia Antipolis, FRANCE. Tel. +33 492944200. Fax +33 493654716 (<http://www.etsi.eu>).

Note 1: Generally the date of cessation of use will be the date of withdrawal ('dow'), set by the European Standardisation Organisation, but attention of users of these standards is drawn to the fact that in certain exceptional cases this can be otherwise.

Note 2.1: The new (or amended) standard has the same scope as the superseded standard. On the date stated, the superseded standard cannot be used any longer in the context of the directive.

Note 3: In case of amendments, the referenced standard is EN CCCC:YYYY, its previous amendments, if any, and the new, quoted amendment. The superseded standard (column 3) therefore consists of EN CCCC:YYYY and its previous amendments, if any, but without the new quoted amendment. On the date stated, the superseded standard cannot be used any longer in the context of the directive.

V

(Announcements)

ADMINISTRATIVE PROCEDURES

COMMISSION

Call for proposals 2009 — Europe for Citizens Programme (2007-2013)**Implementation of the programme actions: Active Citizens for Europe, Active civil society in Europe and Active European Remembrance**

(2009/C 322/07)

INTRODUCTION

This call for proposals is based on Decision No 1904/2006/EC of the European Parliament and of the Council of 12 December 2006, establishing for the period 2007 to 2013 the programme Europe for Citizens to promote active European citizenship ⁽¹⁾. The detailed conditions of this call for proposals can be found in the Programme Guide for the 'Europe for Citizens' programme published on the Europa website (see point VIII). The programme Guide constitutes an integral part of this call for proposals.

I. Objectives

The Europe for Citizens programme has the following specific objectives:

- bringing together people from local communities across Europe to share and exchange experiences, opinions and values, to learn from history and to build for the future,
- fostering action, debate and reflection related to European citizenship and democracy, shared values, common history and culture through cooperation within civil society organisations at European level,
- bringing Europe closer to its citizens by promoting Europe's values and achievements, while preserving the memory of its past,
- encouraging interaction between citizens and civil society organisations from all participating countries contributing to intercultural dialogue and bringing to the fore both Europe's diversity and unity, with particular attention to activities aimed at developing closer ties between citizens from Member States of the European Union as constituted on 30 April 2004 and those from Member States which have acceded since that date.

II. Eligible applicants

The Programme is open to all promoters established in one of the countries participating to the Programme and being:

- A public body, or
- A non-profit organisation with a legal status (legal personality).

Each action of the Programme is however targeting a more specific range of organisations. The eligibility of applicant organisations is therefore defined in the Programme Guide specifically for each measure/sub measure.

⁽¹⁾ OJ L 378, 27.12.2006, p. 32.

Countries eligible under this Programme are:

- EU Member States ⁽¹⁾
- Croatia,
- Albânia,
- FYROM.

III. Eligible actions

The Europe for Citizens programme supports projects promoting active European citizenship.

This call covers the following actions of the Europe for Citizens programme:

Action 1: Active Citizens for Europe

Measure 1: Town Twinning

This measure is aimed at activities that involve or promote direct exchanges between European citizens through their participation in town-twinning activities.

Measure 1.1: Town twinning citizens' meetings

This measure is aimed at activities that involve or promote direct exchanges between European citizens through their participation in town-twinning activities. A project must involve municipalities from at least two participating countries, of which at least one is an EU Member State. The project must have a minimum of 25 international participants coming from the invited municipalities, with at least five participants from each invited municipality. The maximum duration of the meeting is 21 days. The maximum grant to be awarded is EUR 22 000 per project. A maximum of EUR 40 000 per project can apply if at least 10 towns participate in the project. The minimum grant awarded is EUR 2 500.

The grants for town twinning citizens' meetings are targeted to co-finance the organisational costs of the host town and the travel expenses of the invited participants. The grant calculation is based on flat rates.

Measure 1.2: Networks of twinned towns

This measure supports the development of networks created on the basis of town twinning links, which are important for ensuring structured, intense and multifaceted cooperation among municipalities, and therefore for contributing to maximizing the impact of the Programme. A project must foresee at least three events. It must involve municipalities from at least four participating countries, of which at least one is an EU Member State. The project must have a minimum of 30 international participants coming from the invited municipalities. The maximum project duration is 24 months; the maximum duration of each event is 21 days.

Maximum amount eligible for a project within this measure is EUR 150 000. The minimum amount eligible is EUR 10 000. The grant calculation is based on flat rates.

Measure 2: 'Citizens' projects' and 'Support measures'

Measure 2.1: Citizens' projects

This measure addresses a major challenge of the European Union today: how to bridge the gap between citizens and the European Union. It aims at exploring original and innovative methodologies capable of encouraging citizens' participation and stimulating the dialogue between European citizens and the institutions of the European Union.

A project must involve at least five participating countries, of which at least one is an EU Member State. A project must involve at least 200 participants. The maximum project duration is 12 months.

⁽¹⁾ The 27 EU Member States: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

The amount of the grant will be calculated on the basis of a balanced, detailed forecast budget, expressed in euro. The grant awarded may not exceed 60 % of the total amount of the project's eligible costs. The minimum grant will be EUR 100 000. The maximum grant eligible for a project within this measure is EUR 250 000.

Measure 2.2: Support measures

This measure is a tool to develop the quality of projects submitted within Action 1 'Active Citizens for Europe'. It supports the exchange of experiences, expertise and good practice, as well as activities which may lead to the establishment of long-lasting partnerships and networks.

A project must involve at least two participating countries, of which at least one is an EU Member State. The maximum is 12 months. At least two events per project have to be foreseen.

The amount of the grant will be calculated on the basis of a balanced, detailed forecast budget, expressed in euro. The grant may not exceed a maximum rate of 80 % of eligible costs of the action concerned. The minimum grant eligible is EUR 30 000. The maximum grant eligible for a project within this measure is EUR 100 000.

Action 2: Active civil society in Europe

Measure 3: Support for projects initiated by civil society organisations

The aim of this measure is to support concrete projects promoted by civil society organisations belonging to different participating countries. These projects should raise awareness on matters of European interest and contribute to foster mutual understanding on different cultures and to identify common values through cooperation at European level.

A project must involve at least two participating countries, of which at least one is an EU Member State. The maximum duration of projects is 12 months.

The grant can be calculated following two different methods, corresponding to different approaches and to which specific rules apply:

- (a) Budget based on flat rates for 'event projects'.
- (b) Budget based on real costs for 'production and realisation projects': The grant requested in that case may not exceed 60 % of the eligible costs of the action concerned. The maximum grant is EUR 55 000. The minimum grant eligible is EUR 10 000.

Action 4: Active European Remembrance

The aim of projects supported under this action is to keep alive the memory of the victims of Nazism and Stalinism and to improve the knowledge and understanding of present and future generations about what took place in the camps and other places of mass-civilian extermination, and why.

The maximum duration of project is 12 months.

The grant can be calculated following two different methods:

- (a) Budget based on flat rates and lump sum for 'event projects'.
- (b) Budget based on real costs for 'production and realisation projects': The grant requested in that case may not exceed 60 % of the eligible costs of the action concerned. The maximum grant is EUR 55 000. The minimum grant eligible is EUR 10 000.

IV. Award criteria

Qualitative criteria (80 % of points available):

- Relevance of the project to the objectives and priorities of the Programme (25 %)
- Pertinence of the project and methods proposed (25 %)
- Impact (15 %)
- Visibility and Follow-up (15 %)

Quantitative criteria (20 % of points available):

- Geographical impact (10 %)
- Target Group (10 %)

V. Budget**Foreseen budget 2010 for the following actions**

Action 1 Measure 1.1.	Town twinning citizens' meetings	EUR 7 000 000
Action 1 Measure 1.2.	The thematic networking of twinned towns	EUR 5 165 000
Action 1 Measure 2.1.	Citizens' projects	EUR 1 500 000
Action 1 Measure 2.2.	Support measures	EUR 1 535 000
Action 2 Measure 3	Support for projects initiated by civil society organisations	EUR 3 400 000
Action 4	Active European Remembrance	EUR 1 800 000

VI. Deadlines for applications

Actions		Deadline for submission
Action 1 Measure 1.1.	Town twinning citizens' meetings	1 February 1 June 1 September
Action 1 Measure 1.2.	The thematic networking of twinned towns	1 February 1 September
Action 1 Measure 2.1.	Citizens' projects	1 June
Action 1 Measure 2.2.	Support measures	1 June
Action 2 Measure 3	Support for projects initiated by civil society organisations	15 February
Action 4	Active European Remembrance	30 April

If the deadline for submission falls on a weekend or public holiday in the applicant's country no extension will be granted and applicants must take this into account when planning their submission.

Applications must be sent to the following address:

EACEA
Unit P7 Citizenship
Applications — 'Town Twinning Citizens' Meetings'
Avenue du Bourget 1 (BOUR 01/17)
1140 Bruxelles/Brussel
BELGIQUE/BELGIË

Only proposals submitted using the official application form duly completed and signed by the person empowered to enter into a legal commitment on behalf of the applicant, will be considered.

Applications submitted by fax or directly by email will not be examined.

VII. Further information

The detailed conditions for submitting projects proposals and the application forms can be found in the Europe for Citizens Programme Guide on the following websites:

Directorate-General for Education and Culture:

http://ec.europa.eu/citizenship/index_en.html

Education, Audiovisual and Culture Executive Agency:

http://eacea.ec.europa.eu/citizenship/index_en.htm

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

COMMISSION

Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China

(2009/C 322/08)

Following the publication of a notice of impending expiry ⁽¹⁾ of the anti-dumping measures in force on imports of tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide originating in the People's Republic of China, ('country concerned'), the Commission has received a request for review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community ⁽²⁾ ('the basic Regulation').

1. Request for review

The request was lodged on 30 September 2009 by the European Association of Metals (Eurometaux) ('the applicant') on behalf of producers representing a major proportion, in this case more than 50 % of the Community production of tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide.

2. Product

The product under review is tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide originating in the People's Republic of China ('the product concerned'), currently falling within CN codes 2849 90 30 and ex 3824 30 00.

3. Existing measures

The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 2268/2004 ⁽³⁾ as amended by Council Regulation (EC) No 1275/2005 ⁽⁴⁾.

4. Grounds for the review

The request is based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and recurrence of injury to the Community industry.

In view of the provisions of Article 2(7) of the basic Regulation, the applicant established normal value for the People's Republic of China on the basis of sales prices in an appropriate market economy country, which is mentioned in point 5.1.(d). The allegation of continuation of dumping is based on a comparison of normal value, as set out in the preceding sentence, with evidence of the export prices of the product concerned when sold for export to the Community.

On this basis, the dumping margin calculated is significant.

The applicant further alleges the likelihood of recurrence of injurious dumping. In this respect, the applicant presents evidence that, should measures be allowed to lapse, the current import level of the product concerned is likely to increase due to the existence of unused capacity in the country concerned.

The applicant alleges that the removal of injury is mainly due to the existence of measures and that any recurrence of substantial imports at dumped prices from the country concerned would likely lead to a recurrence of injury of the Community industry should measures be allowed to lapse.

5. Procedure

Having determined, after consulting the Advisory Committee, that sufficient evidence exists to justify the initiation of an expiry review, the Commission hereby initiates a review in accordance with Article 11(2) of the basic Regulation.

⁽¹⁾ OJ C 115, 20.5.2009, p. 18.

⁽²⁾ OJ L 56, 6.3.1996, p. 1.

⁽³⁾ OJ L 395, 31.12.2004, p. 56.

⁽⁴⁾ OJ L 202, 3.8.2005, p. 1.

5.1. Procedure for the determination of dumping and injury

The investigation will determine whether the expiry of the measures would be likely, or unlikely, to lead to a continuation or recurrence of dumping and injury.

(a) Sampling

In view of the apparent large number of parties involved in this proceeding, the Commission may decide to apply sampling, in accordance with Article 17 of the basic Regulation.

(i) Sampling for exporters/producers in the People's Republic of China

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all exporters/producers, or representatives acting on their behalf, are hereby requested to make themselves known by contacting the Commission and providing the following information on their company or companies within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone, and fax numbers and contact person,
- the turnover in local currency and the volume in tonnes of the product concerned sold for export to the Community during the period from 1 January 2009 until 31 December 2009 for each of the 27 Member States separately and in total,
- the turnover in local currency and the volume in tonnes of the product concerned sold on the domestic market during the period from 1 January 2009 until 31 December 2009,
- the turnover in local currency and the volume in tonnes for the product concerned sold to other third countries during the period from 1 January 2009 until 31 December 2009,
- the precise activities of the company worldwide with regard to the product concerned,
- the names and the precise activities of all related companies⁽⁵⁾ involved in the production and/or sales (export and/or domestic) of the product concerned,

- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed to not have cooperated in the investigation. The consequences of non-cooperation are set out in point 8 below.

In order to obtain the information it deems necessary for the selection of the sample of exporters/producers, the Commission will, in addition, contact the authorities of the People's Republic of China, and any known associations of exporters/producers.

(ii) Sampling for importers

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all importers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission and to provide the following information on their company or companies within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone, and fax numbers and contact person,
- the precise activities of the company with regard to the product concerned,
- the volume in tonnes and value in EUR of imports into and resales made in the Community market during the period from 1 January 2009 until 31 December 2009 of the imported product concerned originating in People's Republic of China,
- the names and the precise activities of all related companies⁽⁶⁾ involved in the production and/or sales of the product concerned,
- any other relevant information that would assist the Commission in the selection of the sample.

⁽⁵⁾ For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

⁽⁶⁾ See footnote 5.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed to not have cooperated in the investigation. The consequences of non-cooperation are set out in point 8 below.

In order to obtain the information it deems necessary for the selection of the sample of importers, the Commission will, in addition, contact any known associations of importers.

(iii) *Final selection of the samples*

All interested parties wishing to submit any relevant information regarding the selection of the samples must do so within the time limit set in point 6(b)(ii).

The Commission intends to make the final selection of the samples after having consulted the parties concerned that have expressed their willingness to be included in the sample.

Companies included in the samples must reply to a questionnaire within the time limit set in point 6(b)(iii) and must co-operate within the framework of the investigation.

If sufficient co-operation is not forthcoming, the Commission may base its findings, in accordance with Articles 17(4) and 18 of the basic Regulation, on the facts available. A finding based on facts available may be less advantageous to the party concerned, as explained in point 8.

(b) *Questionnaires*

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the Community industry and to any known association of producers in the Community, to the sampled exporters/producers in the People's Republic of China and to known association of exporters/producers, to the sampled importers, to any known association of importers, and to the authorities of the exporting country concerned.

(c) *Collection of information and holding of hearings*

All interested parties are hereby invited to make their views known, submit information other than questionnaire replies

and to provide supporting evidence. This information and supporting evidence must reach the Commission within the time limit set in point 6(a)(ii).

Furthermore, the Commission may hear interested parties, provided that they make a request showing that there are particular reasons why they should be heard. This request must be made within the time limit set in point 6(a)(iii).

(d) *Selection of the market economy country*

In the previous investigation the United States of America was used as an appropriate market economy country for the purpose of establishing normal value in respect of the People's Republic of China. The Commission envisages using the United States of America again for this purpose. Interested parties are hereby invited to comment on the appropriateness of this country within the specific time limit set in point 6(c).

5.2. Procedure for the assessment of Community interest

In accordance with Article 21 of the basic Regulation and in the event that the likelihood of a continuation or recurrence of dumping and injury is confirmed, a determination will be made as to whether maintaining the anti-dumping measures would not be against the Community interest. For this reason the Commission may send questionnaires to the known Community industry, importers, their representative associations, representative users and representative consumer organisations. Such parties, included those not known to the Commission, provided that they prove that there is an objective link between their activity and the product concerned, may, within the general time limits set in point 6(a)(ii), make themselves known and provide the Commission with information. The parties which have acted in conformity with the preceding sentence may request a hearing, setting out the particular reasons why they should be heard, within the time limit set in point 6(a)(iii). It should be noted that any information submitted pursuant to Article 21 of the basic Regulation will only be taken into account if supported by factual evidence at the time of submission.

6. Time limits

(a) *General time limits*

(i) *For parties to request a questionnaire*

All interested parties who did not cooperate in the investigation leading to the measures subject to the present review should request a questionnaire or other claim forms as soon as possible, but not later than 15 days after the publication of this notice in the *Official Journal of the European Union*.

- (ii) For parties to make themselves known, to submit questionnaire replies and any other information

All interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views and submit questionnaire replies or any other information within 37 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the aforementioned period.

Companies selected in a sample must submit questionnaire replies within the time limit specified in point 6(b)(iii).

(iii) Hearings

All interested parties may also apply to be heard by the Commission within the same 37-day time limit.

(b) Specific time limit in respect of sampling

- (i) The information specified in points 5.1(a)(i) and 5.1(a)(ii) should reach the Commission within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, given that the Commission intends to consult parties concerned that have expressed their willingness to be included in the sample on its final selection within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

- (ii) All other information relevant for the selection of the sample as referred to in 5.1(a)(iii) must reach the Commission within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

- (iii) The questionnaire replies from sampled parties must reach the Commission within 37 days from the date of the notification of their inclusion in the sample.

(c) Specific time limit for the selection of the market economy country

Parties to the investigation may wish to comment on the appropriateness of the United States of America which, as mentioned in point 5.1(d), is envisaged as a market-economy country for the purpose of establishing normal value in respect of People's Republic of China. These comments must reach the Commission within 10 days of the date of publication of this notice in the *Official Journal of the European Union*.

7. Written submissions, questionnaire replies and correspondence

All submissions and requests made by interested parties must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. All written submissions, including the information requested in this notice, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labeled as 'Limited (?)' and, in accordance with Article 19(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labeled 'For inspection by interested parties'.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: N-105 04/92
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Fax +32 22956505

8. Non-co-operation

In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made, in accordance with Article 18 of the basic Regulation, of the facts available. If an interested party does not cooperate or cooperates only partially, and use of facts available is made, the result may be less favourable to that party than if it had cooperated.

9. Schedule of the investigation

The investigation will be concluded, according to Article 11(5) of the basic Regulation within 15 months of the date of the publication of this notice in the *Official Journal of the European Union*.

(?) This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 19 of the basic Regulation and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement).

10. Possibility to request a review under Article 11(3) of the basic Regulation

As this expiry review is initiated in accordance with the provisions of Article 11(2) of the basic Regulation, the findings thereof will not lead to the level of the existing measures being amended but will lead to those measures being repealed or maintained in accordance with Article 11(6) of the basic Regulation.

If any party to the proceeding considers that a review of the level of the dumping margins found in the original investigation is warranted so as to allow for the possibility to amend (i.e. increase or decrease) the level of the measures, that party may request a review in accordance with Article 11(3) of the basic Regulation.

Parties wishing to request such a review, which would be carried out independently of the expiry review mentioned in this notice, may contact the Commission at the address given above.

11. Processing of personal data

It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽⁸⁾.

12. Hearing Officer

It is also noted that if interested parties consider that they are encountering difficulties in the exercise of their rights of defence, they may request the intervention of the Hearing Officer of DG Trade. He acts as an interface between the interested parties and the Commission services, offering, where necessary, mediation on procedural matters affecting the protection of their interests in this proceeding, in particular with regard to issues concerning access to file, confidentiality, extension of time limits and the treatment of written and/or oral submission of views. For further information and contact details interested parties may consult the Hearing Officer's web pages of the website of DG Trade (<http://ec.europa.eu/trade>).

⁽⁸⁾ OJ L 8, 12.1.2001, p. 1.

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION POLICY

COMMISSION

STATE AID — ITALY

State aid C 35/09 (ex NN 77/B/01) — Measures in favour of the employment in the fisheries and aquaculture sector

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

(Text with EEA relevance)

(2009/C 322/09)

By means of the letter dated 19 November 2009 reproduced in the authentic language on the pages following this summary, the Commission notified Italy of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the above-mentioned aid.

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

European Commission
Directorate General for Fisheries
DG MARE/F4 'Legal Issues'
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
Fax +32 22951942

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

SUMMARY

In 2001, Italy notified the Commission of a regional aid scheme applied in Sardinia. The regional law constituting the legal basis of that aid scheme has actually repealed a law of 1984 which had set up a former regional aid scheme. As this law was never notified to the Commission, the aid granted in accordance with it should be considered as illegal aid in the sense of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 (now 88) of the treaty ⁽¹⁾.

When they are granted to the fisheries and the agriculture sectors, the provisions for the examination of such aid are different from those applying to the other sectors. For that reason, separated analyses must be done.

Aid granted under this scheme could have been granted from 1984. However, considering that there is a limitation of 10 years for the recovery of the aid, the Commission considers it

useless to assess the aid granted more than 10 years before any action taken by the Commission in respect of that scheme. On that basis, the scheme is assessed as far as it concerns the aid granted from 1991 to the end of application of this scheme in 1999.

The purpose of this scheme was to grant aid in favour of employment in Sardinia. However, in practice, the aid was granted for the construction of fishing vessels and the setting-up of aquaculture firms.

The following aid was granted:

- direct aid of 60 % for fishing vessels or 80 % for aquaculture firms,
- covering of costs of the interests for the loans contracted for payment of the balance,
- partial covering of operational costs during the first years.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

This aid has been assessed in the light of the guidelines for the examination of State aid to fisheries and aquaculture applying at the time it was granted. Thus, 1988, 1992, 1994 and 1997 Guidelines are applied. On the basis of these Guidelines, which refer to the Council Regulation on structural intervention by the Community in the fisheries sector applying at the time, the Commission has serious doubts on the compatibility of this aid as far as it concerns aid for investment going beyond 60 % of the cost of that investment and aid for operational costs.

If, at the end of the procedure, the Commission takes a negative decision, it should decide, by application of Article 14(1) of Regulation (EC) No 659/1999 that Italy should recover the aid. However, the Commission invites Italy and the interested parties to raise any observation which could be useful, in the light of the case-law of the ECJ, for the evaluation of the possible implications of the delay in the examination of this aid scheme on the potential recovery of incompatible aid.

TEXT OF LETTER

‘La Commissione, dopo aver esaminato le informazioni fornite dalle autorità italiane sulle misure in oggetto, comunica al governo dell'Italia la propria decisione di avviare il procedimento d'indagine formale previsto all'articolo 93 (ora articolo 88), paragrafo 2, del trattato CE e al regolamento (CE) n. 659/1999 del Consiglio, del 22 marzo 1999, recante modalità di applicazione dell'articolo 93 del trattato CE ⁽¹⁾.

1. PROCEDIMENTO

Con lettera del 10 agosto 2001, l'Italia ha notificato alla Commissione un progetto di regime di aiuti a finalità regionale da attuare nella regione Sardegna. Questo regime di aiuti era stato protocollato come nuovo aiuto con il numero N 569/01.

Esaminando il regime di aiuti di cui sopra, la Commissione ha constatato che la legge n. 201/2001 del 7 agosto 2001 della regione Sardegna, che istituiva questo regime di aiuti, ha abrogato la legge regionale n. 28 del 7 giugno 1984; la legge del 1984, tuttavia, non è mai stata notificata alla Commissione. Gli aiuti concessi in applicazione della suddetta legge regionale dovevano quindi essere considerati aiuti illegali ai sensi dell'articolo 1, lettera f), del regolamento (CE) n. 659/1999. La Commissione li ha protocollati come tali il 16 agosto 2001.

La Commissione ha effettuato l'esame di questo regime di aiuti illegale protocollato con il numero NN 77/01. La Commissione, considerate le caratteristiche del regime di aiuti in questione e dato che le disposizioni applicabili all'analisi degli aiuti concessi al settore dell'agricoltura, così come al settore della pesca e dell'acquacoltura, sono diverse da quelle degli aiuti concessi alle imprese degli altri settori di attività economica, ha quindi ritenuto necessario effettuare un esame specifico per questi due settori particolari. Per tale motivo la Commissione ha infine protocollato questo regime di aiuti con tre numeri distinti, in base ai settori di attività economica cui si applica il regime: n. 77/B/01 per il settore della pesca e dell'acquacoltura, n. 77/C/01 per il settore dell'agricoltura e n. 77/A/01 per tutti gli altri settori d'attività.

Con lettera C(2001) 3464 def. del 13 novembre 2001, la Commissione ha informato l'Italia che il regime di aiuti NN 77/A/01 era compatibile con il mercato comune per gli aiuti concessi alle imprese dei settori economici diversi da quello dell'agricoltura o della pesca e dell'acquacoltura (regime di aiuti analizzato infine con il numero NN 77/B/01).

Quanto all'applicazione del suddetto regime di aiuti al settore della pesca e dell'acquacoltura, è stato protocollato con il numero NN 77/B/01: questo regime di aiuti costituisce l'oggetto della presente lettera.

Con lettera del 10 dicembre 2001 la Commissione ha chiesto informazioni supplementari all'Italia, la quale ha trasmesso le sue risposte con lettera del 4 giugno 2003. Successivamente, il 6 novembre 2003, presso gli uffici della Commissione si è tenuta una riunione di lavoro con le autorità regionali della Sardegna, su richiesta di queste ultime, per esaminare le informazioni che le stesse dovevano trasmettere alla Commissione.

Nel mese di maggio 2004 le autorità della Sardegna hanno allora trasmesso direttamente e in modo informale alcune informazioni complementari alla Commissione. Poiché queste informazioni non sono state oggetto di trasmissione formale da parte dell'Italia, la Commissione ha invitato l'Italia a notificare in tempi brevi la sua autorizzazione a inserire tali informazioni nel fascicolo, comunicandole che, in assenza di risposta nei tempi stabiliti, avrebbe provveduto a farlo. Dal momento che l'Italia non ha risposto alla lettera, la Commissione ha inserito queste informazioni nel fascicolo.

Le autorità italiane hanno successivamente trasmesso ulteriori informazioni complementari con lettere del 12 gennaio e del 28 febbraio 2005.

2. DESCRIZIONE

Periodo di esame degli aiuti

Dal momento che la legge regionale che istituisce questi aiuti è del 1984, gli aiuti concessi in applicazione della legge in questione possono risalire fino al 1984. Questo regime di aiuti è stato in vigore fino al 31 dicembre 1999.

Il regolamento (CE) n. 659/1999 del Consiglio recante modalità di applicazione dell'articolo 93 del trattato CE ⁽²⁾ non indica un termine per l'esame degli aiuti illegali ai sensi dell'articolo 1, lettera f), ovvero gli aiuti cui è stata data esecuzione senza che la Commissione abbia potuto pronunciarsi sulla compatibilità con il mercato comune. Tuttavia l'articolo 15 del suddetto regolamento stabilisce che i poteri della Commissione per quanto riguarda il recupero degli aiuti sono soggetti ad un periodo limite di dieci anni e che questo periodo limite inizia il giorno in cui l'aiuto illegale viene concesso al beneficiario ed è interrotto da qualsiasi azione intrapresa dalla Commissione. La Commissione non ritiene quindi opportuno esaminare gli aiuti che beneficiano di questa prescrizione, vale a dire concessi oltre dieci anni prima di qualsiasi azione intrapresa al riguardo dalla Commissione.

⁽¹⁾ GU L 83 del 27.3.1999, pag. 1.

⁽²⁾ GU L 83 del 27.3.1999, pag. 1.

La Commissione considera che questo periodo sia stato interrotto il 16 agosto 2001, quando la Commissione ha accertato l'esistenza degli aiuti illegali concessi in applicazione della legge del 7 giugno 1984 e li ha protocollati. Di conseguenza, la prescrizione si applica agli aiuti concessi ai beneficiari prima del 16 agosto 1991. Nel suo esame la Commissione prende quindi in considerazione gli aiuti concessi a decorrere da questa data fino al 31 dicembre 1999, termine di attuazione del regime di aiuti.

Oggetto degli aiuti

Questo regime di aiuti aveva per oggetto gli aiuti a favore delle piccole e medie imprese ⁽¹⁾ della Sardegna. L'obiettivo dichiarato di questo regime era promuovere la creazione e lo sviluppo dell'occupazione a favore dei giovani tra i 18 e i 35 anni, delle donne e delle categorie sociali svantaggiate attraverso misure di sviluppo regionale. In pratica, per il settore della pesca e dell'acquacoltura, questi aiuti sono stati concessi sotto forma di aiuti agli investimenti, accompagnati da aiuti al funzionamento connessi agli investimenti effettuati.

L'Italia ha fornito informazioni dettagliate sugli aiuti che sono stati concessi in applicazione del suddetto regime nel periodo 1991-1999 a favore della pesca e dell'acquacoltura. In totale sono state adottate 32 decisioni di concessione di aiuti: 13 a favore della pesca e 19 a favore dell'acquacoltura.

Aiuti a favore della pesca

Gli aiuti concessi a favore della pesca sono legati in pratica alla costruzione di pescherecci.

Tali aiuti sono stati concessi nelle seguenti forme:

- aiuto diretto agli investimenti, compreso lo studio di fattibilità del progetto, corrispondente al 60 % del costo;
- aiuto corrispondente all'assunzione a carico degli interessi sui prestiti effettuati per il pagamento del saldo; questi interessi sono stati calcolati a partire da un periodo uniforme di preammortamento di 18 mesi, seguito da 18 rate semestrali di ammortamento a un tasso di interesse del 7,5 %;
- aiuto per l'assunzione parziale dei costi operativi durante i primi anni.

L'importo complessivo di questi aiuti, che ammonta a 11 111 999 035 ITL, pari a circa 5,7 milioni EUR, può essere così ripartito: 9 786 117 284 ITL, pari a circa 5 milioni EUR, per aiuti agli investimenti e l'assunzione a carico degli interessi e 1 325 881 751 ITL, ossia circa 0,7 milioni EUR, per l'assunzione dei costi operativi durante i primi anni.

⁽¹⁾ Si tratta di piccole e medie imprese definite secondo i criteri del fatturato e del numero di posti di lavoro. Le autorità italiane hanno dichiarato che questo regime è sempre stato destinato a imprese molto piccole nei confronti delle quali la definizione di cui alla raccomandazione della Commissione del 3 aprile 1996 (GU L 107 del 30.4.1996, pag. 4) è sempre stata rispettata.

Aiuti a favore dell'acquacoltura

Gli aiuti concessi a favore dell'acquacoltura sono connessi alla costruzione di impianti di acquacoltura.

Tali aiuti sono stati concessi nelle stesse forme di quelli destinati al settore della pesca, ossia:

- aiuto diretto agli investimenti, compreso lo studio di fattibilità del progetto, corrispondente all'80 % del costo;
- aiuto corrispondente all'assunzione a carico degli interessi sui prestiti effettuati per il pagamento del saldo; questi interessi sono stati calcolati a partire da un periodo uniforme di preammortamento di 18 mesi, seguito da 18 rate semestrali di ammortamento;
- aiuto per l'assunzione parziale dei costi operativi durante i primi anni.

L'importo complessivo di questi aiuti, che ammonta a 30 379 121 874 ITL, pari a circa 15,7 milioni EUR, può essere così ripartito: 28 330 582 621 ITL, pari a circa 14,6 milioni EUR, per aiuti agli investimenti e l'assunzione a carico degli interessi e 2 048 539 253 ITL, ossia circa 1,1 milioni EUR, per l'assunzione dei costi operativi durante i primi anni.

3. VALUTAZIONE

Esistenza di aiuti di Stato

L'articolo 87, paragrafo 1, del trattato CE prevede che "salvo deroghe contemplate dal presente trattato, sono incompatibili con il mercato comune, nella misura in cui incidano sugli scambi tra Stati membri, gli aiuti concessi dagli Stati, ovvero mediante risorse statali, sotto qualsiasi forma che, favorendo talune imprese o talune produzioni, falsino o minaccino di falsare la concorrenza".

Gli aiuti esaminati nella presente decisione sono stati concessi mediante fondi pubblici messi a disposizione dalla regione Sardegna. Si tratta pertanto di risorse statali.

Questi aiuti hanno conferito un vantaggio finanziario a imprese operanti nel settore della pesca e dell'acquacoltura e hanno rafforzato la loro posizione sul mercato comunitario rispetto alle imprese degli altri Stati membri. Poiché il commercio intracomunitario dei prodotti della pesca e dell'acquacoltura è significativo, questo vantaggio finanziario ha inciso sugli scambi tra gli Stati membri e ha falsato o minacciato di falsare la concorrenza sul mercato interno tra le imprese di pesca e di acquacoltura.

Questi aiuti costituiscono pertanto aiuti di Stato ai sensi dell'articolo 87 del trattato. Dal momento che gli aiuti sono stati concessi senza che la Commissione abbia potuto pronunciarsi sulla loro compatibilità con il mercato comune, si tratta di aiuti illegali ai sensi dell'articolo 1, lettera f), del regolamento (CE) n. 659/1999.

Tale regime di aiuti può essere ritenuto compatibile con il mercato comune solo se beneficia di una delle deroghe previste dal trattato.

Compatibilità con il mercato comune

Poiché questi aiuti favoriscono alcune imprese del settore della pesca e dell'acquacoltura, la loro compatibilità con il mercato comune deve essere valutata alla luce degli orientamenti per l'esame degli aiuti di Stato nel settore della pesca e dell'acquacoltura.

Conformemente al paragrafo 5.3 degli orientamenti adottati nel 2008 e applicabili a decorrere dal 1° aprile 2008 ⁽¹⁾, gli aiuti illegali sono valutati alla luce degli orientamenti applicabili al momento dell'entrata in vigore dell'atto amministrativo che istituisce l'aiuto. Poiché gli aiuti esaminati sono stati concessi tra il 1991 e il 1999, è opportuno valutarli alla luce degli orientamenti applicabili al momento della loro concessione. Sono quindi gli orientamenti di seguito indicati ad essere applicabili: orientamenti 1988 ⁽²⁾ applicabili agli aiuti concessi fino al 17 giugno 1992, orientamenti 1992 ⁽³⁾ applicabili agli aiuti concessi fino al 17 settembre 1994, orientamenti 1994 ⁽⁴⁾ per gli aiuti concessi fino al 27 marzo 1997 e orientamenti 1997 ⁽⁵⁾ per quelli concessi fino al 1999.

Tutti questi orientamenti contengono disposizioni costanti in merito agli aiuti del presente regime:

- gli aiuti agli investimenti per la costruzione di pescherecci o per la costruzione di impianti di acquacoltura sono compatibili con il mercato comune solo se viene rispettata la percentuale di aiuto definita dai regolamenti relativi alle azioni strutturali della Comunità nel settore della pesca;
- gli aiuti al funzionamento sono di norma incompatibili con il mercato comune; possono essere considerati compatibili solo se legati a un piano di ristrutturazione ritenuto compatibile con il mercato comune.

Aiuti agli investimenti per la costruzione di pescherecci

I regolamenti relativi alle azioni strutturali prevedevano una percentuale massima di aiuto del 60 %: regolamento (CEE) n. 4028/86 modificato dal regolamento (CEE) n. 3944/90 del 20 dicembre 1990 ⁽⁶⁾ nell'allegato II, paragrafo 1; regolamento (CE) n. 3699/93 del 21 dicembre 1993 ⁽⁷⁾ nell'allegato IV, paragrafo 2.1 e regolamento (CE) n. 2468/98 del 3 novembre 1998 ⁽⁸⁾ nell'allegato III, paragrafo 2.1. La percentuale di aiuto diretto concessa dall'Italia al settore della pesca per questi investimenti, pari al 60 % del costo, è quindi conforme a quanto era possibile concedere in applicazione dei suddetti regolamenti.

Tuttavia a questo 60 % si aggiunge l'aiuto corrispondente all'assunzione a carico degli interessi sui prestiti effettuati per il pagamento del saldo. L'aiuto concesso per questi investimenti ha quindi superato la percentuale massima del 60 % ed è pertanto incompatibile con il mercato comune.

⁽¹⁾ GU C 84 del 3.4.2008, pag. 20.
⁽²⁾ GU C 313 dell'8.12.1988, pag. 21.
⁽³⁾ GU C 152 del 17.6.1992, pag. 2.
⁽⁴⁾ GU C 260 del 17.9.1994, pag. 3.
⁽⁵⁾ GU C 100 del 27.3.1997, pag. 12.
⁽⁶⁾ GU L 380 del 31.12.1990, pag. 1.
⁽⁷⁾ GU L 346 del 31.12.1993, pag. 1.
⁽⁸⁾ GU L 312 del 20.11.1998, pag. 19.

L'aiuto in questione potrebbe indubbiamente anche essere considerato un aiuto autonomo, ovvero non legato a questo investimento ma in tal caso dovrebbe, per natura, essere esaminato come aiuto al funzionamento. L'aiuto in questione non è però connesso a un piano di ristrutturazione e non può quindi essere giustificato dall'esistenza di un piano del genere. Per questo motivo se fosse valutato come aiuto autonomo, dovrebbe essere considerato incompatibile.

Ne consegue che l'aiuto concesso dalla regione Sardegna per la costruzione di pescherecci sembra non poter essere ritenuto compatibile con il mercato comune per quanto riguarda l'assunzione a carico degli interessi che determinano un'intensità di aiuto superiore al 60 %.

Aiuti agli investimenti per la costruzione di impianti di acquacoltura

I medesimi regolamenti, negli stessi allegati e paragrafi, prevedevano una percentuale massima di aiuto del 60 % anche per gli investimenti nel settore dell'acquacoltura.

Poiché l'aiuto diretto concesso dalla regione Sardegna ha rappresentato l'80 % del costo dell'investimento, sembra che non possa essere ritenuto compatibile con il mercato comune per la parte che supera il 60 %.

D'altra parte, il ragionamento precedentemente espresso in merito alla compatibilità dell'assunzione a carico degli interessi per quanto riguarda l'investimento nei pescherecci può essere applicato in termini identici agli investimenti nel settore dell'acquacoltura.

Ne consegue che l'aiuto concesso dalla regione Sardegna per la costruzione di impianti di acquacoltura sembra non poter essere ritenuto compatibile con il mercato comune per quanto riguarda la parte dell'aiuto diretto superiore al massimale del 60 % e l'assunzione a carico degli interessi.

Aiuti per l'assunzione dei costi operativi

Conformemente a quanto precede, in base al principio definito dagli orientamenti successivi applicabili, secondo cui gli aiuti al funzionamento sono di norma incompatibili e che possono essere considerati compatibili con il mercato comune solo nella misura in cui sono legati a un piano di ristrutturazione anch'esso ritenuto compatibile con il mercato comune, questo aiuto sembra, ad un primo esame, incompatibile con il mercato comune. Non sembra che ci siano state circostanze particolari tali da giustificare la concessione di simili aiuti.

4. CONCLUSIONI

In questa fase della valutazione preliminare prevista all'articolo 6 del regolamento (CE) n. 659/1999, esistono seri dubbi circa la compatibilità di queste misure di aiuto con il mercato comune, sia per quanto riguarda gli aiuti agli investimenti per la parte dell'aiuto superiore al massimale del 60 % del costo dell'investimento, sia per quanto riguarda l'aiuto per l'assunzione dei costi operativi.

Alla luce delle considerazioni che precedono, la Commissione, nell'ambito del procedimento previsto all'articolo 88, paragrafo 2, del trattato CE, invita l'Italia a presentarle le sue osservazioni e a fornirle tutte le informazioni utili e necessarie per valutare l'aiuto in questione nel termine di un mese a decorrere dal ricevimento della presente lettera. La Commissione invita le autorità italiane a trasmettere immediatamente una copia della presente lettera ai potenziali beneficiari dell'aiuto. La Commissione chiede inoltre informazioni relative all'importo dell'aiuto concesso ai beneficiari del regime.

La Commissione ha altresì invitato l'Italia e i terzi interessati a presentare osservazioni e a fornire qualsiasi elemento utile per stabilire, alla luce dell'articolo 14, paragrafo 1, del regolamento

(CE) n. 659/1999 e della giurisprudenza della Corte di giustizia ⁽¹⁾, le potenziali implicazioni del ritardo accumulato nell'esame di questo regime di aiuti in merito all'eventuale recupero degli aiuti incompatibili.

Con la presente la Commissione comunica al governo italiano che informerà gli interessati mediante pubblicazione della presente lettera e di una sintesi della stessa nella *Gazzetta ufficiale delle Comunità europee*. Informerà inoltre gli interessati nei paesi EFTA firmatari dell'accordo SEE tramite pubblicazione di una comunicazione nel supplemento SEE della *Gazzetta ufficiale delle Comunità europee* e l'Autorità di vigilanza EFTA mediante invio di una copia della presente. Tutti i summenzionati interessati saranno invitati a trasmettere le loro osservazioni entro il termine di un mese a decorrere dalla data di detta pubblicazione.'

⁽¹⁾ In particolare la sentenza della Corte del 24 settembre 2002 pronunciata nelle cause riunite C-74/00P e C-75/00P, *Falck e Acciaierie di Bolzano/Commissione*, Racc. 2002, pag. I-7869.

OTHER ACTS

COMMISSION

Publication of an amendment 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 322/10)

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

AMENDMENT APPLICATION

COUNCIL REGULATION (EC) No 510/2006**Amendment application pursuant to Article 9****'PROSCIUTTO TOSCANO'****EC No: IT-PDO-0217-1494-10.06.2005****PGI () PDO (X)****1. Heading in the specification affected by the amendment:**

- Name of product
- Description
- Geographical area
- Proof of origin
- Method of production
- Link
- Labelling
- National requirements
- Other (to be specified)

2. Type of amendment:

- Amendment to single document or summary sheet

- Amendment to specification of registered PDO or PGI for which neither the single document nor the summary sheet has been published

- Amendment to Specification that requires no amendment to the published Single Document (Article 9(3) of Regulation (EC) No 510/2006)

- Temporary amendment to specification resulting from imposition of obligatory sanitary or phytosanitary measures by public authorities (Article 9(4) of Regulation (EC) No 510/2006)

3. Amendment(s):**3.1. Description of product:**

The chemical and chemico-physical characteristics of the product are specified in greater detail and the packaging methods are defined pursuant to Regulation (EC) No 510/2006.

The characteristics of the raw material are described in greater detail in order to indicate the features which must be checked by the inspection body.

The rules are laid down for affixing a metallic seal to the joints, before the start of processing, to ensure the identification and thus the traceability of the product.

In the case of trimming, the amount of meat which may extrude in relation to the top of the femur is specified more precisely to ensure that the hams will have a standard rounded shape making them easy for consumers to identify.

Finished products are branded as a further guarantee of origin and to ensure traceability.

3.2. Method of production:

It was considered useful to state that slicing and packaging must be done in the area of production in order to safeguard the reputation of the designated product by guaranteeing not only its authenticity but also its qualities and characteristics. 'Prosciutto Toscano' is appreciated by consumers for being 'mature', lean, with a firm texture and a well defined moistness, providing firm and solid slices. For end consumers these characteristics must be present for all types of 'Prosciutto Toscano' on the market, i.e. the product when sliced and packaged must have the same characteristics as a slice cut from a whole ham. To ensure that these requirements are met for consumers, the method of production of 'Prosciutto Toscano' stipulates that joints intended for slicing and packaging must be aged for two months longer.

The fact that joints intended for slicing and packaging may be kept as boned pieces for unspecified periods in environmental conditions which differ from those laid down could result in the development of characteristics inconsistent with those for which 'Prosciutto Toscano' is known, such as the formation of abnormal mould, unusual protein degradation with a resulting change in the protein breakdown index or even rancidity of the adipose fraction, to the extent that flavours and aromas may be produced which differ from those traditionally appreciated by consumers. Rancidity, which is encouraged by a combination of certain environmental and storage factors (including exposure to

high temperatures and the flow of air in ageing rooms), involves a serious change to the fat content which can turn yellow and become less firm, producing volatile organic compounds giving off a rancid smell. These changes can significantly alter the characteristics of the product in connection with the fat colour, its firmness and its attachment to the surface of the muscle tissue. In addition, the exposure of the meat and the fat to the air before packaging can result in high oxidation of the edible surface, turning the meat brown and drying out the surface of the exposed muscle tissue, or in limp products in the case of excess humidity.

3.3. Labelling:

A section is inserted on affixing the logo on the raw material and on the hams which comply with the characteristics laid down in the rules, in order to ensure traceability and monitoring throughout the production chain.

SUMMARY

COUNCIL REGULATION (EC) No 510/2006

'PROSCIUTTO TOSCANO'

EC No: IT-PDO-0217-1494-10.06.2005

PGI () PDO (X)

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

1. Responsible department in the Member State:

Name: Ministero delle politiche agricole e forestali
Address: Via XX Settembre 20
00187 Roma RM
ITALIA
Tel. +39 0646655104
Fax +39 0646655306
E-mail: sacco7@politicheagricole.gov.it

2. Group:

Name: Consorzio del Prosciutto Toscano
Address: Via G. Marignolli 21/23
50127 Firenze FI
ITALIA
Tel. +39 0553215115
Fax +39 0553215115
E-mail: —
Composition: Producers/processors (X) other ()

3. Type of product:

Class 1.2. Meat-based products

4. Specification:

(summary of requirements under Article 4(2) of Regulation (EC) No 510/2006)

4.1. Name:

'Prosciutto Toscano'

4.2. Description:

When released to the market, 'Prosciutto Toscano' has the following physical, organoleptic, chemical and chemico-physical characteristics: the top is rounded due to the presence of a ridge of meat which extrudes no more than 8 cm beyond the end of the femur; the weight is about 8-9 kg but never below 7,5 kg; when sliced open, the product reveals pale red to bright red meat with little fat infiltration in the muscle tissue; white subcutaneous fat with pink streaks, lean, with no delamination of the layers which are firmly attached to the underlying muscle tissue.

'Prosciutto Toscano' has a delicate but savoury taste, with a fragrant aroma as a result of the traditional methods of curing and ageing.

The chemical and chemico-physical characteristics may be summarised as follows:

Salt (expressed as NaCl)	%	max. 8,3
Muscle tissue humidity	%	max. 61,0
Protein breakdown index	%	max. 30,0
Nitrates and nitrites in total		max 95 p.p.m

4.3. Geographical area:

Pig herds for the production of 'Prosciutto Toscano' must be located in the regions of Lombardy, Emilia Romagna, Marche, Umbria, Lazio and Tuscany.

'Prosciutto Toscano' is cured, sliced and packaged in the traditional area of production which covers the entire region of Tuscany.

4.4. Proof of origin:

Traceability is ensured by the monitoring carried out by the inspection body throughout the production chain in compliance with Regulation (EC) No 510/2006.

4.5. Method of production:

The method of production requires that the pigs born, reared and slaughtered in the regions referred to in paragraph 4.3 must not weigh less than 160 kg ($\pm 10\%$) and must not be less than nine months old. 'Prosciutto Toscano' comes from fresh joints of heavy purebred pigs or those bred from the traditional Large White or Landrace species.

Immediately after butchering the joints which have been separated from the carcass are refrigerated for at least 24 hours at a temperature of between - 2 and + 2 °C. They are then trimmed. A fresh trimmed joint must not weigh less than 11,8 kg.

Before curing begins, the producer checks that the joints satisfy the requirements and affixes to each joint a metallic seal in the form of a round stainless steel tag with the embossed letters 'P.T.' and the date when curing began, shown by the month (indicated as a Roman numeral) and the year (indicated by the last two digits of the year). The seal is applied in such a way that it cannot be removed when affixed using a suitable machine.

The curing of the joints begins with salting which must occur within 120 hours after butchering. A dry salting process is employed, using salt, pepper and natural aromatic herbs. After salting the joints are left long enough to ensure proper dehydration before being washed with lukewarm water free of any disinfectants. The joints are then dried in special rooms where temperature and humidity are controlled. The final phase of the curing involves smearing the exposed part of the joint with a mix consisting of lard, wheat or rice flour, salt, pepper and natural aromatic herbs. Ageing takes place in premises specially designed to ensure a proper flow of air and a temperature of between 12 and 25 °C. During this time the hams may be ventilated and exposed to light and natural humidity, depending on the climate conditions in the area of production. The time taken to age the hams, from salting to marketing, must not be less than 10 months for hams with a final weight of 7,5-8,5 kg and not less than 12 months for hams weighing more than 8,5 kg.

'Prosciutto Toscano' intended for slicing must be aged for two months longer than the times indicated in the last paragraph, i.e. not less than 12 months for hams weighing between 7,5 and 8,5 kg and not less than 14 months for hams weighing more than 8,5 kg.

At the end of the ageing process, and in the presence of an official from the inspection body, the producer brands the hams which meet the requisite criteria with a logo bearing the words 'PROSCIUTTO TOSCANO DOP'. In order to ensure traceability throughout the various stages of production, the brand may be also include two other numbers to identify any other operators involved in the production chain.

Slicing and packaging of 'Prosciutto Toscano' must occur at the end of the ageing process, and in the area of production referred to in paragraph 4.3, in order to ensure that the different ageing times for sliced ham are complied with and that characteristics relating to the moistness and look of the meat and fat, described in paragraph 4.2, are preserved. The fact that joints intended for slicing and packaging may be kept as boned pieces for unspecified periods in environmental conditions which differ from those laid down could result in the development of characteristics inconsistent with those for which 'Prosciutto Toscano' is known, such as the formation of abnormal mould, unusual protein degradation with a resulting change in the protein breakdown index or even rancidity of the adipose fraction, to the extent that flavours and aromas may be produced which differ from those traditionally appreciated by consumers. In addition, the exposure of the meat and the fat to the air before packaging can result in high oxidation of the edible surface, turning the meat brown and drying out the surface of the exposed muscle tissue, or in limp products in the case of excess humidity.

4.6. *Link:*

The features of a PDO product depend on environmental conditions and natural and human factors. In particular, the properties of the raw material are dependent on the specific designated area. In the area which is the source of the raw material, the development of livestock farming is linked to the widespread cultivation of cereal crops and to working methods which have encouraged pig farming.

The restricted area for the production of 'Prosciutto Toscano' is justified by the conditions of the area indicated in paragraph 4.3. The landscape and geographic features of Tuscany are ideal for the production of high-quality hams. The climate too, very different from that of neighbouring regions, is particularly suitable for ageing the hams. It is thus a climate which is ideal for fostering a successful combination of environment and typical regional products, allowing them to mature in a slow and healthy manner. Consider the region's wine, its olive oil, its cheese and, of course, its ham.

The environmental factors are closely linked to the features of the area of production, with its cool and verdant valleys and its wooded hills which have a decisive influence on the climate and on the characteristics of the finished product. This combination of raw material/product/designation is linked to the socioeconomic development of the area.

4.7. *Inspection body:*

Name: INEQ — Istituto Nord Est Qualità
Address: Via Rodeano 71
33038 S. Daniele del Friuli UD
ITALIA
Tel. +39 0432940349
Fax +39 0432943357
E-mail: info@ineq.it

4.8. *Labelling:*

The protected designation of origin of 'Prosciutto Toscano' must be indicated in clear and indelible lettering, easily distinguishable from any other writing on the label, and must be immediately followed by the phrase 'Denominazione di Origine Protetta' or the letters 'D.O.P.'. Nothing which is not explicitly permitted may be added. However, the use of names, trade names or private marks is permitted, other than those with a promotional purpose or likely to mislead purchasers, as is the indication of the pig farms from which the product comes, provided that the raw material comes solely from those farms. 'Prosciutto Toscano' can be released to the market within a maximum limit of 30 months after the start of the curing process of the fresh joints. 'Prosciutto Toscano' can also be released to the market as a boned product, i.e. sliced or in portions of varying size and weight. For marketing, all these types of product must be packaged in suitable food casings or containers which must be properly sealed. The branding of the product must be visible when whole boned ham is packaged. If portions of the ham are prepared, the brand must be visible on each piece. If the ham from which the portions are taken has not been branded at the end of the ageing process, it must be branded by the producer in the presence of an official from the inspection body before the ham is divided into portions.

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 322/11)

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

SINGLE DOCUMENT

COUNCIL REGULATION (EC) No 510/2006

'GENISSE FLEUR D'AUBRAC'

EC No: FR-PGI-005-0257-15.10.2002

PGI (X) PDO ()

1. Name:

'Génisse Fleur d'Aubrac'

2. Member State or third country:

France

3. Description of the agricultural product or foodstuff:

3.1. Type of product:

Class 1.1. Fresh meat (and offal)

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

The *Génisse Fleur d'Aubrac* is a heifer (i.e. a young cow which has not yet produced a calf) bred from an Aubrac cow and a Charolais bull, slaughtered between the age of 24 and 42 months.

The main characteristics of the carcasses are as follows:

- minimum weight of 280 kg,
- conformation: E, U and R on the EUROP grading scale,
- fat cover: classes 2 and 3 on the EUROP grading scale,
- pH \leq 6, in the 24 hours after slaughter, in the longissimus dorsal muscle level with the 13th lumbar vertebra,
- minimum maturation: 7 days after slaughter,
- absence of visual flaws: external fat incorrectly removed, trace of bovine hypodermosis, haematoma.

Génisse Fleur d'Aubrac meat is typically a pure red colour. It is relatively lean but slightly marbled.

The meat is sold in carcasses or half-carcasses (fresh), small wholesale cuts (fresh), muscles/ready-to-cut (fresh or frozen), muscles/cut (frozen) and consumer sales units (*Unité de Vente Consommateur*) (fresh or frozen).

3.3. Raw materials:

Not applicable.

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

From birth to weaning

The calves suckle their mothers in the cowshed and in the field. Once turned out to pasture, they graze freely. Weaning occurs naturally and cannot take place any earlier than six months after the birth. Formula milk is prohibited. If necessary due to weather conditions, the farmer can distribute a supplementary feed concentrate a few months before weaning.

From weaning to finishing

Most of the feed must come from the farm's forage resources, except in exceptional weather conditions (drought, etc.). The fodder is composed of:

- annual and/or perennial wild plant species,
- temporary pastures based on grasses, leguminous plants or both,
- permanent and natural pastures.

The fodder can be consumed fresh (grass), dried (hay) and/or preserved by wet process (silage). The supplementary feed is distributed as an accompaniment to the standard ration, which is essentially fodder from the farm.

The supplementary feed concentrate, supplied by a feed manufacturer or produced on the farm, is composed exclusively of: cereals/cereal offals or by-products/oilseeds/oilseed products and by-products (oilcakes)/legume seed products and by-products/pulp from tubers, roots or fruit/molasses/dried alfalfa/dairy products/vegetable oils and fats/minerals (carbonates, phosphates, salt, magnesium)/yeasts and yeast by-products. Only additives which comply with the legislation are used.

Maize in all its forms is excluded from the age of 18 months.

Finishing

The rearing ends with a finishing period of at least four months in stalls or at pasture. The heifers have access to the supplementary feed accompanying the standard ration, which is essentially fodder from the farm. This supplementary feed concentrate, supplied by a feed manufacturer or produced on the farm, is composed exclusively from ingredients on the positive list specified in the 'weaning to finishing' phase and must not exceed 400 kg per animal. Maize in all its forms is excluded from the age of 18 months.

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

The *Génisses Fleur d'Aubrac* are born, reared and fattened in the *Génisse Fleur d'Aubrac* PGI area. The headquarters of the farm as well as all the buildings and pastures, including those situated on land used for transhumance (used to graze *Génisses Fleur d'Aubrac*), must be located in the PGI area.

The *Génisses Fleur d'Aubrac* are reared by one farmer only from birth to slaughter or may change ownership only once. The last owner must keep the animal for at least four months.

The *Génisses Fleur d'Aubrac* are slaughtered in the PGI area. The transport time for the heifers must not exceed four hours (not including any stops). This limitation is justified by the wish to take account of the heifers' welfare during transportation and to avoid long journeys which would cause stress, which has an impact on carcass yield and meat quality. Professionals therefore have a duty to limit it as much as possible so as not to completely undermine all the efforts made by farmers during the production stage.

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

Not applicable.

3.7. *Specific rules concerning labelling:*

The Guarantee of Origin Certificates and labels must include the following references:

- category: heifer,
- sales designation of the product '*Génisse Fleur d'Aubrac*',
- contact details of the inspection body,
- PGI logo,
- 'heifer bred from an Aubrac cow and a Charolais bull',
- 'farm alternating between grazing and indoor housing',
- 'heifer born and reared in the *Pays de l'Aubrac*',
- the animal's national identification number.

4. **Concise definition of the geographical area:**

The area for the PGI '*Génisse Fleur d'Aubrac*' comprises 313 municipalities spread over four *départements*, namely Aveyron, Cantal, Haute-Loire and Lozère.

Département of Aveyron

Cantons of Bozouls, Campagnac, Entraygues-sur-Truyère, Espalion, Estaing, Laguiole, Laissac, Mur-de-Barrez, Pont-de-Salars, Rodez-Nord, Saint-Amans-des-Côtes, Saint-Chely-d'Aubrac, Saint-Geniez-d'Olt, Sainte-Geneviève-sur-Argence, Salles-Curan, Sévérac-le-Château: all municipalities.

Canton of Conques: municipalities of Conques, Saint-Félix-de-Lunel and Sénergues.

Canton of Marcillac-Vallon: municipalities of Muret-le-Château and Salles-la-Source.

Canton of Rodez-Est: municipalities of Rodez-Est and Sainte-Radegonde.

Canton of Rodez-Ouest: municipality of Rodez-Ouest.

Canton of Vézins-de-Lévezou: municipalities of Saint-Laurent-de-Lévezou, Ségur and Vézins-de-Lévezou.

Département of Cantal

Cantons of Chaudes-Aigues, Pierrefort, Ruynes-en-Margeride, Saint-Flour-Nord, Saint-Flour-Sud: all municipalities.

Canton of Massiac: municipalities of Bonnac, La Chapelle-Laurent, Ferrières-Saint-Mary, Saint-Mary-le-Plain, Saint-Poncy and Valjouze.

Canton of Murat: municipality of Neussargues-Moissac.

Département of Haute-Loire

Canton of Pinols: municipalities of Auvers, La Besseyre-Saint-Mary, Desges and Pinols.

Canton of Saugues: municipalities of Chanaleilles, Croisances, Esplantas, Grèzes, Saint-Christophe-d'Allier, Saint-Vénérand, Saugues, Thoras, Vazeilles-Près-Saugues and Venteuges.

Département of Lozère

Cantons of Aumont-Aubrac, Le Bleymard, Chanac, Châteauneuf-de-Randon, Fournels, Grandrieu, Langogne, Le Malzieu-Ville, Marvejols, Mende-Nord, Mende-Sud, Nasbinals, Saint-Alban-sur-Limagnole, Saint-Amans, Saint-Chély-d'Apcher and Saint-Germain-du-Teil: all municipalities.

Canton of La Canourgue: municipalities of Banassac, Canilhac, La Canourgue, Saint-Saturnin and La Tieule.

Canton of Florac: municipality of Les Bondons.

Canton of Le Massegros: municipality of Le Recoux.

Canton of Le Pont-de-Montvert: municipalities of Fraissinet-de-Lozère, Le Pont-de-Montvert and Saint-Maurice-de-Ventalon.

Canton of Villefort: municipalities of Altier and La Bastide-Puylaurent.

5. Link with the geographical area:

5.1. Specificity of the geographical area:

The *Pays de l'Aubrac* includes a number of small natural regions in the mountains of the southern Massif Central. It is a typical physical environment essentially composed of primary and volcanic massifs. It is mainly situated at over 600 metres in altitude and has long, severe winters and rather high annual rainfall. It consists mainly of pastureland: natural pastures (referred to locally as '*devèzes*'), moor- and rangeland, wooded pastures and basalt, granite or schist summer mountain pastures.

The altitude and landscape have led the people living on this territory to develop 'pastoral economies' based on the mountain grass.

5.2. Specificity of the product:

The *Génisse Fleur d'Aubrac*, bred from an Aubrac cow and a Charolais bull, is an original and unique product combining the best of a hardy breed and a well-known meat breed. Farmers in the *Pays de l'Aubrac* have produced these heifers for a long time and are highly skilled in the practice. The cross-breeding draws on the ease with which heifers with a high growth rate and excellent beef conformation can be reared and fattened.

The farming method for the *Génisses Fleur d'Aubrac* is one of alternation between pastureland and stalls, due to the specific weather conditions of the *Pays de l'Aubrac*. The animals are therefore reared in two main phases:

- the summer period (April/May to November/December) during which the animals graze freely,
- the winter period (November/December to April/May) during which the animals are in stalls and eat fodder from storage.

The meat of the *Génisse Fleur d'Aubrac* is pure red in colour, relatively lean and slightly marbled.

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 *Génisse Fleur d'Aubrac* PGI is based on the know-how and reputation benefiting this product.

The know-how developed by *Génisses Fleur d'Aubrac* breeders is evident in the farming system particular to the *Pays de l'Aubrac*, characterised by the use of natural areas for grazing, the extensive management of suckler cow herds, the choice of the hardy Aubrac breed as the pivot for the system and the efforts to obtain *Génisses Fleur d'Aubrac* products with good added value.

The use of grass underpins the farming system in the *Pays de l'Aubrac*. The geographical location of the farms determines the specific manner in which the farm is run:

- at high altitude (around 1 000 metres), the predominantly volcanic soil and the abundant and regular rainfall ensure continuous grass growth throughout the grazing season. The farm areas are mainly composed of permanent pastures on which the animals graze. This is also an important area for summer pastures,
- at medium altitude (800-1 200 metres), in the granite zone, which is the most extensive (covering almost half of the *Pays de l'Aubrac*), the soil is formed on granitic sand and is susceptible to drought in summer. However, animals can graze over the summer on the large areas of rangeland and *devèzes* (natural pastures),
- at low altitude (below 800 metres), on the foothills of the granite zone, the soil is dry. As this causes a severe lack of grass in summer, herds need to move to higher pastures for this season.

During the production cycle, the *Génisses Fleur d'Aubrac* must alternate between pastureland and stalls. Most of their feed comes from the farm's forage resources.

As the extensive method of forage management favours pastureland, livestock density is not very high. In a way, however, it conveys the natural richness of the land. In general, with no intervention other than liming (low pH for particularly acidic soils) and the excellent management of organic fertilisers (manure and slurry), livestock density reaches 1 LU/ha in basalt areas (with the richest soil) and around 0,6 to 0,8 LU/ha in granitic, schist or red sandstone areas (somewhat lower natural potential in terms of quantity but equally good grazing quality in springtime).

Thanks to their hardiness, i.e. their ability to tap their bodies' reserves in difficult periods (long winters) and rebuild them in easier times (spring and summer grazing), the mother cows of the *Aubrac* breed are the most likely to turn the disadvantages of the environment to their advantage. They regularly produce one calf a year without risk during calving. For almost half a century, their offspring, cross-bred with the Charolais bull, has allowed the *Pays de l'Aubrac* to thrive economically from its beef production. The search for higher added value from the best animals (often using a strict selection procedure) is encouraging an increasing number of farmers to breed *Génisses Fleur d'Aubrac*, which have a better conformation than the *Aubrac* breed yet keep its fine bone structure and flavour.

Records dating back to ancient times attest to the great importance of a breeding system in the *Pays de l'Aubrac* in which summer pastures play an essential role. During the 20th century, these mountains gradually moved from cheese to extensive meat production, with rapid growth in cross-breeding between the local *Aubrac* breed and the Charolais breed from the 1960s, which eventually resulted in the emergence of the *Génisse Fleur d'Aubrac*.

The *Génisse Fleur d'Aubrac* was mentioned in the press for the first time in 1991 on the occasion of a celebratory day in its honour. The animals were first sold under the name *Génisse Fleur d'Aubrac* in October 1991. Since then, regular reference has been made to the *Génisse Fleur d'Aubrac* in both the specialist and general press. In 1997, the *Guide des Produits du Terroir* (Guide to Local Products) published by *Editions du Seuil* awarded a *Label Excellence Terroir* (local excellence label) to the *Association des Produits de l'Aubrac* and to farmers for the *Génisse Fleur d'Aubrac*. On 27 May 2002, over 200 people (breeders and local elected representatives) met to celebrate the sale of the 10 000th *Génisse Fleur d'Aubrac*, with coverage by the regional press. Breeders have taken part in a number of exhibitions: the *Salon International de l'Agriculture* in Paris in March 2004, the *Salon de la boucherie et du goût* in Marseille in November 2005, and the *Salon des produits et des filières de qualité* in Marvejols in April 2006. They also provide consumer information on the *Génisse Fleur d'Aubrac* using posters (displayed in butcher's shops), advertising leaflets and lists of sales outlets (distributed at fairs, exhibitions, publicity events, etc.). The *Génisse Fleur d'Aubrac* has also been shown for several years in competitions and at other annual events such as the *Fête de la Transhumance* and the *Festival du bœuf gras de Pâques* in Laguiole (Aveyron).

Reference to publication of the specifications:

<https://www.inao.gouv.fr/fichier/CDCAnnexesGenisseFleurdAubrac.doc>

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

Commission

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⁽¹⁾ Text with EEA relevance

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