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(Resolutions, recommendations and opinions)

RESOLUTIONS

COUNCIL

COUNCIL RESOLUTION

of 8 June 2010

on coordination of the Controlled Foreign Corporation (CFC) and thin capitalisation rules within the European Union

(2010/C 156/01)

THE COUNCIL OF THE EUROPEAN UNION,

RECALLING the communications from the Commission to the Council, the European Parliament and the Economic and Social Committee of 19 December 2006 on coordinating Member States' direct tax systems in the internal market [1] and of 10 December 2007 on the application of anti-abuse measures in the area of direct taxation — within the EU and in relation to third countries [2], and the Council Conclusions on coordinating Member States' direct tax systems in the internal market of 27 March 2007,

ACKNOWLEDGING the need to strike a proper balance between the public interest of combating abuse and protecting the tax bases of Member States and the need to avoid disproportionate restrictions on cross-border activity within the EU,

NOTING that anti-abuse rules may take a variety of forms, such as a general concept of abuse based on legislation or developed in case law or more specific anti-abuse provisions, such as Controlled Foreign Corporation (CFC); noting furthermore that a number of Member States consider that thin capitalisation rules can play a role in preventing abuse; recalling also that anti-abuse rules are envisaged in the EU directives on corporate taxation,

NOTING that the term 'thin capitalisation rules' in this resolution refers to thin capitalisation rules aimed at the prevention of abuse and not to all thin capitalisation rules in general, and considering that thin capitalisation rules which observe the arm's-length principle are capable of preventing tax avoidance, or maintaining the balanced allocation of taxing powers, or both,

CONSIDERING that CFC or thin capitalisation rules may constitute restrictions on the exercise of the Treaty freedoms when they entail a difference in the treatment between objectively comparable domestic and cross-border situations,

RECALLING that it follows from the case law of the Court of Justice of the EU that restrictions on the Treaty freedoms within the EU are capable of being justified by overriding reasons in the public interest, such as the need to prevent tax avoidance and/or the need to preserve a balanced allocation of taxing powers between the Member States, provided that they are proportionate in relation to such objectives, and that preventing tax avoidance in relation to 'wholly artificial arrangements' is generally justified,

CONSIDERING that national CFC and thin capitalisation rules can usefully comprise 'safe harbour' criteria beyond which the possibility of abuse is highest so long as the taxpayer is allowed to produce evidence of the contrary,

(1) COM(2006) 823 final.
(2) COM(2007) 785 final.

EMPHASISING, furthermore, that the guiding principles are a political commitment, whose implementation is left to the decision of each Member State, and therefore affect neither the rights or the obligations of the Member States nor the respective competencies of the Member States and of the Union under the Treaty and, in particular, do not require Member States who do not have the types of rules referred to in this Resolution to introduce such rules,

RECOMMENDS that Member States, when applying cross-border CFC and thin capitalisation rules within the EU not applicable in similar domestic situations, adopt the following guiding principles:

A. For the application of CFC rules, a non-exhaustive list of indicators suggesting that profits may have been artificially diverted to a CFC includes in particular the following:

(a) there are insufficiently valid economic or commercial reasons for the profit attribution, which therefore does not reflect economic reality;

(b) incorporation does not essentially correspond with an actual establishment intended to carry on genuine economic activities;

(c) there is no proportionate correlation between the activities apparently carried on by the CFC and the extent to which it physically exists in terms of premises, staff and equipment;

(d) the non-resident company is overcapitalised, it has significantly more capital than it needs to carry on its activity;

(e) the taxpayer has entered into arrangements which are devoid of economic reality, serve little or no business purpose or which might be contrary to general business interests, if not entered into for the purpose of avoiding tax.

B. With respect to thin capitalisation rules, which will respect the arm's-length principle, the assessment will be on a case-by-case basis. A non-exhaustive list of indicators suggesting an artificial transfer of profits includes in particular the following:

(a) the level of debt to equity is excessive;

(b) the amount of net interest paid by the company goes beyond a certain threshold of the earnings before interest and taxes (EBIT) or of the earnings before interest, taxes, depreciation and amortisation (EBITDA);

(c) a comparison between the equity percentage of the company to that of the group worldwide appears to prove that the debt is excessive.

STRESSES the fact that administrative cooperation can be of key importance in ensuring the effectiveness of anti-abuse measures and underlines therefore the importance of Member States' assistance to each other for the purposes of detecting and combating abusive schemes.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Euro exchange rates [1]

15 June 2010

(2010/C 156/02)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,2258	AUD	Australian dollar	1,4301
JPY	Japanese yen	111,77	CAD	Canadian dollar	1,2629
DKK	Danish krone	7,4377	HKD	Hong Kong dollar	9,5500
GBP	Pound sterling	0,83200	NZD	New Zealand dollar	1,7668
SEK	Swedish krona	9,6215	SGD	Singapore dollar	1,7110
CHF	Swiss franc	1,3998	KRW	South Korean won	1 505,77
ISK	Iceland króna		ZAR	South African rand	9,4245
NOK	Norwegian krone	7,8515	CNY	Chinese yuan renminbi	8,3760
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,2130
CZK	Czech koruna	25,663	IDR	Indonesian rupiah	11 263,11
EEK	Estonian kroon	15,6466	MYR	Malaysian ringgit	4,0036
HUF	Hungarian forint	280,10	PHP	Philippine peso	57,053
LTL	Lithuanian litas	3,4528	RUB	Russian rouble	38,4800
LVL	Latvian lats	0,7076	THB	Thai baht	39,708
PLN	Polish zloty	4,0734	BRL	Brazilian real	2,2132
RON	Romanian leu	4,2358	MXN	Mexican peso	15,5142
TRY	Turkish lira	1,9316	INR	Indian rupee	57,0310

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

NOTICES FROM MEMBER STATES

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

(2010/C 156/03)

Aid No: XA 40/10

Member State: Lithuania

Region: —

Title of aid scheme or name of company receiving an individual aid: Paramos teikimas už šalutinių gyvūninių produktų, neskirtų vartoti žmonėms, pašalinimą ir sunaikinimą (schemos Nr. XA 249/09 pakeitimas)

Legal basis: Lietuvos Respublikos žemės ūkio ministro 2006 m. gegužės 26 d. įsakymo Nr. 3D-217 bei žemės ūkio ministro 2009 m. spalio 29 d. įsakymo Nr. 3D-815 pripažinimo netekusiais galios „pakeitimo“ projektas.

Annual expenditure planned under the scheme or overall amount of individual aid granted to the company: LTL 3 100 000 (EUR 898 550 at the official exchange rate).

Maximum aid intensity:

1. up to 100 % of the costs of removal and destruction of fallen stock where there is an obligation to perform TSE tests on the fallen stock concerned;

2. up to 100 % of the costs of removal and up to 75 % of the costs of destruction:

   — when removing dead cattle, sheep or goats other than those subject to obligatory TSE testing,

   — when removing dead horses,

   — when removing dead pigs, where the pig keeper has up to 1 000 pigs,

3. up to 18 % of the costs of removal and destruction:

   — when removing dead pigs, where the pig keeper has more than 1 000 pigs,

   — when removing dead birds.

Date of implementation: The aid scheme will enter into force after the Commission has sent a notice of receipt, assigned an identification number to the scheme and published the summary information on the Internet.

Duration of scheme or individual aid award: Until 31 December 2013

Objective of aid:

Aid to SMEs.

To provide support to enterprises and farmers operating in the livestock sector in order to ensure a consistent programme of control and safe removal of all fallen stock.

Article 16 of Commission Regulation (EC) No 1857/2006 applies.

Sector(s) concerned: Primary production of agricultural products

Name and address of the granting authority:

Lietuvos Respublikos žemės ūkio ministerija
Gedimino pr. 19 (Lelevelio g. 6)
LT-01103 Vilnius
LIETUVA/LITHUANIA

Website:

http://www.lrs.lt/pls/proj/dokpaieska.showdoc_l?p_id=22363&p_query=&p_tr2=&p_org=13&p_fix=y

Other information: Upon entry into force of this State aid scheme, Scheme No XA 249/09 will cease to apply.

Aid No: XA 41/10

Member State: Republic of Slovenia

Region: Goriška statistical region

Title of aid scheme or name of company receiving an individual aid: Podpore programom razvoja podeželja v Mestni občini Nova Gorica

Legal basis: Odlok o dodeljevanju pomoči za programe in investicije v kmetijstvu in podeželju v Mestni občini Nova Gorica

Annual expenditure planned under the scheme or overall amount of individual aid granted to the company: Approximately EUR 56 000 annually

Maximum aid intensity:

— investment in agricultural holdings: up to 40 % of the eligible costs excluding VAT,

— cofinancing of insurance premiums: up to 50 % of the eligible costs,

— land reparcelling: up to 100 % of the eligible costs incurred, excluding VAT,

— quality products: up to 100 % of the eligible costs, excluding VAT, to be provided in the form of subsidised services,

— the provision of technical support: up to 100 % of the eligible costs, excluding VAT, to be provided in the form of subsidised services.

Date of implementation: From the date on which the registration number of the exemption for the aid scheme is published on the website of the European Commission's Directorate-General for Agriculture and Rural Development.

Duration of scheme or individual aid award: Until 31 December 2013

Objective of aid:

1. Investment in agricultural holdings (Article 4):

   — objectives: cofinancing of investment in basic farm production on agricultural holdings by reducing production costs, improving and re-deploying production, improving quality and preserving and improving the natural environment or improving hygiene conditions or animal welfare standards,

   — eligible costs: the construction, acquisition or improvement of immovable property, the purchase of machinery and equipment, including computer software up to the market value of the asset, general costs linked to this expenditure, such as architects' fees, engineers' fees and consultants' fees, feasibility studies, the acquisition of patents and licences, etc. and the purchase of land (other than land for construction purposes).

2. Insurance premiums (Article 12):

   — objectives: reduction of the consequences and risks for farm crops of natural disasters, and reduction of losses resulting from diseases of farm animals,

   — eligible costs: costs of insurance premiums providing cover for losses to crops and fruit caused by climatic events for one growing season, and the costs of insurance premiums providing cover for losses caused by animal diseases for one insurance year.

3. Land reparcelling (Article 13):

   — objectives: reduction of production costs due to small and scattered plots,

   — eligible costs: legal and administrative costs, including inspection costs.

4. To encourage the production of quality agricultural products (Article 14):

   — objectives: to encourage the production of quality agricultural products,

   — eligible costs: the costs of market research and of product conception and design, including aid granted for the preparation of applications for recognition of geographical indications and designations of origin or certificates of specific character in accordance with the relevant Community regulations; the costs of introducing quality assurance schemes such as ISO 9000 or 14000 series, systems based on hazard analysis and critical control points (HACCP), traceability systems, systems to assure respect of authenticity and marketing norms or environmental audit systems; the costs of training staff to use the programs and systems set out in the previous indent; fees levied by recognised certification bodies for the initial certification of quality assurance and similar systems.

5. Provision of technical support (Article 15):

   — objectives: improving efficiency and expertise by cofinancing the costs of education and training, consultancy services, the organisation of events for sharing knowledge among farms, competitions, exhibitions and fairs, participation in competitions, the dissemination of scientific knowledge, publications and websites,

   — eligible costs: concerning education and training of farmers and farm workers: the costs of organising training programmes, travel and subsistence expenses of participants; concerning the organisation of and participation in events to share knowledge between farms, competitions, exhibitions and fairs: participation fees, travel costs, costs of publications, the rent of exhibition premises, symbolic prizes awarded (up to a value of EUR 250 per prize and winner); publications, such as catalogues or websites, presenting factual information about producers from a given region or producers of a given product, provided the information and presentation are neutral and that all producers concerned have equal opportunities to be represented in the publication.

Sector(s) concerned: All sectors of agriculture

Name and address of the granting authority:

Mestna občina Nova Gorica
Trg E. Kardelja 1
SI-5000 Nova Gorica
SLOVENIJA

Website:

http://www.uradni-list.si/1/objava.jsp?urlid=201014&stevilka=603

Other information: —

Aid No: XA 42/10

Member State: Cyprus

Region: Cyprus

Title of aid scheme or name of company receiving an individual aid: Ο περί Γεωργικής Ασφάλισης (Τροποποιητικός) Νόμος του 2010 και οι περί Οργανισμού Γεωργικής Ασφάλισης (Τροποποιητικοί) (Αρ. 2) Κανονισμοί του 2010

Legal basis:

α) Ο περί Γεωργικής Ασφάλισης (Τροποποιητικός) Νόμος του 2010 και οι περί Οργανισμού Γεωργικής Ασφάλισης (Τροποποιητικοί) (Αρ. 2) Κανονισμοί του 2010 οι οποίοι εγκρίθηκαν με την Απόφαση του Υπουργικού Συμβουλίου ημερομηνίας 5 Αυγούστου 2009

β) Η Απόφαση του Εφόρου Ελέγχου Κρατικών Ενισχύσεων με αριθ. 312 ημερομηνίας 8 Σεπτεμβρίου 2009 όπως δημοσιεύθηκε στην Επίσημη Εφημερίδα της Κυπριακής Δημοκρατίας της 18ης Σεπτεμβρίου 2009

Annual expenditure planned under the scheme or overall amount of individual aid granted to the company: EUR 0,25 million

Maximum aid intensity: 50 %

Date of implementation: 19 March 2010

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

Objective of aid: Insurance premiums (Article 12 of Regulation (EC) No 1857/2006)

Sector(s) concerned:

A10201 — Growing of grapes

A10204 — Growing of pome fruits and stone fruits

A10205 — Other tree and bush fruits and nuts

Name and address of the granting authority:

Οργανισμός Γεωργικής Ασφάλισης
Ζήνωνος Χρ. Σώζου 29-31
Λευκωσία/Nicosia
ΚΎΠΡΟΣ/CYPRUS

(Agricultural Insurance Organisation
Zinonos Chr. Sozou 29-31
Nicosia
CYPRUS)

Website:

http://www.oga.org.cy/images/users/1/23.03.046.110.2009.pdf

http://www.oga.org.cy/images/users/1/23.01.050.163-2009.pdf

http://www.publicaid.gov.cy/publicaid/publicaid.nsf/All/9D62E9F65B0DBB94C22576390025F89F/$file/Απόφαση%20Αρ.%20312.pdf

Other information: The adoption of the 2010 (Amending) Law on Agricultural Insurance and the 2010 (Amending) (No 2) Regulations on the Agricultural Insurance Organisation will change the existing agricultural insurance arrangements so that: (a) cover is also provided for damage to deciduous trees caused by high temperatures; (b) cover is also provided for damage to pome fruits and stone fruits caused by adverse weather conditions at the flowering stage; (c) the definition of deciduous crops also covers walnuts; and (d) the period of cover for damage to tree crops and vines is extended so that it starts before the flowering stage. To maintain the viability of the insurance scheme for deciduous crops, and of the Agricultural Insurance Scheme in general, and for the Agricultural Insurance Organisation to be in a position to meet its obligations to insured farmers, it is deemed necessary to increase the insurance premium for pome fruits and stone fruits from 6 % to 10 %, which means an increase in the annual contribution paid by both farmers and the Government, as the insurance premium is subsidised at the rate of 50 % (EUR 250 000 approximately). This aid amends the existing aid measure XA 77/08 entitled 'Aid for the payment of insurance premiums'.

Aid No: XA 43/10

Member State: Spain

Region: —

Title of aid scheme or name of company receiving an individual aid: Ayudas para fomentar la producción de productos de calidad

Legal basis: Proyecto de Real Decreto …/2010, de … de …, por el que se establecen las bases reguladoras para la concesión de ayudas a las agrupaciones de productores de plantas vivas y productos de la floricultura para mejorar la producción, la comercialización y la formación del sector.

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

Annual amount: EUR 2 083 333.

The overall limit for the aid provided for in Sections 1 to 3 of the Royal Decree will be EUR 250 000 per producer group for activities carried out over a maximum period of three years.

Maximum aid intensity: 50 % of the actual expenditure amount incurred by producer groups which are small or medium-sized enterprises.

Date of implementation: From the date of publication of the registration number of the request for exemption on the website of the Commission's Directorate-General for Agriculture and Rural Development.

Duration of scheme or individual aid award: Until 31 December 2013

Objective of aid:

To improve the quality and variety of live plants and floricultural products in order to increase their commercial value. Article 14 of Commission Regulation (EC) No 1857/2006.

Eligible activities:

A. Market research, product conception and design activities.

B. Introduction of quality assurance schemes, such as ISO 9000 or 14000 series, systems based on hazard analysis and critical control points, traceability systems, systems to assure respect of marketing norms or environmental audit systems or any other quality production system which, through the use of control mechanisms entrusted to independent entities, provides the highest guarantee of traceability, quality and information to the consumer, and whose requirements go beyond those stated under the basic legislation on floricultural and live plant products and involve one or more stages of production and marketing.

C. Initial certification of the systems set out in B.

Sector(s) concerned: Live plants and floricultural products

Name and address of the granting authority:

Ministerio de Medio Ambiente y Medio Rural y Marino
Paseo de Infanta Isabel, 1
28014 Madrid
ESPAÑA

Website:

http://www.mapa.es/ministerio/pags/normas/ayudas_floricultura.pdf

Other information: —

Aid No: XA 47/10

Member State: Spain

Region: Comunitat Valenciana

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

Legal basis: Ayuda individual nominativa: Presupuestos de la Generalitat 2010.

Annual expenditure planned under the scheme or overall amount of individual aid granted to the company: EUR 500 000

Maximum aid intensity: 100 %

Date of implementation: From the date on which the identification number of the exemption request is published on the website of the Commission's Directorate-General for Agriculture and Rural Development.

Duration of scheme or individual aid award: December 2010

Objective of aid:

Participation in fairs; organisation of forums for knowledge-sharing between businesses and coordination of businesses that export overseas.

Information campaigns to promote oranges and clementines, so as to increase their consumption by promoting their nutritional qualities and the associated health benefits, without making any reference to enterprises, trademarks or origin; collecting and examining scientific information so as to submit proposals for inclusion in the lists that are being compiled pursuant to Community Regulation (EC) No 1924/2006 on nutrition and health claims made on foods; improving knowledge of market developments, sectoral information centre and relations with the Community, State and Autonomous Community authorities; promotion of contractual relations in the sector and standardisation of contracts; technical action on quality: monitoring of pests and diseases, and research programmes. These activities are covered by Article 15 of Commission Regulation (EC) No 1857/2006 of 15 December 2006.

Sector(s) concerned: SMEs in the agri-food sector in the Autonomous Community of Valencia

Name and address of the granting authority:

Conselleria de Agricultura, Pesca y Alimentación
C/ Amadeo de Saboya, 2
46010 Valencia
ESPAÑA

Website:

http://www.agricultura.gva.es/especiales/ayudas_agrarias/pdf/intercitrus2010.pdf

Other information: —

La Directora General de Comercialización
Marta VALSANGIACOMO GIL

V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

Prior notification of a concentration

(Case COMP/M.5895 — Keolis Nordic/Busslink Group)

Candidate case for simplified procedure

(Text with EEA relevance)

(2010/C 156/04)

1. On 10 June 2010, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 [1] by which the undertaking Keolis Nordic AB ('Keolis Nordic', Sweden), subsidiary of Keolis SA, which is jointly controlled by SNCF-Participations ('SNCF-P', France) and Caisse de Dépôt et Placement du Québec ('CDPQ', Canada), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Busslink i Sverige AB ('Busslink', Sweden), by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for Keolis Nordic: investment in transport services including bus, coach, railway and light railway services in Sweden and Denmark,

— for Busslink: operation of bus services for Public Transportation Authorities in Sweden.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the EC Merger Regulation. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under the EC Merger Regulation [2] it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

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

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by email to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number COMP/M.5895 — Keolis Nordic/Busslink Group, to the following address:

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

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[1] OJ L 24, 29.1.2004, p. 1 (the 'EC Merger Regulation').
[2] OJ C 56, 5.3.2005, p. 32 ('Notice on a simplified procedure').

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