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Contents

(Continued overleaf)

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

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EN

(1) Text with EEA relevance

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 603/2005

of 12 April 2005

amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings [1], and in particular Article 45 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Annexes to Regulation (EC) No 1346/2000 list the designations given in the national legislation of the Member States to the proceedings and liquidators to which that Regulation applies. Annex A to that Regulation lists the insolvency proceedings referred to in Article 2(a) of that Regulation. Annex B of that Regulation lists the winding-up proceedings referred to in Article 2(c) and Annex C of that Regulation lists the liquidators referred to in Article 2(b) of that Regulation.

(2) Annexes A, B and C to Regulation (EC) No 1346/2000 were amended by the 2003 Act of Accession so as to include the insolvency proceedings, the winding-up proceedings and the liquidators of the new Member States.

(3) Belgium, Spain, Italy, Latvia, Lithuania, Malta, Hungary, Austria, Poland, Portugal and the United Kingdom have notified the Commission, pursuant to Article 45 of Regulation (EC) No 1346/2000, of amendments to the lists set out in Annexes A, B and C to that Regulation.

(4) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.

(5) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application.

(6) Regulation (EC) No 1346/2000 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1346/2000 is amended as follows:

1. Annex A is replaced by the text set out in Annex I to this Regulation;

2. Annex B is replaced by the text set out in Annex II to this Regulation;

3. Annex C is replaced by the text set out in Annex III to this Regulation.

[1] OJ L 160, 30.6.2000, p. 1. Regulation as amended by the 2003 Act of Accession.

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Luxembourg, 12 April 2005.

For the Council
The President
J.-C. JUNCKER

ANNEX I

'ANNEX A

Insolvency proceedings referred to in Article 2(a)

BELGIË/BELGIQUE

— Het faillissement/La faillite
— Het gerechtelijk akkoord/Le concordat judiciaire
— De collectieve schuldenregeling/Le règlement collectif de dettes
— De vrijwillige vereffening/La liquidation volontaire
— De gerechtelijke vereffening/La liquidation judiciaire
— De voorlopige ontneming van beheer, bepaald in artikel 8 van de faillissementswet/Le dessaisissement provisoire, visé à l'article 8 de la loi sur les faillites

ČESKÁ REPUBLIKA

— Konkurs
— Nucené vyrovnání
— Vyrovnání

DEUTSCHLAND

— Das Konkursverfahren
— Das gerichtliche Vergleichsverfahren
— Das Gesamtvollstreckungsverfahren
— Das Insolvenzverfahren

EESTI

— Pankrotimenetlus

ΕΛΛΑΣ

— Η πτώχευση
— Η ειδική εκκαθάριση
— Η προσωρινή διαχείριση εταιρείας. Η διοίκηση και διαχείριση των πιστωτών
— Η υπαγωγή επιχείρησης υπό επίτροπο με σκοπό τη σύναψη συμβιβασμού με τους πιστωτές

ESPAÑA

— Concurso

FRANCE

— Liquidation judiciaire
— Redressement judiciaire avec nomination d'un administrateur

IRELAND

— Compulsory winding up by the court
— Bankruptcy
— The administration in bankruptcy of the estate of persons dying insolvent
— Winding-up in bankruptcy of partnerships
— Creditors' voluntary winding up (with confirmation of a Court)
— Arrangements under the control of the court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution
— Company examinership

ITALIA

— Fallimento
— Concordato preventivo
— Liquidazione coatta amministrativa
— Amministrazione straordinaria

ΚΥΠΡΟΣ

— Υποχρεωτική εκκαθάριση από το Δικαστήριο
— Εκούσια εκκαθάριση από πιστωτές κατόπιν Δικαστικού Διατάγματος
— Εκούσια εκκαθάριση από μέλη
— Εκκαθάριση με την εποπτεία του Δικαστηρίου
— Πτώχευση κατόπιν Δικαστικού Διατάγματος
— Διαχείριση της περιουσίας προσώπων που απεβίωσαν αφερέγγυα

LATVIJA

— Bankrots
— Izlīgums
— Sanācija

LIETUVA

— įmonės restruktūrizavimo byla
— įmonės bankroto byla
— įmonės bankroto procesas ne teismo tvarka

LUXEMBOURG

— Faillite
— Gestion contrôlée
— Concordat préventif de faillite (par abandon d'actif)
— Régime spécial de liquidation du notariat

MAGYARORSZÁG

— Csődeljárás
— Felszámolási eljárás

MALTA

— Xoljiment
— Amministrazzjoni
— Stralċ volontarju mill-membri jew mill-kredituri
— Stralċ mill-Qorti
— Falliment f'każ ta' negozjant

NEDERLAND

— Het faillissement
— De surséance van betaling
— De schuldsaneringsregeling natuurlijke personen

ÖSTERREICH

— Das Konkursverfahren
— Das Ausgleichsverfahren

POLSKA

— Postępowanie upadłościowe
— Postępowanie układowe
— Upadłość obejmująca likwidację
— Upadłość z możliwością zawarcia układu

PORTUGAL

— O processo de insolvência
— O processo de falência
— Os processos especiais de recuperação de empresa, ou seja:
  — À concordata
  — A reconstituição empresarial
  — A reestruturação financeira
  — A gestão controlada

SLOVENIJA

— Stečajni postopek
— Skrajšani stečajni postopek
— Postopek prisilne poravnave
— Prisilna poravnava v stečaju

SLOVENSKO

— Konkurzné konanie
— Vyrovnanie

SUOMI/FINLAND

— Konkurssi/konkurs
— Yrityssaneeraus/företagssanering

SVERIGE

— Konkurs
— Företagsrekonstruktion

UNITED KINGDOM

— Winding up by or subject to the supervision of the court
— Creditors' voluntary winding up (with confirmation by the court)
— Administration, including appointments made by filing prescribed documents with the court
— Voluntary arrangements under insolvency legislation
— Bankruptcy or sequestration'

ANNEX II

'ANNEX B

Winding-up proceedings referred to in Article 2(c)

BELGIË/BELGIQUE

— Het faillissement/La faillite

— De vrijwillige vereffening/La liquidation volontaire

— De gerechtelijke vereffening/La liquidation judiciaire

ČESKÁ REPUBLIKA

— Konkurs

— Nucené vyrovnání

DEUTSCHLAND

— Das Konkursverfahren

— Das Gesamtvollstreckungsverfahren

— Das Insolvenzverfahren

EESTI

— Pankrotimenetlus

ΕΛΛΑΣ

— Η πτώχευση

— Η ειδική εκκαθάριση

ESPAÑA

— Concurso

FRANCE

— Liquidation judiciaire

IRELAND

— Compulsory winding up

— Bankruptcy

— The administration in bankruptcy of the estate of persons dying insolvent

— Winding-up in bankruptcy of partnerships

— Creditors' voluntary winding up (with confirmation of a court)

— Arrangements under the control of the court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution

ITALIA

— Fallimento

— Liquidazione coatta amministrativa

— Concordato preventivo con cessione dei beni

ΚΥΠΡΟΣ

— Υποχρεωτική εκκαθάριση από το Δικαστήριο

— Εκκαθάριση με την εποπτεία του Δικαστηρίου

— Εκούσια εκκαθάριση από πιστωτές (με την επικύρωση του Δικαστηρίου)

— Πτώχευση

— Διαχείριση της περιουσίας προσώπων που απεβίωσαν αφερέγγυα

LATVIJA

— Bankrots

LIETUVA

— įmonės bankroto byla

— įmonės bankroto procesas ne teismo tvarka

LUXEMBOURG

— Faillite

— Régime spécial de liquidation du notariat

MAGYARORSZÁG

— Felszámolási eljárás

MALTA

— Stralċ volontarju

— Stralċ mill-Qorti

— Falliment inkluż il-ħruġ ta' mandat ta' qbid mill-Kuratur f'każ ta' negozjant fallut

NEDERLAND

— Het faillissement

— De schuldsaneringsregeling natuurlijke personen

ÖSTERREICH

— Das Konkursverfahren

POLSKA

— Postępowanie upadłościowe

— Upadłość obejmująca likwidację

PORTUGAL

— O processo de insolvência

— O processo de falência

SLOVENIJA

— Stečajni postopek
— Skrajšani stečajni postopek

SLOVENSKO

— Konkurzné konanie
— Vyrovnanie

SUOMI/FINLAND

— Konkurssi/konkurs

SVERIGE

— Konkurs

UNITED KINGDOM

— Winding up by or subject to the supervision of the court
— Winding up through administration, including appointments made by filing prescribed documents with the court
— Creditors' voluntary winding up (with confirmation by the court)
— Bankruptcy or sequestration'

ANNEX III

'ANNEX C

Liquidators referred to in Article 2(b)

BELGIË/BELGIQUE

— De curator/Le curateur
— De commissaris inzake opschorting/Le commissaire au sursis
— De schuldbemiddelaar/Le médiateur de dettes
— De vereffenaar/Le liquidateur
— De voorlopige bewindvoerder/L'administrateur provisoire

ČESKÁ REPUBLIKA

— Správce podstaty
— Předběžný správce
— Vyrovnací správce
— Zvláštní správce
— Zástupce správce

DEUTSCHLAND

— Konkursverwalter
— Vergleichsverwalter
— Sachwalter (nach der Vergleichsordnung)
— Verwalter
— Insolvenzverwalter
— Sachwalter (nach der Insolvenzordnung)
— Treuhänder
— Vorläufiger Insolvenzverwalter

EESTI

— Pankrotihaldur
— Ajutine pankrotihaldur
— Usaldusisik

ΕΛΛΑΣ

— Ο σύνδικος
— Ο προσωρινός διαχειριστής. Η διοικούσα επιτροπή των πιστωτών
— Ο ειδικός εκκαθαριστής
— Ο επίτροπος

ESPAÑA

— Administradores concursales

FRANCE

— Représentant des créanciers
— Mandataire liquidateur
— Administrateur judiciaire
— Commissaire à l'exécution de plan

IRELAND

— Liquidator
— Official Assignee
— Trustee in bankruptcy
— Provisional Liquidator
— Examiner

ITALIA

— Curatore
— Commissario
— Liquidatore giudiziale

ΚΥΠΡΟΣ

— Εκκαθαριστής και Προσωρινός Εκκαθαριστής
— Επίσημος Παραλήπτης
— Διαχειριστής της Πτώχευσης
— Εξεταστής

LATVIJA

— Maksātnespējas procesa administrators

LIETUVA

— Bankrutuojančių įmonių administratorius
— Restruktūrizuojamų įmonių administratorius

LUXEMBOURG

— Le curateur
— Le commissaire
— Le liquidateur
— Le conseil de gérance de la section d'assainissement du notariat

MAGYARORSZÁG

— Csődeljárás
— Felszámolási eljárás

MALTA

— Amministratur Proviżorju
— Riċevitur Uffiċjali
— Stralċjarju
— Manager Speċjali
— Kuraturi f'każ ta' proċeduri ta' falliment

NEDERLAND

— De curator in het faillissement
— De bewindvoerder in de surséance van betaling
— De bewindvoerder in de schuldsaneringsregeling natuurlijke personen

ÖSTERREICH

— Masseverwalter
— Ausgleichsverwalter
— Sachverwalter
— Treuhänder
— Besondere Verwalter
— Konkursgericht

POLSKA

— Syndyk
— Nadzorca sądowy
— Zarządca

PORTUGAL

— Administrador da insolvência
— Gestor judicial
— Liquidatário judicial
— Comissão de credores

SLOVENIJA

— Upravitelj prisilne poravnave
— Stečajni upravitelj
— Sodišče, pristojno za postopek prisilne poravnave
— Sodišče, pristojno za stečajni postopek

SLOVENSKO

— Správca
— Predbežný správca
— Nútený správca
— Likvidátor

SUOMI/FINLAND

— Pesänhoitaja/boförvaltare
— Selvittäjä/utredare

SVERIGE

— Förvaltare
— God man
— Rekonstruktör

UNITED KINGDOM

— Liquidator
— Supervisor of a voluntary arrangement
— Administrator
— Official Receiver
— Trustee
— Provisional Liquidator
— Judicial factor'

COMMISSION REGULATION (EC) No 604/2005

of 19 April 2005

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], and in particular Article 4(1) thereof,

Whereas:

(1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

(2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 20 April 2005.

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

Done at Brussels, 19 April 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

Director-General for Agriculture and Rural Development

[1] OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 1947/2002 (OJ L 299, 1.11.2002, p. 17).

ANNEX

to Commission Regulation of 19 April 2005 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	111,4
	204	83,8
	212	129,8
	624	101,8
	999	106,7
0707 00 05	052	134,3
	204	52,5
	999	93,4
0709 90 70	052	100,6
	204	33,6
	999	67,1
0805 10 20	052	46,8
	204	46,7
	212	50,3
	220	47,8
	400	53,7
	624	60,6
	999	51,0
0805 50 10	052	65,8
	220	69,6
	388	70,6
	400	67,0
	528	44,6
	624	68,8
	999	64,4
0808 10 80	388	90,2
	400	134,5
	404	123,2
	508	66,4
	512	73,3
	524	63,2
	528	77,5
	720	72,3
	804	109,7
	999	90,0
0808 20 50	388	86,3
	512	67,4
	528	65,7
	720	59,5
	999	69,7

(1) Country nomenclature as fixed by Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 605/2005

of 19 April 2005

amending Regulation (EC) No 296/96 on data to be transmitted by the Member States and the monthly booking of expenditure financed under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy [1], and in particular Articles 5(3) and 7(5) thereof,

Whereas:

(1) In accordance with Article 3 of Commission Regulation (EC) No 296/96 [2], the Commission is kept informed at regular intervals of expenditure incurred by the Member States. To avoid unnecessary notifications, provision should be made for this information to be sent every month without affecting the Member States' obligation to keep information drawn up on a weekly basis available to the Commission, so as to allow proper monitoring of expenditure.

(2) Some of the information to be sent by the Member States should be sent electronically in digital form to enable the Commission to use it directly for accounts management. However, forwarding by other means must continue to be possible in justified cases.

(3) To simplify and streamline administrative procedures, simultaneous forwarding of a copy of the information on paper should now only be required for the monthly summaries.

(4) In practice, indicating certain quantities and areas in the detailed declarations submitted by the Member States is of little value for the monthly advances. As a result, that information should no longer be required.

(5) Payments made by the Commission under the budget of the EAGGF Guarantee Section are exclusively in euro. The Member States may choose to make payments to beneficiaries in euro or in their national currency. However, the paying agencies of those Member States not participating in the euro making payments in national currency and in euro must keep separate accounts for the two currencies. To avoid converting these payments twice, the option of declaring amounts paid in euro in national currency should be abolished.

(6) Where, on the basis of the declarations of expenditure received from the Member States, the total amount of advance commitments which could be authorised under Article 150(3) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [3] is more than half of all corresponding appropriations for the current financial year, the Commission is required to reduce those amounts. For the sake of sound management that reduction must be shared among all the Member States proportionally, on the basis of the declarations of expenditure received from them.

(7) If the Community budget has not been adopted by the beginning of the financial year, the second subparagraph of Article 13(2) of Regulation (EC, Euratom) No 1605/2002 provides that payments may be made monthly per chapter to a maximum of one twelfth of the allotted appropriations in the chapter in question of the preceding financial year. To allocate the available appropriations fairly among the Member States, provision should be made for advances to be granted in this case as a percentage, laid down for each chapter, of the declarations of expenditure submitted by each Member State and for the balance not used in a given month to be reallocated in Commission decisions on subsequent monthly payments.

(8) As part of the reform of the CAP and the introduction of the single farm payment scheme, Member State compliance with the payment deadlines is vital to the proper application of the rules on financial discipline. Specific rules should therefore be laid down to help avoid, wherever possible, any risk of the annual appropriations available in the Community budget being exceeded.

[1] OJ L 160, 26.6.1999, p. 103.
[2] OJ L 39, 17.2.1996, p. 5. Regulation as last amended by Regulation (EC) No 1655/2004 (OJ L 298, 23.9.2004, p. 3).
[3] OJ L 248, 16.9.2002, p. 1.

(9) For reasons of sound administration, where delays arise in sending supporting documents for payments made under Commission Regulation (EC) No 817/2004 of 29 April 2004 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) [1], it must be made possible for payments by the Commission to the Member State relating to September to be held over to the following month.

(10) Half of the expenditure relating to storage operations carried out in September is taken into account in respect of October and the balance in respect of November. To simplify management of the paying agencies' accounts, provision should be made for expenditure on these operations to be taken into account in full (100 %) in respect of October.

(11) Rural development expenditure part-financed by the Community budget and the national budgets is declared at the latest in respect of the second month following payment to the beneficiaries. To harmonise the accounting rules applied in the field of the EAGGF Guarantee Section, provision should be made for this expenditure to be declared in respect of the month in which the payments were made to the beneficiaries.

(12) Regulation (EC) No 296/96 should be amended accordingly.

(13) The measures provided for in this Regulation are in accordance with the opinion of the EAGGF Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 296/96 is hereby amended as follows:

1. Article 3 is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following:

'1. Member States shall collect and keep available for the Commission information on total expenditure effected each week.

No later than the third working day of each week, they shall make available information on total expenditure effected from the beginning of the month until the end of the preceding week.

Where the week runs over two months, no later than the third working day of the following month, Member States shall make available information on total expenditure effected during the preceding month.

2. Member States shall send information electronically on total expenditure effected for a given month and any information explaining any substantial difference between the estimates drawn up in accordance with paragraph 5 and expenditure actually incurred, by the third working day of the following month.

3. Not later than the 10th day of each month, Member States shall send to the Commission, electronically, details of total expenditure effected during the preceding month.

However, the information on expenditure effected between 1 and 15 October shall be forwarded by the 25th day of the same month at the latest.

3a. In justified cases the Commission may accept transmission of the information referred to in paragraphs 2 and 3 by other means.';

(b) paragraph 5 is replaced by the following:

'5. Not later than the 20th of each month, Member States shall transmit to the Commission, electronically, a set of documents permitting the booking to the Community budget of expenditure effected during the preceding month. However, the set of documents permitting the booking of expenditure effected between 1 and 15 October shall be submitted not later than 10 November.

The summary of the data referred to in paragraph 6(b) shall also be sent to the Commission on paper.';

(c) paragraph 6 is amended as follows:

(i) in point (a), the third indent is deleted;

(ii) point (b) is replaced by the following:

'(b) a summary of the data referred to in (a);'

(d) paragraph 9 is replaced by the following:

'9. The paying agencies of Member States not participating in the euro must maintain separate accounts according to the currency in which the payments have been made to the beneficiaries. The same separation must be maintained for the declarations made under the clearance of accounts procedure.';

[1] OJ L 153, 30.4.2004, p. 4.

2. Article 4 is amended as follows;

(a) paragraph 1 is replaced by the following:

'1. On the basis of data sent in accordance with Article 3, the Commission shall adopt decisions and make the monthly advances against booking of expenditure, without prejudice to the provisions of Article 14 of Council Regulation 2040/2000 (*).

If advance commitments in accordance with Article 150(3) of Council Regulation (EC, Euratom) No 1605/2002 (**) exceed one half of the total corresponding appropriations for the current financial year, the advances shall be granted as a percentage of the declarations of expenditure received from each Member State. The Commission shall take the balance of amounts not reimbursed to the Member States into account in decisions on subsequent reimbursements.

If the Community budget has not been adopted by the beginning of the financial year, the advances shall be granted as a percentage of the declarations of expenditure received from each Member State, laid down for each chapter of expenditure and within the limits laid down in Article 13 of Regulation (EC, Euratom) No 1605/2002. The Commission shall take the balance of amounts not reimbursed to the Member States into account in decisions on subsequent reimbursements.

(*) OJ L 244, 29.9.2000, p. 27.
(**) OJ L 248, 16.9.2002, p. 1.';

(b) paragraph 2 is replaced by the following:

'2. Advances against booking shall be reduced for expenditure effected after the deadlines laid down as follows:

(a) where expenditure effected after the deadlines is equal to 4 % or less of the expenditure effected before the deadlines, no reduction shall be made;

(b) above the threshold of 4 %, all further expenditure effected with a delay of up to:

— one month shall be reduced by 10 %,

— two months shall be reduced by 25 %,

— three months shall be reduced by 45 %,

— four months shall be reduced by 70 %,

— five months or more shall be reduced by 100 %;

(c) however, in the case of the direct payments referred to in Article 12 and Title III or, where applicable, Title IVa of Council Regulation (EC) No 1782/2003 (*) made in respect of year n, paid out after the deadlines laid down and after 15 October of year n+1, the following conditions shall apply:

— where the 4 % threshold referred to in point (a) has not been used in full for payments made no later than 15 October of year n+1 and the remainder of the threshold exceeds 2 %, that remainder shall be reduced to 2 %,

— in any case, payments made in the course of budget year n+2 and subsequent years shall be eligible for the Member State concerned only up to the level of its national ceiling as provided for in Annexes VIII or VIIIa or its annual financial envelope established in accordance with Article 143b(3) of Regulation (EC) No 1782/2003 for the year preceding that of the budget year during which the payment is made, where applicable plus the amounts relating to the dairy premium and additional payments provided for in Articles 95 and 96 and the additional amount of aid provided for in Article 12 of that Regulation, less the percentage provided for in Article 10 and corrected by the adjustment provided for in Article 11, taking account of Article 12a of that Regulation and the amounts set in Article 4 of Regulation (EC) No 188/2005 (**),

— above the thresholds referred to above, the expenditure concerned by this point shall be reduced by 100 %;

(d) the Commission shall apply a different time scale and/or lower reductions or none at all if exceptional management conditions are encountered for certain measures or if justified reasons are advanced by the Member States.

However, in the case of the payments referred to in point (c), the preceding sentence shall apply within the ceilings referred to in the second indent of point (c);

(e) the reductions referred to in this Article shall be made in accordance with the rules laid down in Article 14 of Regulation (EC) No 2040/2000.

(*) OJ L 270, 21.10.2003, p. 1.
(**) OJ L 31, 4.2.2005, p. 6.';

(c) paragraph 6 is replaced by the following:

'6. Where the Commission does not receive the documents referred to in Article 55(1) of Commission Regulation (EC) No 817/2004 (*) by 30 September each year, it may, after notifying the Member State concerned, suspend payment of the advance relating to expenditure incurred in respect of September in accordance with that Regulation until the advance relating to expenditure for October.

(*) OJ L 153, 30.4.2004, p. 4.';

3. Article 5(2) is replaced by the following:

'2. The amounts of expenditure referred to in paragraph 1 shall be entered in the accounts by the paying agencies during the month following that to which the operations refer. The operations to be covered in the accounts adopted at the end of each month shall be those occurring between the beginning of the financial year and the end of that month.

However, for operations carried out during September, the expenditure shall be entered in the accounts by the paying agencies not later than 15 October';

4. Article 7(1)(b) is deleted.

Article 2

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

It shall apply from 16 October 2005, with the exception of Article 1(1)(d) and (4), which shall apply from 16 October 2006.

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

Done at Brussels, 19 April 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

COMMISSION REGULATION (EC) No 606/2005

of 19 April 2005

amending Regulation (EC) No 795/2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 [1], and in particular the second subparagraph of Article 51(b) and Article 145(c) and (d) thereof,

Whereas:

(1) Commission Regulation (EC) No 795/2004 [2] introduces the implementing rules for the single payment scheme as from 2005. Experience of the administrative and operational implementation of that scheme at national level has shown that in certain respects further detailed rules are needed and in other respects the existing rules need to be clarified and adapted.

(2) Article 24(2) of Regulation (EC) No 795/2004 provides that the beginning of the 10 month period referred to in Article 44(3) of Regulation (EC) No 1782/2003 for each individual farmer is to be fixed by Member States at a single date within a period to be fixed between 1 September of the calendar year preceding the year of lodging an application under the single payment scheme and 30 April of the following calendar year or is to be left at the farmer's choice within the fixed period. It is appropriate to allow farmers more flexibility for the fixing of the beginning of the 10 month period at the level of each parcel when specific agriculture conditions so warrant.

(3) Article 51 of Regulation (EC) No 1782/2003, as amended by Council Regulation (EC) No 864/2004 [3] and made applicable as from 1 January 2005 by Commission Regulation (EC) No 394/2005, authorises Member States to allow secondary crops to be cultivated on the eligible hectares during a period of maximum three months starting each year on 15 August. It is appropriate to bring forward that date to allow the growing of temporary vegetable crops in regions where cereals are usually harvested sooner for climatic reasons as communicated by the Member States concerned to the Commission.

(4) Regulation (EC) No 795/2004 should therefore be amended accordingly.

(5) Due to the fact that Regulation (EC) No 795/2004 applies as from 1 January 2005, it is appropriate that the provisions provided for in this Regulation apply retroactively from that date.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 795/2004 is amended as follows:

1. in Article 24(2) the following subparagraph is added:

'However, where specific agricultural conditions so warrant, Member States may authorise farmers to fix, within the fixed period referred to in the first subparagraph, two different dates for the beginning of the 10 month period in respect of their holding. Farmers who make use of this possibility shall indicate their choices in respect of each individual parcel in their single application form in addition to the information to be given by them in accordance with Article 12 of Regulation (EC) No 796/2004.'

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[1] OJ L 270, 21.10.2003, p. 1. Regulation last amended by Commission Regulation (EC) No 118/2005 (OJ L 24, 27.1.2005, p. 15).

[2] OJ L 141, 30.4.2004, p. 1. Regulation last amended by Regulation (EC) No 394/2005 (OJ L 63, 10.3.2005, p. 17).

[3] OJ L 161, 30.4.2004, p. 48.

2. the following Article 28a is inserted:

'*Article 28a*

Three months period provided for in Article 51(b) of Regulation (EC) No 1782/2003

The Member States indicated in the Annex are authorised to allow secondary crops to be cultivated on the eligible hectares during a period of maximum three months starting each year on the date laid down in that Annex for each Member State.'

3. an Annex as set out in the Annex to this Regulation is added.

Article 2

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

It shall apply from 1 January 2005.

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

Done at Brussels, 19 April 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX

'*ANNEX*

Member State	Date
Portugal	1 March
Germany	15 July
Austria	30 June
Denmark	15 July
Italy	11 June'

COMMISSION REGULATION (EC) No 607/2005

of 18 April 2005

amending, for the fourth time, Council Regulation (EC) No 1763/2004 imposing certain restrictive measures in support of effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1763/2004 of 11 October 2004 imposing certain restrictive measures in support of effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY) [1], and in particular Article 10(a) thereof,

Whereas:

(1) Annex I to Regulation (EC) No 1763/2004 lists the persons covered by the freezing of funds and economic resources under that Regulation.

(2) The Commission is empowered to amend that Annex, taking into account Council Decisions implementing Council Common Position 2004/694/CFSP of 11 October 2004 on further measures in support of the effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY) [2]. Council Decision 2005/316/CFSP [3] implements that Common Position. Annex I to Regulation (EC) No 1763/2004 should, therefore, be amended accordingly.

(3) In order to ensure that the measures provided for in this Regulation are effective, this Regulation must enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1763/2004 is hereby amended as set out in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 18 April 2005.

For the Commission
Benita FERRERO-WALDNER
Member of the Commission

[1] OJ L 315, 14.10.2004, p. 14. Regulation as last amended by Commission Regulation (EC) No 295/2005 (OJ L 50, 23.2.2005, p. 5).

[2] OJ L 315, 14.10.2004, p. 52.

[3] See page 54 of this Official Journal.

ANNEX

Annex I to Regulation (EC) No 1763/2004 is amended as follows:

1. The following person shall be added:

   (a) Tolimir, Zdravko. Date of birth: 27.11.1948.

2. The following persons shall be removed:

   (a) Borovcanin, Ljubomir. Date of birth: 27.2.1960. Place of birth: Han Pijesak, Bosnia and Herzegovina. Nationality: Bosnia and Herzegovina.

   (b) Jankovic, Gojko. Date of birth: 31.10.1954. Place of birth: Trbuse, Municipality of Foca, Bosnia and Herzegovina. Nationality: Bosnia and Herzegovina.

   (c) Lukic, Milan. Date of birth: 6.9.1967. Place of birth: Visegrad, Bosnia and Herzegovina. Nationality: (a) Bosnia and Herzegovina, (b) possibly Serbia and Montenegro.

   (d) Nikolic, Drago. Date of birth: 9.11.1957. Place of birth: Bratunac, Bosnia and Herzegovina. Nationality: Bosnia and Herzegovina.

   (e) Pandurevic, Vinko. Date of birth: 25.6.1959. Place of birth: Sokolac, Bosnia and Herzegovina. Nationality: (a) Bosnia and Herzegovina, (b) possibly Serbia and Montenegro.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 16 March 2004

concerning the aid which Italy is planning to implement in order to tackle the peach-growing crisis in Piedmont

(notified under document number C(2004) 473)

(Only the Italian text is authentic)

(2005/313/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

After having asked the parties concerned to submit their comments in accordance with that Article,

Whereas:

I. PROCEDURE

(1) By letter dated 20 September 2002, recorded as received on 25 September 2002, the Italian Permanent Representation to the European Union notified the Commission of aid intended to tackle the peach-growing crisis in Piedmont.

(2) By letters dated 10 April 2003, recorded as received on 15 April 2003, and 7 August 2003, recorded as received on 8 August 2003, the Italian Permanent Representation to the European Union forwarded to the Commission the additional information it had requested from the Italian authorities by letters of 13 November 2002 and 5 June 2003.

(3) By letter dated 2 October 2003 the Commission informed Italy of its decision to initiate the procedure provided for in Article 88(2) of the Treaty in respect of the aid concerned.

(4) The Commission decision to initiate the procedure was published in the Official *Journal of the European Union* [1]. The Commission invited interested parties to submit their comments on the aid in question.

(5) The Commission has received no comments on the aid concerned from interested parties.

II. DESCRIPTION

(6) The measure under consideration had been presented as a result of the adverse weather conditions, and in particular the hailstorms, which affected Piedmont in 2002 and damaged the peach and nectarine crops. It consisted initially of the withdrawal from the market of 6 000 tonnes of fruit (peaches and nectarines) to be made into compost. According to the Italian authorities the measure should have qualified for the derogation provided for in Article 87(2)(b) of the Treaty.

(7) The withdrawal operations took place on 25, 26, 27 and 30 September 2002. The quantities withdrawn amounted to 204,16 tonnes of peaches (value: EUR 18 782) and 977,94 tonnes of nectarines (value: EUR 89 970,48). The total quantity withdrawn amounted therefore to 1 182,10 tonnes of fruit. As the aid envisaged was EUR 0,092 per kilo withdrawn, the budget allocation set aside for the measure was EUR 108 752.

[1] OJ C 266, 5.11.2003, p. 3.

(8) According to the information contained in the notification, the producers to whom the measure would apply are members of the Asprofrut [2] organisation who, as a result of the abovementioned adverse weather conditions, incurred losses in excess of 30 % of their average historical production.

(9) The average regional production for the previous three years totalled 144 692 tonnes (86 059 tonnes of peaches and 58 633 tonnes of nectarines).

(10) In the light of the information contained in the notification it appears that the reason for the use of State aid is the fact that:

— Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables [3] provides for withdrawals in each marketing year representing a maximum of 10 % of products marketed by individual producer organisations, which may be increased by three percentage points on condition that the average remains at 10 % over three years;

— the producer organisations in the region had already had recourse to the three points increase within the authorised limits.

III. INITIATION OF THE PROCEDURE PROVIDED FOR IN ARTICLE 88(2) OF THE TREATY

(11) The Commission has initiated the procedure provided for in Article 88(2) of the Treaty because it doubted the compatibility of the scheme with the common market.

(12) The first factor which led the Commission to doubt the compatibility of the aid with the common market was the fact that, according to the information provided by the Italian authorities during the exchange of correspondence with the Commission, it became increasingly clear that the difficult situation was not due to weather conditions but to the unfavourable development of trade, in other words a factor falling within the normal risks associated with farming (for example, in their letter of 7 August 2003 the Italian authorities said that the difficult situation was due more to market conditions than to a fall in production; in addition, the loss has been calculated in terms of turnover and not of production — see recital 13 below).

(13) The second factor which led the Commission to doubt the compatibility of the aid with the common market was the fact that the Italian authorities, after referring to a loss in relation to average historical production, acknowledged that the loss had been calculated in relation to the turnover of the undertakings, while point 11.3 of the Community guidelines for State aid to the agricultural sector (hereafter called the guidelines) [4], which serve as a basis for the assessment of aid to compensate farmers for losses caused by adverse weather conditions, describes a method of calculating losses which concerns production losses (the 'price' factor is taken into consideration only when the loss at production level has been determined).

(14) The third factor which led the Commission to doubt the compatibility of the aid with the common market was the fact that, according to the estimates provided by the Italian authorities, the average production of peaches and nectarines in 2002 was going to be above that for the three previous years, while according to point 11.3.1 of the guidelines aid is permitted only if the damage reaches 20 % of normal production in the less-favoured areas and 30 % in other areas (as indicated in recital 9, the average regional production for the three years preceding the event relied on had totalled 144 692 tonnes, 86 059 tonnes for peaches and 58 633 tonnes for nectarines; for 2002 it had been estimated at 147 300 tonnes, 86 300 tonnes for peaches and 61 000 tonnes for nectarines).

(15) The fourth factor which led the Commission to doubt the compatibility of the aid with the common market was the choice of years used for determining the production for a normal year for the purpose of calculating the loss incurred. According to point 11.3.2 of the guidelines, the gross production in a normal year should be calculated by reference to the average gross production in the previous three years, excluding any year in which compensation was payable as a result of adverse weather conditions. The Italian authorities have calculated the loss incurred by reference to the three years preceding that of the adverse weather referred to above, whereas, by their own admission, while no specific compensation was granted in the peach and nectarine sectors, holdings producing these two types of fruit nevertheless obtained, over the three years in question, interest rate subsidies on loans granted to compensate for damage due to adverse weather representing at least 35 % of the gross production that could be marketed. In view of this information it was difficult to imagine that the peach and nectarine crops had been spared the adverse weather conditions that had affected the entire holding and that, as a corollary, a farmer whose entire holding had been affected could have received aid for all his crops except peaches and nectarines.

[2] According to the information provided by the Italian authorities, two producer organisations applied for assistance, Asprofrut and Lagnasco Group. The latter later withdrew its application.

[3] OJ L 297, 21.11.1996, p. 1.

[4] Republished in full, following amendment, in OJ C 232, 12.8.2000, p. 17.

(16) The fifth factor which led the Commission to doubt the compatibility of the aid with the common market was the appropriateness of the method of calculating the aid. In order to calculate the amount of aid payable (EUR 0,092 per kilo), the Italian authorities had used only the average market prices in September 2002 for fresh packaged products (EUR 0,5 per kilo for nectarines and EUR 0,45 per kilo for peaches) and not the average prices for the three years preceding that of the event excluding any year in which compensation had been paid as a result of adverse weather conditions, as prescribed in point 11.3.2 of the guidelines. According to the Italian authorities this method was to help prevent overcompensation for losses incurred by farmers, given that the loss was due to the failure to sell the products and that the cost price per kilo of product could be estimated at approximately 50 % of the market price. In view of this information the Commission could only find that point 11.3.2 of the guidelines appeared not to have been observed and conclude that the aid seemed to be intended to compensate for losses that were due not to a loss of production but to the unfavourable development of the market.

(17) On this point too, the Commission has expressed doubts about the appropriateness of the basis for calculating the aid because the Italian authorities had not provided any details of deductions for costs not incurred by the farmer owing to the adverse weather or of any amounts received under an insurance policy and of any direct aid received, whereas these reductions are prescribed in points 11.3.2 and 11.3.6 of the guidelines.

(18) The sixth factor which led the Commission to doubt the compatibility of the aid with the common market concerned compliance with point 11.3.8 of the guidelines, according to which, where aid is paid to a producer organisation, the amount must not exceed the actual loss incurred by the farmer. The concept of actual loss was called into question in view of the doubts referred to above (loss of turnover and not of production; method of calculating losses not entirely reliable). In addition, since the Italian authorities have indicated that the producer organisation would pay the aid in full to the farmers, after deducting the costs it had incurred, the Commission has been unable, in the absence of fuller details, to determine whether the costs in question, whose nature remained to be specified, were not excessive, and if the aid paid to the producer organisation concerned had been transferred to the latter in proportion to the losses it had incurred.

(19) The seventh factor which led the Commission to doubt the compatibility of the aid with the common market concerned the existence of a presumption of an infringement of the rules governing the common organisation of the market in fruit and vegetables established by Regulation (EC) No 2200/96. Given that the producer organisations in the region of Piedmont had already exhausted the withdrawal possibilities provided for in that Regulation (see recital 10), the grant of State aid for withdrawals that included an overrun of the possibilities set, would have been contrary to the rules governing the common organisation of the market in fruit and vegetables and would have disturbed the smooth operation of the common market. According to point 3.2 of the guidelines, the Commission cannot, under any circumstances, approve an aid which is incompatible with the rules governing a common organisation of the market or which would interfere with its proper functioning.

(20) Lastly, the Commission has been unable, in the absence of adequate information, to determine whether the aid had already been paid and whether it could be aggregated with other aids with the same objectives.

IV. **COMMENTS BY ITALY**

(21) By letter dated 16 January 2004, recorded as received on 19 January 2004, the Italian Permanent Representation to the European Union forwarded to the Commission a letter from the Italian authorities in which the latter submitted their comments on the aid concerned following the initiation of the procedure provided for in Article 88(2) of the Treaty.

(22) With regard to the deduction of costs not incurred by the farmer (see recital 17 above), the Italian authorities have stressed that since the problem was not one of non-production, all the stages of cultivation had been completed and their costs had been incurred.

(23) With regard to the need to avoid overcompensation for the loss incurred (see recitals 15 and 16), the Italian authorities said that, leaving aside the inappropriateness of the method of calculation used, they considered that they had provided figures which made it highly unlikely that there would be any over-compensation. They reiterated also that, in view of the disproportion between the amount of the aid and the market price used, and the fact that the cost price corresponds to around half the market price, it was difficult to consider that the losses in the sector were too small for aid to be granted.

(24) Lastly, with regard to compliance with point 11.3.8 of the guidelines (see recital 18), the Italian authorities said that the aid would be allocated in relation to the loss incurred (determined on the basis of the quantity delivered) by the members of the producer organisation, and that they would have seen to it that the share of the aid retained by the producer organisation was intended to cover solely the costs it had incurred.

(25) The letter sent on 16 January 2004 by the Italian Permanent Representation to the European Union also contains the reactions of the producer organisation which could have qualified for the aid (Asprofrut). The latter states that 2002 was a particularly difficult year, mainly on account of the weather conditions in the region in August and the storms that affected the countries of central Europe at the same time which are among its usual clients. It emphasised that it had applied to the Region, and had been authorised, to withdraw from the market a product that was not damaged by hail, and in compliance with Community marketing rules, although it had been regraded as an industrial product on account of the deterioration that had occurred between the date of submission of the application for withdrawal and the start of the actual withdrawal operations.

V. **ASSESSMENT OF THE AID**

(26) According to Article 87(1) of the Treaty, any aid granted by States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market. The measure under consideration corresponds to this definition in that it concerns certain types of production and may affect trade by virtue of the position Italy occupies in relation to the products in question (in 2001 Italy was the Union's second largest producer of peaches and largest producer of nectarines).

(27) However, in the cases provided for in Article 87(2) and (3) of the Treaty, certain measures may be considered, as an exception, to be compatible with the common market.

(28) In the case under consideration, the Italian authorities had explained that the damage to the products in question had been caused by adverse weather conditions.

(29) As indicated in recital 12, during the exchange of correspondence with the Italian authorities the Commission had come round to the view that the event responsible for the difficult situation was not a meteorological event but the unfavourable development of the market, in other words, a factor that fell within the normal risks associated with farming.

(30) The comments from the Italian authorities following the initiation of the procedure under the former Article 88(2) of the Treaty did not provide any information making it possible to consider this idea less convincing. On the contrary, with reference to the information from the Italian authorities which states that, since the difficult situation was not due to a problem of non-production, all stages of cultivation had been completed, and above all the explanations from the Asprofrut organisation, which says that it applied to the Region, and was authorised, to withdraw from the market a product that was not damaged by hail and in compliance with the Community marketing rules, although it had been regraded as an industrial product on account of the deterioration that had occurred between the date of submission of the application for withdrawal and the start of the actual withdrawal operations (see recitals 22 and 25), the Commission can only remain doubtful about the link between the withdrawal operation that accompanied the aid and a loss of production due to adverse weather conditions. The measure appears to be linked more to the unfavourable development of the market, in other words, to an event falling within the normal risks associated with farming.

(31) With regard to the doubts set out in recitals 13, 14 and 15, all of which concern the appropriateness of the method of calculating the losses, the Commission, even if it were to adopt the approach taken by the Italian authorities of compensating for losses caused by natural disasters without taking account of the considerations set out in recital 30, could not find in the comments of those authorities any information that enables it to glimpse a justification for the use of a method of calculating losses that is based on turnover instead of production, or for the choice of reference years.

(32) With regard to the choice of the method of calculation, it should be stressed that, while point 11.3.2 of the guidelines provides for the possibility of adopting a method of calculating losses other than the one recommended, this alternative method must make it possible to determine a loss of production (see the rule [5]) according to which 'the Commission will (...) accept alternative methods of calculation of normal production, including regional reference values, provided it is satisfied that these are representative and not based on abnormally high yields'). The reference to turnover cannot be justified therefore in the light of the provisions of point 11.3.2 of the guidelines.

(33) The Commission notes also that in their letter of 16 January 2004 the Italian authorities gave no justification for the choice of reference years used for calculating the loss and no reply to the question how a loss of production of 20 or 30 % was possible, while the estimates of production for the region showed, for 2002, a production higher than that for the three years used as a reference for the calculation of the losses.

[5] Point 11.3.2. of the guidelines. See footnote 4.

(34) In the absence of this information the Commission still does not know why the Italian authorities used, as a point of reference, years during which, by their own admission, certain holdings producing peaches and nectarines had obtained interest subsidies on loans granted to compensate for damage caused by adverse weather conditions and representing at least 35 % of the gross production that could be marketed (as stated in recital 15, it is difficult to imagine that crops of peaches and nectarines could have been spared the bad weather that affected the whole of a holding and that, as a corollary, a farmer whose entire holding was affected could have received aid for all his crops except peaches and nectarines). The Commission does not understand either how the Italian authorities could justify a loss of 20 or 30 % on the grounds of adverse weather conditions while, apart from the fact that the production estimates for 2002 appeared more favourable than the figures for the three previous years used as a reference, it is clear from the comments of Asprofrut that the products withdrawn had not been damaged by hail but had been regraded as industrial products on account of the deterioration that had occurred between the date the application for withdrawal was submitted and the start of the actual withdrawal operations (see recital 31).

(35) In this situation, even if the Commission had been able to consider the approach to compensating for losses due to natural disasters taken by the Italian authorities to be valid, it would in any case have continued to doubt the appropriateness of the arrangements for calculating the loss threshold triggering entitlement to the aid, of the overrun of that threshold and of the eligibility of the peach and nectarine producers for aid under point 11.3 of the guidelines. In effect, the use of turnover (in other words, a factor involved distinctly downstream of weather conditions) only reinforces the finding in recital 30, namely that the withdrawal measure that accompanied the aid appears to be linked more to the unfavourable development of the market, i.e. to an event that falls within the normal risks associated with farming.

(36) With regard to the doubts set out in recital 16, concerning the appropriateness of the method of calculation of the aid, the Italian authorities in their letter of 16 January 2004, themselves acknowledged that it was inappropriate before underlining that the figures provided should make it possible for the Commission to find that there could be no overcompensation for the loss incurred. Again, in this case, if the Commission had been able to consider the approach to compensating for losses due to natural disasters taken by the Italian authorities to be valid, faced with the acknowledged inappropriateness of the method of calculation it could only doubt the compatibility of the proposed aid with the common market.

(37) In actual fact, the fundamental problem again resides in the fact that, as the Italian authorities indicated, the loss incurred by the holdings in question is attributable to the lack of sales of the product (see recital 16) and not to the absence of production (see recital 30). Once again, therefore, the Commission can only suspect that the planned aid is being used for purposes other than to compensate for a lack of earnings due to the unfavourable development of the market, which falls within the normal risks associated with farming.

(38) With regard to the doubts set out in recitals 17 and 18 (concerning the appropriateness of the basis for calculating the aid, because the Italian authorities had provided no details of the deduction of costs not incurred by the farmer as a result of the adverse weather conditions, or of any amounts received under an insurance policy or any direct aid received), the Commission notes that, in their letter of 16 January 2004, the Italian authorities simply stated that the aid they intend to grant would not be reduced by the amount of costs not incurred by the farmer because, since it was not a question of a lack of production, all the cultivation stages had been completed and the relevant costs had been incurred.

(39) In the light of this response, the Commission notes that, while the question of the deduction of costs not incurred by the farmers has been dealt with, no details have been given regarding the deduction of any direct aid received or of any other amount received under an insurance policy. While the Commission had been able to consider the approach taken by the Italian authorities referred to above on several occasions to be valid, this absence of detailed information would have been sufficient in itself for it to continue to harbour doubts about the compatibility of the measure with the common market since it could not have been sure that all the conditions in point 11.3 of the guidelines had been met.

(40) With regard to the doubts set out in recital 18, which are linked to compliance with point 11.3.8 of the guidelines, the Commission notes the details provided by the Italian authorities, according to which the aid would be allocated in relation to the loss incurred by the members of the producer organisation (determined on the basis of the quantity delivered), and that they would see to it that the share of the aid withheld by the producer organisation was to cover only the costs it had incurred. That being so, even if it had been able to consider the approach taken by the Italian authorities, mentioned above, to be valid, the Commission could

only have continued to harbour doubts about compliance with point 11.3.8 of the guidelines, given that the quantity delivered would not have been an objective factor in determining the loss incurred, since the withdrawal operations concerned fruit that had not been damaged by hail but had been regraded as an industrial product on account of the deterioration that occurred between the date of submission of the application for withdrawal (see recital 30) and the start of the actual withdrawal operations, and because without information, which had nevertheless been requested, concerning the nature of the costs incurred by the Asprofrut producer organisation, it could not have been sure that these costs had not been over-estimated, which would have entailed the grant of operating aid to that organisation.

(41) With regard to the doubts set out in recital 19, which are based on the existence of a presumption of an infringement of the rules governing the common organisation of the market in fruit and vegetables established by Regulation (EC) No 2200/96, the Commission can only state that the Italian authorities have not made any submissions that allow this presumption to be overturned. In view of the circumstances in which withdrawal took place, namely at a time when the producer organisations in Piedmont had already exhausted the withdrawal possibilities provided for in that Regulation (see recital 10 above), the Commission can only conclude that the grant of State aid for withdrawals which entail an overrun of the possibilities set would be contrary to the rules governing the common organisation of the market in fruit and vegetables and would disturb the smooth operation of the common market.

(42) Lastly, with regard to the question of the payment of the aid and any aggregation of payment, the Commission notes that in their letter of 16 January 2004 the Italian authorities said that the aid had not been paid and the producer organisation Asprofrut confirmed that no amount had been received. No response has been given, however, to the question of whether the aid could be aggregated with other aid pursuing the same ends. Aggregation could lead to overcompensation for a loss claimed, which would be contrary to point 11.3 of the guidelines.

VI. **CONCLUSIONS**

(43) The observations set out above show that the proposed aid for the Asprofrut producer organisation to cover an operation for the withdrawal of peaches and nectarines cannot be regarded as intended to compensate for losses caused by adverse weather conditions but constitutes a means of offering certain producers compensation for a loss of earnings owing to the unfavourable development of the market, which falls within the normal risks associated with farming. Covering a normal risk associated with farming with an aid is equivalent to granting a beneficiary or beneficiaries operating aid which is incompatible with the common market.

(44) Even if the approach taken by the Italian authorities of compensating for a loss caused by adverse weather could have been considered valid, there are too many grey areas in the explanations provided by those authorities for the Commission to be able to consider that the aid had been granted in compliance with point 11.3 of the guidelines. From this point of view, therefore, the aid could not have qualified for the derogation provided for in Article 87(2)(b) of the Treaty relied on by the Italian authorities, or for that provided for in Article 87(3)(c), since it would not have contributed to facilitating the development of the sector. It would have been incompatible, therefore, with the common market.

(45) There remains, lastly, the presumption of an infringement of the provisions of Regulation (EC) No 2200/96. Since withdrawal took place at a time when the withdrawal possibilities for the producer organisations in Piedmont had been exhausted, the grant of aid to finance an operation that goes beyond the limits set in a regulation designed to govern the market in fruit and vegetables at European level would risk disturbing the smooth operation of that market. According to point 3.2 of the guidelines the Commission cannot under any circumstances approve an aid that is incompatible with the provisions governing a common organisation of the market or which would interfere with the proper functioning of the common organisation. The aid must be regarded therefore as incompatible with the common market.

(46) The Commission need not require recovery of the aid since it has not been paid,

HAS ADOPTED THIS DECISION:

Article 1

The State aid amounting to EUR 108 752 which Italy is planning to implement in order to help cope with the difficulties facing the cultivation of peaches in the region of Piedmont is incompatible with the common market.

The aid in question cannot therefore be implemented.

Article 2

Italy will inform the Commission, within two months of the date of notification of this decision, of the measures that have been taken to comply with it.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 16 March 2004.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION DECISION

of 22 September 2004

on restructuring aid implemented by France for Compagnie Marseille Réparation (CMR) — State aid C34/03 (ex N 728/02)

(notified under document number C(2004) 3350)

(Only the French version is authentic)

(Text with EEA relevance)

(2005/314/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above [1],

Whereas:

I. PROCEDURE

(1) By letter dated 18 November 2002 and registered as received on the same date (hereinafter referred to as the notification), France notified the Commission that it intended to provide financial support for the ship repair yard Compagnie Marseille Réparation (CMR). The case was registered under case number N 728/02.

(2) By letter dated 13 December 2002, the Commission asked France for further information. France replied by letter dated 6 March 2003, registered as received on 7 March 2003.

(3) By letter dated 13 May 2003, the Commission informed France that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the notified measures. The case was registered under case number C 34/03.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission invited interested parties to submit their comments on the measures.

(5) France submitted its comments by letter dated 31 July 2003, registered as received on 4 August 2003. No comments from other interested parties were received.

(6) France submitted further information by letter dated 2 October 2003, registered as received on 3 October 2003 and by letter dated 10 October 2003, registered as received on the same date. The Commission addressed further supplementary questions to France by letter dated 21 November 2003, to which France replied by letter dated 29 December 2003, registered as received on 8 January 2004, and by letter dated 29 January 2004, registered as received on the same date. The Commission asked further questions by letter dated 10 May 2004, to which France replied by letter dated 29 June 2004, registered as received on the same date.

[1] OJ C 188, 8.8.2003, p. 2.
[2] See footnote 1 above.

II. DETAILED DESCRIPTION

A. The recipient

(7) The recipient of the financial support is CMR, a ship repair company situated in Marseille. CMR was founded on 20 June 2002 to take over the assets of the bankrupt ship repair yard Compagnie Marseillaise de Réparations (CMdR).

(8) Previously, ship repair activities in the port of Marseille had been carried out by three undertakings: Marine Technologie, Travofer and CMdR. These yards employed some 430 people in 1996 (310 at CMdR, 70 at Marine Technologie and 50 at Travofer). In 1996, CMdR ran into difficulties and had to file for bankruptcy. A social plan was implemented in the course of the bankruptcy proceedings, helping CMdR to pay for charges related to early retirement and retraining leave for some of its staff, pending a takeover offer. According to France, the plan was financed by the public authorities.

(9) In 1997, CMdR was taken over by the Italian company Marinvest, which later on, in July 2000, sold it to the British group Cammell Laird. At the same time, Cammell Laird also took over the other two Marseille ship repair yards, Marine Technologie and Travofer. Cammell Laird intended to reorganise the three companies within CMdR as a single undertaking and switch the activities from ship repair to ship conversion.

(10) Between July 2000 and July 2002, the workforce at CMdR had significantly decreased due to 'asbestos departures', i.e. the retirement of workers whose health had been affected by exposure to asbestos. In view of the objective of restructuring, these workers were not replaced. The activities of CMdR were reduced accordingly, yet CMdR continued to pursue ship repair until its bankruptcy.

(11) Following the bankruptcy of Cammell Laird in 2001, CMdR got into difficulties. On 31 July 2001, the commercial court of Marseille opened bankruptcy proceedings in respect of CMdR.

(12) CMR, a company set up on 20 June 2002, placed its takeover bid for CMdR at the commercial court of Marseille, which accepted the sale plan on 20 June 2002.

(13) Thus, in the context of the CMdR bankruptcy proceedings, CMR bought CMdR's assets for a price of EUR 1 001 (consisting of one symbolic euro for the assets and EUR 1 000 for stocks). The information shown on CMR's balance sheet indicates that CMR started its operation in 2002 without debts.

(14) France initially indicated that CMR also took over the work in progress.

(15) Moreover, in compliance with French social security legislation on the sale of business activities (Article L 122-12, paragraph 2 of the Labour Code), CMR was obliged to take over all the labour contracts with unchanged conditions regarding skills, pay and seniority. Likewise, CMR had to take over, firstly, wage obligations entered into before the takeover in the amount of EUR 500 000 related to the departures of asbestos affected workers and, secondly, outstanding salaries (paid leave) in the amount of EUR 620 000, these two figures being those initially quantified by France.

(16) France informed the Commission that by March 2003 CMR employed 100 production workers as compared to the average of 184 in the five preceding years.

(17) CMR is owned by five shareholders, one of which acts as the managing director.

B. The business plan

(18) According to France, restoring the viability of ship repair activity in Marseille requires the implementation of a series of measures within CMR. To this end, a five-year business plan was drawn up.

(19) CMR is said to have inherited from CMdR a number of charges ('asbestos departures', salaries (paid leave)) and difficulties such as loss of clientele seeking ship repair in the port of Marseille. This loss was attributed to Cammell Laird's policy of focusing on ship conversion to the detriment of ship repair. This is why France asserts that CMR is in need of restructuring. France recognises that the existence of a single ship repair undertaking in Marseille (i.e. CMR) is in line with the needs and potential of the ship repair market.

(20) The business plan, which France designates as a restructuring plan, is intended to tackle the problems encountered by CMR by adopting a series of measures. Firstly, the previous strategy pursued by Cammell Laird of switching from ship repair to ship conversion will be reversed and CMR will resume its traditional activity of ship repair. In addition, CMR will undertake the following steps, as described by France: reduction of structural costs, computer-assisted design, giving the management and the executive personnel greater responsibility, strict management of subcontracting and the development of multi-task capacities. Finally, some investment will be carried out and special attention will be given to training and specialisation of the staff.

(21) Once the company has repositioned itself on the market, it will also be able to seek to attract ship owners of more sophisticated vessels (such as cruise ships, passenger liners and gas tankers) who are not based in Marseille and for whom the price is not the only criterion for placing an order.

(22) France submitted two versions of CMR's business plan. The notification was based on a plan involving a high operation hypothesis, with turnover amounting to EUR 30 million in 2006 (the high hypothesis). A second, more prudent, plan (the low hypothesis) was drawn up at the request of the commercial court of Marseille (turnover limited to EUR 20 million a year from the third year until the completion of the business plan). The estimate of the company's operation changed accordingly and Table 1 below reproduces these new estimates.

Table 1

Anticipated trend in CMR's operation (the low hypothesis) [3]

(in euro)

Operation	2002 (6 months)	2003	2004	2005	2006
Turnover	[…] (*)	[…] (*)	[…] (*)	[…] (*)	[…] (*)
Operating costs					
Purchases of goods	[…] (*)	[…] (*)	[…] (*)	[…] (*)	[…] (*)
Purchases from subcontracting	[…] (*)	[…] (*)	[…] (*)	[…] (*)	[…] (*)
Other purchases and external costs	[…] (*)	[…] (*)	[…] (*)	[…] (*)	[…] (*)
Salaries and wages	[…] (*)	[…] (*)	[…] (*)	[…] (*)	[…] (*)
Paid holidays	[…] (*)	[…] (*)	[…] (*)	[…] (*)	[…] (*)
'Asbestos departures'	[…] (*)	[…] (*)	[…] (*)	[…] (*)	[…] (*)
Total personnel costs	[…] (*)	[…] (*)	[…] (*)	[…] (*)	[…] (*)
External assistance	[…] (*)	[…] (*)	[…] (*)	[…] (*)	[…] (*)
Total personnel charges and assistance	[…] (*)	[…] (*)	[…] (*)	[…] (*)	[…] (*)
Taxes	[…] (*)	[…] (*)	[…] (*)	[…] (*)	[…] (*)
Total operating costs	[…] (*)	[…] (*)	[…] (*)	[…] (*)	[…] (*)
Operating result	[…] (*)	[…] (*)	[…] (*)	[…] (*)	[…] (*)
Subsidy [1]	[…] (*)	[…] (*)	[…] (*)	[…] (*)	[…] (*)
Net operating result	[…] (*)	[…] (*)	[…] (*)	[…] (*)	[…] (*)

[1] Subsidy from the local authorities (see Table 3).

[3] Table 1 does not correspond to the complete profit and loss account.

(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

(23) According to France, the business plan is based on the turnovers generated by the ship repair companies in Marseille before the Cammell Laird group experienced difficulties in 2000 and on the capacity of CMR to achieve similar levels within two years. France also stresses that the project takes account of the stagnation in the level of customers at the time of the takeover and that the approach adopted is even more prudent in the low hypothesis.

(24) The costs of implementing the low hypothesis business plan, i.e., according to France, the costs of restructuring, are specified in Part 1 of Table 2 below.

(25) France further claimed as restructuring costs charges related to 'asbestos departures' incurred before the takeover and outstanding salaries (paid leave) incurred before the takeover. These costs are outlined in Part 2 of Table 2 below, taking into account reviewed figures provided by France in its letter of 29 January 2004.

Table 2

Claimed costs of restructuring CMR

(in euro)

Item	Amount
Part 1	
Investment in restructuring and maintenance (2002 to 2006): Initial	[…] (*)
Annual (4 × EUR 100 000)	[…] (*)
Inventories	[…] (*)
Training needs: 200 man/hours [1]	[…] (*)
Subtotal 1	[…] (*)
Part 2	
Costs for 'asbestos departures' incurred before the takeover	[…] (*)
Paid leave due before the takeover	[…] (*)
Subtotal 2	[…] (*)
Total (Subtotal 1 + Subtotal 2)	3 649 494

[1] 20 employees a year at CMR and 50 employees a year at subcontractors.

(26) The total costs deemed necessary to launch CMR are thus EUR 3 649 494.

C. **The financial measures**

(27) According to France, the EUR 3 649 494 required by CMR is to be financed by loans and grants provided from public and private sources as outlined in Table 3 below. France adopted a preliminary decision to grant public support to CMR on 3 May 2002, i.e. even before CMR was set up and before CMR took over the assets of CMdR. A legally binding decision to grant the support was issued on 26 June 2002.

Table 3

Financial measures related to the restructuring CMR

(in euro)

Source	Amount
Part 1 — Public contributions	
French central government	1 600 000
Conseil régional of Provence Alpes-Côte d'Azur	630 000
Conseil général of Bouches-du-Rhône	630 000
City of Marseille	630 000
Subtotal 1	3 490 000
Part 2 — Private contributions	
Shareholders' capital contribution	610 000
Bank loans	1 830 000
Subtotal 2	2 440 000
Total (Subtotal 1 + Subtotal 2)	5 930 000

(28) (The French central government will provide CMR with EUR 1 600 000 in the form of an interest-free loan. France attributed to the loan a net grant equivalent (NGE) of EUR 404 640, which is based on the Commission's reference rate for 2002, i.e. 5,06 %. According to France, the conditions governing the payment of this loan can be represented as in Table 4. In September 2003, an amount of EUR 800 000 was paid to CMR.

Table 4

Conditions under which the loan to CMR is paid out and repaid

(in euro)

Amount	Year of payment	Year of repayment
533 333	n	n+6
266 667	n	n+7
400 000	n+1	n+7
400 000	n+2	n+7

(29) The Conseil régional of Provence Alpes-Côte d'Azur, the Conseil général of Bouches-du-Rhône and the City of Marseille will provide CMR with EUR 630 000 in the form of a grant. As of September 2003, the totality of the contribution from local authorities (EUR 1 890 000) had been paid out and was used to cover the losses of the company in the first six months of its operation (2002).

(30) The private contributions are described as capital contributions of shareholders of CMR (EUR 610 000) and bank loans (EUR 1 830 000). The bank loans did not involve any request for special guarantees by the banks, except as regards the following aspects. A part of CMR's assets is financed by means of leasing, i.e. it remains in the ownership of the banks until the loan is paid back. Another part of CMR's assets is subject to mortgage, which means that CMR could lose ownership of them to the banks if the loan is not repaid under the conditions agreed. The bank that provided the loan is the cooperative bank of the Banque populaire group.

D. **Market information**

(31) According to France, the French ship repair sector has in the past twenty years been subject to restructuring due to the strong downturn within the market. In Marseille, ship repair companies ran into difficulties because they had not taken account of unfavourable developments on the market. France states that maintaining three ship repair companies in Marseille (Marine Technologie, Travofer and CMdR) until 2000 when they were taken over by Cammell Laird exceeded the capacity of the market. France argues, however, that the existence of a single ship repair company in Marseille is in line with market requirements.

(32) As regards CMR's workforce, CMR had 100 production workers in March 2003, compared with an average of 184 in the five preceding years. This reduction was also due to departures related to the protection of asbestos-affected workers (30 persons). France notes, however, that these workers will be replaced in line with CMR's recruitment requirements.

(33) According to France, a capacity reduction at CMR was nevertheless achieved by the closure of the former Marine Technologie site and the Travofer site, which have been returned to the port of Marseille and will no longer be used for ship repair.

E. **The decision to initiate proceedings under Article 88(2) of the EC Treaty**

(34) In the decision to initiate the formal investigation procedure (hereinafter referred to as the decision to initiate proceedings), the Commission took the view that the measures constituted state aid within the meaning of Article 87(1) of the EC Treaty. The measures were then assessed under Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding [4] (hereinafter referred to as the Shipbuilding Regulation) as well as the Community Guidelines on State aid for rescuing and restructuring firms in difficulty [5] (hereinafter referred to as the Restructuring Guidelines).

(35) In the decision to initiate proceedings, the Commission expressed doubts whether the financial measures in question could be authorised as restructuring aid, considering, on the one hand, that CMR seemed to be a newly created firm emerging from the liquidation of CMdR and bearing in mind, on the other hand, point 7 of the Restructuring Guidelines, according to which a newly created firm is not eligible for rescue or restructuring aid, even if its initial financial position is insecure.

(36) The Commission also doubted whether, even if CMR were deemed eligible for restructuring aid, all the other criteria stipulated for the approval of restructuring aid were met.

(37) In particular, the Commission noted that France did not describe which structural difficulties needed to be addressed by restructuring and only stated that the difficulties at CMR resulted mainly from the bankruptcy of CMdR. The Commission therefore doubted whether CMR in fact suffered from such structural difficulties. Consequently, the Commission also doubted whether the business plan for CMR was suitable for restoring CMR's viability within a reasonable timescale.

(38) In addition, the Commission doubted whether the capacity reductions required by Article 5 of the Shipbuilding Regulation would take place. It noted that France had not provided more precise information on the workforce actually taken over by CMR and that there were indications that subcontracting activities would be significantly increased.

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[4] OJ L 202, 18.7.1998, p. 1.
[5] OJ C 288, 9.10.1999, p. 2.

(39) The Commission further doubted whether the aid was in proportion to the restructuring costs and benefits. The Commission based its view here on the information that the restructuring costs amounted to EUR 3 649 494 and the total amount of public and private financial contributions to EUR 5 930 000. The financial sources thus exceeded the claimed restructuring needs.

(40) In the context of proportionality, the decision to initiate proceedings raised the issue of determination of the net grant equivalent of the loan granted to CMR by the state, noting that, in conformity with the Commission notice on the method for setting the reference and discount rates [6], the reference rate may be increased in situations involving a particular risk (for example, a company in difficulty) and, in such cases, the premium may amount to 400 basic points or more. The Commission therefore doubted whether the totality of the loan could be considered to be aid.

(41) Also in the context of proportionality, the Commission doubted whether all the costs could be admitted as restructuring costs, citing in particular the costs relating to the training of employees of CMR's subcontractors.

III. **COMMENTS FROM FRANCE**

(42) In its reply to the decision to initiate proceedings and in the supplementary information which it subsequently provided, France submitted the following information and comments.

(43) As regards the doubts as to whether CMR was a firm eligible for restructuring aid, France argued that despite the fact that CMR was a new company, it still faced difficulties. While recognising that taking over human and physical resources potentially constituted an asset for a new company, France maintained that such resources also imposed a substantial burden. France thereby confirmed its initial position that although CMR was a new company, it was similar to an existing company experiencing difficulties.

(44) France also confirmed that CMR began its activity without debts. According to French bankruptcy law, a company in difficulties could, before filing for bankruptcy, attempt to stabilise its situation by concluding an agreement with its creditors with the help of an ad hoc administrator appointed by a commercial court. Such an administrator was appointed at the request of CMdR. Under his supervision, all work in progress was finished and the creditors paid. However, the attempt to stabilise the situation in CMdR was not successful and, due to a decrease in its assets and a lack of orders, CMdR eventually filed for bankruptcy on 31 July 2001. Therefore, at the time of the takeover, CMdR no longer had any debts.

(45) Furthermore, it was stated that, contrary to what France initially asserted, all the work in progress was finished by CMdR before it filed for bankruptcy and that one of the reasons for filing for bankruptcy was an empty order book (see paragraph 44 above).

(46) As regards the doubts as to the viability of the restructuring plan for CMR, France specified further elements of this plan. CMR would resume the ship repair activity abandoned by CMdR in favour of ship conversion. CMR planned to replace some of the 'asbestos departures' by young workers with higher qualifications and make unprecedented efforts to train its staff. Also CMR envisaged introducing annualisation of the working schedule within the framework of the regulation limiting weekly working hours to 35 hours and harmonising differences in staff status. Furthermore, CMR would modernise its plant and working methods, improve safety conditions and draw up an ISO 9001 quality plan. These measures, in addition to the measures notified initially, would, according to France, ensure the viability of CMR within a reasonable timescale.

[6] OJ C 273, 9.9.1997, p. 3.

(47) France also stated that the viability of the plan was ensured by realistic market hypotheses based on the actual operations of the ship repair companies in Marseille prior to their integration into Cammell Laird. In addition, France noted that CMR had concluded an agreement with its employees guaranteeing social peace on the site. Lastly, France observed that CMR's operating results in 2002 and in the first half of 2003 proved that the company would probably become viable as from 2003, as anticipated in the restructuring plan.

(48) As to the need to ensure that competition would not be distorted, France argued that the reduction of ship repair capacities was ensured by the closing of the other two ship repair sites in Marseille (Marine Technologie and Travofer).

(49) Moreover, France argued in this context that ship repair yards in the northern Mediterranean were if anything complementary and not in real competition.

(50) France further confirmed that CMR was an SME within the meaning of Article 2(b) of Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises [7] (hereinafter referred to as the SME Regulation).

(51) Lastly, France stated that 132 CMR employees had been taken over by CMR and that a total number of 58 workers were due to leave in the period 2002 to 2004 for reasons related to asbestos exposure.

(52) As to the proportionality of the financial measures in question, France stated that the amount of EUR 5 930 000 in public and private contributions covered, on the one hand, restructuring costs (EUR 3 649 494) and, on the other, part of the company's working capital requirements over and above restructuring requirements.

(53) France explained that it considered the costs of training of subcontractors to be part of restructuring costs. In this context, France noted that many activities essential to CMR's operation were carried out by external specialised companies. The latter, which as subcontractors were affected by the problems of the ship repair industry in Marseille, were not in a position to finance the training of their employees. This was why CMR was shouldering this financing, in its capacity as the contractor, who had full responsibility vis-à-vis the ship owner.

(54) Alternatively to its claim in terms of restructuring aid, France asked the Commission to consider the compatibility of the financial measures with the common market directly on the basis of the EC Treaty (Article 87(3)(c)), if the aid was not compatible under the Restructuring Guidelines. France argued that ship repair was essential to the proper functioning of the port of Marseille, i.e. it was necessary in order to accommodate ships and ensure the provision of ship maintenance services indispensable for the activity of the port, services related to maritime safety and services related to tourism (repair of pleasure craft). France also argued that the safeguarding of ship repair in Marseille was in the Community's interest since it was in line with the common transport policy, which promoted maritime transport. Finally, France stressed historic and strategic reasons of preserving ship repair in Marseille.

[7] OJ L 10, 13.1.2001, p. 33. Regulation as amended by Regulation (EC) No 364/2004 (OJ L 63, 28.2.2004, p. 22).

IV. **ASSESSMENT**

A. **State aid**

(55) According to Article 87(1) of the EC Treaty, any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market.

(56) Firstly, the loan of EUR 1 600 000 given to CMR by the French government constitutes a financial advantage made available from state resources. As economic benefits granted by regional or local bodies in the Member States are also considered to be state resources, the first criterion for the application of Article 87(1) of the EC Treaty is also met with regard to the grants (each amounting to EUR 630 000) received from the region of Provence Alpes-Côte d'Azur, the department of Bouches-du-Rhône and the city of Marseille.

(57) Secondly, the public contributions were directed to a particular undertaking, CMR. The selectivity criterion governing the application of Article 87(1) of the EC Treaty is thus met.

(58) Thirdly, the three grants from the regional and local authorities as well as the interest-free loan from the French government confer on CMR an economic benefit which would be hard to obtain from the private sector. Hence, by their very nature, such measures are likely to distort competition.

(59) Fourthly, the criterion of trade being affected is met if the recipient carries out an economic activity involving trade between Member States. This is indeed the case with the ship repair activities carried out by CMR. In a sensitive sector such as ship repair, it may be assumed that trade is affected, at least potentially. This assumption underlies the long-term policy pursued with regard to the special rules applicable to state aid in the shipbuilding industry. Those rules apply fully to ship repair, which is subject to the same principles as shipbuilding. Furthermore, because of its geographical position, CMR is, at least potentially, in competition with ship repair yards in Italy and Spain.

(60) The Commission thus concludes that the public contributions to CMR as outlined in Part 1 of Table 3 all constitute state aid within the meaning of Article 87(1) of the EC Treaty.

(61) The Commission also notes that France failed to comply with its obligation under Article 88(3) of the EC Treaty not to put its proposed measures into effect until the Commission proceedings had resulted in a final decision (stand-still clause). The aid is therefore considered to be unlawful.

B. **Derogation under Article 87 of the EC Treaty**

(62) Since CMR engages in ship repair, aid granted to support its activities falls within the scope of the special rules on state aid applicable to shipbuilding. Since 1 January 2004, these rules have been enshrined in the Framework on state aid to shipbuilding ([8]), which replaced the Shipbuilding Regulation. However, in accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful state aid ([9]), unlawful state aid, i.e. aid put into effect in contravention of Article 88(3) of the EC Treaty, must be assessed in accordance with the substantive criteria set out in any instrument in force at the time when the aid was granted. Therefore the Shipbuilding Regulation is applicable. For the sake of completeness, it should be stated that this has no effect on the outcome of the compatibility assessment, given that the substantive criteria for the assessment of rescue and restructuring aid, of regional aid and of training aid are the same ([10]), whether the Commission applies the Shipbuilding Regulation or the Framework on state aid to shipbuilding, which replaced the former rules ([11]).

(63) France asked the Commission to examine whether the financial measures were compatible with the common market directly on the basis of Article 87(3)(c) of the Treaty, arguing that ship repair was an essential activity in the proper operation of a port of the size of Marseille.

(64) The Commission notes, firstly, that, if the ship repair services provided by CMR were indeed essential to the operation of the port, they should in principle be secured by the port's own resources, without having to resort to state aid. Furthermore, the Commission is authorising part of the aid as regional investment aid and is accordingly taking account of the regional concerns involved.

(65) Furthermore, the Shipbuilding Regulation constitutes a specific and exhaustive set of rules applicable to the sector, including ship repair, and stands as a *lex specialis* in relation to the Treaty. Authorising the aid through direct application of the Treaty would thwart the objectives pursued by establishing specific restrictive rules applicable to the sector.

(66) The Commission cannot, therefore, assess the aid directly on the basis of the Treaty.

(67) Article 2 of the Shipbuilding Regulation stipulates that aid granted for ship repair may be considered compatible with the common market only if it complies with the provisions of the Regulation.

1. *Restructuring aid*

(68) According to France, the purpose of the aid is to restructure the activities of CMR. According to Article 5 of the Shipbuilding Regulation, aid for the rescue and restructuring of undertakings active in the shipbuilding sector may exceptionally be considered compatible with the common market provided that it complies with the provisions of the Restructuring Guidelines as well as the specific conditions set out in Article 5 of the Shipbuilding Regulation.

(69) The Commission consequently considered whether the criteria laid down in the Restructuring Guidelines were met.

([8]) OJ C 317, 30.12.2003, p. 11.
([9]) OJ C 119, 22.5.2002, p. 22.
([10]) With the exception of the capacity reduction requirement, which no longer is imposed as a necessary condition for granting restructuring aid by the Framework on state aid to shipbuilding. The Restructuring Guidelines do, however, impose a requirement of avoidance of undue distortion of competition, for which purpose compensatory measures must be taken. See in this respect point 35 et seq. of the Restructuring Guidelines.
([11]) See, in this respect, points 12(b) and (f) and point 26 of the Framework on State aid to shipbuilding.

1.1. Eligibility of the firm

(70) According to the Restructuring Guidelines, in order to be eligible for restructuring aid, the firm must qualify as a firm in difficulty within the meaning of the Guidelines. While no precise Community definition exists, the Commission regards a firm as being in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owners/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to go out of business in the short or medium term (point 4 of the Restructuring Guidelines). These difficulties are manifested for instance by increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value.

(71) However, point 7 of the Restructuring Guidelines stipulates that a newly created firm is not eligible for restructuring aid, even if its initial position is insecure. This is the case, for instance, where a new firm emerges from the liquidation of a previous firm or merely takes over such firm's assets.

(72) The reason for excluding new firms from the eligibility for restructuring aid is based on the assumption that the creation of a company should be a decision reflecting the situation on the market in question. Therefore, a company should be created only if it has a chance of operating on that market, in other words, if it is capitalised and viable *ab initio*.

(73) A new company is not eligible for restructuring aid because, although it might well face start-up difficulties, it cannot encounter difficulties such as those described in the Restructuring Guidelines. Such difficulties (as described in paragraph 70 above) are linked to the history of a company, i.e. they are generated in connection with the operation of a company. By its nature, a new company cannot encounter this type of difficulties.

(74) A new company may, however, face some start-up losses as it has to finance investments and operating costs that initially may not be covered by the revenues from its activity. These costs are, however, associated with the start of a business activity and not with its restructuring. Such costs cannot therefore be financed by restructuring aid without depriving the latter of its specific purpose and limited scope.

(75) This limitation of the scope of the Restructuring Guidelines applies to new companies that emerge out of bankruptcy proceedings of other companies or merely take over other firm's assets. The new company in such cases does not in principle take over the debts of its predecessor and thus does not suffer from the difficulties described in the Restructuring Guidelines.

(76) In the decision to initiate proceedings, the Commission had doubts whether CMR was eligible for restructuring aid, as it appeared to be a newly created company.

(77) The Commission notes in this respect, and France acknowledges, that CMR is a new legal entity with a legal personality distinct from CMdR.

(78) The Commission also takes the view that CMR is a new economic entity that is distinct from CMdR. It is true that CMR continues to carry out an economic activity of the same type as CMdR (ship repair). However, it is not possible to conclude that CMR is the same economic entity as CMdR. On the contrary, the Commission considers that, although CMR took over the assets and goodwill as well as the workforce and some liabilities related to the social security legislation, the takeover marked a discontinuity between the old and new activity. It is illustrated by the fact that the takeover was free of debts related to the old activities. CMR was not therefore in the same financial position as CMdR. In this context, it needs to be said that the reason for which this was the case, i.e. whether it was because the debts stayed with the predecessor or because there were no debts at all, is irrelevant. The actual situation of CMR at the beginning of its operation can be described as a fresh start. The discontinuity is also confirmed by the fact that no work in progress was taken over: all the work was completed and the suppliers paid before CMdR filed for bankruptcy.

(79) It must therefore be concluded that CMR is indeed a new company.

(80) As a matter of fact, France does not dispute this conclusion. It does, however, argue that although it is a new company, CMR is experiencing difficulties that make it similar to an existing company, the cause of these difficulties being the takeover of the workforce and the related social security costs.

(81) As to this argument, the Commission notes that CMR does not display the signs of a company in difficulty within the meaning of the Restructuring Guidelines as described in paragraph 70 above. It simply faces normal set-up costs and normal start-up losses due to the infant nature of its activity.

(82) The costs of launching a commercial activity are inevitable and are not related to the history of a company. CMR would have faced the same type of costs had its shareholders decided to create a company entirely independent from previous ship repair activities. Such a hypothesis would inevitably have involved start-up costs, such as purchase of machinery, hiring and training of staff, etc.

(83) More specifically, the Commission considers that the takeover of the workforce (with no changes in the conditions regarding skills, pay and seniority) and some social security obligations (outstanding payments for holidays, 'asbestos departures') was merely a legal requirement of French social security legislation (similar to that in many other countries), which had been known to the investor ([12]). In other words, this takeover of the workforce was a condition without which the takeover of the assets could not have taken place. Moreover, any costs associated with the acquired assets should have been taken into account when setting the purchase price.

(84) Furthermore, the Commission notes that the workforce taken over by CMR is part of the assets taken over and not a liability. In fact, this takeover of the workforce should ease CMR's entry into market, since it relieves the firm of the costs related to recruiting and training new staff.

(85) France further argues that CMR is a company in difficulty because it exercises the same type of activity as CMdR and because it is bound by the liabilities imposed by French social security legislation, which represent a burden inherited from CMdR.

(86) Finally, France argues that the difficulties of CMdR were related to the nature of the activities it exercised. However, France also notes that the existence of a single ship repair company in Marseille is in line with the needs of the market. It is clear that CMR is indeed, after the closure of Marine Technologie and Travofer, the only ship repair company of its sort in Marseille. Hence, the fact that CMR performs ship repair activities should not be the cause of financial difficulty, requiring restructuring.

([12]) However, after close examination of French legislation in this area (second paragraph of Article L 122-12 of the Labour Code), the Commission takes the view that the legislation does not require all the employees to be taken over.

(87) To conclude, the Commission notes that CMR did not take over any liabilities from CMdR that would establish a continuation of the old ship repair activity. CMR is a newly created company, which, moreover, is not in difficulty within the meaning of the Restructuring Guidelines. The Commission considers that investment aid might be better suited to any other financial difficulties CMR might encounter.

(88) According to the Commission's practice since the entry into force of the Restructuring Guidelines in 1999, a company is considered to be 'new' for the first two years following its establishment. In this context, the Commission notes that CMR was created on 20 June 2002. The legally binding decision to grant it aid was issued on 26 June 2002, i.e. within the two-year period when CMR was a new company.

(89) The Commission therefore concludes that CMR is not eligible for restructuring aid. In the following paragraphs, the Commission considers whether its further doubts expressed in initiating the proceedings as to whether the aid met the other criteria applicable to restructuring aid could be allayed by the information submitted by France. The Commission's conclusions here would apply in the hypothesis that CMR was not a new company, but a company in financial difficulties and therefore eligible for restructuring aid.

(90) For the sake of completeness, the Commission notes that the measures cannot be deemed to be rescue aid. The rule governing eligibility for rescue aid is identical to that for restructuring aid. Pursuant to point 7 of the Restructuring Guidelines, new firms are not eligible for rescue aid. Consequently, as a new firm that is not in difficulty within the meaning of the Restructuring Guidelines, CMR is not eligible for this type of aid.

1.2. Restoration of viability

(91) According to the Restructuring Guidelines, the grant of the aid is conditional on the implementation of a restructuring plan able to restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions, enabling the company to stand on its own feet. This must derive mainly from internal measures, involving the abandonment of activities which would remain structurally loss-making even after restructuring.

(92) The Commission's doubts arose because France did not describe which structural difficulties needed to be addressed by restructuring and only stated that the difficulties at CMR mainly resulted from the bankruptcy of CMdR. The Commission therefore doubted whether CMR was suffering from such difficulties and whether the business plan was suitable to restore its viability.

(93) France explained that CMR's difficulties were due to the commercial policy of Cammell Laird, which had attempted to switch ship repair companies in Marseille to ship conversion. This switch had resulted in a loss of traditional ship repair clientele. To illustrate this, France stated that CMdR had continued to carry on ship repair activities, albeit to a limited extent, but that at the end of its operation its order book was completely empty.

(94) The Commission concludes that the difficulty CMR is facing is the situation on the relevant ship repair market, characterised by a fall in demand and the need to restore credibility, which had been harmed by the policy pursued by the previous operator.

(95) The Commission further concludes that the business plan that France notified would be capable of restoring CMR's viability within a reasonable timescale. However, the Commission considers that the proper instrument to address this type of difficulty is investment aid.

1.3. Avoidance of undue distortions of competition

(96) The Commission also doubts whether CMR is proceeding towards a genuine and irreversible reduction of its capacity, as required by the second subparagraph of Article 5(1) of the Shipbuilding Regulation.

(97) Such capacity reduction has to be commensurate with the level of aid involved, the closed capacity must have been regularly used for shipbuilding, ship repair or ship conversion up to the date of notification of the aid, and the closed capacity must remain closed for not less than 10 years from the Commission's approval of the aid. Moreover, no account will be taken of capacity reductions in other undertakings in the same Member State unless capacity reductions in the beneficiary undertaking are impossible without undermining the viability of the restructuring plan. Finally, the level of capacity reduction is to be determined on the basis of the level of actual production in the five years preceding the restructuring.

(98) First, as regards France's argument that the capacity reduction will be achieved by the closure of the other two ship repair yards in Marseille (Marine Technologie and Travofer), the Commission concludes that, in accordance with Article 5(2) of the Shipbuilding Regulation, such closure is irrelevant since it concerns undertakings other than the beneficiary, unless capacity reduction would undermine the restructuring plan.

(99) In the case at hand, Marine Technologie and Travofer are entities that are legally distinct from CMR and their closure resulted from an event that was independent of CMR, namely the bankruptcy of their parent company Cammell Laird. Furthermore, France has not claimed that a capacity reduction would undermine the business plan of CMR.

(100) The Commission therefore does not accept this argument as evidence of a capacity reduction at CMR.

(101) Second, several other factors were raised which might be of relevance in deciding on the avoidance of undue distortions of competition (see paragraphs 48 to 51 above).

(102) The Commission observes at the outset that the Restructuring Guidelines in principle exempt SMEs from the requirement that aid recipients must mitigate any adverse effects of the aid on competitors, except where otherwise provided by rules on state aid in a particular sector. Such rules do exist here and are enshrined in the Shipbuilding Regulation, which does not provide for any such exemption for SMEs.

(103) Similarly, the fact that other ship repairers in the region are not in competition with CMR is not decisive. The Shipbuilding Regulation presumes that restructuring aid in this sector has an impact on competition and does not allow for any flexibility in the light of specific market conditions, in contrast to point 36 of the Restructuring Guidelines. The beneficiary is obliged to adopt measures so as to decrease its capacity, and to do so to an extent commensurate with the level of aid involved. These stricter rules for shipbuilding are justified by the overcapacity in the sector. Ship repair, as another sensitive sector, is subject to the same rules and principles as shipbuilding, for the same reasons of overcapacity.

(104) Finally, the Commission notes that the workforce at CMdR in 1996, when its difficulties started, was 310 persons. At the time of the takeover of CMdR's assets by CMR, there were 132 persons. Accordingly, this reduction in the workforce took place within CMdR and preceded the grant of restructuring aid to CMR. Therefore it cannot be seen as a measure mitigating the distortions of competition.

(105) As to the argument that capacity will be reduced through the 'asbestos departures', the most recent information (January 2004) indicates 58 affected workers in the period 2002 to 2004. It is clear, however, that at least some of these workers will be replaced (30, as indicated in the letter of 6 March 2003).

(106) On the basis of this information, the Commission's doubts as to whether CMR undertook a genuine and irreversible reduction of its capacities commensurate to the aid granted have not been allayed. Therefore, even if CMR were eligible for aid as a company in difficulty, the aid would not have been compatible with the Shipbuilding Regulation.

1.4. Aid limited to the minimum

(107) Under the Restructuring Guidelines, the amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken in the light of the existing financial resources of the company. Aid beneficiaries are expected to make a significant contribution to the restructuring plan from their own resources or from external financing at market conditions.

(108) The Commission doubted whether this condition had been fulfilled, as the available financial sources, private and public, outweighed the claimed requirements. France replied that the amount of EUR 5 930 000 in public and private contributions covered, on the one hand, the costs of restructuring (EUR 3 649 494) and, on the other, part of the working capital requirements over and above the requirements related to restructuring.

(109) In this context, the Commission raised the issue of determination of the net grant equivalent of the loan granted to CMR. The Commission notice on the method for setting the reference and discount rates stipulates that the reference rate may be increased in situations involving a particular risk. The Commission concludes that if CMR were in difficulties necessitating restructuring, which is the argument which France puts forward and with which the Commission disagrees, such a particular risk would indeed occur. No private borrower would provide CMR with a loan under the conditions in question, i.e. free of interest and without provision of any securities. Therefore the totality of the loan represents aid. The total amount of aid would consequently be EUR 3 490 000.

(110) The claimed needs of restructuring are EUR 3 649 494. As the aid amounts to EUR 3 490 000, the private contribution of the beneficiary to restructuring corresponds to EUR 159 494. The contribution of the beneficiary is thus not significant, contrary to the requirement stipulated by the Restructuring Guidelines.

(111) The Commission concludes that even if CMR were a company in financial difficulties eligible for restructuring aid, the proportionality requirement would not have been met and therefore the aid would not have been compatible with the Restructuring Guidelines.

1.5. The 1994 Restructuring Guidelines

(112) In the decision initiating proceedings, the Commission assessed the measures under the Restructuring Guidelines adopted in 1999. This was not disputed by France in its answer to the decision. It should be noted that Article 5 the Shipbuilding Regulation makes reference to the 1994 Community guidelines on State aid for rescuing and restructuring firms in difficulty [13] (hereinafter referred to as the 1994 Restructuring Guidelines) which were replaced in 1999 by new Restructuring Guidelines. The Commission concludes, however, that even if the 1994 Restructuring Guidelines were applied, the above-mentioned reasoning would not be different. First, a new company cannot by its very nature be a company in difficulty. While less explicit, the 1994 Restructuring Guidelines are also, e.g. in their definition of firms in difficulty, clearly intended for the rescue and restructuring of existing firms, and not for newly created firms. Second, the criterion of 'aid limited to the minimum' already existed in the 1994 Restructuring Guidelines [14] and is not met in the present case.

[13] OJ C 368, 23.12.1994, p. 12.
[14] See point 3.2.2. (iii).

(113) It follows that the aid would not be compatible under the 1994 Restructuring Guidelines.

2. *Regional investment aid*

(114) The conditions governing the compatibility of regional investment aid with the common market are laid down in Article 7 of the Shipbuilding Regulation. First, the measures must concern a region referred to in Article 87(3)(a) or Article 87(3)(c) of the EC Treaty. Second, the intensity of the aid must not exceed the ceiling determined by the Shipbuilding Regulation. Third, the measures must be designed for investment in upgrading or modernising existing yards with the objective of improving the productivity of existing installations. Fourth, the aid must not be linked to a financial restructuring of the yard. Fifth, the aid must be limited to supporting expenditure eligible under the Guidelines on national regional aid [15] (hereinafter referred to as the Regional Guidelines).

(115) The region of Marseille is an assisted area under Article 87(3)(c) of the EC Treaty. According to the Shipbuilding Regulation and pursuant to the regional map approved by the Commission, the intensity of aid for this region must not exceed 12,5 % net [16].

(116) The expenditure eligible for aid has to be expressed as a uniform set of items of expenditure: land, buildings and plant/machinery (point 4.5 of the Regional Guidelines). Eligible expenditure may also include certain categories of intangible investment (point 4.6 of the Regional Guidelines).

(117) In its letter of 29 June 2004, France described the investment at CMR eligible for regional aid as being inventories, investment in equipment and building. Since it covers operating costs, expenditure on inventories is not eligible for aid for initial investment. The Commission describes in Table 5 the expenditure it considers eligible for aid for initial investment.

Table 5

Expenditure [17] eligible for regional investment aid

(in euro)

Item	Amount
1. Investment in equipment, comprising:	420 108
2. Transport material/vehicles	162 500
3. Computer equipment	35 600
4. Various other equipment and installation	222 008
5. Building	1 000
Total	421 108

(118) The Commission accepts that this investment contributes to achieving the goals of CMR's business plan as described in paragraph 20, and thus to upgrading and modernising the yard with the objective of improving its productivity. The investment also corresponds to a uniform set of items of expenditure: investment in buildings (item 5 of Table 5) and investment in plant/machinery (items 1 to 4 of Table 5).

[15] OJ C 74, 10.3.1998, p. 9. Amendments to the Guidelines on national regional aid (OJ C 258, 9.9.2000, p. 5).
[16] Net Grant Equivalent (NGE).
[17] Investment carried out in 2002 to 2004.

(119) In conclusion, the total expenditure eligible for regional investment aid amounts to EUR 421 108 (EUR 401 152 in discounted value, base year 2002, discount rate 5,06 %).

(120) The maximum allowable aid intensity is 12,5 % net (corresponding in this case to 18,9 % gross ([18])). Therefore the admissible aid amounts to EUR 75 737.

(121) The Commission concludes that the aid for CMR can be partially approved as aid for initial investment in the amount of EUR 75 737.

3. *Training aid*

(122) The Commission noted that some of the expenditure that CMR features in its business plan relates to training. The aid was granted after the entry into force of Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ([19]) (hereinafter referred to as the Training Aid Regulation).

(123) The Training Aid Regulation was adopted by the Commission, which was empowered to do so by Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal state aid ([20]). The Training Aid Regulation, as *lex posterior*, amends the Shipbuilding Regulation, which does not in itself provide for the possibility of granting training aid for shipbuilding. Article 1 of the Training Aid Regulation stipulates that the Regulation applies to aid in all sectors, i.e. including shipbuilding.

(124) Under the Training Aid Regulation, individual aid is compatible with the common market if it fulfils all the conditions of the Regulation, i.e. if it does not exceed the relevant maximum allowable aid intensity and if it covers costs eligible under Article 4(7) of the Regulation.

(125) France described CMR's training needs as specific training for 20 employees a year at CMR and 50 employees a year at CMR's subcontractors. The Commission notes that Article 2 of the Training Aid Regulation defines specific training as training involving tuition directly and principally applicable to the employee's present or future position in the assisted firm, i.e. CMR. Employees of CMR's subcontractors are not trained on the basis of their position at CMR and cannot therefore benefit from training aid granted to CMR. In addition, France has not given the Commission any guarantee that the part of the aid intended for the training of CMR's subcontractors will be passed on in full to those subcontractors, CMR being merely the vehicle for the aid. Consequently, the Commission cannot consider the aid to be aid indirectly granted to CMR's subcontractors. Since France did not provide any response to the Commission's query on the breakdown of the training expenditure as between CMR's employees and the employees of CMR's subcontractors, the Commission will determine the eligible expenditure proportionally.

(126) The total training costs claimed by France amount to EUR 896 000. Proportionally, the expenditure on the 20 employees of CMR will then represent EUR 256 000. The Commission considers the latter expenditure to be eligible for training aid.

(127) According to Article 4 of the Training Aid Regulation, aid intensity must not exceed 40 % for small and medium-sized enterprises, in areas qualifying for regional aid pursuant to Article 87(3)(c) of the EC Treaty and for projects involving specific training.

([18]) Gross Grant Equivalent (GGE).
([19]) OJ L 10, 13.1.2001, p. 20. Regulation as amended by Regulation (EC) No 363/2004 (OJ L 63, 28.2.2004, p. 20).
([20]) OJ L 142, 14.5.1998, p. 1.

(128) Consequently, the total amount of training aid amounts to EUR 102 400.

(129) The Commission concludes that the aid for CMR can be partially approved as training aid in the amount of EUR 102 400.

V. **CONCLUSION**

(130) The Commission concludes that France has unlawfully implemented aid amounting to EUR 3 490 000 in breach of Article 88(3) of the EC Treaty. On the basis of its assessment of the aid, the Commission concludes that, as restructuring aid, the aid for CMR is incompatible with the common market, since it does not meet the conditions set out in the Shipbuilding Regulation and the Restructuring Guidelines. However, the Commission finds that the aid is in part compatible with the common market as aid for initial investment pursuant to Article 7 of the Shipbuilding Regulation and as training aid pursuant to the Training Aid Regulation. The difference between the amount granted (EUR 3 490 000) and the compatible amount (EUR 75 737 + EUR 102 400 = EUR 178 137), i.e. EUR 3 311 863, has to be recovered,

HAS ADOPTED THIS DECISION:

Article 1

Of the amount of EUR 3 490 000 granted by France to CMR:

(a) EUR 75 737 is compatible with the common market as regional investment aid under Article 87(3)(e) of the EC Treaty;

(b) EUR 102 400 is compatible with the common market as training aid under Article 87(3)(c) of the EC Treaty;

(c) EUR 3 311 863 is incompatible with the common market.

Article 2

1. France shall take all necessary measures to recover from the beneficiary the aid referred to in Article 1(c) and unlawfully made available to the beneficiary. Such aid amounts to EUR 3 311 863.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of this Decision.

3. The sums to be recovered shall include interest from the date on which they were at the disposal of CMR until the date of their recovery.

4. Interest shall be calculated in accordance with the provisions laid down in Chapter V of Commission Regulation (EC) No 794/2004 ([21]). The interest rate will be applied on a compound basis throughout the entire period referred to in paragraph 3.

5. France shall end the aid measure and cancel all payment of outstanding aid with effect from the date of this Decision.

([21]) OJ L 140, 30.4.2004, p. 1.

Article 3

France shall inform the Commission, within two months of notification of this Decision, of the measures planned and already taken to comply with it. It will provide this information using the questionnaire attached in the Annex to this Decision.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels 22 September 2004.

For the Commission
Mario MONTI
Member of the Commission

ANNEX

Information regarding the implementation of the Commission Decision …

1. *Calculation of the amount to be recovered*

1.1. Please provide the following details on the amount of unlawful state aid that has been put at the disposal of the beneficiary:

Date(s) of payment [1]	Amount of aid [2]	Currency	Identity of beneficiary

[1] Date(s) on which (individual instalments of) the aid has been put at the disposal of the beneficiary (in so far as a measure consists of several instalments and reimbursements use separate rows).
[2] Amount of aid put at the disposal of the beneficiary (in gross aid equivalents).

Comments.

1.2. Please explain in detail how the interest to be paid on the amount of aid to be recovered will be calculated.

2. *Measures planned and already taken to recover the aid*

2.1. Please describe in detail what measures are planned and what measures have already been taken to effect an immediate and effective recovery of the aid. Please also indicate where relevant the legal basis for the measures taken/planned.

2.2. By what date will the recovery of the aid be completed?

3. *Recovery already effected*

3.1. Please provide the following details on the amounts of aid that have been recovered from the beneficiary:

Date(s) [1]	Amount of aid repaid	Currency	Identity of beneficiary

[1] Date(s) on which the aid has been repaid.

3.2. Please attach information clearly documenting the repayment of the aid amounts specified in the table under point 3.1 above.

COMMISSION DECISION

of 20 October 2004

on the aid scheme implemented by Italy for firms investing in municipalities seriously affected by natural disasters in 2002

(notified under document number C(2004) 3893)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2005/315/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) On 6 and 29 March 2003 the Commission received two complaints concerning the prolongation of Law No 383 of 18 October 2001 in certain municipalities in Italy seriously affected by natural disasters in 2002.

(2) On 20 March 2003 the Commission asked the Italian authorities for information on the extension. After requesting on 2 and 21 May 2003 that the deadline for replying be extended, the Italian authorities replied on 10 June 2003. A second letter from the Italian authorities reached the Commission on 4 July 2003.

(3) As the aid scheme entered into force before receiving the preliminary approval of the Commission under Articles 87 *et seq*. of the Treaty, the aid scheme was entered in the register of non-notified aid under number NN 58/03.

(4) By letter of 17 September 2003, the Commission informed Italy of its decision to initiate the procedure under Article 88(2) of the Treaty in respect of the measure in question. The case was registered under number N 57/2003. The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [2] and interested parties were invited to submit their comments.

(5) By letter of 23 October 2003, the Italian authorities asked for an extension of the deadline for submitting their comments. By letters of 5 November and 16 December 2003, the Commission respectively agreed to the request and sent a reminder.

(6) Italy sent its comments by letter of 18 February 2004, received on 23 February, and by letter of 10 September 2004, received on 15 September. No comments were received from interested third parties.

II. DETAILED DESCRIPTION OF THE AID SCHEME

Legal basis

(7) Article 5(e) of Decree-Law No 282 of 24 December 2002, converted into statute by Law No 27 of 21 February 2003, prolongs the benefits provided for in Article 4(1) of Law No 383 of 18 October 2001 solely for firms investing in municipalities seriously affected by natural disasters in 2002. It was clarified by the Italian Economics and Finance Ministry in Revenue Agency Circular No 43/E of 31 July 2003. The municipalities concerned are those located in the areas defined in:

— the Prime Ministerial Decree of 29 October 2002 laying down provisions relating to the declaration of a state of emergency in respect of the serious effects caused by the eruption of Mount Etna and the earthquakes in the province of Catania,

— the Prime Ministerial Decree of 31 October 2002 laying down provisions relating to the declaration of a state of emergency in respect of the serious earthquakes on 31 October 2002 in the province of Campobasso,

[1] OJ C 42, 18.2.2004, p. 5.

[2] See footnote 1.

— the Prime Ministerial Decree of 8 November 2002 laying down provisions relating to the declaration of a state of emergency caused by the earthquakes of 31 October 2002 in the province of Foggia,

— the Prime Ministerial Decree of 29 November 2002 on the provisions relating to the declarations of a state of emergency caused by the exceptional weather (flooding and mudslides) in Liguria, Lombardy, Piedmont, Veneto, Friuli-Venezia Giulia and Emilia-Romagna.

(8) It was also necessary in the municipalities in question to issue evacuation orders or orders banning traffic on the main access routes into the municipalities.

(9) The Commission learnt from press articles that a list of the municipalities affected by the exceptional weather in Liguria, Lombardy, Piedmont, Veneto, Friuli-Venezia Giulia and Emilia-Romagna was drawn up by the Prime Ministerial Order of 28 May 2003, published in Italian Official Gazette No 126 of 3 June 2003.

(10) The measure prolonging Law No 383 of 18 October 2001 entered into force on 23 February 2003, the day following publication of Law No 27 of 21 February 2003 in Ordinary Supplement No 29 to Italian Official Gazette No 44 of 22 February 2003.

Objective

(11) The scheme is designed to promote investment in the areas affected by the natural disasters listed in the Prime Ministerial Decrees referred to in paragraph 7.

Recipients

(12) Any firm in any sector that has invested in the municipalities affected by the natural disasters is eligible. Revenue Agency Circular No 43/E of 31 July 2003 specifies that the scheme is designed to promote investments by firms which, because of the serious difficulties caused by the natural disasters in the municipalities in which they are located, have directly or indirectly suffered financial damage. It also states that such damage is deemed to have affected most of the firms in a given municipality only if:

— the number of buildings affected by the evacuation orders is such as to have a negative effect on the economy of the entire municipality,

— the orders banning traffic affects all the main access routes into the municipality.

According to the Circular in question, in the other cases the aid is intended only for firms located on the access routes or in the buildings concerned by the abovementioned measures.

Form and intensity of the aid

(13) The measure in question prolongs Law No 383 of 18 October 2001 until the second tax year following that in progress on 25 October 2001 and is confined to investments made up to 31 July 2003. Under the Law, the part of the investments carried out after 1 July 2001 and corresponding to 50 % of the investments exceeding the average level of investment in the preceding five years can be offset against taxation of the income of firms and the self-employed. Calculation of the average level does not include investments made in the year in which investment was highest. In the case of real estate investment, the extension applies to investments made up until the third tax year following the one taking in 25 October 2001 and no later than 31 July 2004.

Objective of the scheme

(14) The scheme is designed to promote investment in new industrial plants and new buildings, extensions, renovating and modernising existing establishments, in completing suspended work and in purchasing new equipment.

III. DECISION TO INITIATE THE PROCEDURE UNDER ARTICLE 88(2) OF THE TREATY

(15) In the decision to initiate the formal investigation procedure (hereinafter the decision to initiate the procedure), the measure in question was examined to check whether it could be exempted under Article 87(2)(b) as aid intended to make good the damage caused by natural disasters or exceptional occurrences.

(16) The Commission also considered whether the measure qualifies for the derogations in Article 87(3)(a) and/or (c) of the Treaty pursuant to the guidelines on national regional aid [3], to Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises [4] (SMEs) and to the rules laid down in the Community guidelines on State aid in the agriculture sector [5] and to the rules laid down in the guidelines for the examination of State aid to fisheries and aquaculture [6].

[3] OJ C 74, 10.3.1998, p. 9.
[4] OJ L 10, 13.1.2001, p. 33. Regulation as last amended by Regulation (EC) No 364/2004 (OJ L 63, 28.2.2004, p. 22).
[5] OJ C 28, 1.2.2000, p. 2.
[6] OJ C 19, 20.1.2001, p. 7.

Analysis of the measure as aid to make good the damage caused by natural disasters

(17) As regards the derogation under Article 87(2)(b) of the Treaty, the Commission expressed doubts when initiating the procedure as to whether the aid was intended solely to make good the damage caused by the natural disasters in question, to the exclusion of any overcompensation for damage at the level of individual recipients. It was unable therefore to authorise the measure as aid to make good the damage caused by the natural disasters or any other exceptional occurrences.

(18) The Italian authorities did not quantify the direct material damage caused by the natural disasters. They explained that the scheme is based on a macroeconomic concept of damage, justifying this approach by the impossibility of quantifying damage at the level of each firm without slowing down the procedure and making it ineffective.

(19) Thus, in its decision initiating the procedure, the Commission considered that the information provided by the Italian authorities did not suggest that the measure under examination was, by virtue of its nature and operational arrangements, designed to make good damage caused by the natural disasters. It was unable to conclude from the operational arrangements that:

— the aid recipient is a firm that has suffered damage,

— the damage was caused exclusively by the natural disasters listed in one of the Prime Ministerial decrees referred to in paragraph 7,

— the aid for the firm is confined solely to making good the damage caused by the natural disasters, to the exclusion of any overcompensation for the damage incurred by an individual recipient. The non-existence of a link between the aid and the damage suffered by the firm can also be demonstrated by the fact that, in view of the operational arrangements for the scheme in question, a firm that has suffered damage as a result of the natural disasters might not qualify for the scheme. A firm that carries out an investment geared solely to making good the damage caused by the natural disasters in question might not qualify for the aid if the value of the investment is lower than the average for the investments made in the preceding five years. What is more, a firm that carries out an investment geared solely to making good the damage caused by such natural disasters but records losses in the current year might not qualify either for the scheme in the same year.

Analysis of the measure as investment aid

(20) As regards the admissibility of the derogations in Article 87(3)(a) and/or (c) of the Treaty, the Commission considered in its decision initiating the procedure whether the measure could qualify for exemption as investment aid.

(21) As regards the derogations, the Commission first expressed doubts as to whether the aid available under the scheme is granted solely in areas eligible for regional aid under the Italian regional aid map for the period 2000 to 2006. It also doubted whether:

— the concept of investment defined in the scheme is that provided for in point 4.4 of the guidelines on national regional aid and in Article 2(c) of Regulation (EC) No 70/2001,

— the aid intensity under the scheme, which should be calculated by reference to all the items of expenditure making up the standard base, as defined in point 4.5 of the guidelines on national regional aid and in Article 4(5) of Regulation (EC) No 70/2001, complied with the regional ceilings specified in the Italian regional aid map for the period 2000 to 2006 or the aid intensities laid down in Article 4(2) of Regulation (EC) No 70/2001 for SMEs,

— the rules on the cumulation of aid in points 4.18 to 4.21 of the guidelines for national regional aid and in Article 8 of Regulation (EC) No 70/2001 had been complied with,

— the principle of the necessity of aid referred to in point 4.2 of the guidelines on national regional aid and in Article 7 of Regulation (EC) No 70/2001 had been met,

— in order to ensure that the productive investment aided is viable and sound, the recipient's contribution to its financing is a least 25 %, as provided for in point 4.2 of the guidelines on national regional aid and in Article 4(3) of Regulation (EC) No 70/2001,

— the rules laid down in the Community guidelines on State aid in the agriculture sector and in the guidelines for the examination of State aid to fisheries and aquaculture had been complied with.

IV. COMMENTS RECEIVED FROM ITALY

(22) In its reply to the decision initiating the procedure, Italy sent further information together with its comments, the main points of which are summarised below.

Comments on the analysis of the measure as aid to make good the damage caused by natural disasters

(23) The Italian authorities pointed out that the territory concerned by the measure comprises the municipalities listed in the Prime Ministerial Decrees of 29 October, 31 October and 8 November 2002. Under Article 1 of the Decree of 29 October 2002, aid was to be granted solely in the municipalities affected by flooding and in which evacuation orders or orders banning traffic on the main access routes had been issued. The municipalities were listed in Prime Ministerial Order No 3290.

(24) As regards the doubts as to whether the aid recipients were firms that had suffered damage and whether such damage had been caused exclusively by a natural disaster, the Italian authorities replied that damage was deemed to have affected most of the taxpayers in a given municipality only if:

— the number of buildings affected by the evacuation orders was such as to have a negative effect on the economy of the entire municipality,

— the orders banning traffic affected all the main access routes into the municipality.

(25) The Italian authorities therefore concluded that the main aid recipients were indeed firms that had suffered damage and whose place of business was located along the roads or in the buildings affected by the abovementioned evacuation orders.

(26) Furthermore, as regards the link between damage suffered and aid granted, the Italian authorities considered that the Treaty did not rule out the possibility of taking account of the overall damage in a given area. The scheme was based on a macroeconomic concept of damage level as the demands of efficiency and speed did not allow the damage to each firm to be assessed individually. The Italian authorities therefore used macroeconomic data to demonstrate that the budget allocated to the scheme was much smaller than the extent of the damage.

(27) The Italian authorities also pointed out that, in several cases, the Commission had authorised aid to assist the recovery of a particular sector or to offset more indirect forms of damage.

(28) They confirmed by letter of 10 September 2004 that the measure was based on a macroeconomic approach, although firms would be asked to present certificates or statements in order to verify the actual damage suffered by each recipient. The tax authorities could subsequently carry out the necessary checks. The certificates would have to contain evidence that the firm was entitled to receive aid on account of its location in an eligible area. The firms would also have to certify that the aid did not exceed the damage suffered and that there was no overcompensation.

Comments on the measure as investment aid

(29) As regards the analysis of the compatibility of the aid with the derogations in Article 87(3)(a) and/or (c) of the Treaty carried out in the manner described in paragraph 16 of this Decision, the Italian authorities commented only that the areas concerned by the measure had been identified directly and exclusively by reference to the natural disasters.

(30) They pointed out that the compatibility of the aid should be assessed in the light of Article 87(2)(b) of the Treaty, i.e. as aid intended to make good the damage caused by natural disasters or exceptional occurrences.

(31) By letter of 10 September 2004, the Italian authorities also commented that the aid should be regarded as compatible with the common market by virtue of that derogation and that this therefore obviated the need to conduct a further analysis in the light of other derogations or guidelines.

V. ASSESSMENT

Aid element of the measure

(32) In order to assess whether the measures provided for in the scheme constitute aid within the meaning of Article 87(1) of the Treaty, it is necessary to determine whether they confer an advantage on the recipient, whether the advantage is conferred by the State, whether the measures in question affect competition and whether they are liable to affect intra-Community trade.

(33) The first requirement for the applicability of Article 87(1) of the Treaty is the possibility that the scheme confers an advantage on certain specific recipients. It must therefore be determined whether the recipients enjoy an economic advantage they would not have obtained under normal market conditions or whether they avoid costs which would normally have been borne by the firm's financial resources, and whether this advantage is conferred on a specific category of firm. The possibility of setting off part of the investment against tax confers an economic advantage on the recipients since their taxable income and hence the amount of tax on that income are reduced compared with what the firm would normally have had to pay. In addition, the aid is available to such firms as operate and, in particular, invest in specific areas of Italy and favours them since it is not granted to firms outside those areas.

(34) The second requirement for the applicability of Article 87 is that the aid must be granted by the State or through State resources. In the present case, the use of State resources takes the form of revenue forgone by the public authorities: the reduction in income tax reduces the tax revenue accruing to the State.

(35) The third and fourth requirements for the applicability of Article 87(1) of the Treaty are that the aid distorts or threatens to distort competition and that it be liable to affect trade between Member Sates. In the present case, the measures threaten to distort competition by strengthening the financial position and freedom of action of the recipient firms compared with competitors who do not qualify. If that effect makes itself felt in intra-Community trade, then trade between Member States is affected. In particular, such measures distort competition and affect trade between Member States if the recipients export part of their production to other Member States; by analogy, if they do not export, domestic output is favoured because firms in other Member States then have less chance of exporting their products to the Italian market ([7]). The same is true when a Member State grants aid to firms operating in the service and distribution industries ([8]).

(36) Accordingly, the measures under examination are, in principle, prohibited by Article 87(1) and can be regarded as compatible with the common market only if they qualify for one of the derogations laid down in the Treaty.

(37) The Commission considers, however, that aid granted under the scheme does not constitute State aid if the conditions laid down by Commission Regulation (EC) No 69/2001 ([9]) or the *de minimis* rules in force when the aid was granted are met.

Unlawfulness of the scheme

(38) In view of the fact that the measures have already entered into force, the Commission regrets that the Italian authorities have not fulfilled their obligation to notify the scheme in accordance with Article 88(3) of the Treaty.

Compatibility of the measures with the common market

(39) Having concluded that the measures in question constitute aid within the meaning of Article 87(1) of the Treaty, the Commission must consider whether the aid is compatible with the common market within the meaning of Article 87(2) and (3) of the Treaty.

(40) As regards the applicability of the derogations provided for in the Treaty, the Commission takes the view that the aid does not qualify for the derogation in Article 87(2)(a) as it is not aid having a social character or aid covered by Article 87(2)(c). For obvious reasons, the derogations in Article 87(3)(b) and (d) are not applicable either.

(41) As regards the applicability of the derogations in Article 87(3)(a) and (c), the Commission refers to the doubts it expressed in this connection in its decision initiating the procedure and takes note of the statements made by the Italian authorities under the procedure to the effect that the aid in question is not aimed at any of the objectives covered by these provisions. The Member State concerned did not provide the necessary information to enable the Commission to assess the compatibility of the scheme in the light of these derogations and it is therefore not possible to assess the scheme from this standpoint in the present Decision. This finding is without prejudice to the possibility that aid granted under the scheme may be declared compatible following an individual examination or may be covered by the exemption regulations.

(42) The Commission considered whether the measures could qualify for the derogation in Article 87(2)(b) as aid to make good the damage caused by natural disasters or exceptional occurrences. It should be noted that Italy, in the course of the procedure, stressed that this was the purpose of the aid.

([7]) Judgment of the European Court of Justice of 13 July 1988 in Case 102/87 *French Republic* v *Commission of the European Communities (SEB)* [1988] ECR 4067, paragraph 19.

([8]) Judgment of the European Court of Justice of 7 March 2002 in Case C-310/99 *Italian Republic* v *Commission of the European Communities* [2002] ECR I-2289, paragraph 85.

([9]) OJ L 10, 13.1.2001, p. 30.

Aid to make good the damage caused by natural disasters

(43) Article 87(2)(b) of the Treaty provides that aid may be granted to make good damage caused by natural disasters or exceptional occurrences. The Commission has consistently taken the view that volcanic eruptions, earthquakes, flooding and landslides constitute natural disasters within the meaning of that Article.

(44) Under the scheme in question, aid is granted to make good the damage suffered by firms as a result of the natural disasters that affected several areas in Italy. The disasters and the areas concerned were specified and defined in administrative instruments.

(45) As the Italian authorities also confirmed in their letter of 10 September 2004, the measure is based on a macroeconomic approach. However, according to the Treaty itself and in line with the Commission's standard practice, there must be a clear and direct link between the event that caused the damage and the State aid intended to remedy it. The link must be established at the level of each firm and not at the macroeconomic level ([10]).

(46) As regards more indirect forms of damage, the Commission communication to the European Parliament and the Council concerning the European Community response to the flooding in Austria, Germany and several applicant countries states that '*as regards compensation for more indirect forms of damage caused by the floods, e.g., production delays because of electricity cuts, difficulties in delivering products due to blockage of certain transport routes, where a clear causal link between the damage and the flood can be established, full compensation is possible*' ([11]). However, in view of the macroeconomic approach taken by the measure implemented by the Italian authorities, it is not possible to identify a clear causal link between the damage for which compensation is available and the natural disasters. Even as regards indirect damage, the link must be established at the level of each firm and not at the macroeconomic level.

(47) In the present case, the scheme benefits all firms carrying out investments in excess of a certain threshold established according to the average in preceding years in the municipalities identified by the Italian authorities, some of which are very large, heavily populated and characterised by a very significant level of economic activity (e.g. Milan, Turin, Genoa). It is clear that many aid recipients did not suffer direct damage, and there is no definite proof of indirect damage. There is no evidence either that any damage was caused solely by the natural disasters referred to by the Italian authorities.

(48) The aid mechanism and the amount granted to each recipient bear no relation to the damage actually suffered but depend on the volume of investments carried out in a given period, the volume of investments in preceding years and the existence of a taxable income. Under such conditions, even if the recipient suffered damage caused by the natural disasters at issue, the amount of aid may exceed the amount of damage.

(49) It must therefore be concluded that the formal investigation procedure has not allayed the Commission's doubts and that the scheme in question constitutes aid which is incompatible with the common market.

(50) In their letter of 10 September 2004, the Italian authorities stated, however, that they would ask the firms for certificates or statements so that they could ascertain the actual damage suffered by each firm and subsequently carry out any checks necessary.

(51) It cannot be ruled out that, in certain specific cases, the aid granted under the scheme satisfies the conditions for being regarded as compatible with the common market. The Italian authorities may therefore check each recipient firm in order to verify the existence of a clear and direct link between the natural disasters in question and the State aid intended to make good the damage. This must make it possible to rule out with certainty any overcompensation for damage suffered by individual firms.

(52) In order to rule out any overcompensation, the Italian authorities must require insurance payments to recipients to be deducted from the aid granted to them. They must also ensure there is no cumulation of aid under the scheme in question with aid under other measures in order to avoid any overcompensation for damage.

([10]) See, for example, State aid cases N 629/02, N 545/02, N 429/01, NN 62/2000, N 770/99 and NN 87/99. Even in the case referred to by the Italian authorities, namely case N 92/2000, the Commission identified a link at the level of the economic operators.

([11]) Document COM(2002) 481 final of 28.8.2002, p. 9.

(53) This Decision concerns the scheme as such and must be enforced forthwith, in particular through recovery of aid granted unlawfully and declared incompatible with the common market. The Commission notes that a negative decision on an aid scheme does not prejudge the possibility that certain aid granted under the same scheme need not be regarded as State aid or may be considered compatible with the common market owing to its particular characteristics (e.g. because the individual grant is covered by the *de minimis* rules or because aid is granted under a decision declaring the aid compatible or under an exemption regulation).

VI. **CONCLUSION**

(54) The Commission finds that Italy has unlawfully implemented the aid in question in breach of Article 88(3) of the Treaty.

(55) On the basis of its assessment, the Commission finds that the scheme in question is incompatible with the common market since it does not satisfy the necessary conditions for exemption as aid to make good the damage caused by natural disasters or exceptional occurrences under Article 87(2)(b), the only derogation claimed by Italy.

(56) Article 14 of Council Regulation (EC) No 659/99 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [12] provides that, where negative decisions are taken in cases of unlawful aid, the Commission is to decide that the Member State concerned must take all necessary measures to recover the aid from the beneficiary. The Commission is not to require recovery of the aid if this would be contrary to a general principle of Community law. Recovery in the present case is not contrary to any principle. The Commission also notes that neither the Italian authorities nor the recipients have invoked such principles.

(57) Italy must take all necessary measures to recover the aid from the recipients, with the exception of individual cases which, in accordance with paragraphs 50, 51 and 52 of this Decision, satisfy the conditions for compatibility with the common market under the derogation in Article 87(2)(b) of the Treaty. To that end, Italy must require the aid recipients to repay the aid within two months of notification of this Decision. The aid to be recovered must include interest calculated in accordance with Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty [13].

Italy must send to the Commission an appropriate form reporting progress in recovering the aid, must draw up a list of the recipients concerned by the recovery and must specify clearly the actual measures taken to effect immediate and effective recovery of the aid. In addition, it must, within two months of the notification of this Decision, send the documents proving that recovery of the unlawful and incompatible aid from the recipients is under way (e.g. circulars, recovery orders issued, etc.),

HAS ADOPTED THIS DECISION:

Article 1

The scheme for granting State aid to firms that carried out investments in the municipalities affected by natural disasters in 2002 and listed in Article 5(e) of Decree-Law No 282 of 24 December 2002, which was converted into Law No 27 of 21 February 2003 and prolongs for certain firms the benefits provided for in Article 4(1) of Law No 383 of 18 October 2001, was unlawfully implemented by Italy in breach of Article 88(3) of the Treaty and is incompatible with the common market, without prejudice to Article 3.

Article 2

Italy shall withdraw the aid scheme referred to in Article 1 in so far as it is continuing to produce effects.

Article 3

Individual aid grants under the scheme referred to in Article 1 shall be compatible with the common market within the meaning of Article 87(2)(b) of the Treaty to the extent that they do not exceed the net value of the damage actually suffered by each of the recipients as a result of the natural disasters referred to in Article 5(e) of Decree-Law No 282 of 24 December 2002, with account being taken of insurance payments or of amounts received under other measures.

Article 4

Individual aid grants under the scheme referred to in Article 1 that do not meet the conditions set out in Article 3 shall be incompatible with the common market.

Article 5

1. Italy shall take all necessary measures to recover from the recipients the aid referred to in Article 4.

2. Italy shall suspend all aid payments from the date of notification of this Decision.

[12] OJ L 83, 27.3.1999, p. 1. Regulation as amended by 2003 Act of Accession.
[13] OJ L 140, 30.4.2004, p. 1.

3. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective enforcement of this Decision.

4. The aid to be recovered shall include interest from the date on which it was at the disposal of the recipients until the date of its recovery.

5. Interest shall be calculated on the basis of the provisions of Chapter V of Regulation (EC) No 794/2004.

6. Italy shall order all the recipients of the aid referred to in Article 4 to repay, within two months of the date of notification of this Decision, the aid unlawfully granted plus interest.

Article 6

Within two months of the date of notification of this Decision, Italy shall inform the Commission of the measures taken to comply herewith by completing the questionnaire attached to this Decision. In particular, it shall, by the same deadline, send to the Commission all the documents demonstrating that it has initiated the procedures for recovering the unlawful aid from the recipients.

Article 7

This Decision is addressed to the Italian Republic.

Done at Brussels, 20 October 2004.

For the Commission

Mario MONTI

Member of the Commission

(Acts adopted under Title V of the Treaty on European Union)

COUNCIL DECISION 2005/316/CFSP

of 18 April 2005

concerning the implementation of Common Position 2004/694/CFSP on further measures in support of the effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Common Position 2004/694/CFSP [1] and in particular Article 2 thereof, in conjunction with the second indent of Article 23(2) of the Treaty on European Union,

Whereas:

(1) Pursuant to Common Position 2004/694/CFSP the Council adopted measures in order to freeze all funds and economic resources belonging to natural persons indicted by the International Criminal Tribunal for the former Yugoslavia (ICTY).

(2) On 21 February 2005 the Council adopted Decision 2005/148/CFSP amending the list in the Annex to Common Position 2004/694/CFSP.

(3) Following the transfer of Mr Ljubomir BOROVCANIN, Mr Gojko JANKOVIC, Mr Sreten LUKIC, Mr Drago NIKOLIC and Mr Vinko PANDUREVIC to ICTY detention units, their names should be removed from the list.

(4) On the other hand, the ICTY has put Mr Zdravko TOLIMIR, whose indictment was made public on 10 February 2005, on the list of suspects having absconded. His name should therefore be added to the list in the Annex to Common Position 2004/694/CFSP.

(5) The list contained in the Annex to Common Position 2004/694/CFSP should be amended accordingly,

HAS DECIDED AS FOLLOWS:

Article 1

The list of persons set out in the Annex to Common Position 2004/694/CFSP shall be replaced by the text set out in the Annex to this Decision.

Article 2

This Decision shall take effect on the date of its adoption.

Article 3

This Decision shall be published in the *Official Journal of the European Union*.

Done at Luxembourg, 18 April 2005.

For the Council
The President
J. KRECKÉ

[1] OJ L 315, 14.10.2004, p. 52. Common Position as last amended by Decision 2005/148/CFSP (OJ L 49, 22.2.2005, p. 34).

ANNEX

'ANNEX

List of persons referred to in Article 1

Name: BOROVNICA Goran
Date of birth: 15.8.1965
Place of birth: Kozarac, Municipality of Prijedor, Bosnia and Herzegovina
Nationality: Bosnia and Herzegovina

Name: DJORDJEVIC Vlastimir
Date of birth: 1948
Place of birth: Vladicin Han, Serbia and Montenegro
Nationality: Serbia and Montenegro

Name: GOTOVINA Ante
Date of birth: 12.10.1955
Place of birth: Island of Pasman, Municipality of Zadar, Republic of Croatia
Nationality: Croatian
French

Name: HADZIC Goran
Date of birth: 7.9.1958
Place of birth: Vinkovci, Republic of Croatia
Nationality: Serbia and Montenegro

Name: KARADZIC Radovan
Date of birth: 19.6.1945
Place of birth: Petnjica, Savnik, Montenegro, Serbia and Montenegro
Nationality: Bosnia and Herzegovina

Name: LUKIC Milan
Date of birth: 6.9.1967
Place of birth: Visegrad, Bosnia and Herzegovina
Nationality: Bosnia and Herzegovina
Possibly Serbia and Montenegro

Name: LUKIC Sredoje
Date of birth: 5.4.1961
Place of birth: Visegrad, Bosnia and Herzegovina
Nationality: Bosnia and Herzegovina
Possibly Serbia and Montenegro

Name: MLADIC Ratko
Date of birth: 12.3.1942
Place of birth: Bozanovici, Municipality of Kalinovik, Bosnia and Herzegovina
Nationality: Bosnia and Herzegovina
Possibly Serbia and Montenegro

Name: PAVKOVIC Nebojsa
Date of birth: 10.4.1946
Place of birth: Senjski Rudnik, Serbia and Montenegro
Nationality: Serbia and Montenegro

Name: POPOVIC Vujadin
Date of birth: 14.3.1957
Place of birth: Sekovici, Bosnia and Herzegovina
Nationality: Serbia and Montenegro

Name: TOLIMIR Zdravko
Date of birth: 27.11.1948
Place of birth:
Nationality: Bosnia and Herzegovina

Name: ZELENOVIC Dragan
Date of birth: 12.2.1961
Place of birth: Foca, Bosnia and Herzegovina
Nationality: Bosnia and Herzegovina

Name: ZUPLJANIN Stojan
Date of birth: 22.9.1951
Place of birth: Kotor Varos, Bosnia and Herzegovina
Nationality: Bosnia and Herzegovina'.