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⁽¹⁾ Text with EEA relevance

I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COMMISSION REGULATION (EC) No 845/2007**of 18 July 2007****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 19 July 2007.

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

Done at Brussels, 18 July 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 756/2007 (OJ L 172, 30.6.2007, p. 41).

ANNEX

to Commission Regulation of 18 July 2007 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	MK	52,4
	TR	106,7
	ZZ	79,6
0707 00 05	MK	68,1
	TR	146,1
	ZZ	107,1
0709 90 70	TR	86,5
	ZZ	86,5
0805 50 10	AR	64,5
	UY	55,7
	ZA	59,1
	ZZ	59,8
0808 10 80	AR	89,7
	BR	96,8
	CL	85,8
	CN	86,7
	NZ	105,7
	US	89,1
	UY	60,7
	ZA	92,4
	ZZ	88,4
0808 20 50	AR	90,1
	CL	83,1
	NZ	144,9
	ZA	102,6
	ZZ	105,2
0809 10 00	TR	179,1
	ZZ	179,1
0809 20 95	TR	286,2
	US	344,7
	ZZ	315,5
0809 30 10, 0809 30 90	TR	152,4
	ZZ	152,4
0809 40 05	IL	141,3
	ZZ	141,3

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 846/2007**of 18 July 2007****fixing the weighting coefficients to be used in calculating the Community market price for pig carcasses for the 2007/08 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

marketing year and Commission Regulation (EC) No 1201/2006 ⁽³⁾ should be repealed.

Having regard to the Treaty establishing the European Community,

(4) Since the 2007/08 marketing year begins on 1 July 2007, this Regulation should be applicable as of this date.

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pigmeat ⁽¹⁾, and in particular Article 4(6) thereof,

(5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Pigmeat,

Whereas:

HAS ADOPTED THIS REGULATION:

(1) The Community market price for pig carcasses, as referred to in Article 4(2) of Regulation (EEC) No 2759/75, must be established by weighting the prices recorded in each Member State by coefficients expressing the relative size of the pig population of each Member State.

Article 1

The weighting coefficients referred to in Article 4(2) of Regulation (EEC) No 2759/75 shall be as specified in the Annex hereto.

(2) These coefficients should be determined on the basis of the number of pigs counted at the beginning of December each year in accordance with Council Directive 93/23/EEC of 1 June 1993 on the statistical surveys to be carried out on pig production ⁽²⁾.

Article 2

Regulation (EC) No 1201/2006 is hereby repealed.

(3) In view of the results of the census of December 2006, new weighting coefficients should be set for the 2007/08

Article 3

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

It shall apply from 1 July 2007.

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

Done at Brussels, 18 July 2007.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 282, 1.11.1975, p. 1. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

⁽²⁾ OJ L 149, 21.6.1993, p. 1. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽³⁾ OJ L 218, 9.8.2006, p. 10. Regulation as amended by Regulation (EC) No 1977/2006 (OJ L 368, 23.12.2006, p. 87).

ANNEX

Weighting coefficients to be used in calculating the Community market price for pig carcasses for the 2007/08 marketing year	
Article 4(2) of Regulation (EEC) No 2759/75	
Belgium	3,9 %
Bulgaria	0,6 %
Czech Republic	1,7 %
Denmark	8,4 %
Germany	16,5 %
Estonia	0,2 %
Greece	0,6 %
Spain	16,1 %
France	9,3 %
Ireland	1,1 %
Italy	5,7 %
Cyprus	0,3 %
Latvia	0,3 %
Lithuania	0,7 %
Luxembourg	0,1 %
Hungary	2,5 %
Malta	0,1 %
Netherlands	6,9 %
Austria	1,9 %
Poland	11,6 %
Portugal	1,4 %
Romania	4,2 %
Slovenia	0,4 %
Slovakia	0,7 %
Finland	0,9 %
Sweden	1,0 %
United Kingdom	2,9 %

COMMISSION REGULATION (EC) No 847/2007
of 18 July 2007
implementing Regulation (EC) No 808/2004 of the European Parliament and of the Council
concerning Community statistics on the information society
(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 808/2004 of the European Parliament and of the Council concerning Community statistics on the information society ⁽¹⁾, and in particular Articles 8 thereof,

Whereas:

(1) Regulation (EC) No 808/2004 established a common framework for the systematic production of Community statistics on the information society.

(2) Pursuant to Article 8(1) of Regulation (EC) No 808/2004 implementing measures are necessary to determine the

data to be supplied for preparation of the statistics defined in Articles 3 and 4 of that Regulation and the deadlines for their transmission.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Statistical Programme Committee, established by Council Decision 89/382/EEC, Euratom ⁽²⁾,

HAS ADOPTED THIS REGULATION:

Article 1

The data to be transmitted for the production of Community statistics on the information society as laid down in Articles 3(2) and 4 of Regulation (EC) No 808/2004 shall be as specified in Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on the 20th day following 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 July 2007.

For the Commission
Joaquín ALMUNIA
Member of the Commission

⁽¹⁾ OJ L 143, 30.4.2004, p. 49. Regulation as amended by Regulation (EC) No 1893/2006 (OJ L 393, 30.12.2006, p. 1).

⁽²⁾ OJ L 181, 28.6.1989, p. 47.

ANNEX I

MODULE 1: ENTERPRISES AND THE INFORMATION SOCIETY**1. SUBJECTS AND THEIR CHARACTERISTICS**

- (a) The subjects to be covered for the reference year 2008, selected from the list in Annex I to Regulation (EC) No 808/2004, are the following:

- ICT systems and their usage in enterprises;
- Use of Internet and other electronic networks by enterprises;
- e-Commerce and e-Business processes;

- (b) The following enterprise characteristics shall be collected:

ICT systems and their usage in enterprises

Characteristics to be collected for all enterprises:

- Computer usage

Characteristics to be collected for enterprises that use computers:

- (Optional) Percentage of persons employed using computers at least once a week
- Use of an internal computer network (e.g. LAN)
- Use of an internal homepage (intranet)
- Use of extranet
- Use of dedicated applications for employees to access human resources services (e.g. see open job positions, request annual leave, view or download payslips, or other services)
- (Optional) Degree of improvement through ICT projects: reorganisation and simplification of work routines
- (Optional) Degree of improvement through ICT projects: release of resources
- (Optional) Degree of improvement through ICT projects: higher earnings for the enterprise
- (Optional) Degree of improvement through ICT projects: development of new products and services

Characteristics to be collected for enterprises that use an internal computer network (e.g. LAN):

- Use of wireless access to the internal computer network (e.g. LAN)

Characteristics to be collected for enterprises that use an intranet:

- (Optional) Use of intranet for sharing: general policy or strategy of the enterprise
- (Optional) Use of intranet for sharing: internal company newsletters or daily news
- (Optional) Use of intranet for sharing: day-to-day/working documents (e.g. for meeting)
- (Optional) Use of intranet for sharing: manuals, guides or training material
- (Optional) Use of intranet for sharing: product or services catalogues

Use of Internet and other electronic networks by enterprises

Characteristics to be collected for enterprises that use computers:

- Access to Internet

Characteristics to be collected for enterprises that have access to Internet:

- Percentage of persons employed using computers connected to the World Wide Web at least once a week
- Internet connection: traditional modem or ISDN
- Internet connection: DSL
- Internet connection: other fixed Internet connection
- Internet connection: mobile connection
- Internet usage as consumer for banking and financial services
- Internet usage as consumer for training and education
- Internet usage for interaction with public authorities, in the previous calendar year
- Use of website

Characteristics to be collected for enterprises that interacted with public authorities via Internet, in the previous calendar year:

- Internet usage for obtaining information from public authorities' websites, in the previous calendar year
- Internet usage for obtaining forms from public authorities' websites, in the previous calendar year
- Internet usage for returning filled in forms to public authorities, in the previous calendar year
- Internet usage for treating an administrative procedure completely electronically without the need for additional paper work, in the previous calendar year
- Internet usage for submitting a proposal in an electronic tender system (public e-procurement), in the previous calendar year

Characteristics to be collected for enterprises that have a website:

- Provision of the following facility: product catalogues or price lists
- Provision of the following facility: possibility for visitors to customise or design products
- Provision of the following facility: online ordering or reservation or booking facility
- Provision of the following facility: online payment
- Provision of the following facility: personalised content for regular/repeated visitors
- Provision of the following facility: advertisement of open job positions or online job application

E-commerce and e-business processes

Characteristics to be collected for enterprises that use computers:

- Use of automated data exchange (ADE) defined as the exchange of messages (e.g. orders, invoices, payment transactions or description of goods) via the internet or other computer networks in an agreed format which allows its automatic processing (e.g. XML, EDIFACT etc.) without the individual message being manually typed

- Electronic share of supply chain management information with customers or suppliers
- Share electronically and automatically relevant information about sales orders received (either electronically or not) with the management of inventory levels
- Share electronically and automatically relevant information about sales orders received (either electronically or not) with the accounting
- Share electronically and automatically relevant information about sales orders received (either electronically or not) with the production or services management
- Share electronically and automatically relevant information about sales orders received (either electronically or not) with the distribution management
- Share electronically and automatically relevant information about purchases orders sent (either electronically or not) with the management of inventory levels
- Share electronically and automatically relevant information about purchases orders sent (either electronically or not) with the accounting
- Use of ERP software package to share information on sales and/or purchases with other internal functional areas (for example, finance, planning, marketing, etc.)
- Use of any software application for managing information about clients (so called CRM) to capture, store and make available to other business functions the information about its clients
- Use of any software application for managing information about clients (so called CRM) to make analysis of the information about clients for marketing purposes (setting prices, make sales promotion, choose distribution channels, etc.)
- Use of free or open source operating systems, such as Linux (i.e. with its source code available, no copyright cost, and the possibility to modify and/or (re)distribute it)
- Use of digital signature in any message sent, i.e. using encryption methods that assure the authenticity and integrity of the message (uniquely linked to and capable of identifying the signatory and where any subsequent change to the message is detectable)

Characteristics to be collected for enterprises that use automated data exchange:

- Use of ADE for: sending orders to suppliers
- Use of ADE for: receiving e-invoices
- Use of ADE for: receiving orders from customers
- Use of ADE for: sending e-invoices
- Use of ADE for: sending or receiving product information
- Use of ADE for: sending or receiving transport documents
- Use of ADE for: sending payment instructions to financial institutions
- Use of ADE for: sending or receiving data to/from public authorities
- (Optional) Use of ADE format: EDIFACT or similar standards
- (Optional) Use of ADE format: XML based standards
- (Optional) Use of ADE format: proprietary standards agreed between the enterprise and other organisations

Characteristics to be collected for enterprises that use computers and do not use automated data exchange:

- (Optional) Barriers to ADE: no interest in using automated data exchange due to lack of relevance for the business

- (Optional) Barriers to ADE: lack of expertise in-house for its implementation
- (Optional) Barriers to ADE: return on the investment too low or not clear
- (Optional) Barriers to ADE: lack of software solutions appropriate for the specific sector/size of the enterprise
- (Optional) Barriers to ADE: difficulty with agreeing common standards with business partners
- (Optional) Barriers to ADE: uncertainty of the legal status of the messages exchanged

Characteristics to be collected for enterprises that share supply chain management information with customers or suppliers:

- Exchange of information with suppliers on inventory levels, production plans or demand forecasts
- (Optional) Exchange of information with suppliers on demand forecasts
- (Optional) Exchange of information with suppliers on inventory levels
- (Optional) Exchange of information with suppliers on production plans
- Exchange of information with suppliers on progress of deliveries
- Exchange of information with customers on inventory levels, production plans or demand forecasts
- (Optional) Exchange of information with customers on demand forecasts
- (Optional) Exchange of information with customers on inventory levels
- (Optional) Exchange of information with customers on production plans
- Exchange of information with customers on progress of deliveries
- Exchange of information with suppliers or customers via websites
- Exchange of information with suppliers or customers via automated data exchange

Characteristics to be collected for enterprises that use computers, and not classified in Section J of NACE Rev. 1.1:

- Have received orders for products or services via computer networks, in the previous calendar year
- Have sent orders for products or services via computer networks, in the previous calendar year

Characteristics to be collected for enterprises that have received orders via computer networks, and not classified in Section J of NACE Rev. 1.1:

- Percentage of total turnover that resulted from orders received via computer networks, in the previous calendar year
- (Optional) Percentage of e-commerce sales resulting from orders received via websites, in the previous calendar year
- (Optional) Percentage of e-commerce sales resulting from orders received via automated data exchange over the internet, in the previous calendar year
- (Optional) Percentage of e-commerce sales resulting from orders received via automated data exchange over other computer networks, in the previous calendar year
- Use of secure protocols (SSL/TLS) in receiving Internet orders

Characteristics to be collected for enterprises that have sent orders via computer networks, and not classified in Section J of NACE Rev. 1.1:

- Percentage of total purchases value resulting from orders placed via computer networks, in percentage classes, in the previous calendar year ([0;1[, [1;5[, [5;10[, [10;25[, [25;100])

2. COVERAGE

The characteristics defined in heading 1(b) of this Annex are to be collected and obtained for enterprises classified in the following economic activities, of the following enterprise size and with the following geographic scope.

(a) Economic activity: enterprises classified in the following categories of NACE-Rev. 1.1:

NACE category	Description
Section D	'Manufacturing'
Section F	'Construction'
Section G	'Wholesale and retail trade; repair of motor vehicles, motorcycles and personal and household goods'
Groups 55.1 and 55.2	'Hotels' and 'Camping sites and other provision of short-stay accommodation'
Section I	'Transport, storage and communication'
Class 65.12	'Other monetary intermediation'
Class 65.22	'Other credit granting'
Class 66.01	'Life Insurance'
Class 66.03	'Non-Life Insurance'
Section K	'Real estate, renting and business activities'
Groups 92.1 and 92.2	'Motion picture and video activities' and 'Radio and television activities'

Enterprises classified in the following categories of NACE-Rev. 1.1 are to be covered optionally:

NACE category	Description
Section E	'Electricity, gas and water supply'
Groups 55.3, 55.4 and 55.5	'Restaurants', 'Bars' and 'Canteens and catering'
Groups 92.3 to 92.7 inclusive	'Recreational, cultural and sporting activities', except 'Motion picture and video activities' and 'Radio and television activities'
Division 93	'Other service activities'
Classes 67.12, 67.13, 67.2	'Activities auxiliary to financial intermediation', except 'Administration of financial markets'

(b) Enterprise size: enterprises with 10 or more persons employed; enterprises with less than 10 persons employed are to be covered optionally;

(c) Geographic scope: enterprises located in any part of the territory of the Member State.

3. REFERENCE PERIODS

The reference period is the year 2007 for the characteristics which refer to the previous calendar year. The reference period is January 2008 for the other characteristics.

4. BREAKDOWNS

The subjects and their characteristics listed in heading 1(b) of this Annex shall be provided separately for the following breakdowns.

- (a) Economic activity breakdown: according to the following NACE Rev. 1.1 aggregates. (The characteristics are to be provided for Division 22 optionally.)

NACE aggregation
DA + DB + DC + DD + DE
DF + DG + DH
DI + DJ
DK + DL + DM + DN
40+41 (optional)
45
50
51
52
55.1 + 55.2
55.3+55.4+55.5 (optional)
60 + 61 + 62 + 63
64
65.12 + 65.22
66.01 + 66.03
72
70 + 71 + 73 + 74
92.1 + 92.2
92.3 to 92.7 (optional)
93 (optional)
22 (optional)
67.12+67.13+67.2 (optional)

- (b) Size class breakdown: data shall be broken down by the following size classes of the number of persons employed.

Size class
Less than 10 persons employed (optional)
Less than five persons employed (optional)
Five to nine persons employed (optional)
10 or more persons employed
10 to 49 persons employed
50 to 249 persons employed
250 or more persons employed

- (c) Geographic breakdown: data shall be broken down by the following regional groups.

Regional group
Convergence regions (including phasing-out regions)
Regional competitiveness and employment regions (including phasing-in regions)

5. PERIODICITY

The data shall be provided once for the year 2008.

6. DEADLINES

- (a) The aggregate data, where necessary flagged for confidentiality or unreliability, referred to in Article 6 of Regulation (EC) No 808/2004 shall be forwarded to Eurostat before 5 October 2008. By that date, the dataset has to be finalised, validated and accepted. The tabulated, computer readable transmission format shall follow the instructions provided by Eurostat.
 - (b) The metadata referred to in Article 6 of Regulation (EC) No 808/2004 shall be forwarded to Eurostat before 31 May 2008. The metadata shall follow the report template provided by Eurostat.
 - (c) The quality report referred to in Article 7(4) of Regulation (EC) No 808/2004 shall be forwarded to Eurostat by 5 November 2008. The quality report shall follow the report template provided by Eurostat.
-

ANNEX II

MODULE 2: INDIVIDUALS, HOUSEHOLDS AND THE INFORMATION SOCIETY**1. SUBJECTS AND THEIR CHARACTERISTICS**

- (a) The subjects to be covered for the reference year 2008, selected from the list in Annex I to Regulation (EC) No 808/2004, are the following:

- access to and use of ICT systems by individuals and/or in households,
- use of Internet for different purposes by individuals and/or in households,
- (optional) ICT competence,
- barriers to use of ICT and the Internet.

- (b) The following characteristics shall be collected:

Access to and use of ICT systems by individuals and/or in households

Characteristics to be collected for all households:

- access at home to a computer,
- access at home to the Internet, regardless of whether it is used.

Characteristics to be collected for households with access to the Internet at home:

- devices used to access the Internet at home: desktop computer,
- devices used to access the Internet at home: portable computer (laptop),
- devices used to access the Internet at home: other mobile devices,
- (optional) devices used to access the Internet at home: via Internet-enabled mobile phone,
- (optional) devices used to access the Internet at home: via handheld computer,
- devices used to access the Internet at home: TV set with specific Internet device,
- devices used to access the Internet at home: games console,
- devices used to access the Internet at home: unknown,
- type of connection used to access the Internet at home: modem or ISDN,
- type of connection used to access the Internet at home: DSL (e.g. ADSL, SHDSL, etc.),
- type of connection used to access the Internet at home: other broadband connection (e.g. cable, UMTS, etc.),
- type of connection used to access the Internet at home: mobile phone over narrowband (GPRS, etc.).

Characteristics to be collected for all individuals:

- most recent computer use (within the last three months; between three months and a year ago; more than one year ago; never used a computer),
- use of a mobile phone.

Characteristics to be collected for individuals having used a computer in the last three months:

- average frequency of computer use (every day or almost every day; at least once a week (but not every day); at least once a month (but not every week); less than once a month),
- location of computer use in the last three months: at home,
- location of computer use in the last three months: at place of work (other than home),
- location of computer use in the last three months: at place of education,
- location of computer use in the last three months: at another person's home,
- location of computer use in the last three months: at other places (e.g. public library, hotel, airport, internet café, etc.).

Characteristics to be collected for individuals having used a mobile phone:

- mobile phone usage in the last three months for private purposes for sending photographs or video clips,
- mobile phone usage in the last three months for private purposes for uploading photographs or video clips from your phones to websites,
- mobile phone usage in the last three months for private purposes for receiving subscription-paid information services (for example news, weather forecast, sports results etc.),
- mobile phone usage in the last three months for private purposes for browsing the Internet,
- mobile phone usage in the last three months for private purposes for reading e-mails,
- mobile phone usage in the last three months for private purposes for downloading and/or watching TV or video,
- mobile phone usage in the last three months for private purposes for paying for goods or services (instead of cash or credit card),
- mobile phone usage in the last three months for private purposes for personal navigation (for finding location or address), use of location-aware services (e.g. to receive nearby travel, shopping, event information),
- use of pre-payment,
- use of post-payment.

Characteristics to be collected for individuals having used a mobile phone and post-payment:

- (optional) payment of flat rate for Internet access via your mobile phone.

Use of Internet for different purposes by individuals and/or in households

Characteristics to be collected for all individuals:

- most recent Internet use (within the last three months; between three months and a year ago; more than one year ago; never used the Internet).

Characteristics to be collected for individuals having already used the Internet:

- most recent Internet commerce activity for private use (within the last three months; between three months and a year ago; more than one year ago; never bought or ordered).

Characteristics to be collected for individuals having used the Internet in the last three months:

- average frequency of Internet use in the last three months (everyday or almost every day; at least once a week (but not every day); at least once a month (but not every week); less than once a month),
- location of Internet use in the last three months: at home,
- location of Internet use in the last three months: at place of work (other than home),
- location of Internet use in the last three months: at place of education,
- location of Internet use in the last three months: at another person's home,
- location of Internet use in the last three months: at other places,
- (optional) location of Internet use in the last three months: public library,
- (optional) location of Internet use in the last three months: post office,
- (optional) location of Internet use in the last three months: public office, town hall or government agency,
- (optional) location of Internet use in the last three months: community or voluntary organisation,
- (optional) location of Internet use in the last three months: Internet café,
- (optional) location of Internet use in the last three months: hotspot (at hotels, airports, public places etc.),
- use of mobile devices to access the Internet: mobile phone via GPRS,

- use of mobile devices to access the Internet: mobile phone via UMTS (3G),
- use of mobile devices to access the Internet: handheld computer (palmtop, PDA),
- use of mobile devices to access the Internet: portable computer (laptop) via wireless connection away from home or work,
- Internet usage in the last three months for private purposes for sending and/or receiving e-mail,
- Internet usage in the last three months for private purposes for finding information about goods and services,
- Internet usage in the last three months for private purposes for using services related to travel and accommodation,
- Internet usage in the last three months for private purposes for downloading software (other than games software),
- Internet usage in the last three months for private purposes for reading or downloading online news, newspapers or news magazines,
- Internet usage in the last three months for private purposes for looking for a job or sending a job application,
- Internet usage in the last three months for private purposes for seeking health related information,
- Internet usage in the last three months for private purposes for Internet banking,
- (optional) Internet usage in the last three months for private purposes for selling goods or services, e.g. via auctions,
- Internet usage in the last three months for private purposes for looking for information about education, training or course offers,
- Internet usage in the last three months for private purposes for doing an online course (in any subject),
- Internet usage in the last three months for private purposes for consulting the Internet with the purpose of learning,
- Internet usage in the last three months for private purposes for obtaining information from public authorities' websites,
- Internet usage in the last 12 months for private purposes for obtaining information from public authorities' websites,
- Internet usage in the last three months for private purposes for downloading official forms from public authorities' websites,
- Internet usage in the last 12 months for private purposes for downloading official forms from public authorities' websites,
- Internet usage in the last three months for private purposes for sending filled in forms to public authorities,
- Internet usage in the last 12 months for private purposes for sending filled in forms to public authorities,
- Internet usage in the last three months for private purposes for telephoning over the Internet,
- Internet usage in the last three months for private purposes for video calls (via webcam) over the Internet,
- Internet usage in the last three months for private purposes for posting messages to chat sites, newsgroups or on-line discussion forum,
- Internet usage in the last three months for private purposes for use of instant messaging (real time communication with others by typed text),
- Internet usage in the last three months for private purposes for reading weblogs or blogs,
- Internet usage in the last three months for private purposes for creating or maintaining own weblog or blog,
- Internet usage in the last three months for private purposes for listening to web radios and/or watching web television,

- Internet usage in the last three months for private purposes for downloading and/or listening to music (other than via web radio),
- Internet usage in the last three months for private purposes for downloading and/or watching movies, short films or video files (other than via web TV),
- Internet usage in the last three months for private purposes for using peer-to-peer file sharing for exchanging movies, music, video files,
- Internet usage in the last three months for private purposes for using podcast service to automatically receive audio or video files of interest,
- Internet usage in the last three months for private purposes for downloading computer or video games or their updates,
- Internet usage in the last three months for private purposes for playing networked games with others,
- Internet usage in the last three months for private purposes for uploading self-created content (text, images, photos, videos, music etc.) to any website to be shared,
- Internet usage in the last three months for private purposes for using browser based news feeds (e.g. RSS) for reading new content on websites,
- payment for online audiovisual content in the last three months,
- Internet usage for reading of online news replaced reading of printed news, newspapers, magazines (very much; to some extent; not at all),
- Internet usage for downloading music files replaced buying a CD (very much; to some extent; not at all),
- Internet usage for downloading films and videos replaced buying/renting a DVD (very much; to some extent; not at all),
- Internet usage for listening to web radio replaced listening to normal radio (very much; to some extent; not at all),
- Internet usage for online contacts replaced personal contacts with public services and administrations (very much; to some extent; not at all).

Characteristics to be collected for individuals having used the Internet in the last three months for private purposes for reading or downloading online news, newspapers or news magazines:

- Internet usage in the last three months for private purposes for reading or downloading online news, newspapers or news magazines the individual subscribed to in order to receive them regularly.

Characteristics to be collected for individuals having used the Internet in the last three months for private purposes for telephoning over the Internet and/or video calls (via webcam) over the Internet:

- replacement of mobile phone calls by Internet calls (very much; to some extent; not at all),
- replacement of use of fixed telephone line (not linked to Internet) by Internet calls (very much; to some extent; not at all),
- replacement of use of e-mails by Internet calls (very much; to some extent; not at all),
- no effect on other communication means by Internet calls.

Characteristics to be collected for individuals having used the Internet in the last three months for downloading and/or listening to music and/or downloading and/or watching movies, short films or video files and/or using peer-to-peer file sharing for exchanging movies, music, video files and/or using podcast service to automatically receive audio or video files of interest:

- average frequency of downloading music and/or films in the last three months (every day or almost every day; at least once a week (but not every day); at least once a month (but not every week); less than once a month; not applicable (only listened to music and/or watched films).

Characteristics to be collected for individuals having not paid for online audiovisual content in the last three months:

- would pay if there was a lack of free available content,
- would pay if there was right to share legally protected content,

- would pay if more convenient payment methods were available,
- would pay if prices were more advantageous,
- would pay if paid content had better quality than free services,
- would pay if there was a wider range of choices and/or content was more easily available,
- would pay for none of the above, but other (e.g. to support artists work, etc.),
- would not be willing to pay, nothing would make willingness to pay.

Characteristics to be collected for individuals having used the Internet for Internet commerce activities for private use in the last 12 months:

- Internet usage for ordering food or groceries in the last 12 months,
- Internet usage for ordering household goods in the last 12 months,
- Internet usage for ordering films or music in the last 12 months (to be reported separately: whether delivered online),
- Internet usage for ordering books, magazines, newspapers or e-learning material in the last 12 months (to be reported separately: whether delivered online),
- Internet usage for ordering clothes or sports goods in the last 12 months,
- Internet usage for ordering computer software and upgrades in the last 12 months (to be reported separately: whether delivered online),
- Internet usage for ordering computer hardware in the last 12 months,
- Internet usage for ordering electronic equipment (incl. cameras) in the last 12 months,
- Internet usage for purchasing shares, financial services or insurances in the last 12 months,
- Internet usage for ordering travel or holiday accommodation in the last 12 months,
- Internet usage for ordering tickets for events in the last 12 months,
- Internet usage for ordering lotteries or betting in the last 12 months,
- Internet usage for ordering other goods or services in the last 12 months,
- goods or services bought or ordered in the last 12 months from national sellers,
- goods or services bought or ordered in the last 12 months from sellers from other EU countries,
- goods or services bought or ordered in the last 12 months from sellers from the rest of the world,
- goods or services bought or ordered in the last 12 months: country of origin of sellers is not known.

ICT competence

Characteristics to be collected for individuals having ever used a computer:

- (optional) most recent training course of at least three hours on any aspect of computer use (within the last three months; between three months and a year ago; between one and three years ago; more than three years ago; never taken one).

Barriers to use of ICT and the Internet

Characteristics to be collected for households without access to the Internet at home:

- reason for not having access to the Internet at home: have access to Internet elsewhere,
- reason for not having access to the Internet at home: do not want Internet (because content harmful, etc.),
- reason for not having access to the Internet at home: do not need Internet (because not useful, not interesting, etc.),
- reason for not having access to the Internet at home: equipment costs too high,

- reason for not having access to the Internet at home: access costs too high (telephone, etc.),
- reason for not having access to the Internet at home: lack of skills,
- reason for not having access to the Internet at home: privacy or security concerns,
- reason for not having access to the Internet at home: physical disability,
- reason for not having access to the Internet at home: none of the above, but other.

2. COVERAGE

- (a) The statistical units to be represented for the characteristics listed in heading 1(b) of this Annex that relate to households are households with at least one member in the age group 16 to 74.
- (b) The statistical units to be represented for the characteristics listed in heading 1(b) of this Annex that relate to individuals are the individuals aged 16 to 74.
- (c) The geographical scope shall cover households and/or individuals living in any part of the territory of the Member State.

3. REFERENCE PERIOD

The main reference period for the statistics to be collected is the first quarter of 2008.

4. BREAKDOWNS

- (a) For the subjects and their characteristics listed in heading 1(b) of this Annex that relate to households, the following background characteristics shall be collected:
 - region of residence (to be collected according to NUTS1 classification of regions),
 - (optional) region of residence according to NUTS2 classification,
 - geographical location: living in convergence regions (including phasing-out regions); living in regional competitiveness and employment regions (including phasing-in regions),
 - degree of urbanisation: living in densely populated areas; living in intermediate populated areas; living in thinly populated areas,
 - type of household: number of members in the household (to be collected separately: number of children under 16),
 - household's net monthly income (to be collected as a value or using quartiles).
- (b) For the subjects and their characteristics listed in heading 1(b) of this Annex that relate to individuals, the following background characteristics shall be collected:
 - region of residence (to be collected according to NUTS1 classification of regions),
 - (optional) region of residence according to NUTS2 classification,
 - geographical location: living in convergence regions (including phasing-out regions); living in regional competitiveness and employment regions (including phasing-in regions),
 - degree of urbanisation: living in densely populated areas; living in intermediate populated areas; living in thinly populated areas,
 - gender: male; female,
 - age (to be collected as value or using age groups): under 16 (optional); 16 to 24; 25 to 34; 35 to 44; 45 to 54; 55 to 64; 65 to 74; over 74 (optional),
 - highest completed level of education according to the International Standard Classification of Educational Levels (ISCED 97): low (ISCED 0, 1 or 2); middle (ISCED 3 or 4); high (ISCED 5 or 6),
 - employment situation: employee or self-employed including family workers; unemployed; students not in the labour force; other not in the labour force,
 - occupation according to the International Standard Classification of Occupations (ISCO-88/ISCO-08): manual workers, non-manual workers; ICT workers, non-ICT workers.

5. PERIODICITY

- The data shall be provided once for the year 2008.

6. DEADLINES FOR TRANSMISSION OF RESULTS

- (a) The aggregate data, where necessary flagged for confidentiality or unreliability, referred to in Article 6 of Regulation (EC) No 808/2004 shall be forwarded to Eurostat before 5 October 2008. By that date, the dataset has to be finalised, validated and accepted. The tabulated, computer readable transmission format shall follow the instructions provided by Eurostat.
 - (b) The metadata referred to in Article 6 of Regulation (EC) No 808/2004 shall be forwarded to Eurostat before 31 May 2008. The metadata shall follow the report template provided by Eurostat.
 - (c) The quality report referred to in Article 7(4) of Regulation (EC) No 808/2004 shall be forwarded to Eurostat by 5 November 2008. The quality report shall follow the report template provided by Eurostat.
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COMMISSION REGULATION (EC) No 848/2007**of 18 July 2007****on the issuing of import licences for applications lodged during the first seven days of July 2007
under tariff quotas opened by Regulation (EC) No 616/2007 for poultrymeat**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽²⁾, and in particular Article 7(2) thereof,

Having regard to Commission Regulation (EC) No 616/2007 of 4 June 2007 opening and providing for the administration of Community tariff quotas for poultrymeat originating in Brazil, Thailand and other third countries ⁽³⁾, and in particular Article 5(5) thereof,

Whereas:

- (1) Regulation (EC) No 616/2007 opened tariff quotas for imports of products in the poultrymeat sector.
- (2) The applications for import licences lodged during the first seven days of July 2007 for the subperiod 1 October to 31 December 2007 relate, for some quotas, to quantities exceeding those available. The extent to which

licences may be issued should therefore be determined and an allocation coefficient laid down to be applied to the quantities applied for.

- (3) The applications for import licences lodged during the first seven days of July 2007 for the subperiod 1 October to 31 December 2007 do not, for some quotas, cover the total quantity available. The quantities for which applications have not been lodged should therefore be determined and these should be added to the quantity fixed for the following quota subperiod,

HAS ADOPTED THIS REGULATION:

Article 1

1. The quantities for which import licence applications have been lodged pursuant to Regulation (EC) No 616/2007 for the subperiod 1 October to 31 December 2007 shall be multiplied by the allocation coefficients set out in the Annex to this Regulation.

2. The quantities for which import licence applications have not been lodged pursuant to Regulation (EC) No 616/2007, to be added to the subperiod 1 January to 31 March 2008, are set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 19 July 2007.

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

Done at Brussels, 18 July 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 282, 1.11.1975, p. 77. Regulation as last amended by Regulation (EC) No 679/2006 (OJ L 119, 4.5.2006, p. 1).

⁽²⁾ OJ L 238, 1.9.2006, p. 13. Regulation amended by Regulation (EC) No 289/2007 (OJ L 78, 17.3.2007, p. 17).

⁽³⁾ OJ L 142, 5.6.2007, p. 3.

ANNEX

Group No	Order No	Allocation coefficient for import licence applications lodged for the subperiod 1.10.2007-31.12.2007 (%)	Quantities not applied for to be added to the subperiod 1.1.2008-31.3.2008 (kg)
1	09.4211	2,800279	—
2	09.4212	(¹)	55 566 000
4	09.4214	31,987978	—
5	09.4215	58,665286	—
6	09.4216	(²)	3 179 763
7	09.4217	17,474248	—
8	09.4218	(²)	5 323 600

(¹) Not applied: no licence application has been sent to the Commission.

(²) Not applied: the applications do not cover the total quantity available.

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 6 December 2006

on the State aid C 22/2006 (ex N 615/05) which Italy is planning to implement for tax rebates on oil emulsions with water

(notified under document number C(2006) 5805)

(Only the Italian version is authentic)

(Text with EEA relevance)

(2007/508/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

request dated 6 March 2006, the Italian authorities provided additional information by letter dated 6 April 2006.

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

- (2) By letter dated 7 June 2006, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the measure.

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

- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission called on interested parties to submit their comments.

Having called on interested parties to submit their comments pursuant to those provision(s) ⁽¹⁾ and having regard to their comments,

Whereas:

- (4) The Commission received comments from interested parties. It forwarded them to Italy, which was given the opportunity to react; its comments were received by letters dated 13 September 2006 and 29 September 2006.

I. PROCEDURE

- (1) By letter dated 5 March 2005, registered as received on 13 December 2005 and supplemented by letter dated 9 January 2006, registered as received on 12 January 2006, the Italian authorities notified the Commission of the abovementioned measure in accordance with Article 88(3) of the EC Treaty. Following a Commission

II. DESCRIPTION OF THE MEASURE

- (5) Emulsified fuels are a blend of approximately 15 % water and 85 % fuel oil or gas oil. They have a lower impact on

⁽¹⁾ OJ C 157, 6.7.2006, p. 8.

⁽²⁾ See footnote 1.

the environment than conventional fuels. Recent studies⁽³⁾ show that adding water to fuels leads to higher quality of combustion in terms of emissions. Vaporisation of water during the combustion process increases fuel dispersion resulting in increased contact surface between fuel and air. This reduces the emissions of PM particulates by 59 %. Water vaporisation also reduces the combustion temperature, thereby reducing the formation of nitrogen oxides (NO_x) by 6 %. The efficient combustion process reduces carbon monoxide (CO) by 32 %⁽⁴⁾.

- (6) However, production and storage of emulsions is costly and therefore the price for the final blend is higher than the market price of fossil fuels. Emulsions have an energy content 10 % lower than conventional fuel. Using emulsions causes additional operating costs, e.g. costs of periodical reprocessing that prevents the two components from separation, cleaning of tanks and the need for product recirculation systems.

- (7) Emulsions have been adopted in Italy for public transport, waste collection and transport of goods (ca 9 000 vehicles) by more than 80 municipalities⁽⁵⁾. Emulsions are also used for heating purposes in private housing (ca 100 houses) and public buildings like museums, schools and universities (ca 300 heated buildings).

- (8) The emulsions that are on the Italian market are mainly based on low sulphur gas oil/water blends and they are used for transport and for heating. In 2005 the emulsions used for transport were all gas oil based, whereas the emulsions used for heating were based either on gas oil or on low sulphur heavy fuel. Other heavy fuel oil emulsions listed in the notification – high and low sulphur content for industrial use and high sulphur content for heating – were not on the market in 2005. In comparison to the consumption of conventional fuels, the consumption of emulsions in Italy is still rather marginal. The volumes consumed in tonnes of emulsions and of conventional fuels in 2005 were as follows:

	Emulsions	Conventional fuels
Gas oil for transport	79 359	24,5 million
Gas oil for heating	12 574	2,9 million
Fuel oil for heating	12 498	151 000

- (9) Within the Community emulsions are mainly used in Italy. However, the use of this technology in public transport is at an experimental stage in some Member States, e.g. France, the United Kingdom and the Czech Republic.

- (10) The measure aims at promoting the use of emulsion fuels by ensuring that they are available at a reasonable price. The aid offsets the cost difference between conventional fuels and emulsions. In this way, it tackles a market failure, i.e. that the environmental benefits of emulsions are not reflected in the market price of conventional fuels.

- (11) The measure is to apply for one year: from 1 January 2006 to 31 December 2006. The planned budget is EUR 8,9 million. The beneficiaries of the scheme will be between 11 and 50 emulsions producers.

- (12) Article 18(1) of the Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ('Energy Tax Directive'⁽⁶⁾), and in particular the fourth indent of point 8 in Annex II thereof, allowed Italy to apply a reduced excise duty to emulsions of water blended with gas oil or fuel oil until the end of 2005. Italy notified the measure for the period from 1 January 2006 to 31 December 2006, and for the year 2006 Italy intends to apply the scheme using the general provisions of the Energy Tax Directive.

- (13) In comparison to the normal rate for fossil fuels that applies in Italy, the advantages of the measure in terms of the reduced rates are as follows (all reductions are granted per litre of the gas oil emulsion concerned and per kilogram of the heavy fuel oil concerned):

⁽³⁾ Studies carried out by Laboratori ENI Tecnologie and the European Commission's Joint Research Centre in Ispra (for example, research undertaken within Action 2113 – Emissions Characterisation and Inventories).

⁽⁴⁾ Actual reductions depend on the waterdiesel ratio.

⁽⁵⁾ Including large cities like Milan, Rome, Naples, Turin and Genoa.

⁽⁶⁾ OJ L 283, 31.10.2003, p. 51.

Emulsions	Normal rate	Reduction	Reduced rate	Min. tax level of ETD (*)
water/gas oil, used as motor fuel in transport	EUR 403	EUR 146,3	EUR 256,7	EUR 302
water/gas oil, used for heating	EUR 403,2	EUR 158	EUR 245,2	EUR 21
water/low sulphur heavy fuel oil, used for heating	EUR 64,2	EUR 34,7	EUR 29,5	EUR 15

(*) ETD – Energy Tax Directive

The notification also mentions reduced rates for emulsions that are not on the market like water/heavy fuel oil emulsions for industrial use with high and low sulphur content (EUR 41,6 and EUR 20,8 respectively) and high sulphur content heavy fuel oil emulsion for heating use (EUR 99,3).

- (14) In its letter of 6 March 2006, the Commission requested the Italian authorities to suspend the granting of the aid under the current scheme until the recovery of any incompatible aid by the firms that are the subject of a negative State aid decision, and in particular Commission Decision 2000/128/EC of 11 May 1999 concerning aid granted by Italy to promote employment (OJ L 42, 15.2.2000, p. 1), Commission Decision 2003/193/CE concerning tax exemption and privileged loans in favour of public utilities in Italy ⁽⁷⁾, Commission Decision 2004/800/EC of 30 March 2004 on the State aid scheme put into effect by Italy providing for urgent measures to assist employment ⁽⁸⁾, and Commission Decision 2005/315/EC of 20 October 2004 on the aid scheme implemented by Italy for firms investing in municipalities seriously affected by natural disasters in 2002 ⁽⁹⁾.

III. GROUNDS FOR INITIATING THE ARTICLE 88(2) PROCEDURE

- (15) In the case of gas oil emulsions used as motor fuel Italy applies the minimum tax rate of EUR 302 only to the fossil fuel part of the blend. Therefore the final tax for the emulsion is EUR 256,7. The Commission doubted that the tax exemption for emulsions used as motor fuel complied with the levels of taxation applicable under the Energy Tax Directive and that it did not affect trading conditions and distort competition to an extent contrary to the common interest.

- (16) Furthermore, the Italian authorities refused to give a commitment to suspend the granting of new aid under the current scheme to firms which have not reimbursed the incompatible aid in compliance with the previous recovery decision. Therefore, the Commission found it impossible to take into account the cumulated distortion arising from the old aid and the new aid.

IV. COMMENTS FROM INTERESTED PARTIES

- (17) The following interested parties submitted their comments on the initiation of the procedure: the Unione Petrolifera on 3 August 2006 and the European Emulsion Fuel Manufacturers' Association (EEFMA) on 7 August 2006.
- (18) The EEFMA stressed that emulsion fuels are the only fuels that reduce simultaneously the nitrogen oxide, particulate and carbon dioxide emissions of diesel engines without the need for any mechanical modifications.

- (19) The EEFMA elaborated in detail on the issue that adding water to gas oil changes the fuel's characteristics. The presence of water gives the emulsion a milky appearance at room temperature, while gas oil is clear and transparent. The distinctive characteristic of the emulsion is its stability by centrifugation. The emulsion's density interval of 842-870 kg/m³ is considerably higher than that of gas oil which is 820 to 845 kg/m³. The same is true for the viscosity interval at 40 °C. The average calorific power of gas oil is 10 500 kcal/kg, while that of emulsions is 9 300 kcal/kg. This difference explains why the average consumption of emulsion per km run is higher than that of gasoil.

⁽⁷⁾ OJ L 77, 24.3.2003, p. 21.

⁽⁸⁾ OJ L 352, 27.11.2004, p. 10.

⁽⁹⁾ OJ L 100, 20.4.2005, p. 46.

- (20) The Petroleum Union pointed out that the beneficiaries of the State aid in question are not beneficiaries of aid that has been judged illicit pursuant to the decisions mentioned in paragraph 14.

V. COMMENTS FROM ITALY

- (21) Italy submitted its comments on 11 July 2006 and commented on the third parties' observations by letters dated 13 September 2006 and 28 September 2006.

- (22) Italy described in detail the specific character of emulsions. In particular Italy pointed out that, because of their physical structure, emulsions should be considered as having two parts: one 'active', made up of hydrocarbons (diesel or fuel oil) and as such capable of producing energy following carburation or combustion; the other completely 'passive', made up of water, which is present for the purpose of reducing polluting emissions by comparison with diesel or fuel oil used in the pure state. The water present in the emulsions also absorbs energy during the heating process and is transformed into steam. Such emulsions are therefore products with specific characteristics that are different from traditional petroleum products.

- (23) Italy emphasized that the water is only temporarily present in the preparation for the purpose of improving combustion with a consequent reduction in polluting emissions and environmental benefits.

- (24) The Italian authorities referred to the comments submitted by the Unione Petrolifera to the Commission on the beneficiaries of the aid at issue. In consideration of these comments, the Italian authorities undertook to suspend the payment of the aid at issue if the beneficiary was a company that had not yet reimbursed or paid into a blocked account any illegal and incompatible aid received on the basis of one of the aid measures mentioned by the Commission.

VI. ASSESSMENT OF THE MEASURE

- (25) Italy has notified the measure to the Commission and its entry into force is subject to the Commission's approval, so Italy has complied with its obligations under Article 88(3) of the EC Treaty. Since Italy notified the aid for the period from 1 January 2006 to 31 December 2006, this assessment concerns only this period and is without prejudice to the measure Italy applied in the past.

Existence of aid within the meaning of Article 87(1) of the EC Treaty

- (26) According to Article 87 of the EC Treaty, State aid is (a) any aid granted by a Member State or through State resources (b) which distorts competition (c) by favouring certain undertakings, (d) insofar as it affects trade between Member States.
- (27) The aim of this measure is to compensate the emulsions producers for part of their production costs; the measure therefore favours certain undertakings and the production of certain goods. Excise tax reduction is granted from State resources because by reducing the tax burden on the products the State forgoes revenue.
- (28) The measure is selective because emulsions production requires specific know-how and specific equipment and the emulsions are sold to a limited number of customers. Therefore, the entry costs into the emulsions market are high. Reducing tax rates for emulsions gives an advantage to only a limited number of emulsions producers.
- (29) In consequence of the tax rebates, the prices for emulsions can be lowered to a level that is competitive with fossil fuels. Since emulsions serve as a substitute for fossil fuels, this advantage may distort competition in the EU internal market. As fuels are tradeable internationally, the measure is also likely to affect trade between Member States and therefore constitutes State aid pursuant to Article 87(1) of the EC Treaty.

Exemption under Article 87(3)(c) of the EC Treaty

(30) Article 87(3)(c) of the EC Treaty provides an exemption from the general rule of incompatibility with the common market as stated in paragraph (1) of that Article for aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(31) The proposed aid measures are designed to enhance the use of environmentally friendly fuels in order to reduce pollutant emissions, including particulates, and slightly reduce greenhouse gas emissions. The Commission notes that the reduction of these gases and the reduction of pollutant emissions have been encouraged since 1985 by numerous Community measures ⁽¹⁰⁾, the most recent overview being the Thematic Strategy on Air Pollution ⁽¹¹⁾. The objectives of the present scheme are in line with EU policy in this sector.

(32) Emulsion fuels are not included in the definition of renewable energy sources in Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market ⁽¹²⁾ and are not considered biofuels by Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport ⁽¹³⁾. However, using emulsion fuels results in a reduction in pollution and greenhouse gas emissions. The measure therefore contains a clear environmental benefit. This was also confirmed by the Auto-Oil II programme ⁽¹⁴⁾. The Commission recalls that emulsion fuels have been shown to result in a 59 % reduction in particulates, a 6 % reduction in nitrogen oxides (NO_x) and a 32 % reduction in carbon monoxide (CO) (actual reductions depend on the waterdiesel ratio). Other tests and studies have reported minor reductions in greenhouse gas emissions. These benefits are fully in line with Community environmental policy.

⁽¹⁰⁾ Among others, the White Paper of 1997 on renewable energies (COM(1997) 599 final, 26.11.1997), the Commission Green paper on energy supply safety in the European Union (COM(2000) 769, 29.11.2000), and the Commission's communication on alternative fuels for road transport and on a set of measures to promote the use of biofuels (COM(2001) 547, 7.11.2001).

⁽¹¹⁾ COM(2005) 446.

⁽¹²⁾ OJ L 283, 27.10.2001, p. 33.

⁽¹³⁾ OJ L 123, 17.5.2003, p. 42.

⁽¹⁴⁾ See the final report on the Programme prepared for DG Energy on the following website:
http://ec.europa.eu/energy/oil/fuels/doc/alternative_fuels_en.pdf

(33) According to section E.3.3 of the Community Guidelines on State aid for environmental protection ⁽¹⁵⁾ (the Environmental Aid Guidelines), operating aid for the production of renewable energy will usually be allowable. The Commission takes the view that such aid qualifies for special treatment because of the difficulties these sources of energy have sometimes encountered in competing effectively with conventional sources.

(34) Point 6 of the Environmental Aid Guidelines defines renewable energy in the same way as Directive 2001/77/EC. As explained above, the emulsions do not fall within this definition. For the following reasons, however, the Commission considers that the notified aid can be assessed by analogy with point E.3.3. of the Environmental Aid Guidelines:

— As explained in paragraph 31 above, the scheme is in line with Community policy objectives and it adds to the improvement of environment.

— The emulsions face similar difficulties as fuels derived from renewable energy sources (e.g. biofuels) in competing effectively with fuel from conventional sources: namely high (initial) production costs, lack of accommodating infrastructure in the distribution chain and lack of users with appropriately adapted combustion systems in their vehicles.

— Distortion of competition with respect to conventional fuels will be relatively limited given the strong position conventional fuels still have on the market and given the limited number of emulsions users.

— Distortions of trading conditions with respect to conventional fuels will also be limited because of specific transport and storage needs of emulsions, e.g. the need for periodical reprocessing.

⁽¹⁵⁾ OJ C 37, 3.2.2001, p. 3.

— Italy will submit monitoring reports that will enable the Commission to assess the application of the scheme.

(35) According to point 56 of the Environmental Aid Guidelines, operating aid for the production of renewable energy may be allowable. Point 56 of the Environmental Aid Guidelines provides for aid to cover the difference between the costs of producing energy from renewable energy sources (in the present case emulsions) and the market price of that energy. This implies that the production costs of emulsions, after taking into account the aid, should not show any overcompensation, i.e. should not be below the market price of comparable energy obtained from fossil energy sources for which no aid is granted.

(36) Italy supplied production cost calculations based on the data for 2006. The main factor determining the production costs of emulsions is the price of the raw materials (e.g. surfactant and antifreeze) that must be added to fossil fuels and water. Further costs are logistics costs such as storage in special tanks and transport in dedicated lorries. In addition to the production costs it has to be taken into consideration that, due to the lower energy value of emulsions in comparison to fossil fuels, the consumption of emulsions is estimated to be 10 % higher. Furthermore,

using emulsions imposes additional operating costs on consumers (e.g. cleaning tanks and recirculation systems). The calculations of total emulsions production costs include a fair profit margin of 5 %. The market price of fossil fuels reported by Italy for comparisons with gas oil emulsions is an average of the prices of gas oil over the first 15 days of March 2006 ⁽¹⁶⁾.

(37) From the table below, which is based on the information provided by Italy, it is clear that the aid enables producers to sell the emulsions at a price that is just sufficient to compete with fossil fuels.

(38) In order to avoid overcompensation during the entire period of the scheme, Italy has undertaken to monitor changes in fossil fuel prices and emulsions production costs every six months. Where the difference between the production costs of emulsions and the reference price of fossil fuels exceeds the value of the reduction, Italy will adjust the tax rebate to avoid overcompensation.

⁽¹⁶⁾ For comparisons with heavy fuel oil emulsions an average market price surveyed by the Milan Chamber of Commerce has been used.

	Water emulsions with:		
	gas oil, used in transport	gas oil, used for heating	low sulphur heavy fuel for heating
Raw materials:			
(A) Fossil fuel	387	387	362
(B) Deionised water	0,5	0,5	0,5
(C) Surfactant and research amortization	62	62	14,5
(D) Antifreeze	8	8	
(E) Cetane improver	3,5	3,5	
(F) Bactericide	1	1	
Logistics costs:			
(G) Storage in tanks	6	6	6
(H) Transport in special lorries	4	4	4

	Water emulsions with:		
	gas oil, used in transport	gas oil, used for heating	low sulphur heavy fuel for heating
(I) Other costs (extraordinary)	1	1	1
(J) Production costs	10	10	10
(K) Total costs: sum from A to J	483	483	398
(L) Profit margin: 5 % of K	24,15	24,15	19,9
(M) Total, excluding taxes: K + L	507,15	507,15	417,9
(N) Emulsion excise tax	256	245	29,5
(O) Energy content adjustment factor: 10 % of (M + N)	76,31	75,21	44,74
(P) Extra operating costs	10	10	10
(R) Emulsions end price excl. VAT: (M + N + O + P)	849,46	837,36	502,14
(S) Fossil fuels end price excl. VAT (*)	843	831	490
Difference (R – S) (**)	6,46	6,36	12,14

(*) This refers to the average price for Platt's Low sulphur Diesel over the first 15 days in March 2006 + EUR 25/1 000 litres which corresponds to an average of the difference between the extra-network price and Platt's. It has been assumed that the density of the gas oil is 0,845 kg/l. For heavy fuel for heating the price refers to the average market price surveyed by the Milan Chamber of Commerce.

(**) If the difference is positive, the level of aid is allowable. If the difference is negative, the level of aid is too high and results in overcompensation.

- (39) The Commission thus comes to the conclusion that the aid is restricted to covering the difference between the cost of producing energy from renewable energy sources and the market price of that energy and that there is no overcompensation within the meaning of the Environmental Aid Guidelines.
- (40) As the measure concerns an excise tax rebate for an energy product, the Commission also assessed it with respect to the Energy Tax Directive.
- (41) The Energy Tax Directive lays down minimum levels of taxation for energy products. As far as fuel blends are concerned, the minimum levels are applicable to final products. In order to implement policies appropriate to national circumstances, the Energy Tax Directive allows Member States to apply exemptions and tax rebates when they are not detrimental to the proper functioning
- of the internal market and do not result in a distortion of competition.
- (42) In principle Article 5 of the Energy Tax Directive allows Member States to reduce tax rates of final fuel products from the normal rate to a level not lower than the minimum level of taxation in certain cases, e.g. when there is an improvement in the quality of the fuels. Article 16 allows Member States to apply an exemption or reduced rate of taxation to the renewable and to the water part of the blend.
- (43) In order to apply Article 5 as justification for tax rebates, emulsions must be fuels with improved quality in comparison to corresponding fossil fuels. The information provided by Italy and the comments of the third parties clearly prove that adding water to fossil fuel changes its physical characteristics and brings environmental benefits.

- (44) After adding water the fuel changes with regard to its appearance, density, viscosity and calorific value. The presence of water improves the combustion quality and results in less polluting emissions of PM particulates, nitrogen oxides and carbon dioxide. Therefore emulsions can be treated as an improvement in the quality of fossil fuels as such. Applying Article 5 to emulsions allows reduction of the excise tax rate to the minimum level specified in the Energy Tax Directive.
- (45) In the case of gas oil emulsions used as motor fuel, Italy makes use of Article 16 and, starting from the Community minimum level of taxation of EUR 302, exempts the water part of the blend. Therefore the final tax for these emulsions is 15 % below the minimum tax rate and it amounts to EUR 256,7.
- (46) The Commission finds that, in the particular case of emulsions, this approach is justified by Article 5 and Article 16 of the Energy Tax Directive, considered jointly. Adding water to fossil fuels results in a physically different product with improved combustion quality and consequent environmental benefits. This gives rise to the application of the first indent of Article 5 of the Directive. Simultaneously, the final product contains 15 % water, which is eligible for tax concessions in accordance with Article 16.
- (47) For the reasons stated above, the reductions in taxation for emulsions proposed by Italy are in conformity with the Energy Tax Directive.
- (48) Further, the Commission pointed out the problem of potential cumulation of the distortion arising from the aid under the excise reduction scheme and other distortions deriving from other illegal and incompatible aid, in particular under the schemes mentioned in paragraph 14, which has not yet been reimbursed. According to the Court of Justice judgment of 15 May 1997 ⁽¹⁷⁾, the compatibility of new aid could depend on the existence of any previous unlawful aid that has not been repaid, since the cumulative effect of the aid could distort competition in the common market to a significant extent.
- (49) The Commission notes that, as regards the application of the Deggendorf judgment, Italian authorities referred to the comments submitted by the Unione Petrolifera to the Commission, which stated that 'the beneficiaries of the aid at issue are different from the beneficiaries of the so-called illegal aid'. In consideration of these comments, the

Italian authorities undertook, in the context of this measure, to suspend the payment of the aid at issue if the beneficiary was a company that had not yet reimbursed or paid into a blocked account any illegal and incompatible aid received on the basis of one of the aid measures mentioned by the Commission in its decision initiating the procedure.

- (50) The Commission further notes that during the procedure under Article 88(2) of the EC Treaty it did not receive any comments from third parties that the proposed aid may affect trading conditions and distort competition to an extent contrary to the common interest.

VII. CONCLUSIONS

- (51) On the basis of the foregoing, the Commission concludes that the measure complies with the relevant provisions of the Environmental Aid Guidelines applied by analogy and the relevant provisions of the Energy Tax Directive. Furthermore, Italy has undertaken to suspend the granting of new aid under the current scheme to firms which have not reimbursed the incompatible aid in compliance with the relevant previous recovery decision. The measure can therefore be deemed compatible with the common market pursuant to Article 87(3)(c) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The measure which Italy is planning to implement for tax rebates on emulsions for 2006, amounting to EUR 8,9 million, is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty.

Implementation of the measure is accordingly authorised.

Article 2

This Decision is addressed to the Republic of Italy.

Done in Brussels, 6 December 2006.

For the Commission

Neelie KROES

Member of the Commission

⁽¹⁷⁾ Case C-355/95P *Textilwerke Deggendorf GmbH (TWD) v Commission* [1997] ECR I-2549, paragraphs 25-27.

COMMISSION DECISION

of 20 December 2006

on State aid No C 3/2005 (ex N 592/2004 (ex PL 51/2004)) which Poland is planning to implement for Fabryka Samochodow Osobowych SA (formerly DAEWOO — FSO Motor SA)

(notified under document number C(2006) 6628)

(Only the Polish text is authentic)

(Text with EEA relevance)

(2007/509/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 ⁽¹⁾ pursuant to those provisions,

Whereas:

1. PROCEDURE

- (1) By letter dated 30 April 2004 Poland notified the Commission of aid to DAEWOO-FSO MOTOR S.A., which changed its name to Fabryka Samochodów Osobowych S.A. (hereinafter 'FSO' or 'the beneficiary'), as aid granted before accession. By letter dated 19 May 2004 the Commission asked Poland to submit some missing documents. These were provided on 18 June 2004. The Commission requested further information by letters dated 2 August 2004 and 6 October 2004, to which Poland replied by letter registered on 13 September 2004, and by letter dated 3 November 2004 respectively. On 9 November 2004 a meeting took place between the Commission and the Polish authorities.
- (2) On 5 January 2005, the Polish authorities accepted that the Commission would also treat the notification of 30 April 2004 as a notification under Article 88(3) EC Treaty with regard to any measures which were found to constitute new aid.
- (3) By letter dated 19 January 2005, the Commission informed Poland that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid which had not been granted before accession and constituted new aid. The Commission

decision to initiate the procedure was published in the *Official Journal of the European Union* on 26 April 2005 ⁽²⁾. The Commission invited interested parties to submit comments on the measures. No third party submitted comments.

- (4) In a letter dated 28 February 2005, registered on 1 March 2005, the Polish authorities asked for an extension of the deadline to submit its comments on the opening of the formal investigation procedure. Poland submitted a partial response by letter dated 1 April 2005, registered on 4 April 2005. In the same letter Poland asked for the deadline for providing additional information to be extended to 15 April 2005, because it needed time to update the restructuring plan. By letter dated 27 April 2005, registered on 29 April 2005, the Polish authorities asked for the deadline for providing the supplementary information to be extended again, to 13 May 2005. This information, together with an updated version of the restructuring plan, was submitted by letter dated 31 of May 2005, registered on 2 June 2005. Additional comments were submitted by letter dated 13 June 2005, registered on 14 June 2005.
- (5) By letter dated 4 August 2005, registered on 8 August 2005, Poland informed the Commission that a new investor had been found for FSO. By letter dated 28 September 2005, registered on 29 September 2005, the Polish authorities informed the Commission that an updated restructuring plan would be submitted in November 2005 together with a description of the models produced. By letter dated 16 November 2005, registered on the following day, Poland submitted the English version of the FSO stock valuation. The Commission requested supplementary information on 12 December 2005. The Polish authorities submitted further information by letter dated 15 December 2005, registered on 19 December 2005, in which the announced update of the restructuring plan was submitted. In the same letter Poland informed the Commission that it would provide more information in the coming weeks. In its letter of 3 January 2006, registered on 5 January 2006, Poland submitted a partial response to the Commission's request for information of 12 December 2005 and asked to be given more time (up to 23 January 2006) to provide the remaining information. By letter dated 26 January 2006, registered on 30 January 2006, the Polish authorities submitted part of the additional information,

⁽¹⁾ OJ C 100, 26.4.2005, p. 2.

⁽²⁾ See footnote 1.

requesting an extension of the deadline to 6 February 2006. By letter dated 14 February 2006, registered on 15 February 2006, Poland provided the missing points of the response to the Commission's letter of 12 December 2005.

- (6) On 21 February 2006, a meeting between the Commission services, the Polish authorities, FSO management and the investor AvtoZAZ was held in Brussels. Following the meeting, on 8 March 2006, the Commission sent Poland a request for further information. Poland replied by letter dated 6 April 2006, registered on the following day. In a letter to Poland dated 27 April 2006, the Commission allowed an extension of the deadline for submitting the final version of the restructuring plan to 20 May 2006. The information was submitted by the Polish authorities by letter dated 22 May 2006, registered on the following day.
- (7) By letters dated 28 and 29 June 2006, both registered on the following day, the Polish authorities informed the Commission that a licence agreement had just been signed for the production of a new car model by FSO. On 29 June 2006, a meeting was held with the Polish authorities.
- (8) By letter dated 5 July 2006, the Commission requested further information, which the Polish authorities provided by letters dated 19 and 27 July 2006.
- (9) The Polish authorities submitted additional information by letter dated 30 August 2006 and during a meeting on 31 August 2006.
- (10) By letter dated 6 September 2006, the Commission requested further information, which was provided by letter dated 3 October 2006, registered on the following day. Poland informed the Commission that it would provide more information in the next 10 working days.
- (11) Poland submitted additional information by letter dated 17 October 2006, registered on 19 October 2006. In this letter, the Polish authorities requested a meeting with the Commission services. This meeting took place in Brussels on 7 November 2006. Following this meeting the Polish authorities sent a letter on 17 November 2006.

2. DETAILED DESCRIPTION OF THE AID

2.1. Beneficiary of the aid

- (12) FSO is a Polish car manufacturer. The company's main production plant is located in Warsaw, which is an assisted area under Article 87(3)(a) of the EC Treaty. It manufactures passenger cars, spare parts and accessories. Its main source of revenue since the end of the nineties has been the manufacture of the Daewoo brand vehicles *Matiz* and *Lanos*. FSO S.A. now controls 18 subsidiaries (service, manufacture of components, sales) down from [...] (*) in 1999.
- (13) The predecessor of FSO had been in business in Poland since the 1950s and was one of the two largest Polish car manufacturers. A joint venture agreement was concluded in 1996 between Daewoo Motor Corporation Ltd ('DMC') and the former Ministry of Industry and Trade. Daewoo acquired 70 % of the newly created entity DAEWOO-FSO MOTOR S.A. About 25 % of the company was owned by the State Treasury and the rest by minority shareholders. Since then the company name has been *Fabryka Samochodów Osobowych* ('FSO').

2.2. Difficulties and efforts to find a strategic investor

- (14) FSO's difficulties are mainly the result of the bankruptcy of its largest shareholder, DMC, in 2000. This led to a decline in demand for Daewoo brand vehicles because of customer uncertainty about the fate of FSO and the availability of spare parts and repair services. In addition, FSO suffered from a severe decline in the sale of new vehicles in Poland at the beginning of this decade owing to a very sharp increase in imports to Poland of second-hand cars from Western Europe. Furthermore, as the two models produced were not modernised, unlike competing models, they became less attractive on the EU market over the years. As a consequence of the foregoing, FSO's sales dropped from 189 000 units (of which 179 000 sold in Poland) in 1999 to 47 000 in 2001. FSO generated net losses in 2000, 2001 and 2002 of PLN 2,1 billion (EUR 540 million ⁽³⁾), PLN 1,1 billion (EUR 282 million) and PLN 425 million (EUR 109 million) respectively. In recent years the vast majority of the cars manufactured have been *Lanos*, exported to Ukraine [as assembly kits] and assembled and sold by the firm AvtoZAZ, which started commercial cooperation with FSO in 2000. Total sales remained at a very low level and the company continued to register operating losses.

(*) Confidential information.

(3) For information only, all the amounts provided by the Polish authorities in Polish zloty (PLN) have been converted into euro (EUR) using the exchange rate of 20 October 2006, namely 1 EUR = 3,89 PLN.

Table 1

	1999	2000	2001	2002	2003	2004	2005
Total sales ⁽¹⁾ (1 000 cars) including assembly kits	189	121	47	30	35	43	47

⁽¹⁾ Source: 'Company Presentation, Fabryka Samochodów Osobowych S.A., Warsaw 2006', submitted by the Polish authorities on 31 August 2006.

- (15) Some parts (notably the brand name and some Asian production plants) of the bankrupt DMC, but not FSO, were acquired by General Motors and harboured in a new subsidiary called GM DAT, which stands for General Motors Daewoo Auto & Technology.
- (16) FSO had been looking for a strategic investor since its difficulties began. In February 2004, it contacted the 29 biggest motor vehicle companies and sent them a memorandum presenting itself as an attractive investment opportunity. [Some companies] AvtoZAZ, [...], [expressed] interest in principle in investing in FSO. AvtoZAZ, FSO's key customer, expressed concrete interest in broadening cooperation with FSO. The Polish government started exclusive negotiations with AvtoZAZ for the sale of FSO.
- (17) AvtoZAZ is the biggest car manufacturer in the Ukraine. It assembles cars of several brands, including ZAZ (own brand), Daewoo, VAZ (the brand of the Russian Lada) and Opel ⁽⁴⁾. It is owned by UKRAVTO, which is the owner of the biggest car distribution and service station network in Ukraine. UKRAVTO distributes several brands, including ZAZ, Daewoo, Chevrolet, VAZ and Opel.
- (18) On 25 June 2004 a Letter of Intent was signed between the State Treasury, AvtoZAZ and FSO. By resolution of 9 November 2004, the Council of Ministers approved the sale of FSO shares owned by the State Treasury. FSO and the State Treasury agreed to appoint KPMG as an independent consultant to appraise the market value of the company. The cost method (the book value of the Company's assets and liabilities, with correction when necessary) and the liquidation method (the market value of forced FSO assets sales, less liabilities) were applied. In both cases the value of the FSO shares was negative. At the same time, the State Treasury selected a second independent consultant (PriceWaterhouseCoopers) to carry out its own appraisal. It confirmed the first valuation.
- (19) The sale agreement with AvtoZAZ ⁽⁵⁾ was signed on 30 June 2005 for a total price of PLN 100. Under the agreement, AvtoZAZ has to implement the business plan negotiated with the State Treasury. It covers the period 2005-[...] and provides for launching production of a new car model, increasing production volumes and maintaining a minimum level of employment. The agreement indicates that the State aid contained in the restructuring plan notified to the Commission will be granted by the Polish government if the Commission endorses it. The buyer declares that the award of State aid to FSO was one of the conditions of its decision to purchase the company's shares.
- (20) In the meantime, AvtoZAZ purchased (at a discount) 100 % of the remaining claims against FSO, with a nominal value of nearly [...], of [...] banks which were creditors of FSO.
- 2.3. Markets ⁽⁶⁾**
- (21) In 1999, 640 000 new vehicles were sold in Poland and FSO's market share was 28 %, making it the number one car manufacturer in Poland at the time. In 2003 the number of cars sold in Poland fell to 358 000 and FSO's market share fell to 2,2 % (less than 8 000 cars sold). In 2004, FSO sold only 3 500 cars in Poland. The main competitors of FSO in Poland (and in Europe) are Fiat, Skoda, Renault, Toyota, Opel, Peugeot, Ford, Volkswagen and Citroen. On the Polish market, the share of imported vehicle sales rose from 25 % in 1998 to 75 % in 2003.

⁽⁴⁾ According to a press release dated 10 January 2006, published on its website (www.ukravto.ua), ZAZ produced 148 163 vehicles in 2005. Including 10 190 models 'Travria', 6 224 'Travria Pick-Up', 20 864 'Slavuta', 21 379 'Sens', 9 107 'Lanos T-150', 697 'Opel Astra-H', 1 915 'Opel CKD', 6 179 'VAZ-21093', 14 459 'VAZ-21099' and 57 149 other vehicles.

⁽⁵⁾ Formally, the contract is between the State Treasury of the Republic of Poland and Zakrytoje Akcjonernoje Obszczestwo z Inostrannoj Inwesticzej 'Zaporozskij Awtomobilestroitelnyj Zawod' with its headquarters in Zaporozhye, Ukraine.

⁽⁶⁾ The data used in this section are taken from information provided by the Polish authorities.

(22) Production capacity in the European Union as a whole in 2004 (25 Member States) was 20,8 million cars, whereas production volume was only 14,5 million cars. With a production capacity utilisation rate of 70 %, the industry is therefore clearly suffering from a major excess of production capacity. While FSO's 1999 sales level would have corresponded to an EU market share of over 1 %, FSO's production in 2004 represented a market share below 0,5 %.

(23) Since 2003, most of FSO's production has been purchased by AvtoZAZ and sold on the Ukrainian market. New car sales in Ukraine have increased rapidly in recent years. From 2001 to 2005 they rose from 65 000 to 265 000. On the Ukrainian market the Daewoo cars produced by FSO face competition from the following brands: VAZ (Lada), ZAZ, Chevrolet and the other Daewoo models not produced by FSO. Skoda, Opel, Toyota, Mitsubishi, Nissan, Renault and VW are present on this market but have more limited market shares.

(24) FSO also plans to export a part of its production to [...]. Car sales in [...] were around 1,6 million units in 2005. The domestic brands hold a 72,5 % market share and imported cars account for 27,5 % of sales. However,

the low quality and outdated design of [...] brand cars is leading to a steady increase in imports. Furthermore, foreign car manufacturers are building facilities in [...]. Some 40 % of Western motor vehicle companies have already established factories in the area and a further 16 % are planning to do so.

2.4. The restructuring plan

(25) As illustrated in Table 2, the management started restructuring activities in FSO S.A. and its subsidiaries as soon as the situation deteriorated in 2000 after DMC declared bankruptcy. The workforce at FSO S.A. was reduced by 2 222 employees between January 2001 and September 2003. The restructuring programme notified to the Commission in April 2004 (the 'initial restructuring plan') started at the end of 2003, with completion in 2007, and planned an additional reduction of 1 100 employees in the workforce of FSO S.A., bringing long-term employment to around 2 000 workers. Since then, the programme has been implemented to a large extent. The workforce was down to 2 200 persons at the end of 2005. In the meantime the Polish authorities have announced that the latter level corresponds to the new long-term objective. The subsidiaries controlled by FSO were also completely restructured during this period and the workforce was considerably reduced.

Table 2 (¹)

Workforce at the end of the year

	1999	2000	2001	2002	2003	2004	2005
FSO S.A.	8 769	[...]	[...]	[...]	[...]	[...]	2 236
Service, component, and other subsidiaries	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Subsidiaries responsible for sales	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total FSO S.A. + subsidiaries	19 099	[...]	[...]	[...]	[...]	[...]	6 534

(¹) Source: reply from the Polish authorities of 30 August 2006.

(26) The initial restructuring plan, which was notified to the Commission on 30 April 2004, was based on the condition that a strategic investor for FSO would be found before 2006. As the time of entry of the investor was not certain when the restructuring plan was prepared, the plan initially included two variants. In the course of 2004, when the entry of a potential investor became more certain, FSO confirmed the first restructuring variant, although the target dates were

pushed back slightly. The plan included the following measures:

— extending the right to manufacture the Matiz and Lanos models up to the end of 2006 (licence agreement signed with GM DAT in April 2004),

- entrance of AvtoZAZ as a strategic investor before the end of the first quarter of 2005 (originally end of 2004),
- production of a modified Lanos model from 2005 onwards (originally not mentioned),
- development of new own models and production start-up from 2007 (originally 2005/2006).
- (27) In the initial restructuring plan, FSO planned to produce [between 130 000 and 170 000] units in the long-term. In accordance with this long-term production objective, it planned to reduce existing production capacity by one third, i.e. from [200 000-230 000] vehicles per year — on the basis of two shifts and 250 working days — to [140 000-170 000] per year. Since 2001 small use has been made of existing capacity (less than 25 %). The Polish authorities estimate that after restructuring FSO's break-even point will be [100 000-150 000] cars per annum ⁽⁷⁾.
- (28) In subsequent letters the Polish authorities informed the Commission of delays in implementation of the initial restructuring plan and said that the intermediate sales objectives had not been achieved.
- (29) In 2005, the restructuring plan was modified in the sense that FSO no longer planned to develop its own new models but rather to produce an existing model of a major car manufacturer, called 'the licensor', as opposed to 'the investor', AvtoZAZ. All the components for their production would thus already be available and the investment expenditure would be limited to the technological adjustments to the existing FSO production lines, in order to allow production of the new model. To implement the new plan, FSO needed to attract a licensor.
- (30) The Commission observes that this modification of the restructuring plan — attracting a licensor in addition to the investor — became necessary as FSO failed to attract as an investor a major car manufacturer with which FSO could have developed a new model, as provided for in the initial restructuring plan. The investor — AvtoZAZ — has not developed models of its own which are competitive on the EU market.
- (31) After being modified in response to negotiations with the investor, the restructuring plan was again modified in response to negotiations with potential licensors.
- (32) In the November 2005 version of the restructuring plan, the Polish authorities indicated that a new FSO subsidiary, [...], would be created.
- (33) In [...] 2006, FSO and its shareholder UkrAvto signed a Memorandum of Understanding with GM DAT for the production of a new model at FSO.
- (34) In [...] 2006, FSO and UkrAvto concluded a [...] agreement with GM DAT for the production and [...] of the [...] model (Chevrolet Aveo). GM was looking for new production capacity for this model in [...]. Under the terms of the contract, FSO can manufacture and assemble this model until [...]. It can continue to sell in [...] until [...].
- (35) At the same time, FSO signed an agreement with GM DAT extending the existing licence agreement for the production of the Daewoo Lanos [...]. Under the new agreement, FSO can produce this model until [...] and sell it until [...]. As sales of Lanos [...] increased in 2005 and 2006, FSO intends to produce this old model in significant quantities until the production of the [...] starts at the end of [...].
- (36) In their recent submissions of information, the Polish authorities have indicated that FSO, contrary to what had been announced previously, plans to sell [from 130 000 to 170 000] cars over the long term, in particular after 2008. Part of this production would be sold in [...] and most of the rest in [...].

⁽⁷⁾ Letter from the Polish authorities of 13 June 2005.

- (37) Regarding the financial restructuring which is part of the restructuring plan, measures have been adopted and implemented since 2003 to reduce the company's debts. On 22 September 2003, an agreement was signed with FSO's major creditors, namely DMC, the State Treasury, and [...] financial institutions (including [...] Polish banks). The agreement provided for conversion of the claims of DMC and of the State Treasury into FSO shares at the same conversion rate. This conversion has since taken place. The [...]

financial institutions agreed to write off the majority of their claims against FSO. As indicated, since then [...] banks have sold (at discount) their remaining claims on FSO to the investor. More than PLN [...] million [...] has already been written off. Besides this agreement with its major creditors, on 17 September 2003 FSO lodged an application in court to commence arrangement proceedings with its smaller creditors. These proceedings have since been concluded.

Table 3

Restructuring of liabilities

Item	Liabilities (PLN 1 000)	Interest (PLN 1 000)	Total (PLN 1 000)	Liabilities converted into shares (PLN 1 000)	Written off (PLN 1 000)
DMC	[...]	[...]	[...]	[...]	[...]
State Treasury	[...]	[...]	[...]	[...]	[...]
Arrangement proceedings	[...]	[...]	[...]	[...]	[...]
[...] financial institutions	[...]	[...]	[...]	[...]	[...]
Total	4 193 892	873 849	5 067 741	3 547 475	1 188 500

The amount of liabilities under the loans was quoted in accordance with the Agreement (taking into account the USD exchange rate as at the date of the Agreement, i.e. 3,94 PLN/USD).

[...]

2.5. Aid measures

- (38) In its decision to launch the formal investigation procedure, the Commission concluded that several measures constituting restructuring aid had already been granted before accession in the last quarter of 2003 and in the first four months of 2004. These measures are therefore not covered by this investigation procedure, which concerns only the aid measures that were to be granted after accession. However, the aid granted before accession has to be taken into account in the compatibility assessment, in particular when assessing restriction of the aid to the minimum necessary.
- (39) The largest part of the aid granted after accession takes the form of a [...] % State guarantee on a future investment loan to [...]. The bank loan of USD [...] million (EUR [...] million⁽⁸⁾) will be denominated in US dollars. The guarantee therefore exposes the State

to potential payments amounting to USD 83 million (EUR 66 million)⁽⁹⁾. The second important measure is a write-off by the Ministry of Finance of claims on FSO amounting to PLN 34 860 000 (EUR 9 million).

- (40) The different measures are listed in the table below, on the basis of the information submitted by the Polish authorities on 3 January 2006⁽¹⁰⁾:

⁽⁹⁾ The Polish authorities informed the Commission that the planned guarantee had been revised downwards in their letter of 3 January 2006. The aid measures listed in the decision to launch the investigation procedure were based on the notification of 30 April 2004. The notification contained a plan for a guarantee of USD 162,5 million.

⁽¹⁰⁾ Measures 22 and 23 were omitted in the submission of information of 3 January 2006. They are, however, presented in the decision of 19 January 2005 to initiate the procedure provided for in Article 88(2) of the EC Treaty. As the Commission has not received any details on their withdrawal, it has decided to take them into account.

⁽⁸⁾ All amounts provided by the Polish authorities in US dollars (USD) have been converted into euro (EUR) using the exchange rate of 20 October 2006 of 1 EUR = 1,26 USD.

Table 4

State aid after accession

No	Authority granting State aid/Type of liability	Form of State aid	Measure in nominal value (USD 1 000)
1	Ministry of Finance	Guarantees and pledges on investment credit	83 000

No	Authority granting State aid/Type of liability	Form of State aid	Amount of debt written-off or deferred/measures in nominal value (PLN 1 000)
2	Tax office Warsaw Prague	Write-off	34 860
3	Social Insurance Institute	Write-off	1 586
4	State Fund for Rehabilitation of Disabled Persons (PFRON) <i>Payments to PFRON</i>	Write-off, Deferral into 5 quarterly instalments; First instalment payable 30 June 2005	467 382
5	State Fund for Rehabilitation of Disabled Persons (PFRON) <i>Payments to PFRON</i>	Write-off, Deferral into 6 quarterly instalments; First instalment payable 1 January 2006	375 375
6	Warsaw City Authority <i>Real estate tax</i>	Deferral into 12 monthly instalments First instalment payable 2 January 2006	5 836
7	Warsaw City Authority Białoleka District <i>Fee for perpetual usufruct of land</i>	Deferral of fee until 31 December 2005	376
8	Warsaw City Authority <i>Fee for perpetual usufruct of land</i>	Deferral of fee until 31 December 2005	2 022
9	District Starost Office in Elk <i>Fee for perpetual usufruct of land</i>	Deferral of fee until 31 December 2005	56
10	Elk City Authority <i>Real estate tax</i>	Deferral into 12 monthly instalments of liabilities for April and May 2004 First instalment payable 31 December 2004	54
11	Elk City Authority <i>Real estate tax</i>	Deferral into 12 monthly instalments First instalment payable 30 June 2005	323
12	Koźuchów City Authority <i>Real estate tax</i>	Deferral into 12 monthly instalments First instalment payable 1 January 2005	458
13	Mazowiecki Provincial Governor <i>Fee for perpetual usufruct of land</i>	Write-off of fee for 2004	2 419
14	Warsaw City Authority	Write-off of fee for 2004	397

No	Authority granting State aid/Type of liability	Form of State aid	Amount of debt written-off or deferred/measures in nominal value (PLN 1 000)
15	District Starost Office in Opole <i>Fee for perpetual usufruct of land</i>	Deferral of fee until 31 December 2004	79
16	District Starost Office in Opole <i>Fee for perpetual usufruct of land</i>	Deferral of fee until 31 December 2005	79
17	District Starost Office in Nysa <i>Fee for perpetual usufruct of land</i>	Deferral of fee until 31 December 2004	89
18	District Starost Office in Nysa <i>Fee for perpetual usufruct of land</i>	Deferral of fee until 31 December 2005	81
19	Nysa City Authority <i>Real estate tax</i>	Write-off, Deferral into instalments payable in 16 quarterly instalments	341 341
20	2nd Mazowiecki Tax office, Warsaw <i>Tax on civil law transactions</i>	Write-off	1 103
21	2nd Mazowiecki Tax office, Warsaw <i>Tax on civil law transactions</i>	Write-off	671
22	II Customs Office in Warsaw <i>Customs duties</i>	Deferral of payments for May and June 2004 until December 2004	1 050
23	II Customs Office in Warsaw <i>Customs duties</i>	Deferral of payments for July and August 2004 until January 2005	1 000
24	National Fund for Environmental Protection and Water Management/ Provincial Fund for Environmental Protection and Water Management State Treasury	Subsidy or preferential loan to finance costs for the implementation and functioning by the end of 2008 of a system to recycle vehicles and the costs of adapting to legal requirements concerning environmental protection	7 170
		TOTAL in PLN (rows 2-24)	61 990

(41) The notified aid measures amount to USD 83 million (EUR 66 million) and PLN 62 million (EUR 16 million). At the exchange rate of 20 October 2006, the total aid measures therefore amount to EUR 82 million or PLN 318 million.

(42) A large proportion of the aid measures are in the form of a write-off or deferral of the State's existing claims on FSO. Since, to the Commission's knowledge, FSO has not paid these claims, the company has already benefited from the suspension of payment of its liabilities. As a result, these measures can be deemed to have already been partially implemented.

2.6. Grounds for initiating the procedure

(43) In its decision to initiate the procedure, the Commission indicated that the compatibility of the new aid would be

assessed on the basis of the applicable rescue and restructuring guidelines. The current Community Guidelines on State aid for rescuing and restructuring firms in difficulty ('the 2004 guidelines') entered into force on 10 October 2004. For measures notified before this date, the previous 1999 rescue and restructuring guidelines⁽¹¹⁾ ('the 1999 guidelines') entered into force on 10 October 1999. For measures notified after this date, the previous 1999 rescue and restructuring guidelines⁽¹²⁾ ('the 1999 guidelines') apply. As the measures were notified on 29 April 2004, the 1999 guidelines apply. The Commission therefore made an initial assessment of the notified (new) aid on the basis of the criteria laid down in those guidelines.

⁽¹¹⁾ OJ C 244, 1.10.2004, p. 2.

⁽¹²⁾ OJ C 288, 9.10.1999, p. 2.

- (44) The Commission concluded firstly that given the losses and the decline in sales which FSO had suffered in the previous years, it qualified as a firm in difficulty under section 2.1 of the guidelines.
- (45) Regarding restoration of viability, the Commission expressed doubts about certain aspects of the plan. One element of these doubts concerned the lack of clarity about the planned level of production. The Commission also remarked that it did not have at its disposal the updated restructuring plan, which, according to the Polish authorities, had been negotiated with the investor. Importantly, the Commission also stated that it had not received a market survey from the Polish authorities. It indicated that the survey would have to include an assessment of total production capacity and demand at Community level, and a conclusion as to whether there was excess capacity on the market.
- (46) Regarding the avoidance of undue distortion of competition, the Commission indicated that it could not take a final position because, firstly, the Polish authorities had not provided information on whether there was overcapacity on the market on which FSO operated. Secondly, Poland had not indicated whether FSO and/or the investor were planning any measures that could be considered compensatory measures, beyond the capacity reduction already included in the restructuring plan as a measure necessary to achieve viability.
- (47) Regarding the limitation of aid to the strict minimum necessary, the Commission requested more details on the measures considered to be own contributions and details about restructuring costs. The Commission also expressed doubts about whether the aid was limited to the minimum necessary because the conditionality of some of the aid measures seemed to indicate that they were not absolutely necessary.
- (48) Finally, the Commission noted that the agreement on debt restructuring concluded with public creditors on 22 September 2003 might contain aid granted before accession. Even if the compatibility of this potential aid cannot be assessed and it cannot be recovered, it must nevertheless be taken into account in the assessment of the new aid.

3. POLAND'S COMMENTS

- (49) Regarding the contradictory figures on planned production levels in the years 2005 and 2006, the Polish authorities explained in their letter of 13 June 2005 that, owing to delays in the entry of the investor, the figures had had to be revised downwards in successive versions of the restructuring plan. They indicated that the break-even point, estimated to be [100 000-150 000] units, should be reached in [...]. In their letter of 22 May 2006 the Polish authorities provided sales forecasts for the years 2008 to 2010. In the documents submitted during the meeting of 31 August 2006, the Polish authorities provided a forecast for the years 2006 to 2008, which confirmed the figures set out above.

Table 5

Production forecast (1 000 cars)	2006	2007	2008	2009	2010
Letter of 22 May 2006 ⁽¹⁾			[...]	[...]	[> 200]
Document of 31 August 2006 (Production forecast including assembly kits)	[< 100]	[...]	[...]		

⁽¹⁾ This forecast concerned the [...] model, for which the [...] agreement was concluded only [...].

- (50) In their letter of 3 October 2006, the Polish authorities submitted a substantially higher forecast for 2008 to 2010. According to this forecast, annual production should evolve to a level of [over 250 000] units during that period.
- (51) As requested in the decision to initiate the procedure, Poland submitted the updated version of the restructuring plan on 31 May 2005. Poland has submitted further updated versions since then. The restructuring plan includes descriptions of the markets on which FSO operates. It shows that there are considerable overcapacities in the EU, as already indicated.

(52) In terms of proposals for compensatory measures, Poland has stated that, firstly, FSO plans targeted restriction of production and sales to the level of [140 000-170 000] cars until 2008, despite the fact that it could produce [200 000-230 000] cars and has the real possibility of selling over [140 000-170 000] cars. Secondly, FSO has limited its sales network by reducing the number of car sales outlets from [...] in 2003 to [...] in 2006. It has also liquidated two of its own sales outlets. Thirdly, the company is limiting the number of countries to which it exports its products.

(53) Regarding the limitation of the aid to the minimum necessary, the Polish authorities have provided several documents on the amounts described as own contributions.

(54) Finally, Poland has provided a copy of the agreement of 22 September 2003 on debt restructuring.

larger than the amount converted by the State Treasury. In these circumstances, the Commission concluded that this operation respected the market economy creditor principle and did not constitute State aid.

(57) Even though doubts on this subject were not expressed in the decision to launch the procedure, because the transaction took place afterwards, the Commission checked whether the sale of the State's stake in FSO to AvtoZAZ for the [...] price of PLN 100 on 30 June 2005 contained aid to the purchaser, and, indirectly, to FSO. The Commission has analysed the valuation report drawn up by KPMG. The consulting firm observes that the company has been registering heavy losses and that demand for its products has been low. Therefore, the discounted cash flows method cannot be applied properly. Only the cost method and liquidation method can be applied. Both methods conclude that FSO's value is [...]. PriceWaterhouseCoopers ('PWC') agrees to a large extent with the conclusions of KPMG. The Commission has not found any manifest errors in these reports and has concluded that the events that took place between the date of valuation by KPMG and the date of the transaction did not result in the price of the shares becoming [...]. The Commission therefore considers that this transaction does not include an element of aid.

4. ASSESSMENT OF THE AID

4.1. Existence of aid

(55) The Polish authorities do not contest that the measures listed in Table 4 constitute State aid, as concluded in the opening decision.

(56) Besides the measures listed in Table 4, in the decision to open the procedure the Commission expressed doubts that the agreement with public creditors of 22 September 2003 on debt restructuring could contain aid granted before accession. Indeed, the Commission noted that the financial institutions accepted a partial write-off of their claims against FSO only on the condition that the depreciation resulting from this waiver was accepted by the Polish tax authority as a cost reducing taxable income. The Commission therefore indicated that the State may have granted a more substantial concession than the private parties to the agreement. The Polish authorities provided a copy of the agreement of 22 September 2003. The Commission observed that the conversion of debt into FSO shares accepted by the State Treasury was carried out in parallel with and on the same terms as the conversion of debt by DMC, which is a private sector company. In addition, the amount so converted by DMC is much

(58) In conclusion, only the measures listed in Table 4 constitute aid covered by the current decision.

4.2. Quantification of the aid

(59) In the decision to launch the procedure, the Commission concluded that the measures listed in Table 4 had not been granted before the accession of Poland to the EU on 1 May 2004. However, the Commission observed that in the contract for the sale of FSO shares concluded on 30 June 2005 between the government and AvtoZAZ, the State aid chapter (Article 9) provides that 'The relevant organs of the public administration intend, provided they receive a decision from the European Commission recognising the planned State aid as consistent with the common market, to grant the Company [...] State aid for restructuring. This assistance shall be granted on

the terms set out in FSO's restructuring plan, which is currently under review at the European Commission under case number C 3/2005. [...] The Buyer declares that the award of State aid to the Company referred to in clause 1 above was one of the conditions of its decision to invest by purchasing Company Shares. [...] The declarations of the relevant organs of the public administration on the intent to grant State aid to the Company, referred to in clause 1 above, are included in Attachment No 6 to this contract'. The Commission concludes from the foregoing that on 30 June 2005 there was a legally binding commitment from the State to grant the notified aid subject to approval by the Commission.

(60) The Commission has noted that on 30 June 2005 and on earlier dates, it was far from certain that FSO could regain viability. This is confirmed by the aforementioned KPMG and PWC valuation reports. In particular, the Commission notes that the company had no licensor for the production of a new model. The company did not know what it would produce in the future. The contract for the [...] was only signed in 2006. The then existing licence agreement with GM DAT for the production of the Lanos expires [...]. The level of production of the Lanos was low and insufficient to cover costs. In conclusion, the aid was unconditionally promised at a time when the risk of bankruptcy was high.

(61) As regards the precise amount of aid included in the State guarantee covering the investment loan to [...], the Polish authorities have not submitted a calculation of a risk factor by which the guarantee could be weighted. Up to October 2006, the Polish authorities always emphasised that this guarantee was necessary as the company was unable to obtain financing from the market due to the bad experience and the losses suffered by the banks in connection with earlier loans to FSO. In addition, the Commission has noted that, as indicated above, the commitment to grant the guarantee was entered into at a time when the risk of bankruptcy was high. In these circumstances, the Commission considers that the aid included in the State guarantee may be up to 100 % of the amount of the guarantee. However, on the basis of the later assessment of the compatibility of the aid, the Commission does not need to quantify the precise amount of aid included in this guarantee.

(62) The Commission notes that the Polish authorities, in their letter of 17 October 2006, suggested that the company would be able to obtain loans from the market at that time. As a result, Poland asked for the

aid included in the guarantee to be quantified on the basis of the reduction in the interest rate obtained thanks to the guarantee. The Commission cannot accede to this request. The State committed itself to grant the guarantee (and the other aid measures), and the aid amount has to be assessed with reference to the time of the irreversible commitment by the State to grant the support measures, and no later. All loans offered by the market after this date are 'contaminated' by the aid which the State has undertaken to grant. The market took account of the direct positive impact (and indirect impact, such as the finding of an investor, which was made possible thanks to the promise of the aid) of the aid on the company. As a result, the price of the financing offered later cannot be used as a basis to assess the quantity of aid in the measures contractually promised previously. In addition, the information provided by the Polish authorities on the willingness of the banks to grant loans is not conclusive and does not prove that any bank would actually be ready to lend the amount in question to FSO without State support. The Polish authorities confirmed [...] in their letter of 17 November 2006.

(63) As regards the aid by means of deferrals of tax and social security liabilities owed by FSO, these deferrals are equivalent to loans to the company. As indicated, these deferrals of payment were granted when the risk of bankruptcy was high. In these circumstances, the Commission concludes that the amount of aid in such deferrals could amount to the full deferred amount. However, on the basis of the later assessment of the compatibility of the aid, the Commission does not need to quantify the precise amount of aid included in these deferrals.

(64) Therefore, the maximum aid amount granted after accession to be assessed in this decision is USD 83 million (EUR 66 million) plus PLN 62 million (EUR 16 million). At the exchange rate of 20 October 2006, the maximum aid amount is therefore EUR 82 million or PLN 318 million.

(65) Regarding the amount of aid contained in the measures granted before accession, the Commission observes that some of the measures also involved deferrals of tax and social security debts. On the basis of the same reasoning as previously set out, the Commission has concluded that the maximum aid amount granted before accession is the total of the nominal value of the measures, namely PLN 201 million (EUR 51 million). The Commission does not need to quantify precisely the aid amount included in these measures.

4.3. Legal basis for the assessment

- (66) As already indicated in the decision to initiate the procedure, the aid under consideration has been assessed on the basis of the 1999 (and not the 2004) Community guidelines on State aid for rescuing and restructuring firms in difficulty. The Commission considers that restructuring aid is compatible when each of the conditions laid down in the guidelines is fulfilled ⁽¹³⁾.

4.4. Eligibility of the firm

- (67) As indicated in the decision to initiate the procedure, the Commission considers that FSO is in difficulty and eligible for restructuring aid. As confirmed by the information submitted by the Polish authorities, without the aid the company would not have been able to attract a new shareholder and a licensor, which was indispensable for its survival. In addition, without a State guarantee, banks would still even today not give FSO an investment loan, which is indispensable for production of a new model and, consequently, for the firm's survival.
- (68) The Commission has also to verify whether [...], which could be the beneficiary of the guaranteed investment loan, is eligible or not. The Polish authorities have assured the Commission that [...] — or whatever other name it receives — would be a subsidiary of FSO and would appear in the consolidated financial statement of the FSO group. On the basis of the information provided by Poland, it can be concluded that the creation of [...] would not constitute the creation of a new firm in the sense of the guidelines. Being a core part of an economic unit in difficulty, [...] is eligible for restructuring aid.

⁽¹³⁾ This is confirmed in the judgment of the Court of First Instance in Case T-17/03 *Schmitz-Gotha Fahrzeugwerke GmbH* [2006] ECR II-1139, paragraphs 44 and 45.

(44) Point 3.2.2 of the Guidelines, which lays down that requirement, stipulates, in particular, that the restructuring plan must fulfil three material conditions. It is essential, first, that it restore the viability of the beneficiary firm within a reasonable timescale and on the basis of realistic assumptions (point 3.2.2(i)); second, that it avoid undue distortions of competition (point 3.2.2(ii)); and, third, that it be in proportion to the restructuring costs and benefits (point 3.2.2(iii)).

(45) As those conditions are cumulative, the Commission must declare a restructuring aid plan to be incompatible if even one of those conditions has not been satisfied (Case T-171/02 *Regione autonoma della Sardegna v Commission* [2005] II-0000, paragraph 128; see also, to that effect, *France v Commission*, cited above, paragraphs 49 and 50).

4.5. Restoration of viability

- (69) The guidelines indicate that *'the restructuring plan, the duration of which must be as short as possible, must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. [...] The improvement in viability must derive mainly from internal measures [...].'*
- (70) As stated previously, FSO will in the future operate as an independent car manufacturer, in the sense that the models produced, assembled and sold by the firm will not be developed within the group to which it belongs ⁽¹⁴⁾. Therefore, the company needs to conclude a licence agreement with one of the major car manufacturers developing their own models. These companies can locate the production of their models in their own plants or in independent companies like FSO. It follows from the foregoing that, when trying to get a licence agreement, FSO will be in competition with the existing production plants of the car manufacturer concerned as well as with other independent manufacturers. FSO can get licence agreements regularly and generate profits from the production of the models concerned only if it is a reliable and efficient manufacturer with a low cost base.
- (71) The Commission notes that the restructuring plan aims at fulfilling the latter condition.
- (72) On the operational side, the company has implemented a far-reaching restructuring plan, which concerned FSO S.A. as well as the subsidiaries. Some of the problems identified at FSO were an excessive number of divisions

⁽¹⁴⁾ In their letter of 6 April 2006, the Polish authorities indicate that 'As a rule, the granting of a licence is closely linked with closer cooperation between the licensor and the licensee. This involves transfer of know-how, manufacturing technologies, technical support, development of research and development processes, quality control, but also joint measures aimed at localising the production of assemblies and components. If the licensee is successful in implementing the terms and conditions of the licensing agreement, subsequent joint projects may be launched [...]. From the foregoing, it is clear that over the long term, FSO expects to be involved more deeply in the development of new products. However, that concerns the very long term and implies a number of conditions, the fulfilment of which is at this stage hypothetical. The Commission will therefore base its analysis on the premise that FSO remains an independent manufacturer.'

and management levels, as well as an inappropriate organisational structure. FSO decided to reduce the number of divisions and to merge some of them, to reduce the number of management levels and management positions. It has also modified the function distribution map by concentrating some functions and eliminating superfluous ones. More generally, as the level and structure of employment did not correspond to current operations and production volumes, the company substantially reduced its workforce, as shown in Table 2. The company has restructured its service subsidiaries, component production subsidiaries and sales subsidiaries.

(73) On the financial side, the company was riddled with debts, which it could not reimburse because of the major losses it had suffered since 2000. However, as illustrated in Table 3, the firm negotiated with its creditors, who agreed either to convert their claims into shares or to waive a majority of them.

(74) The foregoing description illustrates that, as required by the guidelines, the company has already taken important internal measures on the operating and financial sides to restore its competitiveness. The restructuring period will however only be completed when FSO has made the all the investments necessary for the production of the new model and has restored a production volume that generates a reasonable profit. Consequently, on the basis of current planning, the restructuring period should be considered as ending in the course of [...].

(75) In addition to the internal restructuring, which makes FSO a more efficient manufacturer, the company also benefits from having had a new shareholder — AvtoZAZ — since 2005. This gives FSO privileged access to the distribution network of UkrAvto to sell its products.

(76) The Commission notes that the restructuring plan is not free of risks and uncertainties. Firstly, FSO will have to successfully bid on a regular basis for licence agreements in order to have a model to produce. Secondly, it will be dependent on the commercial success of the one or two vehicles produced, which cannot be guaranteed. Thirdly, it will have to generate a sufficient profit margin from production of the models concerned. Given the intensity of competition on the automobile market, reflected in

the low level of profit made by the manufacturers of vehicles for the mass market, achieving profitability will require constant improvements in efficiency and cost control. All these risks are inherent in the restructuring plan and, should they materialise, cannot be considered 'unforeseeable circumstances' within the meaning of paragraph 48 of the guidelines.

(77) However, in view of the operational and financial restructuring already achieved, the support of the new shareholder, and the [...] agreement signed with GM DAT in [...] 2006 for production of the [...], the Commission considers that there is a sufficient probability that the restructuring plan will allow FSO to restore its long-term viability.

4.6. Avoidance of undue distortions of competition

(78) As already mentioned, the EU automobile industry is suffering from overcapacities and car manufacturers regularly announce workforce reductions. In this context, the exit of firms from the market is a normal outcome of the operation of market mechanisms. The aid currently examined thwarts the operation of these mechanisms and shifts the burden of adjustment to other manufacturers. These competitors have to face one more competitor than they would have to if the State had not intervened to rescue FSO from bankruptcy. In order to assess the size of the distortion created by this aid, it is therefore necessary to determine on which markets FSO operates and who its competitors are.

(79) The Commission observes that FSO is active on two markets. Firstly, it competes to obtain licences or orders to produce cars from existing major car manufacturers. In this context, FSO is in competition with existing production plants — either belonging to the major manufacturer concerned or independent — that could also produce these cars and would be interested in assembling them. The Commission observes that over recent years the major car manufacturers active in the EU regularly oblige several plants located in a given geographical area, generally Europe⁽¹⁵⁾, to compete with each other for the production of a given model.

⁽¹⁵⁾ Producing within the EU to serve the EU market avoids customs duties and limits the transport costs. Therefore large car manufacturers consider the production plants operating within the EU to be more substitutable — and therefore in fiercer competition with each other — than production plants operating both within and outside the EU.

Thanks to the aid, FSO can survive and will compete for such production opportunities at the expense of other production plants located in the area. This kind of distortion may have already taken place when FSO was awarded the [...] licence agreement by GM DAT. The [...] model could theoretically have been produced in another European plant. As FSO will compete for other licence agreements in the future, the Commission can reasonably assume, leaving aside this particular contract, that the kind of distortion just described will take place in the future, at the expense of other plants located in the EU. In this respect, the Commission observes that several plants in the EU currently produce the type of car that FSO plans to produce. Such distortion can seriously harm the production plant which would have got the licence agreement concerned if FSO had left the market. The production of a car model often involves employing hundreds (or even thousands) of persons over several years. The welfare of the Member State where the unsuccessful bidder is located is thereby seriously affected by the presence of FSO on the market.

- (80) Secondly, the model produced by FSO will be in competition with other models and take part of their market share from them. Sales of the competing models will be lower than they would in the absence of FSO. This kind of distortion will negatively affect the car manufacturers and their production plants producing the competing models. If FSO had exited the market, production of the models that FSO is going to build would most probably have been awarded to another production plant. However, the Commission observes that the fact that FSO was awarded the contract means its production is cheaper. Therefore, cheaper cars will be offered on the market than would be the case if FSO left the market⁽¹⁶⁾. In addition, it is generally recognized that an increase in the production capacity available on a market tends to depress the prices of the product concerned. The lower car prices will therefore harm competitors. The Commission observes that, according to the forecast included in the restructuring plan, FSO's production will over the long term account for between 1 and 2 % of EU car production. However, as acknowledged by the Polish authorities, the cars produced by FSO will mainly be in competition with car models of similar size and price. Therefore the market share in that particular segment cannot be considered 'negligible' within the meaning of point 36 of the guidelines.

⁽¹⁶⁾ Indeed, the intense competition is likely to force the major car manufacturer producing its cars at FSO to reflect the lower costs in a lower sales price.

- (81) The Commission concludes from the foregoing analysis that the aid keeping FSO alive on a market suffering from overcapacity will negatively affect FSO's competitors: production plants bidding for construction of the same model, production plants producing competing models and car manufacturers producing competing models. Therefore, the Commission considers that measures are necessary to limit the distortion created by the aid. In deciding on the level of these measures, the Commission takes into account the mitigating factors that the company is located in an assisted area and that its market share is small.
- (82) In the course of the procedure, the Polish authorities have proposed various compensatory measures. Firstly, the Polish authorities have said that FSO has reduced its sales network by reducing the number of sales outlets. However, the Commission observes that, as sales in Poland have declined sharply and some outlets have overdue liabilities vis-à-vis FSO or have gone bankrupt, this rationalisation was necessary for viability reasons and to reduce sales costs. In addition, some of these outlets were not controlled by FSO and it was the decision of the owners not to sell FSO cars anymore and to sell other brands. This measure is therefore not an additional effort of FSO and does not restrict the presence of the company on the markets beyond what is justified by the need to restore viability. It cannot therefore be accepted as a compensatory measure.
- (83) The Polish authorities have also suggested that FSO 'voluntarily' limit the number of countries to which it exports its products. However, the Commission notes that FSO will not produce its own models but will produce under a licence agreement. Such a contract limits the countries in which the products can be sold. Therefore, such a limitation is inherent to the business plan and not a concession from FSO, which has no control over it. In addition, the sales forecasts for these countries were not underpinned by sufficient information.
- (84) The Polish authorities have proposed dismantling some equipment on FSO's production lines. However, this equipment has to be replaced anyway to produce a new model.

(85) Finally, Poland, which has indicated that FSO's production capacity is [200 000-230 000] units per year on a two shifts basis, has proposed restricting its production capacity to [140 000-170 000] units per year until 2008. The Commission notes that this corresponds to the level of production forecast by FSO for 2008 (see Table 5) ⁽¹⁷⁾. Therefore, this measure would not be a constraint on the company.

(86) To summarise, none of the measures proposed by the Polish authorities represent concessions by FSO. They do not limit FSO's market presence more than the measures necessary to restore viability would do in any case. Thus they cannot compensate for the distortion created by the aid. Undue distortions of competition are therefore not avoided. As the Commission considers that measures are necessary to limit the distortion of competition, it has decided to make the compatibility of the aid conditional on compliance with the following measures:

1. Annual production of passenger cars, including all kinds of assembly kits, will be limited to 150 000 units until the end of February 2011 ⁽¹⁸⁾, [...].
2. Annual sales of passenger cars in the EU ⁽¹⁹⁾ will be limited to 107 000 units until the end of February 2011 ⁽²⁰⁾.
3. These two conditions apply to FSO, to all its present and future subsidiaries, and to any company controlled by the FSO shareholders to the extent that it operates assets (e.g. plants, production lines) currently belonging to FSO or its subsidiaries.

(87) The Commission considers this condition appropriate to reduce the distortion of competition created by the aid. On the basis of the production forecasts provided by the Polish authorities, this condition will constitute a

constraint on the company only for two, or, at a maximum, three years and two months ⁽²¹⁾. Thus, during that period, the condition will oblige the company to produce and sell fewer cars. These limitations also mean that the company will not be able to bid for any additional license agreements requiring production during this period.

(88) By setting the production ceiling (duration, level) so that the restrictive effect is limited to two – at the maximum three – years and two months, the Commission has taken into account the status of the region where the company is located and its small market share.

4.7. Aid limited to the minimum necessary

(89) In the decision to launch the investigation procedure, the Commission expressed doubts as to whether all the aid was necessary. In particular, the Commission observed that the granting of certain measures had been made conditional on finding an investor. The aid therefore seemed to constitute a way to attract an investor rather than being strictly limited to what the company really needed to survive. The investigation procedure has allayed these doubts. Indeed, the Commission finds that without the support of an investor and a licensor the company on its own could not have survived. FSO had no model of its own to produce, nor did it have the capability to develop a completely new one. Furthermore, the lack of interest manifested by the 29 biggest car manufacturers following the approaches made by FSO in February 2004 shows that the firm was in a very difficult situation and that even with the aid it did not represent a manifestly viable and profitable firm. On the basis of the foregoing, the Commission concludes that the fact that part of the aid was made conditional on finding an investor does not mean that this aid was in excess of the minimum necessary to restore FSO to viability.

(90) In order to assess whether the aid is limited to the minimum necessary, the Commission has analysed which parties have supported and will support the restructuring costs. These are mainly made up of the costs of restructuring the company's liabilities. For a smaller amount, the company also needed a guarantee to get the investment loan to finance the modernisation of the production line necessary to produce the new model.

⁽¹⁷⁾ On the basis of the amended forecasts submitted on 3 October 2006, this measure would only be a constraint in 2008.

⁽¹⁸⁾ Production must be limited to 25 000 units in the first two months of 2011.

⁽¹⁹⁾ Including new Member States when they join the EU.

⁽²⁰⁾ Sales in the EU must be limited to 17 833 units in the first two months of 2011.

⁽²¹⁾ The restraining effect is limited to two years and two months when the production forecasts set out in Table 5 are used. If the increased forecasts included in the letter of 3 October 2006 are used, the restraining effect is limited to three years and two months.

(91) As previously indicated (see Table 3), FSO signed an agreement with its main creditors. Under this agreement, DMC converted claims against FSO amounting to PLN [2-3] million (*) [...] into capital. The State Treasury did the same for an amount of PLN [400-800] million [...]. As indicated in paragraph 55, the Commission considers this conversion to be free of aid. In this agreement of September 2003, private banks undertook to waive claims against FSO amounting to PLN [0,7-1,2] billion [...], and more than half of this commitment has already been implemented. Smaller claims against FSO were also restructured, so that an additional PLN [120-230] million [...] was written off. The debt conversions and write-offs directly reduce the amount of aid necessary to save the company. Indeed, if these creditors had not accepted the conversions and write-offs of their claims, the reimbursement of these liabilities would have been due immediately and additional aid would have been necessary to reimburse them and thereby avoid the bankruptcy of FSO. In total, not counting the debt conversion by the State Treasury, the contribution made by FSO's private creditors amounts to PLN [2,8-4,4] billion [...].

(92) Besides the contribution just described, Poland has indicated that over recent years AvtoZAZ has pre-financed its orders to FSO, which have represented nearly the entire production of the Polish firm. This pre-financing permitted FSO, which had no liquidity available, to finance the production (of the cars ordered e.g. buying inputs). The pre-financed orders have made it possible for the company to operate over the last few years. This kind of pre-financing is not common practice in the car industry, especially for a firm in difficulty. It can then be concluded that AvtoZAZ, through this exceptional pre-financing to FSO, has contributed to financing the company during its restructuring period. This private contribution is a sign that the market believes in the viability of the firm. According to the information submitted by the Polish authorities, the amount of advance payments from AvtoZAZ amounted at some points in time to USD [10-50] million [...].

(93) As indicated, at the exchange rate of 20 October 2006, the maximum aid amount to be granted after accession is EUR 82 million or PLN 318 million. In assessing whether the aid is limited to the minimum necessary, the Commission has also to take into account the aid granted before Poland's accession in the framework of the same restructuring. As indicated before, the

Commission considers the maximum aid amount granted in the quarters before accession to be PLN 201 million (EUR 51 million). The maximum total restructuring aid therefore amounts to PLN 519 million (EUR 133 million). It may be concluded from the above that the private sector contribution covers more than 85 % of the restructuring costs, and the aid less than 15 %. Even if the (aid-free) conversion of debt by the State were considered a restructuring cost, the private sector contribution amounts to more than three quarters of the restructuring costs. The Commission considers the contribution from the private creditors to be substantial.

(94) On the basis of the foregoing, the Commission concludes that the aid is limited to the minimum necessary.

4.8. 'One time, last time' principle

(95) On the basis of the information provided by the Polish authorities, the Commission concludes that the company has not received restructuring aid in the last ten years. During the current restructuring, the first aid measures were granted in the last quarter of 2003. This condition is therefore respected.

5. CONCLUSION

(96) The Commission concludes that the notified aid is compatible with the common market, if certain conditions are fulfilled,

HAS ADOPTED THIS DECISION:

Article 1

The aid measures listed in Table 4, some of which Poland has already partially or fully implemented and some of which Poland has not yet implemented, for Fabryka Samochodów Osobowych are compatible with the common market, subject to the obligations and conditions set out in Article 2.

Article 2

1. The plan for restructuring FSO, including the restructuring of FSO liabilities, must be fully implemented.

(*) Clerical error — should be 'billion'.

2. Annual production of passenger cars, including all kinds of assembly kits, shall be limited to 150 000 units until the end of February 2011. This limitation applies to each calendar year. Production shall be limited to 25 000 units in the first two months of 2011.

3. Annual sales of these passenger cars in the EU (including new Member States as soon as they join the EU) shall be limited to 107 000 units until the end of February 2011. This limitation applies to each calendar year. Sales in the EU shall be limited to 17 833 units in the first two months of 2011.

4. The two conditions set out above shall apply to FSO, to all its present and future subsidiaries, and to any company controlled by the controlling shareholder of FSO to the extent that it uses productive assets (e.g. plant, production lines) currently belonging to FSO or its subsidiaries.

5. For the purpose of monitoring compliance with all the above conditions, Poland shall provide the Commission with six-monthly reports on the state of progress of FSO's restructuring. As regards the production and sales limitations, Poland shall provide the Commission with annual reports on

production and sales figures of the previous calendar year, to be sent no later than at the end of January. The last report shall be sent before the end of March 2011 and shall cover production and sales in the first two months of 2011.

Article 3

Poland shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to the Republic of Poland.

Done in Brussels, 20 December 2006.

For the Commission

Neelie KROES

Member of the Commission

COMMISSION DECISION
of 17 July 2007
amending Decision 2006/784/EC authorising methods for grading pig carcasses in France
(notified under document number C(2007) 3419)
(Only the French text is authentic)
(2007/510/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3220/84 of 13 November 1984 determining the Community scale for grading pig carcasses ⁽¹⁾, and in particular Article 5(2) thereof,

Whereas:

- (1) Commission Decision 2006/784/EC ⁽²⁾ authorises three methods for grading pig carcasses in France.
- (2) The French Government has asked the Commission to authorise two new methods of grading pig carcasses and has presented the results of its dissection trials in the second part of the protocol provided for in Article 3(3) of Commission Regulation (EEC) No 2967/85 of 24 October 1985 laying down detailed rules for the application of the Community scale for grading pig carcasses ⁽³⁾.
- (3) Examination of this request has revealed that the conditions for authorising these grading methods are fulfilled.

- (4) The measures provided for in this Decision are in accordance with the opinion of the Management Committee for Pigmeat,

HAS ADOPTED THIS DECISION:

Article 1

The following points (d) and (e) shall be added to the first subparagraph of Article 1 of Decision 2006/784/EC:

- ‘(d) the *Autoform* apparatus and the assessment methods related thereto, details of which are given in Part 4 of the Annex;
- (e) the *UltraFom 300* apparatus and the assessment methods related thereto, details of which are given in Part 5 of the Annex.’

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 17 July 2007.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

⁽¹⁾ OJ L 301, 20.11.1984, p. 1. Regulation as last amended by Regulation (EC) No 3513/93 (OJ L 320, 22.12.1993, p. 5).

⁽²⁾ OJ L 318, 17.11.2006, p. 27.

⁽³⁾ OJ L 285, 25.10.1985, p. 39. Regulation as last amended by Regulation (EC) No 1197/2006 (OJ L 217, 8.8.2006, p. 6).

ANNEX

Parts 4 and 5 below shall be added to the Annex to Decision 2006/784/EC:

'PART 4

AUTOFOM

1. Grading of pig carcasses is carried out by means of the apparatus known as "Autofom".
2. The apparatus shall be equipped with sixteen 2 MHz ultrasonic transducers (SFK Technology, K2KG), with an operating distance between transducers of 25 mm.

The ultrasonic data shall comprise measurements of backfat thickness and muscle thickness.

The results of the measurements shall be converted into estimates of the percentage of lean meat by using a computer.

3. The lean meat content of carcasses shall be calculated on the basis of 23 measuring points according to the following formula:

$$\hat{Y} = 69,4808 - 0,09178 \cdot X_0 - 0,08778 \cdot X_7 - 0,02047 \cdot X_9 - 0,06525 \cdot X_{19} - 0,03135 \cdot X_{21} - 0,01352 \cdot X_{26} - 0,01257 \cdot X_{29} + 0,00660 \cdot X_{31} + 0,00726 \cdot X_{36} - 0,11207 \cdot X_{48} - 0,31733 \cdot X_{60} - 0,12530 \cdot X_{64} - 0,03016 \cdot X_{83} - 0,28903 \cdot X_{88} - 0,15229 \cdot X_{91} - 0,03713 \cdot X_{92} + 0,09666 \cdot X_{100} - 0,08611 \cdot X_{101} + 0,01797 \cdot X_{113} + 0,03736 \cdot X_{115} + 0,03356 \cdot X_{116} + 0,01313 \cdot X_{121} + 0,01547 \cdot X_{123}$$

where

\hat{Y} = the estimated percentage of lean meat in the carcass,

$X_0, X_7 \dots X_{123}$ are the variables measured by Autofom.

4. The measuring points and the statistical method are described in Part II of the protocol presented to the Commission by France in accordance with Article 3(3) of Regulation (EEC) No 2967/85.

The formula shall be valid for carcasses weighing between 45 and 125 kg.

PART 5

ULTRAFOM 300

1. Grading of pig carcasses is carried out by means of the apparatus known as "UltraFom 300".
2. The apparatus shall be equipped with a 3,5 MHz ultrasound probe (SFK Technology 3,5 64LA), 5 cm in length, featuring 64 ultrasound transducers. The ultrasound signal shall be digitalised, recorded and analysed by a micro-processor.

The results of the measurements shall be converted into estimates of the percentage of lean meat by UltraFom itself.

3. The lean meat content of carcasses shall be calculated according to the following formula:

$$\hat{Y} = 66,49 - 0,891 \cdot G + 0,104 \cdot M$$

where

\hat{Y} = the estimated percentage of lean meat in the carcass,

G = the thickness of the fat (including rind) between the second and third last ribs, at 7 cm off the dorsal midline, at a trajectory perpendicular to the rind (in millimetres),

M = the thickness of the muscle between the second and third last ribs, at 7 cm off the dorsal midline, at a trajectory perpendicular to the rind (in millimetres).

The formula shall be valid for carcasses weighing between 45 and 125 kg.'