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## I

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

## REGULATIONS

## COUNCIL REGULATION (EC) No 143/2008

of 12 February 2008

**amending Regulation (EC) No 1798/2003 as regards the introduction of administrative cooperation and the exchange of information concerning the rules relating to the place of supply of services, the special schemes and the refund procedure for value added tax**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Whereas:

(1) The amendments introduced with regard to the place of supply of services by Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services <sup>(3)</sup> mean that services to taxable persons are supplied principally where the recipient is established. Where the supplier and the recipient of the services are established in different Member States, the reverse charge mechanism will be applicable more frequently than hitherto.

(2) To ensure the proper application of value added tax (VAT) on services which are subject to the reverse

charge mechanism, the data collected by the Member State of the supplier should be communicated to the Member State where the recipient is established. Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax <sup>(4)</sup> should provide for such communication.

(3) Directive 2008/8/EC also extends the scope of the special scheme for electronic services supplied by taxable persons not established within the Community.

(4) Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but in another Member State <sup>(5)</sup> simplifies the refund procedure for VAT in a Member State in which the taxable person concerned is not identified for VAT purposes.

(5) The extension of the scope of the special scheme and the amendments to the refund procedure for taxable persons not established in the Member State of refund mean that the Member States concerned will need to exchange considerably more information. The required exchange of information should not make any excessive administrative demands on the Member State concerned. This exchange of information should thus take place electronically under existing systems for exchanging information.

(6) Regulation (EC) No 1798/2003 should therefore be amended accordingly,

<sup>(1)</sup> Opinion of 7 September 2005.

<sup>(2)</sup> Opinion of 12 May 2005.

<sup>(3)</sup> See page 11 of this Official Journal.

<sup>(4)</sup> OJ L 264, 15.10.2003, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

<sup>(5)</sup> See page 23 of this Official Journal.

HAS ADOPTED THIS REGULATION:

*Article 1*

From 1 January 2010, Regulation (EC) No 1798/2003 is hereby amended as follows:

1. in Article 1(1), the fourth subparagraph shall be replaced by the following:

‘For the period provided for in Article 357 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (\*), it also lays down rules and procedures for the exchange by electronic means of value added tax information on services supplied electronically in accordance with the special scheme provided for in Chapter 6 of Title XII of that Directive and also for any subsequent exchange of information and, as far as services covered by that special scheme are concerned, for the transfer of money between Member States’ competent authorities.

(\*) OJ L 347, 11.12.2006, p. 1. Directive as last amended by Directive 2008/8/EC (OJ L 44, 20.2.2008, p. 11).;

2. in Article 2, points 8 to 11 shall be replaced by the following:

‘8. “intra-Community supply of goods” means any supply of goods which must be declared in the recapitulative statement provided for in Article 262 of Directive 2006/112/EC;

9. “intra-Community supply of services” means any supply of services which must be declared in the recapitulative statement provided for in Article 262 of Directive 2006/112/EC;

10. “intra-Community acquisition of goods” means the acquisition of the right under Article 20 of Directive 2006/112/EC to dispose as owner of moveable tangible property;

11. “VAT identification number” means the number provided for in Articles 214, 215 and 216 of Directive 2006/112/EC;’

3. in Article 22(1), the first subparagraph shall be replaced by the following:

‘1. Each Member State shall maintain an electronic database in which it stores and processes the information which it collects pursuant to Chapter 6 of Title XI of Directive 2006/112/EC.’;

4. in the first paragraph of Article 23, point 2 shall be replaced by the following:

‘2. the total value of all intra-Community supplies of goods and the total value of all intra-Community supplies of services to persons holding a VAT identification number by all operators identified for the purposes of VAT in the Member State providing the information.’;

5. in Article 24, the first paragraph shall be replaced by the following:

‘On the basis of the data stored in accordance with Article 22 and solely in order to prevent a breach of VAT legislation, the competent authority of a Member State shall, wherever it considers it necessary for the control of intra-Community acquisitions of goods or intra-Community supplies of services taxable in its territory, obtain directly and without delay, or have direct access to by electronic means, any of the following information:

1. the VAT identification numbers of the persons who carried out the supplies of goods and services referred to in point 2 of the first paragraph of Article 23;

2. the total value of supplies of goods and services from each such person to each person holding a VAT identification number referred to in point 1 of the first paragraph of Article 23.’;

6. Article 27(4) shall be replaced by the following:

‘4. The competent authorities of each Member State shall ensure that persons involved in the intra-Community supply of goods or of services and, for the period provided for in Article 357 of Directive 2006/112/EC, non-established taxable persons supplying electronically supplied services, in particular those referred to in Annex II of that Directive, are allowed to obtain confirmation of the validity of the VAT identification number of any specified person.

During the period provided for in Article 357 of Directive 2006/112/EC, the Member States shall provide such confirmation by electronic means in accordance with the procedure referred to in Article 44(2) of this Regulation.’;

7. the heading of Chapter VI shall be replaced by the following:

**'PROVISIONS CONCERNING THE SPECIAL SCHEME IN CHAPTER 6 OF TITLE XII OF DIRECTIVE 2006/112/EC';**

8. Article 28 shall be replaced by the following:

*'Article 28*

The following provisions shall apply concerning the special scheme provided for in Chapter 6 of Title XII of Directive 2006/112/EC. The definitions contained in Article 358 of that Directive shall also apply for the purpose of this Chapter.;

9. Article 29(1) shall be replaced by the following:

'1. The information provided by the taxable person not established in the Community to the Member State of identification when his activities commence pursuant to Article 361 of Directive 2006/112/EC shall be submitted in an electronic manner. The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article 44(2) of this Regulation.;

10. in Article 30, the first paragraph shall be replaced by the following:

'The return with the details set out in Article 365 of Directive 2006/112/EC is to be submitted in an electronic manner. The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article 44(2) of this Regulation.;

11. Article 31 shall be replaced by the following:

*'Article 31*

The provisions in Article 22 of this Regulation shall apply also to information collected by the Member State of identification in accordance with Articles 360, 361, 364 and 365 of Directive 2006/112/EC.;

12. Article 34 shall be replaced by the following:

*'Article 34*

Articles 28 to 33 of this Regulation shall apply for the period provided for in Article 357 of Directive 2006/112/EC.;

13. the following Chapter VIa shall be inserted:

**'CHAPTER VIa**

**PROVISIONS CONCERNING THE EXCHANGE AND CONSERVATION OF INFORMATION IN THE CONTEXT OF THE PROCEDURE PROVIDED FOR IN DIRECTIVE 2008/9/EC**

*Article 34a*

1. Where the competent authority of the Member State of establishment receives an application for refund of value added tax under Article 5 of Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (\*) and Article 18 of that Directive is not applicable, it shall, within 15 calendar days of its receipt and by electronic means, forward the application to the competent authorities of each Member State of refund concerned with confirmation that the applicant as defined in Article 2(5) of Directive 2008/9/EC is a taxable person for the purposes of value added tax and that the identification or registration number given by this person is valid for the refund period.

2. The competent authorities of each Member State of refund shall notify by electronic means the competent authorities of the other Member States of any information required by them under Article 9(2) of Directive 2008/9/EC. The technical details, including a common electronic message by which this information is to be transmitted, shall be determined in accordance with the procedure provided for in Article 44(2) of this Regulation.

3. The competent authorities of each Member State of refund shall notify by electronic means the competent authorities of the other Member States if they want to make use of the option to require the applicant to provide the description of business activity by harmonised codes as referred to in Article 11 of Directive 2008/9/EC.

The harmonised codes referred to in the first subparagraph shall be determined in accordance with the procedure provided for in Article 44(2) of this Regulation on the basis of the NACE classification established by Regulation (EEC) No 3037/90.

(\*) OJ L 44, 20.2.2008, p. 23.;

14. in Article 39, the first paragraph shall be replaced by the following:

'For the period provided for in Article 357 of Directive 2006/112/EC, the Commission and the Member States shall ensure that such existing or new communication and information exchange systems which are necessary to provide for the exchanges of information described in Articles 29 and 30 of this Regulation are operational. The Commission will be responsible for whatever development of the common communication network/common system interface (CCN/CSI) is necessary to permit the exchange of this information between Member States. Member States will be responsible for whatever development of their systems is necessary to permit this information to be exchanged using the CCN/CSI.'

#### Article 2

From 1 January 2015, Regulation (EC) No 1798/2003 is hereby amended as follows:

1. in Article 1(1), the fourth subparagraph shall be replaced by the following:

'This Regulation also lays down rules and procedures for the exchange by electronic means of value added tax information on services in accordance with the special schemes provided for in Chapter 6 of Title XII of Directive 2006/112/EC and also for any subsequent exchange of information and, as far as services covered by those special schemes are concerned, for the transfer of money between Member States' competent authorities.;

2. in Article 2, the sole paragraph shall be numbered '1' and the following paragraph shall be added:

'2. The definitions contained in Articles 358, 358a and 369a of Directive 2006/112/EC shall also apply for the purposes of this Regulation.;

3. in Article 5, paragraph 3 shall be replaced by the following:

'3. The request referred to in paragraph 1 may contain a reasoned request for a specific administrative enquiry. If the Member State takes the view that no administrative enquiry is necessary, it shall immediately inform the requesting authority of the reasons thereof.

Notwithstanding the first subparagraph and without prejudice to Article 40 of this Regulation, an enquiry into the amounts declared by a taxable person in connection with the supply of telecommunications services, broadcasting services and electronically supplied services which are taxable in the Member State in which the requesting authority is situated and for which the taxable person makes use or opts not to make use of the special scheme provided for in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC, may only be refused by the requested authority if information on the same taxable person obtained in an administrative enquiry held less than two years previously, has already been supplied to the requesting authority.

However, with respect to the requests referred to in the second subparagraph made by the requesting authority and assessed by the requested authority in conformity with a Statement of Best Practices concerning the interaction of this paragraph and Article 40(1) to be adopted in accordance with the procedure referred to in Article 44(2), a Member State which refuses to hold an administrative enquiry on the basis of Article 40 shall provide to the requesting authority the dates and values of any relevant supplies made over the last two years by the taxable person in the Member State of the requesting authority.;

4. in Article 17, the following paragraph shall be added:

'For the purposes of the first paragraph, each Member State of establishment shall cooperate with each Member State of consumption so as to make it possible to ascertain whether the taxable persons established on its territory declare and pay correctly the VAT due with regard to telecommunications services, broadcasting services and electronically supplied services for which the taxable person makes use or opts not to make use of the special scheme provided for in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC. The Member State of establishment shall inform the Member State of consumption of any discrepancies of which it becomes aware.;

5. in Article 18, the second paragraph shall be replaced by the following:

'Each Member State shall determine whether it will take part in the exchange of a particular category of information, as well as whether it will do so in an automatic or structured automatic way. However, each Member State shall take part in exchanges of the information available to it with regard to telecommunications services, broadcasting services and electronically supplied services for which the taxable person makes use or opts not to make use of the special scheme provided for in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC.;

6. Article 27(4) shall be replaced by the following:

'4. The competent authorities of each Member State shall ensure that persons involved in the intra-Community supply of goods or of services and non-established taxable persons supplying telecommunication services, broadcasting services and electronically supplied services, in particular those referred to in Annex II of Directive 2006/112/EC, are allowed to obtain confirmation of the validity of the VAT identification number of any specified person.

The Member States shall provide such confirmation by electronic means in accordance with the procedure referred to in Article 44(2) of this Regulation.;

7. the heading of Chapter VI shall be replaced by the following:

**'PROVISIONS CONCERNING THE SPECIAL SCHEMES IN CHAPTER 6 OF TITLE XII OF DIRECTIVE 2006/112/EC';**

8. Article 28 shall be replaced by the following:

*'Article 28*

The following provisions shall apply concerning the special schemes provided for in Chapter 6 of Title XII of Directive 2006/112/EC.;

9. Article 29 shall be replaced by the following:

*'Article 29*

1. The information provided by the taxable person not established in the Community to the Member State of identification when his activities commence pursuant to Article 361 of Directive 2006/112/EC shall be submitted in an electronic manner. The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article 44(2) of this Regulation.

2. The Member State of identification shall transmit the information referred to in paragraph 1 by electronic means to the competent authorities of the other Member States within 10 days from the end of the month during which the information was received from the taxable person not established within the Community. Similar details for the identification of the taxable person applying the special scheme under Article 369b of Directive 2006/112/EC shall be transmitted within 10 days from the end of the month during which the taxable person stated that his

taxable activities under that scheme commenced. In the same manner the competent authorities of the other Member States shall be informed of the allocated identification number.

The technical details, including a common electronic message, by which this information is to be transmitted, shall be determined in accordance with the procedure provided for in Article 44(2) of this Regulation.

3. The Member State of identification shall without delay inform by electronic means the competent authorities of the other Member States if a taxable person not established in the Community or a taxable person not established in the Member State of consumption is excluded from the special scheme.;

10. in Article 30, the first and second paragraphs shall be replaced by the following:

'The return with the details set out in Articles 365 and 369g of Directive 2006/112/EC is to be submitted in an electronic manner. The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article 44(2) of this Regulation.

The Member State of identification shall transmit this information by electronic means to the competent authority of the Member State of consumption concerned at the latest 10 days after the end of the month in which the return was received. The information provided for in the second paragraph of Article 369g of Directive 2006/112/EC shall also be transmitted to the competent authority of the Member State of establishment concerned. Member States which have required the tax return to be made in a national currency other than euro, shall convert the amounts into euro using the exchange rate valid for the last date of the reporting period. The exchange shall be done following the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication. The technical details by which this information is to be transmitted shall be determined in accordance with the procedure provided for in Article 44(2) of this Regulation.;

11. Article 31 shall be replaced by the following:

*'Article 31*

The provisions in Article 22 of this Regulation shall apply also to information collected by the Member State of identification in accordance with Articles 360, 361, 364, 365, 369c, 369f and 369g of Directive 2006/112/EC.;

12. in Article 32, the following paragraph shall be added:

‘Concerning the payments to be transferred to the Member State of consumption in accordance with the special scheme provided for in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC, the Member State of identification shall, of the amounts referred to in the first and second paragraphs, be entitled to retain:

- (a) from 1 January 2015 until 31 December 2016 — 30 %,
- (b) from 1 January 2017 until 31 December 2018 — 15 %,
- (c) from 1 January 2019 — 0 %.’;

13. Article 34 shall be deleted;

14. in Article 39, the first paragraph shall be replaced by the following:

‘The Commission and the Member States shall ensure that such existing or new communication and information exchange systems which are necessary to provide for the exchanges of information described in Articles 29 and 30 are operational. The Commission will be responsible for whatever development of the common communication network/common system interface (CCN/CSI) is necessary to permit the exchange of this information between Member States. Member States will be responsible for whatever development of their systems is necessary to permit this information to be exchanged using the CCN/CSI.’.

*Article 3*

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

Articles 1 and 2 shall apply from the following dates:

- (a) Article 1, from 1 January 2010;
- (b) Article 2, from 1 January 2015.

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

Done at Brussels, 12 February 2008.

*For the Council*  
*The President*  
A. BAJUK

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**COMMISSION REGULATION (EC) No 144/2008**  
**of 19 February 2008**  
**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 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector <sup>(1)</sup>, and in particular Article 138(1) thereof,

Whereas:

- (1) Regulation (EC) No 1580/2007 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 138 of Regulation (EC) No 1580/2007 shall be fixed as indicated in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 20 February 2008.

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

Done at Brussels, 19 February 2008.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

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<sup>(1)</sup> OJ L 350, 31.12.2007, p. 1.

## ANNEX

## to Commission Regulation of 19 February 2008 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	IL	53,3
	JO	74,3
	MA	43,5
	TN	115,9
	TR	93,6
	ZZ	76,1
0707 00 05	JO	190,5
	MA	143,8
	TR	181,9
	ZZ	172,1
0709 90 70	MA	52,4
	TR	140,5
	ZA	71,0
	ZZ	88,0
0709 90 80	EG	60,4
	ZZ	60,4
0805 10 20	EG	50,0
	IL	51,5
	MA	57,0
	TN	47,7
	TR	78,8
	ZZ	57,0
0805 20 10	IL	110,6
	MA	117,3
	ZZ	114,0
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	42,0
	EG	82,3
	IL	80,1
	JM	114,0
	MA	128,9
	PK	65,4
	TR	81,4
	ZZ	84,9
	ZZ	84,9
0805 50 10	EG	84,7
	IL	96,9
	MA	114,0
	TR	113,2
	ZZ	102,2
0808 10 80	AR	96,3
	CA	88,1
	CN	89,7
	MK	39,9
	US	109,1
	ZZ	84,6
0808 20 50	AR	91,7
	CN	92,4
	US	122,0
	ZA	92,3
	ZZ	99,6

<sup>(1)</sup> 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 145/2008****of 19 February 2008****amending Regulation (EC) No 796/2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001<sup>(1)</sup>, and in particular Article 52(2) thereof,

Whereas:

- (1) Commission Regulation (EC) No 796/2004<sup>(2)</sup> lays down the rules for the application of Regulation (EC) No 1782/2003, concerning, *inter alia*, the conditions for the verification of the tetrahydrocannabinol content in hemp growth.
- (2) In accordance with Article 33(2) of Regulation (EC) No 796/2004, the Member States have notified to the Commission the results of the tests to determine the tetrahydrocannabinol levels in the hemp varieties sown in 2007. Those results should be taken into account when drawing up the list of varieties of hemp eligible for direct payments in the coming marketing years and

the list of varieties temporarily authorised for the marketing year 2008/2009.

- (3) Following a request submitted by Romania in accordance with Article 33(4) of Regulation (EC) No 796/2004, two new varieties of hemp should be included as eligible for direct payments.
- (4) Regulation (EC) No 796/2004 should therefore be amended accordingly.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex II to Regulation (EC) No 796/2004 is replaced by the text in the Annex to this Regulation.

*Article 2*This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the marketing year 2008/2009.

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

Done at Brussels, 19 February 2008.

*For the Commission*

Mariann FISCHER BOEL

*Member of the Commission*

<sup>(1)</sup> OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Commission Regulation (EC) No 1276/2007 (OJ L 284, 30.10.2007, p. 11).

<sup>(2)</sup> OJ L 141, 30.4.2004, p. 18. Regulation as last amended by Regulation (EC) No 1550/2007 (OJ L 337, 21.12.2007, p. 79).

## ANNEX

## 'ANNEX II

## VARIETIES OF HEMP ELIGIBLE FOR DIRECT PAYMENTS

(a) **Hemp varieties**

Beniko  
Carmagnola  
Chamaeleon  
CS  
Delta-Llosa  
Delta 405  
Denise  
Dioica 88  
Epsilon 68  
Fedora 17  
Felina 32  
Felina 34 – Féline 34  
Ferimon - Férimon  
Fibranova  
Fibrimon 24  
Futura 75  
Kompolti  
Red Petiole  
Santhica 23  
Santhica 27  
Silesia  
Uso-31

(b) **Hemp varieties authorised in the marketing year 2008/2009**

Bialobrzeskie  
Cannakomp  
Diana <sup>(1)</sup>  
Fasamo  
Kompolti hibrid TC  
Lipko  
Lovrin 110  
Silvana  
UNIKO-B  
Zenit <sup>(1)</sup>

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<sup>(1)</sup> Only in Romania, as authorised by Commission Decision 2007/69/EC (OJ L 32, 6.2.2007, p. 167):'

## DIRECTIVES

## COUNCIL DIRECTIVE 2008/8/EC

of 12 February 2008

## amending Directive 2006/112/EC as regards the place of supply of services

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Whereas:

(1) The realisation of the internal market, globalisation, deregulation and technology change have all combined to create enormous changes in the volume and pattern of trade in services. It is increasingly possible for a number of services to be supplied at a distance. In response, piece-meal steps have been taken to address this over the years and many defined services are in fact at present taxed on the basis of the destination principle.

(2) The proper functioning of the internal market requires the amendment of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax <sup>(3)</sup> as regards the place of supply of services, following the Commission's strategy of modernisation and simplification of the operation of the common VAT system.

(3) For all supplies of services the place of taxation should, in principle, be the place where the actual consumption takes place. If the general rule for the place of supply of services were to be altered in this way, certain exceptions to this general rule would still be necessary for both administrative and policy reasons.

(4) For supplies of services to taxable persons, the general rule with respect to the place of supply of services should be based on the place where the recipient is established, rather than where the supplier is established. For the purposes of rules determining the place of supply of services and to minimise burdens on business, taxable persons who also have non-taxable activities should be treated as taxable for all services rendered to them. Similarly, non-taxable legal persons who are identified for VAT purposes should be regarded as taxable persons. These provisions, in accordance with normal rules, should not extend to supplies of services received by a taxable person for his own personal use or that of his staff.

(5) Where services are supplied to non-taxable persons, the general rule should continue to be that the place of supply of services is the place where the supplier has established his business.

(6) In certain circumstances, the general rules as regards the place of supply of services for both taxable and non-taxable persons are not applicable and specified exclusions should apply instead. These exclusions should be largely based on existing criteria and reflect the principle of taxation at the place of consumption, while not imposing disproportionate administrative burdens upon certain traders.

(7) Where a taxable person receives services from a person not established in the same Member State, the reverse charge mechanism should be obligatory in certain cases, meaning that the taxable person should self-assess the appropriate amount of VAT on the acquired service.

(8) To simplify the obligations on businesses engaging in activities in Member States where they are not established, a scheme should be set up enabling them to have a single point of electronic contact for VAT identification and declaration. Until such a scheme is established, use should be made of the scheme introduced to facilitate compliance with fiscal obligations by taxable persons not established within the Community.

<sup>(1)</sup> OJ C 104 E, 30.4.2004, p. 143 and opinion delivered on 16 May 2006 (not yet published in the Official Journal).

<sup>(2)</sup> OJ C 117, 30.4.2004, p. 15 and OJ C 195, 18.8.2006, p. 54.

<sup>(3)</sup> OJ L 347, 11.12.2006, p. 1. Directive as last amended by Directive 2007/75/EC (OJ L 346, 29.12.2007, p. 13).

- (9) In order to further the correct application of this Directive every taxable person identified for VAT purposes should submit a recapitulative statement of the taxable persons and the non-taxable legal persons identified for VAT purposes to whom he has supplied taxable services which fall under the reverse charge mechanism.
- (10) Some of the changes made to the place of supply of services could have a considerable impact on the budget of Member States. To ensure a smooth transition these changes should be introduced over time.
- (11) In accordance with point 34 of the Interinstitutional Agreement on better law-making <sup>(1)</sup>, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (12) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

From 1 January 2009, Directive 2006/112/EC is hereby amended as follows:

1. in Article 56, paragraph 3 shall be replaced by the following:

‘3. Points (j) and (k) of paragraph 1 and paragraph 2 shall apply until 31 December 2009.’;

2. in Article 57, paragraph 2 shall be replaced by the following:

‘2. Paragraph 1 shall apply until 31 December 2009.’;

3. in Article 59, paragraph 2 shall be replaced by the following:

‘2. Until 31 December 2009, Member States shall apply Article 58(b) to radio and television broadcasting services, as referred to in Article 56(1)(j), supplied to non-taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State, by a taxable person who has established his business outside the Community or who has a fixed establishment there from which the services are supplied, or who, in the absence of such a place of business or fixed estab-

lishment, has his permanent address or usually resides outside the Community.’;

4. Article 357 shall be replaced by the following:

‘Article 357

This Chapter shall apply until 31 December 2014.’.

#### Article 2

From 1 January 2010, Directive 2006/112/EC is hereby amended as follows:

1. Chapter 3 of Title V shall be replaced by the following:

‘CHAPTER 3

#### **Place of supply of services**

##### **Section 1**

##### **Definitions**

Article 43

For the purpose of applying the rules concerning the place of supply of services:

1. a taxable person who also carries out activities or transactions that are not considered to be taxable supplies of goods or services in accordance with Article 2(1) shall be regarded as a taxable person in respect of all services rendered to him;
2. a non-taxable legal person who is identified for VAT purposes shall be regarded as a taxable person.

##### **Section 2**

##### **General rules**

Article 44

The place of supply of services to a taxable person acting as such shall be the place where that person has established his business. However, if those services are provided to a fixed establishment of the taxable person located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the taxable person who receives such services has his permanent address or usually resides.

<sup>(1)</sup> OJ C 321, 31.12.2003, p. 1.

*Article 45*

The place of supply of services to a non-taxable person shall be the place where the supplier has established his business. However, if those services are provided from a fixed establishment of the supplier located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the supplier has his permanent address or usually resides.

**Section 3****Particular provisions****Subsection 1****Supply of services by intermediaries***Article 46*

The place of supply of services rendered to a non-taxable person by an intermediary acting in the name and on behalf of another person shall be the place where the underlying transaction is supplied in accordance with this Directive.

**Subsection 2****Supply of services connected with immovable property***Article 47*

The place of supply of services connected with immovable property, including the services of experts and estate agents, the provision of accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, the granting of rights to use immovable property and services for the preparation and coordination of construction work, such as the services of architects and of firms providing on-site supervision, shall be the place where the immovable property is located.

**Subsection 3****Supply of transport***Article 48*

The place of supply of passenger transport shall be the place where the transport takes place, proportionate to the distances covered.

*Article 49*

The place of supply of the transport of goods, other than the intra-Community transport of goods, to non-taxable

persons shall be the place where the transport takes place, proportionate to the distances covered.

*Article 50*

The place of supply of the intra-Community transport of goods to non-taxable persons shall be the place of departure.

*Article 51*

“Intra-Community transport of goods” shall mean any transport of goods in respect of which the place of departure and the place of arrival are situated within the territories of two different Member States.

“Place of departure” shall mean the place where transport of the goods actually begins, irrespective of distances covered in order to reach the place where the goods are located and “place of arrival” shall mean the place where transport of the goods actually ends.

*Article 52*

Member States need not apply VAT to that part of the intra-Community transport of goods to non-taxable persons taking place over waters which do not form part of the territory of the Community.

**Subsection 4****Supply of cultural, artistic, sporting, scientific, educational, entertainment and similar services, ancillary transport services and valuations of and work on movable property***Article 53*

The place of supply of services and ancillary services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities, such as fairs and exhibitions, including the supply of services of the organisers of such activities, shall be the place where those activities are physically carried out.

*Article 54*

The place of supply of the following services to non-taxable persons shall be the place where the services are physically carried out:

- (a) ancillary transport activities such as loading, unloading, handling and similar activities;
- (b) valuations of and work on movable tangible property.

**Subsection 5****Supply of restaurant and catering services***Article 55*

The place of supply of restaurant and catering services other than those physically carried out on board ships, aircraft or trains during the section of a passenger transport operation effected within the Community, shall be the place where the services are physically carried out.

**Subsection 6****Hiring of means of transport***Article 56*

1. The place of short-term hiring of a means of transport shall be the place where the means of transport is actually put at the disposal of the customer.

2. For the purposes of paragraph 1, "short-term" shall mean the continuous possession or use of the means of transport throughout a period of not more than thirty days and, in the case of vessels, not more than ninety days.

**Subsection 7****Supply of restaurant and catering services for consumption on board ships, aircraft or trains***Article 57*

1. The place of supply of restaurant and catering services which are physically carried out on board ships, aircraft or trains during the section of a passenger transport operation effected within the Community, shall be at the point of departure of the passenger transport operation.

2. For the purposes of paragraph 1, "section of a passenger transport operation effected within the Community" shall mean the section of the operation effected, without a stopover outside the Community, between the point of departure and the point of arrival of the passenger transport operation.

"Point of departure of a passenger transport operation" shall mean the first scheduled point of passenger embarkation within the Community, where applicable after a stopover outside the Community.

"Point of arrival of a passenger transport operation" shall mean the last scheduled point of disembarkation within the Community of passengers who embarked in the Community, where applicable before a stopover outside the Community.

In the case of a return trip, the return leg shall be regarded as a separate transport operation.

**Subsection 8****Supply of electronic services to non-taxable persons***Article 58*

The place of supply of electronically supplied services, in particular those referred to in Annex II, when supplied to non-taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State, by a taxable person who has established his business outside the Community or has a fixed establishment there from which the service is supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community, shall be the place where the non-taxable person is established, or where he has his permanent address or usually resides.

Where the supplier of a service and the customer communicate via electronic mail, that shall not of itself mean that the service supplied is an electronically supplied service.

**Subsection 9****Supply of services to non-taxable persons outside the Community***Article 59*

The place of supply of the following services to a non-taxable person who is established or has his permanent address or usually resides outside the Community, shall be the place where that person is established, has his permanent address or usually resides:

- (a) transfers and assignments of copyrights, patents, licences, trade marks and similar rights;
- (b) advertising services;
- (c) the services of consultants, engineers, consultancy firms, lawyers, accountants and other similar services, as well as data processing and the provision of information;
- (d) obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right referred to in this Article;

- (e) banking, financial and insurance transactions including reinsurance, with the exception of the hire of safes;
- (f) the supply of staff;
- (g) the hiring out of movable tangible property, with the exception of all means of transport;
- (h) the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other services directly linked thereto;
- (i) telecommunications services;
- (j) radio and television broadcasting services;
- (k) electronically supplied services, in particular those referred to in Annex II.

Where the supplier of a service and the customer communicate via electronic mail, that shall not of itself mean that the service supplied is an electronically supplied service.

#### Subsection 10

#### Prevention of double taxation or non-taxation

##### Article 59a

In order to prevent double taxation, non-taxation or distortion of competition, Member States may, with regard to services the place of supply of which is governed by Articles 44, 45, 56 and 59:

- (a) consider the place of supply of any or all of those services, if situated within their territory, as being situated outside the Community if the effective use and enjoyment of the services takes place outside the Community;
- (b) consider the place of supply of any or all of those services, if situated outside the Community, as being situated within their territory if the effective use and enjoyment of the services takes place within their territory.

However, this provision shall not apply to the electronically supplied services where those services are rendered to non-taxable persons not established within the Community.

##### Article 59b

Member States shall apply Article 59a(b) to telecommunications services and radio and television broadcasting

services, as referred to in point (j) of the first paragraph of Article 59, supplied to non-taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State, by a taxable person who has established his business outside the Community or has a fixed establishment there from which the services are supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community.;

2. in Article 98(2), the second subparagraph shall be replaced by the following:

'The reduced rates shall not apply to electronically supplied services.;

3. the introductory sentence of Article 170 shall be replaced by the following:

'All taxable persons who, within the meaning of Article 1 of Directive 86/560/EEC (\*), Article 2(1) and Article 3 of Directive 2008/9/EC (\*\*), and Article 171 of this Directive, are not established in the Member State in which they purchase goods and services or import goods subject to VAT shall be entitled to obtain a refund of that VAT insofar as the goods and services are used for the purposes of the following:

(\*) Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory (OJ L 326, 21.11.1986, p. 40).

(\*\*) Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC to taxable persons not established in the Member State of refund but established in another Member State (OJ L 44, 20.2.2008, p. 23).;

4. Article 171 shall be amended as follows:

- (a) paragraph 1 shall be replaced by the following:

'1. VAT shall be refunded to taxable persons who are not established in the Member State in which they purchase goods and services or import goods subject to VAT but who are established in another Member State, in accordance with the detailed rules laid down in Directive 2008/9/EC.;

(b) paragraph 3 shall be replaced by the following:

'3. Directive 86/560/EEC shall not apply to:

- (a) amounts of VAT which according to the legislation of the Member State of refund have been incorrectly invoiced;
- (b) invoiced amounts of VAT in respect of supplies of goods the supply of which is, or may be, exempt pursuant to Article 138 or Article 146(1)(b).';

5. the following Article 171a shall be inserted:

*'Article 171a*

Member States may, instead of granting a refund of VAT pursuant to Directives 86/560/EEC or 2008/9/EC on those supplies of goods or services to a taxable person in respect of which the taxable person is liable to pay the tax in accordance with Articles 194 to 197 or Article 199, allow deduction of this tax pursuant to the procedure laid down in Article 168. The existing restrictions pursuant to Article 2(2) and Article 4(2) of Directive 86/560/EEC may be retained.

To that end, Member States may exclude the taxable person who is liable to pay the tax from the refund procedure pursuant to Directives 86/560/EEC or 2008/9/EC.;

6. in Section 1 of Chapter 1 of Title XI, the following Article 192a shall be inserted:

*'Article 192a*

For the purposes of this Section, a taxable person who has a fixed establishment within the territory of the Member State where the tax is due shall be regarded as a taxable person who is not established within that Member State when the following conditions are met:

- (a) he makes a taxable supply of goods or of services within the territory of that Member State;
- (b) an establishment which the supplier has within the territory of that Member State does not intervene in that supply.;

7. Article 196 shall be replaced by the following:

*'Article 196*

VAT shall be payable by any taxable person, or non-taxable legal person identified for VAT purposes, to whom the

services referred to in Article 44 are supplied, if the services are supplied by a taxable person not established within the territory of the Member State.;

8. in Article 214, the following points shall be added:

- '(d) every taxable person who within their respective territory receives services for which he is liable to pay VAT pursuant to Article 196;
- (e) every taxable person, established within their respective territory, who supplies services within the territory of another Member State for which VAT is payable solely by the recipient pursuant to Article 196.;

9. Article 262 shall be replaced by the following:

*'Article 262*

Every taxable person identified for VAT purposes shall submit a recapitulative statement of the following:

- (a) the acquirers identified for VAT purposes to whom he has supplied goods in accordance with the conditions specified in Article 138(1) and (2)(c);
- (b) the persons identified for VAT purposes to whom he has supplied goods which were supplied to him by way of intra-Community acquisitions referred to in Article 42;
- (c) the taxable persons, and the non-taxable legal persons identified for VAT purposes, to whom he has supplied services, other than services that are exempted from VAT in the Member State where the transaction is taxable, and for which the recipient is liable to pay the tax pursuant to Article 196.;

10. in Article 264, paragraph 1 shall be amended as follows:

(a) points (a) and (b) shall be replaced by the following:

- '(a) the VAT identification number of the taxable person in the Member State in which the recapitulative statement must be submitted and under which he has carried out the supply of goods in accordance with the conditions specified in Article 138(1) and under which he effected taxable supplies of services in accordance with the conditions laid down in Article 44;

(b) the VAT identification number of the person acquiring the goods or receiving the services in a Member State other than that in which the recapitulative statement must be submitted and under which the goods or services were supplied to him;;

(b) point (d) shall be replaced by the following:

‘(d) for each person who acquired goods or received services, the total value of the supplies of goods and the total value of the supplies of services carried out by the taxable person;’;

11. Article 358 shall be amended as follows:

(a) point (2) shall be replaced by the following:

‘(2) “electronic services” and “electronically supplied services” mean the services referred to in point (k) of the first paragraph of Article 59;’;

(b) point (4) shall be replaced by the following:

‘(4) “Member State of consumption” means the Member State in which, pursuant to Article 58, the supply of the electronic services is deemed to take place;’;

12. in Annex II, the heading shall be replaced by the following:

**‘INDICATIVE LIST OF THE ELECTRONICALLY SUPPLIED SERVICES REFERRED TO IN ARTICLE 58 AND POINT (K) OF THE FIRST PARAGRAPH OF ARTICLE 59’.**

#### *Article 3*

From 1 January 2011, Articles 53 and 54 of Directive 2006/112/EC shall be replaced by the following:

#### *‘Article 53*

The place of supply of services in respect of admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events, such as fairs and exhibitions, and of ancillary services related to the admission, supplied to a taxable person, shall be the place where those events actually take place.

#### *Article 54*

1. The place of supply of services and ancillary services, relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities, such as fairs and exhibitions, including the supply of services of the organisers of

such activities, supplied to a non-taxable person shall be the place where those activities actually take place.

2. The place of supply of the following services to a non-taxable person shall be the place where the services are physically carried out:

(a) ancillary transport activities such as loading, unloading, handling and similar activities;

(b) valuations of and work on movable tangible property.’.

#### *Article 4*

From 1 January 2013, Article 56(2) of Directive 2006/112/EC shall be replaced by the following:

‘2. The place of hiring, other than short-term hiring, of a means of transport to a non-taxable person shall be the place where the customer is established, has his permanent address or usually resides.

However, the place of hiring a pleasure boat to a non-taxable person, other than short-term hiring, shall be the place where the pleasure boat is actually put at the disposal of the customer, where this service is actually provided by the supplier from his place of business or a fixed establishment situated in that place.

3. For the purposes of paragraphs 1 and 2, “short-term” shall mean the continuous possession or use of the means of transport throughout a period of not more than thirty days and, in the case of vessels, not more than 90 days.’.

#### *Article 5*

From 1 January 2015, Directive 2006/112/EC is hereby amended as follows:

1. in Section 3 of Chapter 3 of Title V, Subsection 8 shall be replaced by the following:

#### **‘Subsection 8**

**Supply of telecommunications, broadcasting and electronic services to non-taxable persons**

#### *Article 58*

The place of supply of the following services to a non-taxable person shall be the place where that person is established, has his permanent address or usually resides:

(a) telecommunications services;

(b) radio and television broadcasting services;

‘Special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons.’;

(c) electronically supplied services, in particular those referred to in Annex II.

7. Article 357 shall be deleted;

Where the supplier of a service and the customer communicate via electronic mail, that shall not of itself mean that the service supplied is an electronically supplied service.’;

8 Article 358 shall be replaced by the following:

2. in Article 59, points (i), (j) and (k) of the first paragraph and the second paragraph shall be deleted;

‘Article 358

For the purposes of this Chapter, and without prejudice to other Community provisions, the following definitions shall apply:

3. Article 59a shall be replaced by the following:

‘Article 59a

In order to prevent double taxation, non-taxation or distortion of competition, Member States may, with regard to services the place of supply of which is governed by Articles 44, 45, 56, 58 and 59:

1. “telecommunications services” and “broadcasting services” mean the services referred to in points (a) and (b) of the first paragraph of Article 58;

(a) consider the place of supply of any or all of those services, if situated within their territory, as being situated outside the Community if the effective use and enjoyment of the services takes place outside the Community;

2. “electronic services” and “electronically supplied services” mean the services referred to in point (c) of the first paragraph of Article 58;

(b) consider the place of supply of any or all of those services, if situated outside the Community, as being situated within their territory if the effective use and enjoyment of the services takes place within their territory.’;

3 “Member State of consumption” means the Member State in which the supply of the telecommunications, broadcasting or electronic services is deemed to take place according to Article 58;

4. “VAT return” means the statement containing the information necessary to establish the amount of VAT due in each Member State.’;

4. Article 59b shall be deleted;

9. in Chapter 6 of Title XII, the heading of Section 2 shall be replaced by the following:

5. in Article 204(1), the third subparagraph shall be replaced by the following:

‘Special scheme for telecommunications, broadcasting or electronic services supplied by taxable persons not established within the Community’;

‘However, Member States may not apply the option referred to in the second subparagraph to a taxable person not established within the Community, within the meaning of point (1) of Article 358a, who has opted for the special scheme for telecommunications, broadcasting or electronic services.’;

10. in Section 2 of Chapter 6 of Title XII, the following Article shall be inserted:

‘Article 358a

For the purposes of this Section, and without prejudice to other Community provisions, the following definitions shall apply:

6. in Title XII, the heading of Chapter 6 shall be replaced by the following:

1. "taxable person not established within the Community" means a taxable person who has not established his business in the territory of the Community and who has no fixed establishment there and who is not otherwise required to be identified for VAT purposes;
2. "Member State of identification" means the Member State which the taxable person not established within the Community chooses to contact to state when his activity as a taxable person within the territory of the Community commences in accordance with the provisions of this Section.;

11. Articles 359 to 365 shall be replaced by the following:

*Article 359*

Member States shall permit any taxable person not established within the Community supplying telecommunications, broadcasting or electronic services to a non-taxable person who is established in a Member State or has his permanent address or usually resides in a Member State, to use this special scheme. This scheme applies to all those services supplied within the Community.

*Article 360*

The taxable person not established within the Community shall state to the Member State of identification when he commences or ceases his activity as a taxable person, or changes that activity in such a way that he no longer meets the conditions necessary for use of this special scheme. He shall communicate that information electronically.

*Article 361*

1. The information which the taxable person not established within the Community must provide to the Member State of identification when he commences a taxable activity shall contain the following details:

- (a) name;
- (b) postal address;
- (c) electronic addresses, including websites;
- (d) national tax number, if any;
- (e) a statement that the person is not identified for VAT purposes within the Community.

2. The taxable person not established within in the Community shall notify the Member State of identification of any changes in the information provided.

*Article 362*

The Member State of identification shall allocate to the taxable person not established within the Community an individual VAT identification number and shall notify him of that number by electronic means. On the basis of the information used for that identification, Member States of consumption may have recourse to their own identification systems.

*Article 363*

The Member State of identification shall delete the taxable person not established within the Community from the identification register in the following cases:

- (a) if he notifies that Member State that he no longer supplies telecommunications, broadcasting or electronic services;
- (b) if it may otherwise be assumed that his taxable activities have ceased;
- (c) if he no longer meets the conditions necessary for use of this special scheme;
- (d) if he persistently fails to comply with the rules relating to this special scheme.

*Article 364*

The taxable person not established within the Community shall submit by electronic means to the Member State of identification a VAT return for each calendar quarter, whether or not telecommunications, broadcasting or electronic services have been supplied. The VAT return shall be submitted within 20 days following the end of the tax period covered by the return.

*Article 365*

The VAT return shall show the identification number and, for each Member State of consumption in which VAT is due, the total value, exclusive of VAT, of supplies of telecommunications, broadcasting and electronic services carried out during the tax period and total amount per rate of the corresponding VAT. The applicable rates of VAT and the total VAT due must also be indicated on the return.;

12. Article 366(1) shall be replaced by the following:

‘1. The VAT return shall be made out in euro.

Member States which have not adopted the euro may require the VAT return to be made out in their national currency. If the supplies have been made in other currencies, the taxable person not established within the Community shall, for the purposes of completing the VAT return, use the exchange rate applying on the last day of the tax period.’;

13. Articles 367 and 368 shall be replaced by the following:

*‘Article 367*

The taxable person not established within the Community shall pay the VAT, making reference to the relevant VAT return, when submitting the VAT return, at the latest, however, at the expiry of the deadline by which the return must be submitted.

Payment shall be made to a bank account denominated in euro, designated by the Member State of identification. Member States which have not adopted the euro may require the payment to be made to a bank account denominated in their own currency.

*Article 368*

The taxable person not established within the Community making use of this special scheme may not deduct VAT pursuant to Article 168 of this Directive. Notwithstanding Article 1(1) of Directive 86/560/EEC, the taxable person in question shall be refunded in accordance with the said Directive. Articles 2(2) and (3) and Article 4(2) of Directive 86/560/EEC shall not apply to refunds relating to telecommunications, broadcasting or electronic services covered by this special scheme.’;

14. Article 369(1) shall be replaced by the following:

‘1. The taxable person not established within the Community shall keep records of the transactions covered by this special scheme. Those records must be sufficiently detailed to enable the tax authorities of the Member State of consumption to verify that the VAT return is correct.’;

15. in Chapter 6 of Title XII, the following Section shall be inserted:

**‘Section 3**

**Special scheme for telecommunications, broadcasting or electronic services supplied by taxable persons established within the Community but not in the Member State of consumption**

*Article 369a*

For the purposes of this Section, and without prejudice to other Community provisions, the following definitions shall apply:

1. “taxable person not established in the Member State of consumption” means a taxable person who has established his business in the territory of the Community or has a fixed establishment there but has not established his business and has no fixed establishment within the territory of the Member State of consumption;
2. “Member State of identification” means the Member State in the territory of which the taxable person has established his business or, if he has not established his business in the Community, where he has a fixed establishment.

Where a taxable person has not established his business in the Community, but has more than one fixed establishment therein, the Member State of identification shall be the Member State with a fixed establishment where that taxable person indicates that he will make use of this special scheme. The taxable person shall be bound by this decision for the calendar year concerned and the two calendar years following.

*Article 369b*

Member States shall permit any taxable person not established in the Member State of consumption supplying telecommunications, broadcasting or electronic services to a non-taxable person who is established or has his permanent address or usually resides in that Member State, to use this special scheme. This special scheme applies to all those services supplied in the Community.

*Article 369c*

The taxable person not established in the Member State of consumption shall state to the Member State of identification when he commences and ceases his taxable activities covered by this special scheme, or changes those activities in such a way that he no longer meets the conditions necessary for use of this special scheme. He shall communicate that information electronically.

*Article 369d*

A taxable person making use of this special scheme shall, for the taxable transactions carried out under this scheme, be identified for VAT purposes in the Member State of identification only. For that purpose the Member State shall use the individual VAT identification number already allocated to the taxable person in respect of his obligations under the internal system.

On the basis of the information used for that identification, Member States of consumption may have recourse to their own identification systems.

*Article 369e*

The Member State of identification shall exclude the taxable person not established in the Member State of consumption from this special scheme in any of the following cases:

- (a) if he notifies that he no longer supplies telecommunications, broadcasting or electronic services;
- (b) if it may otherwise be assumed that his taxable activities covered by this special scheme have ceased;
- (c) if he no longer meets the conditions necessary for use of this special scheme;
- (d) if he persistently fails to comply with the rules relating to this special scheme.

*Article 369f*

The taxable person not established in the Member State of consumption shall submit by electronic means to the Member State of identification a VAT return for each calendar quarter, whether or not telecommunications, broadcasting or electronic services have been supplied. The VAT return shall be submitted within 20 days following the end of the tax period covered by the return.

*Article 369g*

The VAT return shall show the identification number referred to in Article 369d and, for each Member State of consumption in which VAT is due, the total value, exclusive of VAT, of supplies of telecommunications, broadcasting or electronic services carried out during the tax period and the total amount per rate of the corresponding VAT. The applicable rates of VAT and the total VAT due must also be indicated on the return.

Where the taxable person has one or more fixed establishments, other than that in the Member State of identification, from which the services are supplied, the VAT return shall in addition to the information referred to in the first paragraph include the total value of supplies of telecommunications, broadcasting or electronic services covered by this special scheme, for each Member State in which he has an establishment, together with the individual VAT identification number or the tax reference number of this establishment, broken down by Member State of consumption.

*Article 369h*

1. The VAT return shall be made out in euro.

Member States which have not adopted the euro may require the VAT return to be made out in their national currency. If the supplies have been made in other currencies, the taxable person not established in the Member State of consumption shall, for the purposes of completing the VAT return, use the exchange rate applying on the last date of the tax period.

2. The conversion shall be made by applying the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication.

*Article 369i*

The taxable person not established in the Member State of consumption shall pay the VAT, making reference to the relevant VAT return, when submitting the VAT return, at the latest, however, at the expiry of the deadline by which the return must be submitted.

Payment shall be made to a bank account denominated in euro, designated by the Member State of identification. Member States which have not adopted the euro may require the payment to be made to a bank account denominated in their own currency.

*Article 369j*

The taxable person not established in the Member State of consumption making use of this special scheme may not, in respect of his taxable activities covered by this scheme, deduct VAT pursuant to Article 168 of this Directive. Notwithstanding Article 2(1) and Article 3 of Directive 2008/9/EC, the taxable person in question shall be refunded in accordance with the said Directive.

If the taxable person not established in the Member State of consumption making use of this special scheme also carries out in the Member State of consumption activities not covered by this scheme in respect of which he is obliged to be registered for VAT purposes, he shall deduct VAT in respect of his taxable activities which are covered by this scheme in the VAT return to be submitted pursuant to Article 250.

#### Article 369k

1. The taxable person not established in the Member State of consumption shall keep records of the transactions covered by this special scheme. Those records must be sufficiently detailed to enable the tax authorities of the Member State of consumption to verify that the VAT return is correct.

2. The records referred to in paragraph 1 must be made available electronically on request to the Member State of consumption and to the Member State of identification.

Those records must be kept for a period of 10 years from 31 December of the year during which the transaction was carried out.;

16. in Annex II, the heading shall be replaced by the following:

**'INDICATIVE LIST OF THE ELECTRONICALLY SUPPLIED SERVICES REFERRED TO IN POINT (C) OF THE FIRST PARAGRAPH OF ARTICLE 58'.**

#### Article 6

The Commission shall, by 31 December 2014, submit a report on the feasibility of applying efficiently the rule laid down in Article 5 for the supply of telecommunications services, radio and television broadcasting services and electronically supplied

services to non-taxable persons and on the question whether that rule still corresponds to the general policy at that time concerning the place of supply of services.

#### Article 7

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 5 of this Directive from the respective dates provided for in those provisions.

They shall forthwith inform the Commission thereof. When Member States adopt these provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### Article 8

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

#### Article 9

This Directive is addressed to the Member States.

Done at Brussels, 12 February 2008.

For the Council  
The President  
A. BAJUK

**COUNCIL DIRECTIVE 2008/9/EC**

**of 12 February 2008**

**laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Whereas:

- (1) Considerable problems are posed, both for the administrative authorities of Member States and for businesses, by the implementing rules laid down by Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country <sup>(3)</sup>.
- (2) The arrangements laid down in that Directive should be amended in respect of the period within which decisions concerning applications for refund are notified to businesses. At the same time, it should be laid down that businesses too must provide responses within specified periods. In addition, the procedure should be simplified and modernised by allowing for the use of modern technologies.
- (3) The new procedure should enhance the position of businesses since the Member States shall be liable to pay interest if the refund is made late and the right of appeal by businesses will be strengthened.
- (4) For clarity and better reading purposes, the provision concerning the application of Directive 79/1072/EEC, previously contained in Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax <sup>(4)</sup>, should now be integrated in this Directive.

- (5) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (6) In accordance with point 34 of the Interinstitutional Agreement on better law-making <sup>(5)</sup>, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (7) In the interest of clarity, Directive 79/1072/EEC should therefore be repealed, subject to the necessary transitional measures with respect to refund applications introduced before 1 January 2010,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

This Directive lays down the detailed rules for the refund of value added tax (VAT), provided for in Article 170 of Directive 2006/112/EC, to taxable persons not established in the Member State of refund, who meet the conditions laid down in Article 3.

*Article 2*

For the purposes of this Directive, the following definitions shall apply:

1. 'taxable person not established in the Member State of refund' means a taxable person within the meaning of Article 9(1) of Directive 2006/112/EC who is not established in the Member State of refund but established in the territory of another Member State;

<sup>(1)</sup> OJ C 285 E, 22.11.2006, p. 122.

<sup>(2)</sup> OJ C 28, 3.2.2006, p. 86.

<sup>(3)</sup> OJ L 331, 27.12.1979, p. 11. Directive as last amended by Directive 2006/98/EC (OJ L 363, 20.12.2006, p. 129).

<sup>(4)</sup> OJ L 347, 11.12.2006, p. 1. Directive as last amended by Directive 2007/75/EC (OJ L 346, 29.12.2007, p. 13).

<sup>(5)</sup> OJ C 321, 31.12.2003, p. 1.

2. 'Member State of refund' means the Member State in which the VAT was charged to the taxable person not established in the Member State of refund in respect of goods or services supplied to him by other taxable persons in that Member State or in respect of the importation of goods into that Member State;
3. 'refund period' means the period mentioned in Article 16 covered by the refund application;
4. 'refund application' means the application for refund of VAT charged in the Member State of refund to the taxable person not established in the Member State of refund in respect of goods or services supplied to him by other taxable persons in that Member State or in respect of the importation of goods into that Member State;
5. 'applicant' means the taxable person not established in the Member State of refund making the refund application.

#### Article 3

This Directive shall apply to any taxable person not established in the Member State of refund who meets the following conditions:

- (a) during the refund period, he has not had in the Member State of refund, the seat of his economic activity, or a fixed establishment from which business transactions were effected, or, if no such seat or fixed establishment existed, his domicile or normal place of residence;
- (b) during the refund period, he has not supplied any goods or services deemed to have been supplied in the Member State of refund, with the exception of the following transactions:
  - (i) the supply of transport services and services ancillary thereto, exempted pursuant to Articles 144, 146, 148, 149, 151, 153, 159 or 160 of Directive 2006/112/EC;
  - (ii) the supply of goods and services to a person who is liable for payment of VAT in accordance with Articles 194 to 197 and Article 199 of Directive 2006/112/EC.

#### Article 4

This Directive shall not apply to:

- (a) amounts of VAT which, according to the legislation of the Member State of refund, have been incorrectly invoiced;
- (b) amounts of VAT which have been invoiced in respect of supplies of goods the supply of which is, or may be, exempt

under Article 138 or Article 146(1)(b) of Directive 2006/112/EC.

#### Article 5

Each Member State shall refund to any taxable person not established in the Member State of refund any VAT charged in respect of goods or services supplied to him by other taxable persons in that Member State or in respect of the importation of goods into that Member State, insofar as such goods and services are used for the purposes of the following transactions:

- (a) transactions referred to in Article 169(a) and (b) of Directive 2006/112/EC;
- (b) transactions to a person who is liable for payment of VAT in accordance with Articles 194 to 197 and Article 199 of Directive 2006/112/EC as applied in the Member State of refund.

Without prejudice to Article 6, for the purposes of this Directive, entitlement to an input tax refund shall be determined pursuant to Directive 2006/112/EC as applied in the Member State of refund.

#### Article 6

To be eligible for a refund in the Member State of refund, a taxable person not established in the Member State of refund has to carry out transactions giving rise to a right of deduction in the Member State of establishment.

When a taxable person not established in the Member State of refund carries out in the Member State in which he is established both transactions giving rise to a right of deduction and transactions not giving rise to a right of deduction in that Member State, only such proportion of the VAT which is refundable in accordance with Article 5 may be refunded by the Member State of refund as is attributable to the former transactions in accordance with Article 173 of Directive 2006/112/EC as applied by the Member State of establishment.

#### Article 7

To obtain a refund of VAT in the Member State of refund, the taxable person not established in the Member State of refund shall address an electronic refund application to that Member State and submit it to the Member State in which he is established via the electronic portal set up by that Member State.

*Article 8*

1. The refund application shall contain the following information:

- (a) the applicant's name and full address;
- (b) an address for contact by electronic means;
- (c) a description of the applicant's business activity for which the goods and services are acquired;
- (d) the refund period covered by the application;
- (e) a declaration by the applicant that he has supplied no goods and services deemed to have been supplied in the Member State of refund during the refund period, with the exception of transactions referred to in points (i) and (ii) of Article 3(b);
- (f) the applicant's VAT identification number or tax reference number;
- (g) bank account details including IBAN and BIC codes.

2. In addition to the information specified in paragraph 1, the refund application shall set out, for each Member State of refund and for each invoice or importation document, the following details:

- (a) name and full address of the supplier;
- (b) except in the case of importation, the VAT identification number or tax reference number of the supplier, as allocated by the Member State of refund in accordance with the provisions of Articles 239 and 240 of Directive 2006/112/EC;
- (c) except in the case of importation, the prefix of the Member State of refund in accordance with Article 215 of Directive 2006/112/EC;
- (d) date and number of the invoice or importation document;
- (e) taxable amount and amount of VAT expressed in the currency of the Member State of refund;

(f) the amount of deductible VAT calculated in accordance with Article 5 and the second paragraph of Article 6 expressed in the currency of the Member State of refund;

(g) where applicable, the deductible proportion calculated in accordance with Article 6, expressed as a percentage;

(h) nature of the goods and services acquired, described according to the codes in Article 9.

*Article 9*

1. In the refund application, the nature of the goods and services acquired shall be described by the following codes:

- 1 = fuel;
- 2 = hiring of means of transport;
- 3 = expenditure relating to means of transport (other than the goods and services referred to under codes 1 and 2);
- 4 = road tolls and road user charge;
- 5 = travel expenses, such as taxi fares, public transport fares;
- 6 = accommodation;
- 7 = food, drink and restaurant services;
- 8 = admissions to fairs and exhibitions;
- 9 = expenditure on luxuries, amusements and entertainment;
- 10 = other.

If code 10 is used, the nature of the goods and services supplied shall be indicated.

2. The Member State of refund may require the applicant to provide additional electronic coded information as regards each code set out in paragraph 1 to the extent that such information is necessary because of any restrictions on the right of deduction under Directive 2006/112/EC, as applicable in the Member State of refund or for the implementation of a relevant derogation received by the Member State of refund under Articles 395 or 396 of that Directive.

*Article 10*

Without prejudice to requests for information under Article 20, the Member State of refund may require the applicant to submit by electronic means a copy of the invoice or importation document with the refund application where the taxable amount on an invoice or importation document is EUR 1 000 or more or the equivalent in national currency. Where the invoice concerns fuel, the threshold is EUR 250 or the equivalent in national currency.

*Article 11*

The Member State of refund may require the applicant to provide a description of his business activity by using the harmonised codes determined in accordance with the second subparagraph of Article 34a(3) of Council Regulation (EC) No 1798/2003 <sup>(1)</sup>.

*Article 12*

The Member State of refund may specify which language or languages shall be used by the applicant for the provision of information in the refund application or of possible additional information.

*Article 13*

If subsequent to the submission of the refund application the deductible proportion is adjusted pursuant to Article 175 of Directive 2006/112/EC, the applicant shall make a correction to the amount applied for or already refunded.

The correction shall be made in a refund application during the calendar year following the refund period in question or, if the applicant makes no refund applications during that calendar year, by submitting a separate declaration via the electronic portal established by the Member State of establishment.

*Article 14*

1. The refund application shall relate to the following:
  - (a) the purchase of goods or services which was invoiced during the refund period, provided that the VAT became chargeable before or at the time of the invoicing, or in respect of which the VAT became chargeable during the refund period, provided that the purchase was invoiced before the tax became chargeable;
  - (b) the importation of goods during the refund period.
2. In addition to the transactions referred to in paragraph 1, the refund application may relate to invoices or import

documents not covered by previous refund applications and concerning transactions completed during the calendar year in question.

*Article 15*

1. The refund application shall be submitted to the Member State of establishment at the latest on 30 September of the calendar year following the refund period. The application shall be considered submitted only if the applicant has filled in all the information required under Articles 8, 9 and 11.

2. The Member State of establishment shall send the applicant an electronic confirmation of receipt without delay.

*Article 16*

The refund period shall not be more than one calendar year or less than three calendar months. Refund applications may, however, relate to a period of less than three months where the period represents the remainder of a calendar year.

*Article 17*

If the refund application relates to a refund period of less than one calendar year but not less than three months, the amount of VAT for which a refund is applied for may not be less than EUR 400 or the equivalent in national currency.

If the refund application relates to a refund period of a calendar year or the remainder of a calendar year, the amount of VAT may not be less than EUR 50 or the equivalent in national currency.

*Article 18*

1. The Member State of establishment shall not forward the application to the Member State of refund where, during the refund period, any of the following circumstances apply to the applicant in the Member State of establishment:
  - (a) he is not a taxable person for VAT purposes;
  - (b) he carries out only supplies of goods or of services which are exempt without deductibility of the VAT paid at the preceding stage pursuant to Articles 132, 135, 136, 371, Articles 374 to 377, Article 378(2)(a), Article 379(2) or Articles 380 to 390 of Directive 2006/112/EC or provisions providing for identical exemptions contained in the 2005 Act of Accession;
  - (c) he is covered by the exemption for small enterprises provided for in Articles 284, 285, 286 and 287 of Directive 2006/112/EC;

<sup>(1)</sup> OJ L 264, 15.10.2003, p. 1.

(d) he is covered by the common flat-rate scheme for farmers provided for in Articles 296 to 305 of Directive 2006/112/EC.

2. The Member State of establishment shall notify the applicant by electronic means of the decision it has taken pursuant to paragraph 1.

#### Article 19

1. The Member State of refund shall notify the applicant without delay, by electronic means, of the date on which it received the application.

2. The Member State of refund shall notify the applicant of its decision to approve or refuse the refund application within four months of its receipt by that Member State.

#### Article 20

1. Where the Member State of refund considers that it does not have all the relevant information on which to make a decision in respect of the whole or part of the refund application, it may request, by electronic means, additional information, in particular from the applicant or from the competent authorities of the Member State of establishment, within the four-month period referred to in Article 19(2). Where the additional information is requested from someone other than the applicant or a competent authority of a Member State, the request shall be made by electronic means only if such means are available to the recipient of the request.

If necessary, the Member State of refund may request further additional information.

The information requested in accordance with this paragraph may include the submission of the original or a copy of the relevant invoice or import document where the Member State of refund has reasonable doubts regarding the validity or accuracy of a particular claim. In that case, the thresholds mentioned in Article 10 shall not apply.

2. The Member State of refund shall be provided with the information requested under paragraph 1 within one month of the date on which the request reaches the person to whom it is addressed.

#### Article 21

Where the Member State of refund requests additional information, it shall notify the applicant of its decision to approve or refuse the refund application within two months of receiving the requested information or, if it has not received a reply to its request, within two months of expiry of the time limit laid down in Article 20(2). However, the period available for the decision in respect of the whole or part of the refund application shall always be at least six months from the date of receipt of the application by the Member State of refund.

Where the Member State of refund requests further additional information, it shall notify the applicant of its decision in respect of the whole or part of the refund application within eight months of receipt of the application by that Member State.

#### Article 22

1. Where the refund application is approved, refunds of the approved amount shall be paid by the Member State of refund at the latest within 10 working days of the expiry of the deadline referred to in Article 19(2) or, where additional or further additional information has been requested, the deadlines referred to in Article 21.

2. The refund shall be paid in the Member State of refund or, at the applicant's request, in any other Member State. In the latter case, any bank charges for the transfer shall be deducted by the Member State of refund from the amount to be paid to the applicant.

#### Article 23

1. Where the refund application is refused in whole or in part, the grounds for refusal shall be notified by the Member State of refund to the applicant together with the decision.

2. Appeals against decisions to refuse a refund application may be made by the applicant to the competent authorities of the Member State of refund in the forms and within the time limits laid down for appeals in the case of refund applications from persons who are established in that Member State.

If, under the law of the Member State of refund, failure to take a decision on a refund application within the time limits specified in this Directive is not regarded either as approval or as refusal, any administrative or judicial procedures which are available in that situation to taxable persons established in that Member State shall be equally available to the applicant. If no such procedures are available, failure to take a decision on a refund application within these time limits shall mean that the application is deemed to be rejected.

#### Article 24

1. Where a refund has been obtained in a fraudulent way or otherwise incorrectly, the competent authority in the Member State of refund shall proceed directly to recover the amounts wrongly paid and any penalties and interest imposed in accordance with the procedure applicable in the Member State of refund, without prejudice to the provisions on mutual assistance for the recovery of VAT.

2. Where an administrative penalty or interest has been imposed but has not been paid, the Member State of refund may suspend any further refund to the taxable person concerned up to the unpaid amount.

*Article 25*

The Member State of refund shall take into account as a decrease or increase of the amount of the refund any correction made concerning a previous refund application in accordance with Article 13 or, where a separate declaration is submitted, in the form of separate payment or recovery.

*Article 26*

Interest shall be due to the applicant by the Member State of refund on the amount of the refund to be paid if the refund is paid after the last date of payment pursuant to Article 22(1).

If the applicant does not submit the additional or further additional information requested to the Member State of refund within the specified time limit, the first paragraph shall not apply. It shall also not apply until the documents to be submitted electronically pursuant to Article 10 have been received by the Member State of refund.

*Article 27*

1. Interest shall be calculated from the day following the last day for payment of the refund pursuant to Article 22(1) until the day the refund is actually paid.

2. Interest rates shall be equal to the interest rate applicable with respect to refunds of VAT to taxable persons established in the Member State of refund under the national law of that Member State.

If no interest is payable under national law in respect of refunds to established taxable persons, the interest payable shall be equal to the interest or equivalent charge which is applied by the Member State of refund in respect of late payments of VAT by taxable persons.

*Article 28*

1. This Directive shall apply to refund applications submitted after 31 December 2009.

2. Directive 79/1072/EEC shall be repealed with effect from 1 January 2010. However, its provisions shall continue to apply to refund applications submitted before 1 January 2010.

References to the repealed Directive shall be construed as references to this Directive except for refund applications submitted before 1 January 2010.

*Article 29*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive with effect from 1 January 2010. They shall forthwith inform the Commission thereof.

When such provisions are adopted by Member States, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 30*

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

*Article 31*

This Directive is addressed to the Member States.

Done at Brussels, 12 February 2008.

*For the Council*

*The President*

A. BAJUK

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## II

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

## DECISIONS

## COMMISSION

## COMMISSION DECISION

of 19 December 2007

on State aid concerning compensations under the manure decree (C 12/1999)

(notified under document number C(2007) 6777)

(Only the Dutch and French versions are authentic)

(2008/138/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having called on interested parties to submit their comments pursuant to the provision(s) cited above <sup>(1)</sup>,

Whereas:

## I. PROCEDURE

- (1) By letter of 3 July 1998, the Belgium authorities notified the above mentioned aid pursuant to Article 88(3) of the EC Treaty.
- (2) By letter No SG-Grefte (1999) D/2211 of 26 March 1999, the Commission opened the formal investigation procedure pursuant to Article 88(2) of the EC Treaty. Belgium subsequently expressed comments by letter of 28 April 1999.
- (3) The Commission received comments from interested parties. It forwarded them to Belgium by letter of 30 June 1999, which was given the opportunity to react. The Belgian authorities sent the Commission additional information by letter of 1 June 1999, 27 June 2000 and 23 July 2001.

- (4) By letter of 12 March 2007, Belgium informed the Commission that it was withdrawing the notified measure. In this letter Belgium confirmed that the aid has not been paid.

## II. CONCLUSION

- (5) Up to the date on which it received the request of withdrawal from Belgium, the Commission had not taken any formal decision on the notification in question. In these circumstances, it accepts the withdrawal of the notification within the meaning of Article 8(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(2)</sup>.
- (6) The formal investigation procedure should therefore be closed pursuant to Article 8(2) of Regulation (EC) No 659/1999 as it is now superfluous,

HAS ADOPTED THIS DECISION:

## Article 1

The formal investigation procedure regarding an aid concerning compensations under the manure decree is hereby closed pursuant to Article 8(2) of Regulation (EC) No 659/1999.

<sup>(1)</sup> OJ C 129, 8.5.1999, p. 2.

<sup>(2)</sup> OJ L 83, 27.3.1999, p. 1.

*Article 2*

This Decision is addressed to Belgium.

Done at Brussels, 19 December 2007.

*For the Commission*  
Mariann FISCHER BOEL  
*Member of the Commission*

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**COMMISSION DECISION****of 21 September 2007****on State aid promoting investment in the rationalisation of steep-slope winegrowing in Rhineland Palatinate***(notified under document number C(2007) 4462)***(Only the German text is authentic)**

(2008/139/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

**II. CONCLUSION**

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

Having called on interested parties to submit their comments pursuant to the provision(s) cited above <sup>(1)</sup>,

Whereas:

**I. THE PROCEDURE**

- (1) By letter of 30 September 1994, received on 7 October 1994, the German authorities notified the above mentioned aid pursuant to Article 93(3) (now Article 88(3)) of the EC Treaty.
- (2) By letter No SG(95) D/4615 of 7 April 1995, the Commission opened the formal investigation procedure pursuant to Article 93(2) (now Article 88(2)) of the EC Treaty <sup>(2)</sup>. Germany subsequently expressed comments by letter of 29 May 1995 and 24 June 1996. No comments from interested third parties were received by the Commission. The German authorities sent the Commission additional information by letter of 1 June 2007.
- (3) By letter of 24 June 1996, Germany informed the Commission that it was withdrawing the notified measure. In reply to a question from the Commission, Germany has also confirmed that the investment aid has not been paid.

(4) Up to the date on which it received the notification from Germany, the Commission had not taken any formal decision on the notification in question. In these circumstances, it accepts the withdrawal of the notification within the meaning of Article 8(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(3)</sup>.

(5) The formal investigation procedure should therefore be closed pursuant to Article 8(2) of Regulation (EC) No 659/1999 as it is now superfluous,

HAS ADOPTED THIS DECISION:

*Article 1*

The formal investigation procedure regarding aid promoting investment in the rationalisation of steep-slope winegrowing in Rhineland Palatinate is hereby closed pursuant to Article 8(2) of Regulation (EC) No 659/1999.

*Article 2*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 21 September 2007.

*For the Commission*  
Mariann FISCHER BOEL  
*Member of the Commission*

<sup>(1)</sup> OJ C 169, 5.7.1995, p. 12.

<sup>(2)</sup> OJ C 359, 11.12.1999, p. 27.

<sup>(3)</sup> OJ L 83, 27.3.1999.

**COMMISSION DECISION****of 21 December 2007****on State aid promoting investment in favour of a malthouse (Maltacarrión, SA) in Castilla y León  
(C 48/2005)***(notified under document number C(2007) 6897)***(Only the Spanish text is authentic)**

(2008/140/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Whereas:

the notification within the meaning of Article 8(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(2)</sup>.

(5) The formal investigation procedure should therefore be closed pursuant to Article 8(2) of Regulation (EC) No 659/1999 as it has become devoid of purpose,

**I. PROCEDURE**

(1) By letter of 1 December 2004 the Spanish authorities notified the abovementioned aid pursuant to Article 88(3) of the EC Treaty.

HAS ADOPTED THIS DECISION:

*Article 1*(2) By letter No SG-Greffe (2005) D/207666 of 22 December 2005, the Commission opened the formal investigation procedure pursuant to Article 88(2) of the EC Treaty <sup>(1)</sup>. Spain subsequently submitted its comments by letter of 23 January 2005.

The formal investigation procedure concerning an aid promoting investment in favour of a malthouse (Maltacarrión, SA) in Castilla y León is hereby closed pursuant to Article 8(2) of Regulation (EC) No 659/1999.

(3) By letter of 13 March 2006, Spain informed the Commission that it was withdrawing the notified measure. In reply to a further question from the Commission, Spain confirmed, by letter of 5 May 2006, that no aid was ever paid.

*Article 2*

This Decision is addressed to the Kingdom of Spain.

**II. CONCLUSION**

(4) Up to the date on which it received the request for withdrawal from Spain, the Commission had not taken any formal decision on the notification in question. In these circumstances, the Commission accepts the withdrawal of

Done at Brussels, 21 December 2007.

*For the Commission*

Janez POTOČNIK

*Member of the Commission*

<sup>(1)</sup> Not published because the Spanish authorities notified withdrawal of the measure before it could be published.

<sup>(2)</sup> OJ L 83, 27.3.1999, p. 1.

## COMMISSION DECISION

of 25 September 2007

on the measures C 47/2003 (ex NN 49/2003) implemented by Spain for Izar

(notified under document number C(2007) 4298)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2008/141/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Spain were received in letters dated 12 January 2004 and 10 May 2004, respectively.

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

- (4) In the context of two State aid decisions not related to the present procedure <sup>(2)</sup>, adopted during 2004 (i.e. after the opening of the formal investigation concerning the LNG tanker guarantees), the Commission found State aid of EUR 864 million granted to Izar by Spain to be incompatible with the Treaty, and ordered its recovery.

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

Having called on interested parties to submit their comments pursuant to the provisions cited above <sup>(1)</sup> and having regard to their comments,

- (5) By letter dated 5 August 2004, Spain invoked Article 296 of the Treaty <sup>(3)</sup> with the objective of rescuing the military shipbuilding activities from a foreseeable bankruptcy of Izar, as a consequence of that recovery order. In subsequent correspondence, the Spanish authorities also explained to the Commission how the new military shipbuilding company formerly known as Bazán (Navantia) would function, outlined their commitments in relation to the competition concerns, and proposed a methodology for the follow-up of those commitments.

Whereas:

## I. PROCEDURE

(1) In March 2000, the Commission learnt that three delivery guarantees had been granted by the Spanish public holding company Sociedad Estatal de Participaciones Industriales (SEPI) to Repsol/Gas Natural (Repsol) in relation to the construction and delivery of three LNG tankers contracted to two public shipyards belonging at the time to Astilleros Españoles (AESAs), and subsequently transferred to the Izar group. AESA and Izar were wholly owned by SEPI.

- (6) In the meanwhile, the pending recovery orders on Izar, for a total of EUR 1,2 billion <sup>(4)</sup>, had led the company to a situation of negative net worth, and technical bankruptcy. In view of this, on 1 April 2005 Spain put into liquidation the civil shipyards that remained in Izar (i.e., shipyards outside the perimeter of the newly created Navantia: Gijón, Sestao, Manises and Seville), and launched a privatisation procedure for those yards.

(2) By letter dated 9 July 2003, the Commission notified Spain of its decision to initiate proceedings under Article 88(2) of the Treaty concerning the three non-notified measures.

## II. DESCRIPTION OF THE AID MEASURES

(3) By letters dated 5 August 2003 and 22 October 2003, the Spanish authorities submitted their comments on the Commission's letter. The Commission received comments from one interested party (Repsol) in October 2003 and February 2004. It forwarded them to Spain, which was given the opportunity to react. The comments from

- (7) In 1999, Repsol awarded three shipowners one contract each for the chartering of one LNG tanker each, plus the option for one extra tanker each, under a long-term time-charter arrangement.

<sup>(2)</sup> Cases C 38/2003 and C 40/2000.

<sup>(3)</sup> This Article allows a Member State to 'take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war materials'.

<sup>(4)</sup> In addition to the two 2004 decisions, an older decision from 1999 (Case C 3/99) also requested from Izar recovery of a further EUR 111 million.

<sup>(1)</sup> OJ C 209, 4.7.2003, p. 24.

- (8) Subsequently, negotiations were undertaken between the shipowners and shipbuilders, including Korean yards, for the construction of the three LNG tankers. On 31 July 2000, two public Spanish shipyards that had just been transferred from AESA to Izar <sup>(1)</sup> were awarded the three contracts for the construction of the LNG tankers and the final shipbuilding contracts were signed.
- (9) On the same day, AESA signed an additional clause to each shipbuilding contract whereby it committed to indemnify Repsol for all the costs Repsol would incur if the ships were not delivered according to the contractual terms for reasons for which the shipyards could be held liable.
- (10) On the same day (31 July 2000), SEPI granted Repsol delivery guarantees for each of the three shipbuilding contracts, covering the same damages and prejudices for which AESA undertook to indemnify Repsol <sup>(2)</sup>. The losses were capped to a maximum of approximately EUR 180 million per ship, i.e. for a maximum aggregate total of approximately EUR 540 million. The guarantees were granted for a period starting on 31 July 2000 until the end of the period terminating 12 months after the delivery of each ship <sup>(3)</sup>.

### III. REASONS FOR INITIATING THE PROCEDURE

- (11) In its decision of 9 July 2003 to initiate the formal investigation procedure (the opening decision), the Commission concluded that the three aid measures constituted State aid within the meaning of Article 87(1) of the Treaty, and questioned their compatibility with the common market. The Commission considered that the beneficiaries of the aid were the yards, but did not exclude the possibility that Repsol could have also benefited from the aid, and decided that the Article 88(2) procedure should include Repsol, in order to allow for the submission of the additional information needed to dispel those doubts.

### IV. COMMENTS RECEIVED AFTER THE INITIATION OF FORMAL PROCEEDINGS

- (12) In its observations, Repsol insists on the distinction that must be drawn between its position as contractual ben-

eficiary of the guarantees, and any alleged benefits deriving from the state aid. According to Repsol:

- The guarantees from SEPI covered benefits to which Repsol was entitled under Spanish civil and commercial law. The guarantees corresponded to Repsol's creditor position vis-à-vis the shipowners, Izar and the shipyards. Repsol was not due to pay any premium for the guarantees, as it is not market practice that companies obtaining a security for the respect of contractual obligations must pay for this security.
- In addition, the guarantees did not provide Repsol with any economic advantage within the meaning of Article 87(1) of the Treaty. Similarly to the guarantees received from the shipowner parent companies, SEPI's counter-guarantees only ensured that the contractual terms of the vessels' chartering contracts and shipbuilding contracts would be complied with, thereby enabling Repsol to comply with the LNG transportation contracts signed with other parties.
- Repsol would have required additional guarantees to those given by Izar, irrespective of whether they had been granted by SEPI or any other entity. Those guarantees are a requirement in accordance with market practice, in view of the size and risks of the investments and commercial commitments at stake.

- (13) The submission from Spain concurred with the above arguments as regards the position of Repsol. The Spanish authorities therefore concluded that Repsol could not be deemed to be a beneficiary of State aid.

### V. ASSESSMENT

#### The position of Repsol as a potential beneficiary of the aid

- (14) One of the aims of the opening decision was to identify the beneficiary of any State aid involved in the delivery guarantees granted by SEPI.
- (15) The Commission notes that, according to civil law, the provider of a good or service is liable for the performance of the contract signed with the buyer. This liability covers both the quality of the product and the agreed time of delivery. Thus, if a contractual agreement is not respected and the buyer suffers loss or damage as a result, the latter can claim compensation. In the case at hand, this compensation would have been borne by the yard or its parent company Izar.

<sup>(1)</sup> On 20 July 2000, AESA sold to Izar the two shipyards responsible for the construction of the LNG tankers. By letter dated 13 February 2003, the Spanish authorities confirmed that Izar had taken over responsibility for AESA's commitments in relation to the shipbuilding contracts.

<sup>(2)</sup> Under the terms of the guarantee, SEPI would indemnify Repsol at first request for all the direct and indirect costs and consequent losses Repsol would incur if the ships were not delivered according to the contract terms for reasons for which Izar could be held liable.

<sup>(3)</sup> Pursuant to the shipbuilding contracts, the vessels had to be delivered on 15 September 2003, 15 December 2003 and 15 March 2004, respectively.

- (16) In view of this, it appears that Repsol, which rented the vessels produced by (yards that are owned by) Izar, was in a creditor position vis-à-vis the shipowners and Izar. Hence, it cannot be held liable under the charter and shipbuilding contracts, including the additional clause thereto.
- (17) In consideration of the above, and in accordance with the observations from Repsol and Spain, the Commission concludes that Repsol cannot be regarded as a beneficiary of the aid, since it did not obtain any benefit to which it would not have been entitled on the basis of general civil or commercial law.

### Conclusion

- (18) The Commission considers that the voluntary liquidation of Izar's assets was an appropriate measure for the purpose of implementation by Spain of the three pending recovery decisions. In particular, it considers that the commitments and actions undertaken by Spain were sufficient to prevent distortion of competition.
- (19) The Commission is also of the opinion that the tendering procedure for the sale of the four civil shipyards was carried out by Spain in a satisfactory manner, through an open, transparent and unconditional procedure. In particular, on 3 November 2006 the Spanish Council of Ministers authorised the sale of the Sestao, Gijón and Seville yards to the successful bidders. The privatisation contracts were signed on 30 November 2006. As regards the remaining yard (Manises), it was concluded that the option which maximised the liquidation value consisted in the closure of the yard, and the transfer of assets to SEPI.
- (20) As a result of the liquidation and sale of Izar, the company definitively ceased all economic activity. The sole reason why Izar still exists is so that it can carry out the tasks relating to the cessation of its activities, in particular the termination of employee contracts. Once these tasks have been completed, Izar will be liquidated.

These activities are not of a kind to justify applying the competition rules provided for in the Treaty. Consequently, even assuming that the measures in question had entailed a benefit for Izar and a distortion of competition, the Commission considers that any such distortion ceased at the moment when Izar ceased economic activities and closed its yards. Under these circumstances, a Commission decision on the classification of such measures as aid and on their compatibility would not have any practical effect.

- (21) Consequently, the formal investigation initiated under Article 88(2) of the Treaty no longer serves any purpose.

### VI. CONCLUSION

- (22) On the basis of the above considerations, the Commission finds that Repsol cannot be deemed a beneficiary of the disputed aid, and that the procedure against the Izar yards no longer serves any purpose,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The formal investigation procedure under Article 88 (2) of the Treaty is closed.

#### *Article 2*

This Decision is addressed to Spain.

Done at Brussels, 25 September 2007.

*For the Commission*

Neelie KROES

*Member of the Commission*

## COMMISSION DECISION

of 25 September 2007

on State aid C 32/2006 (ex N 179/2006) implemented by Poland for Huta Cynku Miasteczko Śląskie SA

(notified under document number C(2007) 4310)

(Only the Polish version is authentic)

(Text with EEA relevance)

(2008/142/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

letter dated 23 May 2007, Poland informed the Commission that it was withdrawing the notification.

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 <sup>(1)</sup> pursuant to the provisions cited above and having regard to their comments,

Whereas:

## I. PROCEDURE

- (1) On 17 March 2006, Poland notified restructuring aid for Huta Cynku Miasteczko Śląskie SA (hereinafter 'HCM'). This notification took place following a Commission decision raising no objections regarding rescue aid to HCM in the form of a guarantee for a loan of PLN 11,8 million (EUR 3,12 million <sup>(2)</sup>).
- (2) On 19 July 2006, the Commission decided to initiate a procedure under Article 88(2) of the EC Treaty in respect of the notified aid because of doubts about its compatibility with the common market. The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* on 30 August 2006 <sup>(3)</sup>. The Commission invited interested parties to submit comments on the measures. No such third party comments were submitted.
- (3) On 18 September 2006, Poland submitted an incomplete response concerning the initiation of the procedure. By

<sup>(1)</sup> OJ C 207, 30.8.2006, p. 5.

<sup>(2)</sup> All amounts provided by the Polish authorities in Polish zloty (PLN) have been converted into Euro (EUR) by using the exchange rate of 22 June 2007 of EUR 1 = PLN 3,7865.

<sup>(3)</sup> See footnote 1.

## II. DETAILED DESCRIPTION OF THE AID

## 1. Beneficiary of the aid

- (4) HCM is a state-owned company created in 1966. It is active in the market for the production and metallurgical processing of non-ferrous metals (production of zinc and lead). In 2004 the company had a 51 % share of the Polish refined zinc market and a 3 % share of the European market. It has about 1 100 employees and is based in a region eligible for regional aid under Article 87(3)(a) of the EC Treaty.

## 2. Aid measures

- (5) The Polish authorities notified the Commission that Agencja Rozwoju Przemysłu SA (Industrial Development Agency SA, hereinafter 'ARP') intended to provide a loan of PLN 21,8 million (EUR 5,76 million) for a period of five years. Reimbursement was to start one year after the date on which the loan was granted. The loan was to be based on a variable interest rate equal to the Commission's reference rate. PLN 10 million (EUR 2,64 million) was to be spent on investment related to technological restructuring. The remaining PLN 11,8 million (EUR 3,11 million) was to be used to finance reimbursement of the rescue loan, i.e. the loan for which ARP had provided a guarantee.
- (6) Poland also informed the Commission of a planned composition agreement to be signed with creditors enabling the company to regain solvency. To this end, the creditors, who had claims on HCM worth PLN 65,3 million (EUR 15,9 million), were divided according to the size of the amounts due and the security held. The composition agreement essentially provides for deferral of the repayment of private and public debts for several years. To this end, different groups were formed according to the security held. The debt was deferred for a specific period for each group.

## 3. Grounds for initiating the procedure

- (7) The loan was notified by the Polish authorities as state aid within the meaning of Article 87(1) of the EC Treaty.

(8) The Commission decided to initiate the procedure under Article 88(2) of the EC Treaty because it had doubts as to whether all the conditions for approving restructuring aid laid down in the Community Guidelines on state aid for rescuing and restructuring firms in difficulty<sup>(4)</sup> (hereinafter 'the Guidelines') applicable at the time were fulfilled, and in particular whether:

(a) the restructuring plan would result in the beneficiary's long-term viability being restored, as the restructuring was mainly financial and was based primarily on a composition agreement which had not been signed at the date on which the procedure was initiated. Moreover the problem of the major impact of exchange rate variations on the company's financial results had not been sufficiently addressed;

(b) the own contribution of the beneficiary to the coverage of restructuring costs was significant;

(c) the compensatory measures were sufficient, as they consisted in a decrease of production capacity of only 0,7 %.

(9) In addition, the Commission raised doubts about whether the composition agreement in fact included elements of state aid.

### III. POLAND'S COMMENTS

(10) The Polish authorities have informed the Commission that HCM successfully concluded the composition agreement after the procedure was initiated.

(11) Moreover, the Polish authorities have informed the Commission that the company has now become profitable (it had a net profit of PLN 10,3 million (about EUR 2,72 million) for the first half of 2006); its liquidity has improved and it is able to secure financing on the market. Thus, as the guaranteed loan was no longer an advantage for the company, Poland withdrew the notification of the measure referred to in recital 6. Furthermore, the company has reimbursed the loan for which a state guarantee was provided as rescue aid and so this guarantee no longer serves any purpose.

### IV. ASSESSMENT

(12) Under Article 8 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty<sup>(5)</sup>, Member States may withdraw a notification after the initiation of a formal investigation procedure in due time before the Commission has taken a decision on the aid. In such cases, the Commission must take a decision closing that procedure without carrying out an assessment.

(13) Poland withdrew the notification of the state aid measure described in recital 6 above. However, in order to be able to terminate the procedure under Article 88(2) of the EC Treaty, the Commission needs to assess whether the composition agreement mentioned in recital 6 involves state aid elements.

(14) The Commission recognises that the composition agreement does not constitute state aid, as it fulfils the private creditor test and because it consists in a debt deferral which is more advantageous for the creditors than the liquidation of HCM. It is settled case law that a public creditor will balance the advantage to be derived from receiving the sum offered under the restructuring plan against the sum which it would be able to recover if the firm was liquidated. No advantage, and thus no state aid, exists where restructuring would yield better proceeds than liquidation<sup>(6)</sup>. Poland provided a study showing that even if one assumes the deferral to result in a loss of funds if calculated in net present value, such a loss would still put the public creditors in a better position than the company's liquidation would do. As a consequence of the composition agreement, the creditors will be able to recover 75,7 % of their claims on average and those in a less favourable position will obtain 72,9 %, which is still higher than the potential proceeds from the liquidation, which the study estimates to be 64,8 %. Moreover, the Commission sees no grounds for finding that the public creditors received less favourable treatment than the private ones, as creditors of the same ranking were treated alike.

(15) The notification of the restructuring plan meant that the rescue aid could be extended beyond the six-month deadline. However, Poland later withdrew this notification. Point 26 of the Guidelines states clearly that the notification of a restructuring plan is a condition *sine qua non* for an extension of the rescue aid. Therefore, if a notified restructuring plan is later withdrawn, the extension allowed for the rescue aid has to be terminated<sup>(7)</sup>. This condition was respected here as the loan which the state guarantee was securing was repaid.

<sup>(5)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(6)</sup> See Case C-342/96 *Spain v Commission*, paragraph 46; Case C-256/97 *DMT*, paragraph 24; Case T-152/99 *Hamsa*, paragraph 168.

<sup>(7)</sup> C(2007) 1405 (final). Available at [http://ec.europa.eu/comm/competition/state\\_aid/register/ii/by\\_case\\_nr\\_c2005\\_0030.html#32](http://ec.europa.eu/comm/competition/state_aid/register/ii/by_case_nr_c2005_0030.html#32)

<sup>(4)</sup> OJ C 244, 1.10.2004, p. 2.

**V. CONCLUSION**

- (16) The Commission had decided to close the formal investigation procedure under Article 88(2) of the EC Treaty in respect of the notified aid measure, noting that Poland has withdrawn the notification and has not granted any unlawful state aid,

HAS ADOPTED THIS DECISION:

*Article 1*

The aid measure which Poland was planning to implement for HCM in the form of a loan of PLN 21,8 million (about EUR 5,76 million), has been withdrawn since the Commission opened the formal investigation procedure. The formal investigation procedure is therefore now redundant.

*Article 2*

Regarding the composition agreement, the Commission concludes that it does not constitute state aid within the meaning of Article 87(1) of the EC Treaty.

*Article 3*

This Decision is addressed to the Republic of Poland.

Done at Brussels, 25 September 2007.

*For the Commission*  
Neelie KROES  
*Member of the Commission*