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<sup>(1)</sup> Text with EEA relevance

## I

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

## REGULATIONS

**COMMISSION REGULATION (EC) No 277/2008****of 27 March 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 28 March 2008.

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

Done at Brussels, 27 March 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 27 March 2008 establishing the standard import values for determining the entry price of certain fruit and vegetables**

<i>(EUR/100 kg)</i>		
CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	JO	56,9
	MA	49,2
	TN	123,3
	TR	88,7
	ZZ	79,5
0707 00 05	JO	178,8
	MA	69,9
	MK	99,4
	TR	175,7
	ZZ	131,0
0709 90 70	MA	52,7
	TR	137,5
	ZZ	95,1
0805 10 20	EG	46,0
	IL	57,7
	MA	55,0
	TN	57,2
	TR	56,9
	ZZ	54,6
0805 50 10	IL	116,0
	TR	132,0
	ZA	133,3
	ZZ	127,1
0808 10 80	AR	94,3
	BR	85,2
	CA	103,3
	CL	80,1
	CN	91,7
	MK	39,9
	US	116,2
	UY	70,2
	ZA	66,6
	ZZ	83,1
0808 20 50	AR	77,5
	CL	87,7
	CN	53,0
	ZA	86,3
	ZZ	76,1

<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 278/2008****of 27 March 2008****fixing the export refunds on white and raw sugar exported without further processing**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the market in the sugar sector<sup>(1)</sup>, and in particular the second subparagraph of Article 33(2) thereof,

Whereas:

- (1) Article 32 of Regulation (EC) No 318/2006 provides that the difference between prices on the world market for the products listed in Article 1(1)(b) of that Regulation and prices for those products on the Community market may be covered by an export refund.
- (2) Given the present situation on the sugar market, export refunds should therefore be fixed in accordance with the rules and certain criteria provided for in Articles 32 and 33 of Regulation (EC) No 318/2006.

- (3) The first subparagraph of Article 33(2) of Regulation (EC) No 318/2006 provides that the world market situation or the specific requirements of certain markets may make it necessary to vary the refund according to destination.
- (4) Refunds should be granted only on products that are allowed to move freely in the Community and that comply with the requirements of Regulation (EC) No 318/2006.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

*Article 1*

Export refunds as provided for in Article 32 of Regulation (EC) No 318/2006 shall be granted on the products and for the amounts set out in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on 28 March 2008.

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

Done at Brussels, 27 March 2008.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

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<sup>(1)</sup> OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 1260/2007 (OJ L 283, 27.10.2007, p. 1). Regulation (EC) No 318/2006 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 October 2008.

## ANNEX

**Export refunds on white and raw sugar exported without further processing applicable from 28 March 2008**

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	S00	EUR/100 kg	25,85 <sup>(1)</sup>
1701 11 90 9910	S00	EUR/100 kg	25,85 <sup>(1)</sup>
1701 12 90 9100	S00	EUR/100 kg	25,85 <sup>(1)</sup>
1701 12 90 9910	S00	EUR/100 kg	25,85 <sup>(1)</sup>
1701 91 00 9000	S00	EUR/1 % sucrose × 100 kg of net product	0,2811
1701 99 10 9100	S00	EUR/100 kg	28,11
1701 99 10 9910	S00	EUR/100 kg	28,11
1701 99 10 9950	S00	EUR/100 kg	28,11
1701 99 90 9100	S00	EUR/1 % sucrose × 100 kg of net product	0,2811

NB: The destinations are defined as follows:

S00 — All destinations with the exception of:

- (a) third countries: Andorra, Liechtenstein, the Holy See (Vatican City State), Croatia, Bosnia-Herzegovina, Serbia (\*), Montenegro, Albania and the former Yugoslav Republic of Macedonia;
- (b) territories of the EU Member States not forming part of the customs territory of the Community: the Faeroe Islands, Greenland, Heligoland, Ceuta, Melilla, the Communes of Livigno and Campione d'Italia, and the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control;
- (c) European territories for whose external relations a Member State is responsible and not forming part of the customs territory of the Community: Gibraltar.

(\*) Including Kosovo, under the aegis of the United Nations, pursuant to UN Security Council Resolution 1244 of 10 June 1999.

<sup>(1)</sup> This amount is applicable to raw sugar with a yield of 92 %. Where the yield for exported raw sugar differs from 92 % the refund amount applicable shall be multiplied, for each exporting operation concerned, by a conversion factor obtained by dividing by 92 the yield of the raw sugar exported, calculated in accordance with paragraph 3 of Point III of the Annex I of Regulation (EC) No 318/2006.

**COMMISSION REGULATION (EC) No 279/2008****of 27 March 2008****fixing the export refunds on syrups and certain other sugar products exported without further processing**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the market in the sugar sector<sup>(1)</sup>, and in particular the second subparagraph of Article 33(2) thereof,

Whereas:

- (1) Article 32 of Regulation (EC) No 318/2006 provides that the difference between prices on the world market for the products listed in Article 1(1)(c), (d) and (g) of that Regulation and prices for those products on the Community market may be covered by an export refund.
- (2) Given the present situation on the sugar market, export refunds should therefore be fixed in accordance with the rules and certain criteria provided for in Articles 32 and 33 of Regulation (EC) No 318/2006.
- (3) The first subparagraph of Article 33(2) of Regulation (EC) No 318/2006 provides that the world market situation or the specific requirements of certain markets may make it necessary to vary the refund according to destination.
- (4) Refunds should be granted only on products that are allowed to move freely in the Community and that comply with the requirements of Commission Regulation (EC) No 951/2006 of 30 June 2006 laying down detailed

rules for the implementation of Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector<sup>(2)</sup>.

- (5) Export refunds may be set to cover the competitive gap between Community and third country's exports. Community exports to certain close destinations and to third countries granting Community products a preferential import treatment are currently in a particular favourable competitive position. Therefore, refunds for exports to those destinations should be abolished.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. Export refunds as provided for in Article 32 of Regulation (EC) No 318/2006 shall be granted on the products and for the amounts set out in the Annex to this Regulation subject to the conditions provided for in paragraph 2 of this Article.
2. To be eligible for a refund under paragraph 1 products must meet the relevant requirements laid down in Articles 3 and 4 of Regulation (EC) No 951/2006.

*Article 2*

This Regulation shall enter into force on 28 March 2008.

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

Done at Brussels, 27 March 2008.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

<sup>(1)</sup> OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 1260/2007 (OJ L 283, 27.10.2007, p. 1). Regulation (EC) No 318/2006 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 October 2008.

<sup>(2)</sup> OJ L 178, 1.7.2006, p. 24. Regulation as amended by Regulation (EC) No 2031/2006 (OJ L 414, 30.12.2006, p. 43).

## ANNEX

**Export refunds on syrups and certain other sugar products exported without further processing applicable from 28 March 2008**

Product code	Destination	Unit of measurement	Amount of refund
1702 40 10 9100	S00	EUR/100 kg dry matter	28,11
1702 60 10 9000	S00	EUR/100 kg dry matter	28,11
1702 60 95 9000	S00	EUR/1 % sucrose × 100 kg of net product	0,2811
1702 90 30 9000	S00	EUR/100 kg dry matter	28,11
1702 90 71 9000	S00	EUR/1 % sucrose × 100 kg of net product	0,2811
1702 90 95 9100	S00	EUR/1 % sucrose × 100 kg of net product	0,2811
1702 90 95 9900	S00	EUR/1 % sucrose × 100 kg of net product	0,2811 <sup>(1)</sup>
2106 90 30 9000	S00	EUR/100 kg dry matter	28,11
2106 90 59 9000	S00	EUR/1 % sucrose × 100 kg of net product	0,2811

NB: The destinations are defined as follows:

S00 — All destinations with the exception of:

- (a) third countries: Andorra, Liechtenstein, the Holy See (Vatican City State), Croatia, Bosnia-Herzegovina, Serbia (\*), Montenegro, Albania and the former Yugoslav Republic of Macedonia;
- (b) territories of the EU Member States not forming part of the customs territory of the Community: the Faeroe Islands, Greenland, Heligoland, Ceuta, Melilla, the Communes of Livigno and Campione d'Italia, and the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control;
- (c) European territories for whose external relations a Member State is responsible and not forming part of the customs territory of the Community: Gibraltar.

(\* Including Kosovo, under the aegis of the United Nations, pursuant to UN Security Council Resolution 1244 of 10 June 1999.

(<sup>1</sup>) The basic amount is not applicable to the product defined under point 2 of the Annex to Commission Regulation (EEC) No 3513/92 (OJ L 355, 5.12.1992, p. 12).

**COMMISSION REGULATION (EC) No 280/2008****of 27 March 2008****fixing the maximum export refund for white sugar in the framework of the standing invitation to tender provided for in Regulation (EC) No 900/2007**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector<sup>(1)</sup>, and in particular the second subparagraph and point (b) of the third subparagraph of Article 33(2) thereof,

Whereas:

- (1) Commission Regulation (EC) No 900/2007 of 27 July 2007 on a standing invitation to tender to determine refunds on exports of white sugar for the 2007/08 marketing year<sup>(2)</sup> requires the issuing of partial invitations to tender.
- (2) Pursuant to Article 8(1) of Regulation (EC) No 900/2007 and following an examination of the tenders submitted

in response to the partial invitation to tender ending on 27 March 2008, it is appropriate to fix a maximum export refund for that partial invitation to tender.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

*Article 1*

For the partial invitation to tender ending on 27 March 2008, the maximum export refund for the product referred to in Article 1(1) of Regulation (EC) No 900/2007 shall be 33,106 EUR/100 kg.

*Article 2*

This Regulation shall enter into force on 28 March 2008.

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

Done at Brussels, 27 March 2008.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

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<sup>(1)</sup> OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 1260/2007 (OJ L 283, 27.10.2007, p. 1). Regulation (EC) No 318/2006 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 October 2008.

<sup>(2)</sup> OJ L 196, 28.7.2007, p. 26. Regulation as last amended by Commission Regulation (EC) No 148/2008 by Commission Regulation (OJ L 46, 21.2.2008, p. 9).

**COMMISSION REGULATION (EC) No 281/2008****of 27 March 2008****fixing the maximum export refund for white sugar in the framework of the standing invitation to tender provided for in Regulation (EC) No 1060/2007**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector<sup>(1)</sup>, and in particular the second subparagraph and point (b) of the third subparagraph of Article 33(2) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1060/2007 of 14 September 2007 opening a standing invitation to tender for the resale for export of sugar held by the intervention agencies of Belgium, the Czech Republic, Spain, Ireland, Italy, Hungary, Poland, Slovakia and Sweden<sup>(2)</sup> requires the issuing of partial invitations to tender.

- (2) Pursuant to Article 4(1) of Regulation (EC) No 1060/2007 and following an examination of the tenders submitted in response to the partial invitation to tender ending on 26 March 2008, it is appropriate to fix a maximum export refund for that partial invitation to tender.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

*Article 1*

For the partial invitation to tender ending on 26 March 2008, the maximum export refund for the product referred to in Article 1(1) of Regulation (EC) No 1060/2007 shall be 423,48 EUR/t.

*Article 2*

This Regulation shall enter into force on 28 March 2008.

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

Done at Brussels, 27 March 2008.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

<sup>(1)</sup> OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 1260/2007 (OJ L 283, 27.10.2007, p. 1). Regulation (EC) No 318/2006 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 October 2008.

<sup>(2)</sup> OJ L 242, 15.9.2007, p. 8. Regulation as last amended by Commission Regulation (EC) No 148/2008 (OJ L 46, 21.2.2008, p. 9).

**COMMISSION REGULATION (EC) No 282/2008****of 27 March 2008****on recycled plastic materials and articles intended to come into contact with foods and amending Regulation (EC) No 2023/2006****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

plastic materials and articles which are intended to come into contact with foodstuffs.

Having regard to the Treaty establishing the European Community,

(4) Plastic packaging waste may contain residues from previous use, contaminants from misuse and contaminants from non-authorised substances. Therefore it is necessary to lay down special requirements to ensure that materials and articles produced from recycled plastics and intended for food contact respect the requirements of Article 3 of Regulation (EC) No 1935/2004.

Having regard to Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC <sup>(1)</sup>, and in particular Article 5(1) thereof,

(5) Commission Regulation (EC) No 2023/2006 of 22 December 2006 on good manufacturing practice for materials and articles intended to come into contact with food <sup>(4)</sup> lays down rules on good manufacturing practice for groups of materials and articles intended to come into contact with food listed in Annex I to Regulation (EC) No 1935/2004 and combinations of those materials and articles or recycled materials and articles used in those materials and articles.

After consulting the European Food Safety Authority ('the Authority'),

Whereas:

(1) Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste <sup>(2)</sup> promotes the recovery and incineration at waste incineration plants with energy recovery and recycling of packaging waste.

(6) Plastic waste can be treated mechanically to produce recycled materials and articles or it can be broken down to monomers and oligomers by chemical depolymerisation. Monomers and oligomers resulting from chemical depolymerisation should not be treated differently from monomers manufactured by chemical synthesis. Therefore, they are covered by the authorisation of monomers and additives in Directive 2002/72/EC and they should comply with the specifications and purity criteria established therein. Therefore, they should not be covered by this Regulation.

(2) Regulation (EC) No 1935/2004 sets out the general principles for eliminating the differences between the laws of Member States as regards materials and articles in contact with food and provides in Article 5(1) for the adoption of specific measures for groups of materials and articles. That Regulation identifies that harmonisation of rules on recycled plastic materials and articles should be given priority.

(7) Offcuts and scraps from the production of plastic food contact materials, that has not been in contact with food or otherwise contaminated and is re-melted on the premises into new products or sold to a third party as part of a quality control system in compliance with the rules for good manufacturing practice laid down in Regulation (EC) No 2023/2006 would be considered as suitable for food contact applications and should not fall under the scope of this Regulation. All other offcuts and scraps from the production of plastic food contact materials should fall within the scope of the present Regulation.

(3) Commission Directive 2002/72/EC of 6 August 2002 relating to plastic materials and articles intended to come into contact with foodstuffs <sup>(3)</sup> sets out rules for

<sup>(1)</sup> OJ L 338, 13.11.2004, p. 4.

<sup>(2)</sup> OJ L 365, 31.12.1994, p. 10. Directive as last amended by Directive 2005/20/EC (OJ L 70, 16.3.2005, p. 17).

<sup>(3)</sup> OJ L 220, 15.8.2002, p. 18. Directive as last amended by Directive 2007/19/EC (OJ L 91, 31.3.2007, p. 17).

<sup>(4)</sup> OJ L 384, 29.12.2006, p. 75.

- (8) Recycled plastic used behind a plastic functional barrier as defined by Directive 2002/72/EC should not be covered by the authorisation procedure in this Regulation. The rules set out in Directive 2002/72/EC for substances used behind a plastic functional barrier are regarded as sufficient to ensure the safety also of recycled plastics used behind a functional barrier.
- (9) Directive 2002/72/EC lays down lists of substances authorised to be used in the manufacture of plastic food contact materials or articles. These substances have been evaluated for their safety and migration limits have been set for their safe use. To ensure the same level of safety of recycled plastic materials and articles only authorised monomers and additives should be added to the recycled plastics and their migration limits should also be respected by recycled plastic food contact materials.
- (10) Directive 2002/72/EC provides for a declaration of compliance and record keeping to ensure that relevant information on the safe use of the plastic material is passed on between business operators and to the competent authorities. Those general rules are also valid for recycled plastics; therefore, they should apply also to recycled plastic food contact materials and articles.
- (11) Only the combination of characteristic of the input, sorting efficiency, and the effectiveness of the process to reduce contamination together with the defined use of recycled plastic ensure the safety of the recycled plastic material and article. They are specific to the type of plastic and the recycling process applied. It is only feasible to evaluate all these aspects together in individual evaluations of the recycling processes followed by individual authorisations.
- (12) The safety of the recycled plastics can only be ensured if the recycling process is able to produce a reproducible quality of the recycled plastics. This can be controlled if an effective quality assurance system is applied. Therefore, only recycled plastics from a recycling process managed by an effective quality assurance system should be placed on the market.
- (13) Directive 2002/72/EC lays down the list of monomers and starting substance authorised to the exclusion of all others (positive list) to be used in the manufacture of plastic food contact materials or articles and, therefore, only materials and articles complying with the provisions laid down in Directive 2002/72/EC should be used as input for the recycling process. This can be achieved by sorting the plastic articles before recycling. For certain materials, such as polyolefines, due to their physico-chemical properties, 100 % sorting efficiency may be necessary to ensure recycled plastic that complies with the requirements of Article 3 of Regulation (EC) No 1935/2004. This sorting efficiency can be achieved in product loops which are in a closed and controlled chain. For other materials, for example, PET the safety of the recycled plastic can be ensured with a lower sorting efficiency as regards to its former use in food contact which is realistically achievable from kerbside collection systems. The sorting efficiency necessary for each material should be identified on a case by case basis.
- (14) Plastic waste may be contaminated by substances from the previous use or incidental misuse of the plastics or by substances originating from non-food contact grade plastic. As it is not possible to know all possible types of contamination and as different types of plastics have different capacities to retain and release contaminants it is not possible to set defined characteristics for the final product applicable to all types of recycled plastics. Therefore a combination of input characterisation together with an adequate process to remove possible contamination is necessary to control the safety of the final product.
- (15) In the mechanical treatment, in which the plastic waste is ground into small pieces and cleaned, special care has to be taken to remove these contaminations. The recycling process must demonstrate that it can efficiently reduce potential contamination to a level that does not pose a risk to human health. The contaminants should only migrate in levels comparable to or well below levels demonstrated in the challenge tests of that recycling process or in other appropriate analytical test and should comply with the requirements of Article 3 of Regulation (EC) No 1935/2004. A safety assessment should verify that the recycling process fulfils these conditions. Alternatively, for non-fillable materials and articles, such as crates and pallets that are handled in product loops in a closed and controlled chain in which all steps of manufacture, distribution and use are controlled, it may be sufficient to prove that contamination can be excluded when they are only used in contact with dry food such as fruits and vegetables.
- (16) Certain types of plastic materials and articles manufactured with recycled plastics may only be suitable for contact with specified types of food under certain conditions. A safety assessment should identify these materials and articles and appropriate contact conditions.

- (17) Differences between national laws, regulations and administrative provisions concerning the safety assessment and the authorisation of recycling processes, used in the manufacture of materials and articles intended to come into contact with food, may hinder the free movement of these materials and articles, creating conditions of unequal and unfair competition. An authorisation procedure should therefore be established at Community level on the basis of the authorisation procedure provided for in Articles 9 to 12 of Regulation (EC) No 1935/2004.
- (18) The authorisation procedure provided for in Article 9 to 12 of Regulation (EC) No 1935/2004 is intended for the authorisation of substances. Changes to that procedure should be introduced in the present Regulation to adapt the authorisation procedure to the authorisation of recycling processes. These changes are specific procedural rules as referred to in Article 5(1)(n) of Regulation (EC) No 1935/2004.
- (19) A safety assessment of the recycling process should be carried out by the European Food Safety Authority ('the Authority'). In order to inform the applicant of the data to be provided for the safety assessment, the Authority should publish detailed guidance concerning the preparation and the submission of the application.
- (20) The safety assessment of the recycling process should be followed by a risk management decision as to whether this recycling process should be authorised. That decision should be adopted in accordance with the regulatory procedure described in Article 23(2) of Regulation (EC) No 1935/2004 so as to ensure close cooperation between the Commission and the Member States.
- (21) The recycling process is company specific as regards technology and process parameters used. Therefore, only process specific authorisations should be granted. The authorisation procedure provided for in Articles 9 to 12 of Regulation (EC) No 1935/2004 should be adapted accordingly.
- (22) It should be possible to apply the process in different production sites as long as technology and process parameters as described in the application and authorisation are adhered to.
- (23) The public should be informed on the authorised recycling processes. For that purpose, a Community register, as referred to in Article 5(1)(m) of Regulation (EC) No 1935/2004, of recycling processes authorised under this Regulation should be established including the description of the field of application for the recycled plastic of the authorised process.
- (24) The recycling and the converting plant should be subject to inspection and control by the Member State. Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure verification of compliance with feed and food law, animal health and animal welfare rules<sup>(1)</sup> also covers official control on food contact materials. The most efficient way to control if the recycling process is applied as specified in the authorisation and to control if an effective quality assurance system is in place is the auditing of the recycling plant by the competent authorities. Therefore official controls performed to ensure compliance with this Regulation should include audits as specified in Article 10 of Regulation (EC) No 882/2004. The audits should be made in the most cost effective manner possible to keep to a minimum the administrative and economic burden to competent authorities and small and medium enterprises.
- (25) To ensure an efficient control Member States and the Commission should be informed about the recycling or manufacturing sites in which the authorised recycling process is being applied.
- (26) Industry should be enabled to label that their packaging contains recycled plastics. However, consumers should not be misled by labelling as regards recycled content. Rules for labelling of recycled plastics in relation to the content of recycled plastics have been laid down in EN ISO 14021. To ensure adequate information of the consumer when recycled plastics are labelled, they should follow transparent rules as those laid down in EN ISO 14021 or equivalent.

<sup>(1)</sup> OJ L 165, 30.4.2004, p. 1; corrected version (OJ L 191, 28.5.2004, p. 1). Regulation as last amended by Commission Regulation (EC) No 180/2008 (OJ L 56, 29.2.2008, p. 4).

- (27) Article 16 of Regulation (EC) No 1935/2004 requires a declaration of compliance for materials and articles. The converter of recycled plastic material and articles should declare that he is using only recycled plastic from an authorised process and that the final product respects Community and national provisions applicable to it, in particular Regulation (EC) No 1935/2004 and Directive 2002/72/EC. The recycler should provide the converter with the information that the recycled plastic is produced by an authorised process and specify its field of application. Therefore, both the finished recycled plastic materials and articles and the recycled plastic should be accompanied by a declaration of compliance. General information to be provided in the declaration is already laid down in Directive 2002/72/EC. Therefore, this Regulation should only specify the additional information in relation to the content of recycled plastics in the recycled plastic materials and articles.
- (28) Since recycled materials and articles are already on the market in the Member States, provision should be made to ensure that the transition to a Community authorisation procedure is smooth and does not disturb the existing recycled plastic materials and articles market. Sufficient time should be allowed for applicants to make available to the Authority the information necessary for the safety assessment of the recycled plastic used in such products. Therefore, a certain time period, (the 'initial authorisation phase'), should be fixed during which time the information for existing recycling processes should be submitted by the applicants to the Authority. Applications for authorisations of new recycling processes may also be submitted during the initial authorisation phase. The Authority should evaluate without delay all applications for existing, as well as new recycling processes for which sufficient information has been submitted during the initial authorisation phase.
- (29) Specific requirements need to be set on the quality assurance system applied in recycling processes. As the quality assurance is part of the good manufacturing practice which is covered by Regulation (EC) No 2023/2006 the specific requirements on the quality assurance system should be included in the Annex to that Regulation.
- (30) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

##### **Subject matter and scope**

1. This Regulation shall apply to the plastic materials and articles and parts thereof intended to come into contact with

foodstuffs as referred to in Article 1 of Directive 2002/72/EC which contain recycled plastic (hereafter 'recycled plastic materials and articles').

2. This Regulation shall not apply to the following recycled plastic materials and articles, provided that they have been manufactured according to good manufacturing practice, as laid down in Regulation (EC) No 2023/2006:

- (a) recycled plastic materials and articles made with monomers and starting substances, derived from chemical depolymerization of plastic materials and articles;
  - (b) recycled plastic materials and articles made from unused plastic production offcuts and/or process scraps in compliance with Directive 2002/72/EC, that are recycled within the manufacturing site or are used at another site;
  - (c) recycled plastic materials and articles in which the recycled plastic is used behind a plastic functional barrier, as specified in Directive 2002/72/EC.
3. The plastic materials and articles that fall within the scope of this Regulation remain subject to Directive 2002/72/EC.

#### *Article 2*

##### **Definitions**

1. For the purposes of this Regulation, the definitions laid down in Regulation (EC) No 1935/2004 and Directive 2002/72/EC shall apply.

2. The following definitions shall also apply:

(a) 'recycling process' means a process in which plastic waste is recycled pursuant to the definition of recycling in point 7 of Article 3 of Directive 94/62/EC on packaging and packaging waste; for the purpose of this Regulation, this term is limited to processes, in which a recycled plastic is produced;

(b) 'plastic input' means collected and sorted post-use plastic materials and articles used as input into a recycling process;

- (c) 'product loops which are in a closed and controlled chain' means manufacture and distribution cycles in which products circulate with a controlled reuse and distribution system, and in which the recycled material originates only from these entities in the chain, so that the unintentional introduction of external material is just the minimum technically feasible;
- (d) 'challenge test' means a demonstration of the effectiveness of a recycling process to remove chemical contamination from plastic materials or articles;
- (e) 'converter' means the natural or legal person responsible for ensuring that the requirements of this Regulation, as regards the recycled plastic materials and articles are met within the business under their control;
- (f) 'recycler' means the natural or legal person responsible for ensuring that the requirements of this Regulation, as regards the recycling process are met within the business under their control.
- (b) the plastic input must originate from plastic materials and articles that have been manufactured in accordance with Community legislation on plastic food contact materials and articles, in particular Council Directive 78/142/EEC of 30 January 1978 on the approximation of laws of the Member States relating to materials and articles which contain vinyl chloride monomer and are intended to come into contact with foodstuffs<sup>(1)</sup> and Directive 2002/72/EC;
- (c) (i) either the plastic input must originate from a product loop which is in a closed and controlled chain ensuring that only materials and articles which have been intended for food contact are used and any contamination can be ruled out; or
- (ii) it must be demonstrated in a challenge test, or by other appropriate scientific evidence that the process is able to reduce any contamination of the plastic input to a concentration that does not pose a risk to human health;
- (d) the quality of the recycled plastic must be characterised and controlled in accordance with pre-established criteria that ensure compliance of the final recycled plastic material and article with Article 3 of Regulation (EC) No 1935/2004;
- (e) there must be established conditions of use of the recycled plastic whereby it can be ensured that the recycled plastic materials and articles comply with Article 3 of Regulation (EC) No 1935/2004.

#### Article 3

##### Requirements for recycled plastic materials and articles

1. Recycled plastic materials and articles shall only be placed on the market if they contain recycled plastic obtained only from a recycling process, authorised in accordance with this Regulation.

2. The authorised recycling process, referred to in paragraph 1 of this Article, shall be managed by an appropriate quality assurance system that ensures that the recycled plastic complies with the requirements set out in the authorisation.

That quality assurance system shall comply with the detailed rules laid down in the Annex to Regulation (EC) No 2023/2006.

#### Article 4

##### Conditions for the authorisation of recycling processes

In order to be authorised, a recycling process shall comply with the following conditions:

- (a) the quality of plastic input must be characterised and controlled in accordance with pre-established criteria that ensure compliance of the final recycled plastic material and article with Article 3 of Regulation (EC) No 1935/2004;

#### Article 5

##### Application for authorisation of recycling processes and opinion of the Authority

1. The procedure for authorisation laid down in Articles 9 and 10 of Regulation No (EC) 1935/2004 shall apply *mutatis mutandis* for the authorisation of recycling processes, subject to the specific provisions laid down in paragraphs 2 to 4 of this Article.

2. The technical dossier shall contain the information specified in the guidelines for the safety assessment of a recycling process to be published by the Authority at the latest six months after the date of publication of this Regulation.

3. The Authority shall give an opinion within six months of receipt of a valid application as to whether or not the recycling process complies with the conditions laid down in Article 4.

<sup>(1)</sup> OJ L 44, 15.2.1978, p. 15.

4. In the event of an opinion in favour of authorising the evaluated recycling process, the opinion of the Authority shall include the following:

- (a) a short description of the recycling process;
- (b) where appropriate, any recommendations on conditions or restrictions concerning the plastic input;
- (c) where appropriate, any recommendations on conditions or restrictions concerning the recycling process;
- (d) where appropriate, any criteria to characterise the recycled plastic;
- (e) where appropriate, any recommendations concerning conditions in the field of application of the recycled plastic;
- (f) where appropriate, any recommendations concerning monitoring compliance of the recycling process with the conditions of the authorisation.

#### Article 6

##### Authorisation of recycling processes

1. The Commission shall adopt a Decision addressed to the applicant granting or refusing authorisation of the recycling process.

Article 11(3) of Regulation (EC) No 1935/2004 shall apply.

2. The Decision shall take into account the opinion of the Authority, relevant provisions of Community law, and other legitimate factors relevant to the matter under consideration.

Where the Decision is not in accordance with the opinion of the Authority, the Commission shall provide an explanation of the reasons for the differences.

3. The Decision granting the authorisation shall include the following:

- (a) the name of the recycling process;
- (b) the name and address of the authorisation holder(s);
- (c) a short description of the recycling process;
- (d) any conditions or restrictions concerning the plastic input;

(e) any conditions or restrictions concerning the recycling process;

(f) any characterisation of the recycled plastic;

(g) any conditions in the field of application of the recycled plastic that has been manufactured by the recycling process;

(h) any requirements concerning monitoring of the compliance of the recycling process with the conditions of the authorisation;

(i) the date from which the authorisation is effective.

4. The Decision granting or refusing the authorisation shall be published in the *Official Journal of the European Union*.

5. The authorisation issued to the authorisation holder shall be valid throughout the Community.

The authorised recycling process shall be entered in the Register referred to in Article 9(1).

#### Article 7

##### Obligations arising from the authorisation

1. After the authorisation of a recycling process in accordance with this Regulation, the authorisation holder or any other business operator using the authorised recycling process under licence shall comply with any conditions or restrictions attached to such authorisation.

Any converter using recycled plastic from the authorised recycling process or any business operator using materials or articles containing recycled plastic from the authorised recycling process shall comply with any condition or restriction attached to such authorisation.

2. The authorisation holder or any other business operator using the authorised recycling process under licence shall immediately inform the Commission of any new scientific or technical information, which might affect the safety assessment of the recycling process in relation to human health.

If necessary, the Authority shall then review the assessment.

3. The granting of an authorisation shall not affect the general civil and criminal liability of any business operator in respect of the authorised recycling process, the material or article containing recycled plastic from the authorised recycling process, and the food that is in contact with such material or article.

#### Article 8

##### **Modification, suspension and revocation of authorisation of a recycling process**

1. The authorisation holder may, in accordance with the procedure laid down in Article 5(1) apply for a modification of the existing authorisation.

2. The application referred to in paragraph 1 shall be accompanied by the following:

- (a) a reference to the original application;
- (b) a technical dossier containing the new information in accordance with the guidelines referred to in Article 5(2);
- (c) a new complete summary of the technical dossier in a standardised form.

3. On its own initiative or following a request from a Member State or the Commission, the Authority shall evaluate whether the opinion or the authorisation is still in accordance with this Regulation, in accordance with the procedure laid down in Article 5, where applicable.

4. The Commission shall examine the opinion of the Authority without delay and if necessary prepare a draft Decision to be taken.

5. A draft Decision modifying an authorisation shall specify any necessary changes in the conditions of use and, if any, in the restrictions attached to that authorisation.

6. If appropriate, the authorisation shall be modified, suspended or revoked in accordance with the procedure referred to in Article 6.

#### Article 9

##### **Community register**

1. The Commission shall establish and maintain a Community register of authorised recycling processes.

2. The register shall be made available to the public.

3. Each entry in the register shall include the information referred to in Article 6(3).

#### Article 10

##### **Official control**

1. The official control of a recycling plant and converter shall be performed in accordance with the rules laid down in Regulation (EC) No 882/2004 and shall include in particular audits as *control technique* as specified in Article 10 of Regulation (EC) No 882/2004.

2. The official control shall verify that the recycling process corresponds to the authorised process and that an effective quality assurance system in accordance with Regulation (EC) No 2023/2006 is in place.

3. The authorisation holder shall notify the competent authority in the Member State about the recycling or manufacturing site in which the authorised recycling process is being applied. Member States shall forward that information to the Commission.

Manufacturing or recycling sites in third countries shall be notified to the Commission.

The Commission shall make available and keep updated a register of recycling sites in the Community and third countries.

#### Article 11

##### **Labelling of recycled plastic materials and articles**

Voluntary self-declaration of the recycled content in recycled plastic materials and articles shall follow the rules laid down in ISO 14021:1999 or equivalent.

#### Article 12

##### **Declaration of compliance and record keeping**

1. In addition to the requirements of Article 9 of Directive 2002/72/EC, the declaration of compliance of recycled plastic materials and articles shall contain the information laid down in Part A of Annex I to this Regulation.

2. In addition to the requirements of Article 9 of Directive 2002/72/EC, the declaration of compliance of recycled plastic shall contain the information laid down in Part B of Annex I to this Regulation.

*Article 13***Transitional measures for the authorisation of recycling processes**

1. For the initial authorisation phase of recycling processes, the procedure provided for in Articles 5, 6 and 7 shall apply subject to paragraphs 2 to 6 of this Article.
2. During the 18 months following the publication of the guidelines for the safety assessment of a recycling process of the Authority as provided for in Article 5(2), business operators seeking authorisation shall submit an application in accordance with Article 5.
3. The Commission shall make available to the public a register of recycling processes for which a valid application has been submitted in accordance with paragraph 2.
4. The Authority shall issue an opinion on each recycling process for which a valid application has been submitted during the period referred to in paragraph 2 of this Article. The deadline of six months for issuing the opinion, as referred to in Article 5(3), shall not apply.
5. Applications for which the Authority could not issue an opinion owing to the applicant's failure to comply with the time limits specified for submission of supplementary information in accordance with Article 10(2) of Regulation (EC) No 1935/2004 shall be excluded from consideration for the initial authorisation.
6. Within six months of receiving all the opinions referred to in paragraph 4, the Commission shall submit for opinion to the Standing Committee on the Food Chain and Animal Health draft decisions granting or refusing authorisation of the recycling processes referred to in paragraph 1.

*Article 14***Transitional measures for the trade in and use of recycled plastic**

1. Trade in and use of recycled plastic from a recycling process already in place on the date of entry into force of this Regulation, for which authorisation is refused or for which no valid application has been submitted in accordance with Article 13 shall be permitted until six months after the date of adoption of the Decisions referred to in Article 13(6).
2. Trade in and use of recycled plastic materials and articles containing recycled plastic from a recycling process already in place on the date of entry into force of this Regulation, for which authorisation is refused or for which no valid application has been submitted in accordance with Article 13 shall be permitted until exhaustion of stocks.

*Article 15***Amendment to Regulation (EC) No 2023/2006**

The Annex to Regulation (EC) No 2023/2006 is amended in accordance with Annex II to this Regulation.

*Article 16***Entry into force**

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

However, Articles 3, 9, 10 and 12 shall apply from the date of the adoption of the Decisions referred to in Article 13(6). Until that date, national provisions in force concerning recycled plastic materials and articles and recycled plastic shall continue to apply in the Member States.

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

Done at Brussels, 27 March 2008.

*For the Commission*  
Androulla VASSILIOU  
*Member of the Commission*

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## ANNEX I

## PART A

**Additional information in the declaration of compliance for recycled plastic materials and articles**

The written declaration referred to in Article 12(1) shall contain the following additional information:

A declaration that only recycled plastic from an authorised recycling process has been used listing the EC Register number of the authorised recycling process.

## PART B

**Additional information in the declaration of compliance for recycled plastic**

The written declaration referred to in Article 12(2) shall contain the following additional information:

1. The declaration that the recycling process has been authorised listing the EC Register number of the authorised recycling process;
  2. The declaration that the plastic input, the recycling process and the recycled plastic meet the specifications for which the authorisation has been granted;
  3. The declaration that a quality assurance system according to Section B of Annex to Regulation (EC) No 2023/2006 is in place.
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## ANNEX II

The Annex to Regulation (EC) No 2023/2006 is amended as follows:

(1) The following section title is inserted after the title:

**'A. Printing inks'**

(2) The following section is added:

**'B. Quality assurance system for plastic recycling processes covered by Regulation (EC) No 282/2008 on recycled plastic materials and articles intended to come into contact with foods and amending Regulation (EC) No 2023/2006'**

1. The quality assurance system implemented by the recycler must give adequate confidence in the capability of the recycling process to ensure the recycled plastic meets the requirements in the authorisation.
2. All the elements, requirements and provisions adopted by the recycler for his quality assurance system must be documented in a systematic and orderly manner in the form of written policy statements and procedures.

That quality system documentation must permit uniform interpretation of the quality policy and procedures, such as quality programmes, plans, manuals, records and measures taken to ensure traceability.

It must include, in particular:

- (a) a quality policy manual, containing a clear definition of the recycler's quality objectives, the organisation of the business and in particular the organisational structures, the responsibilities of the managerial staff and their organisational authority where manufacture of the recycled plastic is concerned;
  - (b) the quality control plans, including those for input and recycled plastic characterisation, suppliers' qualification, sorting processes, washing processes, deep cleansing processes, heating processes, or any other part of the process relevant for the quality of the recycled plastic including the choice of points which are critical for the quality control of the recycled plastics;
  - (c) the managing and operative procedures implemented to monitor and control the whole recycling process, including the inspection and quality assurance techniques at all the manufacturing stages, especially the establishment of critical limits at the points which are critical for the quality of the recycled plastics;
  - (d) the methods of monitoring the efficient operation of the quality system and in particular its ability to achieve the desired recycled plastic quality, including control of products which fail to conform;
  - (e) the tests and analytical protocols or any other scientific evidence applied before, during and after recycled plastic production, the frequency with which they will take place, and the test equipment used; it must be adequately possible to trace back the calibration of the test equipment;
  - (f) the recording documents adopted.'
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## COMMISSION REGULATION (EC) No 283/2008

of 27 March 2008

replacing Annex I to Council Regulation (EC) No 673/2005 establishing additional customs duties on imports of certain products originating in the United States of America

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 673/2005 of 25 April 2005 establishing additional customs duties on imports of certain products originating in the United States of America <sup>(1)</sup>, and in particular Article 3 thereof,

Whereas:

- (1) As a result of the United States' failure to bring the Continued Dumping and Subsidy Offset Act (CDSOA) in compliance with its obligations under the WTO agreements, Regulation (EC) No 673/2005 imposed a 15 % *ad valorem* additional customs duty on imports of certain products originating in the United States of America as from 1 May 2005. In conformity with the WTO authorisation to suspend the application of concessions to the United States, the Commission shall adjust the level of suspension annually to the level of nullification or impairment caused by the CDSOA to the Community at that time.
- (2) The CDSOA disbursements for the most recent year for which data are available relate to the distribution of anti-dumping and countervailing duties collected during the Fiscal Year 2007 (1 October 2006 to 30 September 2007). On the basis of the data published by the United States' Customs and Border Protection, the level of nullification or impairment caused to the Community is calculated at USD 33,38 million.
- (3) Since the level of nullification or impairment and consequently of suspension has decreased, the last 30 products of the list in Annex I to Regulation (EC) No 673/2005 should be removed from the list in Annex I to that Regulation.
- (4) The effect of a 15 % *ad valorem* additional import duty on imports from the United States of the products in the amended Annex I represents, over one year, a value of trade that does not exceed USD 33,38 million.
- (5) To make sure that there are no delays in the customs clearance of goods removed from the scope of the 15 % *ad valorem* additional import duty, this Regulation should enter into force on the day of its publication.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Committee on trade retaliation,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex I to Regulation (EC) No 673/2005 is replaced by the Annex to this Regulation.

*Article 2*

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

It shall apply from 1 May 2008.

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

Done at Brussels, 27 March 2008.

For the Commission  
Peter MANDELSON  
Member of the Commission

<sup>(1)</sup> OJ L 110, 30.4.2005, p. 1. Regulation as last amended by Commission Regulation (EC) No 409/2007 (OJ L 100, 17.4.2007, p. 16).

## ANNEX

## 'ANNEX I

The products on which additional duties are to apply are identified by their eight-digit CN codes. The description of products classified under these codes can be found in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff<sup>(1)</sup> as amended by Regulation (EC) No 493/2005<sup>(2)</sup>.

0710 40 00	6204 63 11
4803 00 31	6204 63 18
4818 30 00	6204 63 90
4818 50 00	6204 69 18
4820 10 50	6204 69 90
4820 10 90	6301 30 10
4820 30 00	6301 30 90
4820 50 00	6301 40 10
4820 90 00	6301 40 90
6103 43 00	8467 21 99
6104 63 00	8705 10 00
6203 43 11	9003 19 30
6203 43 19	9009 11 00
6203 43 90	9009 12 00

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<sup>(1)</sup> OJ L 256, 7.9.1987, p. 1.

<sup>(2)</sup> OJ L 82, 31.3.2005, p. 1.

**COMMISSION REGULATION (EC) No 284/2008****of 27 March 2008****registering certain names in the Register of protected designations of origin and protected geographical indications (Lingot du Nord (PGI), Cipolla Rossa di Tropea Calabria (PGI), Marrone di Roccadaspide (PGI))**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs <sup>(1)</sup>, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) In accordance with the first subparagraph of Article 6(2) and pursuant to Article 17(2) of Regulation (EC) No 510/2006, France's application to register the name 'Lingot du Nord' and Italy's applications to register the

names 'Cipolla Rossa di Tropea Calabria' and 'Marrone di Roccadaspide' were published in the *Official Journal of the European Union* <sup>(2)</sup>.

- (2) As no objection under Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, these names should be entered in the Register,

HAS ADOPTED THIS REGULATION:

*Article 1*

The names in the Annex to this Regulation are hereby entered in the Register of protected designations of origin and protected geographical indications.

*Article 2*This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 27 March 2008.

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

<sup>(1)</sup> OJ L 93, 31.3.2006, p. 12. Regulation as amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

<sup>(2)</sup> OJ C 151, 5.7.2007, p. 21 (Lingot du Nord), OJ C 160, 13.7.2007, p. 15 (Cipolla Rossa di Tropea Calabria), OJ C 160, 13.7.2007, p. 19 (Marrone di Roccadaspide).

## ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

**Group 1.6.: Fruit, vegetables and cereals, fresh or processed**

FRANCE

Lingot du Nord (PGI)

ITALY

Cipolla Rossa di Tropea Calabria (PGI)

Marrone di Roccaspide (PGI)  
  

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**COMMISSION REGULATION (EC) No 285/2008****of 27 March 2008****fixing the rates of refunds applicable to certain products from the sugar sector exported in the form of goods not covered by Annex I to the Treaty**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the market in the sugar sector<sup>(1)</sup>, and in particular Article 33(2)(a) and (4) thereof,

Whereas:

- (1) Article 32(1) and (2) of Regulation (EC) No 318/2006 provides that the differences between the prices in international trade for the products listed in Article 1(1)(b), (c), (d) and (g) of that Regulation and prices within the Community may be covered by an export refund where these products are exported in the form of goods listed in Annex VII to that Regulation.
- (2) Commission Regulation (EC) No 1043/2005 of 30 June 2005 implementing Council Regulation (EC) No 3448/93 as regards the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds<sup>(2)</sup>, specifies the products for which a rate of refund is to be fixed, to be applied where these products are exported in the form of goods listed in Annex VII to Regulation (EC) No 318/2006.
- (3) In accordance with the first paragraph of Article 14 of Regulation (EC) No 1043/2005, the rate of the refund per 100 kilograms for each of the basic products in question is to be fixed each month.
- (4) Article 32(4) of Regulation (EC) No 318/2006 lays down that the export refund for a product contained in goods

may not exceed the refund applicable to that product when exported without further processing.

- (5) The refunds fixed under this Regulation may be fixed in advance as the market situation over the next few months cannot be established at the moment.
- (6) The commitments entered into with regard to refunds which may be granted for the export of agricultural products contained in goods not covered by Annex I to the Treaty may be jeopardised by the fixing in advance of high refund rates. It is therefore necessary to take precautionary measures in such situations without, however, preventing the conclusion of long-term contracts. The fixing of a specific refund rate for the advance fixing of refunds is a measure which enables these various objectives to be met.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

*Article 1*

The rates of the refunds applicable to the basic products listed in Annex I to Regulation (EC) No 1043/2005 and in Article 1(1) and in point (1) of Article 2 of Regulation (EC) No 318/2006, and exported in the form of goods listed in Annex VII to Regulation (EC) No 318/2006, shall be fixed as set out in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on 28 March 2008.

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

Done at Brussels, 27 March 2008.

For the Commission

Heinz ZOUREK

Director-General Enterprise and Industry

<sup>(1)</sup> OJ L 58, 28.2.2006, p. 1. Regulation as amended by Commission Regulation (EC) No 1585/2006 (OJ L 294, 25.10.2006, p. 19).

<sup>(2)</sup> OJ L 172, 5.7.2005, p. 24. Regulation as last amended by Regulation (EC) No 246/2008 (OJ L 75, 18.3.2008, p. 64).

## ANNEX

**Rates of refunds applicable from 28 March 2008 to certain products from the sugar sector exported in the form of goods not covered by Annex I to the Treaty <sup>(1)</sup>**

CN code	Description	Rate of refund in EUR/100 kg	
		In case of advance fixing of refunds	Other
1701 99 10	White sugar	28,11	28,11

<sup>(1)</sup> The rates set out in this Annex are not applicable to exports to

- (a) third countries: Andorra, Liechtenstein, the Holy See (Vatican City State), Croatia, Bosnia-Herzegovina, Serbia (\*), Montenegro, Albania and the former Yugoslav Republic of Macedonia and to the goods listed in Tables I and II of Protocol 2 to the Agreement between the European Community and the Swiss Confederation of 22 July 1972 exported to the Swiss Confederation.
- (b) territories of the EU Member States not forming part of the customs territory of the Community: the Faeroe Islands, Greenland, Heligoland, Ceuta, Melilla, the Communes of Livigno and Campione d'Italia, and the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control;
- (c) European territories for whose external relations a Member State is responsible and not forming part of the customs territory of the Community: Gibraltar

(\*) Including Kosovo, under the aegis of the United Nations, pursuant to UN Security Council Resolution 1244 of 10 June 1999.

## II

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

## DECISIONS

## COUNCIL AND COMMISSION

## DECISION OF THE COUNCIL AND OF THE COMMISSION

of 25 February 2008

**concerning the conclusion on behalf of the European Community and the European Atomic Energy Community of the Agreement on Scientific and Technological Cooperation between the European Community and the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part**

(2008/270/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION AND THE COMMISSION  
OF THE EUROPEAN COMMUNITIES,

one part, and the Swiss Confederation, of the other part  
(the Agreement), also providing for its provisional  
application.

Having regard to the Treaty establishing the European  
Community, and in particular Article 170 in conjunction with  
the first sentence of the first subparagraph of Article 300(2) and  
Article 300(3) thereof,

(2) The Agreement was signed by the representatives of the  
Parties on 25 June 2007 in Luxembourg, subject to its  
conclusion at a later date.

Having regard to the Treaty establishing the European Atomic  
Energy Community, and in particular the second paragraph of  
Article 101 thereof,

(3) The Agreement should be approved,

Having regard to the proposal from the Commission,

HAVE DECIDED AS FOLLOWS:

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

*Article 1*

The Agreement on Scientific and Technological Cooperation  
between the European Community and the European Atomic  
Energy Community, of the one part, and the Swiss Confed-  
eration of the other part <sup>(2)</sup> is hereby approved on behalf of  
the European Community and the European Atomic Energy  
Community.

Whereas:

*Article 2*

(1) The Commission has negotiated, on behalf of the  
Communities, an Agreement on Scientific and Techno-  
logical Cooperation between the European Community  
and the European Atomic Energy Community, of the

The President of the Council, on behalf of the European  
Community, and the President of the Commission, on behalf  
of the European Atomic Energy Community, shall make the  
notification provided for in Article 14 of the Agreement.

<sup>(1)</sup> Opinion of 23 October 2007 (not yet published in the Official  
Journal).

<sup>(2)</sup> OJ L 189, 20.7.2007, p. 26.

*Article 3*

1. The Agreement is related to the seven agreements signed with Switzerland on 21 June 1999 and concluded by Decision 2002/309/EC, Euratom of the Council and of the Commission, as regards the Agreement on Scientific and Technological Cooperation, of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation <sup>(1)</sup>.

2. It shall not be renewed in case the agreements referred to in paragraph 1 have been terminated.

Done at Brussels, 25 February 2008.

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

*For the Commission*  
*The President*  
José Manuel BARROSO

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<sup>(1)</sup> OJ L 114, 30.4.2002, p. 1.

# COUNCIL

## COUNCIL DECISION

of 25 February 2008

**on the conclusion of a Second Additional Protocol to the Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part, to take account of the accession of the Republic of Bulgaria and Romania to the European Union**

(2008/271/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Articles 57(2), 71, 80(2), 133(1), 133(5) and 181 in conjunction with the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the 2005 Act of Accession, and in particular Article 6(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Second Additional Protocol to the Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part, was signed on behalf of the European Community and its Member States on 21 February 2007.
- (2) The Second Additional Protocol should be approved,

### *Article 1*

The Second Additional Protocol to the Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part, to take account of the accession of the Republic of Bulgaria and Romania to the European Union, is hereby approved on behalf of the European Community and its Member States.

The text of the Second Additional Protocol is attached to this Decision <sup>(1)</sup>.

### *Article 2*

The President of the Council shall give the notification provided for in Article 5 of the Second Additional Protocol.

Done at Brussels, 25 February 2008.

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

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<sup>(1)</sup> OJ L 141, 2.6.2007, p. 69.

# COMMISSION

## COMMISSION DECISION

of 28 November 2007

on State aid C 6/07 (ex N 558/06) planned by Poland for Techmatrans S.A.

(notified under document number C(2007) 5616)

(Only the Polish version is authentic)

(Text with EEA relevance)

(2008/272/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to those provisions <sup>(1)</sup>,

Whereas:

### I. PROCEDURE

(1) By letter dated 21 August 2006, Poland notified the Commission of the planned restructuring aid for Techmatrans. Poland provided the Commission with further information by letter dated 14 December 2006. By letter dated 21 February 2007, the Commission informed Poland that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid for Techmatrans. The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* <sup>(2)</sup>. The Commission called on interested parties to submit their comments and received no comments from interested parties. The Polish authorities submitted further information by letters of 10 April and 24 July 2007.

### II. DETAILED DESCRIPTION OF THE MEASURES

#### *The Beneficiary*

(2) Techmatrans is a 100 % state-owned engineering company created in 1972. It employs 112 workers. In

2006 the company's turnover amounted to PLN 8,1 (EUR 2,0) million and the balance sheet totalled PLN 6,3 (EUR 1,6) million. With these figures the company meets the SME thresholds, however due to the State ownership it is classified as a large enterprise. It does not belong to a larger business group.

(3) The company's main activities are providing repair, service and modernisation of transport technology systems as well as supply of new lifting transport technology systems for industrial plants of the automotive, metallurgical and construction sectors. The company has a low market share on the Polish market (0,2-1,0 %) and an even lower market share on the European market.

(4) Since 2002 the owner and the management of Techmatrans have made efforts to privatise the company. In July 2005 in reply to the invitation to buy between 51 % and 85 % of the company's shares, two bidders submitted offers. No negotiations were launched and in September 2005 the procedure was terminated. The Polish authorities have not explained why the procedure was stopped.

(5) Techmatrans is based in a region eligible for aid under Article 87(3)(a) of the EC Treaty.

#### *The company's difficulties*

(6) Between 2000 and 2004 the company incurred cumulated net losses amounting to PLN 7,7 million and own capital fell from PLN 11,2 million in 2001 to PLN 4,0 million in 2004. In 2005 the company made a profit of PLN 277 000, however in 2006 the company made losses again, amounting to PLN 1,1 million.

<sup>(1)</sup> OJ C 77, 5.4.2007, p. 43.

<sup>(2)</sup> See footnote 1.

- (7) As the main reasons for the difficulties the Polish authorities mention a lack of orders, low profitability of contracts performed, and high costs of employment restructuring.
- (8) Techmatrans admits that the difficulties are caused by internal deficiencies: low level of production technology compared to competitors, poor production management, poor quality and low technical level of products, and old and obsolete assets (on average production assets are 90 % depreciated). In fact since 2001 no major modernisation or even replacement investments have been implemented.
- (9) Due to the lack of funds the marketing activity of Techmatrans is limited; accordingly, the company's current customer base consists mainly of companies with which Techmatrans has cooperated previously. Its liquidity problems have further exacerbated the company's situation.
- (10) The company's liquidity indexes are too low to raise long-term loans on the market. Due to losses the equity of Techmatrans has decreased by 65 % since 2001, while the company was unable to take on long-term debts. Accordingly, around 30 % of operations are financed by short-term liabilities in respect of suppliers or public authorities.
- (14) Certain restructuring measures have been already implemented. Overheads have been reduced: the company's activity was concentrated on one localisation, which reduced the costs of maintenance and operating costs; part of the redundant assets were sold in 2004, and employment was reduced from 133 workers in 2003 to 112 in 2005. As a result, the company made a small profit in 2005. The employment restructuring is considered to have been accomplished, and so no further employment reductions are planned.
- (15) In order to lower fixed costs and accumulate capital for restructuring, Techmatrans plans to sell the redundant assets: real estate in 2007, redundant stocks (over one year old) and old machines and cars during the restructuring period, when the new ones are bought. The market value of the real estate according to an independent expert is between PLN 1,8 million and PLN 3,1 million, depending on the method of evaluation. Therefore the company assumed that the planned revenue from the real estate sale should amount to PLN 2 million. As for the sale of stocks, it is assumed that the revenue will amount to 25 % of the book value, i.e. they will amount to PLN 100 000. The estimated revenue from the sale of cars and machines amount to PLN 100 000.
- (16) In addition, Techmatrans secured a merchant credit of PLN 110 000 with a longer repayment deadline than usual on the market. Poland has also proposed considering the profits made by Techmatrans in 2005 as an own contribution.

### ***The restructuring***

- (11) The planned restructuring consists mainly in assets restructuring. The restructuring plan envisages significant investments in production assets: purchase of new machines, know-how and licences and modernisation of IT systems. The aim of these investments is to increase the production efficiency and extend the range of the company's products.
- (12) In order to lower the costs the company plans to purchase new vehicles and modernise the heating, water and energy supply systems.
- (13) The planned capital injection will stabilise the financial situation of the company and improve financial indices.
- (17) Restructuring costs according to the notified restructuring plan amounted to PLN 5,35 million, PLN 2,8 million was planned to be financed from the state aid and the remaining PLN 2,55 million was supposed to be financed by Techmatrans.
- (18) As regards the compensatory measures, the company planned to cease one of its activities, i.e. design of technological transport control systems. The control systems would remain part of the company's offer, but their design would be commissioned from other companies.

**The measure**

- (19) The notified aid consists of a capital injection from the state-owned Industrial Development Agency (IDA) to an amount of PLN 2,8 (EUR 0,7) million. The legal basis for the capital injection is the Commercialisation and Privatisation Act of 30 August 1996 <sup>(3)</sup>.
- (20) The current owner — the State Treasury — will reduce the share capital of Techmatrans in order to cover the losses incurred in 2001-2004. Then the company will issue new shares, which will be bought by IDA, which in this way will acquire 41,5 % of the Techmatrans shares. The injected capital will be spent on investments.
- (21) In addition to the above notified measure, the Polish authorities have informed the Commission that Techmatrans had received state support in 2004 and 2005 in the form of arrangements for debt repayment in instalments. The support was granted as *de minimis* aid.

**III. DECISION TO OPEN THE FORMAL INVESTIGATION PROCEDURE**

- (22) The formal investigation procedure was opened as the Commission had doubts that the planned restructuring aid complied with the Community Guidelines on state aid for rescuing and restructuring firms in difficulty <sup>(4)</sup> (hereinafter 'the Guidelines').
- (23) First, the Commission had doubts that the envisaged restructuring was sufficient to restore long-term viability. The projected profit margin was low, so presumably it would have not been acceptable for a private investor. In addition, the company's actual situation in 2006 was much worse than projected, so the restructuring plan had to be updated.
- (24) Second, the proposed own contribution was lower than required by the Guidelines. Moreover, certain measures proposed as an own contribution raised doubts as regards their compliance with the Guidelines. The restructuring costs also seemed to have been underestimated. As such, coverage of restructuring costs by the real own contribution was probably even less smaller than indicated.

<sup>(3)</sup> According to Article 56(2) of the Act, 15 % of the yearly profits from privatisation and the accumulated interest is transferred to the Entrepreneurs' Restructuring Fund. The Fund's assets are used for rescue and restructuring of firms in difficulty. According to Article 56(5) of the Act, the State Treasury increases the capital of ARP S.A. by an amount equal to 1/3 of the income of the Entrepreneurs' Restructuring Fund for the purpose of supporting the rescue and restructuring of large companies in difficulty, including the ones to be privatised.

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

- (25) Finally, the Commission had doubts as regards the economical rationality of the compensatory measures proposed. The activity which was supposed to be ceased seemed to be technologically more advanced and more profitable than the company's other activities. This also raised doubts regarding the company's industrial strategy.

**IV. COMMENTS FROM POLAND**

- (26) First, Poland did not share the Commission's doubts surrounding the future profit margins envisaged by the company in the restructuring plan. Evidence was provided to show that a profit margin of around 2 % to 4 % is typical in the mechanical engineering sector for similar companies producing technological transportation systems like Techmatrans. Poland presented an example of a successful company listed on the Polish stock exchange, which is active in the same market segment and achieves similarly low profit margins.
- (27) The Polish authorities stressed that the planned capital injection is supposed to be a temporary support for Techmatrans enabling effective restructuring of the company and its successful privatisation in 2009/2010. Poland emphasised that IDA's participation in the company was planned purely as a temporary investment and that both IDA and the State Treasury would sell their shares in Techmatrans once the situation of the company had improved.
- (28) The Polish authorities noted that significant restructuring measures, such as reduction of employment, reduction of overheads and organisational restructuring with a long-term impact on the results of the company had already been implemented in Techmatrans.
- (29) The Polish authorities submitted an updated restructuring plan of Techmatrans. The financial projections have been corrected taking into account the results achieved by the company in 2006 and including repayment of the rescue loan.
- (30) Poland noted that the company managed to obtain additional private financing in the restructuring period. Techmatrans signed agreements with banks on its receivables discounting (on 19 July 2006 and 27 March 2007). On the basis of these agreements the bank takes over Techmatrans' receivables which are due in less than 90 days, while immediately paying out cash to Techmatrans. Poland argues that this financing has a similar effect to revolving credit and should be considered as an own contribution of Techmatrans.

## V. ASSESSMENT

### 1. State aid within the meaning of Article 87(1) of the EC Treaty

- (31) Article 87(1) of the EC Treaty declares any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and affects trade between Member States incompatible with the common market.
- (32) The capital injection of PLN 2,8 (EUR 0,7) million will be paid by the state-owned Industrial Development Agency (IDA) from a fund created by law and financed through public revenue and thus from State resources.
- (33) Techmatrans competes with other European companies on the Polish and EU market. The criterion concerning the impact on trade within the Community is therefore fulfilled.
- (34) Therefore, the above-mentioned measure is considered to be state aid within the meaning of Article 87(1) of the EC Treaty.
- (35) The measures received by Techmatrans as *de minimis* aid in 2004 and 2005 do not fulfil all the criteria of Article 87(1) of the EC Treaty and therefore will not be covered by these proceedings in accordance with point 69 of the Guidelines.

### 2. Derogations under Article 87(2) and 87(3) of the EC Treaty

- (36) The exemptions in Article 87(2) of the EC Treaty do not apply to the present case. As to the exemptions under Article 87(3) of the EC Treaty, since the primary objective of the aid concerns the restoration of the long-term viability of an undertaking in difficulty, only the exemption of Article 87(3)(c) of the EC Treaty, which authorises state aid granted to promote the development of certain economic activities where such aid does not adversely affect trading conditions to an extent contrary to the common interest, can be applied. Therefore, the aid can only be considered compatible on the basis of Article 87(3)(c) of the EC Treaty if the conditions laid down in the Guidelines are respected.

#### 2.1. The eligibility of the company

- (37) The Guidelines consider a firm to be in difficulties if it is unable to recover through its own resources or by raising the funds it needs from shareholders or borrowing and without the intervention of public authorities will almost certainly go out of business. The Guidelines also list

some of the typical characteristics of such companies, such as mounting debt or falling or nil net asset value.

- (38) Techmatrans has to be considered as a 'firm in difficulty' within the meaning of the Guidelines. In the last 5 years Techmatrans has lost more than half of its equity and has made losses both on sales and its net result. The accumulated losses in the period 2002-2004 totalled PLN 7,3 (EUR 1,9) million. In the same period sales went down from PLN 15,7 (EUR 4,1) million (in 2001) to PLN 8,5 (EUR 2,2) million (estimated for 2006), i.e. by 46 %.
- (39) In the period 2001-2005 the working capital fell from PLN 7,7 (EUR 1,9) million to PLN 2,3 (EUR 0,6) million. In the same period the share of stocks in the working capital grew from 16 % to 38,5 %.
- (40) In view of the above, the Commission considers that Techmatrans qualifies as a 'firm in difficulty' within the meaning of the Guidelines and is consequently eligible for restructuring aid.

#### 2.2. Restoration of viability

- (41) In order for a measure to be deemed compatible with Community law under points 34-37 of the Guidelines, the restructuring plan has to analyse in detail the problems which have led to the difficulties and set out the means by which to restore the long-term viability and health of the firm within a reasonable timescale. This has to be done on the basis of realistic assumptions as to future operating conditions. The expected return on capital must be enough to enable the restructured firm to compete in the marketplace on its own merits.
- (42) In the opening decision, the Commission raised doubts as to whether the planned restructuring was sufficient in order for Techmatrans to achieve viability and pointed out that the restructuring plan needed to be updated and completed. With the additional information submitted following the decision to initiate the formal investigation procedure, the Polish authorities have allayed these doubts as regards restoration of viability.
- (43) Firstly, the poor results generated by Techmatrans in 2006 have been duly explained. As the notified capital injection had to be postponed, the company, faced with liquidity problems, started to require advance payments from its clients amounting to 40 % of the value of orders. As a result, a considerable number of orders was lost. Once the company had managed to improve its liquidity in the second half of 2006, its results improved significantly. The restructuring plan has been updated accordingly, taking into account the results recorded by Techmatrans in 2006.

- (44) Secondly, as regards the Commission's concerns with respect to the low level of the expected profit margin of 3 % at the end of the restructuring period in 2010, the Polish authorities explained that such a level of expected profit margin corresponds to the situation in the sector, where margins oscillate between 2 % and 4 %. Examples of private companies active in the same sector and generating similar profit margins have been presented, including one company listed on the Polish stock exchange.
- (45) A more detailed analysis of the situation in the market segment in which Techmatrans is active confirmed that a relatively low profit margin is typical for companies producing and providing services for the automotive industry, as the margins are squeezed by clients with a strong negotiating position. Therefore the projected level of return is justified.
- (46) The restructuring activities consist mainly of new investments which should allow the company to exploit its potential in the long run (and which, in the short-term, by increasing depreciation, have a negative impact on the net result). Significant restructuring measures, such as employment restructuring, partial assets restructuring and organisational restructuring have been already implemented. Finally, the company has no significant debts to repay, and all the restructuring aid will be spent on improving productivity and competitiveness.
- (47) The mechanical engineering industry is an industry with predominantly small and medium sized companies, mainly because products are customised and sold in small batches. Demand is cyclical which requires companies to flexibly adjust their capacities. In many cases products are know-how based and long-standing experience is necessary. Techmatrans seems to be a company which meets these requirements and the implementation of the investment program envisaged in the restructuring plan should ensure restoration of long-term viability.
- (48) Finally, the Polish authorities plan to privatise the company in 2009/2010 following the restructuring process. This should additionally secure the position of the company in the long-term perspective. Market belief in the company has already been demonstrated in 2005 when two potential investors expressed their interest in acquiring it (the negotiations, however, did not lead to a successful privatisation at that time).
- (49) Having analysed and verified the above explanations and the planned restructuring, in particular the investment programme, the Commission considers that, if this restructuring is implemented, Techmatrans should achieve viability in the long term. On the basis of these elements, the Commission concludes that the implementation of the restructuring plan will lead to restoration of viability.
- ### 2.3. Aid limited to the minimum
- (50) Pursuant to points 43-45 of the Guidelines, the aid must be limited to the minimum necessary and the beneficiary is expected to make a significant contribution to the restructuring from its own resources or from external commercial financing. The Guidelines clearly indicate that a significant part of the financing of the restructuring must come from own resources, including the sale of assets not essential to the firm's survival and from external financing at market rates.
- (51) The own contribution to cover the restructuring costs of Techmatrans will come from asset sales: sale of real estate (PLN 2 million), stocks (PLN 0,1 million) and old cars and production machines (PLN 0,1 million). In addition Techmatrans has secured a longer-term merchant credit of PLN 0,11 million.
- (52) In addition Techmatrans has obtained receivables discounting. The expected total of receivables to be discounted in 2007 amounts to PLN 3 160 000. This estimate is based on the agreements on receivables discounting already signed with banks and clients. Assuming that the expected shortening of the payment period would be similar to the effect achieved in 2006 (80 days), the financing achieved on this basis in 2007 should have an effect equivalent to the long-term financing of PLN 702 000 (PLN 3 160 000 × 80 days/360 days).
- (53) As Techmatrans acquired this financing at market rates, while being in difficulties and before state aid was awarded, the Commission considers that it is justified to assume that similar financing will be available to the company for the whole period of restructuring and under financial conditions which are at least as good. Therefore the Commission considers that this financing can be accepted as an own contribution within the meaning of the Guidelines.
- (54) The restructuring costs according to the updated restructuring plan would amount to PLN 5,959 million (investments: PLN 5,359 million, repayment of rescue loan: PLN 0,6 million). The own contribution to financing should amount to PLN 3,012 million (revenue from the sale of assets: PLN 2,2 million, longer-term merchant credit: PLN 110 000, receivables discounting: PLN 702 000).

(55) The own contribution of Techmatrans to the overall restructuring can be considered the maximum possible and equal to at least 50 % of restructuring costs which is in line with the Guidelines. The Commission can therefore accept the level of the own contribution.

#### 2.4. *Avoiding undue distortions of competition*

(56) Pursuant to points 38-42 of the Guidelines, action must be taken to mitigate as far as possible any adverse effects of the aid on competitors. The aid must not unduly distort competition. This usually means limiting the company's market share at the end of the restructuring period. The compulsory limitation or reduction of the company's share of the relevant market represents a compensatory factor in favour of its competitors. It should be in proportion to the distortive effects of the aid and to the relative importance of the firm on its market or markets.

(57) According to point 56 of the Guidelines, the conditions for authorising aid are less stringent as regards necessary compensatory measures in assisted areas. When analysing the consequences of the restructuring aid on the market and on the competitors, the Commission has taken account of the fact that Techmatrans is located in an Article 87(3)(a) of the EC Treaty assisted area.

(58) As for compensatory measures, the doubts surrounding the economical rationality of the measures proposed raised by the Commission in the opening decision have been allayed. Techmatrans plans to cease activities connected with the design and sale of technological transport steering systems because outsourcing in this field will be more rational than in others where the company is active. Contrary to the company's other activities, subcontracting of this activity will not necessitate passing on to potential competitors the specialist knowledge inherent in the company's core activity. In addition, ceasing these activities will not require significant adjustments to be made within the company.

(59) The activity which Techmatrans plans to cease is profitable, and therefore the resignation is not motivated by

viability concerns. In recent years this activity generated between 5 and 8,6 % of Techmatrans' revenue.

(60) The Commission notes that the market share of Techmatrans is low, that it is in terms of size an SME (while formally not qualifying as an SME because it is State owned) and that the amount of the planned aid is rather limited (EUR 0,7 million). Therefore the distortion of competition that the compensatory measures aim to address is insignificant. The Commission therefore considers the proposed compensatory measure to be sufficient.

#### VI. CONCLUSION

(61) The Commission concludes that the notified state aid in favour of Techmatrans for the implementation of the above-mentioned restructuring process can be deemed compatible with the common market,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The state aid which Poland is planning to implement according to the restructuring plan of Techmatrans, amounting to PLN 2 800 000, is compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty.

Implementation of the aforementioned aid of PLN 2 800 000 is accordingly authorised.

#### *Article 2*

This Decision is addressed to the Republic of Poland.

Done at Brussels, 28 November 2007.

*For the Commission*

Neelie KROES

*Member of the Commission*