

# Official Journal

## of the European Union

L 118

English edition

Legislation

Volume 51

6 May 2008

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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

## COUNCIL REGULATION (EC) No 396/2008

of 29 April 2008

**amending Regulation (EC) No 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community<sup>(1)</sup> (the basic Regulation),

Having regard to Article 1(4) of Council Regulation (EC) No 397/2004 of 2 March 2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan<sup>(2)</sup>,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

**A. PREVIOUS PROCEDURE**

(1) By Regulation (EC) No 397/2004, the Council imposed a definitive anti-dumping duty on imports into the Community of cotton-type bed linen falling within CN codes ex 6302 21 00 (TARIC codes 6302 21 00 81, 6302 21 00 89), ex 6302 22 90 (TARIC code 6302 22 90 19), ex 6302 31 00 (TARIC code

6302 31 00 90) and ex 6302 32 90 (TARIC code 6302 32 90 19), originating in Pakistan. A country-wide anti-dumping duty of 13,1 % was imposed on all companies exporting the product concerned to the Community.

(2) In May 2006, following an *ex officio* partial interim review pursuant to Article 11(3) of the basic Regulation, the Council, by Regulation (EC) No 695/2006<sup>(3)</sup>, amended Regulation (EC) No 397/2004 and established new duty rates ranging from 0 % to 8,5 % based on a new investigation period between 1 April 2003 and 31 March 2004. Given the large number of cooperating exporting producers, a sample was established.

(3) The companies selected in the sample were attributed the individual duty rates established during the review investigation, while other cooperating companies not included in the sample were attributed the weighted average duty rate of 5,8 %. A duty rate of 8,5 % was imposed on companies which either did not make themselves known or did not cooperate in the investigation.

(4) Article 1(4) of Regulation (EC) No 397/2004 gives the possibility to Pakistani exporting producers which meet the three criteria set out in the same Article to be granted the same treatment as the cooperating companies not included in the sample (new exporting producer treatment or NEPT).

(5) Regulation (EC) No 925/2007 established the findings concerning 18 Pakistani companies having requested NEPT. Four of these companies were granted NEPT, while the requests of the remaining 14 companies were rejected.

<sup>(1)</sup> OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

<sup>(2)</sup> OJ L 66, 4.3.2004, p. 1. Regulation as last amended by Regulation (EC) No 925/2007 (OJ L 202, 3.8.2007, p. 1).

<sup>(3)</sup> OJ L 121, 6.5.2006, p. 14.

### B. NEW EXPORTING PRODUCERS' REQUESTS

- (6) 13 additional Pakistani companies have requested to be granted NEPT.
- (7) An examination was carried out to determine whether each applicant fulfils the criteria for being granted NEPT as set out in Article 1(4) of Regulation (EC) No 397/2004, by verifying that:
- it did not export to the Community the product described in recital 1 in the period between 1 April 2003 and 31 March 2004,
  - it is not related to any of the exporters or producers subject to the measures imposed by that Regulation, and
  - it has actually exported to the Community the product concerned after the investigation period on which the measures are based or it has entered into an irrevocable contractual obligation to export a significant quantity to the Community.
- (8) A questionnaire was sent to all applicants who were asked to supply evidence to demonstrate that they met the three criteria mentioned above.
- (9) Exporting producers fulfilling these three criteria may be granted the duty rate applicable to the cooperating companies not included in the sample, i.e. 5,8 %, pursuant to Article 1(4) of Regulation (EC) No 397/2004.

### C. FINDINGS

#### Companies which have submitted incomplete replies

- (10) Three Pakistani companies requesting NEPT did not reply to the initial questionnaire. It was therefore not possible to verify whether these companies fulfilled the criteria set out in Article 1(4) of Regulation (EC) No 397/2004 and their request had to be rejected. These companies were informed that their application would not be considered any further and were given the opportunity to comment. No comments were received.

#### Companies which have submitted a complete reply

- (11) For two Pakistani exporting producers, the examination of the information submitted showed that they had provided sufficient evidence to prove that they meet the three criteria set out in Article 1(4) of Regulation (EC) No 397/2004. Therefore, these two producers can be granted the duty rate applicable to the cooperating companies not included in the sample (i.e. 5,8 %) in

accordance with Article 1(4) of Regulation (EC) No 397/2004 and be added to the list of exporting producers in the Annex to that Regulation.

- (12) One Pakistani company was found to be related to a company which had cooperated in the review investigation and which exported the product concerned during the IP. Therefore, this producer did not fulfil the second criterion set out in Article 1(4) of Regulation (EC) No 397/2004, and its request for NEPT was therefore rejected. This company was informed that its application could not be considered any further and was given the opportunity to comment, but it did not submit any additional information that could lead to a change in the findings.
- (13) Three Pakistani companies were found to have exported the product concerned during the IP. Therefore, these three producers did not fulfil the first criterion set out in Article 1(4) of Regulation (EC) No 397/2004 and their requests for NEPT were therefore rejected. These companies were informed that their application could not be considered any further and were given the opportunity to comment, but they did not submit any additional information that could lead to a change in the findings.
- (14) Three Pakistani companies were unable to prove that they had sold the product concerned to the Community after the IP or having entered into an irrevocable contractual obligation to export a significant quantity to the Community. Therefore, it could not be established whether these companies had exported the product concerned after the IP as set out in the third criterion in Article 1(4) of Regulation (EC) No 397/2004, and their requests for NEPT were therefore rejected. These companies were informed that their application could not be considered any further and were given the opportunity to comment, but they did not submit any additional information that could lead to a change in the findings.
- (15) One Pakistani company was unable to prove that it was a producer of the product concerned and did not supply any supporting evidence of any sales of the product concerned to the Community after the IP or having entered into an irrevocable contractual obligation to export a significant quantity to the Community. This applicant did not therefore meet the basic criterion of being an exporting producer and its application could therefore not be considered any further. This company was informed that its application could not be considered any further and were given the opportunity to comment, but did not submit any additional information that could lead to a change in the findings.

(16) All the applicants and the Community industry were informed of the final findings of the examination and were given the opportunity to submit their comments.

urers in the Annex to Regulation (EC) No 397/2004 and be subject to the duty rate of 5,8 %. The requests submitted by the remaining 11 Pakistani companies should be rejected for the reasons outlined above,

#### D. CONCLUSION

HAS ADOPTED THIS REGULATION:

(17) In consideration of the findings mentioned in recital 11, two Pakistani exporting producers were found to fulfil the criteria set out in Article 1(4) of Regulation (EC) No 397/2004 to be granted NEPT. These companies should therefore be added to the list of cooperating manufac-

#### Article 1

The list of cooperating manufacturers in the Annex of Regulation (EC) No 397/2004 shall be replaced by the following:

Name	Address
'A.B. Exports (PVT) Ltd	Off. No 6, Ground Floor, Business Center, New Civil Lines, Faisalabad
A.S.T. (PVT) Limited	Saba Square 2-C, Saba Commercial Street No 3, Phase V Extension, D.H. Authority, Karachi
Aala Processing Industries (PVT) Ltd	5 KM Satyana Road Faisalabad 38000
Abdur Rahman Corporation (Pvt) Ltd	P-214 Muslim Town #1, Sargodha Road, Faisalabad
Adil Waheed Garments	66-Zubair Colony, Jaranwala Road, Faisalabad
Afroze Textile Industries (Pvt) Ltd	LA 7/1-7, Block 22 F.B. Area, Karachi
Al Musawar Textile (PVT) Ltd	Atlas Street, Maqbool Road, Faisalabad
M/S Al-Ghani International	202 Bhaiwala, Ghona Road, Faisalabad
Al-Karam Textile Mills (PVT) Ltd	3rd floor, K.D.L.B. Building, 58-West Wharf Road, Karachi
Al-Latif	W,S, 24, Block-2, Azizabad, F.B. Area, Karachi-75950
Al-Noor Processing & Textile Mills	Sargodha Road, Near Bava Chak, Faisalabad
Al-Raheem Textile	F/40, Block-6, P.E.C.H.S., Karachi
Ameer Enterprises	3rd floor, Bismillah Centre, Street No 2, Karkhana Bazar, Yanr Market, Faisalabad
Amsons Textile Mills (PVT) Ltd	D-14/B, S.I.T.E., Karachi
Amtex (Private) Limited	1-Km, Khurrianwala-Jaranwala Road, Faisalabad

Name	Address
Anjum Textile Mills (PVT) Ltd	Anjum Street, Nalka Kohala, Sargodha Road, Faisalabad
Ansa Industries	Plot #16, Sector C-2 Karachi Exporting Processing Zone Landhi Industrial Area Karachi 74000
Apex Corporation	1-19, Arkay Square, PO Box 13373, Karachi
M/S Arif Textiles Private Limited	Karim Bibi Street, Bawa Chak, Sargodha Road Faisalabad
Arshad Corporation	1088/2, Jail Road Faisalabad 38000
Arzoo Textile Mills Ltd	2,6 km, Jaranwala Road, Khurrinwala, Faisalabad
Asia Textile Mills	D-156, S.I.T.E. Avenue, Karachi
Aziz Sons	D21/Karach, S.I.T.E., Karachi-75700
B.I.L. Exporters	15/5, Sector 12/C, North Karachi Industrial Area, Karachi
Baak Industries	P-107, Akbarabad, Near Allied Hospital, Faisalabad
Be Be Jan Pakistan Limited	Square No 7, Chak No 204/R.B., Faisalabad
Bela Textiles Ltd	A-29/A, S.I.T.E., Karachi
Bismillah Fabrics (PVT) Ltd	3 Km, Jhumbra Road, Khurrianwala, Faisalabad
Bismillah Textiles (PVT) Ltd	1. KM, Jaranwala Road, Khurrianwala, Faisalabad
Classic Enterprises	B-1/1, Sector 15, Korangi Industrial Area, Karachi
M/S Club Textile	Sargodha Road, Ali Block Faisalabad
Cotton Arts (PVT) Ltd	613/1, Dagrwaan Road, Faisalabad
D.L. Nash (Private) Ltd	11, Timber Pond, Keamari Road, Karachi-75620
Dawood Exports PVT Ltd	PO Box 532, Sargodha Road, Faisalabad
Decent Textiles	P-1271, Abdullahpur, West Canal Road, Faisalabad
En Em Fabrics (Pvt) Ltd	10th Km, Sargodha Road, Faisalabad
En Em Industries Ltd	10th Km, Sargodha Road, Faisalabad

Name	Address
Enn Eff Exports	4th floor, Business Centre, New Civil Lines, Faisalabad
Faisal Industries	Office 205, Madina City Mall, Abdullah Haroon Road, Saddar, Karachi
Fashion Knit Industries	5-Business Centre, Ground Floor, Mumtaz Hassan Road, Karachi
Fateh Textile Mills Limited	PO Box No 69, Hali Road, S.I.T.E., Hyderabad
Gerpak Textile (PVT) Ltd	317 Clifton Centre, Schon Circle, Kehkashan Clifton, Karachi
Gohar Textile mills	208 Chak Road, Zia Town, Faisalabad
H.A. Industries (PVT) Ltd	10 KM, Jaranwala Road, Faisalabad
Haroon Fabrics (Private) Limited	P-121, Rafique Colony, Jail Road, Faisalabad
Hay's (PVT) Limited	A-33, (C), Textile Avenue, S.I.T.E., Karachi-75700
M/S Home Furnishings Limited	Plot No 1, 2, 10, 11, Sector IX-B., Karachi Export Processing Zone, Karachi
Homecare Textiles	D-115, S.I.T.E., Karachi
Husein Industries Ltd	HT-8 Landhi Industrial & Trading Estate, Landhi, Karachi
Ideal International	A-63/A, SIND Industrial Trading Estate, Karachi-75700
J.K. Sons Private Limited	3-1/A, Peoples Colony Jaranwala Road Faisalabad
Jaquard Weavers	811 Mahmoodabad Colony, Multan
Kam International	F-152, S.I.T.E., Karachi
Kamal Spinning Mills	4th KM, Jranwala Road, Khurrianwala, Faisalabad
Kausar Processing Industries (PVT) Ltd	P-61 Gole Chiniot Bazar, Faisalabad
Kausar Textile Industries (PVT) Ltd	Maqbool Road, Faisalabad
Khizra Textiles International	P-68, First Floor, Tawakal Cloth Market, Gol Chiniot Bazar, Faisalabad-38000
Kohinoor Textile Mills Limited	Peshawar Road, Rawalpindi
Latif International (PVT) Ltd	Street No 1, Abdullahpur, Faisalabad

Name	Address
Liberty Mills Limited	A/51-A, S.I.T.E., Karachi
M/s M.K. SONS Pvt Limited	2 KM, Khurrianwala, Jarranwala Road, Faisalabad
MSC Textiles (PVT) Ltd	P-19, 1st floor, Montgomery Bazar, Faisalabad
Mughanum (PVT) Ltd	P-162, Circular Road, Faisalabad
Mustaqim Dyeing & Printing Industries (Pvt) Ltd	D-14/A, Bada Board, S.I.T.E., Karachi
Naseem Fabrics	Suite #404, 4th floor, Faisalcomplex, Bilal Road, Civil Lines, Faisalabad
Nawaz Associates	87 D/1 Main Boulevard Gulberg III, Lahore
Nazir Industries	Suite 3, 7th floor, Textile Plaza, M.A. Jinnah Road, Karachi-74000
Niagara Mills (PVT) Ltd	Kashmir Road, Nishatabad, Faisalabad
Nina Industries Limited	A-29/A, S.I.T.E., Karachi
Nishitex Enterprises	P-224, Tikka Gali No 2, Y.Y. Plaza., 1st floor, Montgomery Bazar, Faisalabad
Parsons Industries (PVT) Ltd	E-53 S.I.T.E., Karachi
Popular Fabrics (PVT) Limited	Plot 115, Landhi Industrial Area, Karachi
Rainbow Industries	810/A, Khanewal Road, Multan
Rehman International	P-2, Al Rehman House, Ghulam Rasool Nagar Main Road, Sarfray Colony, Faisalabad
Sadaqat Textile Mills Pvt Ltd	Sadaqat Street, Sargodha Road, Faisalabad
Sadiq Siddique Co.	170-A, Latif Cloth Market, M.A. Jinnah Road, Karachi
Sakina Exports International	#313, Dada Chambers, M.A. Jinnah Road, Karachi-74000
Samira Fabrics (PVT) Ltd	401-403, Chapal Plaza, Hasrat Mohani Road, Karachi
Sapphire Textile Mills Limited	313, 3rd floor, Cotton exchange Bldg. I.I., Chundrigar Road, Karachi
Shahzad Siddique (PVT) Ltd	4,5 KM, Khurrianwala Jaranwala Road, Faisalabad
Shalimar Cotton Export (PVT) Ltd	Yousaf Chowk, Sargodha Road, Faisalabad

Name	Address
Sharif Textiles Industries (PVT) Ltd	PO Box 265, Satiana Road, Faisalabad
Shercotex	39/c, Peoples Colony, Faisalabad
Sitara Textile Industries Limited	6- K.M., Sargodha Road, Faisalabad
South Asian Textile Inds.	Street No 3, Hamedabad Colony, Vehari Road, Multan
Sweetey Textiles Pvt Ltd	P-237, 2nd floor, Hassan Arcade Montgomery Bazar, Faisalabad
Tex-Arts	P-22, 1st floor, Montgomery Bazar, Faisalabad
The Crescent Textile Mills Ltd	Sargodha Road, Faisalabad
Towellers Limited	WSA 30-31, Block 1, Federal B, Karachi
Union Exports (PVT) Limited	D-204/A, S.I.T.E., Karachi-75700
United Finishing Mills Ltd	2nd floor, Regency Arcade, The Mall, Faisalabad
United Textile Printing Industries (Pvt) Ltd	PO Box 194, Maqbool Road, Faisalabad
Wintex Exports PVT Ltd	P-17/A, Main Road, Sarfaraz Colony, Faisalabad
Zafar Fabrics (PVT) Limited	Chak No 119, J.B. (Samana), Sargodha Road, Faisalabad
Zamzam Weaving and Processing Mills	Bazar 1, Razabad, Faisalabad
ZIS Textiles Private Limited	3Km Sheikhupaura Road Khurrianwala Faisalabad'

*Article 2*

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

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

Done at Luxembourg, 29 April 2008.

*For the Council*  
*The President*  
D. RUPEL

**COMMISSION REGULATION (EC) No 397/2008**  
**of 5 May 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 6 May 2008.

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

Done at Brussels, 5 May 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 5 May 2008 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	MA	63,1
	TN	102,3
	TR	147,8
	ZZ	104,4
0707 00 05	JO	178,8
	TR	109,5
	ZZ	144,2
0709 90 70	TR	139,7
	ZZ	139,7
0805 10 20	EG	49,8
	IL	54,9
	MA	48,9
	TN	52,0
	TR	53,3
	ZZ	51,8
0805 50 10	AR	112,6
	IL	130,3
	TR	130,7
	ZA	118,5
	ZZ	123,0
0808 10 80	AR	89,4
	BR	85,2
	CL	91,6
	CN	85,5
	MK	65,0
	NZ	119,9
	US	106,3
	UY	78,3
	ZA	74,5
ZZ	88,4	

<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 398/2008****of 5 May 2008****amending the representative prices and additional duties for the import of certain products in the sugar sector fixed by Regulation (EC) No 1109/2007 for the 2007/08 marketing year**

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>,

Having regard to Commission Regulation (EC) No 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector <sup>(2)</sup>, and in particular of the Article 36,

Whereas:

(1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups

for the 2007/08 marketing year are fixed by Commission Regulation (EC) No 1109/2007 <sup>(3)</sup>. These prices and duties have been last amended by Commission Regulation (EC) No 387/2008 <sup>(4)</sup>.

(2) The data currently available to the Commission indicate that the said amounts should be changed in accordance with the rules and procedures laid down in Regulation (EC) No 951/2006,

HAS ADOPTED THIS REGULATION:

*Article 1*

The representative prices and additional duties on imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 1109/2007 for the 2007/08 marketing year are hereby amended as set out in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on 6 May 2008.

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

Done at Brussels, 5 May 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 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 last amended by Regulation (EC) No 1568/2007 (OJ L 340, 22.12.2007, p. 62).

<sup>(3)</sup> OJ L 253, 28.9.2007, p. 5.

<sup>(4)</sup> OJ L 116, 30.4.2008, p. 21.

## ANNEX

**Amended representative prices and additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 95 applicable from 6 May 2008**

(EUR)

CN code	Representative price per 100 kg of the product concerned	Additional duty per 100 kg of the product concerned
1701 11 10 <sup>(1)</sup>	19,62	6,49
1701 11 90 <sup>(1)</sup>	19,62	12,21
1701 12 10 <sup>(1)</sup>	19,62	6,30
1701 12 90 <sup>(1)</sup>	19,62	11,69
1701 91 00 <sup>(2)</sup>	21,72	15,20
1701 99 10 <sup>(2)</sup>	21,72	9,85
1701 99 90 <sup>(2)</sup>	21,72	9,85
1702 90 95 <sup>(3)</sup>	0,22	0,42

<sup>(1)</sup> Fixed for the standard quality defined in Annex I.III to Council Regulation (EC) No 318/2006 (OJ L 58, 28.2.2006, p. 1).

<sup>(2)</sup> Fixed for the standard quality defined in Annex I.II to Regulation (EC) No 318/2006.

<sup>(3)</sup> Fixed per 1 % sucrose content.

**COMMISSION REGULATION (EC) No 399/2008****of 5 May 2008****amending Annex VIII to Regulation (EC) No 1774/2002 of the European Parliament and of the Council as regards requirements for certain processed petfood****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption<sup>(1)</sup>, and in particular Article 20(1)(a) and Article 32(1) thereof,

Whereas:

(1) Regulation (EC) No 1774/2002 lays down animal and public health requirements for the placing on the market of certain animal by-products and products derived therefrom not intended for human consumption.

(2) Annex VIII to Regulation (EC) No 1774/2002 lays down requirements for the placing on the market and importation into the Community of petfood, dog chews and technical products. Chapter II B(3) of that Annex provides that processed petfood other than canned petfood must undergo certain heat treatment during processing.

(3) The requirements for the importation into the Community of processed petfood other than canned petfood were amended by Commission Regulation (EC) No 829/2007<sup>(2)</sup>; the model health certificate for processed petfood other than canned petfood which has to accompany imported consignments was modified. According to the new health certificate set out in Chapter 3(B) of Annex X to Regulation (EC) No 1774/2002, the processed petfood must not be heat-

treated if the ingredients of animal origin which are used have already been treated in accordance with the processing standards for their placing on the market in the Community. Those standards provide for adequate protection against risks for public and animal health.

(4) Article 28 to Regulation (EC) No 1774/2002 provides that the provisions in that Regulation applicable to the importation of certain products, including that processed petfood are to be no more favourable or less favourable than those applicable to the production and marketing of those products in the Community. Therefore, those provisions applicable for the importation of that processed petfood into the Community should also apply for the production of that processed petfood in the Community.

(5) Annex VIII to Regulation (EC) No 1774/2002 should therefore be amended.

(6) 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*

Annex VIII to Regulation (EC) No 1774/2002 is amended in accordance with the Annex to this Regulation.

*Article 2*

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

<sup>(1)</sup> OJ L 273, 10.10.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 1432/2007 (OJ L 320, 6.12.2007, p. 13).

<sup>(2)</sup> OJ L 191, 21.7.2007, p. 1. Regulation as amended by Regulation (EC) No 1256/2007 (OJ L 282, 26.10.2007, p. 30).

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

Done at Brussels, 5 May 2008.

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

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ANNEX

In Annex VIII to Regulation (EC) No 1774/2002, paragraph B(3) of Chapter II is replaced by the following:

- '3. Processed petfood other than canned petfood must:
- (a) be subjected to a heat treatment of at least 90 °C throughout the substance of the final product;
  - (b) be subjected to a heat treatment to at least 90 °C of the ingredients of animal origin; or
  - (c) be produced as regards ingredients of animal origin exclusively using:
    - (i) meat or meat products which have been subject to a heat treatment of at least 90 °C throughout their substance;
    - (ii) the following animal by-products or processed products which have been processed in accordance with the requirements of this Regulation: milk and milk based products, gelatine, hydrolysed protein, egg products, collagen, blood products, processed animal protein including fishmeal, rendered fat, fish oils, dicalcium phosphate, tricalcium phosphate or flavouring innards.

After the heat treatment, every precaution must be taken to ensure that such processed petfood is not exposed to contamination.

The processed petfood must be packaged in new packaging.'

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**COMMISSION REGULATION (EC) No 400/2008****of 5 May 2008****amending for the 95th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan <sup>(1)</sup>, and in particular Article 7(1), first indent, thereof,

Whereas:

- (1) Annex I to Regulation (EC) No 881/2002 lists the persons, groups and entities covered by the freezing of funds and economic resources under that Regulation.

- (2) On 21 April 2008, the Sanctions Committee of the United Nations Security Council decided to amend the list of persons, groups and entities to whom the freezing of funds and economic resources should apply. Annex I should therefore be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex I to Regulation (EC) No 881/2002 is hereby amended as set out in the Annex to this Regulation.

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

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

Done at Brussels, 5 May 2008.

*For the Commission*  
Eneko LANDÁBURU  
*Director-General for External Relations*

<sup>(1)</sup> OJ L 139, 29.5.2002, p. 9. Regulation as last amended by Commission Regulation (EC) No 374/2008 (OJ L 113, 25.4.2008, p. 15).

## ANNEX

Annex I to Regulation (EC) No 881/2002 is amended as follows:

The following entries shall be added under the heading 'Natural persons':

- (1) Suhayl Fatilloevich **Buranov** (*alias* Suhayl Fatilloevich **Buranov**). Name in original script: **Буранов** Сухайл Фатиллоевич Address: Massiv Kara-Su-6, building 12, apt. 59, Tashkent, Uzbekistan Date of birth: 1983. Place of birth: Tashkent, Uzbekistan. Nationality: Uzbek. Other information: (a) One of the leaders of the Islamic Jihad Group; (b) Has undertaken special training on mines and explosives at the Al-Qaida camp in the Khost province; (c) Has participated in military operations in Afghanistan and Pakistan on the Taliban side; (d) Was one of the organisers of the terrorist attacks committed in Uzbekistan in 2004; (e) Criminal proceedings were instituted against him in 2000 in accordance with the following articles of the Criminal Code of the Republic of Uzbekistan: Articles 159, part 3 (Attempts to Constitutional Order of the Republic of Uzbekistan), and 248 (Illegal Possession of Arms, Ammunition, Explosive Substances, or Explosive Assemblies); (f) An order for his arrest has been issued.
  - (2) Najmiddin Kamolitdinovich **Jalolov**. Name in original script: **Жалолов** Нажмиддин Камолитдинович. Address: S. Jalilov Street 14, Khartu, Andijan Region, Uzbekistan. Date of birth: 1972. Place of birth: Andijan Region, Uzbekistan. Nationality: Uzbek. Other information: (a) One of the leaders of the Islamic Jihad Group; (b) Has undertaken special training on mines and explosives at Al-Qaida camps; (c) Has participated in military operations in Afghanistan and Pakistan on the Taliban side; (d) Was one of the organisers of the terrorist attacks committed in Uzbekistan in 1999 and 2004; (e) Criminal proceedings were instituted against him in March 1999 in accordance with the following articles of the Criminal Code of the Republic of Uzbekistan: Articles 154 (Mercenary), 155 (Terrorism), 156 (Incitement of Ethnic, Racial or Religious Hatred), 159 (Attempts to Constitutional Order of Uzbekistan), 242 (Organisation of Criminal Community) and 244 (Failure to Report about Crime or Concealment thereof); (f) An order for his arrest has been issued.
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## II

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

## DECISIONS

## COMMISSION

## COMMISSION DECISION

of 11 December 2007

on State Aid C 47/06 (ex N 648/05) Tax credit introduced by France for the creation of video games

(notified under document number C(2007) 6070)

(Only the French text is authentic)

(Text with EEA relevance)

(2008/354/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

1. **PROCEDURE**

(1) The French authorities notified the present aid measure on 20 December 2005.

(2) By letter of 25 January 2006, the Commission asked for additional information that was provided by letter of 15 February 2006.

(3) On 3 May 2006 a meeting took place between the Commission and the French authorities. Following the meeting, the French authorities made changes to the measure and informed the Commission accordingly by letter of 12 June 2006.

(4) On the basis of these changes, the Commission requested additional information by letter of 1 August 2006, to which the French authorities replied, after requesting a deadline extension, by letter of 18 September 2006.

(5) By letter of 22 November 2006, the Commission informed France of its Decision to initiate the procedure provided for in Article 88(2) of the Treaty in respect of the tax credit for the creation of video games.

(6) France submitted its comments by letter of 22 December 2006, registered as received on 3 January 2007.

(7) 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 on the measure under review.

<sup>(1)</sup> OJ C 297, 7.12.2006, p. 19.

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

- (8) The Commission received comments from the following interested parties:
- TIGA, by letter of 21 December 2006,
  - EGDF, by letter of 22 December 2006,
  - GAME, by letter of 3 January 2007,
  - ADESE, by letter of 3 January 2007,
  - APOM, by letter of 5 January 2007,
  - ISFE, by letter of 5 January 2007,
  - Ubisoft, by letter of 8 January 2007.
- (9) The Commission received further comments but, since most of them were received after the one-month deadline following publication of the decision in the *Official Journal of the European Union*, it did not accept them.
- (10) The comments submitted by the deadline set were forwarded to France by letter of 12 February 2007.
- (11) By letter of 23 January 2007 and in preparation for a meeting with the Commission that was held on 29 January 2007, the French authorities informed the Commission of the changes made to the measure notified.
- (12) The Commission asked for further information on 21 February 2007.
- (13) By letter of 22 March 2007, the French authorities presented their observations on the interested parties' comments sent on 12 February 2007 and their replies to the questions sent on 21 February 2007.
- (14) Meetings took place with representatives of EGDF and ISFE on 13 and 14 February 2007 respectively.
- (15) On 31 July 2007 a meeting took place between the French authorities and the Commission after which the French authorities sent three letters to the Commission dated 5 October, 17 October and 7 November 2007 and informing it of the changes made to the measure notified.
- 2. DETAILED DESCRIPTION OF THE MEASURE ON THE DATE ON WHICH THE PROCEDURE WAS INITIATED**
- (16) The measure is a scheme, in the form of a tax credit, for supporting the creation of video games with a cultural dimension. On the date on which the procedure was initiated, the details of the scheme were as follows:
- (a) *Eligible undertakings and video games*
- (17) The eligible undertakings are video game manufacturers, namely video game development studios, whether independent undertakings or subsidiaries of publishers.
- (18) Eligible games are defined as leisure software made available to the public on a physical medium or on-line and incorporating elements of artistic and technological creation; the latter cover not only PC and console video games but also mobile games, on-line games for one or more players, educational or edutainment software and, provided that they incorporate sufficient interactivity and creativity, cultural CD-ROMs. A threshold of EUR 150 000 for development costs has been set so as to exclude games not intended for large-scale marketing. In addition, to be eligible for the tax credit, the video games must satisfy a number of criteria.
- (19) The first criterion is a negative one: video games containing pornographic or extremely violent sequences are not eligible for the tax credit.
- (20) Eligible video games must also have a cultural dimension. For this, they must satisfy one of the following two criteria:
- (a) either they must adapt an existing work from Europe's cultural heritage on the basis of a scenario written in French;
- (b) or they must satisfy a criterion relating to the quality and originality of the concept and to their contribution to expressing Europe's cultural diversity and creation in the field of video games. This criterion will be assessed by examining the quality and originality of the content, the scenario, playability, navigation and interactivity as well as the visual, sound and graphic elements.

(21) Lastly, there is a European cultural criterion relating to the nationality of the creative collaborators: a system of points that are broken down by category and awarded according to whether the job is held by a national of a Member State of the European Union determines the European nature of video games and hence their eligibility for the tax credit. For the points system, account is taken not only of the collaborators employed directly by the game manufacturer but also of those working for any subcontractors.

(b) *Eligible expenditure*

(22) Eligible expenditure is defined so as to correspond to the expenditure on conception and creation. It does not include expenditure on debugging or downstream testing. It does include the following:

(a) personnel costs (wages and social security contributions) for:

1. the producer, the assistant producer, the artistic director and the technical director;
2. the individuals responsible for the scenario and dialogues, the design and the conception of game levels;
3. the persons responsible for programming;
4. the persons responsible for graphic design and animation;
5. the persons responsible for the sound environment.

(b) depreciation of assets other than buildings directly assigned to the creation of approved video games;

(c) other operating expenditure calculated at a flat rate of 75 % of personnel expenditure.

(23) Public subsidies received by the undertakings in respect of expenditure eligible for the tax credit will be deducted from the base for calculating the tax credit.

(c) *Tax credit mechanism*

(24) The tax credit rate is applied to the expenditure base as defined above. The rate is 20 % of eligible expenditure.

(25) The French authorities propose introducing a ceiling per undertaking in order to keep the tax cost of the measure under control. As things stand, they propose to set a ceiling of EUR 3 million. The annual budget expected for the scheme is put at some EUR 30 million.

(26) An authorisation procedure is also in place for ascertaining that the criteria for selecting video games are met. An assessment is made by a committee of experts made up of representatives of the French administration and qualified individuals who are not necessarily active in the field of video games but who can represent other cultural disciplines. This group of experts will verify the eligibility of the undertaking and of the game, the nature of expenditure and compliance with the cultural criteria described in recitals 19, 20 and 21. It will give an opinion on the basis of which the Culture and Communication Ministry will issue its approval.

(27) The payment arrangements are as follows: the tax credit is set off against the corporation tax payable in respect of the first tax year closed after the date on which provisional authorisation is given for the launch of the project and then against the corporation tax payable in respect of each financial year during which eligible expenditure has been incurred. Final authorisation is given upon supply to the publisher. If final authorisation is not given within 24 months of provisional authorisation being given, the undertaking must repay the tax credit it has used. Lastly, where the amount of the tax reduction for a particular tax year exceeds the amount of tax due, the difference is refunded to the undertaking.

### 3. REASONS FOR INSTITUTING THE PROCEDURE

(28) In the first place, the Commission wished to ensure, in accordance with the judgment in *Matra v Commission*<sup>(3)</sup>, that the measure under review did not contain any clauses that contravened the provisions of the Treaty in fields other than State Aid. In particular, it asked the French authorities whether French establishments of European undertakings were eligible for the tax credit, irrespective of their legal structure. It also wondered whether the exclusion of subcontracting expenditure could not be regarded as discrimination based on the location of the expenditure.

<sup>(3)</sup> Case C-225/91 *Matra v Commission* [1993] ECR I-3203, point 41.

- (29) The Commission also expressed doubts as to the compatibility of the measure under review with Article 87(3)(d) of the Treaty. First, it doubted whether the measure had a clearly cultural objective. While acknowledging that certain video games could be regarded as cultural products, the Commission doubted whether the selection criteria applied meant that only video games that could be regarded as cultural products within the meaning of Article 87(3)(d) were eligible for the tax credit.
- (30) The first cultural criterion proposed by the French authorities for selecting eligible video games is that the games should be an adaptation of an existing work from Europe's cultural heritage based on a scenario written in French. Some of the examples provided by the French authorities of video games that would satisfy this criterion seem to indicate that the criterion could be very broadly interpreted and would not, therefore, offer all the necessary guarantees that selected video games actually were an adaptation of an existing work from Europe's cultural heritage.
- (31) Video games are also eligible if they satisfy a criterion relating to the quality and originality of the concept and to their contribution to expressing Europe's cultural diversity and creation in the field of video games. This criterion too can be broadly interpreted in that sports and/or simulation games in particular, which do not appear to have a manifestly cultural character, could be regarded as being eligible.
- (32) The Commission also asked the French authorities to explain the criterion that was designed to exclude from the tax credit mechanism 'extremely violent' games.
- (33) In order to assess the level of selection allowed by the eligibility test, the Commission requested a simulation based on production in recent years.
- (34) The Commission also expressed doubts as to whether the measure was designed to meet the cultural objective laid down, and in particular whether it had a sufficient incentive effect, whether there were not other instruments more appropriate than the measure and whether it was proportional. On the last point, the Commission stated that an aid measure, to be proportional, had to be based on a correct definition of eligible costs. Now, the 'other operating expenditure' (excluding personnel costs and depreciation of assets other than

buildings) are fixed at a flat rate of 75 % of personnel expenditure. The Commission doubted whether this calculation of 'other operating expenditure' made it possible to determine the costs actually incurred by eligible undertakings in creating video games.

- (35) Lastly, the Commission noted that, by reducing the production costs of undertakings in this sector that were established in France, the tax credit was liable to strengthen their position relative to their European competitors. It wondered, therefore, whether the distortions of competition and the effects on trade were sufficiently limited so that the overall aid assessment was positive.

#### 4. COMMENTS FROM INTERESTED PARTIES

- (36) Ubisoft, TIGA <sup>(4)</sup>, GAME <sup>(5)</sup>, APOM <sup>(6)</sup> and EGDF <sup>(7)</sup> stress that, in their view, video games are cultural products. They emphasise that games in general are one of the oldest cultural traditions of mankind and underscore its interactions with other fields of culture, namely the cinema, music and the plastic arts. They present video games as being audiovisual products that can act on the imagination, way of thinking, language and cultural references of players, notably those in the 15-25 age category. According to them, video games reflect the cultural environment in which they are created via the use of language and humour, music, the environment (in particular, architecture and landscapes), and personalities (clothing, origin) or via the scenario, the themes or stories tackled, or playability. GAME, for example, stresses that German video games are often based in Germany or in Europe and take their inspiration from typically local stories (e.g. Siedler, which is a game of strategy that takes place in the sixteenth century). While US productions are often based in the United States and follow Hollywood tastes. Japanese games are often based on national myths and on the style of Japanese comic strips.
- (37) The same third parties take the view that the impact of the measure on trade and competition will be limited and that the measure does not present any real risk for their national industries, notably in Germany and the United Kingdom. EGDF stresses in particular that, by permitting 20 % financing of between 15 and 30 projects over a period of two years, the measure as notified will create only a limited distortion as 1 500 video games are marketed each year in each Member State. In addition,

<sup>(4)</sup> Trade association representing the business and commercial interests of games developers.

<sup>(5)</sup> Bundesverband der Entwickler von Computerspielen e.V. (Federal German Association of Video Game Manufacturers).

<sup>(6)</sup> Association des Producteurs d'Oeuvres Multimédia.

<sup>(7)</sup> European Games Developer Federation.

TIGA notes that the main distortions of competition come from third countries, particularly Canada, where the authorities have a much more pro-active policy of support for their video game industry. Some of the third parties also emphasise the fact that this measure might have the effect of promoting video game production throughout the European Community. GAME agrees, but on condition that subcontracting costs can be included in eligible costs: otherwise, the beneficiary undertakings would be prompted to internalise their costs rather than having recourse to subcontracting.

- (38) By contrast, ISFE<sup>(8)</sup>, which represents video game publishers (including Sony, Microsoft, Nintendo and Vivendi), argues that video games could not be regarded as cultural products but only as interactive entertainment products. Whereas a film viewer watches in silence, the main activity of a player is to interact in a personalised manner with the game, the story told by the game not being of any real importance. Unlike films, video games are not designed as a vehicle for ideas or cultural messages. Indeed, their main value resides in playability and in interaction with the player or players. ISFE stresses that video games must be regarded as software and not as audiovisual products. It also challenges the idea that the alleged artistic expenditure may represent more than 50 % of the expenditure on a video game's concept. According to ISFE, it is instead the software expenditure — clearly linked to playability — that exceeds all other expenditure and represents up to 70 % of production costs. ISFE also claims that the tax credit demonstrates a misunderstanding on the part of the French authorities of the real nature of video games.
- (39) Nor does ISFE rule out the possibility that the measure may adversely affect competition by reducing the production costs of a group of video game manufacturers in France and by encouraging the redirection of investment from other Member States to France. It also takes the view that the tax credit will encourage the production of video games that will not reflect market demand and points to the risk of cross-subsidisation, with manufacturers using the aid obtained by them for their 'cultural' games to finance the manufacturer of purely commercial games. Nevertheless, ISFE approves the principle of support for video games in France but emphasises that the Community framework for State Aid for research and development and innovation would have been a more appropriate legal basis for such support<sup>(9)</sup>.
- (40) ADESE<sup>(10)</sup> makes similar comments. It takes the view that video games should be regarded primarily as

computer programmes and not as audiovisual products, that the production costs of a video game are essentially technological and not artistic in nature and that, in this respect, research and development aid would be more appropriate. It also notes that the measure could have an adverse effect on competition and trade between Member States, and in particular on Spanish industry. Lastly, it emphasises the danger of a subjective assessment by the committee of experts responsible for applying the selection criteria as this could be a source of discrimination.

#### 5. FURTHER DETAILS PROVIDED AND CHANGES MADE BY THE FRENCH AUTHORITIES FOLLOWING THE INITIATION OF THE PROCEDURE

- (41) Following the initiation of the procedure and contacts with the Commission, the French authorities notified a certain number of details and changes as regards the tax credit scheme.
- (42) They confirmed that French permanent establishments of European undertakings could also qualify for the tax credit, irrespective of their legal status.
- (43) As regards the criterion aimed at excluding 'extremely violent' games from the tax credit scheme, the French authorities also explained that the committee of experts responsible for identifying eligible games will base itself only on the existing pan-European classification system, PEGI<sup>(11)</sup>, which describes in detail violent situations, and in particular extremely violent situations ('18+' video games). All games classified as '18+' under the PEGI system will be excluded from the tax credit scheme.
- (44) The French authorities have also made radical changes to the selection test. While, to be eligible for the tax credit, a game must always have a development cost in excess of EUR 150 000 and must not include pornographic or extremely violent sequences, a number of major changes have been made
- (45) The game must, from now on, be produced primarily with the help of European authors and creative collaborators.

<sup>(8)</sup> Interactive Software Federation of Europe.

<sup>(9)</sup> OJ C 323, 30.12.2006, p. 1.

<sup>(10)</sup> Asociación Española de Distribuidores y Editores de Software de Entretenimiento (Spanish Association of Distributors and Editors of Leisure Software).

<sup>(11)</sup> Launched in 2003 by ISFE, PEGI (Pan-European Game Information) is a system for classifying video games that was created to align the different national systems in Europe. It has been approved by the European Commission.

- (46) From now on, the game must also obtain a maximum of 14 points (out of 22) on the basis of the criteria set out in the table below:

Criterion	Number of points
1. Heritage	maximum 4 points
The game is an adaptation of a recognised work from Europe's historical, artistic or scientific heritage.	4 points
or	
The game is inspired by a film, an audiovisual work, a literary or artistic work or a European cartoon strip.	2 points
2. Original creation	maximum 2 points
The game is an original creation (originality of scenario/creativity of the graphic and sound environment).	from 0 to 2 points
3. Cultural content	maximum 8 points
The game is based on a narration.	3 points
The artistic expenditure <sup>(1)</sup> accounts for more than 50 % of the production budget.	2 points
The original version of the scenario ('bible of the game') is written in French.	1 point
The game is published in its original version in at least three official languages of the European Union.	1 point
The game deals with political, social or cultural issues of relevance to European citizens and/or reflects values specific to European societies.	1 point
4. European location of expenditure and nationality of creative collaborators	maximum 5 points
At least 80 % of the creative expenditure is located in the territory of the European Union.	1 point
The game involves the participation of European creative collaborators.	from 0 to 4 points
5. Editorial and technological innovation	maximum 3 points
The game includes between one and three innovations in the following six areas: man/machine interface, content generated by users, artificial intelligence, rendering, multi-player interactivity and functionalities, narrative structure.	from 0 to 3 points
Maximum number of points available	22 points

(<sup>1</sup>) Eligible expenditure for the tax credit corresponds to expenditure on conception and creation. Artistic expenditure covers the personnel costs (wages and social security contributions) for the producer, the assistant producer, the artistic director and the persons responsible for the scenario, the animation and the sound environment. It does not include the personnel costs for the persons responsible for programming, depreciation on assets other than buildings directly assigned to the creation of video games, and other operating expenditure.

- (47) As they were required to do so by the decision initiating the procedure, the French authorities have carried out simulations based on the video games produced in France in 2005-2006. On the basis of the criteria described in that decision, the simulation indicates that 49 % of the games would have been eligible. On the basis of the new criteria described in recital 46, 31 % of the video games would have been eligible.

included in eligible costs up to an amount of EUR 1 million per project. They have also agreed no longer to fix 'other operating expenditure' (i.e. excluding personnel costs and depreciation) at a flat rate equal to 75 % of personnel expenditure but to include only the operating expenditure that can actually be imputed to the creation of eligible video games.

- (48) As for the definition of eligible costs, the French authorities have extended the tax credit scheme to subcontractors, stating that subcontracting costs could be

- (49) Lastly, the French authorities have undertaken to re-notify the scheme within four years of the date of its entry into force.

## 6. ASSESSMENT OF THE MEASURE

### 6.1. Classification as State Aid

- (50) Article 87(1) of the Treaty states: 'Save as otherwise provided for in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.'
- (51) The measure under review in this decision consists of a tax credit that is set off against the corporation tax normally payable by beneficiaries. There is, therefore, no doubt that this measure is granted through State resources.
- (52) The measure is designed to reduce the production costs of beneficiaries and clearly constitutes an advantage that is also selective in so far as only video game manufacturers are eligible. It constitutes, therefore, a selective advantage that could distort competition within the meaning of Article 87(1) of the Treaty.
- (53) In addition, according to the information on market shares which has been provided by the French authorities and is available only for video game publishers, the leading three French video game publishers, namely Ubisoft, Atari and VU Games, accounted for 6,4 %, 3,5 % and 4,4 % respectively of the corresponding market in 2005, which is made up of the United Kingdom, Germany, France, Spain and Italy. The studios in France, for which the measure is intended, account for only a small proportion of the turnover of these publishers (25 % in the case of Ubisoft, 10 % in the case of Atari and 2 % in the case of VU Games). They nevertheless represent a not-insignificant proportion of these publisher's market shares in the five Member States mentioned. The measure clearly has an impact on intra-Community trade.
- (54) In the light of the foregoing, it has to be concluded that the measure in question constitutes State Aid within the meaning of the Treaty.

### 6.2. Lawfulness of the aid

- (55) On 31 January 2007, when the draft law on modernisation of television broadcasting and on the television of the future was debated, the French Parliament adopted the draft article introducing the tax credit, which had

been notified to the Commission and on the basis of which the Commission had initiated the investigation procedure. The Law was published in the *Journal Officiel* on 7 March 2007. However, the French authorities confirmed that the implementing decrees would not be adopted before the Commission had taken its final decision.

- (56) The Commission can conclude, therefore, that the aid measure has not been implemented and that the French authorities have thus complied with their obligations under Article 88(3) of the Treaty.
- (57) The French authorities also undertook to amend the draft law and the draft implementing decrees in order to introduce the changes indicated in Section 5.

### 6.3. Compatibility of the aid with the common market

- (58) First, acting in accordance with the principle established by the Court in *Matra*<sup>(12)</sup>, the Commission must ensure that the conditions governing access to the tax credit do not contain any clauses that contravene the provisions of the Treaty in fields other than State Aid and in particular that they do not contain any discrimination on the ground of nationality.
- (59) It should be noted here that the measure does not contain any restriction as to the nationality of the personnel employed or the location of the eligible expenditure. The French authorities have included subcontracting expenditure in eligible costs to the extent of EUR 1 million and have confirmed that this expenditure was eligible, irrespective of whether the subcontractor was established in France or in another Member State.
- (60) The scheme is open to video game manufacturers established in France, including permanent French establishments of European undertakings, as the French authorities confirmed in the comments they submitted following the decision to initiate the procedure. The Commission takes the view that, in the light of French tax rules, restricting the tax credit to undertakings thus defined is inherent in the condition of being a taxable person in France for the purposes of corporation tax and is, therefore, justified by the tax nature of the aid measure.

- (61) The Commission can conclude, therefore, that the aid measure does not infringe the provisions of the Treaty in areas other than State Aid.

<sup>(12)</sup> See footnote 3.

(62) Second, regarding the compatibility of the measure with the Community State Aid rules, the Commission notes that the French authorities notified the measure under Article 87(3)(d) of the Treaty. As the Commission indicated in its decision to initiate the procedure, the compatibility of this measure with that Article should be examined on the basis of the following questions:

1. Is the measure geared to achieving a genuine objective of promoting culture?
2. Is the measure designed in such a way as to achieve its cultural objective? In particular:
  - (a) Is it an appropriate instrument or are there other, more appropriate instruments?
  - (b) Does it have a sufficient incentive effect?
  - (c) Is it proportional? Could the same result not be achieved with less aid?
3. Are the distortions of competition and the effects on trade limited in such a way that the overall aid assessment is positive?

*Existence of a cultural objective*

(63) On the general question as to whether video games can be regarded as cultural products, the Commission would note that Unesco recognises the video game industry as a cultural industry and the role it plays in the field of cultural diversity<sup>(13)</sup>. It also takes note of the arguments put forward by certain third parties and by the French authorities, and in particular those according to which video games can act as a vehicle for images, values and themes that reflect the cultural environment in which they are created and may act on the ways of thinking and the cultural references of users, especially among young people. It would also note in this connection that Unesco has adopted the Convention on the Protection and Promotion of the Diversity of

Cultural Expressions<sup>(14)</sup>. In addition, the Commission takes note of the increasingly wide dissemination of video games among the different age categories and socio-professional categories as well as among men and women.

- (64) It transpires that the main objective of video games is to provide interactive entertainment, as stressed by the ISFE. However, this does not prevent certain video games from also having a cultural dimension, as in the case of certain theatrical forms where interaction with the public also takes place. Similarly, the fact that video games can be regarded as software rather than as audiovisual products in no way affects the fact that some of them can also be regarded as cultural products within the meaning of Article 87(3)(d) of the Treaty. It has to be concluded, therefore, that certain video games may constitute cultural products<sup>(15)</sup>. In any event, this was explicitly recognised in the decision to initiate the procedure<sup>(16)</sup>.
- (65) The Commission would also note that, like any derogation from the general rule spelt out in Article 87(1), the derogation in Article 87(3)(d), must be interpreted in a restrictive fashion. And so for the production of cinematographic and audiovisual works, the Commission communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual works states that, for this derogation to apply, 'Each Member State must ensure that the content of the aided production is cultural according to verifiable national criteria (in compliance with the application of the subsidiarity principle)<sup>(17)</sup>.
- (66) This principle must be applied in the present case and it should, therefore, be ascertained that the French authorities have drawn up verifiable national criteria for ensuring that the video games eligible for the tax credit have a cultural content. It is precisely because it had doubts about the criteria initially applied by the French authorities that the Commission initiated the investigation procedure in respect of the tax credit.
- (67) The new selection test should, therefore, be examined in order to check whether it is consistent with the principle set out in recital 65.

<sup>(14)</sup> Convention adopted at the General Conference of Unesco on 20 October 2005 and incorporated into Community law by Council Decision 2006/515/EC of 18 May 2006 on the conclusion of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (OJ L 201, 25.7.2006, p. 15) (the text of which can be consulted at: <http://unesdoc.unesco.org/images/0014/001429/142919f.pdf>).

<sup>(15)</sup> Such a conclusion in no way prejudices the classification or description of video games resulting from national or international standards.

<sup>(16)</sup> Recital 39.

<sup>(17)</sup> COM(2001) 534 final (OJ C 43, 16.2.2002, p. 6).

<sup>(13)</sup> See the Unesco website, and in particular the pages relating to the cultural industries and their role as a focal point for culture in the future: [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=2461&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=2461&URL_DO=DO_TOPIC&URL_SECTION=201.html)

- (68) To be eligible, a video game must obtain at least 14 out of 22 points. In line with the reasoning applied by the Commission in its Decision of 22 November 2006 concerning State Aid N 461/2005 (the UK Film Tax Incentive decision) <sup>(18)</sup>, it is necessary to identify among the different criteria involved in the selection test those that can be regarded as relevant when it comes to assessing the cultural content of video games and to ensure that the number of points attached to these criteria is sufficient to ensure that the content of eligible video games can be regarded as cultural within the meaning of Article 87(3)(d) of the Treaty.
- (69) The first part of the test contains two criteria relating to heritage and may be regarded as having a cultural content. This is clearly the case with the criterion for which four points are awarded if the game is an adaptation of a recognised work of Europe's historical, artistic or scientific heritage. The criterion for which two points are awarded if the game takes its inspiration from a film, an audiovisual, literary or artistic work or a European cartoon strip has a less pronounced cultural content since it depends on the cultural level of the work on which the video game draws. This is, however, reflected in the smaller number of points attached to this criterion, which is therefore proportional and can consequently be accepted.
- (70) The second part of the test awards up to two points depending on the originality of the video game. Account is taken of the scenario and of the creativity of the graphic and sound environment. It transpires that the creativity in audiovisual products is generally regarded as an important aspect of products with a cultural content. Moreover, creativity is an essential part of the definition of cultural expressions given in the Unesco Convention on the Protection and Promotion of the Diversity of Cultural Expressions <sup>(19)</sup>. Furthermore, use of the criterion of 'original creation' is advocated by the *Conseil supérieur de la propriété littéraire et artistique* (CSPLA) in France in order to distinguish a multimedia work from software <sup>(20)</sup>. Lastly, the simulation carried out by the French authorities also shows that this is a genuinely selective criterion since only 13 video games out of the 74 manufactured in France in 2005 and 2006 were awarded one or two points. This is a reflection of the effectiveness of this criterion in achieving the cultural objective being pursued.
- (71) The third part of the test is entitled 'cultural content'. The criterion which awards three points to video games based on a narration can be regarded as a cultural criterion: it requires the video game to be based on a scenario and a story, thereby excluding pure simulation games (e.g. sport or combat games), the cultural nature of which would be debatable. Preference can thus be given here to video games which are closer to films and the cultural content of which thus seems more evident.
- (72) The criterion that awards two points to video games with a production budget 50 % of which is devoted to artistic expenditure may also be regarded as a relevant cultural criterion in that it is an indication of the special importance attached in the production of a video game to the design, scenario, dialogue and music, which are important aspects of any conclusion to the effect that, overall, a video game has a cultural content. With such a criterion, therefore, preference can be given to such games as opposed to those that are more technical, such as sports games or games of pure simulation, where the cultural aspect is less evident. The aforementioned Unesco Convention also refers to the artistic dimension when defining cultural content <sup>(21)</sup>.
- (73) ISFE has expressed doubts that 50 % of a game's production expenditure can be artistic in nature, stressing that software expenditure generally accounts for 70 % of production costs. This argument does not call into question but, on the contrary, would reinforce the validity of the criterion in so far as it would provide confirmation that this criterion makes for a stricter selection of video games.
- (74) In any event, the Commission would note that the difference between the figures provided by ISFE and the assertion by the French authorities that certain games can be characterised by artistic expenditure that accounts for more than 50 % of production costs can be explained by the different types of expenditure included. For instance, expenditure eligible for the tax credit corresponds only to the expenditure on conception and creation. It does not include all the production expenditure and excludes, for example, expenditure on debugging and downstream testing, and this might have the effect of increasing the share of artistic expenditure.
- (75) It should also be pointed out that the French authorities provided precise examples of detailed budgets for video game manufacturing which show clearly that artistic expenditure may account for the bulk of expenditure. This is also corroborated by the comments from certain third parties, including APOM, which stresses that

<sup>(18)</sup> OJ C 9, 13.1.2007, p. 1.

<sup>(19)</sup> Article 4, point 3: "Cultural expressions" are those expressions that result from the creativity of individuals, groups and societies, and that have cultural content.'

<sup>(20)</sup> CSPLA study (*Commission sur les aspects juridiques des œuvres multimédias*) of 26 May 2005: 'The legal regime for multimedia works: Copyright and legal certainty of investors'.

<sup>(21)</sup> According to point 2 of Article 4, "cultural content" refers to the symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities.'

- the creative features of a video game nowadays play a preponderant and substantial part in the works concerned and that the technological and software features are simply tools at the service of these creative features and, on average, account for only a small proportion of the cost price. Lastly, the Commission notes that so-called software expenditure can fluctuate with the console cycles and may indeed be higher at the beginning of a cycle.
- (76) For the reasons set out above, the criterion based on the share of artistic expenditure in the budget appears as a relevant criterion for assessing the cultural content of video games in the case under review.
- (77) The criterion awarding one point if the game deals with political, social or cultural issues of relevance to European citizens and/or reflects values specific to European societies is itself also relevant in so far as those values are the expression of Europe's cultural identities.
- (78) As regards the two language criteria (original version of the scenario in French, and original version of the game published in at least three languages of the European Union, including French), which award two points in total, it should first be noted that they are virtually always met in the case of the games covered by the simulation presented by the French authorities and that, in this respect, they are relatively non-discriminatory. Second, certain reservations can be expressed regarding their actual relevance when it comes to assessing the cultural content of a video game. Without in any way challenging the fundamental cultural importance of language, it would seem that this plays a less essential role in the cultural nature of a video game than, for example, in the case of a film or a book. It would seem that the language of a video game can be changed without affecting the integrity of the work, something which is not the case with the dubbing of a film or the translation of a book.
- (79) The fourth part of the selection test comprises the criteria linked to the location of expenditure and the nationality of the creative collaborators. Although the contribution made by European creative collaborators may have an indirect effect on the European cultural nature of a video game, the location- and nationality-related criteria still have no direct link to the cultural content of eligible video games given the characteristics peculiar to the video game sector. In its 'UK Film Tax Incentive' decision, the Commission came to the same conclusions regarding similar criteria applied by the UK authorities in connection with a tax credit scheme.
- (80) The fifth part of the test comprises the criteria related to editorial and technological innovation, which are more directly concerned with the software components of video games, the non-cultural nature of which has, in any case, been underscored by ISFE. This argument can be accepted and there is no reason to regard these criteria as being relevant when it comes to assessing the cultural content of eligible video games.
- (81) It thus transpires that 14 out of a maximum of 22 points (12 points if the language criteria are not taken into account) are awarded in connection with criteria that can reasonably be regarded as aiming to promote culture within the meaning of Article 87(3)(d) of the Treaty. They therefore account for more than half of the available points. The Commission has also considered the extreme hypothetical situation where a game would be awarded maximum points for the criteria which may be regarded as not being relevant from a cultural viewpoint and for the language criteria. Such a game would be awarded 10 points. And so, it would still need to obtain a further 4 points on the basis of the criteria that are relevant from a cultural viewpoint in order to exceed the 14-point eligibility threshold. In any event, this 'extreme hypothetical situation' would not seem to arise all that frequently: of the 74 video games covered by the simulation provided by the French authorities, only 7 fall into that category, of which 6 were eligible but were all awarded more than 4 points on the basis of the relevant cultural criteria (and 6 points on the basis of the language criteria).
- (82) In addition, the Commission notes that this new selection test based on a number of detailed criteria reduces the risk of subjectivity in the assessment of video games carried out by the committee of experts.
- (83) Lastly, the Commission would point out that the new selection test proposed by the French authorities is more restrictive than the test notified initially. For example, on the basis of the criteria described in the decision implementing the procedure, the simulations provided by the French authorities show that 49 % of video games manufactured in France in 2005-2006 would have been eligible, as against 31 % on the basis of the current test. As the Commission emphasised in its decision initiating the procedure, 'if the measure resulted in support for the manufacturer of a large proportion of video games, it might then appear that it had been deflected from its avowed objective of promoting culture and that it could therefore have an industrial objective' <sup>(22)</sup>. Given the characteristics peculiar to the video game sector, the fact that close on 30 % of games are selected indicates that the objective of the measure is not simply an industrial objective of providing support for a specific sector.

<sup>(22)</sup> Paragraph 42.

- (84) It has, therefore, to be concluded that the French authorities have drawn up verifiable national criteria guaranteeing that the content of video games eligible for the tax credit is truly cultural and that the aid measure thus meets a genuine objective of promoting culture.

*Is the measure designed in such a way as to meet this cultural objective?*

- (85) The Commission must make sure that the measure is appropriate, that it has a sufficient incentive effect and that it is proportional.

#### Appropriate instrument

- (86) On this first point, the French authorities have explained that, in their view, the tax credit is the most appropriate instrument for meeting the objective being pursued. They have looked into the possibility of notifying this measure under the Community framework for State Aid for research and development and innovation, something also suggested by ISFE, but they ruled it out notably because, with this legal basis, the measure could not be linked to the cultural content of video games and there was no way of ensuring some diversity in the supply of video games. Nor would it have been possible under the framework to grant the same level of aid as the tax credit. The Commission acknowledges that, as designed, the tax credit actually allows public support to be channelled to games with a cultural content and that, in this regard, it appears to be an appropriate tool for achieving the cultural objective being pursued. The Commission would also stress that it has already come to the conclusion in previous decisions that measures in the form of a tax credit are compatible on the basis of Article 87(3)(d) of the Treaty <sup>(23)</sup>.

#### Incentive effect

- (87) The analysis of the video game market reveals a trend towards concentration of supply that is detrimental to independent production studios and hence to the diversity of supply <sup>(24)</sup>. The video game market is, to a

large extent, a global market on which games for consoles account for two thirds of sales. It is dominated largely by manufacturers of game consoles, who impose on video game manufacturers an authorisation and licensing system that accounts for up to 20 % of the game's final price.

- (88) In addition, the market is characterised by a fragmentation of technical standards and a lack of interoperability. Demand is determined by regular renewal and destruction, on average every six years, of household video game equipment (consoles and PCs).

- (89) Accordingly, the video game industry is forever in a start-up phase, with very short production cycles and substantial investment. Moreover, production costs can be written off on the publishing market, unlike, for example, the production costs of films, which can also be written off against broadcasting rights or DVD sales.

- (90) In this connection, according to the information provided, the French video game industry is, as a general rule, characterised by small production studios (fewer than 200 employees) that do not have sufficient financial capacity and are, therefore, dependent on publishers for financing their activities. The system whereby development studios are remunerated by publishers is a function of sales, once the production costs advanced by publishers have been met. The French authorities have emphasised that the number of 'cultural' video games that could have met the selection test for the tax credit has been falling steadily since 2000. As an example, they stress in particular that fewer and fewer video games have had a historical context (Versailles, Pompei, Egypt) since the production studio specialising in this genre, Cryo Interactive, closed down.

- (91) A tax credit based on the criteria described in Section 5 of this Decision should promote the production of video games with a cultural content as opposed to games that are purely for entertainment in that it would reduce the former's production costs. There is, therefore, reason to conclude that the measure is liable to have a sufficient incentive effect relative to its objective.

#### Proportionality

- (92) The Commission notes that the aid intensity is only 20 %, which is relatively low compared with the aid intensities normally authorised in the cultural field. For instance, the intensity normally authorised for the cinema or audiovisual production is 50 %.

<sup>(23)</sup> See, for example, the Decision of 16 May 2006 in Case N 45/06 — Tax credit for phonographic production (OJ C 293, 2.12.2006, p. 6) and the Decision of 22 March 2006 in Cases NN 84/04 and N 95/04 — Aid schemes for the cinema and the audiovisual sector (OJ C 305, 14.12.2006, p. 12).

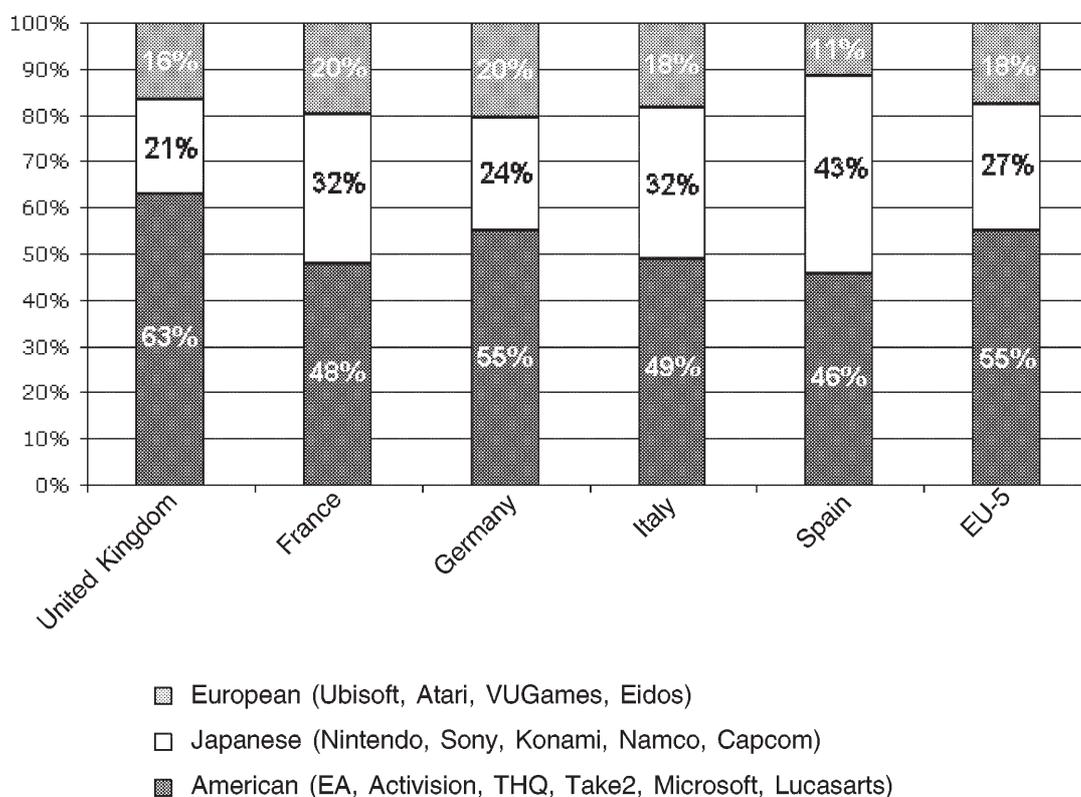
<sup>(24)</sup> Sources: Digital broadband content — the online computer and video game industry, OECD, DSTI/ICCP/IE(2004)13/FINAL, published on 12 May 2005; report by Mr Fries for Mr Francis Mer, Minister for Economic, Financial and Industrial Affairs, and Ms Nicole Fontaine, Minister responsible for Industrial Affairs: Proposals for developing the video game industry in France (22 December 2003).

- (93) The Commission would also note that the eligible costs base is correct and defined in detail: thus, only operating expenditure excluding personnel costs and depreciation of assets other than buildings actually incurred by the aid beneficiary will be taken into account. This type of expenditure is no longer set at the flat rate of 75 % of personnel costs.
- (94) It should, therefore, be concluded that the measure is also proportional. Moreover, since only the costs effectively incurred in the manufacture of eligible games is taken into account, the concern expressed by ISFE

regarding the risk of cross-subsidisation between cultural and commercial games is no longer justifiable.

*Are the distortions of competition and the effects on trade limited in such a way that the overall aid assessment is positive?*

- (95) On the basis of the figures provided by the French authorities, it transpires that the main competitors on the video game market are Japanese or North American manufacturers. Thus, the market shares of European publishers in 2005 on the main Europe on markets never exceed 20 %, averaging 18 %, as the following graph shows:



- (96) These figures are corroborated by the list of the 50 most popular games in France in 2006 provided by ISFE: 21 of them are published by Japanese firms, 19 by US firms and 10 by European firms. They are also borne out by the ranking of video game manufacturers by turnover, prepared by the European Audiovisual Observatory in 2003 and showing that the four market leaders are Japanese and US firms.
- (97) It stands to reason that the market shares of French publishers, who indirectly benefit from the tax credit in

so far as they publish video games manufactured by the studios eligible for the tax credit, are smaller: in 2005 the three main French publishers, Ubisoft, Atari, and VUGames, accounted for 6,4 %, 3,5 % and 4,4 % respectively of the publishing market for video games comprising the five Member States indicated in the above graph. Moreover, the studios of those publishers that are established in France account for only a small proportion of their market shares: 25 % for Ubisoft (or 1,6 % of the market comprising those five Member States), 10 % for Atari (or 0,35 %) and 2 % for VUGames (negligible share).

- (98) It should also be emphasised that a relatively small proportion of the video games manufactured in France will be subsidised: the simulation carried out for video games manufactured in France in 2005-2006 shows that only 30 % of them could, in theory, be eligible for the tax credit.
- (99) The point should also be made that the associations of video game manufacturers that submitted comments following the initiation of the procedure, and these include TIGA, GAME, APOM and EGDF, also underscored the small impact of the measure on their national industries. For instance, EGDF, which represents 500 studios in 10 Member States, stressed in particular that, as notified, the measure will, by permitting 20 % financing of between 15 and 30 projects over two years, create only a small distortion as 1 500 video games are marketed each year. These comments are all the more significant in that they concerned the project described in the decision initiating the procedure and the scope of which has since been reduced.
- (100) The measure could have had a potentially negative effect on trade identified by GAME in that the subcontracting costs were not included in eligible costs in France's initial proposal. This would have prompted the beneficiaries to internalise their costs instead of resorting to subcontracting, which is common in this sector. This could have been detrimental in particular to firms established in other Member States and thus to intra-Community trade. However, this negative effect is ruled out in so far as the French authorities have agreed to include subcontracting costs in eligible costs up to a limit of EUR 1 million per project.
- (101) The Commission takes the view that this limit, which is justified for budgetary reasons, is acceptable in the case under review in so far as, in practice, it is not liable to affect most of the video games manufactured in France. According to the information provided by the French authorities, 64 of the 74 video games covered by their simulation had a production budget of less than EUR 2 million, eight had a budget of between EUR 2 million and EUR 5 million, and two had a budget in excess of EUR 5 million. Given the average size of a production budget, a ceiling of EUR 1 million for subcontracting expenditure does not appear liable to significantly hamper recourse to subcontracting. Depending on changes in the production budgets for video games in France, the Commission reserves the right to review this ceiling when the aid measure is re-notified within four years of its implementation, in line with the commitments entered into by the French authorities.
- (102) In addition, the Commission considers that the impact of the tax credit on competition will be all the more limited in that the video game market is a large market worth some USD 21 billion in 2003 and one that is enjoying high long-term growth put at 13 % a year and one on which prices are relatively fixed.
- (103) Lastly, the Commission notes that two of the third parties pointed to the potentially adverse affect of the measure on trade and competition. ISFE stated that the measure might trigger a transfer of investment to France while ADESE underscored the potentially negative effect of the measure on the industry in Spain in particular. They did not, however, provide any statistics or detailed explanation enabling the Commission to assess this potential risk. The Commission also notes that ISFE and ADESE represent video game publishers and distributors. As explained in recital 37, the associations of producers which represent the direct competitors of the potential aid beneficiaries concluded that such a risk for competition could be ruled out. The Commission also takes the view that the development studios eligible for the tax credit are not in a position to exert market power over publishers as stated in recital 90. In its comments, Ubisoft, one of the leading French publishers, stressed the equally beneficial nature of the aid since those publishers' financial risks could also be reduced by lowering the production costs of video games and since supply on a European scale could be developed.
- (104) The Commission considers that the amount of the tax credit is not such as to affect industrialists' decisions on where to locate their investment, given the other parameters of such decisions, including employment and remuneration conditions. With particular respect to the measure's effect on the industry in Spain, the Commission notes on the basis of the graph given in recital 95 that European publishers' market share is lowest in that country. Contrary to the claim by ADESE and since it did not provide more detailed data, it can be considered that this aid measure is not liable to have a greater impact in Spain than in the other Member States.
- (105) In the light of the foregoing, the Commission takes the view that the aid will not have the effect of strengthening the market power of beneficiary firms or of hampering dynamic incentives for market operators but, on the contrary, it will increase the diversity of supply on the market. There are grounds, therefore, for concluding that the distortions of competition and the effects on trade that the measure will have are limited so that the overall aid assessment is positive. Accordingly, the tax credit for the creation of video games is compatible with the common market on the basis of Article 87(3)(d) of the Treaty,

HAS ADOPTED THIS DECISION:

*Article 1*

The measure planned by France with a view to introducing a tax credit for the creation of video games is compatible with the common market under Article 87(3)(d) of the Treaty.

*Article 2*

This Decision is addressed to the French Republic.

Done at Brussels, 11 December 2007.

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

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## RECOMMENDATIONS

## COMMISSION

## COMMISSION RECOMMENDATION

of 5 December 2007

on reproducing the text of Article 20 TEC in passports

*(notified under document number C(2007) 5841)*

(2008/355/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 211 thereof,

Whereas:

- (1) Article 20 of the Treaty establishing the European Community (hereinafter Article 20 TEC) entitles Union citizens located in a third country in which their own Member State is not represented to protection by the diplomatic and consular authorities of any other Member State represented, on the same conditions as the nationals of that State. This right is also enshrined in Article 46 of the Charter of Fundamental Rights of the European Union.
- (2) A Eurobarometer survey published in July 2006 revealed that the majority of Union citizens are not aware of Article 20 TEC and its implications. Only 23 % of the persons interviewed claimed to be familiar with the possibilities offered by Article 20 TEC. It also emerged that half of the Union citizens expect to travel to a third country within the next three years.
- (3) The suggestion to reproduce Article 20 TEC in passports to inform citizens of their rights was invoked in the report of 9 May 2006 of Mr Barnier 'For a European civil protection force: Europe aid'. On 15 June 2006, the Council Presidency invited Member States to consider the possibility of reproducing the wording of Article 20 TEC in passports to ensure that Union citizens are well informed of their rights<sup>(1)</sup>.

- (4) The Commission adopted a Green Paper on diplomatic and consular protection of Union citizens in third countries<sup>(2)</sup> on 28 November 2006, which proposed several possible actions to strengthen the protection of Union citizens. As an effective way of reminding citizens of their rights, it was suggested to recommend Member States to print Article 20 TEC in passports. This proposal received wide support from Member States, civil society, citizens and other European institutions<sup>(3)</sup> <sup>(4)</sup>. To inform citizens of their right to protection by diplomatic and consular authorities under Article 20 TEC, it was also suggested to create an EU website concerning this right and to include a reference to the website in national passports.
- (5) The issuing of passports falls under Member States' competence. A uniform format for passports was introduced by a Resolution of the representatives of the Governments of the Member States on 23 June 1981<sup>(5)</sup>. In addition, measures have been adopted at Community level regarding the security standards for passports. Minimum security standards for passports were introduced by a Resolution of the representatives of the Governments of the Member States on 17 October 2000 in order to combat forgery<sup>(6)</sup>. A Council Regulation was adopted on 13 December 2004 requiring Member States to introduce biometric identifiers in passports by 28 August 2006 and to store additional data in passports by 28 June 2007<sup>(7)</sup>.
- (6) Article 20 TEC should be reproduced in the official language(s) of the Member State issuing the passport.

<sup>(2)</sup> COM(2006) 712.<sup>(3)</sup> Opinion of the European Parliament: A6-0454/2007.<sup>(4)</sup> Opinion of the European Economic and Social Committee: SOC/262 (CESE 425/2007).<sup>(5)</sup> OL C 241, 19.9.1981, p. 1.<sup>(6)</sup> OJ C 310, 28.10.2000, p. 1.<sup>(7)</sup> Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ L 385, 29.12.2004, p. 1).<sup>(1)</sup> 'Reinforcing the European Union's emergency and crisis response capacities', Document of the Council 10551/06 of 15.6.2006.

- (7) It would be sufficient to reproduce the wording of the first sentence of Article 20 TEC. The second sentence refers to Member States' duty to engage in international negotiations to secure protection and is not directly relevant for citizens.
- (8) The Commission intends to create a website dedicated to consular protection to publish practical information, e.g. updated contact details of Member States' representations in third countries. It would be useful to include a reference to this website in national passports together with Article 20 TEC as a single common access point to information on this right.
- (9) To minimise the administrative burden of the Member States, it would be appropriate to recommend Member States to print Article 20 TEC in new passports issued after 1 July 2009.
- (10) In order to inform citizens whose passports are issued without a reference to Article 20 TEC, it should be recommended to affix a sticker on the outside rear cover.
- (11) To reproduce the wording of Article 20 TEC in passports would significantly enhance citizens' awareness of the right to protection by diplomatic and consular authorities and entail limited costs for the Member States,

HEREBY RECOMMENDS:

1. Member States are invited to reproduce the first sentence of Article 20 of the Treaty establishing the European Community and a reference to an EU website (<http://ec.europa.eu/consularprotection>) in passports issued after 1 July 2009.
2. Member States are invited to make available a sticker with the information referred to in point 1 to holders of passports issued before 1 July 2009.
3. Member States are invited to inform the Commission 18 months from the publication of this Recommendation in the *Official Journal of the European Union* of action taken in response to this Recommendation.

Done at Brussels, 5 December 2007.

*For the Commission*  
Franco FRATTINI  
*Vice-President*

## AGREEMENTS

## COUNCIL

**Information on the date of entry into force of the Partnership Agreement between the European Community and the Republic of Côte d'Ivoire**

The European Community and the Government of the Republic of Côte d'Ivoire notified each other on 18 April 2008 that their adoption procedures had been completed.

The Agreement accordingly entered into force on 18 April 2008 pursuant to Article 16 thereof.

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## III

(Acts adopted under the EU Treaty)

## ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

## POLITICAL AND SECURITY COMMITTEE DECISION EULEX/2/2008

of 22 April 2008

on the establishment of the Committee of Contributors for the European Union Rule of Law Mission in Kosovo (EULEX KOSOVO)

(2008/356/CFSP)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular the third subparagraph of Article 25, thereof,

Having regard to the Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Police Rule of Law Mission in Kosovo<sup>(1)</sup> (EULEX KOSOVO), and in particular Article 13(3) thereof,

Whereas:

- (1) Under Article 13(3) of Joint Action 2008/124/CFSP, the Council authorised the Political and Security Committee (PSC) to take the relevant decisions on the setting-up of a Committee of Contributors for EULEX KOSOVO.
- (2) The European Council Conclusions of Göteborg of 15 and 16 June 2001 established guiding principles and modalities for third States' contributions to police missions. On 10 December 2002 the Council approved 'Consultations and modalities for the contribution of non-EU States to EU civilian crisis management operations' which developed the arrangements for the participation of third States in civilian crisis management operations, including the setting-up of a Committee of Contributors.
- (3) The Committee of Contributors for EULEX KOSOVO will play a key role in the day-to-day management of the mission. It will be the main forum for discussing all problems relating to the day-to-day management of the

mission. The PSC, which exercises the political control and strategic direction of the mission, is to take account of the views of the Committee of Contributors,

HAS DECIDED AS FOLLOWS:

*Article 1*

**Establishment**

A Committee of Contributors for EULEX KOSOVO (CoC) is hereby established.

*Article 2*

**Functions**

1. The CoC may express views which will be taken into account by the PSC which exercises the political control and the strategic direction of EULEX KOSOVO.
2. The terms of reference of the CoC are laid down in the document entitled 'Consultations and modalities for the contribution of non-EU States to EU civilian crisis management operations'.

*Article 3*

**Composition**

1. All EU Member States are entitled to be present at the CoC discussions but only contributing States will take part in the day-to-day management of EULEX KOSOVO. Representatives of the third States participating in EULEX KOSOVO may attend CoC meetings. A representative of the European Commission may also attend CoC meetings.
2. The CoC will receive regular information from the Head of Mission.

<sup>(1)</sup> OJ L 42, 16.2.2008, p. 92.

*Article 4***Chair**

For EULEX KOSOVO, in conformity with 'Consultations and modalities for the contribution of non-EU States to EU civilian crisis management operations', the CoC will be chaired by a representative of the Secretary-General/High Representative, in close consultation with the Presidency.

*Article 5***Meetings**

1. The CoC shall be convened by the Chair on a regular basis. Where circumstances require, emergency meetings may be convened on the Chair's initiative, or at the request of a representative of a participating State.

2. The Chair shall circulate in advance a provisional agenda and documents relating to the meeting. The Chair shall be responsible for conveying the outcome of the CoC's discussions to the PSC.

*Article 6***Confidentiality**

1. The Council Security Regulations shall apply to the meetings and proceedings of the CoC. In particular, representatives in the CoC shall possess adequate security clearance.

2. The deliberations of the CoC shall be covered by the obligation of professional secrecy.

*Article 7***Taking effect**

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

Done at Brussels, 22 April 2008.

*For the Political and Security Committee*  
*The Chairperson*  
M. IPAVIC

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