ISSN 1725-2555

Official Journal of the European Union

L 120

English edition

Legislation

Volume 52

15 May 2009

Contents

[1] Text with EEA relevance

(Continued overleaf)

EN

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

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

II *Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory*

EN

[1] Text with EEA relevance

I

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

REGULATIONS

COMMISSION REGULATION (EC) No 402/2009

of 14 May 2009

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 Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1],

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector [2], and in particular Article 138(1) thereof,

Whereas:

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 Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 15 May 2009.

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

Done at Brussels, 14 May 2009.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 350, 31.12.2007, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	MA	53,3
	TN	115,0
	TR	101,5
	ZZ	89,9
0707 00 05	JO	155,5
	MA	32,7
	TR	143,8
	ZZ	110,7
0709 90 70	JO	216,7
	TR	116,6
	ZZ	166,7
0805 10 20	EG	44,5
	IL	54,1
	MA	43,6
	TN	49,2
	TR	99,9
	US	49,3
	ZZ	56,8
0805 50 10	AR	50,9
	TR	56,4
	ZA	67,0
	ZZ	58,1
0808 10 80	AR	80,2
	BR	71,7
	CL	72,4
	CN	100,3
	MK	42,0
	NZ	105,1
	US	133,5
	UY	71,7
	ZA	80,2
	ZZ	84,1

(1) Nomenclature of countries laid down 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 403/2009

of 14 May 2009

concerning the authorisation of a preparation of L-valine as a feed additive

(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 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition [1], and in particular Article 9(2) thereof,

Whereas:

(1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.

(2) In accordance with Article 7 of Regulation (EC) No 1831/2003, an application was submitted for the authorisation of the preparation set out in the Annex to this Regulation. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.

(3) The application concerns a new authorisation of the amino acid L-valine with a purity of at least 98 %, produced by *Escherichia coli* (K-12 AG314) FERM ABP-10640 as a feed additive for all species, to be classified in the additive category 'nutritional additives'.

(4) From the opinions of the European Food Safety Authority (the Authority) of 30 January 2008 [2] and of 18 November 2008 [3] it results that the amino acid L-valine with a purity of at least 98 %, does not have an adverse effect on animal health, human health or the environment and that it is considered a source of available valine for all species. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Community Reference Laboratory set up by Regulation (EC) No 1831/2003.

(5) The assessment of that preparation shows that the conditions for authorisation, provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of that preparation should be authorised as specified in the Annex to this Regulation.

(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

The preparation specified in the Annex, belonging to the additive category 'nutritional additives' and to the functional group 'amino acids, their salts and analogues', is authorised as an additive in animal nutrition subject to the conditions laid down in that Annex.

Article 2

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

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

Done at Brussels, 14 May 2009.

For the Commission
Androulla VASSILIOU
Member of the Commission

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[1] OJ L 268, 18.10.2003, p. 29.
[2] *The EFSA Journal* (2008) 695, 1-21.
[3] *The EFSA Journal* (2008) 872, 1-6.

ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						mg/kg of complete feedingstuff with a moisture content of 12 %			
Category of nutritional additives. Functional group: amino acids and their salts and analogues									
3c3.7.1	-	L-valine	Additive composition: L-valine with a purity of at least of 98 % (on dry matter) produced by *Escherichia coli* (K-12 AG314) FERM ABP-10640 Characterisation of the active substance: L-valine ($C_5H_{11}NO_2$) Analytical method: Community method for the determination of amino acids (Commission Regulation (EC) No 152/2009 [1])	All species	-	-	-	The moisture content shall be indicated.	*3 June 2019*

[1] OJ L 54, 26.2.2009, p. 1.

DIRECTIVES

DIRECTIVE 2009/33/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 April 2009

on the promotion of clean and energy-efficient road transport vehicles

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) Natural resources, the pursuit of prudent and rational utilisation of which Article 174(1) of the Treaty requires, include oil, which is the principal energy source in the European Union but is also a major source of pollutant emissions.

(2) The Commission Communication of 15 May 2001 entitled 'A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development', presented to the Gothenburg European Council of 15 and 16 June 2001, identified greenhouse gas emissions and pollution caused by transport among the main obstacles to sustainable development.

(3) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme [4] acknowledged the need for specific measures to enhance energy efficiency and energy saving and for the integration of climate change objectives into transport and energy policies as well as the need for specific measures in the transport sector to address energy use and greenhouse gas emissions.

(4) The Commission Communication of 10 January 2007 entitled 'An energy policy for Europe' proposed a commitment on the part of the European Union to achieve at least a 20 % reduction of greenhouse gases by 2020 compared to 1990. In addition, binding targets for further improvement of energy efficiency by 20 %, a level of 20 % of renewable energy and a 10 % share of renewable energy in transport in the Community by 2020 have been proposed, inter alia, to improve security of energy supply by diversifying the fuel mix.

(5) The Commission Communication of 19 October 2006 entitled 'Action Plan for Energy Efficiency: Realising the Potential' announced that the Commission will continue its efforts to develop markets for cleaner, smarter, safer and energy-efficient vehicles through public procurement and awareness-raising.

(6) The mid-term review of the Commission's 2001 Transport White Paper entitled 'Keep Europe moving – Sustainable mobility for our continent', of 22 June 2006, announced that the Union will stimulate environmentally-friendly innovation in particular by successive European emission standards (Euro Norms) and by the promotion of clean vehicles on the basis of public procurement.

[1] OJ C 195, 18.8.2006, p. 26.
[2] OJ C 229, 22.9.2006, p. 18.
[3] Opinion of the European Parliament of 22 October 2008 (not yet published in the Official Journal) and Council Decision of 30 March 2009.
[4] OJ L 242, 10.9.2002, p. 1.

(7) In its Communication of 7 February 2007 entitled 'Results of the review of the Community Strategy to reduce CO_2 emissions from passenger cars and light-commercial vehicles', the Commission presented a comprehensive new strategy to enable the Union to reach its 120 g/km objective for CO_2 emissions from new passenger cars by 2012. A legislative framework was proposed to ensure vehicle technology improvements. Complementary measures should promote the procurement of fuel-efficient vehicles.

(8) The Commission Green Paper on Urban Transport of 25 September 2007 entitled 'Towards a new culture for urban mobility' notes the support of stakeholders for promoting the market introduction of clean and energy-efficient vehicles through green public procurement. It proposes that a possible approach could be based on the internalisation of external costs by using lifetime costs for energy consumption, CO_2 emissions, and pollutant emissions linked to the operation of the vehicles to be procured as award criteria, in addition to the vehicle price. In addition, public procurement could give preference to new Euro standards. The earlier use of cleaner vehicles could then improve air quality in urban areas.

(9) The CARS 21 High Level Group report of 12 December 2005 supported the Commission's initiative on the promotion of clean and energy-efficient vehicles, on condition that a technology-neutral and performance-based integrated approach involving vehicle manufacturers, oil or fuel suppliers, repairers, customers or drivers and public authorities is taken.

(10) The High Level Group on competitiveness, energy and the environment, in its report of 27 February 2007, recommended that private and public procurement should take account of full lifetime costs with emphasis on energy efficiency. Member States and the Community should develop and publish public purchasing guidance on how to move beyond lowest price tendering to procurement of more sustainable intermediate goods in line with Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors [1] and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts [2].

(11) This Directive aims to stimulate the market for clean and energy-efficient road transport vehicles, and especially – since this would have a substantial environmental impact – to influence the market for standardised vehicles produced in larger quantities such as passenger cars, buses, coaches and trucks, by ensuring a level of demand for clean and energy-efficient road transport vehicles which is sufficiently substantial to encourage manufacturers and the industry to invest in and further develop vehicles with low energy consumption, CO_2 emissions, and pollutant emissions.

(12) Member States should inform national, regional or local contracting authorities and contracting entities and operators which provide public passenger transport services of the provisions relating to the purchase of clean and energy-efficient road transport vehicles.

(13) Clean and energy-efficient vehicles initially have a higher price than conventional ones. Creating sufficient demand for such vehicles could ensure that economies of scale lead to cost reductions.

(14) This Directive addresses the need to provide support for Member States through facilitating and structuring the exchange of knowledge and best practices for promoting the purchase of clean and energy-efficient vehicles.

(15) Procurement of vehicles for public transport services can make a significant impact on the market if harmonised criteria are applied at Community level.

(16) The biggest impact on the market, together with the best cost/benefit result, is obtained through mandatory inclusion of lifetime costs for energy consumption, CO_2 emissions, and pollutant emissions as award criteria in the procurement of vehicles for public transport services.

(17) In line with the scope of Directive 2004/17/EC and Directive 2004/18/EC and whilst fully respecting the implementation in national law of those directives, this Directive should cover road transport vehicles purchased by contracting authorities and contracting entities, irrespective of whether such authorities and entities are public or private. Furthermore, this Directive should cover the purchase of road transport vehicles used for performing public passenger transport services under a public service contract, leaving to Member States the freedom to exclude minor purchases with a view to avoiding an unnecessary administrative burden.

[1] OJ L 134, 30.4.2004, p. 1.
[2] OJ L 134, 30.4.2004, p. 114.

(18) In line with Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) ([1]) and with a view to avoiding an undue administrative burden, Member States should be able to exempt authorities and operators from the requirements laid down in this Directive when purchasing vehicles designed and constructed for special use.

(19) This Directive should provide for a set of options for taking into account energy and environmental impacts. This would enable authorities and operators that have already developed methods tailored to meeting local needs and conditions to continue applying these methods.

(20) Including energy consumption, CO_2 emissions, and pollutant emissions in the award criteria does not impose higher total costs but rather anticipates operational lifetime costs in the procurement decision. Complementary to the legislation on Euro Norms, which sets maximum emission limits, this approach monetises the actual pollutant emission and does not require any additional standard setting.

(21) When fulfilling the requirement to take energy and environmental impacts into account by setting technical specifications, contracting authorities, contracting entities and operators are encouraged to set specifications of a higher level of energy and environmental performance than laid down in Community legislation, taking into account, for example, Euro Norms which are already adopted but have not yet become obligatory.

(22) The ExternE Study ([2]), the Commission Clean Air for Europe (CAFE) ([3]) Programme and the HEATCO Study ([4]) have provided information on the costs of CO_2, oxides of nitrogen (NO_x), non-methane hydrocarbons (NMHC) and particulate matter emissions. Costs are taken at present value to keep the award procedure simple.

(23) This Directive should define a range for the costs of CO_2 and pollutant emissions which, on the one hand, enables flexibility for contracting authorities, contracting entities and operators to take account of their local situation, and, on the other hand, ensures an appropriate degree of harmonisation.

(24) Mandatory application of criteria for the procurement of clean and energy-efficient vehicles does not preclude the inclusion of other relevant award criteria. It also does not prevent the choice of retro-fitted vehicles upgraded for higher environmental performance. Such other relevant award criteria may also be included in procurements subject to Directives 2004/17/EC or 2004/18/EC, provided they are linked to the subject-matter of the contract, do not confer an unrestricted freedom of choice on the contracting authority or contracting entity, are expressly mentioned and comply with the fundamental principles of the Treaty.

(25) The method of calculating operational lifetime costs for pollutant emissions for the purpose of vehicle procurement decisions, including the numerical values defined in this Directive, does not prejudge other Community legislation addressing external costs.

(26) Reviews and revisions of the calculation method defined in this Directive should consider relevant related Community legislative measures and should aim for consistency with them.

(27) The energy and environmental award criteria should be among the various award criteria taken into consideration by contracting authorities or contracting entities when they are called upon to take a decision on the procurement of clean and energy-efficient road transport vehicles.

(28) This Directive should not prevent contracting authorities and contracting entities from giving preference to the latest Euro Norms in the purchase of vehicles for public transport services before those standards become obligatory. It should also not prevent contracting authorities and contracting entities from giving preference to alternative fuels, for example hydrogen, Liquefied Petroleum Gas (LPG), Compressed Natural Gas (CNG) and biofuels, provided the lifetime energy and environmental impacts are taken into account.

(29) Standardised Community test procedures should be developed for additional vehicle categories in order to improve comparability and transparency of manufacturer data. Manufacturers should be encouraged to provide data for total lifetime energy consumption, CO_2 emissions and pollutant emissions.

([1]) OJ L 263, 9.10.2007, p. 1.
([2]) Bickel, P., Friedrich, R., ExternE. Externalities of Energy. Methodology 2005, update, European Commission, Publications Office, Luxembourg, 2005.
([3]) Holland, M., et al., (2005a). Methodology for the Cost-Benefit Analysis for CAFE: Volume 1: Overview of Methodology. AEA Technology Environment, Didcot, 2005.
([4]) Bickel, P., et al., HEATCO Deliverable 5. Proposal for Harmonised Guidelines, Stuttgart, 2006.

(30) The possibility of public support for the purchase of clean and energy-efficient road transport vehicles, including the retrofitting of vehicles with engines and replacement parts, which go beyond the mandatory environmental requirements, is recognised in the Community guidelines for State aid for environmental protection [1] and Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) [2]. In this context, the guidelines included in the Commission Communication entitled 'Community guidelines on State aid for railway undertakings' [3], in particular footnote 1 to point 34 and footnote 3 to point 36, are also relevant. However, the rules of the Treaty, and in particular Articles 87 and 88 thereof, will continue to apply to such public support.

(31) The possibility of public support in favour of the promotion of development of infrastructures necessary for the distribution of alternative fuels is recognised in the Community guidelines for State aid for environmental protection. However, the rules of the Treaty, and in particular Articles 87 and 88 thereof, will continue to apply to such public support.

(32) The purchase of clean and energy-efficient road transport vehicles offers an opportunity to cities wishing to brand themselves as environmentally conscious. In this context, disclosure on the Internet of information on public procurement pursuant to this Directive is important.

(33) The publication on the Internet of relevant information related to the financial instruments available in the Member States for urban mobility and for the promotion of clean and energy-efficient road transport vehicles should be encouraged.

(34) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [4].

(35) In particular the Commission should be empowered to adapt to inflation and to technical progress the data for the calculation of the operational lifetime costs of road transport vehicles. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(36) Since the objectives of this Directive, namely to promote and stimulate the market for clean and energy-efficient vehicles and to improve the contribution of the transport sector to the environment, climate and energy policies of the Community, cannot be sufficiently achieved by the Member States and can therefore, in order to provide a critical mass of vehicles for cost-efficient developments by European industry, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(37) The Member States and the Commission should continue to promote clean and energy-efficient road transport vehicles. In this context, national and regional operational programmes, as defined by Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund [5] could play an important role. Furthermore, Community programmes such as Civitas and Intelligent Energy Europe could contribute to improving urban mobility while reducing its adverse effects.

(38) In accordance with point 34 of the Interinstitutional Agreement on better law-making [6], Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and objectives

This Directive requires contracting authorities, contracting entities as well as certain operators to take into account lifetime energy and environmental impacts, including energy consumption and emissions of CO_2 and of certain pollutants, when purchasing road transport vehicles with the objectives of promoting and stimulating the market for clean and energy-efficient vehicles and improving the contribution of the transport sector to the environment, climate and energy policies of the Community.

Article 2

Exemptions

Member States may exempt from the requirements laid down in this Directive contracts for the purchase of vehicles referred to in Article 2(3) of Directive 2007/46/EC, which are not subject to type approval or individual approval on their territory.

[1] OJ C 82, 1.4.2008, p. 1.
[2] OJ L 214, 9.8.2008, p. 3.
[3] OJ C 184, 22.7.2008, p. 13.
[4] OJ L 184, 17.7.1999, p. 23.
[5] OJ L 210, 31.7.2006, p. 25.
[6] OJ C 321, 31.12.2003, p. 1.

Article 3

Scope

This Directive shall apply to contracts for the purchase of road transport vehicles by:

(a) contracting authorities or contracting entities in so far as they are under an obligation to apply the procurement procedures set out in Directives 2004/17/EC and 2004/18/EC;

(b) operators for the discharge of public service obligations under a public service contract within the meaning of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road [1] in excess of a threshold which shall be defined by Member States not exceeding the threshold values as set out in Directives 2004/17/EC and 2004/18/EC.

Article 4

Definitions

For the purpose of this Directive:

1. 'contracting authorities' means contracting authorities as defined in Article 2(1)(a) of Directive 2004/17/EC and in Article 1(9) of Directive 2004/18/EC;

2. 'contracting entities' means contracting entities as referred to in Article 2(2) of Directive 2004/17/EC;

3. 'road transport vehicle' means a vehicle covered by the vehicle categories listed in Table 3 of the Annex.

Article 5

Purchase of clean and energy-efficient road transport vehicles

1. Member States shall ensure that, from 4 December 2010, all contracting authorities, contracting entities and operators referred to in Article 3, when purchasing road transport vehicles, take into account the operational lifetime energy and environmental impacts as set out in paragraph 2 and apply at least one of the options set out in paragraph 3.

2. The operational energy and environmental impacts to be taken into account shall include at least the following:

(a) energy consumption;

(b) emissions of CO_2; and

(c) emissions of NO_x, NMHC and particulate matter.

In addition to the operational energy and environmental impacts mentioned in the first subparagraph, contracting authorities, contracting entities and operators may also consider other environmental impacts.

3. The requirements of paragraphs 1 and 2 shall be fulfilled in accordance with the following options:

(a) by setting technical specifications for energy and environmental performance in the documentation for the purchase of road transport vehicles on each of the impacts considered, as well as any additional environmental impacts; or

(b) by including energy and environmental impacts in the purchasing decision, whereby:

— in cases where a procurement procedure is applied, this shall be done by using these impacts as award criteria, and

— in cases where these impacts are monetised for inclusion in the purchasing decision, the methodology set out in Article 6 shall be used.

Article 6

Methodology for the calculation of operational lifetime costs

1. For the purposes of Article 5(3)(b), second indent, operational lifetime costs for energy consumption, as well as for CO_2 emissions and pollutant emissions as set out in Table 2 of the Annex, which are linked to the operation of the vehicles under purchase, shall be monetised and calculated using the methodology set out in the following points:

(a) The operational lifetime cost of the energy consumption of a vehicle shall be calculated using the following methodology:

— the fuel consumption per kilometre of a vehicle according to paragraph 2 shall be counted in units of energy consumption per kilometre whether this is given directly, which is the case for instance for electrical cars, or not. Where the fuel consumption is given in different units, it shall be converted into energy consumption per kilometre, using the conversion factors as set out in Table 1 of the Annex for the energy content of the different fuels,

— a single monetary value per unit of energy shall be used. This single value shall be the lower of the cost per unit of energy of petrol or diesel before tax when used as a transport fuel,

[1] OJ L 315, 3.12.2007, p. 1.

— operational lifetime cost of the energy consumption of a vehicle shall be calculated by multiplying the lifetime mileage, where needed, taking into account the mileage already performed, according to paragraph 3, by the energy consumption per kilometre according to the first indent of this point, and by the cost per unit of energy according to the second indent of this point.

(b) The operational lifetime cost for the CO_2 emissions of a vehicle shall be calculated by multiplying the lifetime mileage, where needed, taking into account the mileage already performed, according to paragraph 3, by the CO_2 emissions in kilograms per kilometre according to paragraph 2, and by the cost per kilogram taken from the range as set out in Table 2 of the Annex.

(c) The operational lifetime cost for the pollutant emissions, as listed in Table 2 of the Annex, of a vehicle shall be calculated by adding up the operational lifetime costs for emissions of NO_x, NMHC and particulate matter. The operational lifetime cost for each pollutant shall be calculated by multiplying the lifetime mileage, where needed, taking into account the mileage already performed, according to paragraph 3, by the emissions in grams per kilometre according to paragraph 2, and by the respective cost per gram. The cost shall be taken from the Community-averaged values set out in Table 2 of the Annex.

Contracting authorities, contracting entities and operators referred to in Article 3 may apply higher costs provided these costs do not exceed the relevant values set out in Table 2 of the Annex multiplied by a factor of 2.

2. Fuel consumption, as well as CO_2 emissions and pollutant emissions as set out in Table 2 of the Annex per kilometre for vehicle operation, shall be based on standardised Community test procedures for the vehicles for which such test procedures are defined in Community type approval legislation. For vehicles not covered by standardised Community test procedures, comparability between different offers shall be ensured by using widely recognised test procedures, or the results of tests for the authority, or information supplied by the manufacturer.

3. Lifetime mileage of a vehicle, if not otherwise specified, shall be taken from Table 3 of the Annex.

Article 7

Adaptations to technical progress

The Commission shall adapt to inflation and to technical progress the data for the calculation of the operational lifetime costs of road transport vehicles as set out in the Annex. Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 9(2).

Article 8

Best practice exchange

The Commission shall facilitate and structure the exchange of knowledge and best practices between Member States on practices for promoting the purchase of clean and energy-efficient road transport vehicles by contracting authorities, contracting entities and operators referred to in Article 3.

Article 9

Committee procedure

1. The Commission shall be assisted by a Committee.

2. Where reference is made to this paragraph, Articles 5a(1) to (4) and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 10

Reporting and review

1. Every two years, with effect from 4 December 2010, the Commission shall prepare a report on the application of this Directive and on the actions taken by individual Member States to promote the purchase of clean and energy-efficient road transport vehicles.

2. Those reports shall assess the effects of this Directive, especially of the options referred to in Article 5(3), and the need for further action, and include proposals, as appropriate.

In those reports, the Commission shall compare the nominal and relative numbers of vehicles purchased corresponding to the best market alternative in terms of lifetime energy and environmental impacts, within each of the categories of vehicles listed in Table 3 of the Annex, to the overall market for these vehicles and estimate how the options referred to in Article 5(3) have affected the market. The Commission shall assess the need for further action and include proposals, as appropriate.

3. No later than the date of the first report, the Commission shall examine the options referred to in Article 5(3), present an evaluation of the methodology set out in Article 6 and propose appropriate adjustments, if necessary.

Article 11

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 4 December 2010. They shall forthwith inform the Commission thereof.

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

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

Article 12

Entry into force

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

Article 13

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 23 April 2009.

For the European Parliament	*For the Council*
The President	*The President*
H.-G. PÖTTERING	P. NEČAS

ANNEX

Data for the calculation of operational lifetime costs of road transport vehicles

Table 1: Energy content of motor fuels

Fuel	Energy content
Diesel	36 MJ/litre
Petrol	32 MJ/litre
Natural Gas/Biogas	33-38 MJ/Nm^3
Liquefied Petroleum Gas (LPG)	24 MJ/litre
Ethanol	21 MJ/litre
Biodiesel	33 MJ/litre
Emulsion fuel	32 MJ/litre
Hydrogen	11 MJ/Nm^3

Table 2: Cost for emissions in road transport (in 2007 prices)

CO_2	NO_x	NMHC	Particulate matter
0,03-0,04 EUR/kg	0,0044 EUR/g	0,001 EUR/g	0,087 EUR/g

Table 3: Lifetime mileage of road transport vehicles

Vehicle category (M and N categories as defined in Directive 2007/46/EC)	Lifetime mileage
Passenger cars (M_1)	200 000 km
Light commercial vehicles (N_1)	250 000 km
Heavy goods vehicles (N_2, N_3)	1 000 000 km
Buses (M_2, M_3)	800 000 km

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 28 January 2009

concerning State aid C 27/05 (ex NN 69/04) granted for the purchase of forage in the Region of Friuli-Venezia Giulia (Article 6 of Regional Law No 14 of 20 August 2003 and call for expressions of interest published by the Chamber of Commerce of Trieste)

(notified under document number C(2009) 187)

(Only the Italian text is authentic)

(2009/382/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having called on interested parties to submit their comments pursuant to that Article,

Whereas:

I. PROCEDURE

(1) Having received information and then a complaint that Regional Law No 14 of 20 August 2003 of the Region of Friuli-Venezia Giulia provided for the granting of funding to the Chambers of Commerce of Trieste and Gorizia to provide for the forage needs of holdings affected by the drought of 2003, the Commission asked the Italian authorities for a series of clarifications by letter of 2 April 2004.

(2) Not having received a reply at the end of the four-week period allowed the Italian authorities to provide the requested information, the Commission sent them a reminder by letter of 26 May 2004.

(3) By letter of 10 June 2004, registered as received on 15 June 2004, the Italian Permanent Representation to the European Union forwarded to the Commission a letter from the Italian authorities stating that they had sent two letters to the Chambers of Commerce of Trieste and Gorizia, of 30 September 2003 and 12 March 2004 respectively, to draw their attention to the need to publish a call for expressions of interest for the aid provided for by Article 6 of the abovementioned law and to send a copy thereof to the Commission.

(4) On the basis of that information, by letter of 28 June 2004, the Commission asked the Italian authorities to send it the text of the two letters concerned and of the calls for expressions of interest drawn up by the two Chambers of Commerce. In addition, the Commission asked whether aid had been granted and, if so, how much and how it had been granted.

(5) By letter of 27 September 2004, registered as received on 29 September 2004, the Italian Permanent Representation to the European Union sent the Commission the texts concerned and the information requested in the letter of 28 June 2004.

(6) Since it was clear from that information that the call for expressions of interest had already been published by the Chamber of Commerce of Trieste and acted on and that, furthermore, the aid that the Chambers of Commerce could pay or had paid was not provided for in the Chambers' general aid scheme, approved by the Commission under State aid N 241/01, the Commission decided to open an unnotified aid dossier under number NN 69/04.

(7) By letter of 12 November 2004, the Commission requested additional information on the aid concerned from the Italian authorities.

(8) On the same day, the Commission received a letter from the Italian authorities providing information supplementing that requested in the letter of 28 June 2004 (see recital 4).

(9) By letter of 6 January 2005, registered as received on 11 January 2005, the Italian Permanent Representation to the European Union forwarded to the Commission a letter from the Italian authorities requesting an extension of the deadline allowed them for providing additional information on the aid in question, so as to permit them to re-examine the regional legislation concerned.

(10) By letter of 25 January 2005, the Commission gave an extension of one month.

(11) By letter of 21 February 2005, the Italian Permanent Representation to the European Union forwarded to the Commission a letter from the Italian authorities stating that the Chamber of Commerce of Gorizia had not implemented the planned aid and no longer intended to do so (the letter was accompanied by a Decision of the Chamber of Commerce confirming this).

(12) By letters of 28 February 2005, registered as received on 1 March 2005, and of 30 March 2005, registered as received on 31 March 2005, the Italian Permanent Representation to the European Union sent the Commission additional information on the aid granted by the Chamber of Commerce of Trieste.

(13) By letter of 22 July 2005 ([1]), the Commission informed Italy of its Decision to initiate the procedure laid down in Article 88(2) of the Treaty with regard to the aid for the purchase of forage provided for by Article 6 of Regional Law No 14 of 20 August 2003 and the subject of the call for expressions of interest published by the Chamber of Commerce of Trieste.

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

(15) The Commission did not receive any comments from interested parties.

([1]) See letter SG(2005)-Greffe D/203816.
([2]) OJ C 233, 22.9.2005, p. 5.

II. **DESCRIPTION**

(16) Article 6 of Regional Law No 14 of 20 August 2003 of the Region of Friuli-Venezia Giulia (hereafter Regional Law No 14) lays down that the regional authorities are authorised to grant special funding of EUR 170 000 to the Chamber of Commerce, Industry, Crafts and Agriculture of Trieste and of EUR 80 000 to the Chamber of Commerce, Industry, Crafts and Agriculture of Gorizia to cope with exceptional needs connected with feeding animals on livestock holdings affected by the drought of 2003 and located in areas not served by shared irrigation installations.

(17) The call for expressions of interest published by the Chamber of Commerce of Trieste provides for financial support for holdings in the Province of Trieste affected by the drought of 2003 that, not having been able to irrigate their land not served by shared irrigation installations, suffered a loss of production of at least 20 % in less-favoured areas and 30 % in other areas. That support takes the form of aid for the purchase of forage required to feed livestock.

(18) The aid is paid on presentation of invoices for purchases of forage from 1 May and 20 November 2003 and covers the quantity of forage necessary to satisfy nutritional requirements calculated per livestock unit (hereafter LU) present on the holding and belonging to the farmer. The LUs include the bovine, ovine, caprine and equine animals raised for slaughter or used for work; in the case of slaughter animals, the farmers concerned are main-occupation farmers and owner-occupiers registered with the *Istituto nazionale per la previdenza sociale* (National Social Security Institute) for the agricultural sector. The term 'forage' means any type of dried hay.

(19) The aid can be paid to any holding in the Province of Trieste so requesting until the fund created for that purpose has been used up.

(20) The maximum amount of forage that can be reimbursed per LU is 1 500 kg. The reference price used to calculate the aid is EUR 20, excluding VAT. If the number of applications exceeds the forecast, the individual aid per LU will be reduced proportionately.

(21) Should the beneficiary holdings request and obtain other aid for the losses caused by the drought of 2003, the amount of aid stipulated in the call for expressions of interest will be reduced accordingly.

III. **INITIATION OF THE PROCEDURE LAID DOWN IN ARTICLE 88(2) OF THE TREATY**

(22) The Commission initiated the procedure laid down in Article 88(2) of the Treaty because it doubted that the aid measures concerned were compatible with the common market. Doubts were raised by the following:

(a) on the basis of the provisions of which it had been informed, the Commission could not draw the conclusion that the loss threshold had been established strictly in accordance with point 11.3 of the Community Guidelines for State aid in the agriculture sector [1] (hereafter the Guidelines) and could therefore not rule out the possibility that aid had been paid to certain farmers who would not have been eligible if the loss threshold had been calculated as laid down in that point;

(b) the actual method used to calculate the aid did not correspond to that laid down in point 11.3 of the Guidelines, since it was based simply on price per unit weight purchased; in addition, the aid was to be paid on the basis of purchase invoices for forage, but the call for expressions of interest published by the Chamber of Commerce of Trieste did not specify that purchases had to be limited to the quantities of forage actually lost because of the drought;

(c) according to point 11.3 of the Guidelines, the amount of aid should also be reduced by the amount of any direct aid payments, however, the Italian authorities had provided no information on this; the risk of over-compensation for the losses suffered could therefore not be ruled out;

(d) according to that same point of the Guidelines, the amount of aid paid should be reduced by any amount received under insurance schemes and normal costs not incurred by the farmer, for example, where the crop could not be harvested, should also be taken into account; however, the Italian authorities provided no information on this, which further reinforces the doubts expressed concerning the risk of over-compensation.

IV. **COMMENTS FROM ITALY**

(23) By letter of 26 September 2005, registered as received on 27 September 2005, the Italian Permanent Representation to the European Union forwarded to the Commission the comments of the Italian authorities following the initiation of the procedure laid down in Article 88(2) of the Treaty with regard to the aid in question.

(24) The Italian authorities state, among other things, that the drought of 2003 was declared to constitute 'adverse weather conditions' by the Region of Friuli-Venezia Giulia by means of Decree No 0329/Pres. issued by the President of the Region on 16 September 2003, was confirmed by meteorological data collected by the regional meteorological observatory and was the subject of a State aid dossier notified to the Commission and approved by it (N 262/04).

(25) The Italian authorities acknowledge that the method used by the Chamber of Commerce of Trieste to calculate the losses suffered by farmers in the Province of Trieste is not in accordance with point 11.3 of the Guidelines. They state, however, that following initiation of the procedure laid down in Article 88(2) of the Treaty, the Chamber of Commerce of Trieste checked the thresholds for the loss of production on each of the holdings receiving aid (43 holdings), on the basis of a comparison of the average production of forage during the three years from 2000 to 2002 (in which no compensation was paid for loss caused by adverse weather conditions) and the quantities of forage harvested in 2003. According to the Italian authorities, the data obtained showed that losses in every case were more than the minimum thresholds laid down for entitlement to aid (20 % in less-favoured areas and 30 % in other areas).

(26) The Italian authorities also add that they calculated the aid that could have been paid in accordance with the Guidelines. To do so, they used the data given in Decision No 1535 of 23 May 2003 of the Regional Executive concerning the average quantity and the average price of forage during the three years from 2000 to 2002. From the figure obtained, they deducted the actual production declared by each holding for 2003, multiplied by the average price for that year. They set out all their calculations in a table showing the amounts of aid paid, the amounts of aid that could have been approved under the Guidelines and the amounts of *de minimis* aid that can still be paid to the beneficiaries of the aid under Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture and fisheries sectors [2]. From the table it can be seen that if the *de minimis* aid is cumulated with the aid that can be granted under the Guidelines only two farmers received aid that was greater than the losses suffered, which the Italian authorities have undertaken to recover.

(27) As regards the other doubts raised by the Commission when initiating the procedure laid down in Article 88(2) of the Treaty, the Italian authorities explain that the beneficiaries of the aid concerned did not receive direct aid for forage or any amount under insurance schemes. They also state that the beneficiaries did incur costs for harvesting and transporting forage, since some forage was produced.

[1] OJ C 28, 1.2.2000, p. 2.

[2] OJ L 325, 28.10.2004, p. 4.

(28) Finally, the Italian authorities declare that all the farmers receiving the aid concerned were informed that the procedure laid down in Article 88(2) of the Treaty had been initiated with regard to the measure in question.

V. **ASSESSMENT**

(29) According to Article 87(1) of the 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 is, in so far as it affects trade between Member States, incompatible with the common market. The aid provided for by Regional Law No 14 corresponds to that definition in the sense that it is granted by a local authority, it favours the production of certain goods (livestock, since the aid for the purchase of forage is to allow the animals to be fed) and could distort competition and affect trade between Member States in view of Italy's position in the production of those goods (for example, Italy was responsible for 13,3 % of Community beef and veal production in 2006, making it the Community's third largest beef and veal producer).

(30) However, in cases covered by Article 87(2) and (3) of the Treaty, some measures may enjoy derogations and be considered compatible with the common market.

(31) In the case in question, taking into account the nature of the aid (aid to compensate farmers for losses caused by adverse weather conditions) the only derogation that can apply is that provided for in Article 87(3)(c) of the Treaty, according to which aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the common market where such aid does not adversely affect trading conditions to an extent contrary to the common interest (the derogation provided for in Article 87(2)(b) of the Treaty is applicable in the case of actual natural disasters rather than assimilated events; as indicated in the Guidelines, the Commission has always held that drought in itself cannot be considered to be a natural disaster within the meaning of Article 87(2)(b) of the Treaty).

(32) In order to be able to apply the above derogation, the aid concerned, unlawful under Article 1(f) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [1] (now Article 88), must be examined on the basis of the substantive criteria set out in any instrument in force at the time when the aid was granted in accordance with the Commission Notice on the determination of the applicable rules for the assessment of unlawful State aid [2].

(33) In this case, the rules that apply to the aid in question when it was granted are those set out in point 11.3 of the Guidelines. According to that point:

(a) losses must attain a certain threshold, fixed at 20 % of normal production in less-favoured areas and 30 % in other areas; The calculation of losses should be made for each individual holding;

(b) the above thresholds must be determined on the basis of the gross production of the relevant crop in the year in question compared with the gross production in a normal year; in principle the latter should be calculated by reference to the average gross production in the previous three years, excluding any year in which compensation was paid as a result of adverse weather conditions; other methods of calculating normal production (including regional reference figures) may be accepted, provided that they are representative and not based on abnormally high yields;

(c) in order to avoid over-compensation, the amount of aid payable must not exceed the average level of production during a normal period multiplied by the average price during the same period minus actual production in the year the event took place multiplied by the average price for that year;

(d) the amount of aid should also be reduced by the amount of any direct aid payments;

(e) any amounts received under insurance schemes must be deducted from the amount of aid; furthermore, normal costs not incurred by the farmer, for example, where a crop does not need to be harvested, should also be taken into account.

(34) As regards compliance with the first two conditions, the Commission notes that the Italian authorities established the existence of a drought based on appropriate meteorological information. As regards the size of the losses caused by the above adverse weather conditions, the Commission notes first of all that the Italian authorities themselves acknowledge that the method used to calculate the losses suffered by farmers in the Province of Trieste does not comply with point 11.3 of the Guidelines. The Commission cannot but confirm this, since the call for expressions of interest published by the Chamber of Commerce of Trieste simply stipulates the loss threshold above which aid may be granted, but does not specify the method for calculating losses.

[1] OJ L 83, 27.3.1999, p. 1.
[2] OJ C 119, 22.5.2002, p. 22.

(35) That being stated, according to the information provided by the Italian authorities following initiation of the procedure laid down in Article 88(2) of the Treaty, applying the method laid down in point 11.3 of the Guidelines, i.e. in this case, a comparison of the average production of forage during the period from 2000 to 2002 (in which no compensation was paid for losses caused by adverse weather conditions) and forage production in 2003, the losses were more than the minimum thresholds laid down for entitlement to aid (20 % in less-favoured areas and 30 % in other areas) on every single holding receiving aid.

(36) As regards the actual method used to calculate the aid (and therefore compliance with the third condition referred to above), the Commission notes that the method used does not comply with the Guidelines, since the aid was paid on presentation of invoices for purchases of forage made between 1 May and 20 November 2003 for the quantities necessary to satisfy the normal nutritive requirements for each livestock unit present on the holding, while according to the Guidelines the amount of aid payable should not exceed the average level of production during a normal period multiplied by the average price during the same period minus actual production in the year the event took place multiplied by the average price for that year.

(37) The information provided by the Italian authorities following initiation of the procedure laid down in Article 88(2) of the Treaty shows that the calculation method used by the Chamber of Commerce of Trieste led in several cases (12 cases out of 43) to a higher aid payment than would have resulted from the use of the calculation method provided for in the Guidelines.

(38) Given that the calculation method used by the Chamber of Commerce of Trieste resulted in more than 25 % of cases in the amounts of aid that can be paid according to point 11.3 of the Guidelines being exceeded, the Commission cannot accept that method.

(39) As regards the other conditions laid down in point 11.3 of the Guidelines (and therefore compliance with the fourth and fifth conditions referred to above), the Commission notes the statement by Italian authorities that the beneficiaries of the aid in question did not receive direct aid for forage or any amount under insurance schemes and that the beneficiaries did incur costs for harvesting and transporting forage, since some forage was produced. This means that the conditions concerned are not relevant in this case.

VI. **CONCLUSION**

(40) In the light of the foregoing, the Commission cannot accept that all the conditions laid down in point 11.3 of the Guidelines are satisfied, since, as stated in recital 38, the method used by the Chamber of Commerce of Trieste to calculate the aid in many cases resulted in the amounts that could have been paid without over-compensation being exceeded.

(41) The aid granted by the Chamber of Commerce of Trieste for purchases of forage following the drought of 2003 does not therefore qualify for the derogation provided for in Article 87(3)(c) of the Treaty as regards that part that exceeds the amount that could have qualified for that derogation if the method for calculating the aid laid down in point 11.3 of the Guidelines had been used. However, that part of the aid that does not exceed that amount is compatible with the common market, since it satisfies all the conditions laid down by the Guidelines.

(42) According to Article 14(1) of Regulation (EC) No 659/1999, where negative decisions are taken in cases of unlawful aid, the Commission is to decide that the Member State concerned is to take all necessary measures to recover the aid from the beneficiary. Italy must therefore take all necessary measures to recover the aid granted from the beneficiary. Under point 42 of the Notice from the Commission 'Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid' ([1]) Italy has four months from the entry into force of this Decision to execute its provisions. The aid to be recovered must include interest calculated in accordance with Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 ([2]).

(43) However, any aid granted under the aid scheme that at the time it was granted satisfied the conditions laid down in a Commission regulation adopted on the basis of Article 2 of Council Regulation (EC) No 994/98 ([3]) (the *de minimis* Regulation) is deemed not to constitute State aid within the meaning of Article 87(1) of the Treaty.

(44) Point 49 of the Notice from the Commission 'Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid' lays down that to quantify the precise amount of aid to be recovered from each individual beneficiary under the Member State's scheme, it may apply the *de minimis* criteria applicable at the time of the granting of the unlawful and incompatible aid that is subject to the recovery decision.

([1]) OJ C 272, 15.11.2007, p. 11.
([2]) OJ L 140, 30.4.2004, p. 1.
([3]) OJ L 142, 14.5.1998, p. 1.

(45) When the Chamber of Commerce of Trieste granted the aid, the Community rules on *de minimis* aid in the agriculture sector had not yet been adopted.

(46) The first such Community rules on were laid down in Regulation (EC) No 1860/2004.

(47) In accordance with Regulation (EC) No 1860/2004, aid not exceeding EUR 3 000 per beneficiary over the three-year period (this is the *de minimis* aid granted to an undertaking) does not affect trade between Member States and does not distort or threaten to distort competition and therefore does not fall under Article 87(1) of the Treaty.

(48) Under Article 5 of Regulation (EC) No 1860/2004, the same principle applies to aid granted before the entry into force of that Regulation provided it fulfils all the conditions laid down in Articles 1 and 3 thereof.

(49) In the case in question, individual aid not exceeding EUR 3 000 will be deemed not to constitute State aid within the meaning of Article 87(1) of the Treaty if, at the time it was granted, it complied with Articles 1, 2 and 3 of Regulation (EC) No 1860/2004. The above applies only to amounts not exceeding EUR 3 000 actually paid under the scheme concerned. The Italian authorities cannot claim that the number of cases of recovery can be reduced by deducting in the 12 cases of over-compensation the amount that each beneficiary could have received under Regulation (EC) No 1860/2004, since if the amount of aid granted under the scheme exceeds the maximum *de minimis* aid, that aid cannot benefit from the provisions of the *de minimis* Regulation, even for that part that does not exceed that maximum amount,

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme for the purchase of forage implemented unlawfully by the Chamber of Commerce of Trieste (Italy, Region of Friuli-Venezia Giulia), in infringement of Article 88(3) of the Treaty is incompatible with the common market in that it provides aid exceeding that resulting from the method for calculating aid laid down in point 11.3 of the Community Guidelines for State aid in the agriculture sector. The aid granted under the scheme is compatible with the common market up to the amount resulting from the method for calculating aid laid down in point 11.3 of the above Guidelines and incompatible for the part exceeding that amount.

Article 2

Individual aid granted under the scheme referred to in Article 1 shall not constitute State aid if, at the time it is granted, it fulfils the conditions laid down by the regulation adopted pursuant to Article 2 of Regulation (EC) No 994/98 which is applicable at the time the aid is granted.

Article 3

1. The Chamber of Commerce of Trieste (Italy) shall recover the incompatible aid granted under the scheme referred to in Article 1 from the beneficiaries.

2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiaries until their actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and Commission Regulation (EC) No 271/2008 [1] amending Regulation (EC) No 794/2004.

Article 4

1. Recovery of the aid granted under the scheme referred to in Article 1 shall be immediate and effective.

2. Italy shall ensure that this Decision is implemented within four months of its notification.

Article 5

1. Within two months of notification of this Decision, Italy shall submit the following information:

(a) the total amount (principal and interest) to be recovered from each beneficiary;

(b) a detailed description of the measures already taken and those planned to comply with this Decision;

(c) documents demonstrating that the beneficiaries have been ordered to repay the aid.

2. Italy shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid granted under the scheme referred to in Article 1 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and interest already recovered from the beneficiaries

[1] OJ L 82, 25.3.2008, p. 1.

Article 6

This Decision is addressed to Italy.

Done at Brussels, 28 January 2009.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

COMMISSION DECISION

of 14 May 2009

suspending the definitive anti-dumping duties imposed by Council Regulation (EC) No 1683/2004 on imports of glyphosate originating in the People's Republic of China

(2009/383/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 [1], (the basic Regulation), and in particular Article 14(4) thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) Following a review investigation carried out in accordance with Article 11(2) of the basic Regulation (review investigation), the Council, by Regulation (EC) No 1683/2004 [2] imposed a definitive anti-dumping duty on imports of glyphosate originating in the People's Republic of China, presently falling within CN codes ex 2931 00 95 (TARIC code 2931 00 95 82) and ex 3808 93 27 (TARIC code 3808 93 27 19) (the product concerned), as extended to imports of glyphosate consigned from Malaysia (whether declared as originating in Malaysia or not) (TARIC codes 2931 00 95 81 and 3808 93 27 11) with the exception of those produced by Crop protection (M) Sdn. Bhd., Lot 746, Jalan Haji Sirat 4½ Miles, off Jalan Kapar, 42100 Klang, Selangor Darul Ehsan, Malaysia (TARIC additional code A309) and as extended to imports of glyphosate consigned from Taiwan (whether declared as originating in Taiwan or not) (TARIC codes 2931 00 95 81 and 3808 93 27 11) with the exception of those produced by Sinon Corporation, No 23, Sec. 1, Mei Chuan W. Rd, Taichung, Taiwan (TARIC additional code A310). The rate of the anti-dumping duty is 29,9 %.

(2) Audace, an association of users and distributors of the product concerned, has submitted information on a change of market conditions which occurred after the expiry review investigation period (i.e. from 1 January 2002 to 31 December 2002), and alleged that such changes would justify the suspension of the measures currently in force, in accordance with Article 14(4) of the basic Regulation. Consequently, the Commission examined whether such suspension was warranted.

B. GROUNDS

(3) Article 14(4) of the basic Regulation provides that, in the Community interest, anti-dumping measures may be suspended on the grounds that market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of such suspension, provided that the Community industry has been given an opportunity to comment and these comments have been taken into account. Article 14(4) further specifies that the anti-dumping measures concerned may be reinstated at any time if the reason for suspension is no longer applicable.

(4) With regard to the Community industry, it is noted that its situation has improved up to the first half of 2008. Due to a strong increase in prices on the EU market, an increase of the sales volume and value, and the relatively stable production costs, profits expressed as a percentage of turnover have increased significantly. These positive trends are confirmed by more recent figures for the main Community producer, which represents the large majority of the Community industry's production and sales volume. On the basis of the market information currently available, it is not expected that this situation will change substantially in the event of a suspension of the measures.

(5) The Community industry has confirmed that, currently, the level of its prices on the EU market remains generally unchanged although export prices from the People's Republic of China have dropped substantially since July 2008.

(6) The increasing production capacity and output in the People's Republic of China could have a downward effect on EU glyphosate prices in the medium or long term. However, current information shows that this effect is expected to be to a large extent absorbed by a growing global demand.

(7) No indications have been found as to why the suspension would not be in the Community interest.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 303, 30.9.2004, p. 1.

(8) In conclusion, given the temporary change in market conditions, and in particular the current level of prices on the Community market, together with the current high profit levels of the Community industry notwithstanding decreasing export prices from the People's Republic of China in recent months, it is considered that the injury linked to the imports of the product concerned originating in the People's Republic of China is unlikely to resume as a result of the suspension. It is therefore proposed to suspend for nine months, in accordance with Article 14(4) of the basic Regulation, the measures in force.

C. **CONSULTATION OF THE COMMUNITY INDUSTRY**

(9) Pursuant to Article 14(4) of the basic Regulation, the Commission has informed the Community industry of its intention to suspend the anti-dumping measures in force. The Community industry has been given an opportunity to comment and their comments were taken into account.

D. **CONCLUSION**

(10) The Commission therefore considers that all requirements for suspending the anti-dumping duty imposed on the product concerned are met, in accordance with Article 14(4) of the basic Regulation. Consequently, the anti-dumping duty imposed by Regulation (EC) No 1683/2004 should be suspended for a period of nine months.

(11) Should the situation which led to the suspension change subsequently, the Commission may reinstate the anti-dumping measures by repealing the suspension of the anti-dumping duties forthwith,

HAS DECIDED AS FOLLOWS:

Article 1

The definitive anti-dumping duty imposed by Regulation (EC) No 1683/2004 on imports of glyphosate, falling within CN codes ex 2931 00 95 (TARIC code 2931 00 95 82) and ex 3808 93 27 (TARIC code 3808 93 27 19) and originating in the People's Republic of China, as extended to imports of glyphosate consigned from Malaysia (whether declared as originating in Malaysia or not) (TARIC codes 2931 00 95 81 and 3808 93 27 11) with the exception of those produced by Crop protection (M) Sdn. Bhd., Lot 746, Jalan Haji Sirat 4½ Miles, off Jalan Kapar, 42100 Klang, Selangor Darul Ehsan, Malaysia (TARIC additional code A309) and as extended to imports of glyphosate consigned from Taiwan (whether declared as originating in Taiwan or not) (TARIC codes 2931 00 95 81 and 3808 93 27 11) with the exception of those produced by Sinon Corporation, No 23, Sec. 1, Mei Chuan W. Rd, Taichung, Taiwan (TARIC additional code A310), is hereby suspended for a period of nine months.

Article 2

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

Done at Brussels, 14 May 2009.

For the Commission
Catherine ASHTON
Member of the Commission

RECOMMENDATIONS

COMMISSION

COMMISSION RECOMMENDATION

of 30 April 2009

on remuneration policies in the financial services sector

(Text with EEA relevance)

(2009/384/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Whereas:

(1) Excessive risk-taking in the financial services industry and in particular in banks and investment firms has contributed to the failure of financial undertakings and to systemic problems in the Member States and globally. These problems have spread to the rest of the economy and led to high costs for society.

(2) Whilst not the main cause of the financial crisis that unfolded in 2007 and 2008, there is a widespread consensus that inappropriate remuneration practices in the financial services industry also induced excessive risk-taking and thus contributed to significant losses of major financial undertakings.

(3) Remuneration practices in a large part of the financial services industry have been running counter to effective and sound risk management. These practices tended to reward short-term profit and gave staff incentives to pursue unduly risky activities which provided higher income in the short term while exposing financial undertakings to higher potential losses in the longer term.

(4) In principle, if risk management and control systems were strong and highly effective, the risk-taking incentives provided by remuneration practices would be consistent with the risk tolerance of a financial undertaking. However, all risk management and control systems have limitations and, as the financial crisis has shown, can fail to deal with the risks created by inappropriate incentives, due to the increasing complexity of the risks and the range of ways by which risk may be taken. Consequently, a simple functional separation between business units and staff responsible for risk management and control systems is necessary but no longer sufficient.

(5) Creating appropriate incentives within the remuneration system itself should reduce the burden on risk management and increase the likelihood that these systems become effective. Therefore, there is a need to establish principles on sound remuneration policies.

(6) Given the competitive pressures in the financial services industry and the fact that many financial undertakings operate cross-border, it is important to ensure that principles on sound remuneration policy are applied consistently throughout the Member States. However, it is acknowledged that to be more effective, principles on sound remuneration policy would need to be implemented globally and in a consistent manner.

(7) In its Communication to the Spring European Council 'Driving European Recovery' [1], the Commission presented its plan to restore and maintain a stable and reliable financial system. In particular, the Communication announced that a new Recommendation on remuneration in the financial services sector would be presented in order to improve risk management in financial firms and align pay incentives with sustainable performance.

(8) This Recommendation sets out general principles applicable to remuneration policy in the financial services sector and should apply to all financial undertakings operating in the financial services industry.

[1] COM(2009) 114.

(9) Those general principles may be of more relevance to certain categories of financial undertakings than others, in the light of existing regulations and common practices in the financial services industry. These principles should apply in parallel to any rule or regulation governing a specific financial sector. In particular, fees and commissions received by intermediaries and external service providers in case of outsourced activities should not be addressed, since the compensation practices relating to such fees and commissions are already partially covered by particular regimes, in particular Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments [1] and Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation [2]. Furthermore, this Recommendation is without prejudice to the rights, where applicable, of social partners in collective bargaining.

(10) With respect to financial undertakings whose securities are admitted to trading on a regulated market within the meaning of Directive 2004/39/EC in one or more Member States, this Recommendation apply in addition to and together with Commission Recommendation 2004/913/EC of 14 December 2004 fostering an appropriate regime for the remuneration of directors of listed companies [3] and Commission Recommendation 2009/385/EC of 30 April 2009 complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies [4].

(11) The remuneration policy of a particular financial undertaking should also be linked to the size of the financial undertaking concerned, as well as the nature and the complexity of its activities.

(12) A risk-focused remuneration policy, which is consistent with effective risk management and does not entail excessive risk exposure, should be adopted.

(13) Remuneration policy should cover those categories of staff whose professional activities have a material impact on the risk profile of the financial undertaking. In order to avoid incentives for excessive risk-taking, special arrangements should be adopted with regard to the remuneration of these categories of staff.

(14) Remuneration policy should aim at aligning the personal objectives of staff members with the long-term interests of the financial undertaking concerned. The assessment of the performance-based components of remuneration should be based on longer-term performance and take into account the outstanding risks associated with the performance. The assessment of performance should be set in a multi-year framework, for example of three to five years, in order to ensure that the assessment process is based on longer term performance and that the actual payment of performance-based components of remuneration is spread over the business cycle of the company.

(15) Financial undertakings should be able to reclaim variable components of remuneration that were awarded for performance based on data which has subsequently proven to be manifestly misstated.

(16) As a general principle, payments related to early termination of a contract which are awarded on a contractual basis should not be a reward for failure. For directors of listed financial undertakings, specific provisions on termination payments set out in Recommendation 2009/385/EC should apply.

(17) In order for remuneration policy to be in line with the objectives, the business strategy, the values and the long-term interests of the financial institution, other factors, apart from financial performance, should be considered, such as compliance with systems and controls of the financial institution, as well as compliance with the standards governing the relationship with clients and investors.

(18) Effective governance is a necessary condition for the remuneration policy to be sound. The decision-making process regarding the remuneration policy of a financial undertaking should be internally transparent and should be designed in such a way as to avoid conflicts of interest and ensure the independence of the persons involved.

(19) The governing body of the financial undertaking should have the ultimate responsibility for establishing the remuneration policy for the whole financial undertaking and monitoring its implementation. In order to provide necessary expertise, control functions and, where appropriate, human resources departments and experts should be involved in the process. In particular, control functions should also be involved in the design and the review of the implementation of the remuneration policy, and should be adequately rewarded so as to attract skilled individuals and to ensure their independence from the business units they control. The statutory auditor, within the limits of current reporting duties, should report on material weaknesses in the review of the implementation of the remuneration policy to the (supervisory) board or to the audit committee.

[1] OJ L 145, 30.4.2004, p. 1.
[2] OJ L 9, 15.1.2003, p. 3.
[3] OJ L 385, 29.12.2004, p. 55.
[4] See page 28 of this Official Journal.

(20) Control of the design and implementation of the remuneration policy is more likely to be effective if the stakeholders of the financial undertaking, including, where applicable, employee representatives, are properly informed of and engaged in the process of setting up and monitoring remuneration policy. For that purpose, financial undertakings should disclose the relevant information to their stakeholders.

(21) The implementation of the principles laid down in this Recommendation should be reinforced through supervisory review at the national level. Therefore, supervisor's overall assessment of the soundness of the financial undertaking should include the assessment of compliance of the remuneration policy of the financial undertaking with the principles laid down in this Recommendation.

(22) Member States should ensure that branches of financial undertakings having their registered office or their head office in a third country and which operate in the territory of a Member State should be subject to similar principles on remuneration policy which apply to financial undertakings having their registered office or their head office in the territory of a Member State.

(23) This Recommendation should apply without prejudice to measures which might be adopted by Member States with respect to remuneration policies of financial undertakings which benefit from State assistance.

(24) The notification of measures by Member States in accordance with this Recommendation should include a clear timeframe for financial undertakings to adopt remuneration policies consistent with the principles set out in this Recommendation,

HEREBY RECOMMENDS:

SECTION I

Scope and definitions

1. *Scope*

1.1. Member States should ensure that the principles contained in sections II, III and IV apply to all financial undertakings having their registered office or their head office in their territory.

1.2. Member States should ensure that the principles contained in sections II, III and IV apply to the remuneration of those categories of staff whose professional activities have a material impact on the risk profile of the financial undertaking.

1.3. When taking measures to ensure that financial undertakings implement those principles, Member States should take into account the nature, the size as well as the specific scope of activities of the financial undertakings concerned.

1.4. Member States should apply the principles contained in sections II, III and IV to financial undertakings on an individual basis and on a consolidated basis. Principles on sound remuneration policy should apply at group level to the parent undertaking and to its subsidiaries, including those established in offshore financial centres.

1.5. This Recommendation does not apply to fees and commissions received by intermediaries and external service providers in case of outsourced activities.

2. *Definitions for the purposes of this Recommendation*

2.1. 'Financial undertaking' means any undertaking, irrespective of its legal status, whether regulated or not, which performs any of the following activities on a professional basis:

(a) it accepts deposits and other repayable funds;

(b) it provides investment services and/or performs investment activities within the meaning of Directive 2004/39/EC;

(c) it is involved in insurance or reinsurance business;

(d) it performs business activities similar to those set out in points (a), (b) or (c).

A financial undertaking includes, but is not limited to, credit institutions, investment firms, insurance and reinsurance undertakings, pension funds and collective investment schemes.

2.2. 'Director' means any member of the administrative, managerial or supervisory bodies of financial undertakings.

2.3. 'Control functions' means risk management, internal control and similar functions within a financial undertaking.

2.4. 'Variable component of remuneration' means a component of remuneration entitlement which is awarded on the basis of performance criteria, including bonuses.

SECTION II

Remuneration policy

3. *General*

3.1. Member States should ensure that financial undertakings establish, implement and maintain a remuneration policy which is consistent with and promotes sound and effective risk management and which does not induce excessive risk-taking.

3.2. Remuneration policy should be in line with the business strategy, objectives, values and long-term interests of the financial undertaking, such as sustainable growth prospects, and be consistent with the principles relating to the protection of clients and investors in the course of services provided.

4. *Structure of the remuneration policy*

4.1. Where remuneration includes a variable component or a bonus, remuneration policy should be structured with an appropriate balance of fixed and variable remuneration components. The appropriate balance of remuneration components may vary across staff members, according to market conditions and the specific context in which the financial undertaking operates. Member States should ensure that remuneration policy of a financial undertaking sets a maximum limit on the variable component.

4.2. The fixed component of the remuneration should represent a sufficiently high proportion of the total remuneration allowing the financial undertaking to operate a fully flexible bonus policy. In particular, the financial undertaking should be able to withhold bonuses entirely or partly when performance criteria are not met by the individual concerned, the business unit concerned or the financial undertaking. The financial undertaking should also be able to withhold bonuses where its situation deteriorates significantly, in particular where it can no longer be presumed that it can or will continue to be able to carry out its business as a going concern.

4.3. Where a significant bonus is awarded, the major part of the bonus should be deferred with a minimum deferment period. The amount of the deferred part of the bonus should be determined in relation to the total amount of the bonus as compared to the total amount of the remuneration.

4.4. The deferred element of the bonus should take into account the outstanding risks associated with the performance to which the bonus relates and may consist of equity, options, cash, or other funds the payment of which is postponed for the duration of the deferment period. The measures of future performance to which the deferred element is linked should be risk adjusted as set out in point 5.

4.5. Payments related to the early termination of a contract which are awarded on a contractual basis, should be related to performance achieved over time and designed in a way that does not reward failure.

4.6. Member States should ensure that the (supervisory) board of a financial undertaking can require staff members to repay all or part of bonuses that have been awarded for performance based on data which has subsequently proven to be manifestly misstated.

4.7. The structure of the remuneration policy should be updated over time to ensure that it evolves to meet the changing situation of the financial undertaking concerned.

5. *Performance measurement*

5.1. Where remuneration is performance related, its total amount should be based on a combination of the assessment of the performance of the individual and of the business unit concerned and of the overall results of the financial undertaking.

5.2. The assessment of performance should be set in a multi-year framework in order to ensure that the assessment process is based on longer term performance and that the actual payment of bonuses is spread over the business cycle of the company.

5.3. The measurement of performance, as a basis for bonus or bonus pools, should include an adjustment for current and future risks related to the underlying performance and should take into account the cost of the capital employed and the liquidity required.

5.4. When determining individual performance, non-financial criteria, such as compliance with internal rules and procedures, as well as compliance with the standards governing the relationship with clients and investors should be taken into account.

6. *Governance*

6.1. The remuneration policy should include measures to avoid conflicts of interest. The procedures for determining remuneration within the financial undertaking should be clear and documented and should be internally transparent.

6.2. The (supervisory) board should determine the remuneration of directors. In addition, the (supervisory) board should establish the general principles of the remuneration policy of the financial undertaking and be responsible for its implementation.

6.3. Control functions and, where appropriate, human resources departments and external experts should also be involved in the design of the remuneration policy.

6.4. Members of the (supervisory) board responsible for remuneration policy and members of the remuneration committees and staff members who are involved in the design and implementation of the remuneration policy should have relevant expertise and functional independence from the business units they control and thus be capable of forming an independent judgement on the suitability of the remuneration policy, including the implications for risk and risk management.

6.5. Without prejudice to the overall responsibility of the (supervisory) board as set out in point 6.2, the implementation of the remuneration policy should, at least on an annual basis, be subject to central and independent internal review by control functions for compliance with policies and procedures defined by the (supervisory) board. The control functions should report on the outcome of this review to the (supervisory) board.

6.6. Staff members engaged in control processes should be independent from the business units they oversee, have appropriate authority, and be compensated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control. In particular, with regard to insurance or reinsurance undertakings, the actuarial function and the responsible actuary should be remunerated in a manner commensurate with her or his role in the insurance or reinsurance undertaking and not in relation to the performance of the undertaking concerned.

6.7. The general principles of the remuneration policy should be accessible to staff members to whom they apply. Those staff members should be informed in advance of the criteria that will be used to determine their remuneration and of the appraisal process. The appraisal process and the remuneration policy should be properly documented and transparent to the individual staff members concerned.

SECTION III

Disclosure

7. Without prejudice to confidentiality and data protection provisions, relevant information on the remuneration policy referred to in section II and any updates in case of policy changes should be disclosed by the financial undertaking in a clear and easily understandable way to relevant stakeholders. Such disclosure may take the form of an independent remuneration policy statement, a periodic disclosure in annual financial statements or any other form.

8. The following information should be disclosed:

(a) information concerning the decision-making process used for determining the remuneration policy, including if applicable, information about the composition and the mandate of a remuneration committee, the name of the external consultant whose services have been used for the determination of the remuneration policy and the role of the relevant stakeholders;

(b) information on linkage between pay and performance;

(c) information on the criteria used for performance measurement and the risk adjustment;

(d) information on the performance criteria on which the entitlement to shares, options or variable components of remuneration is based;

(e) the main parameters and rationale for any annual bonus scheme and any other non-cash benefits.

9. When determining the level of the information which should be disclosed, Member States should take into account the nature, the size as well as the specific scope of activities of the financial undertakings concerned.

SECTION IV

Supervision

10. Member States should ensure that competent authorities take into account the size of the financial undertaking and the nature and the complexity of its activities when monitoring whether the principles contained in sections II and III are followed.

11. Member States should ensure that financial undertakings are in a position to communicate the remuneration policy covered by this Recommendation to their competent authorities, including an indication of compliance with the principles set out in this Recommendation, in the form of a remuneration policy statement subject to appropriate updates.

12. Member States should ensure that competent authorities may request and have access to all information they need to evaluate the extent to which the principles contained in sections II and III are followed.

SECTION V

Final provisions

13. Member States are invited to take the necessary measures to promote the application of this Recommendation by 31 December 2009 and to notify the Commission of the measures taken in accordance with this Recommendation, in order to enable the Commission to monitor closely the situation and, on that basis, to assess the need for further measures.

14. This Recommendation is addressed to the Member States.

Done at Brussels, 30 April 2009.

For the Commission
Siim KALLAS
Vice-President

COMMISSION RECOMMENDATION

of 30 April 2009

complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies

(Text with EEA relevance)

(2009/385/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Whereas:

(1) On 14 December 2004, the Commission adopted Recommendation 2004/913/EC fostering an appropriate regime for the remuneration of directors of listed companies [1] and on 15 February 2005 the Commission adopted Recommendation 2005/162/EC on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board [2]. The main objectives of those Recommendations are to ensure transparency of remuneration practices, shareholder control on the remuneration policy and individual remuneration through disclosure and the introduction of a mandatory or advisory vote on the remuneration statement and shareholder approval for share-based remuneration schemes, effective and independent non-executive supervision and at least an advisory role of the remuneration committee with regard to remuneration practices.

(2) It follows from those Recommendations that the Commission should monitor the situation, including implementation and application of the principles included in those Recommendations, and assess the need for further measures. Moreover, experience over the last years, and more recently in relation to the financial crisis, has shown that remuneration structures have become increasingly complex, too focused on short-term achievements and in some cases led to excessive remuneration, which was not justified by performance.

(3) Whilst the form, structure and level of directors' remuneration continue to be matters primarily falling within the competence of companies, their shareholders and, where applicable, employee representatives, the Commission considers that there is a need for additional principles regarding the structure of directors' remuneration, as set out in a company's remuneration policy and the process of determining remuneration and control on that process.

(4) This Recommendation is without prejudice to the rights, where applicable, of social partners in collective bargaining.

(5) The existing regime for the remuneration of directors of listed companies should be strengthened by principles which are complementary to those contained in Recommendations 2004/913/EC and 2005/162/EC.

(6) The structure of directors' remuneration should promote the long-term sustainability of the company and ensure that remuneration is based on performance. Variable components of remuneration should therefore be linked to predetermined and measurable performance criteria, including criteria of a non-financial nature. Limits should be set on the variable components of remuneration. Significant variable components of remuneration should be deferred for a certain period, for example, three to five years, subject to performance conditions. Further, companies should be able to reclaim variable components of remuneration that were paid on the basis of data, which proved to be manifestly misstated.

(7) It is necessary to ensure that termination payments, so-called 'golden parachutes', are not a reward for failure and that the primary purpose of termination payments as a safety net in case of early termination of the contract is respected. To that purpose, termination payments should be limited to a certain amount or duration beforehand, which, in general, should not be more than two years' annual remuneration (on the basis of only the non-variable component of the annual remuneration) and not be paid if the termination is due to inadequate performance or if a director leaves on his own account. This does not preclude termination payments in situations of early termination of the contract, due to changes in the strategy of the company or in merger and/or takeover situations.

[1] OJ L 385, 29.12.2004, p. 55.
[2] OJ L 52, 25.2.2005, p. 51.

(8) Schemes under which directors are remunerated in shares, share options or any other right to acquire shares or be remunerated on the basis of share price movements should be better linked to performance and long-term value creation of the company. Therefore, an appropriate vesting period should apply to shares, whereby vesting is made subject to performance conditions. Share options and rights to acquire shares or be remunerated on the basis of share price movements should be not be exercisable during an appropriate period and the right to exercise them should be made subject to performance conditions. In order to further prevent conflicts of interest of directors who hold shares in the company, these directors should be obliged to retain a part of their shares until the end of their mandate.

(9) In order to facilitate the shareholders' assessment of the company's approach to remuneration and strengthen the company's accountability towards its shareholders, the remuneration statement should be clear and easily understandable. Moreover, further disclosure of information relating to the structure of remuneration is necessary.

(10) In order to increase accountability, shareholders should be encouraged to attend general meetings and make considered use of their voting rights. In particular, institutional shareholders should take a leading role in the context of ensuring increased accountability of boards with regard to remuneration issues.

(11) Remuneration committees, as referred to in Recommendation 2005/162/EC, fulfil an important role in designing a company's remuneration policy, preventing conflicts of interests and supervising the (managing) board's behaviour in the context of remuneration. To strengthen the role of those committees, at least one member thereof should have expertise in the field of remuneration.

(12) Remuneration consultants may have conflicting interests, for instance when they advise the remuneration committee on remuneration practices and arrangements, and at the same time advise the company or the executive or managing director(s). It is appropriate for remuneration committees to exercise caution when hiring remuneration consultants in order to ensure that the same consultants do not advise the human resources department of the company or executive or managing directors at the same time.

(13) In view of the importance of the question of remuneration of directors and in order to enhance the effective application of the Community framework on directors' remuneration, the Commission intends to make extended use of different monitoring mechanisms, such as annual scoreboards and mutual evaluation by Member States. Moreover, the Commission intends to explore the possibilities of standardising disclosure of directors' remuneration policy.

(14) The notification of measures by Member States in accordance with this Recommendation should include a clear time-frame for companies to adopt remuneration policies consistent with the principles set out in this Recommendation,

HEREBY RECOMMENDS:

SECTION I

Scope and definitions

1. *Scope*

1.1. The scope of section II of this Recommendation corresponds to that of Recommendation 2004/913/EC.

The scope of section III of this Recommendation corresponds to that of Recommendation 2005/162/EC.

1.2. Member States should take all appropriate measures to ensure that listed companies, to which Recommendations 2004/913/EC and 2005/162/EC are applicable, have regard to this Recommendation.

2. *Definitions in addition to those laid down in Recommendations 2004/913/EC and 2005/162/EC*

2.1. 'Variable components of remuneration' means components of directors' remuneration entitlement which are awarded on the basis of performance criteria, including bonuses.

2.2. 'Termination payments' means any payment linked to early termination of contracts for executive or managing directors, including payments related to the duration of a notice period or a non-competition clause included in the contract.

SECTION II

Remuneration policy

(section II of Recommendation 2004/913/EC)

3. *Structure of the policy on directors' remuneration*

3.1. Where the remuneration policy includes variable components of remuneration, companies should set limits on the variable component(s). The non-variable component of remuneration should be sufficient to allow the company to withhold variable components of remuneration when performance criteria are not met.

3.2. Award of variable components of remuneration should be subject to predetermined and measurable performance criteria.

Performance criteria should promote the long-term sustainability of the company and include non-financial criteria that are relevant to the company's long-term value creation, such as compliance with applicable rules and procedures.

3.3. Where a variable component of remuneration is awarded, a major part of the variable component should be deferred for a minimum period of time. The part of the variable component subject to deferment should be determined in relation to the relative weight of the variable component compared to the non-variable component of remuneration.

3.4. Contractual arrangements with executive or managing directors should include provisions that permit the company to reclaim variable components of remuneration that were awarded on the basis of data which subsequently proved to be manifestly misstated.

3.5. Termination payments should not exceed a fixed amount or fixed number of years of annual remuneration, which should, in general, not be higher than two years of the non-variable component of remuneration or the equivalent thereof.

Termination payments should not be paid if the termination is due to inadequate performance.

4. *Share-based remuneration*

4.1. Shares should not vest for at least three years after their award.

Share options or any other right to acquire shares or to be remunerated on the basis of share price movements should not be exercisable for at least three years after their award.

4.2. Vesting of shares and the right to exercise share options or any other right to acquire shares or to be remunerated on the basis of share price movements, should be subject to predetermined and measurable performance criteria.

4.3. After vesting, directors should retain a number of shares, until the end of their mandate, subject to the need to finance any costs related to acquisition of the shares. The number of shares to be retained should be fixed, for example, twice the value of total annual remuneration (the non-variable plus the variable components).

4.4. Remuneration of non-executive or supervisory directors should not include share options.

5. *Disclosure of the policy on directors' remuneration*

5.1. The remuneration statement, mentioned in point 3.1 of Recommendation 2004/913/EC, should be clear and easily understandable.

5.2. In addition to the information set out in point 3.3 of Recommendation 2004/913/EC, the remuneration statement should include the following:

(a) an explanation how the choice of performance criteria contributes to the long-term interests of the company, in accordance with point 3.2 of this Recommendation;

(b) an explanation of the methods, applied in order to determine whether performance criteria have been fulfilled;

(c) sufficient information on deferment periods with regard to variable components of remuneration, as referred to in point 3.3 of this Recommendation;

(d) sufficient information on the policy regarding termination payments, as referred to in point 3.4 of this Recommendation;

(e) sufficient information with regard to vesting periods for share-based remuneration, as referred to in point 4.1 of this Recommendation;

(f) sufficient information on the policy regarding retention of shares after vesting, as referred to in point 4.3 of this Recommendation;

(g) sufficient information on the composition of peer groups of companies the remuneration policy of which has been examined in relation to the establishment of the remuneration policy of the company concerned.

6. *Shareholders' vote*

6.1. Shareholders, in particular institutional shareholders, should be encouraged to attend general meetings where appropriate and make considered use of their votes regarding directors' remuneration, while taking into account the principles included in this Recommendation, Recommendation 2004/913/EC and Recommendation 2005/162/EC.

SECTION III

The remuneration committee

(point 3 of Annex I to Recommendation 2005/162/EC)

7. *Creation and composition*

7.1. At least one of the members of the remuneration committee should have knowledge of and experience in the field of remuneration policy.

8. *Role*

8.1. The remuneration committee should periodically review the remuneration policy for executive or managing directors, including the policy regarding share-based remuneration, and its implementation.

9. *Operation*

9.1. The remuneration committee should exercise independent judgement and integrity when exercising its functions.

9.2. When using the services of a consultant with a view to obtaining information on market standards for remuneration systems, the remuneration committee should ensure that the consultant concerned does not at the same time advise the human resources department or executive or managing directors of the company concerned.

9.3. In exercising its functions, the remuneration committee should ensure that remuneration of individual executive or managing directors is proportionate to the remuneration of other executive or managing directors and other staff members of the company.

9.4. The remuneration committee should report on the exercise of its functions to the shareholders and be present at the annual general meeting for this purpose.

SECTION VI

Final provisions

10. Member States are invited to take the necessary measures to promote the application of this Recommendation by 31 December 2009.

In this respect, Member States are invited to organise national consultations with stakeholders on this Recommendation and to notify the Commission of measures taken in accordance with this Recommendation in order to allow the Commission to monitor closely the situation, and on this basis assess the need for further measures.

11. This Recommendation is addressed to the Member States.

Done at Brussels, 30 April 2009.

For the Commission

Siim KALLAS

Vice-President

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