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Contents

## I Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory

## REGULATIONS

- Commission Regulation (EC) No 1095/2009 of 16 November 2009 establishing the standard import values for determining the entry price of certain fruit and vegetables ..... 1
- ★ **Commission Regulation (EC) No 1096/2009 of 16 November 2009 concerning the authorisation of an enzyme preparation of endo-1,4-beta-xylanase produced by *Aspergillus niger* (CBS 109.713) as a feed additive for chickens for fattening and the authorisation of a new use of this preparation as a feed additive for ducks (holder of authorisation BASF SE) and amending Regulation (EC) No 1458/2005 <sup>(1)</sup>..... 3**
- ★ **Commission Regulation (EC) No 1097/2009 of 16 November 2009 amending Annex II to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for dimethoate, ethephon, fenamiphos, fenarimol, methamidophos, methomyl, omethoate, oxydemeton-methyl, procymidone, thiodicarb and vinclozolin in or on certain products <sup>(1)</sup> ..... 6**
- ★ **Commission Regulation (EC) No 1098/2009 of 16 November 2009 amending Regulation (EC) No 2535/2001 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the import arrangements for milk and milk products and opening tariff quotas ... 23**

Price: EUR 4

<sup>(1)</sup> 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

DECISIONS

**Commission**

2009/837/EC:

- ★ **Commission Decision of 10 December 2008 on Aid Measure C 11/08 (ex N 908/06) planned by Poland in favour of BVG Medien Beteiligungs GmbH** (notified under document C(2008) 7813) <sup>(1)</sup> 26

2009/838/EC:

- ★ **Commission Decision of 17 June 2009 on the State aid C 33/08 (ex N 732/07) to Volvo Aero Corporation for R & D, which Sweden intends to implement** (notified under document C(2009) 4542) <sup>(1)</sup>..... 41

2009/839/EC:

- ★ **Commission Decision of 13 November 2009 amending Decision 2004/4/EC authorising Member States temporarily to take emergency measures against the dissemination of *Pseudomonas solanacearum* (Smith) Smith as regards Egypt** (notified under document C(2009) 8702).... 52



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

## I

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

## REGULATIONS

## COMMISSION REGULATION (EC) No 1095/2009

of 16 November 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) <sup>(1)</sup>,

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 <sup>(2)</sup>, 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 17 November 2009.

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

Done at Brussels, 16 November 2009.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

<sup>(2)</sup> 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 <sup>(1)</sup>	Standard import value
0702 00 00	MA	32,0
	MK	38,6
	TR	58,8
	ZZ	43,1
0707 00 05	EG	171,8
	JO	161,3
	MA	69,5
	TR	96,9
	ZZ	124,9
0709 90 70	MA	67,9
	TR	113,4
	ZZ	90,7
0805 20 10	MA	79,8
	ZA	117,3
	ZZ	98,6
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	52,3
	HR	64,7
	MA	58,8
	TR	73,1
	ZZ	62,2
0805 50 10	AR	55,7
	TR	73,1
	ZA	72,0
	ZZ	66,9
0806 10 10	AR	196,3
	BR	249,9
	LB	279,3
	TR	125,5
	US	288,8
	ZZ	228,0
0808 10 80	AU	171,8
	CA	69,4
	NZ	100,7
	US	91,0
	ZA	89,8
	ZZ	104,5
0808 20 50	CN	62,9
	TR	84,0
	US	72,0
	ZZ	73,0

<sup>(1)</sup> 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 1096/2009

of 16 November 2009

concerning the authorisation of an enzyme preparation of endo-1,4-beta-xylanase produced by *Aspergillus niger* (CBS 109.713) as a feed additive for chickens for fattening and the authorisation of a new use of this preparation as a feed additive for ducks (holder of authorisation BASF SE) and amending Regulation (EC) No 1458/2005

(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<sup>(1)</sup> 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. Article 10 of that Regulation provides for the re-evaluation of additives authorised pursuant to Council Directive 70/524/EEC<sup>(2)</sup>.

(2) An enzyme preparation of endo-1,4-beta-xylanase produced by *Aspergillus niger* (CBS 109.713) was provisionally authorised in accordance with Directive 70/524/EEC as a feed additive for use on chickens for fattening by Commission Regulation (EC) No 1458/2005<sup>(3)</sup>. That additive was subsequently entered in the Community Register of feed additives as an existing product, in accordance with Article 10(1) of Regulation (EC) No 1831/2003.

(3) In accordance with Article 10(2) of Regulation (EC) No 1831/2003 in conjunction with Article 7 of that Regulation, an application was submitted for the re-evaluation of that additive and, in accordance with Article 7 of that Regulation, for a new use on ducks, requesting that additive to be classified in the additive category 'zootechnical additives'. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.

(4) The use of that preparation was authorised for ten years by Commission Regulation (EC) No 1380/2007<sup>(4)</sup> for turkeys for fattening.

(5) From the opinion of the European Food Safety Authority (the Authority) of 17 June 2009<sup>(5)</sup> it results that the enzyme preparation of endo-1,4-beta-xylanase produced by *Aspergillus niger* (CBS 109.713) does not have an adverse effect on animal health, human health or the environment. The Authority concluded that the use of that preparation is safe for chickens for fattening and ducks and can significantly improve their weight gain and/or feed to gain ratio. 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.

(6) 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.

(7) As a consequence of the granting of a new authorisation under Regulation (EC) No 1831/2003, the provisions on that preparation in Regulation (EC) No 1458/2005 should be deleted.

(8) 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 'zootechnical additives' and to the functional group 'digestibility enhancers', is authorised as an additive in animal nutrition subject to the conditions laid down in that Annex.

*Article 2*

In Annex II to Regulation (EC) No 1458/2005, the row concerning enzyme No 62, endo-1,4-beta-xylanase EC 3.2.1.8, is deleted.

<sup>(1)</sup> OJ L 268, 18.10.2003, p. 29.

<sup>(2)</sup> OJ L 270, 14.12.1970, p. 1.

<sup>(3)</sup> OJ L 233, 9.9.2005, p. 3.

<sup>(4)</sup> OJ L 309, 27.11.2007, p. 21.

<sup>(5)</sup> *The EFSA Journal* (2009) 1155, p. 1.

*Article 3*

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, 16 November 2009.

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

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## 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
						Units of activity/kg of complete feedingstuff with a moisture content of 12 %			
<b>Category of zootechnical additives. Functional group: digestibility enhancers.</b>									
4a62	BASF SE	Endo-1,4-beta-xylanase EC 3.2.1.8	Additive composition: Preparation of endo-1,4-beta-xylanase produced by <i>Aspergillus niger</i> (CBS 109.713) having a minimum activity of: Solid form: 5 600 TXU <sup>(1)</sup> /g Liquid form: 5 600 TXU/ml  Characterisation of the active substance: Endo-1,4-beta-xylanase produced by <i>Aspergillus niger</i> (CBS 109.713) Analytical method <sup>(2)</sup> Viscosimetric method based on decrease of viscosity produced by action of endo-1,4-beta-xylanase on the xylan-containing substrate (wheat arabinoxylan) at pH 3,5 and 55 °C	Chickens for fattening	—	560 TXU		1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting. 2. Recommended dose per kilogram of complete feedingstuff: — chickens for fattening: 560—800 TXU, — ducks: 560—800 TXU. 3. For use in feed rich in non-starch polysaccharides (mainly beta-glucans and arabinoxylans), e.g. containing more than 40 % wheat.	7.12.2019
				Ducks		560 TXU			

<sup>(1)</sup> 1 TXU is the amount of enzyme which liberates 5 micromole of reducing sugars (xylose equivalents) from wheat arabinoxylan per minute at pH 3,5 and 55 °C.

<sup>(2)</sup> Details of the analytical methods are available at the following address of the Community Reference Laboratory: [www.irmm.jrc.be/crl-feed-additives](http://www.irmm.jrc.be/crl-feed-additives)

## COMMISSION REGULATION (EC) No 1097/2009

of 16 November 2009

**amending Annex II to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for dimethoate, ethephon, fenamiphos, fenarimol, methamidophos, methomyl, omethoate, oxydemeton-methyl, procymidone, thiodicarb and vinclozolin in or on certain products**

(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 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC <sup>(1)</sup>, and in particular Article 14(1)(a), in conjunction with Article 15(1)(a), and Article 49 (2) thereof,

Whereas:

- (1) For dimethoate, ethephon, fenamiphos, fenarimol, methamidophos, methomyl, omethoate, oxydemeton-methyl, procymidone, thiodicarb and vinclozolin maximum residue levels (MRLs) are set in Annex II to Regulation (EC) No 396/2005.
- (2) New information on the toxicology, consumer exposure or the expected pesticide residues has become available which indicates that the MRLs may raise concerns of consumer protection.
- (3) In its opinion of 20 October 2008 <sup>(2)</sup> concerning dimethoate and omethoate the Authority concluded in particular that at the current MRLs for head cabbage, lettuce, cauliflower, cherries, wheat, peas with pods and Brussels sprouts there is a risk that the Acceptable Daily Intake and the Acute Reference Dose (ARfD) for one or more consumer groups will be exceeded. Therefore the current MRLs for these crops should be lowered.
- (4) In its opinion of 15 September 2008 <sup>(3)</sup> concerning ethephon the Authority concluded that at the current MRLs for pineapples, currants, grapes and peppers

there is a risk that the Acute Reference Dose (ARfD) for one or more consumer groups will be exceeded. Therefore the current MRLs for these crops should be lowered.

- (5) In its opinion of 15 September 2008 <sup>(4)</sup> concerning fenamiphos the Authority concluded that at the current MRLs for bananas, carrots, peppers, cucumbers, melons, head cabbage, and sugar beet there is a risk that the Acceptable Daily Intake and the Acute Reference Dose (ARfD) for one or more consumer groups will be exceeded. Therefore the current MRLs for these crops should be lowered.
- (6) In its opinion of 15 September 2008 <sup>(5)</sup> concerning fenarimol the Authority concluded that at the current MRLs for bananas, tomatoes and peppers there is a risk that the Acute Reference Dose (ARfD) for one or more consumer groups will be exceeded. Therefore the current MRLs for these crops should be lowered.
- (7) In its opinion of 15 September 2008 <sup>(6)</sup> concerning methamidophos the Authority concluded that at the current MRLs for apricots, beans with pods and sugar beet there is a risk that the Acute Reference Dose (ARfD) for one or more consumer groups will be exceeded. Therefore the current MRLs for these crops should be lowered.
- (8) In its opinion of 26 September 2008 <sup>(7)</sup> concerning methomyl and thiodicarb the Authority concluded that at the current MRLs for grapes, head cabbage, lettuce, cauliflower, potatoes, tomatoes, aubergines, cucumbers, grapefruit, oranges, lemons, limes, mandarins, peaches, plums, peppers, apples, pears, quinces, bananas, mangoes, pineapples, carrots, celeriac, radishes, swedes, (water) melons, pumpkins, sweet corn, broccoli, kale, kohlrabi, scarole, leek and sugar beet there is a risk that the Acceptable Daily Intake and the Acute Reference Dose (ARfD) for one or more consumer groups will be exceeded. Therefore the current MRLs for these crops should be lowered.

<sup>(1)</sup> OJ L 70, 16.3.2005, p. 1.

<sup>(2)</sup> EFSA scientific report (2008) 172.

<sup>(3)</sup> EFSA scientific report (2008) 159.

<sup>(4)</sup> EFSA scientific report (2008) 160.

<sup>(5)</sup> EFSA scientific report (2008) 161.

<sup>(6)</sup> EFSA scientific report (2008) 162.

<sup>(7)</sup> EFSA scientific report (2008) 173.



- (9) In its opinion of 16 September 2008 <sup>(1)</sup> concerning oxydemeton-methyl the Authority concluded that at the current MRLs for brussels sprouts, head cabbage, kohlrabi, lettuce and other salad plants including brassica, barley, oats and sugar beet there is a risk that the Acceptable Daily Intake and the Acute Reference Dose (ARfD) for one or more consumer groups will be exceeded. The Authority also concluded that the lowest limit of analytical determination (LOD) could technically be lowered and that by lowering it the control would be improved. Therefore the current MRLs for brussels sprouts, head cabbage, kohlrabi, lettuce and other salad plants including brassica, barley, oats, sugar beet and the LODs for all other crops should be lowered.
- (10) In its opinion of 21 January 2009 <sup>(2)</sup> concerning procymidone the Authority concluded that at the current MRLs for apricots, grapes, strawberries, raspberries, kiwi, (lamb's) lettuce, tomatoes, peppers, aubergines, cucumbers, gherkins, courgette, peaches, plums, pears, (water) melons, pumpkins, scarole, rucicola, witloof, beans with pods, sunflower seed, rapeseed, soya bean and products of animal origin there is a risk that the Acceptable Daily Intake and the Acute Reference Dose (ARfD) for one or more consumer groups will be exceeded. Therefore the current MRLs for these crops should be lowered.
- (11) In its opinion of 16 September 2008 <sup>(3)</sup> concerning vinclozolin the Authority concluded that at the current MRLs for apples, pears, table grapes, scarole, aubergine, Chinese cabbage, plums, apricots, lettuce, currants, witloof, strawberries, beans, hops, rape seed, carrots, shallots, spring onions, pumpkin, okra, cress, rocket and other salad plants and (water) melons there is a risk that the Acceptable Daily Intake and the Acute Reference Dose (ARfD) for one or more consumer groups will be exceeded. Therefore the current MRLs for these crops should be lowered.
- (12) It is appropriate to set new MRLs taking account of the opinions of the Authority. These new MRLs recommended by the Authority, are based on existing authorised agricultural uses that lead to lower residues or, when these do not exist, on the LOD. For ethephon on pineapples, this Regulation establishes an MRL that was not recommended by the Authority, but which was indicated as safe in the reasoned opinion of the Authority.
- (13) Through the World Trade Organisation, the Community's trading partners have been consulted about the new MRLs and their comments on these levels have been taken into account.
- (14) A reasonable period should be allowed to elapse before the modified MRLs become applicable in order to permit Member States and interested parties to prepare themselves to meet the new requirements which will result from the modification of the MRLs.
- (15) Annex II to Regulation (EC) No 396/2005 should therefore be amended accordingly.
- (16) In order to allow for the normal marketing, processing and consumption of products, the Regulation provides for a transitional arrangement for products which have been lawfully produced before the modification of the MRLs and for which the EFSA opinions show that a high level of consumer protection is maintained.
- (17) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health and neither the European Parliament nor the Council has opposed them,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex II to Regulation (EC) No 396/2005 is amended in accordance with the Annex to this Regulation.

*Article 2*

As regards the active substances and the products set out in the following list, Regulation (EC) No 396/2005 as it stood before being amended by this Regulation shall continue to apply to products which were produced before 7 June 2010:

- (a) dimethoate: cherry juice, wheat after storage, frozen peas with pods;
- (b) ethephon: preserved pineapples, pineapple juice, preserved peppers;
- (c) fenarimol: tomato juice, preserved tomatoes, preserved peppers;
- (d) methamidophos: apricot juice, preserved apricots, and frozen beans with pods;

<sup>(1)</sup> EFSA scientific report (2008) 227.

<sup>(2)</sup> EFSA scientific report (2008) 163.

<sup>(3)</sup> EFSA scientific report (2008) 166.

- (e) methomyl/thiodicarb: raisins and preserved peach;
- (f) oxydemeton-methyl: oilseeds, cereals, milk powder, tea, wine, juices, preserved, frozen and dried fruit and vegetables, nuts;
- (g) procymidone: oilseeds, preserved peaches, tomatoes, orange juice and raisins;
- (h) vinclozolin: raspberry juice, apple juice, quince jelly, pear juice, preserved apricots, apricot juice.

*Article 3*

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

It shall apply from 7 June 2010.

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

Done at Brussels, 16 November 2009.

*For the Commission*  
Androulla VASSILOU  
*Member of the Commission*

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## ANNEX

Annex II to Regulation (EC) No 396/2005 is amended as follows:

The lines for dimethoate, ethephon, fenamiphos, fenarimol, methamidophos, methomyl, omethoate, oxydemeton-methyl, procymidone, thiodicarb, and vinclozolin are replaced by the following:

**Pesticide residues and maximum residue levels (mg/kg)**

Code number	Groups and examples of individual products to which the MRLs apply <sup>(a)</sup>	Dimethoate (sum of dimethoate and omethoate expressed as dimethoate)	Ethephon	Fenamiphos (sum of fenamiphos and its sulphoxide and sulphone expressed as fenamiphos)	Fenarimol	Methamidophos	Methomyl and Thiodicarb (sum of methomyl and thiodicarb expressed as methomyl)	Oxydemeton-methyl (sum of oxydemeton-methyl and demeton-S-methylsulfone expressed as oxydemeton-methyl)	Procymidone <sup>(b)</sup>	Vinclozolin (sum of vinclozolin and all metabolites containing the 3,5-dichloraminiminoethoxy, expressed as vinclozolin) <sup>(c)</sup>
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
0100000	<b>1. FRUIT FRESH OR FROZEN; NUTS</b>							<b>0,01 (*)</b>	<b>0,02 (*)</b>	
0110000	(i) <b>Citrus fruit</b>	0,02 (*)	0,05 (*)	0,02 (*)	0,02 (*)	0,01 (*)	<b>0,02 (*)</b>			0,05 (*)
0110010	Grapefruit (Shaddocks, pomelos, sweeties, tangelo, ugli and other hybrids)									
0110020	Oranges (Bergamot, bitter orange, chinotto and other hybrids)									
0110030	Lemons (Citron, lemon)									
0110040	Limes									
0110050	Mandarins (Clementine, tangerine and other hybrids)									
0110990	Others									
0120000	(ii) <b>Tree nuts (shelled or unshelled)</b>	0,05 (*)	0,1	0,02 (*)	0,02 (*)	0,01 (*)	<b>0,02 (*)</b>			0,05 (*)
0120010	Almonds									
0120020	Brazil nuts									
0120030	Cashew nuts									
0120040	Chestnuts									
0120050	Coconuts									
0120060	Hazelnuts (Filbert)									

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
0120070	Macadamia									
0120080	Pecans									
0120090	Pine nuts									
0120100	Pistachios									
0120110	Walnuts									
0120990	Others									
0130000	(iii) <b>Pome fruit</b>	0,02 (*)		0,02 (*)	0,3	0,01 (*)				
0130010	Apples (Crab apple)		0,5				<b>0,02 (*)</b>			<b>0,05 (*)</b>
0130020	Pears (Oriental pear)		0,05 (*)				<b>0,02 (*)</b>			<b>0,05 (*)</b>
0130030	Quinces		0,05 (*)				<b>0,02 (*)</b>			1
0130040	Medlar	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0130050	Loquat	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0130990	Others		0,05 (*)				0,2			<b>0,05 (*)</b>
0140000	(iv) <b>Stone fruit</b>			0,02 (*)						
0140010	Apricots	0,02 (*)	0,05 (*)		0,5	<b>0,01 (*)</b>	<b>0,02 (*)</b>			<b>0,05 (*)</b>
0140020	Cherries (sweet cherries, sourcherries)	<b>0,2 (+)</b>	3		1	0,01 (*)	0,1			0,5
0140030	Peaches (Nectarines and similar hybrids)	0,02 (*)	0,05 (*)		0,5	0,05	<b>0,02 (*)</b>			0,05 (*)
0140040	Plums (Damson, greengage, mirabelle)	0,02 (*)	0,05 (*)		0,02 (*)	0,01 (*)	<b>0,02 (*)</b>			<b>0,05 (*)</b>
0140990	Others	0,02 (*)	0,05 (*)		0,02 (*)	0,01 (*)	<b>0,02 (*)</b>			0,05 (*)
0150000	(v) <b>Berries &amp; small fruit</b>	0,02 (*)		0,02 (*)		0,01 (*)				
0151000	(a) <i>Table and wine grapes</i>				0,3					
0151010	Table grapes		<b>0,05 (*)</b>		0,3		<b>0,02 (*)</b>			<b>0,05 (*)</b>
0151020	Wine grapes		1 (+)		0,3		<b>0,5</b>			5
0152000	(b) <i>Strawberries</i>		0,05 (*)		0,3		<b>0,02 (*)</b>			<b>0,05 (*)</b>
0153000	(c) <i>Cane fruit</i>		0,05 (*)				<b>0,02 (*)</b>			
0153010	Blackberries				0,02 (*)					5
0153020	Dewberries (Loganberries, Boysenberries, and cloudberries)				0,02 (*)					5
0153030	Raspberries (Wineberries)				0,1					5
0153990	Others				0,02 (*)					<b>0,05 (*)</b>

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
0154000	(d) <i>Other smallfruit &amp; berries</i>		0,05 (*)				<b>0,02 (*)</b>			<b>0,05 (*)</b>
0154010	Blueberries (Bilberries cowberries (red bilberries))		0,05 (*)		0,02 (*)					
0154020	Cranberries		0,05 (*)		0,02 (*)					
0154030	Currants (red, black and white)		<b>0,05 (*)</b>		1					
0154040	Gooseberries (Including hybridswith other ribes species)		0,05 (*)		1					
0154050	Rose hips	(**)	(**)	(**)	(**)	(**)		(**)	(**)	(**)
0154060	Mulberries (arbutus berry)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0154070	Azarole (mediteranean medlar)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0154080	Elderberries (Black chokeberry (appleberry), mountain ash, azarole, buckthorn (sea sallowthorn), hawthorn, service berries, and other treeberries)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0154990	Others		0,05 (*)		0,02 (*)					
0160000	(vi) <b>Miscellaneous fruit</b>					0,01 (*)	<b>0,02 (*)</b>			
0161000	(a) <i>Edible peel</i>		0,05 (*)	0,02 (*)	0,02 (*)					0,05 (*)
0161010	Dates	0,02 (*)								
0161020	Figs	0,02 (*)								
0161030	Table olives	2								
0161040	Kumquats (Marumi kumquats, nagami kumquats)	0,02 (*)								
0161050	Carambola (Bilimbi)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0161060	Persimmon	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0161070	Jambolan (java plum) (Java apple (water apple), pomerac, rose apple, Brazilian cherry (grumichama), Surinam cherry)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0161990	Others	0,02 (*)								
0162000	(b) <i>Inedible peel, small</i>	0,02 (*)	0,05 (*)	0,02 (*)	0,02 (*)					
0162010	Kiwi									10
0162020	Lychee (Litchi) (Pulasan, rambutan (hairy litchi))									0,05 (*)
0162030	Passion fruit									0,05 (*)
0162040	Prickly pear (cactus fruit)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0162050	Star apple	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0162060	American persimmon (Virginia kaki) (Black sapote, white sapote, green sapote, canistel (yellow sapote), and mammeiy sapote)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0162990	Others									0,05 (*)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
0163000	(c) <i>Inedible peel, large</i>	0,02 (*)								0,05 (*)
0163010	Avocados		0,05 (*)	0,02 (*)	0,02 (*)					
0163020	Bananas (Dwarf banana, plantain, apple banana)		0,05 (*)	0,05	<b>0,2</b>					
0163030	Mangoes		0,05 (*)	0,02 (*)	0,02 (*)					
0163040	Papaya		0,05 (*)	0,02 (*)	0,02 (*)					
0163050	Pomegranate		0,05 (*)	0,02 (*)	0,02 (*)					
0163060	Cherimoya (Custard apple, sugar apple (sweetsop) , llama and other medium sized Annonaceae)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0163070	Guava	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0163080	Pineapples		<b>0,5 (+)</b>	0,02 (*)	0,02 (*)					
0163090	Bread fruit (Jackfruit)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0163100	Durian	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0163110	Soursop (guanabana)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0163990	Others		0,05 (*)	0,02 (*)	0,02 (*)					
0200000	<b>2. VEGETABLES FRESH OR FROZEN</b>							<b>0,01 (*)</b>		
0210000	(i) <b>Root and tuber vegetables</b>		0,05 (*)	<b>0,02 (*)</b>	0,02 (*)	0,01 (*)	<b>0,02 (*)</b>		<b>0,02 (*)</b>	<b>0,05 (*)</b>
0211000	(a) <i>Potatoes</i>	0,02 (*)								
0212000	(b) <i>Tropical root and tuber vegetables</i>	0,02 (*)								
0212010	Cassava (Dasheen, eddoe (Japanese taro), tannia)									
0212020	Sweet potatoes									
0212030	Yams (Potato bean (yam bean), Mexican yam bean)									
0212040	Arrowroot	(**)	(**)	(**)	(**)	(**)	(**)		(**)	(**)
0212990	Others									
0213000	(c) <i>Other root and tuber vegetables except sugar beet</i>									
0213010	Beetroot	0,02 (*)								
0213020	Carrots	0,02 (*)								
0213030	Celeriac	0,1								
0213040	Horseradish	0,02 (*)								
0213050	Jerusalem artichokes	0,02 (*)								
0213060	Parsnips	0,02 (*)								
0213070	Parsley root	0,02 (*)								

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
0213080	Radishes (Black radish, Japanese radish, small radish and similar varieties)	0,02 (*)								
0213090	Salsify (Scorzonera, Spanish salsify (Spanish oysterplant))	0,02 (*)								
0213100	Swedes	0,02 (*)								
0213110	Turnips	0,02 (*)								
0213990	Others	0,02 (*)								
0220000	(ii) <b>Bulb vegetables</b>		0,05 (*)	0,02 (*)	0,02 (*)	0,01 (*)	<b>0,02 (*)</b>			
0220010	Garlic	0,02 (*)							<b>0,2</b>	1
0220020	Onions (Silverskin onions)	0,02 (*)							<b>0,2</b>	1
0220030	Shallots	0,02 (*)							<b>0,2</b>	<b>0,05 (*)</b>
0220040	Spring onions (Welsh onion and similar varieties)	2							<b>0,02 (*)</b>	<b>0,05 (*)</b>
0220990	Others	0,02 (*)							<b>0,02 (*)</b>	<b>0,05 (*)</b>
0230000	(iii) <b>Fruiting vegetables</b>	0,02 (*)				0,01 (*)	<b>0,02 (*)</b>			
0231000	(a) <i>Solanacea</i>				<b>0,02 (*)</b>					<b>0,05 (*)</b>
0231010	Tomatoes (Cherry tomatoes)		1	0,05					<b>0,02 (*)</b>	
0231020	Peppers (Chilli peppers)		0,05 (*)	<b>0,05</b>					<b>0,02 (*)</b>	
0231030	Aubergines (egg plants) (Pepino)		0,05 (*)	0,05					<b>0,02 (*)</b>	
0231040	Okra, lady's fingers		0,05 (*)	0,02 (*)					<b>2</b>	
0231990	Others		0,05 (*)	0,02 (*)					<b>0,02 (*)</b>	
0232000	(b) <i>Cucurbits — edible peel</i>		0,05 (*)		0,2				<b>0,02 (*)</b>	1
0232010	Cucumbers			<b>0,02 (*)</b>						
0232020	Gherkins			0,02 (*)						
0232030	Courgettes (Summer squash, marrow (patisson))			0,05						
0232990	Others			0,02 (*)						
0233000	(c) <i>Cucurbits — inedible peel</i>		0,05 (*)		0,05				<b>0,02 (*)</b>	0,05 (*)
0233010	Melons (Kiwano)			<b>0,02 (+)</b>						
0233020	Pumpkins (Winter squash)			0,02 (*)						
0233030	Watermelons			0,05						
0233990	Others			0,02 (*)						

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
0234000	(d) <i>Sweet corn</i>		0,05 (*)	0,02 (*)	0,02 (*)				<b>0,02 (*)</b>	0,05 (*)
0239000	(e) <i>Other fruiting vegetables</i>		0,05 (*)	0,02 (*)	0,02 (*)				<b>0,02 (*)</b>	0,05 (*)
0240000	(iv) <b>Brassica vegetables</b>	0,02 (*)	0,05 (*)		0,02 (*)				<b>0,02 (*)</b>	<b>0,05 (*)</b>
0241000	(a) <i>Flowering brassica</i>			0,02 (*)		0,02	<b>0,02 (*)</b>			
0241010	Broccoli (Calabrese, Chinese broccoli, Broccoli raab)									
0241020	Cauliflower									
0241990	Others									
0242000	(b) <i>Head brassica</i>					0,01 (*)				
0242010	Brussels sprouts			0,05			0,05			
0242020	Head cabbage (Pointed head cabbage, red cabbage, savoy cabbage, white cabbage)			<b>0,02 (*)</b>			<b>0,02 (*)</b>			
0242990	Others			0,02 (*)			<b>0,02 (*)</b>			
0243000	(c) <i>Leafy brassica</i>			0,02 (*)		0,01 (*)	<b>0,02 (*)</b>			
0243010	Chinese cabbage (Indian (Chinese) mustard, pak choi, Chinese flat cabbage (tai goo choi), peking cabbage (pe-tsai), cow cabbage)									
0243020	Kale (Borecole (curly kale), collards)									
0243990	Others									
0244000	(d) <i>Kohlrabi</i>			0,02 (*)		0,01 (*)	<b>0,02 (*)</b>			
0250000	(v) <b>Leaf vegetables &amp; fresh herbs</b>	0,02 (*)	0,05 (*)	0,02 (*)	0,02 (*)	0,01 (*)				
0251000	(a) <i>Lettuce and other salad plants including Brassicacea</i>	0,02 (*)								0,05 (*)
0251010	Lamb's lettuce (Italian cornsalad)	0,02 (*)					<b>0,02 (*)</b>		<b>0,02 (*)</b>	
0251020	Lettuce (Head lettuce, lollo rosso (cutting lettuce), iceberg lettuce, romaine (cos) lettuce)	0,02 (*)					<b>0,05</b>		<b>0,02 (*)</b>	
0251030	Scarole (broad-leaf endive) (Wild chicory, red-leaved chicory, radicchio, curld leave endive, sugar loaf)	0,02 (*)					<b>0,02 (*)</b>		<b>0,02 (*)</b>	
0251040	Cress	0,02 (*)					<b>0,02 (*)</b>		<b>0,02 (*)</b>	
0251050	Land cress	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0251060	Rocket, Rucola (Wild rocket)	0,02 (*)					<b>0,02 (*)</b>		<b>0,02 (*)</b>	
0251070	Red mustard	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0251080	Leaves and sprouts of Brassica spp (Mizuna)	0,02 (*)					<b>0,02 (*)</b>		<b>5</b>	
0251990	Others	0,02 (*)					<b>0,02 (*)</b>		<b>0,02 (*)</b>	



(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
0252000	(b) <i>Spinach &amp; similar (leaves)</i>	0,02 (*)							<b>0,02</b> (*)	0,05 (*)
0252010	Spinach (New Zealand spinach, turnip greens (turnip tops))	0,02 (*)					<b>0,05</b>			
0252020	Purslane (Winter purslane (miner's lettuce), garden purslane, common purslane, sorrel, glasswort)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0252030	Beet leaves (chard) (Leaves of beetroot)	0,02 (*)					<b>0,02</b> (*)			
0252990	Others	0,02 (*)					<b>0,02</b> (*)			
0253000	(c) <i>Vine leaves (grape leaves)</i>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0254000	(d) <i>Water cress</i>	0,02 (*)					<b>0,02</b> (*)		<b>0,02</b> (*)	0,05 (*)
0255000	(e) <i>Witloof</i>	0,02 (*)					<b>0,02</b> (*)		<b>0,02</b> (*)	<b>0,05</b> (*)
0256000	(f) <i>Herbs</i>	0,02 (*)							<b>0,02</b> (*)	0,05 (*)
0256010	Chervil	0,02 (*)					0,3			
0256020	Chives	0,02 (*)					0,3			
0256030	Celery leaves (fennel leaves, Coriander leaves, dill leaves, Caraway leaves, lovage, angelica, sweet cicely and other Apiacea)	0,02 (*)					0,3			
0256040	Parsley	0,02 (*)					0,3			
0256050	Sage (Winter savory, summer savory)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0256060	Rosemary	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0256070	Thyme (marjoram, oregano)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0256080	Basil (Balm leaves, mint, peppermint)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0256090	Bay leaves (laurel)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0256100	Tarragon (Hyssop)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0256990	Others	0,02 (*)					0,3			
0260000	(vi) <b>Legume vegetables (fresh)</b>	<b>0,02</b> (*)	0,05 (*)	0,02 (*)	0,02 (*)		<b>0,02</b> (*)			
0260010	Beans (with pods) (Green bean (french beans, snap beans), scarlet runner bean, slicing bean, yardlong beans)					<b>0,01</b> (*)			<b>1</b>	<b>0,05</b> (*)
0260020	Beans (without pods) (Broad beans, Flageolet, jack bean, lima bean, cowpea)					0,01 (*)			<b>0,02</b> (*)	0,5
0260030	Peas (with pods) (Mangetout (sugar peas))					0,5			<b>1</b>	<b>0,05</b> (*)
0260040	Peas (without pods) (Garden pea, green pea, chickpea)					0,01 (*)			<b>0,3</b>	<b>0,05</b> (*)
0260050	Lentils					0,01 (*)			<b>0,02</b> (*)	0,05 (*)
0260990	Others					0,01 (*)			<b>0,02</b> (*)	0,05 (*)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
0270000	<b>(vii) Stem vegetables (fresh)</b>	0,02 (*)	0,05 (*)	0,02 (*)	0,02 (*)		<b>0,02 (*)</b>		<b>0,02 (*)</b>	0,05 (*)
0270010	Asparagus					0,01 (*)				
0270020	Cardoons					0,01 (*)				
0270030	Celery					0,01 (*)				
0270040	Fennel					0,01 (*)				
0270050	Globe artichokes					0,1				
0270060	Leek					0,01 (*)				
0270070	Rhubarb					0,01 (*)				
0270080	Bamboo shoots	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0270090	Palm hearts	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0270990	Others					0,01 (*)				
0280000	<b>(viii) Fungi</b>	0,02 (*)	0,05 (*)	0,02 (*)	0,02 (*)	0,01 (*)	<b>0,02 (*)</b>		<b>0,02 (*)</b>	0,05 (*)
0280010	Cultivated (Common mushroom, Oyster mushroom, Shi-take)									
0280020	Wild (Chanterelle, Truffle, Morel)									
0280990	Others									
0290000	<b>(ix) Sea weeds</b>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0300000	<b>3. PULSES, DRY</b>	0,02 (*)	0,05 (*)	0,02 (*)	0,02 (*)	0,01 (*)	<b>0,02 (*)</b>	<b>0,01 (*)</b>		
0300010	Beans (Broad beans, navy beans, flageolets, jack beans, lima beans, field beans, cowpeas)								<b>0,02 (*)</b>	0,5
0300020	Lentils								<b>0,02 (*)</b>	0,05 (*)
0300030	Peas (Chickpeas, field peas, chickling vetch)								<b>0,2 (*)</b>	<b>0,05 (*)</b>
0300040	Lupins								<b>0,02 (*)</b>	0,05 (*)
0300990	Others								<b>0,02 (*)</b>	0,05 (*)
0400000	<b>4. OILSEEDS AND OILFRUITS</b>			0,05 (*)	0,02 (*)			<b>0,01 (*)</b>		<b>0,05 (*)</b>
0401000	<b>(i) Oilseeds</b>	0,05 (*)								
0401010	Linseed		0,1 (*)			0,01 (*)	0,05 (*)		<b>0,02 (*)</b>	
0401020	Peanuts		0,1 (*)			0,01 (*)	0,1		<b>0,02 (*)</b>	
0401030	Poppy seed		0,1 (*)			0,01 (*)	0,05 (*)		<b>0,02 (*)</b>	
0401040	Sesame seed		0,1 (*)			0,01 (*)	0,05 (*)		<b>0,02 (*)</b>	
0401050	Sunflower seed		0,1 (*)			0,01 (*)	0,05 (*)		<b>0,2</b>	
0401060	Rape seed (Bird rapeseed, turnip rape)		0,1 (*)			0,01 (*)	0,05 (*)		<b>0,05</b>	

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
0401070	Soya bean		0,1 (*)			0,2	0,1		<b>0,05</b>	
0401080	Mustard seed		0,1 (*)			0,01 (*)	0,05 (*)		<b>0,02 (*)</b>	
0401090	Cotton seed		2			0,2	0,1		<b>0,02 (*)</b>	
0401100	Pumpkin seeds		0,1 (*)			0,01 (*)	0,05 (*)		<b>0,02 (*)</b>	
0401110	Safflower	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0401120	Borage	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0401130	Gold of pleasure			(**)	(**)	(**)	(**)	(**)	(**)	(**)
0401140	Hempseed					0,01 (*)	0,05 (*)		<b>0,02 (*)</b>	
0401150	Castor bean	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0401990	Others		0,1 (*)			0,01 (*)	0,05 (*)		<b>0,02 (*)</b>	
0402000	(ii) <b>Oilfruits</b>		0,05 (*)			0,01 (*)	0,05 (*)		<b>0,02 (*)</b>	
0402010	Olives for oil production	2								
0402020	Palm nuts (palmoil kernels)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0402030	Palmfruit	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0402040	Kapok	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0402990	Others	0,05 (*)								
0500000	<b>5. CEREALS</b>			0,02 (*)	0,02 (*)	0,01 (*)	<b>0,02 (*)</b>	<b>0,02 (*)</b>	<b>0,02 (*)</b>	0,05 (*)
0500010	Barley	0,02 (*)	0,5							
0500020	Buckwheat	0,02 (*)	0,05 (*)							
0500030	Maize	0,02 (*)	0,05 (*)							
0500040	Millet (Foxtail millet, teff)	0,02 (*)	0,05 (*)							
0500050	Oats	0,02 (*)	0,05 (*)							
0500060	Rice	0,02 (*)	0,05 (*)							
0500070	Rye	0,05	0,5							
0500080	Sorghum	0,02 (*)	0,05 (*)							
0500090	Wheat (Spelt Triticale)	0,05	0,2							
0500990	Others	0,02 (*)	0,05 (*)							
0600000	<b>6. TEA, COFFEE, HERBAL INFUSIONS AND COCOA</b>		0,1 (*)	0,05 (*)	0,05 (*)		0,1 (*)	<b>0,02 (*)</b>	<b>0,1 (*)</b>	0,1 (*)
0610000	(i) <b>Tea (dried leaves and stalks, fermented or otherwise of <i>Camellia sinensis</i>)</b>	0,05 (*)				0,02 (*)				
0620000	(ii) <b>Coffee beans</b>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
0630000	(iii) <b>Herbal infusions (dried)</b>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0631000	(a) <i>Flowers</i>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0631010	Camomille flowers	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0631020	Hybiscus flowers	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0631030	Rose petals	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0631040	Jasmine flowers	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0631050	Lime (linden)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0631990	Others	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0632000	(b) <i>Leaves</i>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0632010	Strawberry leaves	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0632020	Rooibos leaves	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0632030	Maté	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0632990	Others	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0633000	(c) <i>Roots</i>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0633010	Valerian root	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0633020	Ginseng root	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0633990	Others	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0639000	(d) <i>Other herbal infusions</i>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0640000	(iv) <b>Cocoa (fermented beans)</b>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0650000	(v) <b>Carob (st johns bread)</b>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0700000	<b>7. HOPS (dried), including hop pellets and unconcentrated powder</b>	0,05 (*)	0,1 (*)	0,05 (*)	5	0,02 (*)	10	<b>0,02 (*)</b>	0,1 (*)	<b>0,05 (*)</b>
0800000	<b>8. SPICES</b>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0810000	(i) <b>Seeds</b>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0810010	Anise	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0810020	Black caraway	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0810030	Celery seed (Lovage seed)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0810040	Coriander seed	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0810040	Cumin seed	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0810060	Dill seed	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
0810070	Fennel seed	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0810080	Fenugreek	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0810090	Nutmeg	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0810990	Others	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0820000	<b>(ii) Fruits and berries</b>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0820010	Allspice	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0820020	Anise pepper (Japan pepper)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0820030	Caraway	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0820040	Cardamom	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0820050	Juniper berries	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0820060	Pepper, black and white (Long pepper, pink pepper)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0820070	Vanilla pods	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0820080	Tamarind	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0820990	Others	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0830000	<b>(iii) Bark</b>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0830010	Cinnamon (Cassia)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0830990	Others	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0840000	<b>(iv) Roots or rhizome</b>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0840010	Liquorice	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0840020	Ginger	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0840030	Turmeric (Curcuma)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0840040	Horseradish	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0840990	Others	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0850000	<b>(v) Buds</b>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0850010	Cloves	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0850020	Capers	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0850990	Others	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0860000	<b>(vi) Flower stigma</b>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0860010	Saffron	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0860990	Others	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
0870000	(vii) <b>Aril</b>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0870010	Mace	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0870990	Others	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0900000	<b>9. SUGAR PLANTS</b>	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0900010	Sugar beet (root)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0900020	Sugar cane	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0900030	Chicory roots	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
0900990	Others	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
1000000	<b>10. PRODUCTS OF ANIMAL ORIGIN — TERRESTRIAL ANIMALS</b>							<b>0,01 (*)</b>	<b>0,02</b>	
1010000	(i) <b>Meat, preparations of meat, offals, blood, animal fats fresh chilled or frozen, salted, in brine, dried or smoked or processed as flours or meals other processed products such as sausages and food preparations based on these</b>		0,05 (*)	<b>0,02 (*)</b>	0,02 (*)	0,01 (*)	0,02 (*)			0,05 (*)
1011000	(a) <i>Swine</i>									
1011010	Meat									
1011020	Fat free of lean meat									
1011030	Liver									
1011040	Kidney									
1011050	Edible offal									
1011990	Others									
1012000	(b) <i>Bovine</i>									
1012010	Meat									
1012020	Fat									
1012030	Liver									
1012040	Kidney									
1012050	Edible offal									
1012990	Others									
1013000	(c) <i>Sheep</i>									
1013010	Meat									
1013020	Fat									

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1013030	Liver									
1013040	Kidney									
1013050	Edible offal									
1013990	Others									
1014000	(d) Goat									
1014010	Meat									
1014020	Fat									
1014030	Liver									
1014040	Kidney									
1014050	Edible offal									
1014990	Others									
1015000	(e) Horses, asses, mules or hinnies	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
1015010	Meat	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
1015020	Fat	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
1015030	Liver	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
1015040	Kidney	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
1015050	Edible offal	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
1015990	Others	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
1016000	(f) Poultry — chicken, geese, duck, turkey and Guinea fowl-, ostrich, pigeon			<b>0,02</b> (*)						
1016010	Meat									
1016020	Fat									
1016030	Liver									
1016040	Kidney									
1016050	Edible offal									
1016990	Others									
1017000	(g) Other farm animals (Rabbit, Kangaroo)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
1017010	Meat	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
1017020	Fat	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
1017030	Liver	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1017040	Kidney	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
1017050	Edible offal	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
1017990	Others	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
1020000	(ii) <b>Milk and cream, not concentrated, nor containing added sugar or sweetening matter, butter and other fats derived from milk, cheese and curd</b>		0,05 (*)	0,005 (*)	0,02 (*)	0,01 (*)	0,02 (*)			0,05 (*)
1020010	Cattle									
1020020	Sheep									
1020030	Goat									
1020040	Horse									
1020990	Others									
1030000	(iii) <b>Birds' eggs, fresh preserved or cooked Shelled eggs and egg yolks fresh, dried, cooked by steaming or boiling in water, moulded, frozen or otherwise preserved whether or not containing added sugar or sweetening matter</b>		0,05 (*)	<b>0,02 (*)</b>	0,02 (*)	0,01 (*)	0,02 (*)			0,05 (*)
1030010	Chicken									
1030020	Duck	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
1030030	Goose	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
1030040	Quail	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
1030990	Others	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
1040000	(iv) <b>Honey (Royal jelly, pollen)</b>	(**)	(**)	(**)	(**)	(**)	(**)	(**)		(**)
1050000	(v) <b>Amphibians and reptiles (Frog legs, crocodiles)</b>	(**)	(**)	(**)	(**)	(**)	(**)	(**)		(**)
1060000	(vi) <b>Snails</b>	(**)	(**)	(**)	(**)	(**)	(**)	(**)		(**)
1070000	(vii) <b>Other terrestrial animal products</b>	(**)	(**)	(**)	(**)	(**)	(**)	(**)		(**)

(<sup>e</sup>) For the complete list of products of plant and animal origin to which MRLs apply, reference should be made to Annex I.

(\*) Pesticide-code combination for which the MRL as set in Annex III Part B applies.

(\*\*) Indicates lower limit of analytical determination

(<sup>b</sup>) = The residue definition differs for the following combinations pesticide-code number:

Vinclozolin — code 1000000: Vinclozolin, iprodione, procymidone, sum of compounds and all metabolites containing the 3,5-dichloroaniline moiety expressed as 3,5 dichloroaniline

Procymidone — code 1000000: Vinclozolin, iprodione, procymidone, sum of compounds and all metabolites containing the 3,5-dichloroaniline moiety expressed as 3,5 dichloroaniline

(+): Ethephon — code 0151020: The maximum residue level has been established temporarily pending the evaluation by EFSA.

(+): Ethephon — code 0163080: The maximum residue level has been established temporarily pending the evaluation by EFSA.

(+): Fenamiphos — code 0233010: The maximum residue level has been established temporarily pending the finalisation of the review under article 12(2).

(+): Dimethoate — code 0140020: The maximum residue level has been established temporarily pending the finalisation of the review under article 12(2).



## COMMISSION REGULATION (EC) No 1098/2009

of 16 November 2009

**amending Regulation (EC) No 2535/2001 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the import arrangements for milk and milk products and opening tariff quotas**

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) <sup>(1)</sup>, and in particular Article 144(1) and Article 148 in conjunction with Article 4 thereof,

Whereas:

- (1) Under the tariff concessions provided for in Decision No 1/98 of the EC-Turkey Association Council of 25 February 1998 on the trade regime for agricultural products <sup>(2)</sup>, the Community undertook to open a zero-duty annual import quota of 2 300 tonnes for cheese originating in Turkey falling within CN codes 0406 90 29, 0406 90 50, ex 0406 90 86, ex 0406 90 87 and ex 0406 90 88.
- (2) The detailed rules for administering that import tariff quota (hereinafter: 'the quota') are currently laid down by Commission Regulation (EC) No 2535/2001 <sup>(3)</sup>.
- (3) The administration of tariff quotas according to the method based on the chronological order of the lodging of applications set out in Article 144(2)(a) of Regulation (EC) No 1234/2007 has proved positive in other agricultural sectors. In the interests of simplifying procedures, that method should now be applied to the quota to which this Regulation relates. That should be done in accordance with Articles 308a, 308b and 308c(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code <sup>(4)</sup>.
- (4) Due to the particularities involved in the transfer from one management system to another, Article 308c(2) and (3) of Regulation (EC) No 2454/93 should not apply to the tariff period from 1 January 2010 to 31 December 2010.

(5) Regulation (EC) No 2535/2001 should therefore be amended accordingly.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 2535/2001 is amended as follows:

1. in Article 5, point (d) is deleted;
2. in Article 19, point (c) is deleted;
3. Article 19a is replaced by the following:

*'Article 19a*

1. Articles 308a, 308b and 308c(1) of Regulation (EEC) No 2454/93 shall apply to the quotas laid down in Annex VIIa and provided for in:

- (a) Council Regulation (EC) No 312/2003 (\*);
- (b) Council Regulation (EC) No 747/2001 (\*\*);
- (c) Annex IV, list 4 of the Trade, Development and Cooperation Agreement with South Africa (\*\*\*);
- (d) Annex I to Protocol 1 to Decision No 1/98 of the EC-Turkey Association Council (\*\*\*\*).

2. Imports under the quotas referred to in paragraph 1 shall not be subject to the presentation of an import licence.

2a. For the quota referred to in paragraph 1(d), Article 308c(2) and (3) of Regulation (EEC) No 2454/93 shall not apply for the tariff period from 1 January 2010 to 31 December 2010.

4. Application of the reduced rate of duty shall be subject to the presentation of proof of origin issued in accordance with:

<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

<sup>(2)</sup> OJ L 86, 20.3.1998, p. 1.

<sup>(3)</sup> OJ L 341, 22.12.2001, p. 29.

<sup>(4)</sup> OJ L 253, 11.10.1993, p. 1.

- (a) Annex III to the Agreement with the Republic of Chile;
- (b) Protocol 4 to the Agreement with Israel;
- (c) Protocol 1 to the Agreement with South Africa (\*\*\*\*);
- (d) Protocol 3 to Decision No 1/98 of the EC-Turkey Association Council.
4. Annex I.D is deleted;
5. in Annex VIIa, a paragraph 4 is added, the text of which appears in the Annex to this Regulation.

*Article 2*

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

It shall apply to the import quota periods opened from 1 January 2010.

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(\*) OJ L 46, 20.2.2003, p. 1.  
(\*\*) OJ L 109, 19.4.2001, p. 2.  
(\*\*\*) OJ L 311, 4.12.1999, p. 1.  
(\*\*\*\*) OJ L 86, 20.3.1998, p. 1.  
(\*\*\*\*\*) OJ L 311, 4.12.1999, p. 298.;

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

Done at Brussels, 16 November 2009.

*For the Commission*  
Janez POTOČNIK  
*Member of the Commission*

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## ANNEX

**'4. Tariff quotas under Annex 1 to Protocol 1 to Decision No 1/98 of the EC-Turkey Association Council**

Quota number	CN Code	Description of goods <sup>(1)</sup>	Country of origin	Annual quota from 1 January to 31 December (in tonnes)	Applicable rate of duty (EUR/100 kg net weight)
09.0243	0406 90 29	Kashkaval cheese	Turkey	2 300	0
	0406 90 50	Cheese of sheep's milk or buffalo milk in containers containing brine, or in sheepskin or goatskin bottles			
	ex 0406 90 86 ex 0406 90 87 ex 0406 90 88	<i>Tulum Peyniri</i> , made from sheep's milk or buffalo milk, in individual plastic or other kind of packings of less than 10 kg			

<sup>(1)</sup> Notwithstanding the rules on the interpretation of the Combined Nomenclature, the wording of the description of products must be regarded as merely indicative, since the applicability of the preferential arrangements is determined, within the context of this Annex, by the scope of the CN codes. Where ex CN codes are indicated, the applicability of the preferential scheme shall be determined on the basis of the CN code and the corresponding description, taken together.'

## II

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

## DECISIONS

## COMMISSION

## COMMISSION DECISION

of 10 December 2008

on Aid Measure C 11/08 (ex N 908/06) planned by Poland in favour of BVG Medien Beteiligungs GmbH

(notified under document C(2008) 7813)

(Only the Polish text is authentic)

(Text with EEA relevance)

(2009/837/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

### 1. PROCEDURE

(1) By electronic notification dated 27 December 2006, registered at the Commission on the same day <sup>(2)</sup>, the Polish authorities gave notice pursuant to Article 88(3) of the EC Treaty and under the Multisectoral Framework on regional aid for large investment projects <sup>(3)</sup> ('the MSF') that they intended to grant regional aid for a large investment project in favour of BVG Medien Beteiligungs GmbH.

(2) The Commission requested supplementary information by letters of 2 March 2007 (D/50921), 15 June 2007 (D/52553) and 21 December 2007 (D/55146). The Polish authorities replied by letters of 13 April 2007 (A/33156), 23 October 2007 (A/38722) and 23 January 2008 (A/1392).

(3) By letter of 11 March 2008 the Commission informed Poland that it had decided to initiate the proceedings laid down in Article 88(2) EC Treaty in respect of the aid.

(4) The Commission decision to initiate the procedure ('the Opening Decision') was published in the *Official Journal of the European Union* <sup>(4)</sup>. The Commission called on interested parties to submit their comments.

(5) The Commission received no comments from interested parties. The Polish authorities replied by letters of 9 May 2008 (A/8753) and 13 May 2008 (A/8829), both registered at the Commission on 13 May 2008.

<sup>(1)</sup> OJ C 159, 24.6.2008, p. 18.

<sup>(2)</sup> The initial two-month period within which the assessment must be completed started to run on 3 January 2007.

<sup>(3)</sup> OJ C 70, 19.3.2002, p. 8.

<sup>(4)</sup> See footnote 1.

## 2. DETAILED DESCRIPTION OF THE AID

### 2.1. Objective

- (6) The measure supports the setting-up of a new roto-gravure printing works, thereby promoting regional development and employment in Lower Silesia Province in south-west Poland, an assisted area pursuant to Article 87(3)(a) of the EC Treaty with a regional aid ceiling of 50 % net grant equivalent (NGE) in accordance with the regional aid map of Poland applicable from 1 May 2004 to 31 December 2006 <sup>(5)</sup>.

### 2.2. The beneficiary

- (7) The Polish authorities stated that the investment project was to be implemented and managed by BDN Sp. z o.o. Sp. k., a limited partnership ('the Partnership').
- (8) The Partnership consists of: the general partner, BDN Sp. z o.o. ('BDN'), a limited liability company established in Poland, and the limited partner, BVG Medien Beteiligungs GmbH ('BVG'), a limited liability company established in Germany.
- (9) The Polish authorities also indicated that, under the Commercial Code, a limited partnership did not have legal personality. Therefore the corporate income tax on the Partnership's economic activity was paid by its partners. Since the aid was granted in the form of exemption from corporate income tax, the actual beneficiaries are the partners, i.e. BDN and BVG.
- (10) According to the Polish authorities, the partners share any profits (and thus any reduction in taxes levied on those profits) pro-rata to their contribution to the Partnership, i.e. more than 99 % for BVG and less than 1 % for BDN.
- (11) Moreover, since BDN itself is a wholly-owned subsidiary of BVG, the Commission considers, in line with the view of the Polish authorities, that the beneficiary of the aid measure is BVG. However, taking the total amount of aid into account (i.e. the part accruing to BVG as well as the part accruing to BDN), the Commission considers the BVG group as the final beneficiary of the aid.
- (12) When calculating the beneficiary's market share <sup>(6)</sup>, the Commission also took account of the fact that BVG is a large enterprise wholly owned by BVG Medien KG, a limited partnership in the hands of private investors. To be more precise, [...] <sup>(\*)</sup> % of the shares are owned by Heinz H. Bauer and his family. Mr Bauer is also the owner of 96 % of the shares of another capital group, Heinrich Bauer Verlag, a publishing house with a number of subsidiaries worldwide.

## 2.3. Investment project

### 2.3.1. Products and technology

- (13) The Partnership is setting up a new roto-gravure printing works in Nowogrodzic, in the Special Economic Zone of Kamienna Góra.
- (14) With roto-gravure technology, the printing ink is transferred onto a surface (e.g. paper) by a steel printing cylinder which is engraved electromechanically or by laser.
- (15) The new printing works will have [...] roto-gravure printing lines carrying out the three main stages of production. Production starts with the preparation of printing forms (cylinders) from digital data supplied by the customer. The next operation is roto-gravure printing — the paper is printed in four basic colours, slit, folded and stitched to make the end product. As a last step, the end product is packed and sent to its destination.
- (16) The new plant will essentially be involved in printing magazines, commercial catalogues and inserts (advertising material added to magazines and newspapers).

### 2.3.2. Project implementation

- (17) The investment project started in 2004 and consists in setting up [...] production lines. [...] roto-gravure lines together with their auxiliary facilities have already been set up. An order for a [...] line has also been placed and it is expected to be commissioned in the [...] quarter of 2008. It is estimated that this will be followed by the installation of a [...] line. According to the estimates provided by the Polish authorities, the whole project will be completed in 2009.
- (18) The printing works started production in July 2006. Full capacity of all [...] lines amounting to 152 thousand tonnes annually is expected to be achieved in 2010.

## 2.4. Eligible expenditures

- (19) Eligible investment costs are calculated on the basis of the initial investment costs. The eligible expenditure amounts to PLN 857,998 million (EUR 184,6 million approx <sup>(7)</sup>). in nominal value, which is PLN 734,031 million (EUR 157,95 million approx.) (discounted value). Table 1 provides a breakdown of the eligible expenditure associated with the investment project (expressed in nominal value).

<sup>(5)</sup> PL 1/2004 — Commission letter of 13 August 2004 (C(2004) 3230/5).

<sup>(6)</sup> See Section 5.4.2.

<sup>(\*)</sup> Business secret

<sup>(7)</sup> On the basis of the PLN/EUR exchange rate when the aid was granted, i.e. 4,6474.

Table 1

**Breakdown of project costs relating to initial investment**

<i>(PLN million, nominal value)</i>	
Land	[...]
Buildings, premises, civil engineering	[...]
Machinery, installations and equipment	[...]
Total eligible costs	858,000

**2.5. Financing of the project**

- (20) The Polish authorities confirmed that the beneficiary's own contribution exceeded 25 % of the eligible costs and was free of any public support.

**2.6. Legal basis**

- (21) The following legal basis has been indicated:
- Special Economic Zones Act of 20 October 1994;
  - Cabinet Decree of 14 September 2004 on the Kamienna Góra Special Economic Zone.

**2.7. The aid measure***2.7.1. Form and amount of the aid*

- (22) The aid was granted under the authorised scheme PL 39/2004<sup>(8)</sup>. The aid consists of full exemption from corporate income tax (currently 19 % in Poland) until the end of the period for which the Special Economic Zone was established. (i.e. until 1 December 2017) or until the applicable regional aid ceiling is reached.
- (23) While the actual amount of tax relief is contingent on the beneficiary's pre-tax income and may turn out to be less than the maximum allowable, the cap for which the beneficiary is eligible should be taken into account when calculating aid intensity.
- (24) This cap corresponds to the amount resulting from the scaled-down regional aid ceiling and amounts to PLN 220,057 million (EUR 47,35 million) (discounted value). The Polish authorities have confirmed that in the event of the eligible costs being lower than estimated the cap will be reduced proportionally.
- (25) In order to benefit from the tax exemption, the beneficiary had to apply for a licence to operate in the Special Economic Zone. This was granted on 21 June 2004

<sup>(8)</sup> Regional aid scheme for enterprises conducting business activity in special economic zones. Commission letter of 9 March 2005 (C(2005) 735).

which, according to the Polish authorities, can be considered as the date on which the aid was granted.

- (26) Notification did not take place until 2006, when, following the various stages of the investment and the resulting increase in the eligible costs, it became clear to the Polish authorities that the aid measure required individual notification in accordance with paragraph 24 of the MSF.
- (27) The Polish authorities have explained that the aid scheme in question (PL 39/2004) requires only a minimum amount of investment expenditure and grants the right to corporate income tax exemption up to the allowable regional aid ceiling. When the licence, and hence the aid, were awarded, neither the exact amount of the eligible costs nor the amount of the aid were known to the authorities.
- (28) In the light of the above, and in order to comply with the standstill clause, the Polish authorities undertook to limit the amount of aid currently available to the beneficiary to the maximum which does not require individual notification under paragraph 24 of the MSF (i.e. EUR 37,5 million (discounted value)). Aid in excess of this amount will not be implemented until the Commission has given its approval.
- (29) The awarding authority responsible is the Ministry of the Economy.
- 2.7.2. Cumulation*
- (30) The tax exemption granted under scheme PL 39/2004 can be cumulated with aid received from other sources to cover the same eligible costs. However, Poland has confirmed that the total amount of regional aid in this case will not exceed the amount resulting from the scaled-down regional aid ceiling.

**2.8. Maintenance of the assisted activity**

- (31) The Polish authorities have confirmed that the investment project must be maintained for a period of five years from the day of its completion.

**2.9. Incentive effect**

- (32) As for the incentive effect of the aid, it has been confirmed that the beneficiary applied for the licence entitling it to the aid and the licence was granted before the start of work on the project. As mentioned above, the licence entitled the beneficiary to aid in the form of tax exemption up to the applicable regional aid ceiling calculated with reference to the total eligible costs of the project.

## 2.10. Contribution to regional development

- (33) Lower Silesia is a region with serious socioeconomic problems in which per capita GDP was only 51,7 % of the EU-27 average in 2004 <sup>(9)</sup> and the unemployment rate stood at 24,9 %, equivalent to 268 % of the EU-27 average and 131 % of the Polish average.
- (34) The investment into the [...] production lines is expected to create around 500 direct jobs as well as additional jobs for paper and printing ink suppliers and other support service providers. Furthermore, due to its use of leading-edge technology (laser engraving of printing forms and computer-aided manufacture), the project will create demand for personnel with higher education and will ensure the transfer of know-how.

## 2.11. General obligations

- (35) The Polish authorities have undertaken to submit to the Commission:
- on a five-yearly basis, starting from the day on which the Commission approves the aid, an intermediary report (including information on the aid amounts paid, execution of the aid contract and any other investment projects started at the same establishment/plant);
  - within six months of payment of the last aid instalment on the basis of the notified payment schedule, a detailed final report.

## 3. REASONS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

### 3.1. Doubts concerning the definition of the relevant geographic market

- (36) For the purpose of the market analysis to be carried out in accordance with paragraph 24 of the MSF, Poland considers that the geographic market is EEA-wide on the basis that the Nowogrodzic plant and other printing works located in Poland already supply markets as distant as the United Kingdom (the aided printing works is already printing the British magazine 'Take a Break' <sup>(10)</sup>). This would show that transport and logistics costs within the EEA are not a real obstacle to rotogravure printing.
- (37) The Polish authorities also specified that only [0-10] % of the sales of the aided printing works will supply the Polish market, while the remaining [90-100] % will go to other EEA countries. In 2007 the breakdown in value terms of foreign printing orders performed by the beneficiary was the following: Germany — [75-85] %; United Kingdom — [10-15] %; Austria — less than [0-3] %. In addition, negotiations were ongoing with companies in France, Denmark and Sweden.

<sup>(9)</sup> Measured in purchasing power standard.

<sup>(10)</sup> 'Take a Break' is the best-selling women's weekly in the UK with a circulation of over 1 million copies.

- (38) The Polish authorities also referred in general to the trend of rapid globalisation of the printing market, with printing operations being expanded into third countries and printing services being commissioned by publishers in distant locations.

- (39) At this stage of the assessment the Commission doubted whether transport and logistics costs could really be discounted as a real obstacle to supplying rotogravure printing services even to more distant markets in the EEA. Internet searches indicate that 'Take a Break' is in fact published by H. Bauer Publishing Ltd, which is a UK subsidiary of the Bauer Verlag Group. Treatment of the publishing and printing of magazines within a single group may offer advantages in terms of integration, prioritisation and flexibility of the overall process which counterbalance the transport and logistical difficulties involved.

- (40) Moreover, the number of foreign markets currently supplied by the aided printing works appears to be limited, with Germany representing by far the most important destination.

- (41) Therefore, when analysing the market share and capacity increase at EEA level as proposed by the Polish authorities, the Commission also invited interested parties to comment on whether the relevant market was indeed EEA-wide.

### 3.2. Doubts concerning capacity created by the project

- (42) The Polish authorities have explained that it is difficult to provide a definitive breakdown of the capacity created by the project between magazine printing and catalogue/insert printing, given that magazines and catalogues/inserts are printed on the same production lines. The beneficiary's production capacity for inserts and catalogues will be highly dependent on the printing house's magazine workload (non-periodical items are printed as machines become available). However, as indicated by the Polish authorities, one possible solution is to estimate capacity breakdown on the basis of the expected share of magazines and catalogues/inserts in the sales of the aided facility.

- (43) The planned breakdown as indicated by Poland was approx. [90-100] % for magazines and [0-10] % for other products. The Polish authorities explained that this state of affairs reflected the fact that the printing works already had a stable order book for magazines, inter alia, from in-house publishers belonging to the same group as the beneficiary. Increasing the share of the catalogue market, however, is expected to be a gradual process.

- (44) On the basis of the above breakdown, capacity increase in relation to the size of the EEA-wide market for the rotogravure printing of magazines was [5-10] %, thus exceeding the 5 % threshold laid down in paragraph 24(b) of the MSF.

#### 4. COMMENTS FROM POLAND

- (45) The Commission received no comments from interested parties. The observations of Poland can be summarised as follows.

##### 4.1. Rotogravure and offset technologies belong to the same relevant market

- (46) Poland argued that as a result of the latest technological developments in offset printing, both technologies could be used interchangeably without any significant difference for the customer and at a comparable cost, even in cases of higher print volumes for magazines and catalogues.

- (47) In particular, Poland referred to the following innovations in offset printing:

— the introduction of machines with a wider printing cylinder which allow the printing of sections similar to the dimensions of those printed with rotogravure (72, 80, and even 96 pages); offset printing has thus become a viable alternative for publications up to 96 pages, which form the bulk of BVG's target market;

— an increase in print productivity (speed of printing) which is comparable to rotogravure printing speeds (speed of web sheetfeed reaching 15m/sec);

— an increase in productivity calculated per hour, a reduction in losses and reduction in time when changing forms;

— the implementation of rotogravure crushing apparatus (greater flexibility in dividing sections);

— the preparation of forms from digital data (computer-to-plate or CTP). CTP allows forms to be produced much more quickly and cheaply compared to the previous technology;

— the use of a web sheetfeed equipped with automatic register and control systems that adjust the relevant colour layer much more quickly and generate much less waste paper.

- (48) As evidence that customers no longer differentiate between products on the basis of the printing technology

used, Poland cited examples of customers contracting catalogue printing which had switched from offset to rotogravure printing.

- (49) Accordingly, Poland considers that the convergence of printing technologies has created a uniform printing market where any differences identified previously by the Commission play a marginal role or no longer exist. According to Poland, this has been confirmed by a recent merger decision<sup>(11)</sup>.

- (50) Poland presented data for the combined offset and rotogravure market to show that its compound annual growth rate ('CAGR') in volume terms was 2,54 % in the reference period 2001-06, thus exceeding the CAGR for GDP within the EEA (2 %) <sup>(12)</sup>. The data provided by the Polish authorities originate from CEPIPRINT A.S.B.L., an independent association of paper manufacturers, and they refer to the apparent consumption in Europe (West and East) of two general types of paper used for printing magazines and catalogues, independently of the technology used by printing works. The data do not enable differentiation between the magazine and catalogue markets.

- (51) Poland also provided data on the capacity created by the project relative to the size of the combined offset and rotogravure publication market (again without differentiation between the magazine and catalogue markets) which amounts to [0-5] % in volume terms. The beneficiary's market share in this combined market also remains well below the 25 % threshold <sup>(13)</sup>.

##### 4.2. Rotogravure market is not underperforming

- (52) The Polish authorities also stated that, even if the relevant market were restricted to rotogravure printing alone, its CAGR for the period 2001-06 would exceed the CAGR for GDP within the EEA.

- (53) In that connection Poland provided new data presented by the European Rotogravure Association to the 'Premedia Conference' held in Naples on 14-16 January 2008. The data cover the period 2002-06 and refer to consumption of paper used for rotogravure printing. Data for 2001 were not available from that source and were estimated by Poland on the basis of the CEPIPRINT data referred to above.

<sup>(11)</sup> COMP/M.4893 — Quebecor World/RSDB.

<sup>(12)</sup> EU-27 data used as a proxy.

<sup>(13)</sup> The data provided by Poland indicate market shares of [0-5] % in 2003 and [0-5] % in 2010 on the combined market. These figures do not appear to take sales by the offset printing works belonging to Bauer Verlag into account. Since, however, Poland specified during the initial assessment phase that the Bauer Verlag group has only two offset printing houses with low production capacity (total capacity of approximately 50 000 tonnes per year), the correct market shares on the combined offset and rotogravure market are marginally higher than those indicated by the Polish authorities.



(54) The CEPIPRINT data cover paper consumption used for both offset and rotogravure printing of magazines and catalogues. These data indicate 1 % growth in 2002 compared with 2001, and Poland assumed the same 1 % growth for rotogravure printing in order to add the missing data for 2001 to the 2002-06 dataset.

(55) On the basis of these assumptions, the CAGR for rotogravure printing of magazines from 2001 to 2006 is 2,03 %, i.e. slightly above the CAGR for GDP within the EEA <sup>(14)</sup> in the same period (2 %).

#### 4.3. Capacity increase does not exceed 5 % in any of the plausible relevant markets

(56) Poland also provided revised data demonstrating that the capacity created by the project did not exceed 5 % of the size of the rotogravure printing markets identified as relevant in the opening decision.

(57) As indicated above, it is difficult to provide a definitive breakdown of the capacity created by the project between magazine printing and catalogue/insert printing, given that magazines and catalogues/inserts are printed on the same production lines. The opening decision is therefore based on a capacity breakdown between the forecast shares in the new printing works' total production of magazine printing ([90-100] %) and catalogue/insert printing ([0-10] %) respectively. On that basis, the capacity increase slightly exceeded the 5 % threshold for magazine printing.

(58) The Polish authorities referred to this breakdown again in their observations, indicating the latest available information on the printing works' current and expected sales.

(59) Poland indicated that the [90-100] % — [0-10] % division had been intended purely as a short-term forecast based on initial estimates at the time of submission. Catalogue printing orders were still being negotiated at that time. Poland also referred to information submitted during the initial investigation phase which indicated that acquiring a share in the catalogue market was a gradual process, whereas the beneficiary already had a good, stable order book for magazines. As BVG is a new printing works, it can be assumed that catalogue orders will grow slowly but constantly.

(60) Poland noted that there were no printing works in the EEA specialising solely in magazine printing or catalogue printing. Printing works cannot specialise in magazine printing alone as this would not allow efficient use to be made of all their available production capacity. In order to avoid productivity falling as a result of breaks/downtime between the printing of various magazines, catalogue orders are also needed.

(61) As substantiation, Poland referred to an earlier merger decision <sup>(15)</sup> which indicated that in order to use the installed capacity as fully as possible printers will normally try to achieve a mix of different print products, as these have different characteristics (periodicity, printing time and volume). In view of the need to retain some flexibility, it was stated that the three rotogravure printers referred to in the merger decision would aim to ensure that magazine printing accounted for no more than 70-85 % of their product mix.

(62) Poland confirmed that BVG also aimed to achieve a more balanced product mix over time. This will be achieved gradually as new production lines are launched, production capacity is increased and customer confidence grows.

(63) More recent data submitted by Poland indicate a gradual increase in the BVG printing works' share of the catalogue market. In the printing year July 2007–June 2008 <sup>(16)</sup> (data based on historical values until March 2008 and confirmed customer orders between April–June 2008), magazine printing accounted for [90-95] % and catalogue/insert printing for [5-10] %.

(64) A cautious estimate for 2008-09 which only takes account of orders already confirmed by customers and two orders <sup>(17)</sup> at a very advanced stage of negotiations results in a share of [85-90] % for magazines and [10-15] % for catalogues/inserts. A second variant for 2008/2009 was based on the assumption that orders for the second half of this period would reach the same levels as for the first half (targeted approach). In this scenario, the share of magazine printing will fall to [80-85] % in this period, as opposed to [15-20] % for catalogues/inserts.

<sup>(15)</sup> COMP/M.3178 — Bertelsmann Springer/IV.

<sup>(16)</sup> The season for the majority of catalogue orders runs from July to June of the following year.

<sup>(17)</sup> The first of these concerns WeltBild, and price negotiations are still ongoing. However, the fact that this customer has already co-operated with BVG in the past makes it very likely that the order will be confirmed. The second concerns materials for Carrefour for which a price has already been agreed and a sample print run has been prepared, but no formal contract has been signed to date. In both cases, printing was to begin in July 2008.

<sup>(14)</sup> EU-27 data used as a proxy, GDP in EUR million at 1995 prices.

- (65) Table 2 below shows how different breakdowns between magazine printing on the one hand and catalogue/insert printing on the other influence capacity increase on the relevant markets <sup>(18)</sup>.

Table 2

## Capacity increase in relation to the size of the rotogravure printing market

	Capacity created (in tonnes)	Size of the market in 2003 (in tonnes)	Capacity increase (in %)
Rotogravure publication printing (magazines, catalogues and inserts)	152 000	4 600 000	3,3
Magazine printing in 2007/08 (actual data)	[136 800-152 000] ([90-100] %)	2 760 000	[5-10]
Catalogue and insert printing in 2007/08 (actual data)	[0-15 200] ([0-10] %)	1 840 000	[0-5]
Magazine printing — estimate for 2008/2009 (cautious approach)	[121 600 — 136 800] ([80-90] %)	2 760 000	[0-5]
Catalogue and insert printing — estimate for 2008/2009 (cautious approach)	[15 200-30 400] ([10-20] %)	1 840 000	[0-5]
Magazine printing — estimate for 2008/2009 (targeted approach)	[121 600 — 136 800] ([80-90] %)	2 760 000	[0-5]
Catalogue and insert printing — estimate for 2008/2009 (targeted approach)	[15 200-30 400] ([10-20] %)	1 840 000	[0-5]

- (66) In Poland's view, since even cautious forecasts for the 2008-09 season indicate such a significant share of catalogue printing that projected production capacity for magazine printing would fall below the 5 % threshold, paragraph 24(b) of the MSF would be complied with even if the relevant market were restricted to rotogravure printing alone.

#### 4.4. Geographic market for rotogravure printing is EEA-wide

- (67) Poland first noted that transport costs did not constitute a significant amount of the total costs as, by the beneficiary's own calculations, they constituted only [4 to 15] % of the total service costs. Transport costs to individual countries are as follows:

- BVG (beneficiary's printing house) to France (external customer): [4-10] %;
- BVG to Austria (external customer): [4-10] %;

— BVG to Switzerland (external customer): [4-10] %;

— BVG to the UK (associated customer): [10-15] %;

— BDC (Bauer Verlag Publishing in Ciechanów) to the UK (associated customer): [10-15] %;

— BDC to Russia (associated customer): [10-15] %.

- (68) In Poland's view, the fact that these orders can be carried out means that transport costs do not represent a significant obstacle. As such, they do not justify accepting a more restrictive definition of the geographical market than the EEA.

<sup>(18)</sup> The figures for overall EEA consumption in volume terms are based on data from the European Rotogravure Association (ERA), as submitted by the Polish authorities. The breakdown of overall consumption/sales into the sub-segments for magazines and catalogues/inserts has been provided by MillwardBrown SMG/KRC.

- (69) The Polish authorities have also pointed out that most magazine and catalogue printing works have customers from all over Europe (inside and outside the EU). These

printing works<sup>(19)</sup> have sales offices specialising in customer services abroad which offer up-to-the-minute advice and support for specific agreements and orders.

(70) One of the largest printing works in Poland, Winkowski (an independent printing works with three production units in Radzymin, Piła and Wyszaków), uses a central office for orders from abroad which employs 15 persons whose task is to win orders from abroad and provide customer service to individual foreign markets. Other employees provide services to the domestic market. The printing works also owns sales offices in Germany, Sweden, Austria and the UK. It also has its own international transport facility. Winkowski supplies the whole of Europe. Its most important markets are France, Scandinavia, Germany and the UK. The company also supplies the Ukraine, Russia, Slovenia, Romania and other countries.

(71) A similar strategy and sales method is used by RR Donnelley, another large printing works, which has four branches in Poland (two in Cracow, one in Starachowice and one in Kielce). The company supplies the most important markets in Europe from its base in Poland. RR Donnelley also owns sales offices in the Benelux countries, Germany, Switzerland, the UK, Hungary, Scandinavia and Russia. Its printing works in Poland produce magazines and catalogues for export to all these countries. RR Donnelley also owns a specialist international transport and logistics unit.

(72) An example of a Western European printing works which proves that long-distance transport need not constitute an obstacle to trade on the printing market if appropriate distribution systems are in place is Prinovis of Germany. According to freely available information<sup>(20)</sup>, some French magazine titles are printed for Prisma Presse in Germany and supplied to Paris for further finishing or distribution, i.e.:

— the women's weekly 'Femme Actuelle' in Dresden (the Polish authorities have pointed out that the distance between Dresden and Paris is 1 035 km approx. The distance from BDN would be another 120 km);

— the women's monthly 'Prima' in two formats (magazine and pocket) in Itzehoe (the distance between Itzehoe and Paris is 942 km);

<sup>(19)</sup> The examples presented concerning distribution and servicing of geographical markets also include offset printing works. However, the Polish authorities believe that the production method for the finished product (magazines) is not relevant from the supply perspective, as the production technology has no bearing on distribution channels.

<sup>(20)</sup> [http://www.prinovis.de/en/unternehmen/aktuelle\\_nachrichten/2008/03/neuer-frankreich-auftrag-fuer-prinovis.php](http://www.prinovis.de/en/unternehmen/aktuelle_nachrichten/2008/03/neuer-frankreich-auftrag-fuer-prinovis.php)

— the special interest monthlies 'Ça m'intéresse', 'Guide Cuisine' and 'Cuisine Actuelle' in Itzehoe;

— special edition for 'Cuisine Actuelle' in Dresden;

— the pocket edition of the women's monthly 'Bien dans ma vie' in Itzehoe;

— in addition, Prisma Presse signed an agreement recently with Prinovis to print a French magazine tied in with the TV programme 'Télé Loisirs' which is published once a week with a print run of 1,6 million issues; each issue has 140 pages on average.

(73) In Poland's view, this shows that an appropriate distribution network guarantees supplies on time for those magazines where this is particularly important, notwithstanding the fact that Prinovis' French customer is not an external entity. The success of this operation is due in particular to the creation of appropriate long-distance distribution networks and supply monitoring systems. These are being introduced by all publishers and printers which work together over long distances.

(74) In the light of these examples of entities serving customers in various countries all over the EEA and Eastern Europe, the Polish authorities take the view that time, costs and distribution issues do not represent significant obstacles for cooperation with publishers over long distances. The common practice of printing magazines and catalogues in the EEA for the Russian market would justify an even wider definition of the market to embrace the EEA and Russia.

(75) The Polish authorities also stressed that publishers with headquarters outside those countries where most printing capacity is located and where market supply is better than in other parts of Europe usually choose printing works from a wide range of companies, and the fact that they may belong to the same group is not a deciding factor. Since geographical location is not an issue, publishers usually choose printing works on the basis of competitive offers and the benefits of permanent cooperation. In view of technological developments in offset presses and the possibility of using press technologies interchangeably irrespective of the size of the order, the number of potential competitors able to participate in the same tender has now increased significantly.

## 5. ASSESSMENT OF THE AID

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

- (76) The aid is provided in the form of exemption from corporate income tax, which represents a loss of revenue for the Polish authorities. It constitutes state resources within the meaning of Article 87(1) of the EC Treaty. As the aid is granted to a single company, the measure is selective. The aid relieves the beneficiary of costs which it would have to bear under normal market conditions, therefore the company benefits from an economic advantage over its competitors which threatens to distort competition. In so far as the products concerned by the project are traded, there is a risk that the aid could affect trade between Member States.
- (77) Therefore the Commission finds that the restructuring plan constitutes aid within the meaning of Article 87(1) of the EC Treaty.

### 5.2. Notification requirement, legality of the aid, and applicable law

- (78) By notifying the aid measure, the Polish authorities complied with the individual notification requirement of paragraph 24 of the MSF. Any aid in excess of the individual notification threshold will not be put into effect until such time as the Commission has given its approval.
- (79) Pursuant to paragraph 63 and footnote 58 of the Guidelines on national regional aid for 2007-13 <sup>(21)</sup>, the Commission assessed the aid measure under the provisions of the 1998 Guidelines on national regional aid <sup>(22)</sup> ('the RAG') and the MSF.

### 5.3. Compatibility of the aid with the RAG

- (80) As indicated in the decision to initiate the formal investigation procedure, the aid has been granted in accordance with authorised scheme PL 39/2004 and as such the standard compatibility criteria laid down in the RAG (e.g. initial investment in regions eligible for regional aid, eligible costs, own contribution, incentive effect, maintenance of the investment, cumulation) have been complied with.

## 5.4. Compatibility with the MSF

### 5.4.1. Aid intensity

- (81) With eligible expenditure of PLN 734,031 million (approx. EUR 157,95 million) (discounted value) and an applicable standard regional aid ceiling of 50 % in net grant equivalent (NGE), the adjusted maximum aid intensity permitted under paragraph 21 of the MSF is 29,98 % NGE.
- (82) The envisaged aid amount of PLN 220,057 million (EUR 47,35 million) (discounted value), which represents an aid intensity of 29,98 % NGE <sup>(23)</sup>, complies with this ceiling. Therefore the proposed aid intensity is in line with the scaling-down mechanism provided for in paragraph 21 of the MSF.

### 5.4.2. Compatibility with the rules under paragraph 24(a) and (b) of the MSF

- (83) Since the proposed total aid amount of approximately EUR 47,35 million exceeds the notification threshold of EUR 37,5 million, compliance of the proposed aid with paragraph 24(a) and (b) of the MSF has to be assessed.
- (84) The Commission's decision to allow regional aid to large investment projects covered by paragraph 24 of the MSF is contingent on the beneficiary's market share before and after the investment and on the capacity created by the investment. To carry out the relevant tests under paragraph 24(a) and (b) of the MSF, the Commission has first to identify the products concerned by the investment, and to define the relevant product and geographic markets.

### Relevant product market

- (85) According to paragraph 52 of the MSF, 'product concerned' means the product envisaged by the investment project and, where appropriate, its substitutes considered to be such, either by the consumer (by reason of the product's characteristics, prices and intended use) or by the producer (in terms of the flexibility of the production installations). When a project concerns an intermediate product and a significant part of the output is not sold on the market, the product concerned may be deemed to include the downstream products.

<sup>(21)</sup> OJ C 54, 4.3.2006, p. 13.

<sup>(22)</sup> OJ L 74, 10.3.1998, p. 9.

<sup>(23)</sup> As the aid is provided in the form of tax exemption, the net grant equivalent of the aid is equal to its gross grant equivalent.

### Downstream products

- (86) The investment project under scrutiny concerns the printing of magazines, commercial catalogues and inserts using rotogravure technology. The beneficiary is linked to Heinrich Bauer Verlag, a major publishing house, by virtue of its ownership structure. The Heinrich Bauer Verlag Group will be the new printing works' most important customer, accounting for an estimated [...] % of the new plant's sales. Therefore it should first be established whether sales of the print products concerned by the investment to Heinrich Bauer Verlag are taking place under market conditions.
- (87) The Polish authorities have confirmed that transactions between the Partnership operating the new printing works and Heinrich Bauer Verlag will take place on an arm's length basis (Bauer Verlag takes at least 3 offers from leading European rotogravure printing works and the price charged by the Partnership is set as the average of these). The tax authorities are entitled to verify this calculation and to demand additional supporting documentation.
- (88) Furthermore, the share of sales to the Heinrich Bauer Verlag Group is expected to decrease as production capacity increases. The reason for this is that with more production lines installed, the consequences of malfunction are less severe, and this in turn enables the acquisition of new external customers in a market where timely delivery and reliability are essential.
- (89) In the light of the above, the Commission takes the view that BVG's products will be sold under market conditions and that therefore the relevant product market in this case should be defined as the market for printing activities and not the downstream product market (publishing).

### Printing technology

- (90) The investment project concerns rotogravure printing technology whereby a steel printing cylinder engraved by laser transfers the printing ink onto a surface (e.g. paper). As opposed to rotogravure, offset printing is a technique in which both the printing and non-printing areas are on the same plane as the image carrier. The non-printing areas are kept free of ink by being ink-repellent while, on the other hand, the printing areas

are ink-receptive. This is achieved by the offset ink being oil-based and the non-printing areas being kept clean with water or water-based solutions, as water and oil repel each other.

- (91) There are significant differences between the two technologies. First, the investment costs for a rotogravure press are twice as much as for comparable offset presses. This is counterbalanced by the capacity of rotogravure to ensure uniform quality even in long print runs, whereas offset printing quality is quite variable because of the difficulty in maintaining a balance between water and ink during the printing process. Also, rotogravure presses are more efficient (a large number of copies can be completed in a shorter period of time on a rotogravure press than on an offset press) and their lifespan is longer.
- (92) Consequently, above a certain print volume rotogravure has lower production costs. The higher the print volume, the lower the production costs compared with other processes. However, for smaller print runs rotogravure's cost efficiency is reduced by the relatively high cost of preparing cylinders compared with preparing a printing form in offset.
- (93) Therefore rotogravure is particularly suited for large print volumes<sup>(24)</sup>, while the offset method is largely restricted to smaller volumes. Because of the higher and more stable quality of rotogravure printing, there is also a difference for the demand side.
- (94) As regards the arguments submitted by Poland concerning convergence of rotogravure and offset technologies, it should be noted that the market investigation carried out in a previous merger case<sup>(25)</sup> confirmed that the capacity of offset printing machines was constantly increasing. However, at present they represent a credible substitute in magazine printing only for those magazines currently printed in rotogravure with the lowest number of copies and pages.
- (95) The aforementioned merger decision does not define the exact thresholds, in terms of either volume or number of pages, above or below which the use of offset or rotogravure is preferred. The exact definition of the market was thus left open and the market was analysed at the narrowest possible level (i.e. as being restricted to rotogravure printing).

<sup>(24)</sup> Except for the printing of newspapers where the poor quality of the newsprint has an adverse effect on the technical condition of machinery intended for use with high quality materials (e.g. magazines). Therefore newspapers are printed in cold set web offset or in flexography.

<sup>(25)</sup> Cf. footnote 11 above.

(96) An equally cautious approach is also justified in the present case. It should also be noted that, according to the information available on the website of the European Rotogravure Association <sup>(26)</sup>, rotogravure still maintains its edge as regards quality: 'As gravure, unlike any other print process, guarantees constant high quality throughout long print runs it continues to play a leading role as key print process for magazines, catalogues and brand articles in a more and more internationalised market place.'

(97) Thus, despite the apparent competition in some segments of the publication printing market between the offset and rotogravure technologies, the Commission considers that in this case market analysis should be restricted to rotogravure printing in line with a worst-case scenario approach.

#### Rotogravure printing

(98) Rotogravure is used for printing two major graphic products: publications and flexible packaging. Since presses designed for the printing of magazines and catalogues cannot be used to print packaging material and the aided printing works will only be involved in publication printing, the relevant market in this case is limited to publication rotogravure.

(99) Publication rotogravure supplies the magazine and catalogue market. A merger decision <sup>(27)</sup> concluded that there is a distinct product market for the rotogravure printing of magazines on account of the time constraints associated with printing these products and special requirements with regard to finishing and distribution. Separate treatment of the magazine market is also warranted as the bulk of the sales of the printing works in Nowogrodziec will consist of magazines, which means that the project primarily targets this submarket.

(100) In light of these considerations, market investigations will be performed on three plausible relevant markets in this case:

- publication rotogravure printing (broad market definition);
- rotogravure printing of magazines;
- rotogravure printing of catalogues and inserts.

#### Relevant geographic market

(101) Although the market investigation in a previous merger case <sup>(28)</sup> did not enable a precise threshold to be defined

below which all rotogravure presses would be competitive, it was confirmed that the market is larger than national because of cross-border trade flows and competition. This is all the more evident given that there are no rotogravure presses in some countries (e.g. Sweden, where several customers have indicated that Polish presses could also be competitive).

(102) Therefore the merger decision concluded that, in case of Belgium and Sweden (i.e. the countries where the merger leads to significant overlaps), the geographic market definition of rotogravure printing of magazines should include all rotogravure printing facilities located in neighbouring countries <sup>(29)</sup>. It was concluded that the scope of the market for rotogravure printing of catalogues could be even larger because time constraints were not particularly significant and there were no specific distribution difficulties.

(103) In this case the Polish authorities have provided examples showing that the long-distance supply of magazine printing services is feasible provided that appropriate distribution systems are put in place. Such long-distance distribution networks and supply monitoring systems seem to be more conducive to supplying magazines in a timely manner than the benefits resulting from the integrated organisational structure of the companies concerned.

(104) Moreover, Poland has provided examples of the transport costs incurred by the beneficiary when supplying magazines. These costs can be regarded as relatively low even when longer distances have to be covered. The beneficiary currently has customers even beyond the neighbouring countries (in Austria, Switzerland, the UK and France). This also indicates that the beneficiary is able to compete across a substantial proportion of the EEA.

(105) Examples of Polish presses (other than the beneficiary's) providing services to distant customers constitute further proof that it is possible to offer magazine printing services on distant markets without prohibitive distribution costs. Polish printing works are able to compete in non-EEA markets as well (e.g. Ukraine or Russia).

(106) Data compiled by MillwardBrown SMG/KRC <sup>(30)</sup> and submitted by the Polish authorities indicate that there are rotogravure printing houses in only 14 of the EEA countries. Chart 1 shows the breakdown of capacity per country.

<sup>(26)</sup> [http://www.era.eu.org/upload/File/press\\_releases/PressReleaseDrupa08\\_eng\(2\).doc](http://www.era.eu.org/upload/File/press_releases/PressReleaseDrupa08_eng(2).doc)

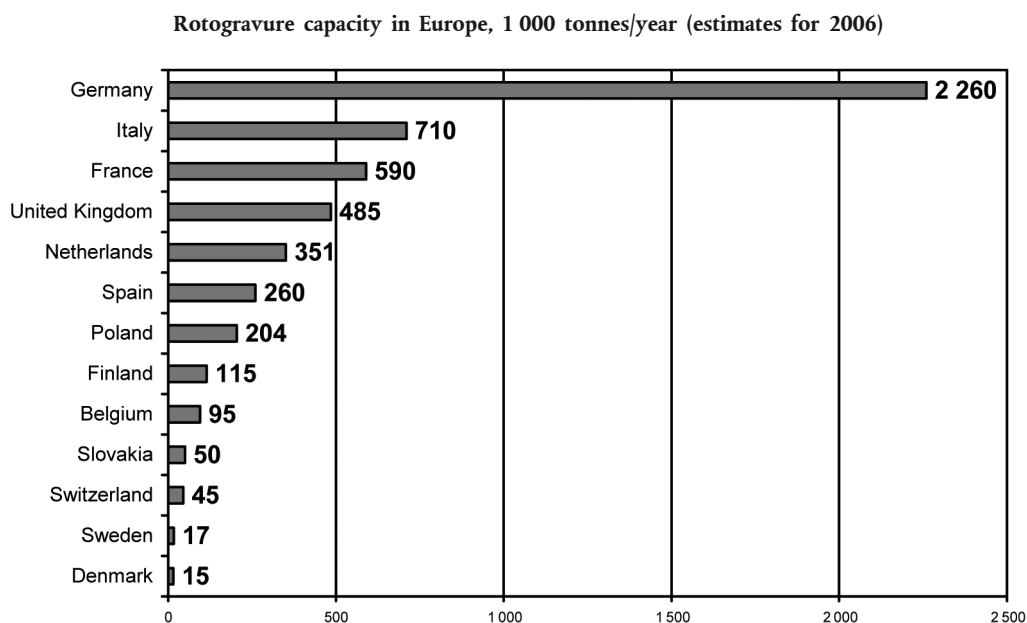
<sup>(27)</sup> Decision of 3 May 2005 in Case No COMP/M.3178 – Bertelsmann/Springer/JV.

<sup>(28)</sup> Cf. footnote 11 above.

<sup>(29)</sup> In the case of Belgium this was defined as the Netherlands, Eastern Germany and Northern France and in the case of Sweden at least all rotogravure facilities in Finland, Northern Germany, Denmark and the Netherlands.

<sup>(30)</sup> The Polish office of Millward Brown International, one of the largest independent market research companies.

Chart 1



(107) As can be seen from Chart 1, Germany accounts for 43 % of all rotogravure capacity in the EEA, whereas its population (and hence its estimated share of magazine/catalogue consumption) is only about 17 % of the EEA total. The shared capacity of the four biggest producers (Germany, Italy, France and the UK) is 78 %, whereas their population represents 53 % of the EEA total. This also suggests that production is concentrated and that there is a significant cross-border trade in rotogravure printing services within the EEA.

(108) Therefore, on the basis of the information currently available to it and in view of the lack of a recognised alternative geographic segmentation and the absence of comments from third parties, the Commission considers that in this case the relevant geographic market is the EEA. It should also be noted that under the MSF apparent consumption is determined at EEA level for the purposes of applying paragraph 24(b) of the MSF.

#### Market Share

(109) To examine whether the project is compatible with paragraph 24(a) of the MSF, the Commission has to analyse the beneficiary's market share at group level before and after the investment. As the investment started in 2004 and should be completed in 2009, the Commission will examine BVG's market share in 2003 and 2010.

(110) To establish BVG's market share at group level, the Commission compared its sales in volume terms at

EEA level against the total amount of rotogravure paper consumed in the EEA.

(111) No data in value terms are available, but Poland has confirmed that prices are set by the beneficiary at, or very close to, average market prices. This means that market shares (and the capacity increase) in value terms are very similar to shares in volume terms, and therefore it is justified to base the analysis on data in volume terms alone.

(112) The figures for overall EEA consumption in volume terms (i.e. the amount of paper printed using rotogravure technology) are based on data from the European Rotogravure Association<sup>(31)</sup> (ERA) submitted by the Polish authorities. ERA has also confirmed the capacity of the [...] production lines to be installed by the beneficiary. The breakdown of overall consumption/sales into the sub-segments for magazines and catalogues/inserts has been provided by MillwardBrown SMG/KRC. This percentage breakdown (60,2 % for magazines and 39,8 % for other publications) concerned 2006 and was expected to remain stable.

(113) The Polish authorities submitted ERA data covering 2002-06. Detailed overall forecasts for 2010 are not available, but ERA expects modest growth of around 1 % to continue over the coming years. However, in the worst-case scenario, the market is assumed to be stagnant and therefore the 2006 data have been used to estimate total consumption in 2010.

<sup>(31)</sup> The European Rotogravure Association (ERA) is the leading international organisation of the rotogravure industry. It is a not-for-profit organisation which supports users of rotogravure technology.

- (114) BVG's market share has been assessed at EEA level on the basis of the three plausible relevant product markets defined in paragraph 101. Market shares at group level (i.e. including Heinrich Bauer Verlag's printing works) the year before and after the investment are provided in Table 3 below.

Table 3

## Market shares in volume terms in the EEA

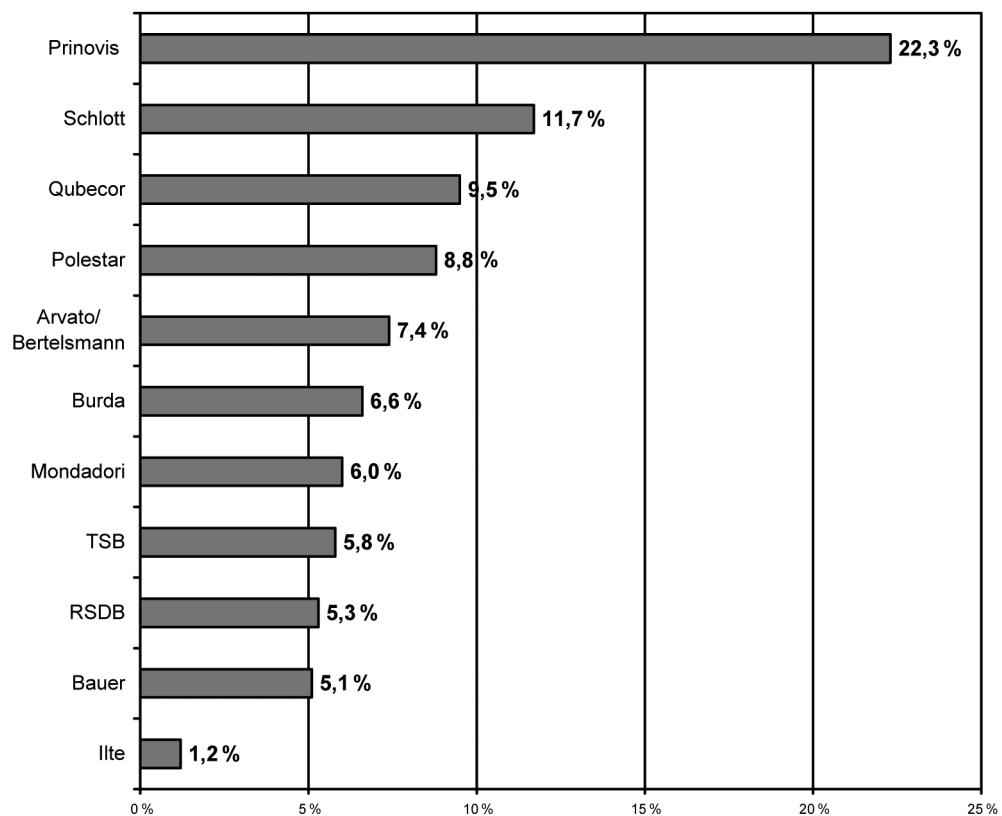
(in %)

	2003	2010
Market share in publication rotogravure printing (broad market definition)	[0-5]	[5-10]
Market share in rotogravure printing of magazines	[5-10]	[10-15]
Market share in rotogravure printing of catalogues and inserts	[0-5]	[0-5]

- (115) Data compiled by MillwardBrown SMG/KRC on rotogravure print capacity also indicate that the Bauer group has a modest share in the EEA market and that it faces strong competitors.

Chart 2

## Print capacity of rotogravure companies in Europe — % of total rotogravure capacity (estimates for 2006)





(116) As Table 3 shows, for all market definitions, BVG's market share at group level remains substantially below the 25 % threshold indicated in paragraph 24(a) of the MSF. The Commission therefore considers that, even allowing for the margin of error inherent in the estimates presented above, the aid measure is compatible with paragraph 24(a) of the MSF.

#### Capacity increase

(117) Pursuant to paragraph 24(b) of the MSF, a project is not eligible for investment aid if the capacity created exceeds 5 % of the size of an underperforming market (i.e. where sectoral growth is below EEA growth). The full capacity to be created by the project will be achieved in 2010.

(118) As the CAGR of the market in 2001-06 (2,03 %), calculated on the basis of the figures Poland submitted, exceeds the CAGR for GDP within the EEA (2,00 %), there is no need to examine whether the capacity created is more than 5 % of the market.

(119) However, data for 2001, i.e. the most important year for the calculation of the CAGR in 2001-06, was not directly available but was estimated by Poland on the basis of the growth recorded by the magazine market as a whole in 2001-02. This might not be representative of growth in rotogravure printing of magazines, and therefore some caution should be exercised. For that reason the Commission has also checked whether the capacity created by the project constitutes more than 5 % of the market.

(120) Total capacity created by the project (including all [...] new production lines) amounts to 152 000 tonnes per annum, on the assumption that one production line accounts for [...] thousand tonnes per annum.

(121) This estimate refers to actual capacity, taking account of factors such as downtime for repairs and maintenance (the maximum working time for production machines was estimated at 61 % of the total theoretical time) and of factors specific to rotogravure printing technology.

(122) In particular, printing machines using this technology have a specified maximum cylinder length, i.e. the width of the paper ribbon used, which corresponds to a given quantity of standard printed pages (in the case of the machines used by the beneficiary, the widest cylinder which can be used enables a maximum of [...] standard pages to be printed). A cylinder of a given length enables a few clearly defined magazines/catalogues volumes to be printed (i.e. for the cylinder with a circumference of [...] used in the aided facility, this is [...] pages).

(123) Theoretical capacity is based on the maximum capacity obtainable from the cylinder with the largest circumference — in case of the beneficiary this would correspond to printing capacity for magazines with exactly [...] pages only. In reality, magazines of different volumes are printed, and machine capacity varies accordingly. Therefore, the estimate also took account of the fact that production takes place at various press widths and various cylinder circumferences, i.e. not always at maximum capacity. The estimate was made with reference to planned printing capacity on the basis of contractual orders.

(124) According to the Polish authorities, since magazines and catalogues/inserts are printed on the same production lines it is difficult to provide an unambiguous breakdown of the capacity created by the project between magazine printing and catalogue/insert printing. However, as indicated by the Polish authorities, one possible solution is to estimate capacity breakdown on the basis of the expected share of magazines and catalogues/inserts respectively in the aided facility's sales.

(125) In that connection Poland has provided the latest production figures which support the claim that the beneficiary is attempting to achieve a more balanced product mix than was indicated during the initial investigation phase. The initially specified [90-100] % share of magazine printing at the new printing works was based on the orders existing at that time. However, since then new customers have been acquired, leading to a gradual increase in the share of catalogue/insert printing.

(126) As shown in Table 2, on the basis of the expected breakdown for 2008/2009 between magazine and catalogue printing, the capacity increase amounts to less than 5 % on all plausible relevant markets. In addition, the analysis was based on the worst-case scenario that the relevant market consists of rotogravure printing alone.

(127) As the two conditions set out in paragraph 24(b) of the MSF have been met (the market is not underperforming and the capacity increase amounts to less than 5 %), the Commission takes the view that the aid measure is compatible with paragraph 24(b) of the MSF.

#### 6. CONCLUSION

(128) On the basis of the foregoing considerations, the Commission considers that its doubts as to whether the project exceeds the thresholds laid down in paragraphs 24(a) and (b) of the MSF have been allayed and therefore concludes that the aid is compatible with the common market,

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid which Poland is planning to implement in favour of BVG Medien Beteiligungs GmbH is compatible with the common market within the meaning of Article 87(3)(a) of the EC Treaty.

The award of aid not exceeding PLN 220,057 million in discounted value (representing an aid intensity of 29,98 % NGE of eligible costs amounting to PLN 734,031 million in discounted value) is, accordingly, authorised. In the event that eligible costs are lower, aid intensity must not exceed 29,98 % NGE of these costs.

*Article 2*

The Polish authorities shall submit a detailed final report within six months of payment of the last aid instalment on the basis of the notified payment schedule.

*Article 3*

This Decision is addressed to the Republic of Poland.

Done at Brussels, 10 December 2008.

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

**COMMISSION DECISION****of 17 June 2009****on the State aid C 33/08 (ex N 732/07) to Volvo Aero Corporation for R & D, which Sweden intends to implement***(notified under document C(2009) 4542)***(Only the Swedish version is authentic)****(Text with EEA relevance)**

(2009/838/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES

mail between managers of the beneficiary. This supplementary information was submitted on 19 June 2008.

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

- (3) By letter of 16 July 2008 the Commission notified to Sweden its decision to initiate proceedings pursuant to Article 88(2) of the EC Treaty on the above mentioned measure. The decision of the Commission to initiate proceedings has been published in the *Official Journal of the European Union* <sup>(2)</sup>. The Commission invited interested parties to submit their observations on the measure. Sweden submitted observations on 17 October 2008.

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

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

- (4) By fax dated 28 October 2008, Fred Bodin, the former President and CEO of Volvo Aero, submitted observations. By letter of 31 October 2008, GE Aviation submitted observations. By e-mail dated 3 November 2008, the IF Metalworkers union of Volvo Aero submitted observations.

Having regard to those comments,

Whereas:

- (5) By letter of 3 November 2008 the Commission has forwarded these observations to the Swedish authorities, which submitted comments on 12 December 2008.

**1. PROCEDURE**

- (1) By letter of 10 December 2007, the Swedish authorities notified to the Commission the measure related to an aid that they intended to grant to Volvo Aero Corporation. The Commission requested further information in a letter dated 28 January 2008. The Swedish authorities submitted some answers to this request in a letter of 18 March 2008.

- (6) The Commission requested further information from the Swedish authorities by letter of 30 March 2009, to which Sweden replied on 3 April 2009.

- (2) On 15 April 2008, a meeting took place between the Swedish authorities and the services of the Commission, after which the Commission wrote another letter requesting supplementary information on 21 April 2008. The Swedish authorities replied to this letter and submitted further observations by letter of 2 June 2008. In that letter, the Swedish authorities referred to additional information, notably internal exchanges of e-

**2. OBJECTIVE OF THE MEASURE**

- (7) The Swedish authorities intend to grant aid to Volvo Aero (the *Company*) for the research and development (R & D) of components for the GENx engine, which is an engine developed by General Electric (GE) for the Boeing B787 and B747-8 aircraft. Volvo Aero signed an initial risk-sharing partnership agreement with GE on 15 December 2004 and commenced work on the R & D project.

<sup>(1)</sup> OJ C 253, 4.10.2008, p. 31.

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

- (8) Volvo Aero is a developer and producer of components for commercial and military aircraft engines, with operating income of SEK 359 million (approx. EUR 39 million <sup>(3)</sup>) and operating margin of 4,8 % in 2008. It is a small player in the so-called second tier market <sup>(4)</sup> and produces components for all the original equipment manufacturers (OEMs): General Electric (GE) and Pratt & Whitney (PW) in North America and Rolls-Royce (RR) in Europe.
- (9) Volvo Aero is part of the Volvo Group (the *Group*). The Group operates mainly in the trucks, construction equipment, and buses sectors. It also provides engines for leisure and work boats as well as diesel-powered generator set and operations in the aerospace industry (through its subsidiary Volvo Aero) <sup>(5)</sup>. In 2008, the Group's operating income amounted to SEK 15 851 million (approx EUR 1 704 million) with an operating margin of 5,2 %. Volvo Aero accounts for 2 % share of the Group's net sales and operating income.
- (10) The GENx is being developed by GE and a number of risk and revenue sharing partners (RRSP) which include, apart from Volvo Aero, the following companies: Avio (Italy), with 12 %, responsible for the design and manufacturing of the accessory gearbox; Techspace Aero (Belgium) with 5 %, responsible for the low pressure compressor stators; and other partners in Japan (IHI and MHI with combined 15 % share) and in the US.
- (11) The GENx for the B787 was certified in March 2008 and the GENx for B747-8 is scheduled for certification in mid 2009. 1120 GENx orders were secured for the B787 and B747-8 aircraft; however the launch of the B787 has been delayed by Boeing for nearly 2 years and no engines have actually been sold as yet.
- (12) Volvo Aero's participation in the GENx under the RRSP agreement amounts to 5,6 % of the overall GENx costs. Volvo Aero is in charge of developing a number of components for GENx: the fan hub frame, booster spool, turbine rear frame, after fan case and high pressure turbine root seal, with the total R & D project costs of SEK 927 million (approx EUR 100 million).
- (13) The scale of the proposed R & D project is 4 times greater than any other R & D project handled by the Company so far and it is the first time Volvo Aero has assumed this level of responsibility. Besides, the technical and commercial risks presented by GENx are substantial.
- (14) The GENx engine contains complex lightweight components that have to be applied in a new manner. The ambitious technological objectives fixed by GE for the development of GENx components are linked to low fuel consumption, low noise, low emissions and low weight.
- (14) The Swedish authorities intended to grant to Volvo Aero a repayable advance <sup>(6)</sup> of SEK 362 million (approx. EUR 39 million at the exchange rate in effect when the aid was granted), which would cover 39 % of the eligible R & D costs. The aid has not been paid out yet and is subject to approval by the Commission. According to the Swedish authorities, the reimbursement mechanism would ensure a return of 7,32 % on the loan, higher than the current reference rate for Sweden (5,49 % in 2007).
- (15) The repayment is defined on the basis of the earnings of Volvo Aero from the project (in terms of payments from GE to Volvo Aero). The forecast used by the Swedish authorities is SEK 23 billion <sup>(7)</sup>, based on sales forecasts of 4 937 engines up to 2028. Until this volume has been attained, Volvo Aero is expected to pay [...] <sup>(\*)</sup> % of the payments from GE to the Government, including payments from other derivative engines from the GENx. When sales exceed SEK 23 billion, Volvo Aero will continue to pay a royalty corresponding to [...] % of annual turnover from the GENx (but excluding future derivative engines), with no limitation in time.
- (16) Volvo Aero requested the aid in a letter to the Swedish Government on 7 December 2004, before the start of the project. The Swedish authorities gave an oral assurance to Volvo Aero in December 2004 that they would grant some aid for the R & D project (without however confirming the exact amount and form of aid). Only informally, through a telephone call from the Ministry of Industry to Volvo Aero, did the Government express its positive stance on the aid.
- (17) Volvo Aero claims that it relied on this assurance and signed the agreement with GE on 15 December 2004, even though it did not get any written confirmation by the Government about the aid. The aid was formally approved by the Swedish authorities only in 14 June 2007 when they gave the instruction to the National Debt Office to formalize the loan, after, according to the Swedish authorities, the scope of Volvo Aero's part in the project had been clarified. By then, a large part of the R & D project had been completed.
- <sup>(3)</sup> According to the European Central Bank, the Swedish krona to euro exchange rate was approx. 9,3 on the notification date of 10 December 2007.
- <sup>(4)</sup> The second tier market includes suppliers of aerostructures such as: Hamilton (US), Honeywell (US), IHI (JP), MTU (DE), Snecma (FR), Avio (IT), ITP (ES).
- <sup>(5)</sup> The Group also provides other services, such as financing, leasing, insurance, action services, warranty, rentals, IT solutions and logistical operations.
- <sup>(6)</sup> Repayable advance means a loan for a project which is paid in one or more instalments and the conditions for the reimbursement of which depend on the outcome of the R & D project.
- <sup>(7)</sup> Expected Volvo Aero revenues from sales of engines and spare parts.
- <sup>(\*)</sup> Business secret

### 3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (18) The Commission decided to open the formal investigation procedure because of a number of misgivings that are summarised below:
- (19) The Commission had misgivings about the market failure invoked by Sweden, i.e. the asymmetric information related to financing that applies to this type of project <sup>(8)</sup>. Given that Volvo Aero is not financially independent of the Volvo Group and the project costs have *de facto* been covered from Volvo Aero's operating cash flow and the intra-group cash pool, this raised the question whether Volvo Aero really lacks the resources to participate in the GENx project.
- (20) The Commission had doubts as to the incentive effect of the aid, and the need for it, and questioned the extent to which the aid had been a determining factor in Volvo Aero's decision to start the project, given that it was only formally approved when almost half of the project had been completed. The Commission was of the opinion that the oral discussion that took place between the Government and the Company was no substitute for the formal procedure for the granting of aid.
- (21) The Commission questioned the proportionality of the aid in respect of the repayment terms of the repayable advance. The Commission was concerned that the foreign exchange risks were being borne by the Government instead of Volvo Aero.
- (22) The Commission in the opening decision considered that the impact of the aid on competition was limited, given the very small market share of the beneficiary (2 % share of the market for large civil aircraft engines). However, the Commission invited competitors or other third parties to submit any observations as concerns effects on competition.

### 4. COMMENTS FROM SWEDEN AND INTERESTED PARTIES

- (23) Pursuant to Article 20(2) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(9)</sup>, and in response to the public notice in the *Official Journal of the European Union* <sup>(10)</sup>, the Commission received

comments from the Swedish authorities, from the former President and CEO of Volvo Aero, from GE Aviation, and from the IF Metalworkers union of Volvo Aero.

#### 4.1. Comments from Sweden

##### 4.1.1. Market failure

- (24) The Swedish authorities provided information to address the Commission's doubts with regard to the market failure issue and to explain the existence of a market failure in the case at hand, focusing on the availability of appropriate internal and external financing as well as the Volvo Group's financial policies towards the use of external funding sources, including public support.
- (25) Sweden provided further information on the Volvo Group's financial policy, including the terms and conditions of the intra-group loan to Volvo Aero. The information provided shows that the intra-group cash pool rather represented an emergency temporary measure in order to enable Volvo Aero to meet the contractual obligations against GE, in anticipation of the agreed Government support. The continuation of such loan, however, would threaten to unbalance the funding of other Group operations and is therefore not a sustainable option.
- (26) As to the availability of external funding, Sweden explained why external financing was not available for the project. The Volvo Group has never obtained from any commercial bank or financial institution a conditional loan comparable to the repayable advance. The Volvo Group does not normally obtain commercial loans where the term exceeds 10 years, while the requested repayable advance is for 20 years. Nordea, the preferred bank of the Volvo Group, was not prepared to provide conditional loans or loans for 20-30 year term to the Volvo Group.

##### 4.1.2. Incentive effect

- (27) The Swedish authorities explained the reasons underlying the time lag between the initial assurances by the Government to grant the aid, the start of the R & D project and the formal approval of the aid. According to Sweden, the Government confirmed to Volvo Aero in 2004 that it would grant the aid. However, for a number of objective reasons, such as the scope of the project that had been clarified only by the autumn of 2006, and the elections in 2006, the approval of the aid was formalised only in 2007.

<sup>(8)</sup> The asymmetry of information comes from the scale of the investment upfront, which is very significant, while returns arrive only in the long term. The break-even point is normally reached after 15-20 years. Technical and commercial risks also have a major bearing.

<sup>(9)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(10)</sup> See footnote 1.

- (28) Sweden provided information to demonstrate that the clear and positive assurances given to Volvo Aero in 2004 with regard to the aid had an incentive effect, as they enabled the Company to engage in the GENx project. The Swedish authorities claimed that the Government intended that Volvo Aero would rely on the said assurances and on that basis would enter into the agreement with GE. Internal documents were provided to the Commission to demonstrate that such assurances accurately reflect the intention of the Swedish authorities at the time.
- (29) Given the assurances by the Government in 2004 which triggered the change in the Company's behaviour, according to the Swedish authorities, a formal agreement to grant the aid in 2007 was just a formalisation of the *de facto* offer of the aid in 2004. The time lag between the assurances and their formalisation does not, according to Sweden, reflect any uncertainty that the aid has actually been paid out. Besides, the Swedish authorities emphasised that the formal decision to grant the aid was taken when a large part of R & D work was still ongoing.
- (30) The Swedish authorities reiterated further that given the exceptional nature of the GENx project, including its size and scope and the technological and commercial risks involved, the conditional loan was crucial for Volvo Aero to engage in the GE agreement. They presented detailed information concerning commercial and technological risks related to the project, both at the project start, as well as at the time the repayable advance was formalised in mid 2007 and beyond. Considering the technical and financial risks, GE initially had serious reservations about involving Volvo Aero in the GENx project given its limited experience in engine component development. Considerable technical and commercial risks remained in mid 2007 and beyond due to ongoing R & D work and fewer sales of GENx powered aircraft than originally expected.
- (31) According to the Swedish authorities, the *de facto* situation of Volvo Aero (that the R & D project was executed with internal and the Group resources) does not mean the long-term or risk-sharing financing was available to the Group operating companies. Having signed the GE agreement, Volvo Aero had contractual commitments to continue with the project. Failure to do so would have had dramatic consequences, such as breach of contract and delay in its work, loss of reputation and the risk of being perceived as an unreliable partner. Therefore, temporary reliance on the intra-group cash pool was crucial but no substitute for long-term funding. The Swedish authorities stressed that the Company, due to delay in the expected State aid, is confronted with the most dramatic cash flow position in its history.

#### 4.1.3. Proportionality of the aid

- (32) The Swedish authorities presented arguments showing why Volvo Aero and not the Government would bear the foreign exchange risk. They also argued that since the repayment of the advance is based on revenues from sales (regardless of currency) and not units sold, the instrument is more proportionate, as it also includes the sale of spare parts. The Swedish authorities further claimed that the aid was proportionate mainly because of the repayment terms of the repayable advance.

#### 4.1.4. Distortion of competition

- (33) The Swedish authorities agreed that the distortion of competition and trade was limited. They emphasised that the risk of crowding out was limited because each engine project presents a fresh opportunity for several component producers to engage in new R & D. According to the Swedish authorities, the aid would only marginally increase the market share of the Company, as the GENx project will replace the previous CF6-80 programme. Finally, the aid would enable the Company to engage in the development and production of components for civil aircraft engines.

### 4.2. Comments from interested parties

- (34) Fred Bodin, the former President and CEO of Volvo Aero, provided the details of the negotiation process with GE and the Government. Given the cash flow implications of the GENx project, the board's decision to enter into the GE agreement was taken on the understanding that Volvo Aero would receive the aid, as documented in the GE RRSP agreement dated 15 December 2004. Mr Bodin emphasised that the Government had clearly confirmed it would grant the aid and he would not have authorised the agreement with GE without a clear commitment from the Government.
- (35) The observations from GE Aviation contained information explaining the negotiation process with GE, showing that GE had concerns regarding Volvo Aero's resources, both technical and financial, to participate in the GENx project, the largest R & D project ever undertaken by Volvo Aero. The Company conveyed to GE on several occasions that receiving the Government support for the project was critical to their decision to become a risk-sharing partner in the GENx project, and that Volvo Aero entered into the GE agreement on the understanding that it would be entitled to the loan. GE also pointed out that there are still risks associated with the GENx programme.

- (36) In their observations, the workers unions stress that the GENx programme is new and unique both for Sweden and for Volvo Aero. The previous work of Volvo Aero in the civil sector has been based on the production of engine components, while a significant part of the new project will involve the development of new engine components. The GENx programme is much larger than previous cooperation projects with Rolls Royce.
- (37) The workers unions expressed their concern over the difficulties of the aircraft market for such a small player as Volvo Aero, for which this kind of programme is essential to stay on a global market. They are aware of the financial implications and the constraints that the programme represented for Volvo but also understand the possibilities offered by the state loan. Without State aid the participation to such a large programme would have been impossible for Volvo Aero.
- (38) According to them, the development work is not yet complete and so there are still significant technical risks. Commercial risks are also still significant, as orders do not always mature into sales, particularly given the economic and financial downturn. The negative consequences of not getting State support on the cash flow situation of Volvo Aero, which is worse than ever, worry the workers unions.

#### 4.3. Observations by Sweden on the third party comments

- (39) By letter dated 12 December 2008, the Swedish authorities submitted observations on the third party comments and provided additional information on the basis of further input received from Volvo Aero to demonstrate that the repayable advance was crucial for Volvo Aero to enter into the GE agreement.
- (40) The Swedish authorities agreed with the observations of GE and the workers unions who claim that the GENx presented an exceptional challenge for Volvo Aero and that the R & D work is still ongoing, with related technical challenges. Besides, according to Sweden, these observations are fully consistent with the information provided by Mr Bodin, the former President and CEO of the Company, which also correctly represents the link between the negotiations with GE and the Government assurances to grant the aid.

#### 4.4. Further information provided by Sweden

- (41) In response to the Commission letter dated 30 March 2009, Sweden provided further information about the intra-group funding to justify why AB Volvo has not contributed long-term funding to the GE project. Considering that the market failure and the incentive effect could be called into question by the late formalisation of the aid, the Swedish authorities indicated their readiness to accept an amendment of the originally notified aid amount.
- (42) On 14 June 2007, the date on which the Government gave its formal agreement to grant the aid, Volvo Aero had *de facto* paid approx. 66,5 % of the eligible costs. This is beyond its originally planned contribution of 60 %, and consequently the aid has to be reduced to approx. 33,5 % of the eligible costs, equivalent to approx. SEK 304 million (approx. EUR 33 million), compared to the SEK 362 million (approx. EUR 39 million) originally planned.

### 5. EXISTENCE OF STATE AID

#### 5.1. Existence of State aid

- (43) As indicated in the decision to open proceedings, the measure under assessment falls within the scope of Article 87(1) of the Treaty. This conclusion was not disputed by any of the parties.
- (44) The notified measure concerns a loan granted by the Swedish National Debt Office to Volvo Aero. The resources involved are State resources, as they were made available by the Swedish Parliament and instructions for their use have been drawn up by the Swedish Government. The measure is selective as it concerns only one undertaking, Volvo Aero, which is a large enterprise involved in trade with other Member States. The measure provides an advantage to Volvo Aero, as it allows the Company to have access to resources on terms which the market is not able to provide. Therefore the measure constitutes State aid according to Article 87(1) of the EC Treaty.

#### 5.2. Legality of the measure

- (45) By notifying the measure before its implementation, the Swedish authorities have fulfilled their obligations under Article 88(3) of the EC Treaty. The notified measure will be implemented only after approval by the Commission, in line with Article 88(3) of the EC Treaty.

## 6. COMPATIBILITY WITH THE SINGLE MARKET

- (46) The Commission has assessed the measure under Article 87(3)(c) of the Treaty, in particular on the basis of the provisions concerning aid for R & D — since 1 January 2007, the Community Framework for State Aid for Research, Development and Innovation <sup>(11)</sup> (the *R & D&I Framework*).

### 6.1. Market failure

- (47) To assess properly an aid for a large R & D project, it is necessary to assess the objectives of the measure, notably which market failures it aims to tackle. Only where market forces alone are unable to reach an economically efficient outcome is a market failure considered to exist. In their notification, the Swedish authorities explained that due to imperfect and asymmetric information, there is lack of private risk-sharing financing for the GENx project which is characterised by high technological risks and long-term returns.
- (48) The Commission has recognised the existence of such market failure concerning large programmes in the aerospace sector in previous decisions <sup>(12)</sup>. However, this does not mean that any project in the sector would face a market failure. It is evident that in several occasions, various companies in the sector have been able to fund new projects either from their own resources or through the financial markets. The Commission must assess the presence and the extent of a market failure in the specific case under assessment.
- (49) In the opening decision, the Commission questioned whether there was a market failure considering that the formal decision of the Government to grant the aid arrived at a very late stage in the programme when the project had already been financed by Volvo Aero from its operating cash flow and the intra-group cash pool. The Commission therefore questioned whether the intra-group funding could *de facto* constitute long-term funding of the GENx project.
- (50) The Commission takes account of information provided by the Swedish authorities on the Volvo Group's financial policy, including the terms and conditions of the intra-group loan to Volvo Aero, which seeks to demonstrate

that the funding from the intra-group cash pool system could not be considered as long-term financing for the GENx project. Such funding rather represented an emergency temporary measure to enable Volvo Aero to meet its contractual obligations towards GE; however, its continuation would threaten to unbalance the funding of other Group operations.

- (51) As explained by Sweden, the Group financial policies require that the subsidiaries are financed from their operating cash flow or the intra-group cash pool that is funded via the Group companies and through external sources. Volvo Treasury is in charge of the Group's cash pool management to ensure that there are sufficient reserves to safeguard the ongoing funding of Volvo operations. It is responsible for assessing the overall needs and possibilities of all the Group's business areas and determining the cash pool limits (borrowing and lending) of the Volvo Group companies on a quarterly basis.
- (52) As further explained by the Swedish authorities, the intra-group funding is not supposed to cover project-related financing. It is the responsibility of the subsidiaries to self-finance their R & D expenditures. Besides, the Group's cash pool facility can only be used for short-term projects, under strict repayment conditions and in proportion to the contribution made to the Group operating income, so that the intra-group financing is not done at the expense of other Group business areas. According to the Swedish authorities, the intra-group funding is provided on market terms.
- (53) The Commission notes that Volvo Aero's reliance on the intra-group cash pool for nearly 4 years has been an exception to the Group financial policies. According to Sweden, Volvo Aero was the only operating company that constantly received a substantial negative cash pool limit ranging between SEK [...] to [...] million (approx. EUR [...] to [...] million) from 2004-2008. Besides, the cash pool limits are no longer fixed on an annual basis, but on a quarterly basis. With its limited contribution of 2 % to the Group's operating income, such reliance on the intra-group funding has been disproportionate compared to the Company's relative importance in the Group <sup>(13)</sup>.

<sup>(11)</sup> OJ C 323, 30.12.2006, p. 1.

<sup>(12)</sup> See for instance Commission's decisions on cases N 165/03 (Spain, aid to ITP for the Trent 900), N 372/05 (France, aid to Snecma for the engine SaM 146), N 120/01 (United Kingdom, aid to Rolls-Royce for the development of the Trent 600 and Trent 900 engines), and more recently on cases N 195/07 (Germany, Aid to Rolls-Royce Deutschland), and N 447/07 (France, Aid to Turbomeca), and most recently in C 9/2007 (Spain, aid to ITP).

<sup>(13)</sup> Volvo Construction Equipment has been granted a high cash pool limit, however only for a single year and the company contributed 11 % to the group's operating income.



- (54) The Commission also takes account of the explanation provided by the Swedish authorities that such exceptional reliance on the Group's cash pool funding threatens to undermine the coherence of the Group's operations. Volvo Aero has relied on the Group's cash pool at the expense of funding other Group's business areas, thus endangering the continuity and balanced growth of other Group operations<sup>(14)</sup>, as it creates an imbalance of risks between the Volvo Group's aerospace and non-aerospace divisions. This would limit the Group's capacity for funding other Group projects which are less risky and give better returns.
- (55) The Commission considers that a continuous reliance on the intra-group cash pool is not sustainable in the long run, as the Group is putting Volvo Aero under severe financial pressure to repay the loan, notwithstanding its severe negative cash flow position. Volvo Aero had a negative operating cash flow after tax of SEK [...] million (approx EUR [...] million) in 2008. Volvo Aero has therefore been obliged to take a number of internal measures to generate cash, such as [...] <sup>(15)</sup>.
- (56) On the basis of these arguments, the Commission is able to conclude that the intra-group cash pool has provided liquidity coverage for Volvo Aero to enable the Company to meet its obligations towards GE. However, such funding could not sustain the long-term financing of the project, as it could undermine the coherence of the intra-group funding and create risks to the balance between the Group businesses.
- (57) Nevertheless, considering that aerospace is one of the Group's business areas, albeit limited to 2 % of the Group's operating income, the Group should contribute some long-term funding to the project, even if, according to the Swedish authorities, the Company is not entitled to seek from Volvo Treasury a more structured long-term commitment regarding the GENx. Therefore, on the basis of the information provided, the magnitude and nature of the market failure concerning the GENx project appears somewhat limited, which could indicate that the proposed aid amount may not be truly proportionate to it.
- (58) Furthermore, given that Volvo Aero does not have the financial autonomy to seek external funding for the investments like the one supported by the measure, the Commission questioned in the opening decision whether the Volvo Group indeed lacked the means of securing external funding for the GENx project.
- (59) In their observations, the Swedish authorities first confirmed that the Volvo Group companies are not allowed to obtain any direct external funding from banks and other financial institutions. Prior to the application for the Government support, the Group explored other possible sources of external risk capital, but without success. Despite the fact that AB Volvo is in a strong position to access external funding, there is very limited external funding available for this type of long-term aerospace R & D project, partly due to perceived high project risks.
- (60) The Swedish authorities also provided arguments explaining why borrowing would not be suitable to fund capital-intensive aerospace R & D projects with high technological and commercial risks and very long pay-back periods.
- (61) The Swedish authorities explained that the Volvo Group sought external risk-sharing financing for the GENx project without success. The Volvo Group approached Nordea Bank, but the bank would not provide risk-sharing financing. The Volvo Group also contacted private equity players on an informal basis, but without success. Finally, Volvo Aero was able to secure only a small contribution from one sub-contractor (Carlton ForgeWorks) to cover the entry fee to GE.
- (62) The Commission therefore is able to conclude that no external funding was available for the GENx project.
- (63) The Commission also noted in the opening decision that the financial policies of Volvo Group seem to imply that State funding was the pre-condition for financing its subsidiaries. In their observations, the Swedish authorities explained that public funding was not a precondition for the Group to finance its subsidiaries. The Group's financial policies define the procedures for seeking alternative sources of funding, either through loans from outside the Volvo Group or commercial credit and other forms of structured products, including public funding.
- (64) On the basis of the comments provided, the Commission finds that while the non-availability of the aid has forced Volvo Aero to rely heavily on the intra-group financing, the Group does not appear to be in a position to sustain such funding in the long run without imposing risks on other Group's operations. In light of the new elements and the reduction in the aid from the Swedish authorities to take account of the Group's own de facto contribution to the project at the date of the formal granting of the aid, the Commission is able to conclude that the aid is intended to address a market failure.

<sup>(14)</sup> As indicated in the letter of 27 November 2008 from Volvo Group to Volvo Aero.

<sup>(15)</sup> It should be noted that in January 2009 it was announced that Volvo Aero would initiate negotiations with the trade unions to reduce the number of blue-collar employees by 250 and the number of white-collar positions by around 100. This clearly indicates the financial difficulties faced by Volvo Aero at the moment.

## 6.2. Incentive effect

- (65) In its opening decision the Commission expressed doubts about the incentive effect of the aid, as the formal agreement of the Swedish Government of the aid to be granted was given when the project had been largely implemented, at least for the Boeing B787. As the decision was taken when the project was almost complete, it seemed to cover risks not related to the R & D content of the project.
- (66) According to chapter 6 of the R & D&I Framework the Commission has first to look whether the request for the aid was submitted by the beneficiary before the start of the R & D project. As already indicated in the opening decision, the aid was requested by Volvo Aero before the start of the project, thus respecting the provision contained in the second paragraph of chapter 6 of the R & D&I Framework.
- (67) The Commission notes that it normally questions the incentive effect of a measure whenever a formal decision to grant the aid is taken by the State at a point where the project is well advanced and *de facto* financed by the beneficiary. In the case of R & D, it is essential that the aid should have an impact on the behaviour of the Company, in inducing a larger or a speedier investment in a project. Without such an impact, the aid would have no incentive effect and would therefore not be necessary.
- (68) In order to have such an impact, the aid has to be decided upon by the State, either formally, but with a suspensive clause in view of the necessary approval by the Commission of the compatibility of the aid on the basis of the Article 88(3) of the Treaty, or through a letter of intent, which would not give rise to any legitimate expectations but would be sufficiently strong to indicate a willingness by the State to support a project<sup>(16)</sup>.
- (69) The Commission also notes that a necessary condition for the compatibility of aid to a R & D project is an early notification of the aid under Article 88(3) of the Treaty. A notification of aid to a project which is close to its end would mean that the State is not convinced about the aid it intends to grant or not able to give an assurance about such aid. If on the face of this uncertainty, the Company is able to carry out the project, and even to conclude it, it is likely then that the aid is largely not necessary for the Company itself.
- (70) According to Chapter 6 of the R & D&I Framework, the Commission has to assess, for all individual measures, a number of criteria indicating the incentive effect of the aid, related to the increase in size, scope or speed of the project or the increase in total amount spent by the beneficiary on R & D. The Commission, in performing the detailed assessment of the incentive effect, has based itself on point 7.3.3 of the R & D&I Framework.
- (71) In determining the incentive effect of the aid in changing the behaviour of the Company, the Commission questioned the value of the oral assurances by the Government given to Volvo Aero in December 2004. The Swedish authorities and third parties reiterated in their observations that the assurances by the Government to provide the aid were a decisive factor in the decision by Volvo Aero to engage in the project. Volvo Aero's contacts with the Ministry of Industry during the autumn of 2004 further strengthened Volvo Aero in its confidence that the resources set aside by the Parliament would be used to support the GENx R & D project<sup>(17)</sup>.
- (72) The Swedish authorities also provided internal documents demonstrating that the Company counted on the assurances concerning the aid before engaging in the project<sup>(18)</sup>. As indicated by the former CEO of the Company, had Volvo Aero not received such assurances from the Government, the GE agreement would not have been concluded, as the project would represent an unacceptable level of risk and scale of investment for the Company and the Group.
- (73) According to Sweden, the fact that there is no counterfactual project (i.e. a project that the Company would carry out in the absence of aid) could also show that Volvo Aero had expectations of receiving the aid, as with the TRENT 900 project<sup>(19)</sup>. GE has also confirmed in its observations that the prospect of receiving aid was important to Volvo Aero's decision to become a risk-sharing partner. The GE agreement with Volvo Aero dated 15 December 2004 also contains a reference to the support from the Swedish State.
- (74) The Commission took into account the economic arguments provided by the Swedish authorities justifying why the GENx project would not have taken place without Government support. First, high upfront costs would put an unacceptable strain on the Company's financial position. As evidenced by financial documents, Volvo Aero was able to finance only up to 60 % of the project costs from its operating cash flow while the remaining 40 % of the project costs were temporarily covered from the intra-group cash pool in anticipation of the expected public funding.

<sup>(16)</sup> See e.g. para 38 of the Guidelines on National Regional aid for 2007-2013 (OJ C 54, 4.3.2006, p. 13).

<sup>(17)</sup> In 2002 the Swedish Parliament took a decision to set aside resources for future R & D-related activities within Swedish aviation industry.

<sup>(18)</sup> Former CEO's presentation to the Board before end 2004

<sup>(19)</sup> State aid case N 301/03.

- (75) The Commission notes that while the aid seems to have had a limited effect on liquidity (the project has after all been financed by Volvo Aero from its internal cash flow and intra-group funding) and a limited effect on profitability in terms of its impact on the internal rate of return (IRR) and net present value (NPV), the aid reduced the financial exposure of Volvo Aero, thus reducing the project risks in the event of its technological or commercial failure.
- (76) The Commission notes that the GENx project is larger than Volvo Aero's earlier R & D project (Trent 900). It also enabled the Company to assume additional R & D responsibilities. The R & D work related to GENx presented additional risks which were not present in the CF6-80 programme, which was pure production work without any R & D component.
- (77) The Commission questioned in its opening decision the incentive effect of the aid that would come when the project was very nearly complete and the nature of technical and commercial risks changed. In their observations, the Swedish authorities demonstrated adequately that technical and commercial risks were still very significant even when the R & D project was at a fairly advanced stage due to the novelty of the technology and Volvo Aero's limited experience of this type of project.
- (78) In light of the above, the Commission is able to conclude that internal decision-making documents and GE observations indicate the critical importance of the aid for Volvo Aero in taking the decision to engage in the project because it reduces risk levels to a level that is acceptable for the Company to undertake the project. On the basis of these elements, the Commission is able to accept that the aid had an incentive effect as it was considered necessary in order for Volvo Aero to engage in the GENx project.
- (80) The Commission notes the arguments presented by the Swedish authorities that it is Volvo Aero and not the Government that bears the foreign exchange risk, given that Volvo Aero receives payments from GE in USD, while the aid has to be repaid in SEK. Besides, since the repayment of the advance is based on revenues from sales (regardless of currency) and not units sold, the instrument is more proportionate, as it also includes the sale of spare parts.
- (81) The repayment terms of the repayable advance would seem to confirm the proportionality of the aid: returns are set at 7,32 %, surplus repayments are not capped in time and the repayment is on a quarterly basis based on revenues from GE.
- (82) While the Commission notes that the foreign exchange risk should be borne by the Company, the fact that the reimbursement is made on all revenues and not just on sales of engines balances the potential advantage to the Company from foreign exchange gains. Furthermore, the repayment advance is in line with the R & D&I Framework and it is a less distorting aid instrument. Taking into account also the relatively high return demanded by Sweden, the aid can be considered to be proportionate, as concerns the foreign exchange risk.
- (83) The Commission further points out that a repayable advance is a risk-sharing instrument that, where the project is successful, allows for a more than proportionate reimbursement from the beneficiary: If sales forecasts are reached, the aid is fully reimbursed, including interest. If sales fall below the forecast, the reimbursement is reduced proportionally<sup>(20)</sup>. If sales are above the forecast, the reimbursement exceeds the amount of the advance received.
- (84) In assessing whether the aid is proportionate to the nature and magnitude of the market failure, the Commission must ensure that the aid is limited to the necessary minimum. In its letter of 12 November 2008 the Commission therefore questioned whether the whole amount of the aid was actually necessary, considering that the aid was formally agreed when the project was fairly advanced and Volvo Aero had been able to finance the costs through the cash-pool described above.

### 6.3. Proportionality

- (79) In its opening decision, the Commission stated it was not entirely convinced about the proportionality of the aid as concerns the repayment terms of the repayable advance. Given that the reimbursement of the advance is structured on the basis of SEK sales figures, while revenues from sales to GE are USD-based, the Commission suspected that the foreign exchange risks might be borne by the Government and not by the Company.

<sup>(20)</sup> And the distortion of competition is more limited, since the product has not been a success.

- (85) In response to the Commission's concerns that the aid may not have been kept to the minimum, the Swedish authorities acknowledged that the aid granting process and the financial situation of the Group were an indication that the amount of aid could be reduced compared to their initial intention. They proposed to reduce the amount of the aid based on the de facto situation of Volvo Aero at the moment of the agreement to grant the aid on 14 June 2007. As of that date, Volvo Aero covered approx. 66,5 % of the eligible costs, of which 60 % had been covered from Volvo Aero internal cash. The remaining 6,5 %, equivalent to approx. SEK 58 million (approx. EUR 6 million), was financed from the intra-group cash pool. In summary, Sweden proposes to reduce the total aid amount from the initially requested SEK 362 million (approx. EUR 39 million) to approx. SEK 304 million (approx. EUR 33 million).
- (86) The Commission finds that limiting the aid to the proposed SEK 304 million (approx. EUR 33 million), which represents 33,5 % of the eligible project costs, compared to the initially proposed 39 % of the eligible costs, ensures the aid is kept to the necessary minimum. This is because the proposed aid amount addresses the actual funding needs by Volvo Aero at the moment when the aid was formalised and in this way it better reflects the magnitude of the market failure. The Commission therefore is able to conclude that the reduced aid amount ensures that the aid remains proportionate and kept to the absolute minimum.
- (87) The Commission therefore is able to conclude that the aid repayment terms and the reduction in the aid amount to 33,5 % of the eligible costs are proportionate to the degree and magnitude of the market failure.
- #### 6.4. Impact on competition
- (88) In its opening decision, the Commission considered the relevant market to be the market for engines for large civil aircraft. The Commission reached the preliminary conclusion that the impact on competition of the aid was limited, in view of the limited market share and of the investment size. Competitors were none the less invited to comment and substantiate a possible significant impact on competition.
- (89) The Swedish authorities indicated that on the worldwide market of components for aero-engines, Volvo Aero is a small player compared to its competitors in Europe, such as Rolls Royce, Snecma, Avio, and MTU. Given that Volvo Aero has only 2 % market share in the large civil aircraft engine market, the aid would have a very limited impact. The components developed and manufactured by Volvo cannot be easily considered as a separate sub-market, not least because they can be developed either by the large original equipment manufacturers or by other suppliers.
- (90) The Commission notes that no competitors intervened after the Commission initiated formal investigation procedures. Taking into account the publicity given to the decision to open proceedings, the very limited market share of Volvo Aero in the large civil aircraft engine market, and the likely lack of European partners for the same components, the Commission infers from this absence of comments that no competitor had concerns that this aid may distort dynamic incentives, create market power or maintain inefficient market structures. The Commission also took into account supportive comments received from GE Aviation, as well as from the former president and CEO of Volvo Aero, and from Volvo trade unions.
- (91) To all appearances, the proposed aid does not seem to distort the dynamic incentives of competitors (engine component producers) to invest and compete. This may be mainly because many second and third tier suppliers tend to have long term relationships with a single Original Equipment Manufacturer (OEM) as their preferred partner. Volvo Aero works on a project basis with various OEMs, mainly Rolls-Royce and GE, and is independent.
- (92) As for competition in the product markets, the aid concerns only a limited number of components for aircraft engines, notably the fan hub frame, booster spool and turbine rear frame. Besides, these components are specifically designed for the GENx engine, and so do not affect other types of engine. Furthermore, the investment involved is limited in scale compared to the investments needed for the development of a new engine. Therefore, the aid does not have a significant impact on market power. Given this, the aid is has a limited effect on competition in the market for aircraft engine components.
- (93) Finally, the aid is not linked to the use of certain inputs for the products concerned and to a certain location of R & D activities.
- (94) Based on the above considerations, the Commission is therefore able to conclude that, in absence of intervention by competitors or other third parties, and taking into account the very limited market share of Volvo Aero, the impact on competition is very limited.

### 6.5. Balancing test

- (95) In light of the positive and negative elements assessed above, and in accordance with point 7.5 of the R & D&I Framework, the Commission has to balance the effects of the measure and determine whether the resulting distortions adversely affect trading conditions to an extent contrary to common interest.
- (96) In the present case, the Commission finds that the aid has a positive effect in so far as it addresses a market failure, that it has an incentive effect for the beneficiary and that it is granted through an appropriate instrument which ensures that the aid is proportionate and that the impact on competition is limited.
- (97) The Commission also finds that the negative effects of the measure are limited, since the distortion of competition created by the aid is not significant as it does not crowd out investments by competitors and it does not create a position of market power.
- (98) In weighing up these factors, the Commission further notes that the Swedish authorities have reduced the aid amount to ensure it is limited to the necessary minimum.
- (99) The Swedish authorities will provide an annual report on the implementation of the aid, allowing the Commission to monitor the measure.
- (100) In conclusion, the Commission is able to say that the balancing test for the aid under assessment is positive.

### 7. CONCLUSIONS

- (101) On the basis of the elements above, the Commission therefore concludes that it should adopt a final positive decision regarding the aid of SEK 304 million (approx. EUR 33 million) that Sweden intends to grant to Volvo Aero for the development of components for the GEnx engine developed by GE for Boeing B787 and B747-8 aircraft,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The State aid which Sweden is intending to grant to Volvo Aero, amounting to SEK 304 million (approx. EUR 33 million) is compatible with the common market.

Implementation of the aid is accordingly authorised.

#### *Article 2*

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels, 17 June 2009.

*For the Commission*

Neelie KROES

*Member of the Commission*

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## COMMISSION DECISION

of 13 November 2009

**amending Decision 2004/4/EC authorising Member States temporarily to take emergency measures against the dissemination of *Pseudomonas solanacearum* (Smith) Smith as regards Egypt**

(notified under document C(2009) 8702)

(2009/839/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community <sup>(1)</sup>, and in particular Article 16(3) thereof,

Whereas:

(1) Under Commission Decision 2004/4/EC <sup>(2)</sup>, tubers of *Solanum tuberosum* L., originating in Egypt, must not in principle be introduced into the Community. However, in previous years including the 2008/2009 import season, the entry into the Community of such tubers was permitted from 'pest-free areas' and subject to specific conditions.

(2) During the 2008/2009 import season, six interceptions of *Pseudomonas solanacearum* (Smith) Smith were recorded resulting in a prohibition on all exports of Egyptian potatoes to the Community as of 26 August 2009.

(3) Egypt has submitted a report on the causes of these interceptions. The main conclusion is that the majority of interceptions are due to failures to comply with the phytosanitary instructions regarding the production and export of potatoes destined for the Community. Potato production zones involved in the non-compliances are no longer eligible for export to the European Union. Egypt has imposed penalties for the infringement of its instructions and suspended the relevant companies for the next three exporting seasons.

(4) As requested by Egypt and in the light of the information provided by it, the Commission has established that the risk of spreading *Pseudomonas solanacearum* (Smith) Smith

with the entry into the Community of tubers of *Solanum tuberosum* L. from 'pest-free areas' of Egypt has been sufficiently mitigated, provided that certain conditions are satisfied.

(5) The entry into the Community of tubers of *Solanum tuberosum* L., originating in 'pest-free areas' of Egypt, should therefore be permitted for the 2009/2010 import season.

(6) Decision 2004/4/EC should therefore be amended accordingly.

(7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plant Health,

HAS ADOPTED THIS DECISION:

*Article 1*

Decision 2004/4/EC is amended as follows:

1. in Article 2, paragraph 1, '2008/2009' is replaced by '2009/2010';

2. in Article 4, '31 August 2009' is replaced by '31 August 2010';

3. in Article 7, '30 September 2009' is replaced by '30 September 2010';

4. the Annex is amended as follows:

(a) in point 1(b)(iii), '2008/2009' is replaced by '2009/2010';

(b) in the second indent of point 1(b)(iii), '1 January 2009' is replaced by '1 January 2010';

(c) in point 1(b)(xii), '1 January 2009' is replaced by '1 January 2010'.

<sup>(1)</sup> OJ L 169, 10.7.2000, p. 1.

<sup>(2)</sup> OJ L 2, 6.1.2004, p. 50.

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels, 13 November 2009.

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

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