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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.

EN

[1] Text with EEA relevance

I

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

REGULATIONS

COUNCIL REGULATION (EC) No 1212/2009

of 30 November 2009

fixing for the 2010 fishing year the guide prices and Community producer prices for certain fishery products pursuant to Regulation (EC) No 104/2000

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products [1], and in particular Article 18(3) and Article 26(1) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Article 18(1) and Article 26(1) of Regulation (EC) No 104/2000 provide that a guide price and a Community producer price should be fixed for each fishing year in order to determine price levels for intervention on the market for certain fisheries products.

(2) Article 18(1) of Regulation (EC) No 104/2000 requires the guide price to be fixed for each of the products and groups of products listed in Annexes I and II to that Regulation.

(3) On the basis of currently available data on the prices for the products concerned and the criteria referred to in Article 18(2) of Regulation (EC) No 104/2000, the guide prices should be increased, maintained or reduced for the 2010 fishing year depending on the species.

(4) Article 26(1) of Regulation (EC) No 104/2000 requires the Community producer price to be fixed for the products listed in Annex III to that Regulation. It is appropriate to establish the Community producer price for one of those products and calculate the Community producer price for the others by means of the conversion factors established by Commission Regulation (EC) No 802/2006 of 30 May 2006 fixing the conversion factors applicable to fish of the genera *Thunnus* and *Euthynnus* [2].

(5) On the basis of the criteria laid down in the first and second indents of Article 18(2) and in Article 26(1) of Regulation (EC) No 104/2000, the Community producer price for the 2010 fishing year should be adjusted.

(6) Given the urgency of the matter, it is important to grant an exception to the six-week period mentioned in paragraph 1(3) of the Protocol on the role of national parliaments in the European Union annexed to the Treaty on European Union,

HAS ADOPTED THIS REGULATION:

Article 1

For the fishing year from 1 January to 31 December 2010, the guide prices as provided for in Article 18(1) of Regulation (EC) No 104/2000 shall be as set out in Annex I to this Regulation.

Article 2

For the fishing year from 1 January to 31 December 2010, the Community producer prices as provided for in Article 26(1) of Regulation (EC) No 104/2000 shall be as set out in Annex II to this Regulation.

Article 3

This Regulation shall enter into force on 1 January 2010.

[1] OJ L 17, 21.1.2000, p. 22.

[2] OJ L 144, 31.5.2006, p. 15.

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

Done at Brussels, 30 November 2009.

For the Council
The President
S. O. LITTORIN

ANNEX I

Annexes	Species Products listed in Annexes I and II to Regulation (EC) No 104/2000	Commercial presentation	Guide price (EUR/tonne)
I	1. Herring of the species *Clupea harengus*	Whole fish	275
	2. Sardines of the species *Sardina pilchardus*	Whole fish	580
	3. Dogfish *(Squalus acanthias)*	Whole fish or gutted fish with head	1 090
	4. Spotted dogfish *(Scyliorhinus spp.)*	Whole fish or gutted fish with head	711
	5. Redfish *(Sebastes spp.)*	Whole fish	1 188
	6. Cod of the species *Gadus morhua*	Whole fish or gutted fish with head	1 589
	7. Saithe *(Pollachius virens)*	Whole fish or gutted fish with head	776
	8. Haddock *(Melanogrammus aeglefinus)*	Whole fish or gutted fish with head	976
	9. Whiting *(Merlangius merlangus)*	Whole fish or gutted fish with head	898
	10. Ling *(Molva spp.)*	Whole fish or gutted fish with head	1 165
	11. Mackerel of the species *Scomber scombrus*	Whole fish	317
	12. Mackerel of the species *Scomber japonicus*	Whole fish	279
	13. Anchovy *(Engraulis spp.)*	Whole fish	1 287
	14. Plaice *(Pleuronectes platessa)*	Whole fish or gutted fish with head from 1.1.2010 to 30.4.2010	1 052
		Whole fish or gutted fish with head from 1.5.2010 to 31.12.2010	1 462
	15. Hake of the species *Merluccius merluccius*	Whole fish or gutted fish with head	3 403
	16. Megrim *(Lepidorhombus spp.)*	Whole fish or gutted fish with head	2 402
	17. Dab *(Limanda limanda)*	Whole fish or gutted fish with head	828
	18. Common flounder *(Platichthys flesus)*	Whole fish or gutted fish with head	496
	19. Albacore or longfinned tunas *(Thunnus alalunga)*	Whole fish	2 241
		Gutted fish with head	2 487
	20. Cuttlefish *(Sepia officinalis and Rossia macrosoma)*	Whole	1 781
	21. Monkfish *(Lophius spp.)*	Whole fish or gutted fish with head	2 923
		Without head	6 015
	22. Shrimp of the species *Crangon crangon*	Simply boiled in water	2 423
	23. Northern prawn *(Pandalus borealis)*	Simply boiled in water	6 474
		Fresh or chilled	1 590
	24. Edible crab *(Cancer pagurus)*	Whole	1 676
	25. Norway lobster *(Nephrops norvegicus)*	Whole	5 197
		Tails	4 102
	26. Sole *(Solea spp.)*	Whole fish or gutted fish with head	6 742

Annexes	Species Products listed in Annexes I and II to Regulation (EC) No 104/2000	Commercial presentation	Guide price (EUR/tonne)
II	1. Greenland halibut *(Reinhardtius hippoglossoides)*	Frozen, in original packages containing the same products	1 916
	2. Hake of the genus *Merluccius spp.*	Frozen, whole, in original packages containing the same products	1 208
		Frozen, filleted, in original packages containing the same products	1 483
	3. Sea bream *(Dentex dentex and Pagellus spp.)*	Frozen, in lots or in original packages containing the same products	1 492
	4. Swordfish *(Xiphias gladius)*	Frozen, whole, in original packages containing the same products	3 998
	5. Cuttlefish *(Sepia officinalis) (Rossia macrosoma) (Sepiola rondeletti)*	Frozen, in original packages containing the same products	1 915
	6. Octopus *(Octopus spp.)*	Frozen, in original packages containing the same products	2 161
	7. Squid *(Loligo spp.)*	Frozen, in original packages containing the same products	1 179
	8. Squid *(Ommastrephes sagittatus)*	Frozen, in original packages containing the same products	961
	9. *Illex argentinus*	Frozen, in original packages containing the same products	856
	10. Prawn of the family *Penaeidae*		
	— Prawn of the species *Parapenaeus longirostris*	Frozen, in original packages containing the same products	4 072
	— Other species of the family *Penaeidae*	Frozen, in original packages containing the same products	8 055

ANNEX II

Species Products listed in Annex III to Regulation (EC) No 104/2000	Weight	Commercial specifications	Community producer price (EUR/tonne)
Yellowfin tuna *(Thunnus albacares)*	weighing more than 10 kg each	Whole	1 224
		Gilled and gutted	
		Other	
	weighing not more than 10 kg each	Whole	
		Gilled and gutted	
		Other	
Albacore *(Thunnus alalunga)*	weighing more than 10 kg each	Whole	
		Gilled and gutted	
		Other	
	weighing not more than 10 kg each	Whole	
		Gilled and gutted	
		Other	
Skipjack *(Katsuwonus pelamis)*		Whole	
		Gilled and gutted	
		Other	
Bluefin tuna (*Thunnus thynnus*)		Whole	
		Gilled and gutted	
		Other	
Other species of the genera *Thunnus* and *Euthynnus*		Whole	
		Gilled and gutted	
		Other	

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 13 July 2009

on State aid schemes C 6/04 (ex NN 70/01) and C 5/05 (ex NN 71/04) implemented by Italy in favour of glasshouse growers (exemption from excise duty on diesel used to heat glasshouses)

(notified under document C(2009) 5497)

(Only the Italian text is authentic)

(2009/944/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having called on interested parties to submit their comments pursuant to that Article, and having regard to those comments,

Whereas:

I. PROCEDURE

(1) By letters dated 28 September 2000 and 17 October 2000, and on the basis of the information at its disposal, the Commission asked the Italian authorities for clarifications about the partial exemption from excise duties on diesel used in agriculture provided for by Decree-Law No 268 of 30 September 2000 laying down urgent measures on income tax for natural persons and excise duties.

(2) The Italian authorities sent the Commission the requested clarifications by letters dated 31 October 2000 and 3 November 2000.

(3) After examining these clarifications, the Commission sent a letter dated 20 November 2000 asking the Italian authorities for further information on the excise duty exemption.

(4) As it had not received a reply within the four-week time-limit prescribed in the aforementioned letter, the Commission sent the Italian authorities a reminder by letter dated 26 April 2001, stating that, if they did not react, it reserved the right to propose to the College of Commissioners that an information injunction be sent pursuant to Article 10(3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [1] (now Article 88).

(5) By letter dated 10 May 2001, the Italian Permanent Representation to the European Union sent the Commission the additional information required of the Italian authorities in the letter of 26 April 2001.

(6) On the basis of the above information, the Commission announced by letter dated 2 August 2001 that it was opening a non-notified State aid dossier (ref. NN 70/01) and asked the Italian authorities for further information.

(7) As it had not received a reply by the deadline set, the Commission sent a new reminder to the Italian authorities by letter dated 1 July 2003, once again drawing their attention to the fact that, in the event of failure to comply with the four-week deadline set for reply, it reserved the right to propose to the College of Commissioners that an information injunction be sent pursuant to Article 10(3) of Regulation (EC) No 659/1999. The deadline set for reply expired at the beginning of August 2003.

[1] OJ L 83, 27.3.1999, p. 1.

(8) As it had not received a reply by the aforementioned deadline, the Commission issued a Decision on 10 October 2003 ([2]) enjoining Italy to supply it with all the information requested in the letter of 2 August 2001 and stating that, if the Italian authorities failed to reply, it reserved the right to initiate the procedure under Article 88(2) of the Treaty.

(9) As it had not received a reply to the information injunction, the Commission wrote to the Italian authorities on 19 February 2004 informing them of its decision to initiate the procedure under Article 88(2) of the Treaty against the provisions of Article 5(5) of Decree-Law No 268 of 30 September 2000 (case C 6/04).

(10) The Decision to initiate the procedure was published in the *Official Journal of the European Union* ([3]). The Commission invited interested parties to submit their comments on the aid scheme.

(11) The Commission received comments on the aid scheme from interested third parties and transmitted them to Italy by letter dated 27 April 2004, giving it the opportunity to express its view on them.

(12) Italy did not express its view on these comments but, after requesting and obtaining an extension to the deadline for responding to the initiation of the procedure under Article 88(2) of the Treaty, sent a reply concerning this procedure by letter dated 21 June 2004, registered as received on 25 June 2004.

(13) After it had sent the letter of 19 February 2004 stating that the procedure under Article 88(2) of the Treaty was being initiated against the provisions of Article 5(5) of Decree-Law No 268 of 30 September 2000, the Commission obtained information according to which glasshouse growers were apparently actually benefiting from a total exemption from excise duty on diesel used to heat glasshouses. By fax dated 10 June 2004, it accordingly asked the Italian authorities for information on this additional exemption.

(14) By letter dated 28 July 2004, registered as received on 3 August 2004, the Italian Permanent Representation to the European Union sent the Commission the Italian authorities' reply to the aforementioned letter of 10 June 2004. This reply showed that the abovementioned additional exemption had been established by means of various provisions: Article 24(3) of Law No 388 of 23 December 2000; Article 13(3) of Law No 448 of 21 December 2001; Article 19(4) of Law No 289 of 27 December 2002 and Article 2(4) of Law No 350 of 24 December 2003.

(15) On the basis of this information, the Commission decided to open a new non-notified aid dossier (ref. NN 71/04), so as to examine the compatibility of this additional exemption with the common market. It informed the Italian authorities of this by letter dated 4 November 2004.

(16) By letter dated 24 January 2005, the Commission informed the Italian Government of its decision to initiate the procedure under Article 88(2) of the Treaty in relation to the aforementioned additional exemption established by Article 24(3) of Law No 388 of 23 December 2000; Article 13(3) of Law No 448 of 21 December 2001; Article 19(4) of Law No 289 of 27 December 2002 and Article 2(4) of Law No 350 of 24 December 2003 (case C 5/05).

(17) The Decision to initiate the procedure was published in the *Official Journal of the European Union* ([4]). The Commission invited interested parties to submit their comments on the aid scheme.

(18) The Commission received no comments from interested third parties.

(19) By letter dated 21 February 2005, registered as received on 22 February 2005, the Italian Permanent Representation to the European Union sent the Commission the Italian authorities' reply concerning initiation of the procedure under Article 88(2) of the Treaty against the aforementioned additional exemption.

(20) By letter dated 27 September 2007, the Commission asked the Italian authorities for additional information on the aid in question and on the replies concerning the initiation of the procedure under Article 88(2) of the Treaty. In particular, the Italian authorities were asked to justify the argument that the aid was consistent with the Italian tax system and to analyse whether it could be justified in the light of the provisions of the Community guidelines on State aid for environmental protection that were applicable at the time of granting of the aid ([5]). The Italian authorities had a month to reply to the request for additional information.

(21) In the absence of a reply for the Italian authorities, the Commission sent them a reminder by fax dated 15 October 2008. This stated that, if it did not receive a reply within the new deadline of one month, it reserved the right to propose to the College of Commissioners that an information injunction be sent pursuant to Article 10(3) of Regulation (EC) No 659/1999.

([2]) Decision C(2003) 3802, notified to Italy by means of letter ref. SG(2003) D/232244 of 13 October 2003.
([3]) OJ C 69, 19.3.2004, p. 8.
([4]) OJ C 101, 27.4.2005, p. 17.
([5]) OJ C 37, 3.2.2001, p. 3.

(22) As it did not receive a reply within the deadline set, the Commission sent Italy such an injunction by letter dated 5 December 2008 ([6]).

(23) By e-mail dated 5 February 2009, registered as received on 9 February 2009, the Italian Permanent Representation to the European Union sent the Commission the Italian authorities' reply to the aforementioned injunction.

(24) Following a meeting with Commission representatives on 21 April 2009, the Italian authorities sent them a new letter on 19 May 2009 via the Italian Permanent Representation to the European Union.

II. **DESCRIPTION**

(25) Article 5(5) of Decree-Law No 268 of 30 September 2000 provides that, for the period from 3 October to 31 December 2000, the excise duty applied to diesel used to heat glasshouses be 5 % of that laid down for diesel used as fuel.

(26) Article 6(1) of that Decree-Law provides that, for the same period, the excise duty rates for diesel used in agriculture be 22 % of that applicable to diesel used as fuel and that the excise duty rates for petrol be 49 % of the normal rate.

(27) Article 24(3) of Law No 388 of 23 December 2000; Article 13(3) of Law No 448 of 21 December 2001; Article 19(4) of Law No 289 of 27 December 2002 and Article 2(4) of Law No 350 of 24 December 2003 all established a total exemption from excise duty for diesel used to heat glasshouses in Italy. This exemption covered the following periods respectively: from 1 January to 30 June 2001; all of 2002; all of 2003 and all of 2004.

III. **INITIAL OPENING OF THE PROCEDURE UNDER ARTICLE 88(2) OF THE TREATY (CASE C 6/04)**

(28) The Commission initiated the procedure under Article 88(2) of the Treaty against the provisions of Article 5(5) of Decree-Law No 268 of September 2000, as it had doubts as to the compatibility with the common market of the additional 17 percentage points of exemption from excise duty granted to glasshouse growers using diesel to heat glasshouses as compared to other operators in the agricultural sector. The doubts originated from the fact that, despite an information injunction being sent, the Italian authorities did not send any information demonstrating that the exemptions were eligible under competition rules (indeed, they did not even reply to the injunction). Moreover, the doubts were corroborated by the question of the eligibility of the excise duty exemptions in the light of the provisions of Council Directive 92/81/EEC of 19 October 1992 on the harmonization of the structures of excise duties on mineral oils ([7]) and on the Directive repealing it, i.e. Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ([8]).

IV. **REACTION OF THE ITALIAN AUTHORITIES TO THE INITIAL OPENING OF THE PROCEDURE UNDER ARTICLE 88(2) OF THE TREATY**

(29) In their letter of 21 June 2004, the Italian authorities stated that the excise duty exemptions could not be considered State aid, but had to be examined in the context of Article 8(2)(f) and Article 15(3) of Directives 92/81/EEC and 2003/96/EC respectively. It was their view that glasshouse growing fell within the category of 'agricultural and horticultural works', for which Community law allows the Member States to apply total or partial exemptions from excise duty, and that the excise duty exemption for glasshouse growing did not introduce any discrimination in the agricultural and horticultural sector linked to differentiation in exemptions, in that all operators were absolutely free to choose between growing outdoors and growing in glasshouses.

(30) According to the Italian authorities, the scheme was of a purely fiscal nature and should be assessed from this viewpoint, so as to allow it to be analysed in an overarching framework covering all the Member States of the European Union, thereby avoiding a situation whereby examining an individual national case outside such a framework could jeopardise the principle of equal treatment of Member States. In this connection, the Italian authorities referred to the political agreement reached by the Council and the Commission at the Ecofin Council on 19 March 2003, under which derogations from a general tax system or differences within it that were justified by the nature or general characteristics of the tax system did not constitute State aid.

(31) To conclude, the Italian authorities added that, according to the estimates and data available to them, the planned scheme '[would] not be detrimental to the proper functioning of the internal market and [would] not result in distortions of competition' (reference to Recital 24 to Directive 2003/96/EC).

([6]) Letter ref. SG-Greffe (2008) D/207739.

([7]) OJ L 316, 31.10.1992, p. 12.

([8]) OJ L 283, 31.10.2003, p. 51.

V. COMMENTS SUBMITTED BY THIRD PARTIES FOLLOWING INITIAL OPENING OF THE PROCEDURE UNDER ARTICLE 88(2) OF THE TREATY

(32) By letter dated 19 April 2004, registered as received on 21 April 2004, the Commission received comments from an interested third party following opening of the procedure under Article 88(2) of the Treaty.

(33) In that letter, the interested party described the fragility of the market in which it operated and the problems connected with the increase in the price of fuels that can be used to heat glasshouses. In the interested third party's view, if the Commission were to rule against the exemption in question, many undertakings in the sector would be forced to close or to reduce the amount of fuel consumed to heat their glasshouses, with a resulting reduction in the quality of their products. Furthermore, according to the interested third party, the prices of the heating fuels used in Belgium and the Netherlands (methane and fuel oil) were 20 % to 40 % lower than the price of agricultural diesel in Italy and that, therefore, applying the exemption in question would in no way distort competition. Lastly, again in this party's view, the number of farms in its sector using methane gas to heat glasshouses was constantly increasing.

VI. SECOND OPENING OF THE PROCEDURE UNDER ARTICLE 88(2) OF THE TREATY (CASE C 5/05)

(34) The Commission initiated a second procedure under Article 88(2) of the Treaty after obtaining information demonstrating that the excise duty exemption enjoyed by glasshouse growers was actually significantly higher than that analysed when the procedure was first opened. The doubts expressed when the procedure was first opened, the causes of which included the fact that the Italian authorities had not replied to the information injunction sent to them, were corroborated by those authorities' reaction to the initial opening of the procedure. Essentially, the doubts expressed by the Commission when the procedure was opened for the second time were based on the following considerations:

(a) the Italian authorities considered that, regardless of their level, excise duty exemptions on fuels did not constitute State aid but rather tax measures justified by the nature of the system of which they were part. However, they did not supply any information in support of this argument;

(b) the Italian authorities further argued that the excise duty exemption did not distort competition, inasmuch as nursery growers were free to avail themselves of the exemption by practising greenhouse growing. This argument appears doubtful, inasmuch as the exemption was aimed not at encouraging a changeover to glasshouse growing, but rather to provide greenhouse growers who were already in business with relief from a financial burden linked to exercise of their activity;

(c) again as regards the issue of distortion of competition, the Italian authorities asserted that, according to the official data available to them, the total exemption granted to glasshouse growers did not distort competition. In the Commission's view, it is unclear how the Italian authorities can make such an argument since, in their reply sent by telex to the Commission on 10 June 2004 (see recital 14 above), they stated that they could not supply precise data on the sums that glasshouse growers could save as a result of the total exemption;

(d) although the Italian authorities asserted that there were no elements of State aid, they failed to indicate which rule of competition would, in their opinion, support the compatibility with the common market of the total excise duty exemption;

(e) the fact that the exemptions were granted contrary to Directives 92/81/EEC and 2003/96/EC could not be ruled out.

VII. REACTION OF THE ITALIAN AUTHORITIES TO THE SECOND OPENING OF THE PROCEDURE UNDER ARTICLE 88(2) OF THE TREATY

(35) By letter dated 21 February 2005, the Italian authorities asserted that the matters of substance covered by the second procedure were identical to those dealt with when the procedure was first opened and that the comments that had already been made in relation to the first procedure remained valid. They also supplemented their reply by stating the following:

(a) adjustments to excise duties by Member States did not constitute State aid within the meaning of Article 87(1) of the Treaty. The conclusions of the Ecofin Council of 19 March 2003, according to which derogations from a general tax system or differences within it that were justified by the nature or general characteristics of the tax system did not constitute State aid, were a decisive factor confirming the primacy of the powers of the Community's financial authorities. Accordingly, they would send information on the nature or general characteristics of the system to those financial authorities as soon as the latter requested them to do so;

(b) the expression 'without prejudice to other Community provisions' in Article 15(1) of Directive 2003/96/EC could not be interpreted in such a way as to render Articles 87 and 88 of the Treaty applicable to every measure reducing excise duties or creating an exemption therefrom and that, if the Community legislature had wished to make every measure adjusting excise duties subject to compliance with Articles 87 and 88 of the Treaty, it would have expressed this wish by inserting a reference to them in accordance with the fundamental rule of statutory construction that *'lex ubi voluit dixit'* ['that which the law intends, it states']. Moreover, in any other Community act, the legislature's wish for given measures to be subject to the rules on State aid was expressed clearly and not through a generic wording such as 'without prejudice to other Community provisions'. In addition, clear and explicit wording was all the more necessary insofar as stating that a measure 'constituted State aid' or 'did not constitute State aid' had a significant impact on the nature, arrangements and duration of implementation of the measure;

(c) the fact that the measure did not jeopardise the proper functioning of the internal market and did not distort competition was an objective fact and thus rendered irrelevant the savings that the producers had been able to make thanks to the measure.

VIII. REPLY FROM THE ITALIAN AUTHORITIES TO THE INFORMATION INJUNCTION OF 5 DECEMBER 2008

(36) In their letter dated 5 February 2009, the Italian authorities firstly returned to the argument concerning the compatibility of the aid with the provisions of Directive 92/81/EEC which, in their view, did not provide sufficient clarification on the question of the compatibility of excise duty exemptions or reductions with competition rules.

(37) In order to illustrate their position, they referred to Article 8 of the Directive, according to which 'without prejudice to other Community provisions, Member States may apply total or partial exemptions or reductions in the rate of duty to mineral oils used under fiscal control […] exclusively in agricultural and in horticultural works, and in forestry […]'.

(38) In the Italian authorities' opinion, the expression 'without prejudice' used in that Article did not establish an obligation to comply with European competition rules, as was the case, by contrast, with Article 26 of Directive 2003/96/EC. If these two Directives had laid down the same requirement, the Community legislature would have had no reason to be more explicit in Article 26 of Directive 2003/96/EC. Accordingly, the Italian authorities concluded that, taking account of Article 8 of Directive 92/81/EEC, the Member States could legitimately apply excise duty reductions or exemptions in the horticulture sector.

(39) The Italian authorities then stressed that implementing Directive 92/81/EEC and thus Directive 2003/96/EC resulted in de facto distortion of competition within the internal market, since the reductions and exemptions provided for benefited those Member States that had greater financial resources and could thus apply excise duty reductions in a uniform manner throughout the entire agricultural sector. As it had limited resources, Italy had decided to take action only in favour of glasshouse growers, insofar as the excise duty reduction and exemption measures were adopted in the context of a crisis caused by price increases for heating products. In this connection, the Italian authorities stated that it was not the Commission's place to intervene in relation to a Member State's choice of priorities.

(40) As regards the possible applicability of the Community guidelines on State aid for environmental protection (see recital 20 above), the Italian authorities claimed that the excise duty reductions granted were in line with the provisions of these guidelines and could therefore be covered by the derogations laid down therein since, in their opinion, the matter concerned existing taxes within the meaning of point 51.2 of the guidelines. This point provides that, where existing taxes are concerned, operating aid connected to reductions or exemptions may be authorised if the following two conditions are satisfied at the same time:

— the tax in question must have an appreciable positive impact in terms of environmental protection;

— the derogations for the firms concerned must have been decided on when the tax was adopted or must have become necessary as a result of a significant change in economic conditions that placed the firms in a particularly difficult competitive situation. In the latter instance, the amount of the tax reduction may not exceed the increase in costs resulting from the change in economic conditions. Once there is no longer any increase in costs, the reduction must no longer apply.

(41) According to the Italian authorities, the excise duties on fuels used in agriculture, in particular gas for heating, can be considered environmental taxes and have a positive impact on the environment in that they encourage producers to reduce fuel consumption.

(42) As regards in particular point 51.2(b) of the guidelines, on the basis of which derogations for firms must have been decided on when the tax was adopted, the Italian authorities referred to Commission Decision C(2005) 4436 of 7 December 2005. That decision provides that 'the excise taxes concerned may not have had an explicit environmental purpose from the outset and the exemptions were decided on […] well before the 2001 environmental aid guidelines became applicable. Therefore, their situation may be considered as if they had been decided at the time the excise tax was adopted. Consequently, in accordance with point 51.2 of the guidelines, the provisions in point 51.1 may be applied to the exemptions to be assessed in this decision'. The Italian authorities added that the excise duty reductions were decided on following a change in the economic situation (in particular an exponential rise in the price of oil) that placed glasshouse growers in a particularly difficult competitive situation as compared to farmers growing crops outdoors and led the authorities in other countries to adopt measures in favour of glasshouse growers and the fisheries sector. The authorities indicated that, in the period under consideration, the price of diesel for heating varied as follows: + 37 % in 1999-2000, + 26 % in 1999-2001 and + 26 % in 1999-2002. Meanwhile the price structure was as follows (annual average in EUR per litre):

EUR per litre

	Price net of tax	Tax	Consumer price
1999	0,217	0,524	0,741
2000	0,342	0,523	0,865
2001	0,317	0,504	0,821
2002	0,292	0,542	0,834
2003	0,314	0,547	0,861
2004	0,354	0,555	0,909

(43) The Italian authorities pointed out, on the other hand, that applying point 51 of the guidelines in any event required undertakings to pay part of the tax. In their view, the measure adopted by Italy could be compatible if beneficiaries paid the minimum amount set at Community level (which, according to the authorities, was EUR 13 per 1 000 kg in the 2000-2003 period and EUR 21 per 1 000 kg thereafter).

(44) Lastly, as regards the total amount of aid granted, the Italian authorities indicated that the figures in the various Finance Laws were estimates based on forecasts of consumption of heating fuels and should be viewed as revenue not collected rather than as resources allocated. In their opinion, it was difficult at that stage to quantify the advantage obtained by each producer, since responsibility for administering the tax system lay with the regions, the provinces or even the municipalities. The figures would be sent as soon as they were available.

IX. **LETTER SENT ON 18 MAY 2009**

(45) In this letter, the Italian authorities asserted, firstly, that the excise duties were existing taxes and that, as such, they could be covered by the derogations applicable to them by virtue of the provisions of the guidelines on State aid for environmental protection, for the reasons set out in recital 42 above.

(46) This argument was followed by an updated version of the table given in recital 42 above (the tax column is split between excise duties and VAT). According the new table, the price structure in the period considered was as follows (this time the data are expressed in EUR per 1 000 litres):

EUR per 1 000 litres

	Price net of tax	VAT	Excise duties	Consumer price
1999	219,83	123,5	397,67	741
2000	344,35	144,1	375,92	864,33
2001	313,4	136,7	370,11	820,22
2002	293,31	139,7	405,24	838,26
2003	314,37	143,5	403,21	861,1
2004	355,01	151,6	403,21	909,86

(47) The Italian authorities underlined that, between 1999 and 2004, consumer prices of diesel for heating had constantly been on the rise, except for a slight decrease between 2000 and 2001. The arguments already illustrated in recitals 42 and 43 above were then repeated.

(48) As regards the justification for the measure in the light of the Italian tax system, the Italian authorities clarified that, in Italy, the quantities of exempted fuel were apportioned on the basis of surface area, crop quality and amount of agricultural equipment actually used. Accordingly, it could be stated that the exemption was calculated on the basis of the type of activity carried out and, for glasshouse growing, proportionately since this type of growing was clearly dependent on diesel and marked by completely different conditions of production from open-field crops. Moreover, the exemption did not favour any single product because it applied to all products grown in glasshouses and because glasshouse growing could be considered a widespread practice throughout the agricultural sector.

(49) With regard to the applicability of Article 87(1) of the Treaty in more general terms, the Italian authorities took the view that the conditions referred to in that paragraph had not been met, in that the exemptions were neither selective nor such as to distort competition.

(50) With regard to selectivity, they referred to the judgment of the Court of First Instance in Case T-233/04 [9]. In that judgment (paragraph 86), the Court stated that 'for the application of Article 87 EC, it is irrelevant that the situation of the presumed beneficiary of the measure is better or worse in comparison with the situation under the law as it previously stood, or has not altered over time. The only question to be determined is whether, under a particular statutory scheme, a State measure is such as to favour "certain undertakings or the production of certain goods" within the meaning of Article 87(1) EC in comparison with other undertakings which are in a legal and factual situation that is comparable in the light of the objective pursued by the measure in question'.

(51) In the opinion of the Italian authorities, the exemption applied to diesel used in covered environments for growing agricultural products in no way distinguished between undertakings in the same legal and factual situation or between products, since all undertakings, regardless of the goods produced, could avail themselves of the exemption when supplying themselves with diesel for glasshouse growing.

(52) With regard to the likelihood of the measure distorting competition, the Italian authorities referred to Commission Decision C(2008) 1105, recital 43 of which states that the total and partial exemptions allowed by Article 8(2) of Directive 92/81/EEC pursue the same objectives as the measure provided for in Directive 2003/96/EC and are of rather small scale and that, therefore, it can be said, by analogy, that they should not unduly distort competition.

(53) The Italian authorities also added that, in recital 32 of that Decision, the Commission had considered that measures of this type applied to fuel used in primary agricultural production would not unduly distort competition in the light of the small size of farms in the European Union (more than 60 % of farms have less than 5 hectares of utilised agricultural area). Using this consideration as a starting point, the stressed that, applying the same size criterion, it would be difficult for the exemptions in question to distort competition, since around 80 % of farms in Italy have less than 5 hectares of utilised agricultural area.

(54) The Italian authorities also argued that the quantity of diesel needed to heat 1 m^3 of glasshouse was around only 2 litres. Moreover, on the basis of a study carried out by Enama (*Ente nazionale per la meccanizzazione agricola* – National Agricultural Mechanisation Body) on diesel consumption in 14 of Italy's 20 regions, the diesel used in glasshouses (167 436 001 litres) accounted for only 11,77 % of agricultural diesel consumption in 2002 and 10,67 % in 2003.

(55) After supplying these clarifications in support of their view that the exemptions in question did not include elements of State aid within the meaning of Article 87(1) of the Treaty, the Italian authorities reiterated the cross-cutting nature of the exemptions, stressed the fact that all agricultural producers could avail themselves of it if they practised glasshouse growing and underlined that the criterion of non-discrimination could not be applied retroactively, for reasons of legitimate expectation and legal certainty.

X. **ASSESSMENT**

(56) This Decision concerns the difference between the excise duty exemptions on diesel used for heating glasshouses, on the one hand, and excise duty exemptions on diesel used as fuel, on the other.

(57) Taking account of the arguments put forward by the Italian authorities in their replies to the first and second opening of the procedure, it is necessary first to examine whether the scheme contains elements of State aid within the meaning of Article 87(1) of the Treaty.

(58) According to Article 87(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market.

(59) The scheme under examination meets this definition, not only because it is financed from State resources (by granting excise duty exemptions, the State forgoes specific revenue that it could otherwise have collected), but also because it favours certain undertakings (undertakings in the agricultural sector and, within that sector, those practising glasshouse growing) and could affect trade or distort competition, given Italy's position in the area of agricultural production in glasshouses (for example, in terms of the surface area of glasshouses given over to the production of fresh vegetables, in 2000 and 2003 Italy occupied second place among producer countries in the European Union; in 2000 and 2001 Italy was the largest vegetable producer in the European Union and, lastly, in the period to which the relevant procedures relate, Italy was the second largest European country in terms of the surface area given over to glasshouse growing).

[9] T-233/04 *Netherlands* v *Commission* [2008] ECR II-00591.

(60) While the matter was being examined, the Italian authorities used a series of arguments to defend their position that the scheme did not contain elements of State aid:

— on the basis of the political agreement reached by the Council and the Commission at the Ecofin Council on 19 March 2003, derogations from a general [tax] system or differences within it that were justified by the nature or general characteristics of the tax system did not constitute State aid. Furthermore, in Italy the exemptions were consistent with the Italian tax system because they were applicable to all products grown in glasshouses and because the quantities of fuel exempted from excise duties were apportioned on the basis of the activity carried out,

— on the basis of the estimates and data available, the scheme in question 'was not detrimental to the proper functioning of the internal market and would not result in distortions of competition' (see recitals 30 and 31),

— the exemptions were neither selective nor such as to distort competition.

(61) It must first of all be stressed that no political agreement can change the concept of aid as defined objectively in the Treaty.

(62) As for the argument that the exemptions are justified by the nature or general characteristics of the tax system, the Commission takes the view that specific excise duty exemptions limited to a given type of production (in the present case, glasshouse growing, which received higher exemptions than growing outdoors) cannot be justified by the nature and logic of the tax system when Community law requires, in principle, the Member States to impose excise duties ([10]). The same consideration applies when Community law does not provide for the exemptions in question to be granted. The argument that the exemptions are valid for all products grown in glasshouses is not relevant in this case, since entire branches of the agricultural production sector received lower exemptions than those granted to glasshouse growers and if, as the Italian authorities assert, the quantities of exempted fuel were apportioned on the basis of the activity carried out, the logic of the tax system would have required the exemption to be the same for all activities based on the use of diesel.

(63) The issue of selectivity has already been examined in recital 58 above. As regards the judgment in Case T-233/04, the Commission notes, in the light of recitals 25 and 26 above, that, while it is true that operators in the agricultural sector who use diesel have been able to enjoy exemptions, glasshouse growers have nevertheless received higher exemptions. All operators are in a comparable financial situation, since they use diesel for production and are therefore affected to the same degree by the objective of the measure (alleviation of the effects of the increase in oil prices), regardless of their legal status. The fact that, in a comparable situation, some operators have been able to enjoy higher exemptions than others demonstrates that the scheme includes an element of selectivity.

(64) The Commission rejects the Italian authorities' arguments that the scheme dues not jeopardise the proper functioning of the internal market and does not result in distortions of competition:

— the decision to which the Italian authorities referred (see recital 52 above) concluded that State aid existed but could be approved on the basis of the derogation under Article 87(3)(c) of the Treaty. However, this derogation cannot be used to demonstrate that there are no State aid elements in the scheme under examination (this consideration also applies to the Italian authorities' argument illustrated in recital 53 above),

— the data referred to in recital 54 above are not complete (14 regions out of 20) and there is nothing to say that they are representative: it is not actually possible to deduce whether the regions for which the data were supplied are the regions in which glasshouse growing is most widespread. Moreover, the data concerning consumption in the agricultural sector indicate instead that diesel is a significant agricultural input. In any event, it is sufficient that aid strengthens the competitive position of an undertaking as compared to that of other undertakings competing in intra-Community trade for it to be likely to result in distortions of competition and affect intra-Community trade ([11]). This is true in the matter under examination, since the exemption favours Italian undertakings growing agricultural products in glasshouses over undertakings operating in the same sector in the other Member States.

(65) The Italian authorities also asserted, in reply to the initial opening of the procedure, that the aid in question did not constitute State aid but that it should be examined in the light of the provisions of Directives 92/81/EEC and 2003/96/EC. They reached this conclusion on the basis of the argument that the existence of State aid would be ruled out by the simple fact that an EU Directive establishes the possibility of granting tax exemptions. This argument was reiterated in the reply to the information injunction sent to them.

([10]) See Commission Decision 2006/323/EC (OJ L 119, 4.5.2006, p. 12).

([11]) Judgment of the Court of Justice of the European Communities in Case 730/79 *Philip Morris Holland* v *Commission* [1980] ECR 2671 .

(66) The Commission cannot agree with this argument. Indeed, the sixth recital to Directive 92/81/EEC permits the Member States 'to apply on an optional basis […] other exemptions […], where this does not give rise to distortions of competition'. Furthermore, Article 8(2) of that Directive provides that the Member States may apply total or partial exemptions or reductions 'without prejudice to other Community provisions'. By referring to the existence of a risk of distortions of competition, Directive 92/81/EEC does not rule out the possibility of exemptions constituting State aid. It is worth recalling that the Commission' powers concerning State aid are conferred directly by Treaty and that such powers cannot be restricted by a Directive whose purpose is to harmonise a tax at European level.

(67) In addition, Recitals 15 and 24 of the preamble to Directive 2003/96/EC state that measures aimed at establishing differentiated national rates of taxation must be in line with the rules governing the internal market and competition, so as not to result in distortions of competition. The requirement to apply the rules on competition is confirmed by Article 26 of that Directive, which draws attention to the fact that the measures in question may constitute State aid and, in such cases, must be notified pursuant to Article 88(3) of the Treaty. That Article expressly states that information provided to the Commission on the basis of that Directive does not free Member States from the notification obligation pursuant to Article 88(3) of the Treaty.

(68) Lastly, the Italian authorities themselves asserted (see recital 39 above) that applying exemptions distorted competition, a characteristic element of State aid within the meaning of Article 87(1) of the Treaty.

(69) In view of all these considerations, the Commission concludes that the excise duty exemptions applied under the scheme in question constitute State aid within the meaning of Article 87(1) of the Treaty.

(70) However, in the cases provided for in Article 87(2) and (3) of the Treaty, such measures may, by derogation, be considered compatible with the common market.

(71) The derogations under Article 87(2) of the Treaty concern aid of a social character granted to individual consumers, aid to make good the damage caused by natural disasters or exceptional occurrences and aid granted to the economy of certain areas of the Federal Republic of Germany and do not apply in this case, regardless of the beneficiaries of the scheme.

(72) The Commission is of the view that the derogations under Article 87(3)(a) of the Treaty concerning the development of specific regions do not apply to the scheme in question, since this scheme does not involve aid to promote the economic development of specific regions where the standard of living is abnormally low or in which there is serious underemployment.

(73) As for the derogation under Article 87(3)(b) of the Treaty, it is sufficient to note that the tax scheme in question is not an important project of common European interest and does not seek to remedy a serious disturbance in the Italian economy. Nor does it seek to promote culture and heritage conservation within the meaning of the derogation under Article 87(3)(d) of the Treaty.

(74) Accordingly, the only derogation that may be invoked is that laid down in Article 87(3)(c) of the Treaty, according to which aid may be considered compatible with the common market if it is intended to facilitate the development of certain economic activities or of certain economic areas, provided that it does not adversely affect trading conditions to an extent contrary to the common interest.

(75) Since the aid under the scheme in question is non-notified aid, its compatibility with the common market must be analysed in the light of the State aid rules in force when it was granted, as laid down in the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid ([12]).

(76) While it is true that recital 172 of the new Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013 ([13]) deems some unlawful aid granted after the entry into force of Directive 2003/96/EC to be compatible with the common market, this applies only where the conditions of that Directive have been complied with and there has been no differentiation within the agricultural sector. The same applies to aid unlawfully granted on the basis of Directive 92/81/EEC.

(77) Article 1(1) of Directive 92/81/EEC provides that 'Member States shall impose a harmonized excise duty on mineral oils in accordance with this Directive'. Article 1(2) states that the Member States are to fix their rates in accordance with Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duty on mineral oils ([14]).

([12]) OJ C 119, 22.5.2002, p. 22.
([13]) OJ C 319, 27.12.2006, p. 1.
([14]) OJ L 316, 31.10.1992, p. 19. The excise duties on diesel used for heating glasshouses are indicated in recital 43 above.

(78) Article 5(2) of Directive 92/82/EEC provides for excise duty on gas oil (diesel) of ECU 18 per 1 000 litres for gas oil used for stationary motors, plant and machinery used in construction, civil engineering or public works or vehicles intended for use off the road network or which have not been granted authorisation for use mainly on the public road network.

(79) Article 2(2) of Directive 92/81/EEC states that 'mineral oils other than those for which a level of duty is specified in the rates Directive 92/82/EEC shall be subject to excise duty if intended for use, offered for sale or used as heating fuel or motor fuel. The rate of duty to be charged shall be fixed, according to use, at the rate for the equivalent heating fuel or motor fuel'. (The EUR 13 indicated by the Italian authorities (see recital 43 above) is the duty applicable to the equivalent heating fuel or motor fuel, i.e. the duty for heavy oil set at EUR 13 per 1 000 kg in Article 6 of the latter Directive.)

(80) However, Article 8(2) of Directive 92/81/EEC provides that 'without prejudice to other Community provisions, Member States may apply total or partial exemptions or reductions in the rate of duty to mineral oils used under fiscal control […] exclusively in agricultural and in horticultural works, and in forestry and inland fisheries'.

(81) In accordance with Directive 2003/96/EC, which has been applicable since 1 January 2004 ([15]), the minimum rate of excise duty on gas oil (diesel) is set at EUR 21 per 1 000 litres (Article 9 of the Directive together with Table C in Annex I to the Directive). This Directive also contains an analogous provision to that in Article 8(2) of Directive 92/81/EEC, namely Article 15(3), according to which 'Member States may apply a level of taxation down to zero to energy products and electricity used for agricultural, horticultural or piscicultural works, and in forestry'.

(82) Under the two aforementioned Directives, therefore, it was possible to grant total excise duty exemptions. However, since the aid scheme in question establishes a differentiation between the excise duty exemptions which benefits certain agricultural undertakings, it cannot be declared compatible with the common market in the light of recital 172 of the Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013 ([16]).

(83) For the whole period covered by the two procedures initiated in relation to the excise duty exemptions (from 3 October 2000 to 31 December 2004 – see recitals 25 and 27 above), the rules applicable to State aid were those set out in the Community guidelines for State aid in the agriculture sector ([17]) (hereinafter 'the 2000 agricultural guidelines').

(84) The Commission considers that, taking account of their nature (total exemptions from excise duty), the aid constitutes unilateral State aid simply intended to improve the financial situation of producers without contributing to development of the sector. This finding is corroborated by the fact that, in the additional information which they supplied, the Italian authorities explained that the reason for granting the aid was the increase in oil prices (see recital 39 above).

(85) In accordance with point 3.5 of the 2000 agricultural guidelines, this aid is operating aid which is incompatible with the common market.

(86) However, point 5.5 of the 2000 agricultural guidelines allows an exception to the provisions of the aforementioned point 3.5 for operating aid for environmental purposes.

(87) In particular, point 5.5.4 of the 2000 agricultural guidelines refers to the specific case of partial or total exemptions from environmental taxes. Here, after expressing certain reservations, the Commission stated that such aid could be accepted if the following conditions are all met:

— if the aid is temporary (maximum duration of five years) and degressive,

— if it can be shown that the aid is necessary to offset a loss of international competitiveness,

— if the aid scheme constitutes a real incentive to reduce use of the inputs concerned.

(88) In the case under examination, the Commission considers that the aid is not degressive because, in the light of the various articles of the Finance Laws that provided for the excise duty exemption, the exemption was partial until 31 December 2000 and then total for each of the periods referred to in recital 27 above. In addition, the aid was not temporary since, in reality, with the exception of the second half of 2001, the exemptions were permanent for the entire period considered. Although the Italian authorities certainly referred to the existence of a difficult competitive situation (see recital 42 above), they did not supply information proving the loss of competitiveness. Lastly, it appears implausible that a system of exemptions which, by definition, makes fuels cheaper, could lead the beneficiaries to reduce their use of the inputs concerned (be it glasshouses or, by extension, the fuels themselves, if they are regarded as inputs).

([15]) Except for certain provisions not relevant to the matter at hand.
([16]) See footnote 13.
([17]) OJ C 28, 1.2.2000, p. 2.

(89) The State aid in question thus cannot be considered to be justified exclusively by the provisions of the 2000 agricultural guidelines which allow pure operating aid to be deemed compatible with the common market.

(90) However, point 5.6.2 of the 2000 agricultural guidelines also provides for the possibility of assessing aid on a case-by-case basis, having regard to the principles set out in the Community guidelines on State aid for environmental purposes.

(91) In view of the period to which the two procedures refer, the State aid rules to be considered for analysing the compatibility of the aid in question are as follows:

— for the period from 3 October 2000 to 2 February 2001, the Community guidelines on State aid for environmental protection ([18]) that had been in force since 1994 (hereinafter 'the 1994 guidelines'),

— for the period from 3 February 2001 to 31 December 2004, the Community guidelines on State aid for environmental protection ([19]) that had been in force since 2001 (hereinafter 'the 2001 guidelines').

(92) According to the 1994 guidelines (point 3.4), the Commission may make an exception to the rule that operating aid is not permitted, provided that such aid only compensates for extra production costs by comparison with traditional production costs, that it is temporary and in principle degressive and that it provides an incentive for reducing pollution or introducing more efficient uses of resources more quickly.

(93) Point 3.4 also states that temporary relief from new environmental taxes may be authorised where it is necessary to offset losses in competitiveness, particularly at international level. A further factor to be taken into account is what the firms concerned have to do in return in order to reduce their pollution. This provision also applies to reliefs from taxes introduced pursuant to EC legislation.

(94) Besides the fact that, as indicated in the analysis carried out in the light of point 5.5.4 of the 2000 agricultural guidelines, the aid is neither temporary nor degressive and does not contain any incentive, the Commission considers that the information available to it in no way demonstrates that the aid is strictly limited to compensating an extra production cost by comparison with traditional production costs. Accordingly, the aid does not satisfy the conditions referred to in recital 92 above that would allow it to be considered compatible with the common market.

(95) In addition, in the present case, the conditions referred to in recital 93 above are not relevant, since the aid does not concern new taxes (the excise duties existed prior to the period to which the two procedures refer: by way of example, Article 24(3) of Law No 388 of 23 December 2000, which introduced the total exemption from excise duty for the period between 1 January and 30 June 2001, refers to Law No 662/1996 which concerned excise duties and, in turn, referred back to Legislative Decree No 504/1995 laying down the Consolidated Text of Legislative Provisions on Taxes on Production and Consumption). In this connection, the Commission notes that the Italian authorities have not challenged the fact that the duties in question are an 'existing tax'. Moreover, they have never asserted that these taxes were introduced recently (see recitals 40 and 45 above).

(96) Accordingly, this aid cannot be declared to be compatible with the common market on the basis of the 1994 guidelines.

(97) The 2001 guidelines draw a distinction between new taxes (point 51.1) and existing taxes (points 51.2 and 52).

(98) The Commission considers that the excise duties covered by the exemption must be considered existing taxes throughout the period under examination, since, in addition to the considerations set out in recital 95 above, the exemptions were decided on each year in the various Finance Laws rather than in any single law adopted with automatic derogations at any single time during the period concerned. Moreover, as the Commission has already observed in recital 95 above, the Italian authorities never challenged the fact that the taxes in question were 'existing taxes' and never asserted that they were introduced recently.

(99) As indicated in recital 40 above, point 51.2 of the 2001 guidelines allows the authorisation conditions applicable to new taxes (set out in point 51.1) to be applied to existing taxes if the following two conditions are satisfied at the same time:

— the tax in question must have an appreciable positive impact in terms of environmental protection,

([18]) OJ C 72, 10.3.1994, p. 3.
([19]) See footnote 5.

— the derogations for the firms concerned must have been decided on when the tax was adopted or must have become necessary as a result of a significant change in economic conditions that placed the firms in a particularly difficult competitive situation. In the latter instance, the amount of the reduction may not exceed the increase in costs resulting from the change in economic conditions. Once there is no longer any increase in costs, the reduction must no longer apply.

(100) The Commission can admit that a tax such as excise duty on diesel for heating, the effect of which is an increase in the price of diesel, can cause users to reduce their consumption of diesel with positive effects as regards environmental protection. However, the exemptions in question were laid down year after year, with even an interruption between 1 July and 31 December 2001 (see recital 27 above), and the Italian authorities have neither demonstrated nor ever asserted that these derogations were decided on when the tax was adopted. On the contrary, they stressed that the derogations were adopted simply to deal with a situation of economic difficulty, namely the increase in motor and heating fuel prices.

(101) It is not possible to accept the argument put forward by the Italian authorities that the Commission should carry out its analysis as if the exemptions had been decided on when the tax was introduced. In effect, the Italian authorities referred to Commission Decision C(2005) 4436 (see recital 42 above). In this Decision (see, in particular, recital 74 thereof), the Commission based its findings on the fact that the exemptions had been decided on well before the 2001 environmental aid guidelines became applicable. However, in the case under examination, it must be noted that the first exemptions date back to October 2000, i.e. shortly before these guidelines became applicable. It must be stressed that at no stage did the Italian authorities rely on exemptions previously granted.

(102) On the other hand, with regard to the second condition in the second sub-paragraph of point 51.2 of the 2001 guidelines, the Italian authorities have not provided evidence demonstrating a significant change in economic conditions that could have placed the firms in a particularly difficult competitive situation (see recital 88 above) nor proved that the value of the exemption did not exceed the increase in costs resulting from the change in economic conditions. With regard, in particular, to the question of the competitive situation, the data in the tables set out in recitals 42 and 46 above do not contain any comparative information. Therefore, they do not make it possible to identify any deterioration whatsoever in the competitive situation of Italian glasshouse growing undertakings. In this connection, it should also be highlighted that the increase in the price of oil products affected the whole of Europe and not only Italy.

(103) Since one of the two conditions referred to in recital 99 above has not been met, the provisions of point 51.2 of the 2001 guidelines cannot be applied, and thus nor can those of point 51.1.

(104) In the alternative, even if the provisions of point 51.2 had been applicable, the exemptions under examination could not have been considered eligible under point 51.1, which provides that:

'When, for environmental reasons, a Member State introduces a new tax in a sector of activity or on products in respect of which no Community tax harmonisation has been carried out or when the tax envisaged by the Member State exceeds that laid down by Community legislation, the Commission takes the view that exemption decisions covering a 10-year period with no degressivity may be justified in two cases:

(a) these exemptions are conditional on the conclusion of agreements between the Member State concerned and the recipient firms whereby the firms or associations of firms undertake to achieve environmental protection objectives during the period for which the exemptions apply or when firms conclude voluntary agreements which have the same effect. Such agreements or undertakings may relate, among other things, to a reduction in energy consumption, a reduction in emissions or any other environmental measure. The substance of the agreements must be negotiated by each Member State and will be assessed by the Commission when the aid projects are notified to it. Member States must ensure strict monitoring of the commitments entered into by the firms or associations of firms. The agreements concluded between a Member State and the firms concerned must stipulate the penalty arrangements applicable if the commitments are not met.

These provisions also apply where a Member State makes a tax reduction subject to conditions that have the same effect as the agreements or commitments referred to above;

(b) these exemptions need not be conditional on the conclusion of agreements between the Member State concerned and the recipient firms if the following alternative conditions are satisfied:

— where the reduction concerns a Community tax, the amount effectively paid by the firms after the reduction must remain higher than the Community minimum in order to provide the firms with an incentive to improve environmental protection,

— where the reduction concerns a domestic tax imposed in the absence of a Community tax, the firms eligible for the reduction must nevertheless pay a significant proportion of the national tax.'

(105) In the present case, the excise duties applied were certainly higher (before exemptions and reductions) than the harmonised level of taxation (see recitals 43 and 46), but it does not appear that agreements such as those provided for by point 51.1(a) were concluded between the Member State and the beneficiaries or that similar agreements were voluntarily entered into by the latter (the Commission has not been notified of any agreement). Moreover, the Italian authorities have underlined that the exemptions in question were granted to deal with a difficult economic situation and have never referred to any environmental measure required of the beneficiaries in return.

(106) The alternative to the conclusion of agreements provided for in point 51.1(b) cannot be applied in the present case since, during the part of the period under consideration that came after the 2001 guidelines became applicable, glasshouse growers enjoyed a total exemption from excise duty and thus did not pay an amount greater than the Community minimum ([20]), at such a level as to encourage them to take action to improve environmental protection, as provided for by the 2001 guidelines in cases where the reduction concerns a Community tax.

(107) However, recital 52 of the 2001 guidelines states that where an existing tax is increased significantly and where the Member State concerned takes the view that derogations are needed for certain firms, the conditions set out in point 51.1 as regards new taxes are applicable by analogy. Therefore, it is first necessary to examine whether the excise duties increased significantly.

(108) The table in point 46 above shows that excise duties did not increase significantly, since their variation was as follows: – 5,4 % between 1999 and 2000, – 6,98 % between 1999 and 2001, + 1,9 % between 1999 and 2002 and + 1,3 % between 1999 and 2003. From one year to the next, the variation was as follows: – 5,4 % from 1999 to 2000, – 1,6 % from 2000 to 2001, + 9,5 % from 2001 to 2002 and – 0,5 % from 2002 to 2003. It can be seen, therefore, that excise duties have been constantly on the decline except between 2001 and 2002. However, the increase seen during that period cannot be considered significant, since, in actual fact, it had practically no effect on trends in the consumer price of diesel for heating (according to the information in the table, the consumer price for diesel for heating increased by only 2,2 % over those two years). Accordingly, the provisions of point 52 of the 2001 guidelines cannot be applied in this case.

(109) Lastly, point 53 of the 2001 guidelines states that when the reductions concern a tax that has been harmonised at Community level and when the domestic tax is lower than or equal to the Community minimum, any exemptions granted must satisfy the conditions laid down in points 45 and 46 and must, in any event, be covered by an express authorisation to derogate from the Community minimum.

(110) Point 45 of the 2001 guidelines states that the duration of the aid must be limited to five years where the aid is degressive and that the aid intensity may reach 100 % of the extra costs ([21]) in the first year, but must have fallen in a linear fashion to zero by the end of the fifth year.

(111) Point 46 of the 2001 guidelines states that the duration of non-degressive aid is limited to five years and that its intensity must not exceed 50 % of the extra costs.

(112) In the case under examination, the Commission has already noted that the aid was not degressive (see recital 88 above). In consequence, only the provisions of point 46 of the guidelines could be applied to it. However, the information supplied by the Italian authorities in no way allows the Commission to conclude that the aid intensity was limited to 50 % of the extra production costs generated by the excise duties by comparison with the market prices of products grown in glasshouses.

(113) Accordingly, the aid cannot be considered eligible on the basis of the provisions of point 46 of the 2001 guidelines or, in consequence, on the basis of the provisions of point 53 thereof.

([20]) EUR 13 per 1 000 kg for the 2000-2003 period and EUR 21 per 1 000 litres – see recital 43.

([21]) Extra costs are defined in point 43 of the guidelines as extra production costs by comparison with the market prices of the products.

(114) The considerations set out in recitals 94-112 above demonstrate that the aid under examination cannot be declared compatible with the common market on the basis of the provisions of the 2001 guidelines.

(115) With regard to the other arguments put forward by the Italian authorities at the various stages of examination of the case, the Commission considers that there is no information allowing it to dispel the doubts expressed in recital 34(b) above. The argument referred to in recital 43 above that the measure adopted by Italy could be compatible with the common market if the beneficiaries paid the minimum amount set at Community level is not relevant, since glasshouse growers enjoyed a total exemption from excise duty for almost the whole period under examination and thus did not pay taxes.

(116) As for the arguments put forward by the interested third party which sent comments after the procedure was initially opened, they do not supply elements supporting the compatibility of the aid with the common market. Indeed, with regard to the difficulty of the situation in which the beneficiary undertakings would find themselves if the aid were declared incompatible and recovered, it should be recalled that recovery of incompatible aid is necessary to restore the previous situation, i.e. the situation without distorted competition that existed before the aid was granted. The fact that certain undertakings are no longer profitable is simply the result of free competition under normal market economy conditions. On the other hand, there is no evidence that reducing diesel consumption necessarily brings about a reduction in the quality of products obtained (at most, such a reduction could slightly delay ripening or growth). Lastly, the reference to the situation in other countries in order to demonstrate that competition is not distorted is not relevant. In this connection, it is sufficient to note that the exemption allows the competitive position of Italian glasshouse growers to be improved as compared to the situation in other countries and that, therefore, the starting point for comparison must be the situation in Italy without the exemptions.

XI. **CONCLUSION**

(117) The Commission finds that Italy has unlawfully implemented the aid in question, contrary to Article 88(3) of the Treaty. The analysis set out above demonstrates that the aid cannot be declared compatible with the common market because it does not comply with the conditions of the 2000 and 2007 agricultural guidelines and the 1994 and 2001 environmental guidelines. Moreover, the analysis has demonstrated that the mere existence of Directives cannot justify the implementation of measures liable to distort competition, and the Italian authorities have not dispelled all the doubts expressed by the Commission when the procedure under Article 88(2) of the Treaty was initiated.

(118) Under Article 14(1) of Regulation (EC) No 659/1999, where negative decisions are taken in relation to unlawful aid, the Commission is to decide that the Member State concerned must take all necessary measures to recover the aid from the beneficiary (in this case glasshouse growers). Italy is thus required to take all necessary measures to recover from the beneficiaries the incompatible aid paid, the value of which corresponds to the difference between the total excise duty exemption granted and the reduced rate of excise duty granted to other operators in the agricultural sector. Under point 42 of the Notice from the Commission 'Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid' ([22]), Italy has four months from the entry into force of this Decision to implement its provisions. The aid to be recovered must bear interest calculated in accordance with Commission Regulation (EC) No 794/2004 ([23]) implementing Council Regulation (EC) No 659/1999.

(119) However, any individual aid granted under the aid scheme under examination which, at the time it was granted, satisfied the conditions laid down in a Commission regulation adopted on the basis of Article 2 of Council Regulation (EC) No 994/98 ([24]) (the *de minimis* Regulation) is not considered to be State aid within the meaning of Article 87(1) of the Treaty.

(120) No Community provisions governing *de minimis* aid in the agricultural sector were in force when the aid under examination was granted.

(121) The first such Community provisions were those of Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture and fisheries sectors ([25]).

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

([22]) OJ C 272, 15.11.2007, p. 4.
([23]) OJ L 140, 30.4.2004, p. 1.
([24]) OJ L 142, 14.5.1998, p. 1.
([25]) OJ L 325, 28.10.2004, p. 4.

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

(124) On 1 January 2008, Regulation (EC) No 1860/2004 was replaced by Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the sector of agricultural production ([26]), which increased the amount of *de minimis* aid to EUR 7 500 per beneficiary over three tax years, irrespective of the form of the aid or the objective pursued, within a ceiling per Member State of 0,75 % the value of annual output.

(125) Article 6(1) of that Regulation provides that the Regulation '[applies] to aid granted before 1 January 2008 to undertakings in the sector of agricultural production, provided that such aid fulfils all the conditions laid down in Articles 1 to 4, except for the reference requirement clearly set out in this Regulation in the first subparagraph of Article 4(1)'.

(126) In this context, the Commission does not consider tax reductions not exceeding EUR 3 000 to be State aid provided that, when they were granted, they complied with Regulation (EC) No 1860/2004. The same applies to tax reductions not exceeding EUR 7 500 provided that, when they were granted, they complied with Regulation (EC) No 1535/2007,

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme in the form of an exemption from excise duties on diesel used for heating glasshouses, which was implemented unlawfully by Italy between 3 October 2000 and 30 June 2001 and in the years 2002, 2003 and 2004, is incompatible with the common market.

Article 2

1. Italy is required to recover from the beneficiaries the incompatible aid granted under the scheme referred to in Article 1.

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

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004.

Article 3

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

Italy shall ensure that this Decision is implemented within four months following the date of its notification.

Article 4

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

(a) a list of beneficiaries that have received aid under the scheme referred to in Article 1 and the total amount of aid received by each of them under the scheme;

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

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

(d) documents demonstrating that orders to return the aid have been sent to the beneficiaries.

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

Article 5

This decision is addressed to the Italian Republic.

Done at Brussels, 13 July 2009.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

([26]) OJ L 337, 21.12.2007, p. 35.

COMMISSION DECISION

of 13 July 2009

concerning the reform of the method by which the RATP pension scheme is financed (State aid C 42/07 (ex N 428/06)) which France is planning to implement in respect of RATP

(notified under document C(2009) 5505)

(only the French text is authentic)

(Text with EEA relevance)

(2009/945/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 observations pursuant to the provisions [1] cited above and having regard to their observations,

Whereas:

1. PROCEDURE

(1) By letter of 29 June 2006, France notified the Commission of the reform of the method by which the RATP pension scheme is financed. It provided the Commission with additional information by letters dated 29 September 2006, 15 December 2006 and 4 April 2007.

(2) By letter of 10 October 2007, the Commission informed France of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the measure notified (hereinafter 'the decision to initiate the procedure').

(3) The decision to initiate the procedure was published in the *Official Journal of the European Union* on 15 January 2008 [2].

(4) The French authorities sent their observations by letter dated 22 January 2008.

(5) On 19 February 2008, the Commission received observations from one interested party. It forwarded those observations to France, giving it the opportunity to comment on them and received France's comments by letter dated 3 April 2008.

(6) On 23 April 2008, the French authorities informed the Commission that in the autumn of 2007, the French Government had embarked on the reform of special public-sector pension schemes, and in particular the pension scheme for RATP staff.

(7) On 6 January 2009, the Commission asked the French authorities for additional information and received a reply from them by letter dated 3 March 2009.

2. DESCRIPTION OF THE BENEFICIARY

(8) The Régie Autonome des Transports Parisiens (the Paris public transport operator, or 'RATP') is a French public enterprise which is wholly owned by the French State. It was established by Law No 48-506 of 21 March 1948 on the reorganisation and coordination of passenger transport in the Paris region [3], its aim being to 'operate the public passenger transport networks and lines for which it has been assigned responsibility' [4].

(9) Under this Law, RATP's activities are limited to public transport in the Paris region. Under Article 7 of Law No 48-506 of 21 March 1948, RATP is responsible for operating the public transport networks in the City of Paris and the Department of Seine and the lines in Seine-et-Oise and Seine-et-Marne previously granted or leased to the Compagnie du chemin de fer métropolitain or the Société des transports en commun de la région parisienne. This was confirmed by Order No 59-151 of 7 January 1959.

[1] OJ C 9, 15.1.2008, p. 13.
[2] See footnote 1.
[3] Journal Officiel de la République française, 26 March and 3 April 1948.
[4] Article 2 of the amended Order No 59-151 of 7 January 1959 on the organisation of passenger transport in the Paris region (Journal Officiel de la République française, 10 January 1959), which amended the 1948 Law referred to above.

(10) However, RATP is able, via its subsidiaries, to provide services outside of the Ile-de-France region ([5]). The RATP subsidiaries, which are formed as limited companies, are currently grouped into three main sectors, which employ approximately 2 050 people, 170 of whom are seconded by head office:

— The Transport sector, managed by RATP Développement SA, whose turnover in 2005 was EUR 57 million, including EUR 4,7 million abroad and EUR 3,1 million in the French regions (i.e. outside of Ile-de-France).

— The Engineering sector, managed by RATP International SA, whose consolidated turnover in 2005 was EUR 86 million; nearly 80 % of its activity took place abroad, with most of the remaining activity taking place outside Ile-de-France.

— The Space Utilisation sector, essentially comprising subsidiaries responsible for property development (on RATP-managed premises), the promotion of sales outlets in Metro stations and telecommunication activities. The consolidated turnover in 2005 for this sector was EUR 33 million (only in Ile-de-France).

(11) The RATP group employs a total of approximately 46 050 people, 44 000 of whom are employed by the RATP as staff in posts governed by service regulations, with the remaining 2 050 people employed in RATP subsidiaries.

(12) The working conditions of staff in posts governed by service regulations are established on a regulatory basis in the RATP staff regulations ([6]). However, working conditions for the 2 050 people employed by RATP subsidiaries are established on the basis of collective agreements, and therefore the RATP staff regulations do not apply to them.

3. DESCRIPTION OF THE PUBLIC TRANSPORT MARKET IN THE ILE-DE-FRANCE REGION

(13) The Ile-de-France public transport market is currently not open to competition. Licences to operate public transport lines have been allocated on the basis of the procedure provided for in Decree No 59-157 of 7 January 1959 on the organisation of passenger transport in the Ile-de-France region ([7]), which divided the public transport market in Ile-de-France between RATP and many private operators which were present in the region at the time.

(14) In addition to RATP, approximately 100 companies provide public transport services in Ile-de-France. These companies are SNCF (the French national rail company) and private operators grouped collectively in the 'OPTILE' association (approximately 95 companies, including three major bus transport operators: Veolia Transport, Keolis and Transdev).

(15) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 ([8]) (hereinafter 'Regulation (EC) No 1370/2007'), provides for the public transport market to be gradually opened up. In accordance with Article 12 of the Regulation, it will come into force on 3 December 2009.

4. PROVISIONS OF THE SPECIAL PENSION SCHEME FOR RATP STAFF BEFORE AND AFTER THE NOTIFIED REFORM

(16) The RATP pension scheme is provided for in Article 31 of Law No 48-506 of 21 March 1948 (referred to above), and supplemented by Decree No 59-1091 of 23 September 1959 on the RATP statutes ([9]).

(17) The pension scheme for RATP staff is a special scheme within the meaning of Articles L 711-1 and R 711-1 of the French Social Security Code, and has specific advantages compared to statutory schemes. It is a regulated scheme, i.e. established by the State on the basis of administrative provisions. In addition, changes to its rules, contributions and benefits, amongst other things, are the subject of regulatory provisions.

([5]) This is made possible by legislation, subject to the following conditions: 'Outside of Ile-de-France and abroad, RATP may also, via its subsidiaries, construct, develop and operate public networks and transport lines for travellers, subject to competition rules being complied with on a reciprocal basis. These subsidiaries shall have the status of a limited company. Their financial management will be independent within the framework of the objectives of the group: they may not benefit from aid allocated by the State, the Ile-de-France transport syndicate and other public organisations as regards the operation of and investment in transport in the Ile-de-France region'.

([6]) The RATP staff regulations define the principles for classifying staff and the provisions relating to certain situations, the main ones being:
— termination of employment, which stipulates the rules to be applied in the event of resignation, redundancy or dismissal,
— leave (annual leave, special leave for family reasons, etc.),
— promotion.
Prior to the reform of the special pension scheme, the RATP staff regulations also provided (in Article 51 thereof), the conditions for retirement, with reference to the pensions regulation. The pensions regulation was repealed as of 1 July 2008 (Article 52 of French Decree No 2008-637 of 30 June 2008).

([7]) *Journal officiel de la République française*, 10 January 1959.

([8]) OJ L 315, 3.12.2007, p. 1.

([9]) *Journal officiel de la République française*, 24 September 1959.

(18) Until 15 January 2008, the main differences between the special pension scheme for RATP staff and statutory schemes concerned how pension entitlements and the payment of pensions were calculated.

(19) In this regard, under statutory pension schemes, the pension amount is calculated on the basis of average salary during a person's whole career or part of it. The pension amount also depends on the period of insurance or on age, with overvaluation or undervaluation being applied if the sums established for these two criteria have not been met or have been exceeded. Consequently, under a general scheme, a pension is calculated on the basis of average salary (including bonuses) over a person's best 25 career years (subject to a maximum annual salary), with a rate of 50 % (full rate) being applied to the salary, if the insured person has contributed for at least 40 years.

(20) However, under the RATP pension scheme, staff in posts governed by service regulations were entitled, in respect of each year of insurance, to 2 % of basic salary (excluding bonuses) received during the last six months of employment, subject to a limit of 37,5 annual payments. This means that an RATP employee, after 37,5 years of employment, would receive a pension corresponding to 75 % of final salary, excluding bonuses, i.e. approximately 64,5 % of final salary, including bonuses.

(21) The fundamental principles of the reform established by the Law of 21 August 2003 ([10]) for almost all French pension schemes were extended to the RATP special pension scheme by Decrees 2008-48 of 15 January 2008 ([11]), 2008-637 of 30 June 2008 ([12]) and 2008-1514 of 30 December 2008 ([13]). One of the objectives of this reform was to harmonise special schemes operating on the basis of the statutory rules applying to staff employed in the private sector and civil servants. With regard to the RATP special scheme, the period of contribution necessary in order to obtain a full pension, in particular, has progressively increased and reached 40 annuities in 2012, before subsequently being changed by one quarter on 1 July of each year until reaching the duration required under the general scheme and the public sector scheme (the duration of 41 years applicable in 2012 to the general scheme and public sector scheme should therefore be reached in 2016 under the special scheme).

([10]) Law No 2003-775 of 21 August 2003 reforming pension schemes.
([11]) Decree No 2008-48 of 15 January 2008 regarding the special pension scheme for RATP staff.
([12]) Decree No 2008-637 of 30 June 2008 regulating the pension scheme for RATP staff.
([13]) Decree No 2008-1514 of 30 December 2008 regarding certain special social security schemes and the pension scheme supplementing Social Security for non-statutory employees of the State and public bodies.

5. FINANCING OF THE PENSION SCHEME FOR RATP STAFF BEFORE AND AFTER THE NOTIFIED REFORM

(22) The pension scheme for RATP staff is a 'pay-as-you-go' pension scheme; contributions made by employees in respect of old-age pensions are immediately used to pay the pensions of retired staff ([14]).

(23) Until 31 December 2005, RATP was legally liable for the pension commitments of the special scheme. Under Article 20 of the 1948 Law referred to above, RATP was responsible for ensuring the financial equilibrium of its special pension scheme.

(24) The RATP pensions department, part of the RATP legal service, was responsible for administering this special pension scheme. The pensions department collected contributions from serving RATP staff and from RATP itself as an employer and paid pensions to beneficiaries of the scheme. The rates of pension contribution (7,85 % of salary and 15,34 % of salary for employees and the employer respectively) were lower than the statutory contribution rate (employee contributions of 12 % and employer contribution of 18 %).

(25) For many years, the RATP pension scheme has experienced structural shortcomings due to reasons relating to the demographic imbalance between active staff and pensioners, the advantageous nature of the scheme compared to the general scheme, and, until 31 December 2005, the standardised setting of pension contribution rates. These successive shortcomings of the RATP pension scheme have been rectified by measures taken by the State, which took action on the basis of Article 2 of the Order of 7 January 1959 and the Decree of 7 January 1959 referred to above.

(26) On 29 June 2006, France provided notification of the reform of the method by which RATP finances its pension scheme. According to the French authorities, the reform is part of the changes made to the institutional arrangements for urban transport in Ile-de-France over the last 10 years and also the preparations for opening urban transport up to competition.

(27) The notified reform has two stages.

([14]) A pay-as-you-go pension scheme is financed on the basis of significant solidarity between generations. Its financial equilibrium is dependent on the ratio between the number of contributors and the number of pensioners. The rates by which revenue and the active employed population increase therefore constitute the two main factors in its development.

5.1. *CREATION OF THE RATP STAFF PENSION FUND ON 1 JANUARY 2006*

(28) Article 1 of Decree No 2005-1635 of 26 December 2005 ([15]) set up, as of 1 January 2006, a pension fund for RATP staff (hereafter the 'CRP-RATP').

(29) The CRP-RATP has the status of a social security body and legal personality, and is legally and financially independent of RATP. In accordance with Article L711-1 of the Social Security Code, it has all the characteristics defined in Article L111-1 of that Code, which states, in particular, that the organisation of social security is to be based on the principle of national solidarity. The CRP-RATP is subject to the Social Security Code rules applicable to all independent pension funds. It is also subject to scrutiny by the relevant State authorities which are represented by commissioners of the Government.

(30) On the date on which it was set up, the CRP-RATP replaced RATP as the only legal debtor for the retirement pensions of staff in posts governed by service regulations.

(31) As a result, since 1 January 2006 the RATP has, in full discharge of its liabilities, made contributions to the CRP-RATP which correspond to the contributions of the active members of this special scheme and its contributions as an employer. From that date, these contributions are at the same level as statutory contributions ([16]). In addition to these employer pension contributions, the CRP-RATP also receives a payment from the State in order to balance the accounts. This balancing contribution finances both the demographic deficit in the special scheme and also the pension entitlements specific to the scheme. In 2006 and 2007, the State paid balancing subsidies of EUR 390,11 and EUR 414 million.

5.2. *THE FINANCIAL AFFILIATION OF BASIC ENTITLEMENTS UNDER THE RATP SPECIAL SCHEME TO STATUTORY SCHEMES*

(32) Article 18 of Decree 2005-1635 of 26 December 2005, as referred to above, makes it possible for the CRP-RATP to financially affiliate some of the RATP special pension scheme entitlements to statutory schemes (CNAV ([17]) and ARGIC ([18])/ARCCO ([19])) ([20]), i.e. a technical transfer of CRP-RATP pension transactions to statutory schemes (receiving schemes) is possible.

(33) The affiliation of some pension rights acquired under the RATP special scheme to statutory schemes is intended to place the mechanism of inter-generational and inter-professional solidarity on a considerably widened demographic basis. On a broader level, it also ensures that the financing of compulsory pension schemes, funded on a pay-as-you-go basis, can continue in the long term.

Basic rights acquired at the time of affiliation

(34) In accordance with Article L222-6 of the Social Security Code, a special pension scheme or any other (statutory) pension scheme may be affiliated in respect of some of the benefits provided under special schemes, equivalent to old-age pension benefits provided to employees under the general scheme.

(35) Under a pay-as-you-go pension scheme, previous entitlements acquired under another scheme (and therefore on the basis of other criteria) can be transferred to a receiving scheme by calculating these rights acquired on the basis of the rules governing the receiving scheme as if the beneficiaries (pensioners, employees and persons whose names have been removed from the scheme) had spent all of their working life under the receiving scheme.

([15]) Decree No 2005-1635 of 26 December 2005 regarding the pension fund for RATP staff.

([16]) Decree No 2005-1638 of 26 December 2005 setting the rates of contributions payable to the pension fund for RATP staff.

([17]) CNAV: *Caisse Nationale d'Assurance Vieillesse* (National Old-Age Pension Fund).

([18]) AGIRC: *Association générale des institutions de retraite des cadres* (General association of pension institutions for managers).

([19]) ARRCO: *Association pour le régime de retraite complémentaire des salariés* (Association for the supplementary retirement scheme for salaried employees).

([20]) The financial affiliation maintains the special scheme and its rules. Its objective is remove pension commitments from the budgets of the companies concerned by the transaction. Unlike inclusion, under affiliation there is no direct link with statutory schemes and the companies, employees and pensioners from the affiliated group. A 'screen' structure set up between the companies and the employees from the affiliated sector on the one hand and the statutory schemes on the other makes it possible to ensure that the affiliation process only regulates global financial flows, based on 'virtual' transactions. These are virtual, in so far as staff have no legal or administrative connection with the receiving scheme's institutions and also in so far as the regulation of the special scheme continues to be the only one used for establishing their pension entitlements and revaluing paid pensions.

(36) In this particular case, the French authorities calculated the basic rights, i.e. those corresponding to pension benefits calculated in the light of the rules governing the receiving schemes and which would be transferred to the schemes ([21]). Only these basic rights thus established in this way may be transferred to the receiving schemes.

(37) Article 222-6 of the Social Security Code also stipulates that affiliation of a special scheme must ensure strict financial neutrality of the transaction for employees covered under the receiving scheme. In other words, under no circumstances may the financial affiliation of a special pension scheme to statutory schemes jeopardise the financial situation of receiving schemes.

(38) This is the point at which weighing takes place, the purpose of which is to determine what proportion of these previous pension entitlements was actually valid at the time of affiliation, in order to ensure that the principle of financial neutrality referred to above is complied with fully. From a conceptual point of view, weighing compares the ratio of pension costs for the group affiliated and the ratio of pension costs under the receiving scheme ([22]). The receiving scheme then determines what proportion should be used for transferring previously reconstituted rights in order to ensure that these ratios would stay the change: on the basis of this rate, pension rights are transferred 'for free' by the receiving scheme.

(39) If the rate of validation of reconstituted acquired entitlements by the receiving scheme is less than 100 %, the scheme may propose that the affiliated scheme validate 100 % of these rights by paying a contribution to maintain entitlements (cash payment).

(40) The method of calculating cash payments is intended not to change the projected ex-ante situation of the scheme. If the weighing is projected, the amount of the cash payment will be equal to the updated net value of annual entry rights. The annual entry right is that which, in respect of supplementary rights (i.e. over and above the rights transferred free of charge) transferred by the receiving scheme, equalises annually the ratio of costs between the full scheme and the receiving scheme.

(41) If the financial situation of a receiving scheme has structural shortcomings, the method of calculation requires that this underlying imbalance not be exacerbated, and not requiring a projected technical equilibrium on the part of the group transferred.

(42) In this particular case, the demographic structure of RATP was not as good as that of the average French company affiliated to statutory pension schemes. The full affiliation of basic rights under the special pension scheme for RATP staff to the statutory schemes requires cash payments to be paid to receiving schemes, i.e. exceptional and one-off payments and payments in discharge of their liabilities.

(43) The French authorities have set out the methods by which these cash payments are calculated. They are calculated on the basis of the parameters in force at the time of implementation. These parameters are:

— the rates of contribution and the bases allowing the provision to be made to the reserves anticipated by the complimentary schemes,

— the level of updating and possibly mortality tables, which will vary depending on economic circumstances.

(44) The French authorities estimate at this stage that the cash payments to be made will consist of:

— a cash payment to the Caisse nationale d'assurance vieillesse (CNAV) which manages the general social security scheme of approximately [EUR 400 million to EUR 800 million] (*),

— cash payments to the additional statutory schemes AGIRC-ARRCO, in the form of a share in the underwriting reserves of these schemes, of approximately [EUR 80 million to EUR 300 million].

(45) The French Government anticipates taking responsibility, on behalf of the CRP-RATP, for payment of these cash payments to statutory schemes in order to ensure that affiliation of the RATP special scheme to these receiving schemes remains financially neutral.

([21]) The entitlements specific to the special scheme or 'special' entitlements correspond to no more than the difference between the pension entitlements acquired under the RATP special scheme and the portion and corresponding to the benefits provided by statutory provisions or basic rights. The 'special' entitlements to the RATP special scheme therefore correspond to the pension rights which are greater than the rights usually provided on a statutory basis. The entitlements specific to the special scheme, or which also will have to be gradually removed in accordance with the reform of special pension schemes (see recital 21 of this Decision) will continue to be the responsibility of the CRP-RATP.

([22]) The difference between the cost ratio under the two schemes depends on differences in the level and structure of pay (which has an impact on pension costs) and also demographic differences (for example, a basis of contribution which is proportionally more limited will have an impact on the amount of contributions).

(*) This information is confidential.

Basic rights acquired after affiliation

(46) Given that these are basic rights acquired after affiliation, RATP and its staff are to pay statutory pension contributions in exchange for the intervention of the general scheme and supplementary schemes.

6. REASONS BEHIND THE ADOPTION OF THE DECISION TO INITIATE THE PROCEDURE

(47) In its decision to initiate the procedure, the Commission questioned whether the reform notified was compatible with the common market. The Commission mentioned that the purpose of the procedure was to establish whether the reform constituted aid granted to RATP.

(48) The Commission first discussed the close link between the CRP-RATP being set up and affiliation to statutory schemes, deciding that it was necessary to verify whether or not the affiliation of basic rights constituted State aid in favour of RATP.

(49) It then questioned the proposal that the financing by the State of specific entitlements under the RATP pension scheme did not constitute State aid and, where necessary, whether or not the scheme was compatible with the single market.

(50) Finally, the Commission questioned the need for the reform notified and its proportionality with regard to common interest. With regard to whether or not the reform was necessary, it discussed the actual and effective opening up of the public transport market in the Paris region and the removal of factors in the legal and actual situation of RATP which could hinder effective competition. It also questioned whether the reform notified was proportional, essentially on the grounds that it would also affect special pension commitments with regard to employees recruited after the reform was implemented.

(51) However, in its decision of 10 October 2007, the Commission concluded that the financing by the State of the RATP pension scheme's shortfall for the period 1995-2005 constituted State aid within the meaning of Article 1(b)(iii) 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 [23] (see recital 15 of this Decision).

(52) The Commission also considered that Article 87 the EC Treaty did not apply to the CRP-RATP, since RATP was not a company (recital 67 of this Decision).

(53) Finally, the Commission decided that the guarantee provided by the French State to beneficiaries under the special scheme directly benefited RATP staff, rather than RATP itself. This guarantee could not therefore be considered to provide the company with an economic advantage (recital 70 of this Decision).

7. ARGUMENTS MADE BY THE FRENCH AUTHORITIES FOLLOWING THE INITIATING OF THE PROCEDURE

Preliminary remark

(54) In their letter of 22 January 2008, the French authorities recalled that, from their point of view, the reform in question constituted assistance to individuals, as opposed to RATP and therefore could not be regarded as State aid benefiting RATP. Furthermore, although RATP would be the actual beneficiary of the notified reform, the French authorities consider that trade between Member States is not affected by the reform, nor is competition jeopardised, in so far as RATP's activities are restricted to a single market (the urban public transport market in Ile-de-France) which is not yet open to competition and also in so far as the reform has had no impact on the activities of RATP subsidiaries or the markets in which those are active.

Affiliation of basic entitlements

(55) According to the French authorities, affiliation of the CRP-RATP to the general scheme does not constitute State aid benefiting RATP, given that the latter has not been advantaged.

(56) Firstly, the French authorities believe that, as the Commission itself indicated in point 69 of the decision to initiate the procedure, 'the second stage of the reform, i.e. the provision of cash payments and the transfer of the financing of basic rights from the CRP-RATP to CNAV and AGIRC-ARRCO no longer affect RATP's economic situation'.

(57) The French authorities also feel that RATP's obligations corresponding to basic rights were not costs that would normally have put a strain on its budget within the meaning of Community case law. In their view, the financial resources of French companies are normally burdened by payments in full discharge of liabilities made to statutory pension funds but not by the obligation to pay pensions for current employees and retired persons, as was the case with RATP, whose head office included a department responsible for pensioners until the time of the notified reform. Consequently, since they are accompanied by payments in full discharge of liabilities at the same level as under statutory arrangements, the affiliation of the CRP-RATP to the general scheme and the provision of cash payments by the State to the general scheme has not meant that RATP avoided paying costs that would normally have placed a burden on its financial resources.

[23] OJ L 83, 27.3.1999, p. 1.

(58) Lastly, according to the French authorities, given that the special scheme was imposed by the State when RATP was set up in 1948, it would not be normal for the company to have to meet the cost of the cash payments paid in exchange for affiliation of the CRP-RATP to the general scheme.

Financing of special rights

(59) Firstly, the French authorities believe that the case-law according to which costs resulting from collective agreements constitute, by their nature, a cost which normally places a burden on a company's budgets, and that the company has voluntarily accepted this agreement or that it was extended to this company on the basis of regulations or law ([24]), does not apply in this particular case in so far as the RATP staff pension scheme was not established on the basis of a collective agreement.

(60) Secondly, according to the French authorities, the existence of special rights does not constitute any advantage for RATP. The fact that RATP continues to recruit staff in posts governed by service regulations who enjoy special rights does not prove that the existence of special rights places the organisation at an economic advantage.

(61) Thirdly, the French authorities maintain that the public financing of special rights constitutes the strict compensation for abnormal expenses borne by RATP. In their view, the conclusion that the financing of special pension rights does not constitute State aid is the result of principles which have emerged from Community case law since the Community was established, the *Combus* ([25]) and *Enirisorse* ([26]) rulings being merely the most recent examples of this.

Compatibility of the reform notified with the single market

(62) If the Commission feels that the reform in question contained elements of State aid, the French authorities take the view that the reform is in any case compatible with the common market.

(63) The French authorities maintain their view that the reform notified complies with the theory of stranded costs and is pro-competitive.

(64) The authorities also feel that the new financing of pension rights starting in 2006 is necessary and proportionate in order to ensure competition within the market.

(65) The French authorities believe the reform notified is necessary in order to prepare for the Ile-de-France urban transport sector opening up to competition, as provided for in Regulation (EC) No 1370/2007. It will prevent distortions of competition between public and private operators and also ensure the permanent removal of the barrier to entry formed by the means of financing pensions within RATP.

(66) As regards the proportionate nature of the reform, in their letter dated 23 April 2008 the French authorities informed the Commission of the reform of the RATP special pension scheme instigated by the French government, a reform which brings the RATP special pension scheme into line with statutory rules.

8. OBSERVATIONS OF INTERESTED PARTIES FOLLOWING THE OPENING OF THE PROCEDURE

(67) In a letter dated 13 February 2008 the RATP branch of the SUD trade union expressed its opposition to the plans notified by the French authorities, stating that the sole objective of the latter was to transform RATP into a large international group driven by the desire to make profit. In its letter the RATP branch of the SUD trade union drew the Commission's attention to the fact that, in its view, the staff of RATP did not have the status of employees under private law subject to the Labour Code.

(68) The RATP branch of the SUD trade union also claimed that the reform of the RATP retirement scheme should have been developed by a joint committee since the scheme is subject to collective bargaining between the social partners.

9. COMMENTS OF FRANCE ON THE OBSERVATIONS OF THE INTERESTED PARTIES

(69) With regard to the legal regime applicable to RATP staff, the French authorities state in their letter of 3 April 2008 that the provisions of the labour code are intended to apply to RATP staff in posts governed by service regulations, except if the labour code or case law expressly states that these provisions should not apply to such staff. According to France, the existence of such exceptions is not sufficient to consider RATP staff as being subject to contracts of employment under public law.

(70) France also indicates that Decree No 60-1362 of 19 December 1960, which delegates competence to the RATP joint committee for matters relating to the status of personnel, does not refer to the retirement scheme. According to the French authorities, the RATP pension scheme is not the result of collective bargaining; it was imposed on RATP by the State by means of administrative procedures.

([24]) Court of Justice judgment in Case C-251/97 *France* v *Commission* [1999] ECR I-6639.

([25]) Court of First Instance judgment in Case T-157/01, *Danske Busvognmaend* v *Commission* [2004] ECR II-917.

([26]) Court of Justice judgment in Case C-237/04, *Enirisorse SpA* v *SotaCRP-RATPbo SpA* [2006] ECR I-2843.

10. SCOPE OF THE PRESENT DECISION

(71) The present decision relates to the compatibility of the new pension financing scheme with Community regulations on State aid.

(72) The opening of the procedure on 10 October 2007 and, in particular, the comments of the French authorities have enabled the Commission to clarify the terms of implementation of the reform notified and, subsequently, to identify three measures which may include State aid components.

(73) Firstly, on 1 January 2006 the CRP-RATP became the sole legal debtor for the retirement pensions of staff in posts governed by service regulations; prior to then, RATP had been the debtor.

(74) Secondly, since 1 January 2006, the State has been paying a subsidy to the CRP-RATP in order to balance its accounts. This public subsidy covers the demographic deficit and the additional cost of the RATP special scheme.

(75) Thirdly, the reform notified provides for the possibility for the CRP-RATP to affiliate the basic pension rights of the special scheme to statutory schemes. The State undertakes to make balancing payments in order to comply with the principle of the strict financial neutrality of the affiliation in place of the CRP-RATP.

11. ASSESSMENT OF THE FIRST MEASURE: CREATION OF THE CRP-RATP

(76) The Commission observes that, on 1 January 2006, the CRP-RATP became the sole legal debtor for the retirement pensions of staff in posts governed by service regulations; prior to then, RATP had been the debtor. The Commission observes that, simultaneously, the contribution paid by RATP to the CRP-RATP for pensions became a contribution in full discharge of its obligations.

(77) The Commission notes that, under the system in place before 1 January 2006, RATP was legally liable for the pension commitments under the special scheme. In this respect, the financing system for the special scheme for RATP staff differed from the provisions under statutory law: RATP was the guarantor of the financial equilibrium of the scheme in question; the 'employer' contribution paid by RATP to the special scheme did not constitute full discharge of its obligations.

(78) Consequently, the Commission concludes that the main effect of the provisions foreseen by the reform notified has been to transform the 'employer' contribution paid by RATP for the pensions of its staff into a contribution discharging it from its obligations, thus relieving it of its historical obligation to ensure the financial equilibrium of the special scheme. In other words, the reform notified has transferred responsibility for the financial equilibrium of the special scheme in question from RATP to the CRP-RATP and, ultimately, the State.

(79) The Commission further observes that, in the absence of the reform notified, the obligation to ensure the financial equilibrium of the regime which had been incumbent upon RATP would have given rise to the entering of a commitment in respect of the State, which would have been provisioned in the accounts upon the transition to the IFRS standards (International Financial Reporting Standards), applicable at RATP since 30 June 2007 ([27]).

(80) The Commission would like to emphasise at this stage that the question raised by the creation of the CRP-RATP is identical to the question which arose in conjunction with the reform of the financing arrangements for the pensions of civil servants working for La Poste ([28]). Consequently, the Commission will assess whether the measure under assessment includes State aid components by means of the same procedure as was adopted for the aforementioned decision.

11.1. *EXISTENCE OF STATE AID*

(81) Article 87(1) of the EC Treaty provides: 'Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market'.

(82) The classification of a national measure as State aid as provided for in Article 87(1) of the EC Treaty requires the following cumulative conditions to be fulfilled, namely: (1) the measure in question confers a selective economic advantage; (2) that advantage is financed via State resources; (3) that advantage distorts or threatens to distort competition and, lastly, (4) that advantage has an effect on trade between Member States.

(83) The reasons for considering that the measure in question meets these cumulative conditions and thus constitutes State aid in favour of RATP within the meaning of Article 87(1) of the EC Treaty need to be explained.

([27]) According to the information report presented by Mr Bertrand Auban, Senator, on behalf of the French national committee for finance, budgetary monitoring and economic accounts on 9 July 2008, these pension commitments are assessed at EUR 21 billion.

([28]) Commission Decision 2008/204/EC of 10 October 2007 on the State aid implemented by France in connection with the reform of the arrangements for financing the retirement pensions of civil servants working for La Poste (OJ L 63, 7.3.2008, p. 16).

11.1.1. EXISTENCE OF A SELECTIVE ECONOMIC ADVANTAGE IN FAVOUR OF RATP

(84) In order to assess whether the measure under assessment incorporates State aid components, it must be established whether this measure confers an economic advantage on RATP by enabling it to avoid having to bear costs which would normally have had to be met out of the undertaking's own financial resources, thereby preventing market forces from having their normal effect ([29]).

(85) It that context, it is settled case law that a normal burden is a normal charge inherent in the day-to-day management or usual activities of an enterprise ([30]). The Court also held that an aid consists of a mitigation of the charges which are normally included in the budget of an undertaking, taking account of the nature or general scheme of the system of charges in question, whereas a special charge is, on the contrary, an additional charge over and above those normal charges ([31]).

(86) In the light of the case-law of the Court, and in line with past practice ([32]) the Commission considers that in order to determine whether a charge is 'normal' or 'special' a reference framework or comparison must be defined, with the objective of identifying companies which are in a legal and factual situation that is comparable in the light of the objective pursued by the measure in question.

(87) In this respect, it has to be recalled that, for application of Article 87(1) of the EC Treaty, the only question to be determined is whether, under a particular statutory scheme, a State measure is such as to favour 'certain undertakings or the production of certain goods' within the meaning of Article 87(1) of the EC Treaty in comparison with other undertakings which are in a legal and factual situation that is comparable in the light of the objective pursued by the measure in question.

(88) More precisely, the Court indicates that the choice of the reference framework follows a two-step approach: firstly, the determination of the system of charges which is the object of the measure under assessment and, secondly, determination of the general scheme applicable to the system of charges in question.

(89) On the assumption that an appropriate external comparison can be identified, by reference to which the existence of 'abnormal' charges could be defined, the measure under assessment would not constitute State aid within the meaning of Article 87(1) of the EC Treaty. If this is not the case, the measure under assessment would constitute State aid within the meaning of that provision.

11.1.1.1. ***Absence of an external comparison in the present case***

(90) Applying this methodology to the case in question, the Commission considers that the system of charges concerned by the measure under assessment comprises social contributions paid by an employer into a mandatory pension scheme for employees.

(91) From a theoretical standpoint the Commission distinguishes between two potential reference frameworks:

— provisions relating to mandatory old-age pensions insurance applicable to statutory pension schemes, i.e. the social security scheme managed by CNAV and the complementary schemes managed by AGIRC and ARRCO,

— provisions relating to mandatory old-age pensions applicable to other public enterprises.

(92) With reference to the first potential basis for comparison, namely statutory pension schemes, the Commission notes that, since 1 January 2006, RATP has been paying a social contribution, the level of which is identical to the social contribution paid by companies affiliated to the pension funds responsible for statutory schemes. The Commission observes however that, at 1 January 2006, the benefits paid to RATP beneficiaries by the special scheme managed by the CRP-RATP are in excess of the benefits paid to employees affiliated to statutory schemes.

(93) Moreover, the Commission finds that the members of the statutory schemes are employees under private law contracts whereas the conditions of RATP employees are governed by service regulations. In this respect, it should be noted that the status of RATP staff diverges from statutory law in several respects (see footnote 6).

([29]) Case C-301/87 *France* v *Commission* [1990] ECR I-307, paragraph 41.

([30]) See to this effect Case T-55/99 *Spain* v *Commission* [2000] ECR II-3207, paragraph 82.

([31]) Case C-390/98, *H.J. Banks & Co Ltd* v *The Coal Authority and Secretary of State for Trade and Industry* [2001] ECR I-6117, paragraph 33.

([32]) See in this context Decision 2008/204/EC mentioned above and the Commission Decision of 10 October 2007 regarding the reform of the financing arrangements for retirement pensions in the banking sector in Greece (OJ C 308, 19.12.2007, p. 9).

(94) In the light of the considerations set out above and its practice in previous decisions ([33]), the Commission considers that the provisions applicable to statutory schemes for mandatory old-age pensions cannot provide a basis for comparison in the analysis conducted by the Commission to determine the existence of an economic advantage within the meaning of Article 87(1) of the EC Treaty.

(95) With regard to the second possible basis for comparison, namely public enterprises, the Commission has not been able to identify a set of economic operators constituting a homogenous group which could provide a basis for comparison. The situation of RATP in France is therefore very particular from the legal and factual point of view in more that one respect ([34]).

(96) In conclusion, the Commission considers that there is no external basis for comparison which could be used to define a 'normal' contribution supported by undertakings in a legal and factual situation comparable to that of RATP in the light of the objective pursued by the measure in question.

(97) The *Enirisorse* ([35]) case, cited by France, does not change the Commission's conclusions as to the existence of an advantage in favour of RATP. In this case the Court based its conclusion on a comparison of the contested measure with a 'normal situation' which the Court had been able to define; a similar comparable situation does not exist in the present case.

(98) In the absence of an appropriate external comparison, the Commission considers that, in order to determine the existence of an advantage within the meaning of Article 87(1) of the EC Treaty, the reference framework for assessing the existence of the advantage is the situation of RATP itself prior to the implementation of the measure.

11.1.1.2. ***Existence of an economic advantage***

(99) As indicated above, under the system in place before 1 January 2006, RATP was legally liable for the pension commitments under the special scheme. In this capacity, RATP was the guarantor of the financial equilibrium of the scheme in question, the 'employer' contribution paid by RATP to the special scheme did not constitute full discharge of its obligations.

(100) The Commission has observed that the main effect of the provisions foreseen by the reform notified is to transform the 'employer' contribution paid by RATP for the pensions of its staff into a contribution discharging it from its obligations.

(101) The Commission therefore concludes that the measures under assessment relieve RATP of charges it would otherwise have had to bear under the provisions of the aforementioned 1948 law.

(102) In the context of an analysis of the normal or abnormal nature of the retirement pension charges for RATP itself, the Commission considers that the obligations a company itself bears under employment legislation or collective agreements with trade unions to provide redundancy benefits and/or early retirement pensions are part of the normal costs of a business which a firm has to meet from its own resources ([36]).

(103) By extension, the Commission considers that the charges incumbent on RATP under the 1948 law are normal charges. Consequently, since the measure under assessment enables RATP to avoid having to bear costs which would normally have had to be met out of the undertaking's own financial resources, the Commission considers that this measure confers an economic advantage within the meaning of Article 87(1) of the EC Treaty. This advantage is selective since it concerns a single beneficiary only.

(104) The Commission has further observed that in the absence of the reform notified the obligation to ensure the financial equilibrium of the special regime which had been incumbent upon RATP would have given rise to the entering of a commitment in respect of the State on the RATP balance sheet, which would have been provisioned in the accounts on the adoption of the IFRS standards (International Financial Reporting Standards), which have been applicable at RATP since 30 June 2007.

(105) This confirms that the creation of the CRP-RATP relieves RATP of charges that it would normally have had to bear.

11.1.1.3. ***Inapplicability of the Combus ruling to the present case***

(106) The French authorities refer at length to the *Combus* ([37]) judgment, in which the Court of First Instance considered as 'abnormal' charges the charges resulting from a reform whereby the special status of the staff of an undertaking is transformed into a statutory status, therefore identical to that of its competitors in terms of the management of

([33]) See in this context the decisions referred to in the footnote 6.
([34]) See in particular parts 2 and 3 of this decision.
([35]) Case C-34/01 *Enirisorse SpA* v *Ministero delle Finanze* [2003] ECR I-14243.
([36]) See paragraph 63 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2).
([37]) Case T-157/01, *Danske Busvognmænd* v *Commission*, ECR II-917.

staff. The Court stated that: 'the measure in question had been introduced to replace the privileged and costly status of the officials employed by Combus with the status of employees on a contract basis comparable to that of employees of other bus transport undertakings competing with Combus. The intention was thus to free Combus from a structural disadvantage it had in relation to its private-sector competitors. Article 87(1) EC is aimed merely at prohibiting advantages for certain undertakings and the concept of aid covers only measures which lighten the burdens normally assumed in an undertaking's budget and which are to be regarded as an economic advantage which the recipient undertaking would not have obtained under normal market conditions. […]. Moreover, instead of paying the DKK 100 million directly to the officials employed by Combus, the Danish Government could have obtained the same result by reassigning those officials within the public administration, without paying any particular bonus, which would have enabled Combus to employ immediately employees on a contract basis falling under private law.'

(107) As a general principle it must be borne in mind that the Combus ruling has not been confirmed by the Court of Justice. Some of the Court's rulings contradict the theory that compensation for a structural disadvantage exempts a measure from being qualified as aid. In this regard, the Court has constantly held that the existence of aid is to be assessed in relation to the effects and not in relation to the causes or objectives of State intervention ([38]). The Court has also held that the concept of aid includes advantages granted by public authorities which, in various forms, reduce the charges which are normally included in the budget of an undertaking ([39]). The Court has also clearly stated that the costs linked to remuneration of employees naturally place a burden on the budgets of undertakings, irrespective of whether or not those costs stem from legal obligations or collective agreements ([40]). In this context, the Court has considered that the fact that State measures aim to compensate for additional costs cannot constitute grounds for disqualifying them from the definition of aid ([41]). In this context, the French authorities cite the application of the principle laid down by the Court of First Instance in the *Combus* judgment, claiming that the reform notified simply relieves RATP of an 'abnormal' charge.

(108) In this respect, the Commission emphasises that a number of important factual aspects distinguish the *Combus* case from the present case:

— the compensation payments are paid directly to the civil servants employed by Combus whereas the measure which is the object of the present decision concerns the 'employer contributions' of RATP,

— the State measure in question in the *Combus* case had been introduced to replace the privileged and costly status of the officials employed by Combus with the status of employees on a contract basis comparable to that of employees of other bus transport undertakings competing with Combus. In contrast, the status and rights of RATP staff remain unchanged as a result of the measure under assessment. This status and these rights are different to those of staff employed under private law contracts by undertakings affiliated to statutory pension schemes,

— the competitive context in which Combus was operating was different to that in which RATP operates. The public limited company Combus A/S had to manage its transport services on a commercial basis and operate on the market under competitive conditions comparable to those of private bus companies. In this context, following invitations to tender, the public transport management companies transferred responsibility for the provision of bus services to private and public companies. According to the regulations governing invitations to tender, contracts are awarded to 'the most economically advantageous bid', irrespective of whether or not the tenderer is a private or public undertaking. RATP, however, operates in a large non-liberalised sector which will only be opened up to competition very gradually by Regulation (EC) No 130/2007; the economic constraints at play in this sector are therefore very different.

(109) The Commission considers that the factual differences between the *Combus* case and the present case are sufficient to justify a different reasoning in each case.

11.1.2. INVOLVEMENT OF STATE RESOURCES

(110) The Commission considers that the measure examined involves State resources in favour of RATP in that the ultimate responsibility for the financial equilibrium of the special pension scheme for RATP employees is no longer incumbent upon RATP, but on the State. With effect of the date of implementation of the reform, the State has ensured the financial equilibrium of the CRP-RATP by means of the payment of a balancing subsidy to the social security body which, in the absence of the reform, would have had to be assumed by RATP.

(111) Consequently, the Commission considers that the measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty.

([38]) Case 173/73 *Italy* v *Commission* [1974] ECR 709, paragraph 13; Case 310/85 *Deufil* v *Commission* [1987] ECR 901, paragraph 8; Case C-241/94 *France* v *Commission* ECR I-4551, paragraph 20.

([39]) C-387/92 *Banco Exterior* [1994] ECR I-877, paragraph 13; aforementioned judgment in Case C-241/94, paragraph 34.

([40]) Case C-5/01 *Belgium* v *Commission* [2002] ECR I-1191, paragraph 39.

([41]) Case 30/59 *Gezamenlijke Steenkolenmijnen in Limburg* v *High Authority* [1961] ECR 3, paragraphs 29 and 30; aforementioned judgment in Case C-173/73, paragraphs 12 and 13; aforementioned judgment in Case C-241/94, paragraphs 29 and 35; Case C-251/97 *France* v *Commission* [1999] ECR I-6639, paragraphs 40, 46 and 47.

11.1.3. DISTORTION OF COMPETITION AND ADVERSE EFFECT ON TRADE

(112) As indicated above, RATP, the beneficiary of the measure under assessment, is the parent company of a group of undertakings, the RATP group, which operate in the transport and associated services sectors. All of these operators are active in the Community markets of the above-mentioned sectors.

(113) It should be recalled that, in principle, aid which is intended to release an undertaking from costs which it would normally have had to bear in its day-to-day management or normal activities distorts the conditions of competition ([42]). It has been ruled that any grant of aid to an undertaking exercising its activities in the Community market is liable to cause distortion of competition and affect trade between Member States ([43]). Moreover, the Court of Justice considered that a public subsidy granted to an undertaking which provides only local or regional transport services and does not provide any transport services outside its State of origin may nonetheless have an effect on trade between Member States within the meaning of Article 87(1) of the EC Treaty. Where a Member State grants a public subsidy to an undertaking, the supply of transport services by that undertaking may for that reason be maintained or increased with the result that undertakings established in other Member States have less chance of providing their transport services in the market in that Member State ([44]).

(114) In the present case, the RATP group is in a privileged position both in relation to its domestic competitors ([45]) and its competitors in other Member States which cannot benefit from the measure under assessment.

(115) In this respect, it should be mentioned that Regulation (EC) No 1370/2007 provides for the progressive opening up of the markets concerned to competition and the opening up of a given sector to competition implies that State aid to an undertaking belonging to that sector is likely to have an effect on intra-Community trade and distort competition in the market in question.

([42]) See Case C-156/98 *Germany* v *Commission* [2000] ECR I-6857, paragraph 30, and the case law cited therein.

([43]) See, for example, Case 730/79 *Philip Morris* v *Commission* ECR 2671, paragraphs 11 and 12; and Case T-214/95 *Vlaams Gewest* v *Commission* [1998] ECR II-717, paragraphs 48-50.

([44]) Case T-222/04 *Alitalia* v *Commission* [2009], paragraph 45.

([45]) It is not necessary for the recipient undertaking itself to take part in intra-Community trade. Where a Member State grants aid to an undertaking, domestic production may for that reason be maintained or increased with the result that undertakings established in other Member States have less chance of entering the market in that Member State. Moreover, the strengthening of an undertaking which, until then, did not take part in intra-Community trade may enable it to enter the market of another Member State (see to this effect, in particular, Case C-310/99 *Italy* v *Commission* [2002] ECR I-2289, paragraph 84).

(116) Consequently, the Commission considers that the measure in question does affect trade between Member States and distort competition between the relevant operators.

11.2. *UNLAWFULNESS OF THE AID*

(117) Pursuant to Article 88(3) of the EC Treaty, Member States must notify any plans to grant or alter aid. They may not put the proposed measures into effect until the procedure has resulted in a final decision.

(118) In the present case, the French authorities notified the reform of the method by which RATP finances its pension scheme by means of a letter dated 29 June 2006. In their letter, the French authorities stated that the arrangements did not appear to constitute State aid notifiable to the Commission in advance under Article 88(3) of the EC Treaty.

(119) However, the Commission observes that the State aid under assessment was implemented by France with effect from 1 January 2006, i.e. before the Commission had adopted a final decision. On this basis, the Commission concludes that France has acted unlawfully in implementing the aid in question contrary to Article 88(3) of the EC Treaty.

11.3. *COMPATIBILITY OF THE AID WITH THE COMMON MARKET*

(120) In so far as the measure under assessment constitutes State aid within the meaning of Article 87(1) of the EC Treaty, its compatibility with the common market must be assessed in the light of the exceptions provided for by that Treaty.

(121) In this respect, the Commission considers that the most appropriate legal basis is Article 87(3)(c) of the EC Treaty, according to which aid to facilitate the development of certain economic activities may be considered to be compatible with the common market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(122) Given the nature and the effects of the reform, the Commission considers that the compatibility of the aid under assessment must be assessed in relation to the creation of a level playing field in terms of mandatory social contributions between RATP and its current, potential and future competitors on the urban public transport market in the Ile-de-France region.

Level of contributions paid by RATP in relation to its competitors under the reformed system

(123) In order to analyse the effects of the aid and assess the extent of distortion of competition, the Commission must first examine the level of contributions borne by RATP in relation to its competitors under the reformed system. Thereafter, the Commission will examine the situation as it would have been if RATP had not benefitted from the aid in question. Lastly, the positive and negative effects of the aid will be analysed, before assessing overall compatibility with the Treaty.

(124) Firstly, the Commission notes that, prior to 1 January 2006, the financing of the RATP special pension scheme differed from the financing of statutory pension schemes in two respects: the fact that RATP's contributions did not constitute full discharge of its obligations and the level of the 'employer' contribution.

(125) The Commission considers that the aid under assessment has resolved the first area of divergence between the RATP special scheme and the statutory schemes. Prior to 1 January 2006, the contributions paid by RATP were not in full discharge of its obligations; RATP was responsible under law for ensuring the financial equilibrium of the retirement pension scheme of its staff. The reform notified has introduced the payment of a contribution in full discharge of RATP's obligations, a feature which characterises the contributions paid by employers subject to statutory law to funds which manage pay-as-you-go pension schemes. With regard to the second area of divergence, the Commission observes that the reform notified has resulted in a harmonisation of the level of mandatory old-age pension charges borne by RATP and companies subject to statutory law in the field of retirement benefits.

The situation without the provision of aid

(126) In the absence of the reform notified, RATP would have had to provision pension commitments for its staff in posts governed by service regulations for the financial years after 2006. This provision would have been a direct result of the fact that the 'employer' contributions for the retirement pensions of RATP staff were not in full discharge of their obligations.

(127) In addition, RATP's contributions to the old-age pension scheme to ensure the financial equilibrium of that scheme would not have been aligned with the level paid by their potential competitors.

(128) In the absence of the reform notified, RATP would therefore have had to assume an additional annual expense of several hundred million euro in relation to the reformed scheme.

(129) As a result, RATP's pension expenses would have put it at a disadvantage in the context of a liberalised market, which would have had a significant impact on its activities.

Positive effects of the aid

(130) It follows from the above that, considering Regulation (EC) No 1370/2007 which provides for the progressive opening up of the urban public transport market, the pension scheme applicable to RATP under the 1948 law comprises a number of specific characteristics which, in isolation, give rise to a distortion of competition to the detriment of RATP and the group to which it belongs. The main effect of the aid under assessment is to align the contributions of RATP with those borne by its competitors and by competitors in the RATP group, thus removing the specific distortion of competition affecting RATP and the RATP group.

(131) Furthermore, the reform will gradually enable RATP to operate as a private investor facing normal commercial constraints. Indeed, this is one of the objectives of the reform in question.

(132) The Commission also considers that the measure under assessment is suited to the Community objective intended. No other mechanism could have addressed this matter in a more effective manner. Public service compensation could certainly have been awarded, but such an approach would not have been suitable or sustainable in the long term given the structural nature of the problem.

(133) As regards the proportionality of measures, the Commission considers that the aid granted has been limited to the strict minimum. Since 1 January 2006, the pension charges paid by RATP have been identical to those paid by companies whose employees are affiliated to statutory schemes.

(134) Lastly, the Commission considers that the measure under assessment serves to ensure the longevity of a retirement pension scheme, the financing of which was no longer viable. The Commission also considers that the reform in progress of the retirement benefits provided by the special scheme ([46]) constitutes a decisive additional element in this context. Consequently, the Commission considers that these measures are perfectly compatible with the general drive to reform Member States' pension systems advocated by both the Council and the Commission ([47]).

([46]) See recital 21 of the present decision.
([47]) See to this effect the joint Council and Commission report on adequate and sustainable pensions (CS/7165/03), 18 March 2003.

Negative effects of the aid

(135) In a static analysis, the Commission considers firstly that the distortions of competition in the urban public transport market in the Ile-de-France region resulting from the measure under assessment are by definition and with immediate effect very limited in the sense that, given the history of RATP and its activities, it is evident that the pension commitments under the reform relate to actions historically implemented in a non-liberalised market where the level of competition has been very low to date. Secondly, with regard to the markets on which the RATP group operates in the form of the subsidiaries of the RATP company, the Commission considers that the measure under assessment only has a very marginal impact. Indeed, these markets will only be affected indirectly by the measure under assessment since, in addition to the strict legal, accounting and financial separation between the parent company and its subsidiaries, the reform notified does not concern staff employed by those subsidiaries.

(136) In a dynamic analysis, doubtlessly more appropriate, considering Regulation (EC) No 1370/2007, the Commission considers that, although the measure under assessment may theoretically enable RATP to maintain a dominant position, the risk is low. This conclusion results from the fact that the measure is limited to bringing the contributions paid by RATP into line with those paid by its competitors and from the fact that, following the reform of the special pension scheme in 2008, the RATP pension scheme does not create any form of incentive in the company's favour.

General assessment of compatibility

(137) In the light of the above, the Commission concludes that the negative effects of the aid granted to RATP will be moderate. The reform notified is limited to what is strictly necessary for the creation of a level playing field with regard to mandatory old-age pension contributions, puts an end to a distortion of competition which would have put RATP at a disadvantage and, consequently, does not adversely affect trading conditions to an extent contrary to the common interest.

(138) Accordingly, the aid in question is compatible with the common market, subject to the full implementation of the reform of the RATP special pension scheme to bring the scheme into line with the statutory regulations governing the basic schemes for private sector employees and civil servants.

(139) The Commission considers that the above conclusion is not called into question by the solution reached in its Decision 2005/145/EC in the EDF case ([48]).

([48]) OJ L 49, 22.2.2005, p. 9.

(140) In this respect, it has to be recalled that, in that decision, the Commission authorised State aid relieving the companies of a given sector of specific pension obligations which were in excess of those resulting from the general pension scheme and which had been defined during the monopoly period. In that case, the Commission also took the view that the partial mitigation of the costs arising from the mechanism for financing the specific pension rights acquired before the date of the reform constituted State aid within the meaning of Article 87(1) of the EC Treaty that could be declared compatible with the common market. The Commission considered in its compatibility assessment that the situation of EDF was not dissimilar in nature to that of stranded costs in the energy field. It involved aid aimed at facilitating the transition to a competitive energy sector. The Commission considered that it was appropriate to consider the aid granted to EDF as compensation for stranded costs ([49]) and stated that it would adopt this approach in its analyses of similar cases.

(141) In the light of the above, the Commission considers that, in the present case, the State aid relieves RATP of pension obligations which were in excess of those arising from the statutory pension scheme and which had been defined before the market was liberalised. In parallel, the Commission adds that the reform of the special pension schemes implemented at RATP since the beginning of 2008 aligns the special scheme of RATP staff with the statutory regulations governing the basic schemes for private sector employees and civil servants.

11.4. *CONCLUSION*

(142) In conclusion, the Commission considers that the measure under assessment constitutes State aid within the meaning of Article 87(1) of the EC Treaty. This aid is illegal but compatible with the common market according to Article 87(3)(c) of the EC Treaty.

12. ASSESSMENT OF THE SECOND AND THIRD MEASURES

(143) As indicated above, with effect from 1 January 2006, the reform notified provides for the payment by the State of a subsidy to the CRP-RATP to enable it to balance its accounts.

(144) In addition, the reform notified provides for the possibility for the CRP-RATP to affiliate the basic pension rights of the special scheme to statutory schemes. In order to respect the general principle of financial neutrality, such affiliation provides for cash payments to the receiving schemes to be borne by the State in place of the CRP-RATP.

([49]) Commission communication relating to the methodology for analysing State aid linked to stranded costs, (Commission letter SG (2001) D/290869 of 6.8.2001).

(145) It must be established whether these measures constitute State aid within the meaning of Article 87(1) of the EC Treaty.

(146) In this respect, it has to be recalled that Article 87 of the EC Treaty applies only to undertakings within the meaning of Community competition law. The Court has consistently held that, where the area of social protection is based on solidarity, it does not constitute an economic activity within the meaning of the Treaty (see paragraph 67 of the decision to initiate the procedure of 10 October 2007) ([50]).

(147) In the light of this case law, the Commission considers that neither the CRP-RATP nor the pension funds serving current and retired RATP employees, i.e. CNAV and AGIRC-ARRCO, are undertakings within the meaning of Community competition law for the following reasons.

(148) In the present case, the Commission observes firstly that RATP staff are subject to mandatory social protection including an independent old-age pension scheme which pursues a social objective. It is intended to provide cover for all the persons to whom it applies against the risks of old age, regardless of their financial status and their state of health at the time of affiliation.

(149) The Commission further considers that this scheme embodies the principle of solidarity in as much as the contributions paid by active workers finance the pensions of retired workers.

(150) The Commission also notes that the management of the scheme in question is entrusted under law to the CRP-RATP, the operation of which is subject to State supervision. In this capacity, it collects the contributions receivable from RATP employees and from RATP itself and is responsible for the calculation and payment of pensions. The Commission observes that, in accordance with Article L711-1 of the Social Security Code, the CRP-RATP has all the characteristics defined in Article L 111-1 of the said Code, which states, in particular, that the organisation of social security is to be founded on the basis of national solidarity.

(151) The Commission observes finally that, in the execution of its remit, the CRP-RATP applies the law and cannot influence the amount of the contributions, the use of assets or the fixing of the level of benefits. The benefits paid are statutory benefits which bear no relation to the amount of the contributions.

(152) In so far as the CRP-RATP does not constitute an undertaking within the meaning of Community competition law, the Commission considers that the payment by the State of a balancing subsidy to the CRP-RATP and the funding by the State of cash payments in place of the CRP-RATP do not constitute State aid within the meaning of Article 87(1) of the EC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The creation of the pension fund for RATP staff (CRP-RATP) constitutes State aid in accordance with Article 87(1) of the Treaty, granted illegally by France contrary to Article 88(3) of the Treaty.

This State aid is compatible with the common market under Article 87(3)(c) of the Treaty, subject to the full implementation of the reform of the RATP special pension scheme, the objective of which is to bring the scheme into line with the statutory regulations governing the basic schemes of private sector employees and civil servants.

Implementation of the aid is accordingly authorised.

Article 2

The payment by the State of a balancing subsidy to the CRP-RATP and the financing by the State of cash payments in place of the CRP-RATP for the affiliation of the basic rights of the special scheme to the statutory schemes do not constitute State aid within the meaning of Article 87(1) of the EC Treaty.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 13 July 2009.

For the Commission
Antonio TAJANI
Vice-President

([50]) The Court ruled as follows in Joined Cases C-159 and C-160/91, *Poucet and Pistre*: 'Sickness funds, and the organizations involved in the management of the public social security system, fulfil an exclusively social function. That activity is based on the principle of national solidarity and is entirely non-profit-making. The benefits paid are statutory benefits bearing no relation to the amount of the contributions. Accordingly, that activity is not an economic activity and, therefore, the organisations to which it is entrusted are not undertakings within the meaning of Articles 81 and 82 of the Treaty.'

V

(Acts adopted from 1 December 2009 under the Treaty on European Union, the Treaty on the Functioning of the European Union and the Euratom Treaty)

ACTS WHOSE PUBLICATION IS OBLIGATORY

COMMISSION REGULATION (EU) No 1213/2009

of 11 December 2009

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

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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

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

Whereas:

Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 12 December 2009.

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

Done at Brussels, 11 December 2009.

For the Commission,
On behalf of the President,
Jean-Luc DEMARTY
Director-General for Agriculture and Rural Development

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

ANNEX

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

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	AL	50,4
	MA	57,1
	TN	90,9
	TR	63,9
	ZZ	65,6
0707 00 05	EG	155,5
	MA	49,3
	TR	76,8
	ZZ	93,9
0709 90 70	MA	50,5
	TR	114,3
	ZZ	82,4
0805 10 20	AR	70,4
	MA	48,8
	TR	63,3
	ZA	61,8
	ZZ	61,1
0805 20 10	MA	73,1
	TR	85,9
	ZZ	79,5
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	HR	59,6
	IL	75,3
	TR	75,5
	ZZ	70,1
0805 50 10	TR	75,6
	ZZ	75,6
0808 10 80	CA	65,1
	CN	80,0
	MK	24,5
	US	92,7
	ZZ	65,6
0808 20 50	CN	47,8
	TR	92,0
	US	186,0
	ZZ	108,6

(1) Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EU) No 1214/2009

of 11 December 2009

amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EC) No 877/2009 for the 2009/10 marketing year

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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

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

Whereas:

(1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups for the 2009/10 marketing year are fixed by Commission Regulation (EC) No 877/2009 ([3]). These prices and duties have been last amended by Commission Regulation (EC) No 1160/2009 ([4]).

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

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 877/2009 for the 2009/10, marketing year, are hereby amended as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 12 December 2009.

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

Done at Brussels, 11 December 2009.

For the Commission,
On behalf of the President,
Jean-Luc DEMARTY
Director-General for Agriculture and Rural Development

([1]) OJ L 299, 16.11.2007, p. 1.
([2]) OJ L 178, 1.7.2006, p. 24.
([3]) OJ L 253, 25.9.2009, p. 3.
([4]) OJ L 314, 1.12.2009, p. 6.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 12 December 2009

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 11 10 (1)	36,95	0,20
1701 11 90 (1)	36,95	3,82
1701 12 10 (1)	36,95	0,07
1701 12 90 (1)	36,95	3,52
1701 91 00 (2)	42,14	4,83
1701 99 10 (2)	42,14	1,70
1701 99 90 (2)	42,14	1,70
1702 90 95 (3)	0,42	0,27

(1) For the standard quality defined in point III of Annex IV to Regulation (EC) No 1234/2007.
(2) For the standard quality defined in point II of Annex IV to Regulation (EC) No 1234/2007.
(3) Per 1 % sucrose content.

POLITICAL AND SECURITY COMMITTEE DECISION Atalanta/8/2009

of 4 December 2009

on the appointment of an EU Force Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somalia coast (Atalanta)

(2009/946/CFSP)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular Article 38 thereof,

Having regard to Council Joint Action 2008/851/CFSP of 10 November 2008 on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somalia coast [1] (Atalanta), and in particular Article 6 thereof,

Whereas:

(1) Pursuant to Article 6 of Joint Action 2008/851/CFSP the Council authorised the Political and Security Committee (PSC) to take decisions on the appointment of the EU Force Commander.

(2) On 22 July 2009, the PSC adopted Decision Atalanta/6/2009 [2] appointing Commodore Peter BINDT as EU Force Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somalia coast.

(3) The EU Operation Commander has recommended the appointment of Rear Admiral Giovanni GUMIERO as the new EU Force Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somalia coast.

(4) The EU Military Committee has supported that recommendation.

(5) In accordance with Article 5 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not participate in the elaboration and implementation of decisions and actions of the European Union which have defence implications,

HAS ADOPTED THIS DECISION:

Article 1

Rear Admiral Giovanni GUMIERO is hereby appointed EU Force Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somalia coast.

Article 2

This Decision shall enter into force on 13 December 2009.

Done at Brussels, 4 December 2009.

For the Political and Security Committee
The Chairman
O. SKOOG

[1] OJ L 301, 12.11.2008, p. 33.
[2] OJ L 192, 24.7.2009, p. 68.

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