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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 300/2010

of 12 April 2010

entering a name in the register of protected designations of origin and protected geographical indications (Gentse azalea (PGI))

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs⁽¹⁾, and in particular the third and fourth subparagraphs of Article 7(5) thereof,

Whereas:

(1) Pursuant to Article 6(2) and in accordance with Article 17(2) of Regulation (EC) No 510/2006, Belgium's application to register the name 'Gentse azalea' was published in the *Official Journal of the European Union*⁽²⁾.

(2) Germany submitted an objection to the registration pursuant to Article 7(1) of Regulation (EC) No 510/2006. The objection was deemed admissible pursuant to Article 7(3) of that Regulation.

(3) Germany indicated in the objection that the registration of the name in question would be contrary to Article 2 of Regulation (EC) No 510/2006 and would jeopardise the existence of names, trade marks or products which have been legally on the market since at least 5 years preceding the date of publication for objection.

(4) By a letter dated 6 March 2009, the Commission asked the Member States concerned to seek agreement among themselves in accordance with their internal procedures.

(5) Given that no agreement was reached between Germany and Belgium within the designated time-frame, the Commission must adopt a decision in accordance with the procedure outlined in Article 15(2) of Regulation (EC) No 510/2006.

(6) In the light of the information provided by Germany and following appropriate scrutiny, the Commission cannot conclude that the registration of the name 'Gentse azalea' would be contrary to Articles 2 and 3 of Regulation (EC) No 510/2006. Germany claims that the delimited geographical area in the application is wider than the town of Ghent, that there is no link between the claimed characteristics of 'Gentse azalea' and the geographical area and that no use of the name is made. Evidence provided in the application shows that there is production of 'Gentse azalea' in the delimited geographical area also outside the boundaries of the city of Ghent, and labels proving use of the name in trade are also part of the application. The application for registration is based on proved reputation of the name 'Gentse azalea' for pot plants.

(7) Germany indicated that registration of the name 'Gentse azalea' as a protected geographical indication would jeopardise the existence of products legally on the market by providing a competitive advantage (marketing advantage) to azalea producers in the geographical area compared to producers in other areas. No evidence was shown that the name 'Gentse azalea' is used for trade for pot plants produced outside the area, neither that it is a registered trademark or is protected as a name of a plant variety. In addition, the name 'Gentse azalea' has already been used in the market for a significant period of time.

(8) In the light of the above, the name 'Gentse azalea' should be entered in the 'Register of protected designations of origin and protected geographical indications'. The specification and summary are modified to make clear that the name 'Gentse azalea' is used for pot plants.

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ C 198, 5.8.2008, p. 13.

- (9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Protected Geographical Indications and Protected Designations of Origin,

Article 2

A summary, containing the main elements of the specifications, is presented in Annex II to this Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

The designation contained in Annex I to this Regulation shall be entered in the register.

Article 3

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

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

Done at Brussels, 12 April 2010.

For the Commission
The President
José Manuel BARROSO

ANNEX I

Agricultural products referred to in Annex II to Regulation (EC) No 510/2006:

Class 3.5: Flowers and ornamental plants

BELGIUM

Gentse azalea (PGI)

ANNEX II

SUMMARY

Council Regulation (EC) No 510/2006 on protected geographical indications and protected designations of origin

'GENTSE AZALEA'

EC No: BE-PGI-005-0536-24.03.2006

PDO () PGI (X)

This summary sets out the main elements of the product specification for information purposes.

1. Responsible department in the Member State:

Name: Vlaamse Overheid, Departement Landbouw en Visserij, Afdeling Duurzame Landbouwontwikkeling

Address: Ellipsgebouw, Koning Albert II-laan 35, Bus 40, 1030 Brussels, Belgium

Tel. +32 25527884

Fax +32 25527871

E-mail: lieve.desmit@lv.vlaanderen.be

2. Group:

Name: Vereniging van Vlaamse Azaleatealers

Address: P/a Axelsvaardeken 29a, 9185 Wachtebeke

Tel. +32 93429126

Fax +32 93429214

E-mail: info@vaneetvelde.com

Composition: Producers/processors (X) Other (X)

3. Type of product:

Class 3.5. Flowers and ornamental plants

4. Specification:

(summary of requirements under Article 4(2) of Regulation (EC) No 510/2006)

4.1. Name:

'Gentse azalea'

4.2. Description:

The 'Gentse azalea' is the ready-for-sale pot plant azalea (*Azalea indica* or *Rhododendron simsii*), from the first show of colour or the 'candle-flame' stage. It is available in various shapes (spherical shrub or standard azaleas, tall-stemmed, pyramid and various unusually shaped varieties) and colours (including white, salmon, red, carmine, pink, purple and lilac) and can be either pure or tinged with another colour (veined or edged). The unique characteristic of the 'Gentse azalea' is that it is the result of a quality-oriented production process based on tradition and diversity.

Quality is guaranteed by compliance with predetermined quality criteria based on product performance (e.g. bud distribution, minimum 80 % show of colour), user-friendliness (e.g. leaving a gap below the rim to allow for watering), reliability (e.g. guaranteed colour) and aesthetic character (e.g. fresh and green appearance). It is a product that is known for its quality, born of many years of tradition, expertise, extensive research and professional information.

4.3. Geographical area:

The production area covers the whole of the province of East Flanders (with Ghent as its capital).

4.4. Proof of origin:

A 'Gentse azalea' must come from a company listed in the register kept by the applicant group. That register is forwarded to the competent supervisory body. The registered companies are either azalea growers (cultivating azaleas from cuttings until they reach the fully grown 'green' stage or until the first show of colour) or traders/forcers (buying fully grown 'green' azaleas and placing them in forcing houses at least until the first show of colour).

Every producer of the pot plant 'Gentse azalea' must comply with the standards laid down by the Azalea Quality Project (*Project Azalea Kwaliteit*, PAK). The PAK is intended to maintain the high quality of the 'Gentse azalea' and is a way of guaranteeing that quality. By signing a quality charter and receiving a participant number and a PAK number, each and every registered company undertakes to comply with the quality standards laid down by the PAK. Registered azalea growers keep a crop information sheet for each batch until the pot plants are ready for sale. The crop information sheet guarantees that the growing method and quality standards have been applied. When 'green' azaleas are shipped to the forcer, they are accompanied by the crop information sheet for the batch in question and a PAK sticker showing their PAK number. Pot plants that are ready for sale are labelled by the grower or the trader/forcer with the label described in point 4.8 before leaving the company.

4.5. Method of production:

For the 'Gentse azalea', the entire cultivation process (from the propagation of cuttings to the production of a pot plant that is able to bear flowers) takes place within the geographical area defined in point 4.3.

The 'Gentse azalea' is propagated by taking cuttings or by grafting onto other rootstock. The cuttings are immediately covered with a plastic sheet. Undersoil heating then increases the temperature of the propagation substrate to 23-25 °C.

During cultivation, the tops of the plants need to be pinched out regularly. This involves removing the top part of the sprig to allow the plant to produce more shoots. The number of times this is done depends on the desired size of the final product. During the first phase of cultivation (up to and including the second time the tops are pinched out), the plants remain under cover. Further cultivation may occur either under cover or in the open air. Once it has reached the desired final diameter, the 'green' azalea will finally form buds. For this to happen, the plant must first be exposed to cold temperatures for a certain period of time. Depending on the length of this exposure, Gentse azaleas are classified as very early flowering (from 15 August), early flowering (from 1 December), medium-early flowering (from 15 January) and late flowering (from 15 February). 'Green' azaleas are sold when the buds are sufficiently mature. The standards laid down as part of the Azalea Quality Project apply to both 'green' and flowering azaleas. Flowering azaleas are obtained through forcing. This is done by exposing the sufficiently mature pot plants to a temperature of at least 20 °C, watering them regularly and, in many cases, using artificial lighting. They are sold from the first show of colour or the 'candle-flame' stage.

4.6. Link:

This application for recognition of the 'Gentse azalea' is based on the reputation of the product. However, the characteristic cultivation of the 'Gentse azalea' came about through a combination of historical, natural and human factors.

Over the past 2 centuries, the Ghent region became the hub of azalea cultivation and trade in Western Europe. Research in this area, the dissemination of information and the supply sector are also concentrated in the region.

The development of azalea cultivation in the geographical area in question was due not only to historical circumstances but also to natural factors. The region around Ghent has a temperate maritime climate that is well suited to azalea growing. Azaleas also need permeable soil. They were primarily grown in a substrate of pine-needle and leaf litter, which was available in the region.

The Ghent master gardener Judocus Huytens first brought azaleas to the region from England in 1774, but *Azalea indica* was actually brought over from England in 1808 by Captain Welbanck. A key factor in the success of the azalea was the founding of the Gent Agricultural and Botanical Society in 1808.

The reputation of the 'Gentse azalea' is shown by the following:

- the first azalea was exhibited by Baron Du Bois de Vroeylande at an exhibition held on 6 February 1819. A big flower show, judged by an international jury, has been held every 5 years since 1839. It is still going today and enjoys worldwide fame as the 'Gentse Floralien',

- Louis Van Houtte was a pioneer of 'Gentse azalea' growing, as he perfected the growing technique and his work in the field of selection and breeding resulted in various new shapes and colours being developed. His first catalogue was published in 1839 and already included 97 varieties of *Azalea indica*,
- on 17 May 1869, the 'Gentse azalea' was exhibited at the St Petersburg Flower Show in Russia,
- Azalea cultivation became so important for the region around Ghent that a periodical dedicated exclusively to azaleas, entitled *Iconographie des azalées de l'Inde* (Iconography of Indian azaleas), was launched in 1881,
- in 1893, Georges Truffaut wrote in his *Étude sur la culture et la végétation de l'Azalea Indica* (Study on the cultivation and vegetation of *Azalea indica*): 'The most important centres of azalea cultivation are to be found in Belgium, particularly in the region around the town of Ghent',
- in 1938, a postage stamp bearing an azalea was issued in Ghent on the occasion of a 3-day azalea exhibition that ran from 17 to 19 December,
- various publications testify to the fact that growers strove to achieve the greatest possible variety of colours and shapes for pot plants. In the *Landbouwtijdschrift* (Journal of Agriculture) published in October 1954, F. Peeters wrote: 'Azalea cultivation, for which Ghent is famous, is practised by numerous horticulturalists. They grow a large number of varieties, which differ in terms of colour and shape...'

4.7. Inspection body:

Name: Federale Overheidsdienst Economie, K.M.O., Middenstand en Energie Algemene Directie Controle en Bemiddeling Tweede Afdeling Gespecialiseerde Diensten, Sectie A Controles Uitgaven EOGFL en Marktordening

Address: WTC III, Simon Bolivarlaan 30, 1000 Brussels, Belgium

Tel. +32 22084040

Fax +32 22083975

E-mail: Dirk.Demaeseneer@economie.fgov.be

4.8. Labelling:

A label displaying the indication 'Gentse azalea', the European PGI symbol and the PAK number is affixed to the pot plants.

COMMISSION REGULATION (EU) No 301/2010**of 12 April 2010****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 13 April 2010.

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

Done at Brussels, 12 April 2010.

*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	IL	160,8
	JO	92,1
	MA	123,9
	TN	126,9
	TR	113,4
	ZZ	123,4
0707 00 05	JO	92,1
	MA	62,1
	TR	115,6
	ZZ	89,9
0709 90 70	MA	60,2
	TR	107,1
	ZZ	83,7
0805 10 20	EG	53,3
	IL	50,8
	MA	54,2
	TN	48,2
	TR	64,2
	ZZ	54,1
0805 50 10	EG	65,1
	IL	66,2
	TR	64,4
	ZA	70,0
	ZZ	66,4
0808 10 80	AR	98,6
	BR	84,9
	CA	112,7
	CL	86,4
	CN	74,5
	MK	22,1
	NZ	121,0
	US	135,1
	UY	74,3
	ZA	85,4
	ZZ	89,5
0808 20 50	AR	92,5
	CL	111,0
	CN	96,9
	ZA	110,5
	ZZ	102,7

⁽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 302/2010**of 12 April 2010****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 (EU) No 288/2010 ⁽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 13 April 2010.

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

Done at Brussels, 12 April 2010.

*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 87, 7.4.2010, p. 24.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 13 April 2010

(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⁾	35,27	0,70
1701 11 90 ⁽¹⁾	35,27	4,32
1701 12 10 ⁽¹⁾	35,27	0,57
1701 12 90 ⁽¹⁾	35,27	4,03
1701 91 00 ⁽²⁾	37,43	6,52
1701 99 10 ⁽²⁾	37,43	3,11
1701 99 90 ⁽²⁾	37,43	3,11
1702 90 95 ⁽³⁾	0,37	0,30

⁽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.

DECISIONS

COMMISSION DECISION

of 12 April 2010

on the duty-free importation of goods intended to be distributed or made available free of charge to victims of the earthquake which occurred in April 2009 in the Italian Republic

(notified under document C(2010) 2227)

(Only the Italian text is authentic)

(2010/214/EU)

THE EUROPEAN COMMISSION,

HAS ADOPTED THIS DECISION:

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

Having regard to Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty ⁽¹⁾, and in particular Article 76 thereof,

Having regard to the request made by the Government of the Italian Republic dated 17 April 2009 and 4 January 2010 seeking duty-free importation of goods to be distributed or made available free of charge to victims of the earthquake which occurred in April 2009 in the Italian Republic,

Whereas:

- (1) An earthquake is a disaster within the meaning of Chapter XVII C of Regulation (EC) No 1186/2009; there is therefore reason to authorise the duty-free importation of goods which satisfy the requirements of Articles 74 to 80 of that Regulation.
- (2) So that the Commission may be suitably informed of the use made of the goods admitted duty-free, the Government of the Italian Republic must communicate the measures taken to prevent those goods from being employed otherwise than for the use laid down.
- (3) The Commission should also be informed of the extent and the nature of importation.
- (4) Other Member States have been consulted in accordance with Article 76 of Regulation (EC) No 1186/2009,

Article 1

1. Goods imported for free circulation by State bodies or by organisations approved by the competent Italian authorities to be distributed by them free of charge to the victims of the earthquake which occurred in April 2009 in the Italian Republic, or made available to them free of charge while remaining the property of the organisations in question, shall be admitted free of import duties within the meaning of Article 2(1)(a) of Regulation (EC) No 1186/2009.

2. Goods imported for free circulation by relief agencies to meet their needs during the period of their activity shall also be admitted duty-free.

Article 2

The Government of the Italian Republic shall communicate to the Commission at the latest on 30 June 2010 the list of approved organisations referred to in Article 1(1).

Article 3

The Government of the Italian Republic shall fully inform the Commission, at the latest on 30 June 2010, of the nature and quantities of the various goods admitted free of duty pursuant to Article 1, by broad category of products.

Article 4

The Government of the Italian Republic shall inform the Commission at the latest on 30 June 2010 of the measures which it is taking to ensure that Articles 78, 79 and 80 of Regulation (EC) No 1186/2009 are complied with.

⁽¹⁾ OJ L 324, 10.12.2009, p. 23.

Article 5

Article 1 of this Decision shall apply to importations made on or after 6 April 2009 and not later than 31 May 2010.

Article 6

This Decision is addressed to the Italian Republic.

Done at Brussels, 12 April 2010.

For the Commission
Algirdas ŠEMETA
Member of the Commission

RULES OF PROCEDURE

AMENDMENTS TO THE RULES OF PROCEDURE OF THE COURT OF JUSTICE

THE COURT,

Having regard to the Treaty on European Union,

Having regard to the Treaty on the Functioning of the European Union, and in particular the sixth paragraph of Article 253 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community and Protocol No 2 annexed to the Treaty of Lisbon amending the Treaty establishing the European Atomic Energy Community,

Having regard to Protocol No 36 annexed to the Treaties and, in particular, Title VII thereof on transitional provisions concerning acts adopted on the basis of Titles V and VI of the Treaty on European Union prior to the entry into force of the Treaty of Lisbon,

Whereas the necessary amendments should be made to its Rules of Procedure following the entry into force of the Treaty of Lisbon,

With the Council's approval given on 8 March 2010,

HAS ADOPTED THE FOLLOWING AMENDMENTS TO ITS RULES OF PROCEDURE:

Article 1

The Rules of Procedure of the Court of Justice of the European Communities ⁽¹⁾ are hereby amended as follows:

1. The title of the Rules shall be replaced by 'Rules of Procedure of the Court of Justice'.
2. In the Rules:
 - (a) the words 'Community' and 'Communities' shall be replaced by 'Union', and the words 'European Communities' shall, save in the case of Article 126, be replaced by 'European Union', and any necessary grammatical changes shall be made;
 - (b) the words 'Court of First Instance' shall be replaced by 'General Court';
 - (c) the word 'Commission' shall be replaced by 'European Commission'.
3. The first paragraph of Article 1 shall be replaced by the following:

In these Rules:

- provisions of the Treaty on European Union are referred to by the number of the article followed by "TEU",
 - provisions of the Treaty on the Functioning of the European Union are referred to by the number of the article concerned followed by "TFEU",
 - provisions of the Treaty establishing the European Atomic Energy Community are referred to by the number of the article followed by "TEAEC",
 - "Statute" means the Protocol on the Statute of the Court of Justice of the European Union,
 - "EEA Agreement" means the Agreement on the European Economic Area.'
4. In the second paragraph of Article 1, the first indent shall be replaced by the following:
 - "institutions" means the institutions of the Union and bodies, offices and agencies established by the Treaties, or by an act adopted in implementation thereof, which may be parties before the Court';
 5. In Article 7(1), the words 'Article 223 of the EC Treaty, and Article 139 of the EAEC Treaty' shall be replaced by 'Article 253 TFEU'.
 6. In Article 16(7), the words 'Article 241 of the EC Treaty, or Article 156 of the EAEC Treaty' shall be replaced by 'Article 277 TFEU' and the words 'Article 241 of the EC Treaty' by 'Article 277 TFEU'.
 7. In Article 38(6), the words 'Articles 238 and 239 of the EC Treaty and Articles 153 and 154 of the EAEC Treaty' shall be replaced by 'Article 273 TFEU', and the words 'by a copy of the arbitration clause contained in the contract governed by private or public law entered into by the Communities or on their behalf, or, as the case may be,' shall be deleted.
 8. In Article 48(4), the words 'Articles 244 and 256 of the EC Treaty and Articles 159 and 164 of the EAEC Treaty' shall be replaced by 'Articles 280 TFEU and 299 TFEU and Article 164 TEAEC'.
 9. In the second paragraph of Article 77, the words 'Articles 230 and 232 of the EC Treaty and Articles 146 and 148 of the EAEC Treaty' shall be replaced by 'Articles 263 TFEU and 265 TFEU'.

⁽¹⁾ OJ L 176, 4.7.1991, p. 7.

10. In Article 80(1), the words 'the Union Treaty, the EC Treaty and the EAEC Treaty, the Statute of the Court' shall be replaced by 'the Treaties, the Statute'.
11. In the first subparagraph of Article 83(1), the words 'Article 242 of the EC Treaty or Article 157 of the EAEC Treaty' shall be replaced by 'Article 278 TFEU or Article 157 TEAEC'.
12. In the second subparagraph of Article 83(1), the words 'Article 243 of the EC Treaty or Article 158 of the EAEC Treaty' shall be replaced by 'Article 279 TFEU'.
13. In the first paragraph of Article 89, the words 'Articles 244 and 256 of the EC Treaty or Articles 159 and 164 of the EAEC Treaty' shall be replaced by 'Articles 280 TFEU and 299 TFEU or Article 164 TEAEC'.
14. In Article 104(1), the words 'the provisions of Community' shall be replaced by 'the provisions of European Union'.
15. In the first subparagraph of Article 104b(1), the words 'the areas covered by Title VI of the Union Treaty or Title IV of Part Three of the EC Treaty' shall be replaced by 'the areas covered by Title V of Part Three of the Treaty on the Functioning of the European Union'.
16. In the first subparagraph of Article 107(1), the words 'Article 300 of the EC Treaty' shall be replaced by 'Article 218 TFEU'.
17. In Article 107(2), the words 'EC Treaty' shall be replaced by 'Treaties'.
18. Chapter 12 of Title III (Article 109a) shall be repealed.
19. The words 'in the version in force before the entry into force of the Treaty of Lisbon' shall be added to the end of the title of Chapter 13, entitled 'Settlement of the disputes referred to in Article 35 of the Union Treaty'.
20. In the first subparagraph of Article 109b(1), the words 'Article 35(7) of the Union Treaty' shall be replaced by 'Article 35(7) TEU in the version in force before the entry into force of the Treaty of Lisbon, as maintained in force by Protocol No 36 annexed to the Treaties'.
21. In the second subparagraph of Article 109b(1), the words 'Article 35(7) of the Union Treaty' shall be replaced by 'Article 35(7) TEU in the version in force before the entry into force of the Treaty of Lisbon, as maintained in force by Protocol No 36 annexed to the Treaties'.
22. In Article 123c, the words 'Article 225(2) or (3) of the EC Treaty or Article 140a(2) or (3) of the EAEC Treaty' shall be replaced by 'Article 256(2) or (3) TFEU'.
23. In the first and fifth paragraphs of Article 123d, the words 'Article 225(3) of the EC Treaty or Article 140a(3) of the EAEC Treaty' shall be replaced by 'Article 256(3) TFEU'.
24. In the fourth paragraph of Article 123d, the words 'Article 225(2) of the EC Treaty or Article 140a(2) of the EAEC Treaty' shall be replaced by 'Article 256(2) TFEU'.
25. In the first paragraph of Article 123e, the words 'Article 225(3) of the EC Treaty or Article 140a(3) of the EAEC Treaty' shall be replaced by 'Article 256(3) TFEU'.
26. In the fifth paragraph of Article 123e, the words 'Article 225(2) of the EC Treaty or Article 140a(2) of the EAEC Treaty' shall be replaced by 'Article 256(2) TFEU'.
27. In the first subparagraph of Article 123f(1), the words 'Community legislation' shall be replaced by 'European Union legislation'.
28. In the first paragraph of Article 123g, the words 'Community legislation' shall be replaced by 'European Union legislation'.
29. In Article 125, the words 'Article 223 of the EC Treaty and Article 139 of the EAEC Treaty' shall be replaced by 'Article 253 TFEU'.

Article 2

These amendments to the Rules of Procedure, which are authentic in the languages referred to in Article 29(1) of these Rules, shall be published in the *Official Journal of the European Union* and shall enter into force on the day of their publication.

Done at Luxembourg, on 23 March 2010.

AMENDMENTS TO THE RULES OF PROCEDURE OF THE GENERAL COURT

THE GENERAL COURT,

Having regard to the Treaty on the Functioning of the European Union, and in particular the fifth paragraph of Article 254 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community and Protocol No 2 annexed to the Treaty of Lisbon amending the Treaty establishing the European Atomic Energy Community,

Having regard to Article 63 of the Protocol on the Statute of the Court of Justice of the European Union,

Having regard to the agreement of the Court of Justice,

Whereas the necessary amendments should be made to its Rules of Procedure following the entry into force of the Treaty of Lisbon,

With the Council's approval given on 8 March 2010,

HAS ADOPTED THE FOLLOWING AMENDMENTS TO ITS RULES OF PROCEDURE:

Article 1

The Rules of Procedure of the Court of First Instance of the European Communities of 2 May 1991 (OJ L 136 of 30 May 1991, p. 1, with corrigendum OJ L 317 of 19 November 1991, p. 34) ⁽¹⁾ are hereby amended as follows:

1. The title of the Rules shall be replaced by 'Rules of Procedure of the General Court'.

2. Throughout the Rules, the words 'Court of First Instance' shall be replaced by 'General Court'.

3. Throughout the Rules, the words 'Statute of the Court of Justice' shall be replaced by 'Statute'.

⁽¹⁾ Amended on 15 September 1994 (OJ L 249 of 24 September 1994, p. 17), 17 February 1995 (OJ L 44 of 28 February 1995, p. 64), 6 July 1995 (OJ L 172 of 22 July 1995, p. 3), 12 March 1997 (OJ L 103 of 19 April 1997, p. 6, with corrigendum OJ L 351 of 23 December 1997, p. 72), 17 May 1999 (OJ L 135 of 29 May 1999, p. 92), 6 December 2000 (OJ L 322 of 19 December 2000, p. 4), 21 May 2003 (OJ L 147 of 14 June 2003, p. 22), 19 April 2004 (OJ L 132 of 29 April 2004, p. 3), 21 April 2004 (OJ L 127 of 29 April 2004, p. 108), 12 October 2005 (OJ L 298 of 15 November 2005, p. 1), 18 December 2006 (OJ L 386 of 29 December 2006, p. 45), 12 June 2008 (OJ L 179 of 8 July 2008, p. 12), 14 January 2009 (OJ L 24 of 28 January 2009, p. 9), 16 February 2009 (OJ L 60 of 4 March 2009, p. 3) and 7 July 2009 (OJ L 184 of 16 July 2009, p. 10).

4. (Does not apply to the English version.)

5. The first paragraph of Article 1 shall be replaced by the following:

Throughout these Rules:

— provisions of the Treaty on the Functioning of the European Union are referred to by the number of the article concerned followed by "TFEU",

— provisions of the Treaty establishing the European Atomic Energy Community are referred to by the number of the article followed by "TEAEC",

— "Statute" means the Protocol on the Statute of the Court of Justice of the European Union,

— "EEA Agreement" means the Agreement on the European Economic Area.'

6. The first indent of the second paragraph of Article 1 shall be replaced by the following:

— "institution" or "institutions" means the institutions of the Union and the bodies, offices and agencies established by the Treaties, or by an act adopted in implementation thereof, and which may be parties before the General Court;

7. In Article 4(1), the words 'Court of Justice of the European Communities' shall be replaced by 'Court of Justice'.

8. In Article 7(1), the words 'immediately after the partial replacement provided for in Article 224 of the EC Treaty and Article 140 of the EAEC Treaty' shall be replaced by 'immediately after the partial replacement provided for in Article 254 TFEU'.

9. In Article 14(2)(1):
- under (a), the words ‘cases brought pursuant to Article 236 of the EC Treaty and to Article 152 of the EAEC Treaty’ shall be replaced by ‘cases brought pursuant to Article 270 TFEU’;
 - under (b), the words ‘cases brought pursuant to the fourth paragraph of Article 230, the third paragraph of Article 232 and Article 235 of the EC Treaty and to the fourth paragraph of Article 146, the third paragraph of Article 148 and Article 151 of the EAEC Treaty’ shall be replaced by ‘cases brought pursuant to the fourth paragraph of Article 263 TFEU, the third paragraph of Article 265 TFEU and Article 268 TFEU’;
 - under (c), the words ‘cases brought pursuant to Article 238 of the EC Treaty and Article 153 of the EAEC Treaty’ shall be replaced by ‘cases brought pursuant to Article 272 TFEU’.
10. In Article 24(7), the word ‘Commission’ shall be replaced by ‘European Commission’.
11. In Article 24(7), the words in the first sentence ‘to enable it to assess whether the inapplicability of one of its acts is being invoked under Article 241 of the EC Treaty or Article 156 of the EAEC Treaty’ shall be replaced by ‘to enable it to assess whether the inapplicability of one of its acts is being invoked under Article 277 TFEU’.
12. In Article 24(7), the words in the second sentence ‘is being invoked under Article 241 of the EC Treaty’ shall be replaced by ‘is being invoked under Article 277 TFEU’.
13. In Article 44(5a):
- the words ‘the Community’ shall be replaced by ‘the Union’;
 - the words ‘under Article 238 of the EC Treaty or Article 153 of the EAEC Treaty’ shall be replaced by ‘under Article 272 TFEU’.
14. In Article 46(2), the words ‘between the Communities and their servants’ shall be replaced by ‘between the Union and its servants’.
15. In Article 51(1), second subparagraph, and (2), second subparagraph, the words ‘an institution of the European Communities’ shall be replaced by ‘an institution of the Union’.
16. In the third subparagraph of Article 67(3), the words ‘a Community institution’ shall be replaced by ‘an institution’.
17. In Article 69(4), the words ‘in accordance with Articles 244 and 256 of the EC Treaty and Articles 159 and 164 of the EAEC Treaty’ shall be replaced by ‘in accordance with Articles 280 TFEU and 299 TFEU and Article 164 TEAEC’.
18. In Article 88, the words ‘between the Communities and their servants’ shall be replaced by ‘between the Union and its servants’.
19. In the second paragraph of Article 98, the sentence ‘This provision shall not apply to proceedings under Articles 230 and 232 of the EC Treaty and Articles 146 and 148 of the EAEC Treaty’ shall be replaced by ‘This provision shall not apply to proceedings under Articles 263 TFEU and 265 TFEU’.
20. In the first subparagraph of Article 101(1), the words ‘Any period of time prescribed by the EC and EAEC Treaties, the Statute of the Court of Justice or these Rules for the taking of any procedural step’ shall be replaced by ‘Any period of time prescribed by the Treaties, the Statute or these Rules for the taking of any procedural step’.
21. In Article 104(1):
- in the first subparagraph, the words ‘pursuant to Article 242 of the EC Treaty and Article 157 of the EAEC Treaty’ shall be replaced by ‘pursuant to Article 278 TFEU and Article 157 TEAEC’;
 - in the second subparagraph, the words ‘referred to in Article 243 of the EC Treaty and Article 158 of the EAEC Treaty’ shall be replaced by ‘referred to in Article 279 TFEU’.
22. In the first paragraph of Article 110, the words ‘pursuant to Articles 244 and 256 of the EC Treaty and Articles 159 and 164 of the EAEC Treaty’ shall be replaced by ‘pursuant to Articles 280 TFEU and 299 TFEU and Article 164 TEAEC’.

Article 2

These amendments to the Rules of Procedure, which are authentic in the languages referred to in Article 35(1) of these Rules, shall be published in the *Official Journal of the European Union* and shall enter into force on the day of their publication.

Done at Luxembourg, 26 March 2010.

E. COULON
Registrar

M. JAEGER
President

AMENDMENTS TO THE RULES OF PROCEDURE OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL

THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL,

Having regard to the Treaty on the Functioning of the European Union, and in particular the fifth paragraph of Article 257 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community and Protocol No 2 annexed to the Treaty of Lisbon amending the Treaty establishing the European Atomic Energy Community,

Having regard to the Protocol on the Statute of the Court of Justice of the European Union, and in particular Article 62c thereof and Article 7(1) of Annex I thereto,

Whereas the necessary amendments should be made to its Rules of Procedure following the entry into force of the Treaty of Lisbon,

With the agreement of the Court of Justice,

With the Council's approval given on 8 March 2010,

HAS ADOPTED THE FOLLOWING AMENDMENTS TO ITS RULES OF PROCEDURE:

Article 1

The Rules of Procedure of the European Union Civil Service Tribunal of 25 July 2007 ⁽¹⁾, amended on 14 January 2009 ⁽²⁾, are hereby amended as follows:

1. Article 1 shall be amended as follows:

(a) the first indent of paragraph 1 shall be replaced by the following:

‘— provisions of the Treaty on the Functioning of the European Union are referred to by the number of the article concerned followed by “TFEU”;

(b) the second indent of paragraph 1 shall be replaced by the following:

‘— provisions of the Treaty establishing the European Atomic Energy Community are referred to by the number of the article followed by “TEAEC”;

(c) the third indent of paragraph 1 shall be replaced by the following:

‘— “Statute” means the Protocol on the Statute of the Court of Justice of the European Union;’;

(d) in the fourth indent of paragraph 1, the words ‘of the European Communities’ shall be replaced by ‘of the European Union’;

(e) the third indent of paragraph 2 shall be replaced by the following:

‘— “institution” or “institutions” means the institutions of the Union and the bodies, offices and agencies established by the Treaties, or by an act adopted in implementation thereof, and which may be parties before the Tribunal.’;

2. In the Rules, the words ‘Court of First Instance’ shall be replaced by ‘General Court’.

3. In the Rules, the words ‘Statute of the Court of Justice’ shall be replaced by ‘Statute’.

4. In Article 3(1), the words ‘of the European Communities’ shall be deleted.

5. In Article 29, the words ‘the sixth paragraph of Article 257 TFEU,’ shall be inserted between the words ‘By virtue of’ and ‘Article 64’.

6. In the heading of Article 40, the word ‘Commission’ shall be replaced by ‘European Commission’.

7. Article 40 shall be amended as follows:

(a) the word ‘Commission’ shall be replaced by ‘European Commission’;

(b) the words ‘Article 241 of the EC Treaty or Article 156 of the EAEC Treaty’ shall be replaced by ‘Article 277 TFEU’.

8. In Article 44(3), the words ‘a Community institution’ shall be replaced by ‘an institution’.

9. In Article 61(4), the words ‘Articles 244 and 256 of the EC Treaty and Articles 159 and 164 of the EAEC Treaty’ shall be replaced by ‘Articles 280 TFEU and 299 TFEU and Article 164 TEAEC’.

10. In Article 100(1), the words ‘the EC and EAEC Treaties’ shall be replaced by ‘the Treaties’.

⁽¹⁾ OJ L 225, 29.8.2007, p. 1, with corrigendum OJ L 69, 13.3.2008, p. 37.

⁽²⁾ OJ L 24, 28.1.2009, p. 10.

11. Article 102 shall be amended as follows:

- (a) in the first subparagraph of paragraph 1, the words 'Article 242 of the EC Treaty and Article 157 of the EAEC Treaty' shall be replaced by 'Article 278 TFEU and Article 157 TEAEC';
- (b) in the second subparagraph of paragraph 1, the words 'Article 243 of the EC Treaty and Article 158 of the EAEC Treaty' shall be replaced by 'Article 279 TFEU'.

12. In the first paragraph of Article 108, the words 'Articles 244 and 256 of the EC Treaty and Articles 159 and 164 of the EAEC Treaty' shall be replaced by 'Articles 280 TFEU and 299 TFEU and Article 164 TEAEC'.

13. In the first subparagraph of Article 118(1), the words 'of the Communities' shall be deleted.

Article 2

These amendments to the Rules of Procedure, which are authentic in the languages referred to in Article 35(1) of the Rules of Procedure of the General Court within the meaning of Article 19(1) of the Treaty on European Union, rules which are applicable to the Civil Service Tribunal by virtue of Article 7(2) of Annex I to the Statute of the Court of Justice of the European Union, shall be published in the *Official Journal of the European Union* and shall enter into force on the day of their publication.

Done at Luxembourg, on 17 March 2010.

IV

(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

COMMISSION DECISION

of 30 September 2009

on a measure taken by Italy to rescue Sandretto Industrie srl (C 19/08 (ex NN 13/08))

(notified under document C(2009) 7184)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2010/215/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) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) On 29 January 2007 the Commission approved rescue aid of EUR 5 million to Sandretto Industrie srl (Sandretto) ⁽¹⁾. The aid consisted of a guarantee on two credit lines provided by private banks, the conditions of which were to be defined after the approval of the Commission. When notifying the rescue aid, Italy undertook to terminate the guarantee no later than six months after its disbursement, and to provide the Commission with a restructuring plan for Sandretto within six months of the date of authorisation of the aid.
- (2) On 14 December 2007, having received no information on progress, the Commission wrote to Italy asking for an update on the case (letter ref. D/54995).
- (3) Italy answered by letter dated 21 January 2008 (ref. A/1233) informing the Commission that the aid had been granted in two parts, one on 24 July 2007 and the other on 13 August 2007.
- (4) By letter dated 23 January 2008 (ref. D/50314) the Commission requested Italy to confirm that the guarantee expired on 24 January 2008, or to provide a restructuring plan, and informed Italy that failing a

prompt reply the Commission departments would propose the opening of the formal investigation procedure.

- (5) Italy replied on 8 February 2008 (ref. A/2526) informing the Commission that the first instalment of the guarantee had expired on 24 January 2008, and that following the failure of several attempts to sell the company's assets the court with jurisdiction in the matter had been given timely notice that the proceedings might have to be converted into an application for bankruptcy.
- (6) A decision to initiate the procedure laid down in Article 88(2) of the Treaty (hereinafter 'the opening decision') was published in the *Official Journal of the European Union*, with an invitation to interested parties to submit their comments ⁽²⁾. Italy sent comments by letter dated 19 May 2008 (ref. A/9253). There were no comments from other interested parties.
- (7) Subsequently, the Commission requested additional information by letter dated 20 August 2008 (ref. D/53263), to which the Italian authorities replied on 18 September (ref. A/19134), and by letter of 20 October 2008 (ref. D/54063), to which the Italian authorities replied on 4 November (ref. A/23219).

II. DESCRIPTION

The recipient

- (8) Sandretto manufactures and sells injection moulding machines for thermoplastics. It began as Fratelli Sandretto in 1947, and since then has undergone several changes in its name and corporate form. At the time the aid was granted, in 2007, Sandretto had a turnover of EUR 30 million, and employed 340 people; it was a major source of activity for the local economy, with two production plants located in the municipalities of Grugliasco and Pont Canavese in the province of Turin, both being areas qualifying for aid under Article 87(3)(c) of the Treaty.

⁽¹⁾ Decision N 802/06 (O) C 43, 27.2.2007, p. 2).

⁽²⁾ OJ C 137, 4.6.2008, p. 12.

- (9) The company was declared insolvent in March 2006, and was then authorised to enter into the procedure known as 'extraordinary administration', which might have allowed it to continue in business⁽³⁾. But it was ultimately decided that it should cease trading, and in accordance with the procedure laid down in Legislative Order No 270/99⁽⁴⁾ the special administrator launched its liquidation, and thus the sale of its assets, under an authorisation issued by the responsible Ministry on 27 February 2007.
- (10) Several public offers were made for the sale of the bulk of the company's assets⁽⁵⁾, without success, until 24 May 2008, when preliminary agreement was reached with the Brazilian company *Indústrias Romi SA*, leading to the signature on 12 June 2008 of a final contract between Sandretto and the buyer's Italian subsidiary, *Romi Italia*.
- (11) On 29 July 2008 the District Court (*Tribunale*) of Turin certified that sale, with the effect that from that date Sandretto ceased trading entirely, and will disappear as a legal person as soon as its assets have been divided among its creditors.

The aid measure

- (12) Although the rescue aid was approved on 29 January 2007, the credit lines, amounting to EUR 5 million, were granted almost six months after the date of authorisation, one on 24 July 2007 and the other on 13 August 2007. According to Italy, the administrators needed this time to select the private banks that would grant the credit and to agree with them on the terms of financing.
- (13) The aid took the form of a guarantee on two credit lines of EUR 2,5 million each, provided by Banca Popolare di Novara e Banca Intesa Sanpaolo.
- (14) According to Italy, the guarantee connected to the first instalment of aid was called on 24 January 2008. Italy did not submit a plan for the restructuring of the company (or its liquidation) within the six month following the authorising decision. After the formal investigation procedure had been initiated, Italy informed the Commission that the public guarantees on both loans had been called⁽⁶⁾.

III. REASONS FOR INITIATING THE PROCEDURE

- (15) In the opening decision the Commission took the view that there was nothing to show that Sandretto had ceased

⁽³⁾ Article 54 of Legislative Order (*decreto legislativo*) No 270 of 1999, see footnote 4 below.

⁽⁴⁾ Laying down new rules on the extraordinary administration of large enterprises in a state of insolvency under Section 1 of Act No 274 of 30 July 1998, published in *Gazzetta ufficiale della Repubblica italiana* No 185, 9.8.1999.

⁽⁵⁾ The remaining assets consist essentially of the Sandretto museum, which displays numerous exhibits illustrating design in plastics.

⁽⁶⁾ See recital 17.

to benefit from the rescue aid on the expiry of the six-month period from the disbursement of the first instalment, i.e. by 24 January 2008.

- (16) Furthermore, the Commission expressed doubts as to whether the rescue aid, once unlawfully extended, could be deemed to be restructuring aid that might be compatible under points 34 to 51 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (hereinafter 'the Guidelines')⁽⁷⁾, especially in the absence of a restructuring plan.

IV. OBSERVATIONS FROM ITALY

- (17) The Italian authorities sent observations by letter dated 18 May 2008 in which they informed the Commission that the guarantee covering the two loan instalments disbursed on 24 July and 13 August 2007 had been called by the banks concerned, on 23 March and 4 April 2008 respectively.
- (18) The Italian authorities declared that the State's claim on Sandretto following the call on the guarantee was 'prededucibile'. This means that for the recovery of its debt the State has preference over ordinary creditors. According to the Italian authorities, it is reasonably certain that full recovery of the aid will be possible.
- (19) Finally, the Italian authorities provided information on the state of the liquidation of Sandretto and on the public offers organised for the sale of Sandretto's assets during the period between June 2007 and May 2008, which led to a partial acquisition by *Romi Italia*.
- (20) Subsequently, in response to Commission requests regarding the sale of certain of Sandretto's assets to *Romi Italia*, the Italian authorities provided the following information.
- (21) *Romi Italia* had acquired part of the assets of Sandretto for EUR 7,9 million. That price was lower than the one at which the company had been valued in June 2007, but it was the highest price to emerge after the failure of several public offers of sale. According to the Italian authorities, it should therefore be considered to reflect the market value of the assets concerned.
- (22) Since 29 July 2008 Sandretto had ceased trading entirely, following an order made by the District Court of Turin, and would disappear as a legal person as soon as its assets were divided among its creditors.
- (23) The Italian authorities also underlined that *Romi Italia* had not taken over any of Sandretto's existing liabilities. Sandretto had ended all contracts of employment with its employees, and *Romi Italia* had concluded new and different contracts, only some of them with former Sandretto employees. *Romi Italia* had not stepped into Sandretto's place in any relationship with former agents,

⁽⁷⁾ OJ C 244, 1.10.2004, p. 2.

suppliers or clients of Sandretto, but had merely taken over contracts strictly necessary to the running of the business (contracts for the supply of gas and electricity or maintenance and security services).

V. ASSESSMENT

V.1. Existence of State aid

- (24) The Commission considers that the rescue aid measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty. The measure takes the form of guarantees which constitute an advantage financed by state resources. The measure is selective, as it is limited to Sandretto, and it is likely to distort competition by providing Sandretto with an advantage over other competitors not receiving aid. Finally, there is extensive trade between Member States in the market in which Sandretto operates ⁽⁸⁾.

V.2. Compatibility of the rescue aid

- (25) According to point 25(a) of the Guidelines, rescue aid must come to an end within a period of not more than six months after the disbursement of the first instalment to the firm.
- (26) In the present case, the first instalment of the aid was disbursed on 24 July 2007. Therefore, the guarantee should have been terminated by 24 January 2008, as acknowledged by the Italian authorities in their submission dated 2 February 2008 ⁽⁹⁾.
- (27) When notifying the rescue aid, Italy undertook to terminate the guarantee no later than six months after its disbursement, and to provide the Commission with a restructuring plan for Sandretto within six months of the date of authorisation of the aid.
- (28) However, Italy never did submit a plan for the restructuring (or liquidation) of the company. Rather, at the expiry of the prescribed six months, the guarantee was called, so that Sandretto now had a EUR 5 million debt to the State. So far, Italy has not shown that this debt to the State has been repaid.
- (29) The conditions for extension laid down in point 26 of the Guidelines are not fulfilled either. Point 26 of the Guidelines states that rescue aid may be extended until the Commission has adopted a decision on a restructuring plan, if such a plan is submitted within the six-month period, which is not the case here.
- (30) Finally, an extension of the guarantee beyond six months cannot be regarded as (unlawful) restructuring aid either,

since there has been no notification of a restructuring plan, or of any measure that might meet the conditions in points 34 et seq. of the Guidelines.

- (31) It must be concluded, therefore, that the rescue aid has been used in breach of the authorising decision, and cannot be considered to be compatible restructuring aid, since none of the conditions in the Guidelines have been complied with.
- (32) In addition, the company continued to benefit from the rescue aid at the end of the six months indicated in the authorising decision, and the Commission accordingly finds that from 24 January 2008 onward the aid measure was being misused within the meaning of Article 1(g) 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 ⁽¹⁰⁾ (the Procedural Regulation), since it was used by the beneficiary in contravention of a decision taken pursuant to Article 4(3) of that Regulation.

V.3. Recovery

- (33) Recital 15 of the Procedural Regulation states that misuse of aid may have effects on the functioning of the internal market which are similar to those of unlawful aid and should thus be treated according to similar procedures.
- (34) Article 14 of the Procedural Regulation states that where a negative decision is taken in a case of unlawful aid, the Commission is to decide that the Member State concerned must take all necessary measures to recover the aid from the beneficiary. Article 16 states that Article 14 applies *mutatis mutandis* in cases of misuse of aid. By reason of the misuse after 24 January 2008 of the aid granted to Sandretto, therefore, Italy must take all necessary measures to recover the aid, with interest payable from the date on which the aid misused was at the disposal of the beneficiary until the date of its recovery.
- (35) After the granting of the aid there was a sale of the assets, in full accordance with the liquidation procedure provided for in Italian law ⁽¹¹⁾, so that the Commission has to verify whether the advantage may have been passed on to the buyer. The Commission must accordingly examine whether the assets were sold at a market price. If it should prove that the assets were in fact sold at a price below their market value, the recovery order must be extended to encompass the buyer ⁽¹²⁾.

⁽⁸⁾ Paragraphs 4-6 of the authorising decision cited in footnote 1.

⁽⁹⁾ Paragraphs 16-18 of the opening decision.

⁽¹⁰⁾ OJ L 83, 27.3.1999, p. 1.

⁽¹¹⁾ Recital 9 above.

⁽¹²⁾ Commission notice, 'Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid', paragraphs 32-35 (OJ C 272, 15.11.2007, p. 4).

- (36) At the Commission's request, the Italian authorities informed the Commission⁽¹³⁾ that Romi Italia had acquired most of the assets of Sandretto for a total of EUR 7,9 million, made up of EUR 2,48 million for holdings in companies abroad and EUR 5,42 million for other tangible and intangible assets (buildings, machineries, trade marks). The price obtained for the tangible and intangible assets (EUR 5,42 million) was lower than the price at which they were valued in June 2007 (EUR 7,5 million). Nevertheless, this price was higher than any other offer made in the course of the liquidation procedure. According to the Italian authorities, it should therefore be considered to reflect the market value of the assets concerned.
- (37) A review of the contracts between Sandretto and Romi Italia and of the submissions of the Italian authorities shows that Romi Italia did not take over any of Sandretto's liabilities. Sandretto has ended all contracts of employment and Romi Italia has concluded new contracts of employment, only some of them with former Sandretto employees. Romi Italia has not stepped into Sandretto's place in any relationship with former agents, suppliers or clients of Sandretto, confining itself to taking over contracts necessary to the running of the business.
- (38) In view of all the considerations set out above, the Commission has concluded that Romi Italia is not de facto continuing the business of Sandretto. Consequently, the Commission considers that the operation was a sale of assets, and not of a going concern. On the basis of the information available to it at the time of adopting the present decision, the Commission has no reason to believe that the price paid by Romi Italia was not a market price.
- (39) The Commission therefore takes the view that the aid conferred an advantage only on Sandretto, and that the benefit was not transferred to Romi Italia. Recovery should therefore be made directly from Sandretto.

VI. CONCLUSION

- (40) The Commission finds that the rescue aid of EUR 5 million, which was extended beyond 24 January 2008 and benefited Sandretto until it ceased trading entirely on 29 June 2009, has been misused, that it cannot be considered compatible with the common market, and that it must be recovered by Italy from the beneficiary, Sandretto,

HAS ADOPTED THIS DECISION:

Article 1

The State aid amounting to EUR 5 million which was granted by Italy and which was misused in that it remained at the

disposal of Sandretto Industrie srl after 24 January 2008 is incompatible with the common market.

Article 2

1. Italy shall recover the aid referred to in Article 1 from the beneficiary.
2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiary until their actual recovery.
3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 as amended⁽¹⁴⁾.
4. Italy shall cancel all outstanding payments of the aid referred to in Article 1 with effect from the date of adoption of this Decision.

Article 3

1. Recovery of the aid referred to in Article 1 shall be immediate and effective.
2. Italy shall ensure that this Decision is implemented within four months following the date of notification of this Decision.

Article 4

1. Within two months following notification of this Decision, Italy shall submit the following information to the Commission:
 - (a) the total amount (principal and interest) to be recovered from the beneficiary;
 - (b) a detailed description of the measures already taken and the measures planned in order to comply with this Decision;
 - (c) documents demonstrating that the beneficiary has been ordered to repay the aid.
2. Italy shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and the measures planned in order to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and interest already recovered from the beneficiary.

⁽¹³⁾ Recital 7 above.

⁽¹⁴⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

Article 5

This Decision is addressed to the Italian Republic.

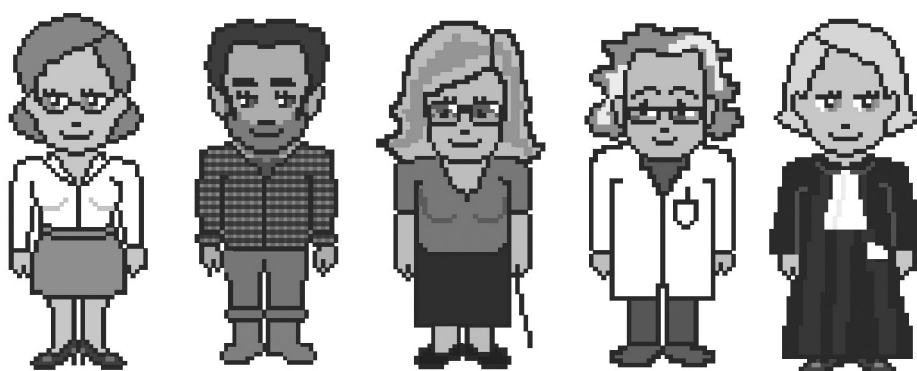
Done at Brussels, 30 September 2009.

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