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Contents



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[1] Text with EEA relevance

EN

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

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

EN

[1] Text with EEA relevance

II

*(Non-legislative acts)*

# INTERNATIONAL AGREEMENTS

## DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL

**of 10 June 2011**

**authorising the Presidency of the Council to negotiate, on behalf of the Member States, the provisions of a legally binding agreement on forests in Europe that fall within the competences of the Member States**

(2011/712/EU)

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL,

Whereas:

(1) A decision to open negotiations on a legally binding agreement (LBA) on forests in Europe may be adopted at the Sixth Ministerial Conference on the Protection of Forests in Europe, to be held between 14 and 16 June 2011 in Oslo, Norway.

(2) The Presidency of the Council should be authorised to negotiate, on behalf of the Member States, the provisions of the LBA on forests in Europe that fall within the competences of the Member States,

HAVE ADOPTED THIS DECISION:

*Article 1*

1. The Representatives of the Governments of the Member States hereby authorise the Presidency of the Council to negotiate, on behalf of the Member States, as regards matters falling within their competences and on the basis of their positions, the provisions of an LBA on forests in Europe, in the event that a decision to open negotiations on such an LBA is adopted at the Sixth Ministerial Conference on the Protection of Forests in Europe, to be held between 14 and 16 June 2011 in Oslo, Norway.

2. Paragraph 1 shall be without prejudice to future decisions of the Member States relating to the designation of their representative on matters falling within their competences.

*Article 2*

1. The negotiations shall be conducted in accordance with the Negotiating Directives set out in the Addendum to this Decision.

2. The negotiations shall be aimed at adding demonstrable value to the existing forest-related multilateral agreements and non-legally binding instruments, while ensuring a cost-effective implementation and avoiding further administrative burdens. They shall be conducted in accordance with negotiating positions established by the Representatives of the Governments of the Member States and on the basis of practical arrangements, both of which are to be agreed by consensus. The negotiations shall be conducted in consultation with the Representatives of the Governments of the Member States meeting within the special committee referred to in Article 1(4) of the Council Decision on the participation of the European Union in negotiations on a legally binding agreement on forests in Europe. The Presidency of the Council shall make every effort to secure the positions thus established, and shall report to the Representatives of the Governments of the Member States on the progress of the negotiations after each session of the Intergovernmental Negotiating Committee.

3. The Presidency, acting on behalf of the Member States, shall cooperate closely with the Commission during the negotiation process, with a view to aiming for unity in the international representation of the Union and its Member States.

*Article 3*

This Decision is addressed to the Presidency of the Council.

Done at Luxembourg, 10 June 2011.

*The President*

FELLEGI T.

# REGULATIONS

## COMMISSION IMPLEMENTING REGULATION (EU) No 1097/2011

**of 25 October 2011**

**amending Council Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1183/2005 of 18 July 2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo [1], and in particular Article 9(1)(a) thereof,

Whereas:

(1) Annex I to Regulation (EC) No 1183/2005 lists the natural and legal persons, entities and bodies covered by the freezing of funds and economic resources under the Regulation.

(2) On 8 July 2011 the Sanctions Committee of the United Nations Security Council approved updates to the list of individuals and entities subject to the freezing of assets. Annex I should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex I to Regulation (EC) No 1183/2005 is replaced by the text set out in the Annex to this Regulation.

*Article 2*

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

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

Done at Brussels, 25 October 2011.

*For the Commission,*
*On behalf of the President,*
*Head of the Service for Foreign Policy Instruments*

[1] OJ L 193, 23.7.2005, p. 1.

*ANNEX*

*'ANNEX I*

**List of natural and legal persons, entities or bodies referred to in Article 2**

A. NATURAL PERSONS

(1) Frank Kakolele **Bwambale** (*alias* (a) Frank Kakorere, (b) Frank Kakorere Bwambale). Nationality: Congolese. Function: FARDC General (without posting as of June 2011). Other information: (a) Left the CNDP in January 2008; (b) As of June 2011 resides in Kinshasa, DRC; (c) Since 2010 he has been involved in activities apparently on behalf of the DRC government's Programme de Stabilisation et Reconstruction des Zones Sortant des Conflits Armés (STAREC), including participation in a STAREC mission to Goma and Beni in March 2011; (d) Former RCD-ML leader. Date of designation referred to in Article 5(1)(b): 10.11.2005.

(2) Jérôme **Kakwavu Bukande** (*alias* (a) Jérôme **Kakwavu**, (b) Commandant Jérôme). Title: General. Nationality: Congolese. Other information: (a) Former President of UCD/FAPC; (b) As of June 2011 detained in Makala Prison in Kinshasa. Date of designation referred to in Article 5(1)(b): 10.11.2005.

(3) Gaston **Iyamuremye** (*alias*: (a) Rumuli, (b) Byiringiro Victor Rumuli, (c) Victor Rumuri, (d) Michel Byiringiro). Date of Birth: 1948. Place of Birth: (a) Musanze District (Northern Province), Rwanda; (b) Ruhengeri, Rwanda. Title: Brigadier General. Function: (a) FDLR President, (b) 2nd Vice-President of FDLR-FOCA. Nationality: Rwandan. Other information: (a) As of June 2011 based at Kalonge, North Kivu Province; (b) According to multiple sources, including the UNSC DRC Sanctions Committee's Group of Experts, Gaston Iyamuremye is the second vice president of the FDLR and is considered a core member of the FDLR military and political leadership; (c) Gaston Iyamuremye ran Ignace Murwanashyaka's (President of the FDLR) office in Kibua, DRC until December 2009. Date of designation referred to in Article 5(1)(b): 23.12.2010.

(4) Germain **Katanga**. Title: General. Nationality: Congolese. Other information: (a) Handed over by the Government of the DR of the Congo to the International Criminal Court (ICC) on 18.10.2007; (b) FRPI chief. Date of designation referred to in Article 5(1)(b): 10.11.2005.

(5) Thomas **Lubanga**. Place of birth: Ituri, DRC. Other information: (a) Transferred to the ICC by the Congolese authorities on 17.3.2006; (b) President of the UPC/L. Date of designation referred to in Article 5(1)(b): 10.11.2005.

(6) Khawa Panga **Mandro** (*alias* (a) Kawa Panga, (b) Kawa Panga Mandro, (c) Kawa Mandro, (d) Yves Andoul Karim, (e) Chief Kahwa, (f) Kawa, (g) Mandro Panga Kahwa, (h) Yves Khawa Panga Mandro). Date of birth: 20.8.1973. Place of birth: Bunia, DRC. Nationality: Congolese. Other information: (a) Arrested by Congolese authorities in October 2005, acquitted by the Court of Appeal in Kisangani, subsequently transferred to the judicial authorities in Kinshasa on new charges; (b) As of June 2011 detained at Makala Central Prison, Kinshasa; (c) Ex-President of PUSIC. Date of designation referred to in Article 5(1)(b): 10.11.2005.

(7) Callixte **Mbarushimana**. Date of birth: 24.7.1963. Place of birth: Ndusu/Ruhengeri, Northern Province, Rwanda. Nationality: Rwandan. Other information: (a) Arrested in Paris on 3 October 2010 under ICC warrant for war crimes and crimes against humanity committed by FDLR troops in the Kivus in 2009 and transferred to The Hague on 25 January 2011; (b) Executive Secretary of the FDLR and Vice-President of the FDLR military high command until his arrest. Date of designation referred to in Article 5(1)(b): 21.3.2009.

(8) Iruta Douglas **Mpamo** (*alias* (a) Mpano, (b) Douglas Iruta Mpamo). Date of birth: (a) 28.12.1965, (b) 29.12.1965. Place of birth: (a) Bashali, Masisi, DRC (refers to date of birth (a)), (b) Goma, DRC (refers to date of birth (b), (c) Uvira). Nationality: Congolese. Other information: (a) As of June 2011 resides in Gisenyi, Rwanda; (b) Owner/Manager of the Compagnie Aerienne des Grands Lacs and of Great Lakes Business Company. Date of designation referred to in Article 5(1)(b): 10.11.2005.

(9) Sylvestre **Mudacumura** (*alias* (a) Radja, (b) Mupenzi Bernard, (c) General Major Mupenzi, (d) General Mudacumura). Function: (a) Military commander of FDLR-FOCA; (b) political 1st Vice-President and head of FOCA High Command. Nationality: Rwandan. Other information: As of June 2011 based at Kikoma forest, near Bogoyi, Walikale, North Kivu. Date of designation referred to in Article 5(1)(b): 10.11.2005.

(10) Leodomir **Mugaragu** (*alias*: (a) Manzi Leon, (b) Leo Manzi). Date of Birth: (a) 1954, (b) 1953. Place of Birth: (a) Kigali, Rwanda, (b) Rushashi (Northern Province), Rwanda. Function: FDLR-FOCA Chief of Staff, in charge of administration. Other information: (a) According to open-source and official reporting, Leodomir Mugaragu is the Chief of Staff of the Forces Combattantes Abucunguzi/Combatant Force for the Liberation of Rwanda (FOCA), the FDLR's armed wing; (b) According to official reporting Mugaragu is a senior planner for FDLR's military operations in the eastern DRC; (c) As of June 2011 based at the FDLR HQ at Kikoma forest, Bogoyi, Walikale, North Kivu. Date of designation referred to in Article 5(1)(b): 23.12.2010.

(11) Leopold **Mujyambere** (*alias* (a) Musenyeri, (b) Achille, (c) Frere Petrus Ibrahim. Date of birth: (a) 17.3.1962, (b) 1966 (estimated). Place of birth: Kigali, Rwanda. Nationality: Rwandan. Other information: (a) As of June 2011 Commander of the South Kivu operational sector now called "Amazon" of FDLR-FOCA; (b) Based at Nyakaleke (south-east of Mwenga, South Kivu). Date of designation referred to in Article 5(1)(b): 21.3.2009.

(12) Ignace **Murwanashyaka** (*alias* Ignace). Title: Dr Date of birth: 14.5.1963. Place of birth: (a) Butera, Rwanda; (b) Ngoma, Butare, Rwanda. Nationality: Rwandan. Other information: (a) President of the FDLR and supreme commander of the FDLR armed forces; (b) Arrested by German authorities on 17 November 2009. Date of designation referred to in Article 5(1)(b): 10.11.2005.

(13) Straton **Musoni** (*alias* I.O. Musoni). Date of birth: (a) 6.4.1961, (b) 4.6.1961. Place of birth: Mugambazi, Kigali, Rwanda. Nationality: Rwandan. Other information: (a) Arrested by German authorities on 17 November 2009; (b) Replaced as 1st Vice-President of the FDLR. Date of designation referred to in Article 5(1)(b): 13.4.2007.

(14) Jules **Mutebutsi** (*alias* (a) Jules Mutebusi, (b) Jules Mutebuzi, (c) Colonel Mutebutsi). Place of birth: 1964 Minembwe South Kivu, DRC. Nationality: Congolese. Other information: (a) Former FARDC Deputy Military Regional Commander of 10th Military Region; (b) In December 2007 arrested by Rwandan authorities and has lived since in semi-liberty in Kigali (not authorised to leave the country). Date of designation referred to in Article 5(1)(b): 10.11.2005.

(15) Mathieu Chui **Ngudjolo** (*alias* Cui Ngudjolo). Other information: (a) Arrested by MONUC in Bunia in October 2003; (b) Surrendered by the Government of the DR of the Congo to the International Criminal Court on 7 February 2008. Date of designation referred to in Article 5(1)(b): 10.11.2005.

(16) Floribert Ngabu **Njabu** (*alias* (a) Floribert Njabu, (b) Floribert Ndjabu, (c) Floribert Ngabu, (d) Ndjabu). Other information: (a) President of FNI; (b) Under house arrest in Kinshasa since March 2005; (b) Transferred to The Hague on 27 March 2011 to testify in the ICC trials. Date of designation referred to in Article 5(1)(b): 10.11.2005.

(17) Laurent **Nkunda** (*alias* (a) Laurent Nkunda Bwatare, (b) Laurent Nkundabatware, (c) Laurent Nkunda Mahoro Batware, (d) Laurent Nkunda Batware, (e) General Nkunda, (f) Nkunda Mihigo Laurent, (g) Chairman, (h) Papa Six). Date of birth: (a) 6.2.1967, (b) 2.2.1967. Place of birth: North Kivu/Rutshuru, DRC (refers to date of birth (a)). Nationality: Congolese. Other information: (a) Former RCD-G General; (b) Founder, National Congress for the People's Defense, 2006; (c) Senior Officer, Rally for Congolese Democracy-Goma (RCD-G), 1998-2006; (d) Officer Rwandan Patriotic Front (RPF), 1992-1998; (e) Arrested by Rwandan authorities in Rwanda in January 2009 and replaced as commander of the CNDP; (f) Under house arrest in Kigali. Date of designation referred to in Article 5(1)(b): 10.11.2005.

(18) Félicien **Nsanzubukire** (*alias* Fred Irakeza). Function: 1st battalion leader of the FDLR-FOCA (based in the Uvira-Sange area of South Kivu). Date of birth: 1967. Place of birth: Murama, Kinyinya, Rubungo, Kigali, Rwanda. Nationality: Rwandan. Other information: (a) Member of the FDLR since at least 1994 and operating in eastern DRC since October 1998; (b) As of June 2011 based in Magunda, Mwenga territory, South Kivu. Date of designation referred to in Article 5(1)(b): 23.12.2010.

(19) Pacifique **Ntawunguka** (*alias* (a) Colonel Omega, (b) Nzeri, (c) Israel, (d) Pacifique Ntawungula). Function: Commander, Operational Sector North Kivu "SONOKI" of FDLR-FOCA. Date of birth: (a) 1.1.1964, (b) 1964 (estimated). Place of birth: Gaseke, Gisenyi Province, Rwanda. Nationality: Rwandan. Other information: As of June 2011 based at Matembe, North Kivu. Date of designation referred to in Article 5(1)(b): 21.3.2009.

(20) James **Nyakuni**. Nationality: Ugandan. Date of designation referred to in Article 5(1)(b): 10.11.2005.

(21) Stanislas **Nzeyimana** (*alias* (a) Deogratias Bigaruka Izabayo, (b) Bigaruka, (c) Bigurura, (d) Izabayo Deo (e) Jules Mateso Mlamba). Function: Deputy Commander of the FDLR-FOCA. Date of birth: (a) 1.1.1966, (b) 1967 (estimated), (c) 28.8.1966. Place of birth: Mugusa (Butare), Rwanda. Nationality: Rwandan. Other information: As of June 2011 based at Mukoberwa, North Kivu. Date of designation referred to in Article 5(1)(b): 21.3.2009.

(22) Dieudonné **Ozia Mazio** (*alias* (a) Ozia Mazio, (b) Omari, (c) Mr Omari). Function: President of FEC in Aru territory. Date of birth: 6.6.1949. Place of birth: Ariwara, DRC. Nationality: Congolese. Other information: Believed to have deceased in Ariwara on 23 September 2008. Date of designation referred to in Article 5(1)(b): 10.11.2005.

(23) Bosco **Taganda** (*alias* (a) Bosco Ntaganda, (b) Bosco Ntagenda, (c) General Taganda, (d) Lydia, (e) Terminator, (f) Tango, (g) Tango Romeo, (h) Major. Title: Brigadier-General. Function: *de facto* Deputy Commander of consecutive anti-FDLR operations "Umoja Wetu", "Kimia II", and "Amani Leo" in North and South Kivu (since January 2009). Nationality: Congolese. Date of birth: (a) 1973, (b) 1974. Place of birth: Bigogwe, Rwanda. Other information: (a) Moved to Nyamitaba, Masisi territory, North Kivu, when he was a child; (b) As of June 2011 resides in Goma and owns large farms in Ngungu area, Masisi territory, North Kivu; (c) Nominated FARDC Brigadier-General by Presidential Decree on 11 December 2004, following Ituri peace agreements; (d) Formerly Chief of Staff in CNDP and became CNDP military commander since the arrest of Laurent Nkunda in January 2009; (e) UPC/L military commander; (f) CNDP Chief of Staff. Date of designation referred to in Article 5(1)(b): 10.11.2005.

(24) Innocent **Zimurinda** (*alias* Zimulinda). Title: Lieutenant Colonel. Date of Birth: (a) 1.9.1972, (b) 1975. Place of Birth: Ngungu, Masisi Territory, North Kivu Province, DRC. Title: Colonel. Nationality: Congolese. Other information: (a) Integrated in the FARDC in 2009 as a Lieutenant Colonel, brigade commander in FARDC Kimia II Ops, based in Ngungu area; (b) In July 2009 promoted to full Colonel and became FARDC Sector commander in Ngungu and subsequently in Kitchanga in FARDC Kimia II and Amani Leo Operations; (c) Whereas he did not appear in the 31 December 2010 DRC Presidential ordinance nominating high FARDC officers, he *de facto* maintained his command position of FARDC 22nd sector in Kitchanga and wears the newly issued FARDC rank and uniform. Date of designation referred to in Article 5(1)(b): 23.12.2010.

B. LEGAL PERSONS, ENTITIES AND BODIES

(1) **Butembo Airlines** (*alias* BAL). Address: Butembo, DRC. Other information: Since December 2008, BAL no longer holds an aircraft operating license in the DRC. Date of designation referred to in Article 5(1)(b): 13.4.2007.

(2) **Congomet Trading House**. Address: Butembo, North Kivu, DRC. Other information: (a) No longer exists as a gold trading house in Butembo, North Kivu; (b) Formerly listed as CONGOCOM. Date of designation referred to in Article 5(1)(b): 13.4.2007.

(3) **Compagnie Aérienne des Grands Lacs** (CAGL), (*alias* Great Lakes Business Company (GLBC)). Address: (a) CAGL: Avenue President Mobutu, Goma, (CAGL also has an office in Gisenyi, Rwanda); (b) GLBC: PO Box 315, Goma, DRC (GLBC also has an office in Gisenyi, Rwanda). Date of designation referred to in Article 5(1)(b): 13.4.2007.

(4) **Machanga Ltd** Address: Kampala, Uganda. Other information: (a) Gold export company (Directors: Mr Rajendra Kumar Vaya and Mr Hirendra M. Vaya); (b) In 2010 assets belonging to Machanga held in the account of Emirates Gold were frozen by Bank of Nova Scotia Mocatta (UK). Date of designation referred to in Article 5(1)(b): 13.4.2007.

(5) **Tous Pour la Paix et le Développement** (*alias* TPD). Address: Goma, North Kivu, DRC. Other information: (a) TPD is a non-governmental organisation; (b) Goma, with provincial committees in South Kivu, Kasai Occidental, Kasai Oriental and Maniema; (c) Officially suspended all activities since 2008; (d) In practice, as of June 2011 TPD offices are open and involved in cases related to returns of IDPs, community reconciliation initiatives, land conflict settlements, etc. Date of designation referred to in Article 5(1)(b): 10.11.2005.

(6) **Uganda Commercial Impex (UCI) Ltd** Address: (a) Kajoka Street, Kisemente, Kampala, Uganda, (b) PO Box 22709, Kampala, Uganda. Other information: (a) Gold export company (Former directors: Mr Kunal Lodhia and Mr J.V. Lodhia); (b) In January 2011, Ugandan authorities notified the Committee that following an exemption on its financial holdings, Emirates Gold repaid UCI's debt to Crane Bank in Kampala, leading to final closure of its accounts. Date of designation referred to in Article 5(1)(b): 13.4.2007.'

# COMMISSION IMPLEMENTING REGULATION (EU) No 1098/2011

## of 27 October 2011

## entering a name in the register of protected designations of origin and protected geographical indications (金乡大蒜 (Jinxiang Da Suan) (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 first subparagraph of Article 7(4) thereof,

Whereas:

(1) Pursuant to the first subparagraph of Article 6(2) of Regulation (EC) No 510/2006, the application of the People's Republic of China to register the name '金乡大蒜 (Jinxiang Da Suan)' was published in the *Official Journal of the European Union* [2].

(2) As no statement of objection under Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, that name should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

*Article 1*

The name contained in the Annex to this Regulation is hereby entered in the register.

*Article 2*

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

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

Done at Brussels, 27 October 2011.

*For the Commission,*
*On behalf of the President,*
Dacian CIOLOȘ
*Member of the Commission*

[1] OJ L 93, 31.3.2006, p. 12.
[2] OJ C 37, 5.2.2011, p. 20.

*ANNEX*

Agricultural products intended for human consumption listed in Annex I to the Treaty:

**Class 1.6. Fruit, vegetables and cereals, fresh or processed**

THE PEOPLE'S REPUBLIC OF CHINA

金乡大蒜 (Jinxiang Da Suan) (PGI)

# COMMISSION REGULATION (EU) No 1099/2011

## of 27 October 2011

## establishing a prohibition of fishing for plaice in VIIf and VIIg by vessels flying the flag of Belgium

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy [1], and in particular Article 36(2) thereof,

Whereas:

(1) Council Regulation (EU) No 57/2011 of 18 January 2011 fixing for 2011 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in certain non-EU waters [2], lays down quotas for 2011.

(2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2011.

(3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1*

**Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2011 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2*

**Prohibitions**

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

*Article 3*

**Entry into force**

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

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

Done at Brussels, 27 October 2011.

*For the Commission,*
*On behalf of the President,*
Lowri EVANS
*Director-General for Maritime Affairs and Fisheries*

[1] OJ L 343, 22.12.2009, p. 1.
[2] OJ L 24, 27.1.2011, p. 1.

*ANNEX*

| | |
|---|---|
| No | 59/T&Q |
| Member State | Belgium |
| Stock | PLE/7FG. |
| Species | Plaice (*Pleuronectes platessa*) |
| Zone | VIIf and VIIg |
| Date | 1.10.2011 |

# COMMISSION IMPLEMENTING REGULATION (EU) No 1100/2011

## of 31 October 2011

## amending Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substances dicamba, difenoconazole, and imazaquin

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ([1]), and in particular Article 13(2) thereof,

Whereas:

(1) The active substances dicamba, difenoconazole and imazaquin were included in Annex I to Council Directive 91/414/EEC ([2]) by Commission Directive 2008/69/EC ([3]) in accordance with the procedure provided for in Article 11b of Commission Regulation (EC) No 1490/2002 of 14 August 2002 laying down further detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC and amending Regulation (EC) No 451/2000 ([4]). Since the replacement of Directive 91/414/EEC by Regulation (EC) No 1107/2009, these substances are deemed to have been approved under that Regulation and are listed in Part A of the Annex to Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances ([5]).

(2) In accordance with Article 12a of Regulation (EC) No 1490/2002, the European Food Safety Authority, hereinafter 'the Authority', presented to the Commission the conclusions on the peer review for difenoconazole ([6]), dicamba ([7]) and imazaquin ([8]) on 17 December 2010. These conclusions were reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and were finalised on 27 September 2011 in the format of the Commission review reports for difenoconazole, dicamba, and imazaquin.

(3) In accordance with Article 12(2) of Regulation (EC) No 1107/2009 the Commission invited the notifiers to submit their comments on the conclusions of the Authority. Furthermore, in accordance with Article 13(1) of that Regulation, the Commission invited the notifiers to submit comments on the draft review reports for dicamba, difenoconazole and imazaquin. The notifiers submitted their comments, which have been carefully examined.

(4) It is confirmed that the active substances dicamba, difenoconazole and imazaquin are to be deemed to have been approved under Regulation (EC) No 1107/2009.

(5) In accordance with Article 13(2) of Regulation (EC) No 1107/2009 in conjunction with Article 6 thereof and in the light of current scientific and technical knowledge, it is necessary to amend the conditions of approval of dicamba, difenoconazole and imazaquin. It is, in particular, appropriate to require further confirmatory information.

(6) The Annex to Implementing Regulation (EU) No 540/2011 should therefore be amended accordingly.

(7) A reasonable period of time should be allowed before the application of this Regulation in order to allow Member States, notifiers and holders of authorisations for plant protection products to meet the requirements resulting from amendment to the conditions of the approval.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

([1]) OJ L 309, 24.11.2009, p. 1.
([2]) OJ L 230, 19.8.1991, p. 1.
([3]) OJ L 172, 2.7.2008, p. 9.
([4]) OJ L 224, 21.8.2002, p. 23.
([5]) OJ L 153, 11.6.2011, p. 1.
([6]) European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance difenoconazole. EFSA Journal 2011; 9(1):1967. [71 pp.]. doi:10.2903/j.efsa.2011.1967. Available online: www.efsa.europa.eu/efsajournal.htm
([7]) European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance dicamba. EFSA Journal 2011; 9(1):1965. [52 pp.] doi:10.2903/j.efsa.2011.1965. Available online: www.efsa.europa.eu/efsajournal.htm
([8]) European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance imazaquin. EFSA Journal 2011; 9(1):1968. [57 pp.]. doi:10.2903/j.efsa.2011.1968. Available online: www.efsa.europa.eu/efsajournal.htm

HAS ADOPTED THIS REGULATION:

*Article 1*

Part A of the Annex to Implementing Regulation (EU) No 540/2011 is amended in accordance with the Annex to this Regulation.

*Article 2*

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

It shall apply from 1 May 2012.

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

Done at Brussels, 31 October 2011.

*For the Commission*
*The President*
José Manuel BARROSO

*ANNEX*

Part A of the Annex to Implementing Regulation (EU) No 540/2011 is amended as follows:

(1) Number 172 on the active substance dicamba is replaced by the following:

| Number | Common Name, Identification Numbers | IUPAC Name | Purity | Date of approval | Expiration of approval | Specific provisions |
|---|---|---|---|---|---|---|
| '172 | Dicamba<br><br>CAS No 1918-00-9<br><br>CIPAC No 85 | 3,6-dichloro-2-methoxybenzoic acid | ≥ 850 g/kg | 1 January 2009 | 31 December 2018 | PART A<br><br>Only uses as herbicide may be authorised.<br><br>PART B<br><br>For the implementation of the uniform principles as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on dicamba, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 27 September 2011 shall be taken into account.<br><br>In this overall assessment Member States shall pay particular attention to the protection of non-target plants.<br><br>Conditions of use shall include adequate risk mitigation measures, where appropriate.<br><br>The notifier shall submit confirmatory information as regards:<br><br>(a) the identification and quantification of a group of soil transformation products formed in a soil incubation study;<br><br>(b) the potential for long range transport through the atmosphere.<br><br>The notifier shall submit this information to the Member States, the Commission and the Authority by 30 November 2013.' |

(2) Number 173 on the active substance difenoconazole is replaced by the following:

| Number | Common Name, Identification Numbers | IUPAC Name | Purity | Date of approval | Expiration of approval | Specific provisions |
|---|---|---|---|---|---|---|
| '173 | Difenoconazole<br><br>CAS No 119446-68-3<br><br>CIPAC No 687 | 3-chloro-4-[(2RS,4RS;2RS,4SR)-4-methyl-2-(1H-1,2,4-triazol-1-ylmethyl)-1,3-dioxolan-2-yl]phenyl 4-chlorophenyl ether | ≥ 940g/kg<br><br>Toluene maximum content: 5 g/kg | 1 January 2009 | 31 December 2018 | PART A<br><br>Only uses as fungicide may be authorised.<br><br>PART B<br><br>For the implementation of the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on difenoconazole, and in particular Appendices I |

| Number | Common Name, Identification Numbers | IUPAC Name | Purity | Date of approval | Expiration of approval | Specific provisions |
|---|---|---|---|---|---|---|
| | | | | | | and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 27 September 2011 shall be taken into account.<br><br>In this overall assessment Member States shall pay particular attention to the protection of aquatic organisms.<br><br>Conditions of use shall include adequate risk mitigation measures, where appropriate.<br><br>The notifier shall submit confirmatory information as regards:<br><br>(a) further data on the specification of the technical material;<br><br>(b) residues of triazole derivative metabolites (TDMs) in primary crops, rotational crops, processed commodities and products of animal origin;<br><br>(c) the potential for endocrine disrupting effects on fish (fish full life cycle study) and the chronic risk to earthworms from the active substance and the metabolite CGA 205375 (*);<br><br>(d) the possible impact of the variable isomer-ratio in the technical material and of the preferential degradation and/or conversion of the mixture of isomers on the worker risk assessment, the consumer risk assessment and on the environment.<br><br>The notifier shall submit to the Member States, the Commission and the Authority the information set out in point (a) by 31 May 2012, the information set out in points (b) and (c) by 30 November 2013 and the information set out in point (d) within 2 years from the adoption of specific guidance.' |

(*) 1-[2-[2-chloro-4-(4-chloro-phenoxy)-phenyl]-2-1H-[1,2,4]triazol-yl]-ethanol.

(3) Number 175 on the active substance imazaquin is replaced by the following:

| Number | Common Name, Identification Numbers | IUPAC Name | Purity | Date of approval | Expiration of approval | Specific provisions |
|---|---|---|---|---|---|---|
| '175 | Imazaquin<br><br>CAS No 81335-37-7<br><br>CIPAC No 699 | 2-[(RS)-4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl]quinoline-3-carboxylic acid | ≥ 960 g/kg (racemic mixture) | 1 January 2009 | 31 December 2018 | PART A<br><br>Only uses as plant growth regulator may be authorised.<br><br>PART B<br><br>For the implementation of the uniform principles as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions |

| Number | Common Name, Identification Numbers | IUPAC Name | Purity | Date of approval | Expiration of approval | Specific provisions |
|---|---|---|---|---|---|---|
| | | | | | | of the review report on imazaquin, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 27 September 2011 shall be taken into account<br><br>The notifier shall submit confirmatory information as regards:<br><br>(a) further data on the specification of the technical material;<br><br>(b) the possible impact of the variable isomer-ratio in the technical material and of the preferential degradation and/or conversion of the mixture of isomers on the worker risk assessment, the consumer risk assessment and on the environment.<br><br>The notifier shall submit to the Member States, the Commission and the Authority the information set out in point (a) by 31 May 2012 and the information set out in point (b) within 2 years from the adoption of specific guidance.' |

# COMMISSION IMPLEMENTING REGULATION (EU) No 1101/2011

## of 31 October 2011

## 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 Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors [2], and in particular Article 136(1) thereof,

Whereas:

Implementing Regulation (EU) No 543/2011 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 XVI, Part A thereto,

HAS ADOPTED THIS REGULATION:

*Article 1*

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 1 November 2011.

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

Done at Brussels, 31 October 2011.

*For the Commission,*
*On behalf of the President,*
José Manuel SILVA RODRÍGUEZ
*Director-General for Agriculture and Rural Development*

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 157, 15.6.2011, 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 | 82,9 |
| | MA | 44,5 |
| | MK | 60,2 |
| | TR | 67,1 |
| | ZZ | 63,7 |
| 0707 00 05 | EG | 151,1 |
| | JO | 191,6 |
| | TR | 150,5 |
| | ZZ | 164,4 |
| 0709 90 70 | TR | 129,6 |
| | ZZ | 129,6 |
| 0805 50 10 | AR | 55,2 |
| | CL | 76,1 |
| | TR | 59,0 |
| | ZA | 84,2 |
| | ZZ | 68,6 |
| 0806 10 10 | BR | 231,1 |
| | CL | 71,4 |
| | TR | 132,1 |
| | US | 252,5 |
| | ZA | 67,9 |
| | ZZ | 151,0 |
| 0808 10 80 | AR | 48,0 |
| | BR | 86,4 |
| | CA | 92,8 |
| | NZ | 118,9 |
| | US | 86,2 |
| | ZA | 121,2 |
| | ZZ | 92,3 |
| 0808 20 50 | CN | 70,6 |
| | TR | 130,3 |
| | ZZ | 100,5 |

(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 IMPLEMENTING REGULATION (EU) No 1102/2011

## of 31 October 2011

## fixing the import duties in the cereals sector applicable from 1 November 2011

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 (EU) No 642/2010 of 20 July 2010 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of import duties in the cereals sector [2], and in particular Article 2(1) thereof,

Whereas:

(1) Article 136(1) of Regulation (EC) No 1234/2007 states that the import duty on products falling within CN codes 1001 10 00, 1001 90 91, ex 1001 90 99 (high quality common wheat), 1002, ex 1005 other than hybrid seed, and ex 1007 other than hybrids for sowing, is to be equal to the intervention price valid for such products on importation increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.

(2) Article 136(2) of Regulation (EC) No 1234/2007 lays down that, for the purposes of calculating the import duty referred to in paragraph 1 of that Article, representative cif import prices are to be established on a regular basis for the products in question.

(3) Pursuant to Article 2(2) of Regulation (EU) No 642/2010, the price to be used for the calculation of the import duty on products of CN codes 1001 10 00, 1001 90 91, ex 1001 90 99 (high quality common wheat), 1002 00, 1005 10 90, 1005 90 00 and 1007 00 90 is the daily cif representative import price determined as specified in Article 5 of that Regulation.

(4) Import duties should be fixed for the period from 1 November 2011 and should apply until new import duties are fixed and enter into force,

HAS ADOPTED THIS REGULATION:

*Article 1*

From 1 November 2011, the import duties in the cereals sector referred to in Article 136(1) of Regulation (EC) No 1234/2007 shall be those fixed in Annex I to this Regulation on the basis of the information contained in Annex II.

*Article 2*

This Regulation shall enter into force on 1 November 2011.

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

Done at Brussels, 31 October 2011.

*For the Commission,*
*On behalf of the President,*
José Manuel SILVA RODRÍGUEZ
*Director-General for Agriculture and Rural Development*

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 187, 21.7.2010, p. 5.

*ANNEX I*

**Import duties on the products referred to in Article 136(1) of Regulation (EC) No 1234/2007 applicable from 1 November 2011**

| CN code | Description | Import duties [1] (EUR/t) |
|---|---|---|
| 1001 10 00 | Durum wheat, high quality | 0,00 |
| | medium quality | 0,00 |
| | low quality | 0,00 |
| 1001 90 91 | Common wheat seed | 0,00 |
| ex 1001 90 99 | High quality common wheat, other than for sowing | 0,00 |
| 1002 00 00 | Rye | 0,00 |
| 1005 10 90 | Maize seed, other than hybrid | 0,00 |
| 1005 90 00 | Maize, other than seed [2] | 0,00 |
| 1007 00 90 | Grain sorghum, other than hybrids for sowing | 0,00 |

[1] For goods arriving in the Union via the Atlantic Ocean or via the Suez Canal the importer may benefit, persuant to Article 2(4) of Regulation (EU) No 642/2010, from a reduction in the duty of:

— 3 EUR/t, where the port of unloading is on the Mediterranean Sea, or on the Black Sea,

— 2 EUR/t, where the port of unloading is in Denmark, Estonia, Ireland, Latvia, Lithuania, Poland, Finland, Sweden, the United Kingdom, or on the Atlantic coast of the Iberian peninsula.

[2] The importer may benefit from a flatrate reduction of EUR 24 per tonne where the conditions laid down in Article 3 of Regulation (EU) No 642/2010 are met.

*ANNEX II*

**Factors for calculating the duties laid down in Annex I**

17.10.2011-28.10.2011

1. Averages over the reference period referred to in Article 2(2) of Regulation (EU) No 642/2010:

*(EUR/t)*

| | Common wheat (1) | Maize | Durum wheat, high quality | Durum wheat, medium quality (2) | Durum wheat, low quality (3) |
|---|---|---|---|---|---|
| Exchange | Minnéapolis | Chicago | — | — | — |
| Quotation | 255,94 | 183,46 | — | — | — |
| Fob price USA | — | — | 351,22 | 341,22 | 321,22 |
| Gulf of Mexico premium | — | 17,04 | — | — | — |
| Great Lakes premium | 20,99 | — | — | — | — |

(1) Premium of 14 EUR/t incorporated (Article 5(3) of Regulation (EU) No 642/2010).
(2) Discount of 10 EUR/t (Article 5(3) of Regulation (EU) No 642/2010).
(3) Discount of 30 EUR/t (Article 5(3) of Regulation (EU) No 642/2010).

2. Averages over the reference period referred to in Article 2(2) of Regulation (EU) No 642/2010:

| | |
|---|---|
| Freight costs: Gulf of Mexico–Rotterdam: | 19,60 EUR/t |
| Freight costs: Great Lakes–Rotterdam: | 52,90 EUR/t |

# COMMISSION IMPLEMENTING REGULATION (EU) No 1103/2011

## of 31 October 2011

## amending the representative prices and additional import duties for certain products in the sugar sector fixed by Implementing Regulation (EU) No 971/2011 for the 2011/12 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 2011/12 marketing year are fixed by Commission Implementing Regulation (EU) No 971/2011 ([3]). These prices and duties have been last amended by Commission Implementing Regulation (EU) No 1092/2011 ([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 Implementing Regulation (EU) No 971/2011 for the 2011/12 marketing year, are hereby amended as set out in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 1 November 2011.

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

Done at Brussels, 31 October 2011.

*For the Commission,*
*On behalf of the President,*
José Manuel SILVA RODRÍGUEZ
*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 254, 30.9.2011, p. 12.
([4]) OJ L 281, 28.10.2011, p. 25.

*ANNEX*

**Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 1 November 2011**

*(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) | 46,76 | 0,00 |
| 1701 11 90 (1) | 46,76 | 0,88 |
| 1701 12 10 (1) | 46,76 | 0,00 |
| 1701 12 90 (1) | 46,76 | 0,58 |
| 1701 91 00 (2) | 49,57 | 2,60 |
| 1701 99 10 (2) | 49,57 | 0,00 |
| 1701 99 90 (2) | 49,57 | 0,00 |
| 1702 90 95 (3) | 0,50 | 0,22 |

(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

## COUNCIL DECISION

**of 10 October 2011**

**opposing the adoption by the European Commission of the draft Directive amending Directive 2009/43/EC of the European Parliament and of the Council as regards the list of defence-related products**

(2011/713/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1], and in particular Article 5a(3)(b) thereof,

Having regard to Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community [2],

Having regard to the draft Commission Directive amending Directive 2009/43/EC, which the Commission submitted on 15 July 2011 to the Council for scrutiny in accordance with Article 5a(3)(a) of Decision 1999/468/EC,

Whereas:

The draft Directive submitted by the Commission exceeds the implementing powers provided for in the basic act, by requiring Member States to give notice of their transposition measures in the form of correlation tables,

HAS ADOPTED THIS DECISION:

*Article 1*

In accordance with Article 5a(3)(b) of Decision 1999/468/EC, the Council opposes the adoption by the Commission of the draft Directive amending Directive 2009/43/EC, which the Commission has submitted to the Council for scrutiny in accordance with Article 5a(3)(a) of Decision 1999/468/EC.

*Article 2*

This Decision shall enter into force on the day of its adoption.

Done at Luxembourg, 10 October 2011.

*For the Council*
*The President*
A. KRASZEWSKI

[1] OJ L 184, 17.7.1999, p. 23.
[2] OJ L 146, 10.6.2009, p. 1.

# COUNCIL DECISION

## of 11 October 2011

## amending Decision 1999/70/EC concerning the external auditors of the national central banks, as regards the external auditors of the Banco de Portugal

(2011/714/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Protocol on the Statute of the European System of Central Banks and of the European Central Bank annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, and in particular to Article 27.1 thereof,

Having regard to Recommendation ECB/2011/11 of the European Central Bank of 25 August 2011 to the Council of the European Union on the external auditors of the Banco de Portugal [1],

Whereas:

(1) The accounts of the European Central Bank (ECB) and of the national central banks of the Eurosystem are to be audited by independent external auditors recommended by the ECB's Governing Council and approved by the Council of the European Union.

(2) The mandate of the current external auditors of the Banco de Portugal ended after the audit for the financial year 2010. It is therefore necessary to appoint external auditors from the financial year 2011.

(3) The Banco de Portugal has selected PricewaterhouseCoopers & Associados — Sociedade de Revisores Oficiais de Contas, Lda. as its external auditors for the financial years 2011 to 2016.

(4) The Governing Council of the ECB recommended that PricewaterhouseCoopers & Associados — Sociedade de Revisores Oficiais de Contas, Lda. should be appointed as the external auditors of the Banco de Portugal for the financial years 2011 to 2016.

(5) It is appropriate to follow the recommendation of the Governing Council of the ECB and to amend Council Decision 1999/70/EC [2] accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

Article 1(10) of Decision 1999/70/EC shall be replaced by the following:

'10. PricewaterhouseCoopers & Associados — Sociedade de Revisores Oficiais de Contas, Lda. is hereby approved as the external auditors of the Banco de Portugal for the financial years 2011 to 2016.'.

*Article 2*

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

*Article 3*

This Decision is addressed to the European Central Bank.

Done at Luxembourg, 11 October 2011.

*For the Council*
*The President*
M. DOWGIELEWICZ

[1] OJ C 258, 2.9.2011, p. 1.

[2] OJ L 22, 29.1.1999, p. 69.

# COUNCIL DECISION

## of 27 October 2011

## on the launch of automated data exchange with regard to DNA data in Latvia

(2011/715/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime [1], in particular Article 2(3) and Article 25 thereof,

Having regard to Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA [2], in particular Article 20 and Chapter 4 of the Annex thereto,

Whereas:

(1) According to the Protocol on Transitional Provisions annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community, the legal effects of the acts of the institutions, bodies, offices and agencies of the Union adopted prior to the entry into force of the Treaty of Lisbon are preserved until those acts are repealed, annulled or amended in implementation of the Treaties.

(2) Accordingly, Article 25 of Decision 2008/615/JHA is applicable and the Council must unanimously decide whether the Member States have implemented the provisions of Chapter 6 of that Decision.

(3) Article 20 of Decision 2008/616/JHA provides that decisions referred to in Article 25(2) of Decision 2008/615/JHA are to be taken on the basis of an evaluation report based on a questionnaire. With respect to automated data exchange in accordance with Chapter 2 of Decision 2008/615/JHA, the evaluation report is to be based on an evaluation visit and a pilot run.

(4) Latvia has informed the General Secretariat of the Council of the national DNA analysis files to which Articles 2 to 6 of Decision 2008/615/JHA apply and the conditions for automated searching as referred to in Article 3(1) of that Decision in accordance with Article 36(2) of that Decision.

(5) According to Chapter 4, point 1.1, of the Annex to Decision 2008/616/JHA, the questionnaire drawn up by the relevant Council Working Group concerns each of the automated data exchanges and has to be answered by a Member State as soon as it believes it fulfils the prerequisites for sharing data in the relevant data category.

(6) Latvia has completed the questionnaire on data protection and the questionnaire on DNA data exchange.

(7) A successful pilot run has been carried out by Latvia with Germany.

(8) An evaluation visit has taken place in Latvia and a report on the evaluation visit has been produced by the German evaluation team and forwarded to the relevant Council Working Group.

(9) An overall evaluation report, summarising the results of the questionnaire, the evaluation visit and the pilot run concerning DNA data exchange has been presented to the Council,

HAS ADOPTED THIS DECISION:

*Article 1*

For the purposes of automated searching and comparison of DNA data, Latvia has fully implemented the general provisions on data protection of Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from the day of the entry into force of this Decision.

*Article 2*

This Decision shall enter into force on the day of its adoption.

Done at Luxembourg, 27 October 2011.

*For the Council*
*The President*
J. MILLER

[1] OJ L 210, 6.8.2008, p. 1.
[2] OJ L 210, 6.8.2008, p. 12.

# COMMISSION DECISION

## of 24 May 2011

## on State aid to certain Greek casinos C 16/10 (ex NN 22/10, ex CP 318/09) implemented by the Hellenic Republic

*(notified under document C(2011) 3504)*

**(Only the Greek text is authentic)**

**(Text with EEA relevance)**

(2011/716/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of the Article 108(2) thereof,

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

Having called upon interested parties to submit their comments pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

### I. PROCEDURE

(1) On 8 July 2009 the Consortium Loutraki SA – Club Hotel Loutraki SA [2] (the 'complainant' or 'Loutraki') lodged with the European Commission (the 'Commission') a complaint concerning Greek legislation on a system of levies on admissions to casinos, alleging that such system provided State aid to three operators, namely Regency Casino de Mont Parnès, Corfu Casino and Casino Thessaloniki [3]. By e-mail message of 7 October 2009 the complainant stated that it did not object to the disclosure of its identity. On 14 October 2009 the Commission services met representatives of the complainant. By letter of 26 October 2009 the complainant provided further elements in support of its complaint.

(2) On 21 October 2009 the Commission communicated the complaint to Greece and invited Greece to clarify the issues it brought forward. By letter dated 17 November 2009 Greece requested further time to respond, which was granted by the Commission by e-mail message of 18 November 2009. On 27 November 2009 Greece replied to the Commission.

(3) On 15 December 2009 the Commission forwarded the reply of Greece to the complainant. The complainant replied on 29 December 2009 with observations on the reply of Greece.

(4) On 25 February, 4 and 23 March and 13 April 2010, the Commission requested further information from Greece, to which Greece replied on 10 March, 1 and 21 April 2010.

(5) By decision of 6 July 2010 (hereinafter the 'Opening Decision'), the Commission informed Greece that it initiated the formal investigation procedure set forth in Article 108(2) of the Treaty on the Functioning of the European Union in regard of the measure implemented by Greece, specifically the charging of lower tax on admissions in certain casinos. The Opening Decision was published in the *Official Journal of the European Union* [4], inviting interested parties to submit their comments.

(6) By letter of 9 August 2010 Greece requested an extension of the deadline to respond, which was granted by the Commission by letter of 18 August 2010. By letter of 6 October 2010 the Commission received comments from Greece on the Opening Decision. On 12 October 2010 the Greek authorities submitted additional information regarding the contested measure.

(7) Following the opening of the procedure, the Commission received observations from two interested parties: the representatives of the beneficiary casino of Mont Parnès, reacted to the opening by letter of 4 August 2010; the representatives of the private Loutraki casino reacted to the opening by letters of 8 and 25 October 2010.

(8) By letter of 29 October 2010, the Commission forwarded the abovementioned observations to the Greek authorities, in order to give them with the opportunity to react. By letter of 6 December 2010 the Greek authorities presented their comments to third parties' observations, in order to clarify, *inter alia*, certain aspects of the application of the subject-scheme and the interpretation of the Greek legislation relevant to the analysis of the case.

### II. THE MEASURE CONCERNED

#### II.1. The measure

(9) The measure under assessment is the fiscal discrimination that the Greek authorities have put into place in favour

[1] OJ C 235, 31.8.2010, p. 3.

[2] Consortium – Loutraki S.A.- Club Hotel Casino Loutraki S.A. (Κοινοπραξία Δ.Α.Ε.Τ.- Λουτράκι ΑΕ- Κλαμπ Οτέλ Λουτράκι ΑΕ), Voukourestiou 11, Akti Poseidonos 48, Loutraki, Athens 10671, Greece.

[3] The casino of Rhodes, to which a license was granted by virtue of the Ministerial Decision T/633/29.5.1996, was not cited in the complaint as following its privatisation in April 1999 it had stopped benefiting from the measure under assessment.

[4] See footnote 1.

of certain casinos through the implementation of several simultaneous partially mandatory legal provisions ([5]) concerning:

— the fixing of a uniform 80 % levy on the price of admission tickets, and

— the setting of two unequal regulated prices of admission tickets at EUR 6 and EUR 15 respectively for publicly and privately owned casinos,

thereby placing the latter at a competitive disadvantage.

(10) The measure under assessment concerns public casinos and one private casino (Thessaloniki), which was exceptionally allowed to benefit from the treatment of public casinos, as further described herein below.

II.2. **The beneficiaries**

(11) The beneficiaries of the measure under analysis are the following Greek casinos: Mont Parnès ([6]), Thessaloniki ([7]), Corfu ([8]) and Rhodes ([9]).

(12) At the time of the Opening Decision, the lower regulated price of admission tickets of EUR 6 only applied to three Greek casinos: Mont Parnès Casino (casino privatised by 49 %, whereas 51 % of shares are still held by the State), Thessaloniki Casino (private casino, but assimilated to public casinos) and Corfu Casino (public casino). The Commission notes that the Rhodes Casino and the Corfu Casino ceased benefiting from the measure in April 1999 ([10]) and August 2010 ([11]) respectively, since they stopped charging the lower price for admission tickets at that respective moment in time when they were fully privatised.

([5]) In particular, Law 2206/1994; Ministerial Decision Y.A 1128269/1226/0015/ΠΟΛ.1292/16.11.1995 – ΦΕΚ 982/Β'/1995; Law 3139/30.4.2003; the decisions of the General Secretary of EOT (managing the public casinos) issued in accordance with Law 1624/1951 and Decree 4109/1960 (EOT decision 535633/21.11.1991; EOT decision 508049/24.3.1992 and EOT decision 532691/24.11.1997); the licenses granted to each casino under national law and confirming the respective price of admission tickets and the obligation to pay 80 % thereof as applicable to each casino.

([6]) Casino Mont Parnès, société anonyme 'Elliniko Kasino Parnithas A.E.', Agiou Konstantinou 49, 15124 Marousi Attikis, Greece.

([7]) Casino Thessaloniki, 'Regency Entertainment Psychagogiki kai Touristiki A.E.', Agiou Konstantinou 49, 15124 Marousi Attikis, Greece and 13th km Thessaloniki-Polygyrou Street, 55103 Thessaloniki, Greece.

([8]) Corfu Casino, 'Elliniko Kasino Kerkyras A.E.', Société de développement touristique, Voulis 7, 10562, Athènes, Greece.

([9]) The Casino of Rhodes, 'Casino Rodos Grande Albergo Delle Rose Boutique Hotel', 4, Georgiou Papanikolaou str., Rhodes, 85100 Greece.

([10]) The casino of Rhodes, to which a license was granted by virtue of the ministerial decision T/633/29.5.1996, was not cited in the complaint received by the Commission as following its privatisation in April 1999 it has applied the EUR 15 price of admission tickets.

([11]) During the formal investigation procedure, the Commission was informed that the Corfu casino was privatised on 30.8.2010, with the sale, by international call to tender, of 100 % of the shares in the company Corfu Hellenic Casino S.A. (Elliniko Kasino Kerkyras A.E. or EKK) to V&T Corfu Casino S.A. Further to its privatisation, the price of admission tickets to it has been aligned to the general fee of EUR 15 – by virtue of the act ΦΕΚ Β' 1178/5.8.2010/Decision 9206 Defining the Terms of the Operational License of the Kerkyra Casino (paragraph 4.1.δ.iii), of Article 4).

II.3. **The relevant national provisions**

(13) Before the opening of the market in 1994, only three casinos operated in Greece, namely the casinos of Mont Parnès, Corfu, and Rhodes. At that time, these casinos were public undertakings and operated as State-owned service-clubs of the Greek Tourism Office (EOT) ([12]). The price of admission tickets in these casinos was set by way of decisions of the General Secretary of the EOT ([13]), as follows:

— Mont Parnès – in 1991 EOT set the price of admission tickets at 2 000 drachmas (approximately EUR 6 ([14]));

— Corfu – in 1992 EOT set the price of admission tickets at 1 500 drachmas and it 1997 it adjusted it to 2 000 drachmas;

— Rhodes – in 1992 EOT set the price of admission tickets at 1 500 drachmas.

(14) The market was opened in 1994, when 6 newly created private casinos joined the existing State owned casinos based on the Law 2206/1994 ([15]). The Law of 1994 provided for the granting of a total of 14 licenses aimed at the existing 3 State owned casinos of Rhodes, Mont Parnès and Corfu, and 11 newly created private casinos ([16]). However only 6 of the 11 new private casinos were licensed and began operating, namely the casinos in Chalcidice, Loutraki, Thessaloniki, Achaia (Rio), Xanthi (Thrace) and Syros (during 1995-96), and the remaining 5 licenses were abolished.

(15) Law 2206/1994 (Article 2(10)) provided that the price of admission tickets to the casinos in certain areas would be set by Ministerial Decision, and that the same Decision

([12]) The three casinos operated as service clubs of the EOT based on Law 1624/1951, Decree 4109/1960 and Law 2160/1993. The EOT was later replaced in the operation of the casinos of Corfu and Mont Parnès by the Hellenic Tourism Development company (ETA), fully owned by the Greek State, under Laws 2636/1998 and 2837/2000, until the grant of licenses to the above mentioned two casinos by virtue of the Law 3139/2003 (the Casino in Rhodes was operated by the EOT until it was granted a license in 1996).

([13]) More precisely, the decisions of the General Secretary of EOT (issued in accordance with Law 1624/1951 and Decree 4109/1960) are: EOT decision 535633/21.11.1991 (setting the price of admission tickets to the Mont Parnès Casino at 2 000 drachmas); EOT decision 508049/24.3.1992 (setting the price of admission tickets to the Corfu and Rhodes Casinos at 1 500 drachmas); EOT decision 532691/24.11.1997 (adjusting the price of admission tickets to the Corfu Casino to 2 000 drachmas).

([14]) EUR 6 became the regulated price for public casinos on Greece's adoption of the euro in 2002.

([15]) Law 2206/1994 governs the 'Creation, organisation, operation, control of casinos, etc.' (ΦΕΚ Α'62/1994).

([16]) The Casino licenses were to be granted by decision of the Minister of Tourism, following a public international tendering procedure organised by a seven-member commission (Article 1(7) of the law of 1994, entitled 'Grant of casino licences').

would determine the percentage of the price that would represent revenue to the Greek State. Indeed on 16.11.1995 a Ministerial Decision ([17]) of the Minister for Finance established that, from 15 December 1995 all operators of casinos under Law 2206/1994 ([18]) must charge a price for admission tickets of 5 000 drachmas ([19]) (approximately EUR 15 ([20])). According to this Ministerial Decision, these casino enterprises are further subject to a legal obligation to pay 80 % of the face value of each ticket as public levy to the State, while the remaining 20 %, including the appropriate VAT, constitute revenue for the casino ([21]). The Ministerial Decision provides that casinos may grant free entrance ([22]). Nevertheless in all cases, all casinos are under the obligation to pay the respective 80 % of the regulated price to the State, regardless of what they actually charge consumers ([23]). According to the Ministerial Decision, the payments of 'public fees' are performed by each casino on a monthly basis ([24]). The Ministerial Decision also provides for specified discounts for tickets valid for 15 or 30 days ([25]).

(16) All the new private casinos created (since 1995) under the Law 2206/1994 implemented the Ministerial Decision of 1995 and applied– in principle, as described in the previous paragraph – the EUR 15 price for admission tickets, with the only exception of the Thessaloniki Casino (as further described below).

(17) However, the State owned casinos of Mont Parnès, Corfu and Rhodes continued to operate as service clubs of EOT ([26]) and did not implemented the acts of 1994-95 until the later granting of the licence provided by the Law 2206/1994.

(18) According to the various observations and descriptions of the national provisions presented by the Greek authorities, the Commission understands that the system worked in practice as follows:

(19) The Greek authorities explained that the operation of casinos in Greece is governed, generally, by Law 2206/1994. The special provisions applicable to the public casinos which existed prior to this Law are considered exceptions from the application of the general provisions of the Law 2206/1994 (and the implementing Ministerial Decision of 1995), pending the privatisation of these public casinos and the issuance of the licenses envisaged in the Law.

(20) Consequently, the Ministerial Decision of 1995 was not deemed to apply to the public casinos until the date they were licensed under Law 2206/1994 – either as concerns the standard admission price of EUR 15, or as concerns the requirement to remit to the State 80 % of that price. The public casinos began paying the relevant 80 % only upon the later granting of the license under the Law 2206/1994 (as described below – paragraphs 23 and following). However, since for the public casinos the price of admission tickets exceptionally remained at the level of EUR 6, as the already in force decisions of the EOT (setting the prices at EUR 6) were considered special derogatory provisions (pre-existing *lex specialis*) which were unaffected by the general provisions of the Law 2206/1994 and the Ministerial Decision of 1995, they only paid 80 % of EUR 6. The EOT decisions were only deemed inapplicable when the casinos were no longer fully owned by the State, after their respective privatisation. It is only further to that that the casinos then passed to the standard price of admission tickets of EUR 15 and the obligation to pay 80 % of EUR 15 as levy to the State.

(21) An exception to what appears that it should have been the rule is the partial privatisation of the Mont Parnès casino, confirmed by the Law 3139/2003 (which also

([17]) Ministerial Decision Y.A 1128269/1226/0015/ΠΟΛ.1292/16.11.1995 – ΦΕΚ 982/Β'/1995.

([18]) According to paragraph 1 of the Ministerial Decision of 1995: 'Casino operators (Law 2206/1994) are obliged from 15 December 1995 to issue an admission ticket to each person according to specific provisions included in the following paragraphs.'

([19]) According to paragraph 5 of the Ministerial Decision of 1995: 'The uniform ticket price for entering the areas of "slot machines" or "table games" shall amount to five thousand (5 000) drachmas.'

([20]) EUR 15 became the standard regulated price on Greece's adoption of the euro in 2002.

([21]) According to paragraph 7.1 of the Ministerial Decision of 1995: 'From the total value of the ticket a percentage of twenty percent (20 %) shall be appropriated by the casino undertaking as fees for issuing the ticket and covering its expenses, in which the appropriate VAT is included, while the remaining amount shall be considered public fee.'

([22]) According to paragraph 6 of the Ministerial Decision of 1995: 'To record the admission of a person, from which the Casino refrains from requesting an price of admission for reasons of promotion or social obligation, the Casino shall issue tickets from a special batch or a special counter of the tax records cash register labelled "Honoris Causa"/"Free admission".'

([23]) According to paragraph 7.2 of the Ministerial Decision of 1995: 'For tickets issued under the label "Honoris Causa"/"Free admission" public fees shall be paid based on of the value of the tickets for that day as established in paragraph 5 of the present decision.'

([24]) According to paragraph 10.1 of the Ministerial Decision of 1995: 'The public fees shall be deposited at the competent income tax office by the tenth day of each month by submitting a statement concerning the fees collected during the previous month'.

([25]) According to paragraph 8.1 of the Ministerial Decision of 1995: 'As provided under the aforementioned paragraphs 2 to 7, it is allowed [for casino operators] to issue long term tickets valid for fifteen or thirty consecutive days or one calendar month, as appropriate. A discount can be granted on the value of the above mentioned long term tickets, as follows:
(a) Forty percent (40 %) of the total value of fifteen daily tickets for the tickets valid for 15 days. In case these tickets are issued for a calendar period of 2 weeks, the last 2 weeks of each month covers the period from the 16th day until the end of the month.
(b) Fifty percent (50 %) of the total value of thirty daily tickets for the tickets valid for thirty days or a month.'

([26]) In 1993, Law 2160/1993 provided that the casinos of Rhodes, Mont Parnès and Corfu would continue to operate as services-clubs of EOT, based on the relevant EOT provisions – namely, Law 1624/1951, Decree 4109/1960 and Law 2160/1993, until a licence was granted to them by the Casino Committee.

provided for the later foreseen privatisation of Corfu) that explicitly stipulated that the price of admission tickets in Mont Parnès casino would remain at EUR 6.

(22) In 2000 EOT was succeeded in the operation of the casinos of Mont Parnès and Corfu by the Hellenic Tourism Company (ETA), fully owned by the Greek State, and from the end of 2000 and until their licensing under Law 2206/1994 in 2003, ETA started ([27]), voluntarily in the beginning and later by virtue of Article 24 of Law 2919/2001, to adapt gradually to the obligations set for casinos by Law 2206/1994, in order to prepare both these formerly State owned casino clubs to be fully licensed as casinos and be privatised. During this transition period ETA, *inter alia*, remitted to the State 80 % of the EUR 6 price of admission tickets in Mont Parnès and Corfu.

(23) In particular, in 2003 the State owned casino of Mont Parnès was converted into a limited company and 49 % of its capital disposed to the private sector ([28]). The license for the Casino Mont Parnès provided for in Law 2206/1994 was finally granted in 2003 under Law 3139/2003 (Article 1(1)). The same law kept the admission price in Mont Parnès at EUR 6 (Article 1(1)(vii)).

(24) In the case of Corfu casino, the license provided for in Law 2206/1994 was initially granted to ETA in 2003 under Law 3139/2003 (Article 1(3)) in order for ETA to contribute it upon its later privatisation. The same provision stated that the admission price to the casino of Corfu would be set by a new ministerial decision, implying in other words that the Ministerial Decision of 1995 was not applicable. According to the Commission's information, no new ministerial decision has been issued and the casino of Corfu continued to charge EUR 6 until its privatisation in August 2010 ([29]), when it started applying the EUR 15 price of admission tickets.

(25) In the case of Rhodes casino, the license under Law 2206/1994 was issued in 1996 by virtue of ministerial decision T/633/29.5.1996. However the casino continued to apply the reduced price of admission tickets until 1999, passing to EUR 15 only after the privatisation which took place in April 1999 (as until its privatisation it operated under the control of EOT – and thus applied the EOT decision of 1992 ([30]) which set the price of admission tickets to the Rhodes Casinos at 1 500 drachmas).

(26) The privately owned Thessaloniki casino was incorporated and licensed in 1995 under Law 2206/1994 ([31]). Until the present date, it has been applying the reduced EUR 6 price of admission tickets applied by the State-owned casinos (in Mont Parnès and Corfu) by virtue of the Law 2687/1953 ([32]) providing that enterprises constituted with foreign investment enjoy treatment at least as favourable as the one applicable to other similar enterprises in the country ([33]). Even later on, when the issue was further raised, the management of the Casino (i.e. Hyatt Regency) asked the price of admission tickets in Thessaloniki casino to be set at the same level as that of the Casino Mont Parnès, i.e. at EUR 6. This request was accepted, following an opinion from the Greek Legal Council of State (Opinion 631/1997/EC). The requirement to remit to the State 80 % of the face value of admission tickets was applicable to the casino of Thessaloniki since the issuance of its license in 1995 ([34]).

## III. GROUNDS FOR INITIATING THE PROCEDURE

(27) The Commission initiated the formal investigation procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) expressing significant doubts about the discriminatory fiscal treatment in favour of several specifically identified casinos in Greece that benefit from a more advantageous taxation than the one to which the rest of the casinos in the country are subject.

(28) The Commission considered that the contested measure departed from the general Greek legal provisions establishing the normal level of levies on admissions in casinos and therefore improved the competitive position of the beneficiaries.

(29) The Commission observed that the contested measure appeared to constitute a loss of State resources for the Greek State, and it provided an advantage to the lower priced casinos. In response to the argument by the Greek authorities that the direct beneficiary of a lower price of admission tickets is the customer, the Commission observed that subsidies to consumers can constitute State aid to enterprises when the subsidy is conditional on the use of a particular good or service from a particular undertaking ([35]).

([27]) For the casino Mont Parnès ETA was followed by the EKP (Elliniko Kasino Parnithas A.E.), set up in 2001 as a subsidiary of the Hellenic Tourism Development Company S.A. (ETA), a company fully controlled by the Greek state.

([28]) The Mont Parnès casino was partially privatised on 10.5.2003 with the sale, by international call to tender, of 49 % of the shares in the company Hellenic Mont Parnès Casino S.A. (EKP) to Athens Resort Casino Holding Company S.A. (ARC), which was set up by the successful candidate grouping (Hyatt Regency – Elliniki Technodomiki) in the call to tender procedure. The company EKP had been set up in 2001 as a subsidiary of ETA, a company fully controlled by the Greek state. ETA was founded in 1998 and had assumed in 2000 the management of the Mont Parnès and Corfu casinos, as successor to EOT (see also footnote 12 above).

([29]) According to information received from the Greek authorities during the formal investigation procedure, the Corfu casino was privatised on 30.8.2010, with the sale, by international call to tender, of 100 % of the shares in the company Corfu Hellenic Casino S.A. (EKK) to V&T Corfu Casino S.A., which was set up by the successful candidate grouping (Vivere Entertainment Commercial & Holding S.A. – Theros International Gaming INC.) in the call to tender procedure. The Company EKK had been set up in 2001 as a subsidiary of ETA.

([30]) See footnote 13.

([31]) Ar. Ph. 904 of 6.12.1994.

([32]) Law 2687/1953 concerning investments and protection of foreign funding.

([33]) The Thessaloniki casino was declared to benefit from the provisions of the Law 2687/1953 according to the Presidential Decree Π.Δ. 290/1995 which assimilated it to the casinos of Mont Parnès and Corfu.

([34]) See also paragraphs 16-18 in the Opening Decision.

([35]) See also paragraphs 19-23 in the Opening Decision.

(30) The Commission also observed that the level of taxation did not appear to be set according to the circumstances of each individual casino ([36]), and it provisionally concluded that the measure is selective ([37]).

(31) The Commission found the contested measure was liable to distort competition between casinos in Greece, as well as in the market of European business acquisition. The Commission noted that it fully respects the right of Member States to regulate gambling on their territory subject to EU law, but cannot accept that these arguments deprive the measure at issue of any effect of distortion of competition or on trade between Member States. The operators in the sector are often international hotel groups, whose decision to invest could be affected by the measure, and in fact casinos may act as an attraction to tourists to visit Greece. The Commission therefore concluded that the measure is capable of distorting competition and affecting trade between Member States ([38]).

(32) The Commission reached the preliminary conclusion that the measure constitutes unlawful aid, since it had been implemented by the Greek authorities without the prior approval of the Commission, and therefore subject to the application of Article 15 of the Procedural Regulation as regards recovery ([39]).

(33) The Commission did not identify any grounds for considering the contested measure compatible with the internal market since it was considered to represent undue operating aid to the beneficiary casinos ([40]).

(34) The Commission finally observed that if its doubts that the measure contains incompatible State aid are confirmed, then pursuant to Article 14(1) of the Procedural Regulation it would be obliged to order its recovery by Greece from the beneficiaries, unless this would be contrary to a general principle of law ([41]).

## IV. COMMENTS FROM THE GREEK AUTHORITIES AND THE INTERESTED THIRD PARTIES

(35) During the formal investigation procedure, the Commission received comments from Greece, from the representative of the company 'Elliniko Kazino Parnithas A.E.' ('Mont Parnès'), and from the representatives of the private Loutraki casino ('Loutraki').

([36]) See also paragraphs 26-28 and 37 in the Opening Decision.
([37]) See also paragraphs 24-29 in the Opening Decision.
([38]) See also paragraphs 30-32 in the Opening Decision.
([39]) See also paragraphs 34-35 in the Opening Decision.
([40]) See also paragraphs 36-38 in the Opening Decision.
([41]) See also paragraphs 39-40 in the Opening Decision.

### IV.1. **Comments from Greece and from Mont Parnès**

(36) As the comments received from the representative of the beneficiary casino of Mont Parnès are essentially identical with the comments received from the Greek authorities, their summary has been presented together under this Section.

#### IV.1.1. *On the presence of aid*

(37) Both the Greek authorities and Mont Parnès contest the existence of State aid. They both argue on the grounds that the State does not forgo any revenue (or that if it does, then the casinos do not gain any advantage).

(38) The Greek authorities argue that the price differentiation is only a price regulation issue, since the tax raised is a uniform proportion of the respective value of the price of admission tickets issued.

(39) According to the Greek authorities, the objective of the setting of a price of admission tickets and the payment to the State is not to raise revenue for the State but to discourage persons of low income from gambling. The fact that the practice of admission tickets also results in public revenues does not alter its nature as a control measure. Thus, the imposition of a price of admission tickets on casino customers entering the gaming area of casinos is regarded by the Greek authorities as constituting an onerous administrative control measure, which however lacks the character of a tax and cannot be regarded as a tax burden according to Judgement No 4027/1998 of the Council of State (the supreme administrative court of Greece) ([42]).

(40) As for the differences between the prices of different casinos, Greece argues that the economic and social circumstances of the various casinos are different and not comparable. The Greek authorities contend that the distinction between charges is justified on public policy grounds, including that 'the conditions applying to each casino, justify and are fully in line with the practice of setting a different ticket price for casinos located near large urban centres … and for casinos in the countryside … which is mainly inhabited by rural populations who – in their majority – have lower incomes and educational levels and are more in need of being discouraged from playing games of chance than the inhabitants of urban areas'.

([42]) In the opinion of the Greek Council of State, this results from the fact that: (a) the legislature, staying in line with the objectives of the law, requires the selling of tickets only to those entering the gaming area and not to the users of other services (hotel, restaurant, etc.) provided on the casino premises, (b) the price of admission tickets is not included in the State's revenues listed pursuant to Article 2(6) of Law 2206/1994, and (c) the legislature provides the option to either establish a uniform set of regulations for all casinos subject to Law 2206/1994, or establish individual regulations if it is deemed that there are special grounds dictating the need for different individual regulations.

(41) On the observation of the complainant (Loutraki) that the price of admission tickets for the casino of Corfu changed from EUR 6 to EUR 15 when it was privatised in 2010, which rather contradicts the public policy arguments, the Greek authorities respond that the remote geographical location of the island of Corfu makes it uncompetitive compared to all other Greek casinos (therefore it does not distort competition). The authorities further argue that it is imperative to make the price of admission tickets dissuasive for the sake of protecting the inhabitants of Corfu, because the change in the operating conditions of the casino following privatisation will inevitably lead to a dramatic increase in its operating hours, its activities in general and its attractiveness.

(42) The Greek authorities and Mont Parnès contend that should there be an advantage to lower priced casinos (because they attract more customers) then by the same token there is no loss of State resources. Furthermore, it is not certain that with a higher ticket price these alleged beneficiaries would generate more revenue for the State, and the alleged loss of revenues is therefore hypothetical. The Greek authorities and Mont Parnès also point out that the benefit of the lower price of admission tickets is received by the customer, and that the proportion of the price kept by the casino is a higher amount in the casinos with a EUR 15 admission, which is therefore a benefit to them.

(43) The Greek authorities and Mont Parnès also maintain that there is no effect on competition/trade on the basis that each casino serves a local market. They dispute the possibility of competition with other forms of gambling cited in the Opening Decision, noting that Internet gambling is currently illegal in Greece.

(44) The authorities and Mont Parnès also contend that even if the view were taken that the reduced price of admission tickets of EUR 6 might have influenced or may influence the decision of a foreign company to invest in a casino business in Greece, the foreign company could always avail itself of Law 2687/1953, as did the company Hyatt Regency Hotels and Tourism (Thessaloniki) S.A. in the case of the Thessaloniki casino.

(45) As regards the allegations of complainant that the beneficiaries are able to grant admission gratuitously, while the 80 % contribution still has to be paid and which therefore illustrates most clearly the aid character of the measure, the Greek authorities claim that the practice is 'exceptional', as casinos allegedly make use of this exception to offer free admission (as a courtesy) mainly to VIPs or famous customers and as this practice is contrary to tax law (Law 2238/1994), since the expenditure from paying 80 % of the ticket price to the State from own resources is not recognised as productive expenditure and cannot be deducted from the company's revenues (which would expose the company applying this practice to substantial tax burdens).

(46) The authorities and Mont Parnès further draw the attention of the Commission to other differences between casinos in terms of various fiscal/regulatory measures. Thus, these differences which allegedly favour Loutraki (the complainant) would counter-balance the advantages that the beneficiaries enjoy due to the lower price of admission tickets. The main measure invoked is that each casino pays a proportion of annual gross profits to the State but under the law the proportion is lower for Loutraki than for others. On this point however, the Commission firstly observes that these other measures invoked by the Greek authorities and Mont Parnès, in case of existence, might constitute a separate aid measure in favour of Loutraki, if all conditions provided by the applicable EU State aid law are met. In any event these measures are distinct from the measure under assessment and therefore they are not covered by the present Decision.

(47) Finally, Greece has indicated that it is examining a potential change of the pricing policy of casinos, in order to eliminate discriminations between casinos. However, it has not yet informed the Commission of the implementation of any such change.

(48) The Greek authorities and Mont Parnès did not submit any observations concerning the compatibility and the legality of the aid.

IV.1.2. *On the quantification and recovery of the aid*

(49) The Greek Authorities and Mont Parnès contend by way of subsidiary argument that even if it were found that the measure under assessment is unlawful and incompatible State aid, any recovery of that aid would run counter to:

— The principle of reasonable confidence of the subject of administration: the issue of the price of admission tickets to the casinos, and particularly the extent to which this price of admission tickets is a financial burden on the casinos, was brought before the Council of State approximately 15 years ago ([43]). The Council of State ruled, under national law, that the price of admission tickets did not have a fiscal nature, which indirectly shows that it was not a financial burden on the casinos. Therefore, the beneficiary casinos could reasonably base their conduct on the assumption that there could be no question of State aid arising from differentiation in these prices, which are not considered a financial burden under national law.

— The principle that a right should not be exercised abusively: the Greek authorities and Mont Parnès contend that because Loutraki only lodged a

([43]) Judgement No 4027/1998 of the Greek Council of State. See also footnote 39 above.

complaint with the Commission 15 years after the adoption of the measure in dispute (in 1995), it is an abusive exercise of its right to have recourse to the Commission to seek the defence of its interests (and rights) arising from the provisions on State aid in the TFEU.

(50) On the calculation of the amount to be recovered, the Greek authorities and Mont Parnès contest the calculation proposed by Loutraki (difference in tax levied per customer between the higher priced and lower priced casinos, multiplied by the number of customers entering the beneficiary casinos). Such calculation would be flawed and arbitrary as it is not certain that with a higher ticket price the alleged beneficiary casinos of Mont Parnès, Thessaloniki and Corfu ([44]) would have the same amount of clientele.

### IV.2. **Comments from Loutraki**

(51) Loutraki argues that the measures provided by national legal provisions constitute a fiscal discrimination in favour of certain casinos insofar as the requirement to remit to the State the uniform 80 % levy on admission in casinos applies to a different tax basis – the two different admission prices set by the State. As the admission price for the beneficiary casinos is significantly inferior to that of the other casinos (EUR 6 instead of EUR 15), this constitutes a loss of revenues for the State and thus amounts to State aid, in light of the distortion of competition it creates.

(52) Loutraki further argues that the measure is not objectively justified, as the imposition of a lower price of admission tickets in the beneficiary casinos is actually contrary to the social objective and the justification and characteristics of the setting of a price of admission tickets to casinos as described by the Judgement No 4027/1998 of the Greek Council of State. Loutraki contends that it cannot be reasonably argued that administrative control and social protection could be achieved by different prices of admission tickets – in casino Mont Parnès, only ca. 20 km from Athens city centre, by a ticket of EUR 6 while in casino Loutraki, ca. 85 km from Athens city centre, by a ticket of EUR 15, or respectively, in casino Thessaloniki, only ca. 8 km from Thessaloniki city centre (also at EUR 6), as opposed to casino Chalcidice, ca. 120 km from Thessaloniki city centre (at EUR 15).

(53) Loutraki observes that, although Greece had previously argued that the reduced price of admission tickets of EUR 6 is justified in consideration of special circumstances applicable to each beneficiary casino, mainly related to the geographical situation of each casino (which determines certain economic, social, demographic and other specificities), nevertheless, in August 2010, the Corfu Casino passed to EUR 15 upon its privatisation, without any explanation as to why the abovementioned special circumstances no longer applied.

(54) On the quantification of the amount to be recovered, Loutraki maintains that this amount is the difference in tax levied per customer multiplied by the number of customers entering the beneficiary casinos.

(55) As concerns the separate measures invoked by Greece and Mont Parnès, which would allegedly favour Loutraki (mainly that Loutraki would pay a lower proportion of annual gross profits to the State as compared to other casinos), Loutraki sustains that in practice it has paid the same amount as its competitors under a separate agreement with the authorities.

## V. **ASSESSMENT OF THE MEASURE**

(56) The measure under assessment is the fiscal discrimination that the Greek authorities have put into place in favour of certain casinos through the implementation of simultaneous legal provisions ([45]) concerning both the fixing of a uniform 80 % levy on the price of admission tickets in casinos, and the setting of two unequal regulated prices of admission tickets at EUR 6 and EUR 15 respectively for publicly and privately owned casinos, thereby placing the latter at a competitive disadvantage ([46]).

### V.1. **Presence of State aid within the meaning of Article 107(1) of the TFEU**

(57) In order to ascertain whether a measure constitutes a State aid caught by the provisions of the TFEU, the Commission has to assess whether it fulfils the conditions of its Article 107(1). This Article states that 'Save as otherwise provided in the Treaties, any aid granted by 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 internal market'.

(58) The Commission will assess hereunder whether the contested measure fulfils the four cumulative conditions to constitute a State aid within the meaning of Article 107(1) of the TFEU.

([44]) Rhodes is not mentioned here, because it applies the EUR 15 price since 1999 (and thus is not affected by potential recovery – in consideration of the 10 years limitation period as provided pursuant to Article 15 of the Council Regulation (EC) No 659/1999).

([45]) In particular, Law 2687/1953; Law 2206/1994; Ministerial Decision Υ.Α 1128269/1226/0015/ΠΟΛ.1292/16.11.1995 – ΦΕΚ 982/Β'/1995; Law 3139/30.4.2003.

([46]) The measure under assessment concerns public casinos and one private casino (Thessaloniki), which was exceptionally allowed to benefit from the treatment of public casinos, as further described herein below.

V.1.1. *Presence of advantage*

(59) In order to constitute State aid, a measure must confer on beneficiaries an advantage which relieves them of charges that are normally borne from their budgets.

(60) Regarding this, the Greek authorities argued, firstly, that, as the level of the contribution that all casinos operating in Greece must pay to the State is uniform (i.e. 80 % of the value of each admission ticket), whereas the element of difference in treatment comes from the pricing policy set in 1994-95 by legal provisions (setting the level of the price of admission tickets at EUR 15 for casinos to be licensed under the provisions of Law 2206/1994), such measure may not be covered by State aid rules.

(61) The Greek authorities also contended that the admission charge constitutes only a measure of administrative control, without having a fiscal character since, as, according to the Decision of the Greek Council of State 4025/1998 (the supreme administrative court), the setting of a price of admission tickets in casinos has a social character and does not constitute a tax measure.

(62) It should however be noted first that the setting of prices by the Law 2206/1994 may not be easily qualified as a typical pricing policy, since all casinos appear to be free to charge consumers a lower price of admission tickets, or even grant free admission, though in all cases they remain subject to the obligation to pay to the State 80 % of the respective value of the admission tickets issued, regardless of what was actually charged to the consumers.

(63) Anyway, in applying the EU rules on State aid, it is irrelevant whether the measure under assessment is of a pricing or tax nature, since Article 107 of the TFEU applies to aid measures 'in any form whatsoever' that provide an advantage. The fact that its primary aim was not to generate fiscal revenues is not in itself sufficient to allow such a measure to escape the qualification of State aid.

(64) Even admitting that the setting of a price of admission tickets in casinos may have a social objective, the question of whether it constitutes an advantage amounting to State aid must be assessed in terms of effects, at the level of individual companies with a view to determining whether some companies contribute less to public revenues. The fact that the exemption from the application of the general price of admission tickets of EUR 15 was granted individually to specific casinos, and in particular the fact that the levy of 80 % is to be paid to the State on the basis of the lower price which those casinos must – in principle (see above) ask, shows that an advantage is granted to those casinos.

(65) The Commission recognises the right of Member States to define under national law the qualification of a measure as being of a tax nature or otherwise. The Commission's assessment is not in any way directed at interpreting national law. However, the measure has the effect of enabling a regular continuous payment to the State of 80 % of the correspondent price of all the admission tickets issued by each casino. Additionally, the Commission observes that according to national law (in particular the Law 2206/1994 and the Ministerial Decision of 1995), the respective amounts are deposited with the competent income tax office ([47]). In consideration of the above, and without it affecting in any way the qualification of the measure under national law, the Commission observes that the measure under assessment has effects similar to those of a fiscal measure. Therefore, for the sole purposes of this Decision and insofar as its assessment under EU State aid law is concerned, the Commission shall refer to the measure as a 'fiscal measure' or a 'tax' in the current Decision.

(66) The measure under assessment, namely the fiscal discrimination produced by the joint effect of a uniform admission tax applied to unequal regulated prices of admission tickets, is placing the casinos owned by the State in Greece at an advantage over those privately owned. The joint effect of the two State actions makes that, while the privately owned casinos must pay to the State an admission tax of EUR 12 (80 % × 15) per person, the casinos owned by the State only pay EUR 4,8 (80 % × 6) ([48]).

(67) By this measure the Greek State relieves the public casinos from a burden that otherwise they should bear if a non-discriminatory and competitive-neutral taxation were enforced. This non-discriminatory and competitive neutral taxation was, in principle, established in Greece by Law 2206/1994 on the creation, organisation, functioning and control of casinos which set at EUR 15 the price of admission tickets and at 80 % of that level the admission tax burden due to the State. However, by not enforcing this non-discriminatory and competitive neutral taxation in respect of the public casinos (and the assimilated private casino of Thessaloniki) and instead allowing them to pay only EUR 4,8 as admission tax, the Greek State has favoured these undertakings. These casinos have effectively paid a lower fiscal burden per person out of their respective total income. The Commission notes that this total income includes not only their admissions revenue (revenues made solely from the price of admission tickets), but also that from their other sources of income, such as

([47]) According to paragraph 10.1 of the Ministerial Decision of 1995, cited above: 'The public fees shall be deposited at the competent income tax office by the tenth day of each month by submitting a statement concerning the fees collected during the previous month'.

([48]) Notwithstanding the reference to public casinos above, the Commission notes that the same lower price of admission tickets applicable to public casinos is exceptionally applicable to one privately owned casino – Thessaloniki – as described in this Decision.

gambling, accommodation, bar and restaurant services, shows etc. (total revenues).

(68) It is settled case-law that the concept of aid includes not only positive benefits, but also measures which, in various forms, mitigate the charges normally included in the budget of an undertaking and which, therefore, without being subsidies in the strict sense of the word, are similar in nature and have the same effect ([49]). The advantage may be provided through a reduction in the undertaking's tax burden in various ways, including a reduction in the tax base.

(69) In this case, the casinos Corfu, Mont Parnès and Thessaloniki (as well as Rhodes casino, until 1999 ([50])), benefit from an advantage similar to a reduction in the tax base, since, as previously explained, ad hoc provisions specific to these casinos set the tax which they must pay per admission at a lower level compared to that imposed on other casinos.

(70) The Greek authorities observed that the direct beneficiary of a lower tax burden is the customer. However, even if it could be argued that the customer is also a beneficiary of a reduced tax burden per admission, since he pays a total lower price, this fact does not preclude the measure from providing an advantage to the relevant undertakings, in this case the beneficiary casinos, since they have to pay a lower amount of fiscal charges per customer received.

(71) In fact, as shown in fiscal cases, derogations from taxes nominally paid by the consumer but collected by the supplier may potentially constitute State aid, as may other incentives to consumers to purchase particular products and services ([51]).

(72) In line with past practice ([52]), the Commission believes that reductions in taxes on consumers can constitute State aid to undertakings when the reduction is conditional on the use of a particular good or service from a particular undertaking. The argument that the direct beneficiary is the customer is not therefore an obstacle to a finding of State aid.

(73) Furthermore, given the customary commercial practice followed by casinos in Greece to waive the price of the admission tickets while paying to the State the admission tax (80 % of the face value of the admission tickets), the advantageous effect of the fiscal discrimination in favour of the public casinos is further reinforced, since the cost of the admission is notably higher for the private casinos with a higher admission tax of EUR 12 than for the public ones that only have to finance EUR 4,8 out of total revenue of their business.

(74) The Greek authorities claimed that the practice of the beneficiary casinos of granting free admission on certain week days is exceptional. It remains the case that it is specifically provided for in the national law (Ministerial Decree of 1995). The Commission has evidence that, contrary to the argument made by Greece that such a practice is reserved for VIPs or famous customers, according to publicly available information (for example, leaflets offering free access distributed in newspapers and on the Internet), free admission is granted to any and all customers, on certain days a week, every week, as a customary practice (e.g. Thessaloniki Casino, advertises on its Internet page that it grants continuous free admission from Sunday to Thursday ([53])). The practice of free admission does not appear to be exceptional among the beneficiary casinos.

(75) As concerns the argument made by Greece that this practice is contrary to national tax law, the Commission reminds that the permission to grant free entrance is expressly provided for in the national law concerning casinos, and it manifestly is applied by the beneficiary casinos.

(76) As to the argument that the expenditure from paying 80 % of the ticket price to the State from own resources is not recognised as productive expenditure and cannot be deducted from the company's revenues under Greek tax law, thus exposing the company applying this practice to substantial tax burdens, the Commission observes that this argument actually favours the arguments made by the complainant, as to the fact that because of the significant tax burden resulting from the payment of the tax out of own revenues, a private casino cannot in practice afford to grant free admission, and thus reinforces the argument that this constitutes an advantage to the lower priced casinos.

(77) Greece also contended that because casinos keep 20 % of the unequal admission price, the advantage is for casinos with a higher price that cash in a net revenue of EUR 3, compared to the EUR 1,2 for the public casinos. This contention is however in fact misleading, since it ignores two key facts to understand in full the true anti-competitive effects of the measure. On the one hand, the setting by regulation of the prices of tickets, including the admission tax, at a lower level for certain casinos, makes them more attractive for customers, thus (i) deviating demand from the pattern that would prevail if casinos would compete only on their own merits based on the individual scope and quality of the services offered and (ii) all other things equal, increasing artificially their

([49]) See judgement of the Court of Justice of 8 November 2001, case C-143/99, Adria-Wien Pipeline et Wietersdorfer & Peggauer Zementwerke, 2001 ECR I-8365.

([50]) Rhodes casino began applying the EUR 15 price after its privatisation in 1999, and has paid 80 % thereof since that date.

([51]) See for instance case C76/2003 – Commission Decision 2011/276/EU of 26 May 2010 concerning State aid in the form of a tax settlement agreement implemented by Belgium in favour of Umicore SA (formerly Union Minière SA), OJ L 122, 11.5.2011, p. 76.

([52]) Commission Decision 98/476/EC of 21 January 1998 on tax concessions under § 52(8) of the German Income Tax Act, OJ L 212, 30.7.1998, p. 50.

([53]) Accordingly, the Thessaloniki Casino offers from Sunday to Thursday free price of admission between 7 am – 20 pm (from 10/01) – http://www.regencycasinos.gr/en-GB/Promotion/Kliroseis/Kliroseis.aspx

level of admissions. On the other hand, as previously explained, the revenues from admissions are only a limited proportion of the total revenues that a customer attracted by a casino generates for the undertaking and out of which the casinos have to pay the admission tax.

(78) Finally, it is to be noted that the existence of advantage in the fiscal discrimination is even recognised by the relevant national provisions themselves. As described by the Greek authorities, the subjection of the casino of Thessaloniki to the regime of lower priced admission tickets and (lower) tax is made on the basis of a Law of 1953 which grants to undertakings established with foreign capital the most favourable treatment granted to national undertakings. It can be observed that although the Greek authorities maintain that the said regime is not advantageous, this Law is nevertheless applied by the Greek authorities to the Thessaloniki casino on grounds that it is the most favourable treatment to national undertakings, by contrast with the more onerous one applied to other private casinos.

(79) As concerns the subsidiary remark made by the Greek authorities and Mont Parnès regarding other differences between casinos in terms of various fiscal/regulatory measures, differences which allegedly favour Loutraki (the complainant) and would thus counter-balance the advantages that the beneficiaries enjoy due to the lower price of admission tickets ([54]), the Commission observes that the 'offsetting' of one measure (differences in general taxation) against another (differences in prices for admission tickets and their specific taxation) cannot be accepted as an argument that the measure under assessment does not constitute aid. In any case, as already mentioned, these aspects are separate and are not subject to the present Decision (see also paragraph 46 herein above).

(80) In regard of all the above considerations, the Commission concludes that the measure under assessment, namely the fiscal discrimination produced by the joint effect of a uniform admission tax applied to unequal regulated prices, provides an advantage to the lowered priced casinos.

V.1.2. *Presence of State resources and imputability to the State*

(81) The advantage referred to above is imputable to the State and is financed by State resources.

(82) As previously explained, the fiscal discrimination is the result of a series of administrative acts, decrees and regulations adopted by the Greek State, among which in particular: the Law 2206/1994; the Ministerial Decision of 1995; the Law 3139/30.4.2003, the Law 2687/1953; the decisions of the General Secretary of EOT (managing the public casinos) issued in accordance with Law 1624/1951 and Decree 4109/1960: EOT decision 535633/21.11.1991, setting the price of admission tickets to the Mont Parnès Casino at 2 000 drachmas; EOT decision 508049/24.3.1992 setting the price of admission tickets to the Corfu and Rhodes Casinos at 1 500 drachmas (later adjusted for the Corfu Casino to 2 000 drachmas by decision 532691/24.11.1997); the licenses granted to each casino under national law and confirming the respective price of admission tickets and the obligation to pay 80 % thereof as applicable to each casino.

(83) Furthermore the fiscal discrimination under assessment is financed by State resources. If the State forgoes revenues which it would otherwise have to collect from an undertaking in normal circumstances, the relevant measure is financed by State resources.

(84) In fiscal terms the fiscal advantage in this case results from the artificial reduction for the public casinos of the tax base on which the 80 % admission tax rate sits, from the general EUR 15 to the EUR 6 face value of the admission ticket in the public casinos.

(85) In line with the Court's case-law ([55]), this discriminatory reduction in tax base leads to a loss of tax revenue for the State, which is equivalent to consumption of State resources in the meaning of Article 107(1) of the TFEU. Thus, in general terms, in the case under assessment the Greek State forgoes fiscal revenue from the public casinos in the amount of EUR 7,20 per admission, which corresponds to the difference between the tax of EUR 12 per admission remitted to the State by the private casinos and the tax of EUR 4,80 per admission remitted to the State by the public casinos. However, some adjustments may be taken into account when evaluating the advantage received by each beneficiary casino (as further described in Section V.4 '*Quantification and recovery*' herein below – more particularly, it would

([54]) The main measure invoked is that each casino pays a proportion of annual gross profits to the State but under the law the proportion is lower for Loutraki than for others. However, during the formal investigation procedure, Loutraki sustained that in practice it has paid the same amount as its competitors under a separate agreement with the authorities.

([55]) See judgement of the Court of Justice of 10.1.2006, case C-222/04, Cassa di Risparmio di Firenze and others [2006] ERC, I-289. See Commission Decision of 22 September 2004, N 354/04, Irish Holding Company Regime, OJ C 131, 28.5.2005, p. 10. In this sense also Commission Notice on the application of the State aid rules to measures relating to direct business taxation, OJ C 384, 10.12.1998, p. 3.

appear that until 2000 Mont Parnès and Corfu have not paid at all any admission tax to the State, therefore the advantage in that case is at the level of the tax of EUR 12 per admission remitted to the State by the private casinos).

(86) Greece argued that, as the casinos with a lower price may thereby attract more customers, there is no certainty that the State forgoes revenue. Greece maintains that therefore the measure would not constitute State aid.

(87) As already mentioned in the Opening Decision, the Commission does not accept this argument. In line with its previous practice ([56]), the Commission considers that the fact that a tax reduction in respect of certain tax payers can generate as a result an increase in the overall level of revenues collected under the relevant tax does not necessarily mean that the measure is not financed from State resources.

(88) In fact the contention by the Greek authorities is erroneous in that the benchmark against which the Greek authorities test the effects of the fiscal discrimination on the State budget is biased by the advantage built in the measure. The Greek authorities introduce in their reasoning the dynamic effect of a reduction in price that might increase the demand and eventually the tax collected, since the latter is proportionate to the number of admissions. This comparison is however inaccurate, considering that it is the inequality itself created by the advantage, namely the fact that there is a lower price and the corresponding lower tax burden per admission, which makes the demand increase.

(89) Anyway the Greek authorities have not provided any proof that the overall tax revenue of the admission tax on casinos is maximised with that pattern of unequal prices. In fact if the Commission were to follow the reasoning that a lowering of the admission price to EUR 6 produces an increase in tax collection, the tax revenue maximisation would take place at a level where all admission tickets are priced at EUR 6 for all casinos both private and public, contradicting the Greek contention that this point is reached with the fiscal discrimination resulting from the unequal prices.

(90) Accordingly, the contested advantage is financed through State resources.

([56]) Commission Decision 2003/515/EC of 17 February 2003 on the State aid implemented by the Netherlands for international financing activities (State aid case C 52/01), OJ L 180, 18.7.2003, p. 52, paragraph 84.

V.1.3. *Selectivity*

(91) According to Article 107(1) of the TFEU, in order to constitute State aid, the measure must be specific or selective in that it favours '*certain undertakings or the production of certain goods*'.

(92) According to the case-law of the Court of Justice ([57]), 'as regards the assessment of the condition of selectivity, which is a constituent factor in the concept of State aid, it is clear from settled case-law that Article 87(1) EC [now Article 107(1) of the TFEU] requires assessment of whether, under a particular statutory scheme, a State measure is such as to "favour certain undertakings or the production of certain goods" 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 system in question' ([58]). The Court has also held on numerous occasions that Article 107(1) of the TFEU does not distinguish between the causes or the objectives of State aid, but defines them in relation to their effects ([59]). According to the Commission's practice and the EU case-law concerning fiscal cases, the selective advantage involved may derive from an exception to the tax provisions of a legislative, regulatory or administrative nature or from a discretionary practice on the part of the tax authorities. However, the selective nature of a measure may be justified by 'the nature or general scheme of the system' ([60]), in which case the measure may be considered not to constitute State aid.

(93) Firstly, the Commission observes that in the case under review the general tax system is constituted by the regime applicable (in principle) to all casinos, as established by the Law 2206/1994 and the implementing Ministerial Decision of 1995 (as also confirmed by the Greek authorities – see paragraph 19 herein above).

(94) Secondly, the Commission notes that the measure at issue constitutes a departure from the application of the general tax system. As confirmed by the Greek authorities, the special provisions applicable to the

([57]) See, to that effect, judgement of the Court of Justice of 29.4.2004, case C-308/01, GIL Insurance [2004] ECR I-4777, paragraph 68, and judgement of the Court of Justice of 3.3.2005, case C-172/03, Heiser [2005] ECR I-1627, paragraph 40, judgement of the Court of Justice of 6.9.2006, case C-88/03, Portugal v. Commission [2006] ECR I-7115, paragraph 54.

([58]) See, to that effect, judgement of the Court of Justice of 6.9.2006, case C-88/03, Portugal v. Commission [2006] ECR I-7115, paragraph 54.

([59]) See, to that effect, judgement of the Court of Justice Case T-93/2002 of 18 January 2005 Confédération nationale du Crédit mutuel/Commission 2005 ECR II-143.
See for instance judgement of the Court of Justice of 29.2.1996, case C-56/93, Belgium v Commission [1996] ECR I-723, paragraph 79; judgement of the Court of Justice of 26.9.1996, case C-241/94, France v Commission, [1996] ECR I-4551, paragraph 20; judgement of the Court of Justice of 17.6.1999, case C-75/97, Belgium v Commission, [1999] ECR I-3671, paragraph 25; and judgement of the Court of Justice of 13.2.2003, case C-409/00, Spain v Commission, [2003] ECR I-10901, paragraph 46.

([60]) Case 173/73 Italy v. Commission [1974] ECR 709.

public casinos (and the assimilated private casino of Thessaloniki) are considered exceptions from the application of the general provisions of the Law 2206/1994 and the implementing Ministerial Decision of 1995 (see also paragraph 19 and the following herein above).

(95) The Commission observes that the requirement to remit 80 % of the price of admission tickets did not apply to the casinos of Mont Parnès and Corfu until 2003. As noted above, as concerns the casinos of Thessaloniki and Rhodes, this requirement became applicable upon issuance of their license under the Law 2206/1994, namely since 1995 in the case of Thessaloniki, and since 1996 in the case of Rhodes. As concerns the price of admission tickets, it has remained at EUR 6 in the case of Mont Parnès and Thessaloniki until present, for Corfu until its privatisation in August 2010, and for Rhodes until its privatisation in 1999. However, both the requirement to remit 80 % and the price of admission tickets of EUR 15 applied to other casinos as of 1995 and have been in practice applied as such.

(96) In consideration of all the above, the Commission considers that the measure is selective.

(97) Thirdly, the Commission observes, however, that the selective nature of a measure may be justified by 'the nature or general scheme of the system', that is to say, whether the exceptions to the system or differentiations within that system derive directly from the basic or guiding principles of the tax system in the Member State concerned (third step of the selectivity analysis). If so, the Commission considers that, under the settled case-law of the Court ([61]) the measures introducing a differentiation between undertakings when that differentiation arises from the nature and overall structure of the system of charges of which they form part do not constitute State aid. This justification based on the nature or overall structure of the tax system reflects the consistency of a specific tax measure with the internal logic of the tax system in general. However, the Commission's practice and the Court's case-law have adopted a very restrictive approach for these justifications. Only reasons inherent in the tax system can be invoked.

(98) The Greek authorities stated that the individual circumstances of each casino are different, and that the prices of admission tickets are set in function of those circumstances, taking account of the objective of setting such a price which is to discourage persons of low income from gambling.

(99) The Commission cannot accept these arguments. The argument that the level of the price is set according to and justified by the circumstances of each individual casino, taking account of the objective of discouraging persons of low income from gambling, cannot be reconciled with the fact that the casinos of Mont Parnès and Thessaloniki, which apply the price of EUR 6, are both close to major centres of population in Greece. Nor can it be reconciled with the explicit possibility to admit customers without payment provided that 80 % of the price is nonetheless remitted to the State.

(100) Furthermore, the Commission also observes that it is not apparent why this lower price is necessary as concerns these casinos specifically and not in the case of other casinos, nor have the Greek authorities explained the economic calculation for setting the lower price of admission tickets at the specific level of EUR 6 and not another intermediary level, and if individual circumstances are concerned, which according to Greece mainly consist in the geographical situation of each casino, why all the beneficiary casinos are (in principle, see above) obliged to charge the same price of admission tickets and not a 'personalised' one, adapted to their individual situation. As an example, should the lower price of admission tickets be justified by the specificities of the individual geographical situation of each of the casinos, than such reasoning in any case would not apply to the casino of Thessaloniki who seems to enjoy this treatment not in consideration of its geographical situation, but in consideration of a national provision granting to undertakings established with foreign capital the most advantageous treatment applicable to national undertakings. Thus, the geographical situation of the casino of Thessaloniki does not appear to have been taken into consideration at any time in setting the price of its admission tickets. As a further example, in August 2010, the Corfu Casino passed to EUR 15 upon its privatisation. However, the Greek authorities have not satisfactorily explained why at that time the abovementioned special circumstances no longer applied and thus why the lower price of admission tickets was no longer necessary in consideration thereof.

(101) In light of all the above, the Commission concludes that the selective character of the measure in review is not justified by the nature of the general system. Therefore, the contested measure is considered to include a discriminating element, in the form of a reduction in the tax base resulting in a fiscal advantage benefiting to individually determined casinos, discrimination which is not justified by the logic of the Greek general relevant tax system.

(102) Accordingly, the Commission therefore concludes that the criterion of selectivity in the sense of Article 107(1) of the TFEU is met in the present case.

V.1.4. *Distortion of competition and effect on trade*

(103) In order to constitute State aid the measure must affect competition and trade between Member States. This

([61]) See case C-88/03, Portugal v. Commission, paragraph 81 see footnote 49 here above, See judgement of the Court of First Instance of 9.9.2009, case T-227/01, Territorio foral de Alava and others, not yet published, paragraph 179 and judgement of the Court of First instance of 9.9.2009, case T-230/01, Territorio foral de Alava and others, not yet published, paragraph 190.

criterion supposes that the beneficiary of the measure exercises an economic activity, regardless of the beneficiary's legal status or means of financing.

(104) According to the Court's case-law ([62]), 'for the purpose of categorising a national measure as prohibited State aid, it is necessary, not to establish that the aid has a real effect on trade between Member States and that competition is actually being distorted, but only to examine whether that aid is liable to affect such trade and distort competition. In particular, when aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid. […] In addition, it not necessary that the beneficiary undertaking itself be involved in intra-Community trade. Aid granted by a Member State to an undertaking may help to maintain or increase domestic activity, with the result that undertakings established in other Member States have less chance of penetrating the market of the Member State concerned.' Moreover, under settled case-law of the Court ([63]), for a measure to distort competition and affect trade between Member States it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition in the internal market ([64]). The Commission considers that the conditions set out in the case-law are fulfilled for the following reasons.

(105) The contested measure alleviates the taxes that the beneficiaries have to pay with respect to the rest of casinos in Greece, thereby strengthening their comparative financial position and increasing the profitability of their investments as opposed to a situation where their profitability would be exclusively based on their own merits.

(106) As above mentioned, under settled case-law, the criterion of trade being affected is met if the recipient firm carries on an economic activity involving trade between Member States. The mere fact that the aid strengthens the firm's position compared with that of other firms which are competitors in intra-European trade is enough to allow the conclusion to be drawn that intra-European trade is affected. Neither the fact that aid is relatively small in amount, nor the fact that the recipient is moderate in size or its share of the European market very small, nor indeed the fact that the recipient does not carry out exports or exports virtually all its production outside the European market do anything to alter this conclusion ([65]).

(107) Greece argued that the situation of the casinos and the distances between them mean that each serves a local market and therefore that the measure cannot distort competition or affect trade between Member States. However, pursuant to case-law ([66]), there is no threshold in order to determine the actual or potential effect on competition and on trade between Member States, and therefore, this condition for applying Article 107(1) of the TFEU may be completed independently of the local or regional provision of the services concerned or the importance of the field of activity concerned.

(108) Greece also argued that the gambling market is not harmonised between Member States, who are therefore free to regulate it at national level. Greece invoked the jurisprudence of the Court which allows restrictions to the single market for gambling services in the name of protection of consumers from fraud and criminality ([67]).

(109) The Commission fully respects the right of Member States to set the objectives of their policy in the area of gambling provided that any restrictions on the freedom to provide services are suitable for achieving the objectives pursued, do not go beyond what is necessary in order to achieve those objectives and are applied in a non-discriminatory manner. However the Commission cannot accept that these arguments deprive the measure at issue of any effect of distortion of competition or on trade between Member States.

([62]) See, to that effect, judgement of the Court of Justice C-372/97, Italy v. Commission [2004] ECR I-3679, paragraph 44, judgement of the Court of Justice C-66/02, Italy v. Commission [2005] ECR I-10901, paragraph 111, judgement of the Court of Justice C-222/04, Cassa di Risparmio di Firenze [2006] ECR I-289, paragraph 140.

([63]) Judgement of the General Court, case T-214/95, Vlaams Gewest v. Commission, [1998] ECR II-717.

([64]) Judgement of the Court in case Philip Morris/Commission, of 17 September 1980, aff. 730/79, Rec. 1980, p. 2671, paragraphs 11 and 12, and judgement of the General Court in case Het Vlaamse Gewest/Commission, of 30 April 1998, aff. T-214/95, Rec. 1998, p. II-717, paragraphs 48-50.

([65]) Judgement of the General Court in the case Het Vlaams Gewest/Commission, of 30 April 1998 cited above; Judgment of the Court in case Altmark trans et Regierungspräsidium Magdeburg, of 24 July 2003, aff. C-280/00, Rec. 2003, p. I-7747, paragraphs 81-82 and judgment of the Court in case Heiser, of 3 March 2005, aff. C-172/03, Rec. 2005, p. I-1627, paragraphs 32-33.

([66]) In particular judgements of the General Court in case C-172/03; Wolfgang Heiser/Finanzamt Innsbruck, of 3 March 2005 and case C-280/00, Altmark Trans et Regierungspräsidium Magdeburg, of 24 July 2003.

([67]) In particular judgment of the Court of 8 September 2009 in case C-42/07 Liga Portuguesa de Futebol Profissional and Bwin International Ltd, formerly Baw International Ltd v Departamento de Jogos da Santa Casa da Misericórdia de Lisboa 2009 ECR I-7633.

(110) The operators in the sector are often international hotel groups ([68]) that compete which each other, whose decision whether to invest or divest in casinos or other hotel facilities are affected by the measure, since it impacts the comparative profitability of these groups and their investments. Casinos are often sited in tourist destinations, which would indicate that the presence of a casino may act as an attraction to tourists to visit Greece. Indeed casinos fell under the responsibility of the Ministry of Tourism in Greece. In addition, the Commission notes that there is a certain cross-border mobility of customers; moreover, casino services are themselves operated in a cross-border environment – for instance, casinos operate such services on cruise ships linking Greece to Italy and other destinations. More widely, some persons wishing to gamble may be able to choose between gambling in a casino and doing so on line. On line gambling is an international business and gamblers in Greece may be able to access such services provided by operators in other Member States. The case referred to by Greece (see paragraph 108) in fact concerned Internet gambling. The Greek authorities disputed the possibility of competition with other forms of gambling cited in the Opening Decision, noting that Internet gambling is currently illegal in Greece. However, and despite the current legal situation in Greece, the Greek authorities have recognised themselves that Internet gambling has in fact grown 'to uncontrollable proportions' ([69]). In this context reference should also be made to the judgement of the Court of Justice in Case C-65/05 *Commission v Greece* ([70]) in which the Court held that Law 3037/2002 which aimed at banning Internet gambling in Greece amounted to an unjustified barrier to the freedom of establishment and the freedom to provide services.

(111) Furthermore, the overall economic crisis affects consumer habits and disposable income for entertainment purposes such as using casino services. In this particular context a differentiation in prices of admission tickets has an even more significant distortive impact on the choices made by consumers and thus is liable even more so to distort competition on the casino market.

(112) As concerns the argument proposed by the authorities and Mont Parnès that even if the view were taken that the reduced price of admission tickets of EUR 6 might have influenced or may influence the decision of a foreign company to invest in a casino business in Greece, the foreign company could always avail itself of Law 2687/1953, the Commission observes that the application of the Law of 1953 is not automatic and would in fact allow the further granting of the more advantageous treatment granted to the beneficiary casinos (i.e. the lower price of admission tickets of EUR 6) to other undertakings. This measure would thus be liable to further propagate the fiscal discrimination under assessment. Furthermore, the Commission notes that although the Law 2687/1953 could have been invoked by other casinos, if they had brought in capital from abroad and had submitted the application in good time, its application is subject to certain specific arbitrary rules that make it a selective measure. In fact, the only one other example of potential application of this Law that has been brought to the attention of the Commission – namely concerning the casino on Syros, who submitted an application under this law – was refused because the application was submitted after the importing of the foreign capital (and not ahead of this).

([68]) For instance, the Mont Parnès casino is operated, as license holder, by the private company Athens Resort Casino Holding Company S.A. (ACR). ACR acquired 49 % of the shares of the casino, and took over its management, after its partial privatisation in 2003 (while the public company ETA kept 51 %). 70 % of ARC is owned by the company Regency Entertainment Leisure and Tourism S.A (formerly Hyatt Regency Hotels and Tourism Thessaloniki S. A.) and the remaining 30 % by the company Ellaktor S.A. (formerly Elliniki Technodomiki S.A.) In Greece, Hyatt Regency also operates and controls Regency Casino Thessaloniki. The multinational Hyatt Hotels corporation, with headquarters in Chicago, Illinois (USA) manages, franchises, owns and develops Hyatt branded hotels, resorts and residential and vacation ownership properties around the world. As of 31 December 2010, the company's worldwide portfolio consisted of 453 properties: full service hotels operate under the Hyatt®, Park Hyatt®, Andaz™, Grand Hyatt®, Hyatt Regency® brands; two select service brands are Hyatt Place® and Hyatt Summerfield Suites™; vacation ownership properties are developed under the Hyatt Vacation Club® brand. Under the brand Hyatt Regency alone there are 9 hotels/resorts in France, UK, Germany, Greece, and Poland. Hyatt operates 4 casinos under the brand Hyatt Regency – the Thessaloniki casino and the hotel and casino Hyatt Regency Warsaw in Warsaw, Poland (2 other casinos are in South Korea and in Wisconsin, USA). This information is available on the site – www.hyatt.com.

For another example, as concerns Loutraki, the Club Hotel Casino Loutraki is a joint venture between the Municipality of Loutraki (through D.A.E.T. Loutraki S.A.) and the multinational holding company of Club Hotel Loutraki S.A., which is the administrator and chief investor in the Casino Loutraki. According to information available on the site http://www.clubhotelloutraki.gr, significant names from the Greek and international business world participate in Club Hotel Loutraki, such as Casinos Austria International (one of the largest investors in casinos internationally, with 67 casinos in 15 countries) Piraeus Bank, EFG Eurobank Ergasias, as well as Israeli companies whose holdings include, among others, six more casinos and chains of luxury hotels.). This information is available on the site http://www.clubhotelloutraki.gr/.

The multinational company Queenco Leisure International (QLI) has the sole management of Casino Rodos but is also involved as shareholder and managerially in the following casinos: Club Hotel Casino Loutraki – Loutraki, Greece (Shareholder and joint management). Casino Palace – Bucharest, Romania (Major Shareholder and sole management). Sasazu – Prague, Czech Republic (Unique shareholder and sole management). This information is available via the site http://www.casinorodos.gr/.

([69]) Government consultation on legislative initiative on regulation of the gambling market, summer 2010.

([70]) Judgment of the Court (Second Chamber) of 26 October 2006, Case C-65/052006 ECR p. I-10341. See also judgement of the Court (Second Chamber) of 4 June 2009, Case C-109/08 – Commission of the European Communities v Hellenic Republic, 2009 ECR I-4657.

(113) The Commission notes, further, that when the casino of Mont Parnès was privatised, the possibility of a licence for a second casino with the same region was specifically provided for in the sale. Clearly the likelihood of investment in such an operation would depend on the conditions of competition with the existing operator. Since it can not be ruled out that casinos are competing with similar companies in another Member State, this requirement pursuant to Article 107(1) of the TFEU must be regarded as fulfilled.

(114) Therefore the Commission concludes that the contested measure is liable to distort competition and affect trade between Member States by potentially improving the operating conditions of the beneficiaries being directly engaged in economic activities, which are liable to pay this tax on admissions in casinos in Greece.

V.1.5. *Conclusion*

(115) Given all the above considerations, the Commission concludes that the criteria for the existence of aid within the meaning of Article 107 of the TFEU are met and that the measure constitutes State aid in favour of the casinos with a lower price of admission tickets. These casinos are Mont Parnès, Corfu, Thessaloniki and Rhodes. In the case of Rhodes, the Commission understands that the casino is no longer a beneficiary (as it stopped practicing the lower price of admission tickets upon its privatisation in April 1999). The Commission considers that neither the Greek authorities nor Mont Parnès have advanced any argumentation which would be sufficiently articulated to alter this conclusion.

V.2. **Compatibility of the aid**

(116) As stated in the Opening Decision, the Commission considers that the measure in question does not qualify for any of the derogations laid down in Article 106 or 107 of the TFEU.

(117) Greece has so far argued that there is no State aid involved and has not offered any arguments as to why any aid would be compatible.

(118) The Commission recognises, as noted above, the right of Member States to regulate gambling on their territory subject to EU law, and that such regulation in order to control and discourage gambling is a legitimate objective of public policy. However the Commission does not believe that this brings the aid, even if this is its objective, within the remit of Article 106(2) of the TFEU. In any event, as noted above, the argument that the measure has the objective of discouraging gambling cannot be reconciled with the fact that the casinos which apply the price of EUR 6 include those closest to the major centres of population in Greece. Nor can it be reconciled with the explicit possibility to admit customers without payment provided that 80 % of the price is nonetheless remitted to the State.

(119) The derogations in Article 107(2) of the TFEU, concerning 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 certain areas of the Federal Republic of Germany, do not apply in this case.

(120) Nor does the derogation provided for in Article 107(3)(a) apply, which authorises aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment because the measure is not conditional on realising any type of activity in specific regions ([71]).

(121) In the same way, the contested measure cannot be regarded as promoting the execution of a project of common European interest or remedying a serious disturbance in the economy of Greece, as provided for in Article 107(3)(b). Nor does it have as its object the promotion of culture and heritage conservation as provided for in Article 107(3)(d).

(122) Finally, the contested measure shall be examined in the light of Article 107(3)(c), which provides for the authorisation of aid to facilitate the development of certain economic activities or of certain economic areas, where such an aid does not adversely affect trading conditions to an extent that is contrary to the common interest. In this respect, however, it is noted that the contested measure does not fall under any of the applications of this subparagraph which the Commission has promulgated, or under any of the frameworks or guidelines, which define the conditions to consider certain types of aid compatible with the internal market.

(123) The contested measure constitutes operating aid that artificially reinforces the competitive position of certain undertakings over other similar undertakings and is not conditional upon the realisation by the beneficiaries of any specific action aiming at the achievement of policy objectives of common interest.

([71]) See, *inter alia*, for precedent Commission's practice Commission Decision 2004/76/EC of 13 May 2003, on the aid scheme implemented by France for headquarters and logistic centres, OJ L 23, 28.1.2004, p. 1, paragraph 73; see also, for a similar reasoning, Commission Decision 2003/515/EC of 17 February 2003, on the State aid implemented by the Netherlands for international financing activities, OJ L 180, 18.7.2003, p. 52, paragraph 105; Commission Decision 2004/77/EC of 24 June 2003, on the aid scheme implemented by Belgium – tax ruling system for US foreign sales corporations, OJ L 23, 28.1.2004, p. 14, paragraph 70.

(124) In particular, the Commission notes that the advantage granted under the contested measure is not related to investment, job creation or specific projects. It simply relieves the undertakings concerned of charges normally borne by similar undertakings and must therefore be considered as operating aid. As a general rule, operating aid does not fall within the scope of Article 107(3)(c) since it distorts competition in the sectors in which it is granted and is at the same time incapable, by its very nature, of achieving any of the objectives laid down in that provision ([72]). Although exceptionally such aid may be granted in regions eligible under the derogation in Article 107(3)(a) of the TFEU and although certain regions of Greece are so eligible, the Commission has severe doubts whether the conditions for compatibility of such operating aid are met in the current case. In line with the standard practice of the Commission, such aid cannot not be considered compatible with the internal market, as it does neither facilitate the development of any activities or economic areas nor it is limited in time, digressive or proportionate to what is necessary to remedy to a specific economic handicap of the areas concerned.

(125) In light of the above, it must be concluded that the measure under review is incompatible with the internal market.

### V.3. **Legality of the aid**

(126) As stated in the Opening Decision, in view of the fact that the first acts producing the fiscal discrimination between casinos date from 1994 and 1995, the Commission has considered whether the measure in its entirety represents existing aid in the sense of Article 108(1) of the TFEU.

(127) The fiscal discrimination was introduced in 1995 illegally– that is, from the perspective of EU State aid law – by the choice made by the Greek authorities to allow in favour of certain casinos derogations from the general rule deriving from the Law 2206/1994 and the Ministerial Decision of 1995. In particular, the Greek authorities allowed the public casinos of Mont Parnès, Corfu and Rhodes to continue to apply a lower price of admission tickets of EUR 6 instead of the standard price of EUR 15, and furthermore, also specifically granted this more advantageous treatment to the casino of Thessaloniki in 1995, based on the Law of 1953 (concerning foreign capital). Meanwhile, this standard level of EUR 15 was imposed and effectively respected by the 5 other private casinos which were established and licensed (under the Law 2206/1994) since 1995. Furthermore, by virtue of the Law 3139/2003 the lower price of EUR 6 for admission tickets was specifically maintained for the casinos of Mont Parnès and Corfu, with the effect of illegally prolonging and confirming the fiscal discrimination. As concerns the casino of Thessaloniki, it is noted that it benefits from the fiscal discrimination by assimilation with the casinos of Mont Parnès and Corfu as confirmed in the Presidential decree 290/1995, based on the Law of 1953, as described herein above. The regime applicable to Thessaloniki is intimately linked to the regime applicable to Mont Parnès and Corfu. As described by the Greek authorities ([73]), when the issue of the price of admission tickets was raised after 1995, the management of the Thessaloniki casino asked that it be set at the same level as that of the Casino Mont Parnès, i.e. at EUR 6, and this request was accepted, following an opinion from the Legal Council of State (Opinion 631/1997/EC). Therefore it can be assumed that, had the treatment of Mont Parnès and Corfu changed in 2003 and had the two casinos passed to EUR 15 at that time, then the treatment of casino Thessaloniki would also have changed. However, this was not the case, and the fiscal discrimination was maintained by virtue of national provisions.

(128) None of the measures described above, benefiting the beneficiary casinos, were ever notified to nor approved by the Commission, certainly not under the EU State aid rules.

(129) The Commission recalls that pursuant to Article 15 of the Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules of application of Article 93 of the EC Treaty ([74]), the powers of the Commission to recover aid shall be subject to a limitation period of 10 years. The limitation period shall begin on the day on which the unlawful aid is awarded to the beneficiary either as individual aid or as aid under an aid scheme. Any action taken by the Commission or by a Member State, acting at the request of the Commission, with regard to the unlawful aid shall interrupt the limitation period. Each interruption shall start time running afresh. The limitation period shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice. Any aid with regard to which the limitation period has expired, shall be deemed to be existing aid. However, pursuant to Article 1(c) of the same regulation, alterations to existing aid constitute new aid.

(130) The Commission observes that according to the case-law of the EU Courts 'the limitation period provided for in Article 15 of the Regulation on State aid procedure, which does not in any way express a general principle whereby new aid is transformed into existing aid but merely precludes recovery of aid established more then 10 years before the Commission first intervened' ([75]).

(131) In the current case, the Commission did not take action, nor did Greece act at the request of the Commission,

([72]) See judgement of the General Court of 4.9.2009, case T-211/05, Italy v Commission, not published yet, paragraph 173; see also judgement of the General Court of 8.6.1995, case T-459/93, Siemens v Commission [1995] ECR II-1675, paragraph 48.

([73]) In their submission of 6 October 2010.

([74]) OJ L 83, 27.3.1999, p. 1.

([75]) See for instance judgment of the General Court in the Gibraltar case – joined Cases T-195/01 and T-207/01, of 30 April 2002, paragraph 130 (OJ C 169, 13.7.2002, p. 30), 2002 ECR II-2309.

before 2009. The Commission took such an action on 21 October 2009 when it communicated the complaint to Greece and requested information in this regard.

(132) Therefore, any aid awarded under this measure as of 21 October 1999 (10 years before the day on which the Commission forwarded the complaint to the Greek State and requested information) is new and unlawful aid, which has been put into effect without prior notification or decision of the Commission, subject to the application of Article 15 of the Procedural Regulation as regards recovery (as further described herein below).

### V.4. **Quantification and recovery**

(133) The contested measure was implemented without having been notified in advance to the Commission in accordance with Article 108(3) of the TFEU. Therefore, the measure constitutes unlawful aid.

(134) Where unlawfully granted State aid is found to be incompatible with the internal market, the consequence of such a finding is that the aid should be recovered from the recipients, unless this would be contrary to a general principle of law, pursuant to Article 14 of Regulation (EC) No 659/1999. Through recovery of the aid, the competitive position that existed before it was granted is restored as far as this is possible. No arguments raised by the Greek authorities or by Mont Parnès justified a general departure from this basic principle.

(135) The Commission observes that Article 14(1) of Regulation (EC) No 659/1999 provides that 'the Commission shall not require recovery of the aid if this would be contrary to a general principle of community law'. The case-law of the Court of Justice and the Commission's own decision-making practice have, amongst others, established that where, as a result of the Commission's actions, legitimate expectations exist on the part of the beneficiary of a measure that the aid has been granted in accordance with EU law, then an order to recover the aid would infringe a general principle of EU law ([76]).

(136) In its judgement in *Forum 187* ([77]), the Court stated that 'the right to rely on the principle of the protection of legitimate expectations extends to any person in a situation where a Community authority has caused him to entertain expectations which are justified. However, a person may not plead infringement of the principle unless he has been given precise assurances by the administration. Similarly, if a prudent and alert economic operator could have foreseen the adoption of a Community measure likely to affect his interests, he cannot plead that principle if the measure is adopted'.

(137) In this respect, as concerns arguments made by the Greek Authorities and Mont Parnès alleging that any recovery of that aid would run counter to the principle of reasonable confidence of the subject of administration, in this case, based on a ruling of the Greek Council of State under national law, the Commission observes that this is a national act taken by a national authority and not an EU authority in the sense of the above cited case-law. Furthermore this act was based solely on national law and did not in any way discuss any State aid issue or qualification. In consideration of the above, the Commission cannot waive recovery based on these arguments.

(138) As concerns the arguments made by Greece and Mont Parnès regarding the delayed action undertaken by Loutraki in lodging a complaint with the Commission, in connection with a principle that a right should not be exercised abusively, the Commission observes that delayed action by a complainant cannot in any case preclude from recovering unlawful aid, otherwise as deriving from the 10 years limitation period set forth pursuant to Article 15 of the Procedural Regulation.

(139) Therefore the Commission cannot follow the arguments proposed by the Greek authorities and Mont Parnès in order to exceptionally waive recovery.

(140) As described in the present Decision, the Commission observes that it was first through the national acts of 1994 and 1995 that both the requirement to remit 80 % of the value of admissions and the standard price of EUR 15 for the admission tickets for all casinos were set. However, both the requirement to remit 80 % and the standard level of the price of EUR 15 did not apply to the beneficiary casinos although they did apply to other casinos as of 1995 and have been in practice applied as such (all private casinos were licensed during 1995-96 and began implementing the measure, with the only exception of Thessaloniki casino). Thus, considering that *de facto* the fiscal discrimination resulting from the differentiation in prices of admission tickets and the related 80 % payments to the State started as of 1995, the period of implementation of the aid can be considered to begin in 1995.

(141) In line with the conclusion under Section V.3 herein above (*Legality of the aid*), the Commission therefore

([76]) See, *inter alia*, Commission Decision 2003/515/EC of 17 February 2003 on the State aid implemented by the Netherlands for international financing activities (OJ L 180, 18.7.2003, p. 52); Commission Decision 2004/76/EC of 13 May 2003 on the aid scheme implemented by France for headquarters and logistics centres (OJ L 23, 28.1.2004, p. 1).

([77]) Judgment of the Court of Justice of 22.6.2006, case C-182/03 and C-217/03, Forum 187 ASBL [2006] ECR I-5479, paragraph 147; see also judgment of the Court of Justice of 26.11.2005, case C- 506/03, Germany v Commission, unpublished, paragraph 58 and judgement of the Court of Justice of 11.3.1987, case C-265/85, Van den Bergh en Jurgens BV v. Commission [1987] ECR 1155, paragraph 44.

considers that the limitation period of 10 years, provided for in Article 15 of the Procedural Regulation (EC) No 659/1999, applies to any aid awarded before 21 October 1999.

(142) In the calculation of the amount to be recovered account must be taken that as described in the present Decision (see also paragraph 85 herein above), the Greek State forgoes fiscal revenue from the public casinos in the amount of EUR 7,20 per admission, which corresponds to the difference between the tax of EUR 12 per admission remitted to the State by the private casinos and the tax of EUR 4,80 per admission remitted to the State by the public casinos.

(143) However, certain aspects relating to the individual situation of each casino may be taken into account for the purposes of calculating the amount of the recovery from each casino, as described below:

— As described in this Decision, the requirement under the 1995 Ministerial Decision to remit to the State 80 % of the price of admission tickets was applicable to the casinos of Corfu and Mont Parnès as of the date they were licensed under Law 2206/1994, i.e. in 2003, following Law 3139/2003. However, from the end of 2000 and until their licensing in 2003, ETA started, on a voluntary basis, to remit to the State 80 % of the price of admission tickets (at the level of EUR 6) ([78]). From this information given by the Greek authorities, and subject to further observations that the Greek authorities may wish to make (confirming or infirming the above) it can be assumed that until 2000 no payment of the admission tax was made, not even of the reduced tax (of 80 % of EUR 6). Therefore during that period (21 October 1999-end of 2000) the amount of the recovery should be calculated using the level of EUR 12 (i.e. the full tax paid by the other private casinos, while the public casinos did not pay any tax at all) and multiplying this by the number of tickets issued during that period.

— The Thessaloniki casino was licensed in 1995 under Law 2206/1994 ([79]). The requirement to remit to the State 80 % of the price of admission tickets was applicable to the casino of Thessaloniki since the issuance of its license in 1995. Until the present date, it has been applying the reduced EUR 6 price of admission tickets applied by the casinos in Mont Parnès and Corfu. Therefore the amount of the recovery for this casino should be calculated by multiplying the number of tickets issued (since 21 October 1999) by EUR 7,20.

— Rhodes Casino was licensed under the Law 2206/1994 in 1996. At that time it began applying the EUR 6 price of admission tickets, however, it passed at EUR 15 upon its privatisation in April 1999. Further to observations submitted during the formal investigation procedure, the Commission understands that the casino of Rhodes ceased to be a beneficiary on its privatisation in April 1999, and therefore the recovery from this casino is covered by the limitation period pursuant to Article 15 of the Procedural Regulation.

(144) As concerns the calculation of the amount of aid to be recovered, the Commission is not in possession of sufficient data in order to provide an accurate estimation of the amounts to be recovered from each beneficiary casino. However, no provision of EU law requires the Commission, when ordering the recovery of aid declared incompatible with the internal market, to fix the exact amount of the aid to be recovered. It is sufficient for the Commission's decision to include information enabling the Member State concerned and the relevant recipient undertaking to work out themselves, without overmuch difficulty, that amount. The Commission is therefore able legitimately to confine itself to declaring that there is an obligation to repay the aid in question and leave it to the national authorities to calculate the exact amounts to be repaid on the basis of the guidance given by the Commission in its decision.

(145) Based on the information submitted by the Member State, the Commission provides herein below the necessary guidance for the recovery.

(146) The Table below presents a general overview of the number of tickets issued by each casino each year (however, as indicated in the Table, the information presented is not complete), and a preliminary estimate of the amounts to be recovered from each casino, subject to further observations that Greece may wish to submit following its calculations as concerns recovery.

**Estimated number of tickets issued by each casino**

| YEAR | CASINO | | | |
|---|---|---|---|---|
| | Mont Parnès | Corfu | Thessaloniki | Rhodes |
| 1999 (22.10.1999 – 31.12.1999) | Missing information | […] (*) | […] | […] ([1]) |
| 2000 | Missing information | […] | […] | […] |

([78]) See also paragraph 21 herein above.
([79]) Ar. Ph. 904 of 6.12.1994.

| YEAR | CASINO | | | |
|---|---|---|---|---|
| | Mont Parnès | Corfu | Thessaloniki | Rhodes |
| 2001 | Missing information | […] | […] | […] |
| 2002 | Missing information | […] | […] | […] |
| 2003 | Missing information until 1 May 2003<br>As of 1 May 2003:<br>[…] | […] | […] | […] |
| 2004 | […] | […] | […] | […] |
| 2005 | […] | […] | […] | […] |
| 2006 | […] | […] | […] | […] |
| 2007 | […] | […] | […] | […] |
| 2008 | […] | […] | […] | […] |
| 2009 (until 22.10.2009): | […] | […] | […] | […] |
| Total until 22.10.2009 | […] | […] | […] | […] |
| Tickets issued after 22.10.2009 | Missing information | Missing information | Missing information | Missing information |

(*) Business secret.
(1) Rhodes was privatised in April 1999 and at that time it stopped applying the reduced price of admission tickets. Aid received by Rhodes before 21 October 2009 is covered by the limitation.

**Preliminary estimate of the amount to be recovered per casino**

**(million EUR in rounded numbers)**

| | Mont Parnès | Corfu | Thessaloniki | Rhodes |
|---|---|---|---|---|
| Algorithm and calculation | For 22.10.1999-2000 (1):<br>number of tickets<br>(x1) × 12 = A1 | For 22.10.1999-2000:<br>number of tickets<br>([…] tickets) × 12 = A2<br>([…] EUR) | For the period 22.10.1999-22.10.2009:<br>number of tickets<br>([…] tickets) × 7,20 = AB3<br>([…] EUR) | N/A |
| | For 2000-22.10.2009:<br>number of tickets<br>(y1) × 7,20 = B1 | For 2000-22.10.2009:<br>number of tickets<br>([…] tickets) × 7,20 = B2<br>([…] EUR) | | |
| | For 22.10.2009-present:<br>number of tickets<br>(z1) × 7,20 = C1 | For 22.10.2009-present:<br>number of tickets<br>(z2) × 7,20 = C2 | For 22.10.2009-30.8.2010 (2):<br>number of tickets<br>(z3) × 7,20 = C3 | |
| Total amount of recovery | A1 + B1 + C1 =<br>To be calculated | A2 + B2 + C2<br>To be calculated | AB3 + C3<br>To be calculated | N/A |
| Total amount to be recovered | To be calculated | | | |

(1) Exact date of 2000 when ETA started paying the 80 % tax of the reduced price of EUR 6 to be confirmed by Greek authorities.
(2) On the understanding that Corfu casino has stopped being a beneficiary upon its privatisation of August 2010, when it passed to EUR 15.

(147) The Commission further observes that Article 108(3) of the TFEU has suspensory effect. However, the Commission has not received information on whether the contested measure was suspended further to the Opening Decision. Consequently, it must be assumed that the measure has continuously been implemented by the Greek authorities until present ([80]). Any aid granted until the adoption of the present Decision should be recovered by Greece from the respective beneficiaries. In this regard, as concerns the Corfu casino, the Commission notes that it has stopped applying the EUR 6 price of admission ticket and passed to EUR 15 as of its privatisation of August 2010, therefore in the calculation of the amount of the recovery only the period until August 2010 should be taken into account.

(148) In consideration of all the above arguments, the Commission therefore orders recovery by Greece of the incompatible State aid illegally granted to the beneficiaries. The Commission recalls that Greece must cancel all outstanding fiscal advantage provided under the measure under assessment with effect from the date of adoption of this Decision.

(149) In this regard, the Commission notes that as concerns the future, Greece has indicated that it is examining a potential change of the pricing policy of casinos, in order to eliminate discriminations between casinos. The Commission notes that according to Greece, this new legislation will put an end to the measure under assessment. However, Greece has not informed the Commission of the follow up and possible implementation of such change. The Commission believes that the adoption of such new legislation is critical to the resolution of issues of discrimination between casinos in Greece and encourages Greece to take the necessary steps without delay.

## VI. **CONCLUSION**

(150) The Commission considers that, in the light of the abovementioned considerations, of the relevant case-law and of the specificities of the case, the contested measure, consisting of the fiscal discrimination that the Greek authorities have put into place in favour of certain casinos through the implementation of several simultaneous legal provisions concerning:

— the fixing of a uniform 80 % levy on the price of admission tickets, and

— the setting of two unequal regulated prices of admission tickets at EUR 6 and EUR 15 respectively for publicly and privately owned casinos,

constitutes State aid within the meaning of Article 107(1) of the TFEU. The Commission also finds that the contested measure having been implemented in breach of Article 108(3) of the TFEU constitutes an unlawful aid.

([80]) The Commission currently only has partial information covering the period 22 October 1999 – 22 October 2009, and particularly, no information concerning the potential continuation of the measure after 22 October 2009.

(151) The Commission observes that pursuant to Article 14 of Regulation (EC) No 659/1999, all unlawful aid may be recovered from the recipient and orders recovery by the Hellenic Republic of the unlawful aid from each of the beneficiary casinos. The Commission notes that the limitation period of 10 years, provided for in Article 15 of the abovementioned Procedural Regulation applies to any aid awarded before 21 October 1999. The Hellenic Republic shall cancel all outstanding fiscal advantage provided under the measure subject to the present Decision, with effect from the date of adoption of this Decision.

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid implemented by the Hellenic Republic and consisting of the fiscal discrimination put into place in favour of certain casinos through the implementation of several simultaneous, partially mandatory, legal provisions concerning

— the fixing of a uniform 80 % levy on the price of admission tickets, and

— the setting of two unequal regulated prices of admission tickets at EUR 6 and EUR 15 respectively for publicly and privately owned casinos,

has been unlawfully put into effect by the Hellenic Republic in breach of Article 108(3) of the Treaty on the Functioning of the European Union and is incompatible with the internal market since it has placed the following beneficiary casinos: Regency Casino Mont Parnès, Regency Casino Thessaloniki and Corfu Casino (on the understanding that Rhodes Casino has stopped being a beneficiary in April 1999) at an undue competitive advantage.

*Article 2*

1. The Hellenic Republic shall recover from the beneficiary casinos the incompatible aid referred to in Article 1 which was granted since 21 October 1999.

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 Commission Regulation (EC) No 794/2004 ([81]).

4. The Hellenic Republic shall cancel all outstanding fiscal discrimination provided under 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.

([81]) OJ L 140, 30.4.2004, p. 1.

2. The Hellenic Republic shall ensure that this Decision is implemented within 4 months following the date of notification of this Decision.

*Article 4*

1. Within 2 months following notification of this Decision, the Hellenic Republic shall submit the following information to the Commission:

(a) the 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 contested measure, calculated in accordance with the guidance contained in this Decision;

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

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

(d) documents demonstrating that the beneficiary has been ordered to repay the aid.

2. The Hellenic Republic 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 planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiary.

*Article 5*

This Decision is addressed to The Hellenic Republic.

Done at Brussels, 24 May 2011.

*For the Commission*

Joaquín ALMUNIA

*Vice-President*

# COMMISSION IMPLEMENTING DECISION

## of 27 October 2011

## amending Decision 98/536/EC establishing the list of national reference laboratories for the detection of residues

*(notified under document C(2011) 7610)*

**(Text with EEA relevance)**

(2011/717/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC [1], and in particular the third subparagraph of Article 14(1) thereof,

Whereas:

(1) Directive 96/23/EC lays down measures to monitor the substances and groups of residues listed in Annex I thereto. It provides that each Member State is to designate at least one national reference laboratory, which is to be responsible for certain tasks laid down in that Directive. Directive 96/23/EC also provides that a list of such designated laboratories is to be drawn up by the Commission.

(2) The list of national reference laboratories for the detection of residues is currently set out in the Annex to Commission Decision 98/536/EC [2].

(3) Certain Member States have designated additional national reference laboratories or have replaced the designated laboratories with other laboratories. In addition, the contact coordinates and the groups of residues monitored by certain laboratories currently listed in the Annex to Decision 98/536/EC have changed. In the interest of clarity and consistency of Union law, it is therefore appropriate to update the list of national reference laboratories set out in the Annex to that Decision.

(4) Decision 98/536/EC should therefore be amended accordingly.

(5) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

*Article 1*

The Annex to Decision 98/536/EC is replaced by the text in the Annex to this Decision.

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels, 27 October 2011.

*For the Commission*
John DALLI
*Member of the Commission*

[1] OJ L 125, 23.5.1996, p. 10.
[2] OJ L 251, 11.9.1998, p. 39.

*ANNEX*

*'ANNEX*

**NATIONAL REFERENCE LABORATORIES**

| Member State | Reference laboratories | Groups of residues |
|---|---|---|
| Belgium | Wetenschappelijk Instituut Volksgezondheid/Institut scientifique de la santé publique<br>J. Wytsmanstraat 14/Rue J. Wytsman<br>1050 Brussel/Bruxelles | A1, A2, A3, A4, A5, A6, B1, B2a, B2b, B2c, B2d, B2e, B2f, B3a, B3b, B3e, B3f |
| | Centrum voor Onderzoek in Diergeneeskunde en Agrochemie (CODA)/Centre d'étude et de recherches vétérinaires et agrochimiques (CERVA)<br>Leuvensesteenweg 17<br>3080 Tervuren | B3c, B3d |
| Bulgaria | Централна лаборатория по ветеринарно-санитарна експертиза и екология<br>ул. „Искърско шосе" № 5<br>1528 София<br><br>(Central Laboratory of Veterinary Control and Ecology, 5 Iskarsko shousse Str., 1528 Sofia) | A1, A2, A3, A4, A5, A6, B1, B2a, B2b, B2c, B2d, B2e, B3a, B3b, B3c, B3e, B3f<br>for animal products except feed |
| Czech Republic | Národní referenční laboratoř pro sledování reziduí veterinárních léčiv<br>Ústav pro státní kontrolu veterinárních biopreparátů a léčiv Brno<br>Hudcova 56 A<br>621 00 Brno | A1, A2, A3, A4, A5, A6, B2d |
| | Národní referenční laboratoř pro rezidua pesticidů a PCB<br>Státní veterinární ústav Praha<br>Sídlištní 136/24<br>165 03 Praha 6 | B3a, B3b |
| | Národní referenční laboratoř pro chemické prvky<br>Státní veterinární ústav Olomouc, laboratoř Kroměříž<br>Hulínská 2286<br>767 60 Kroměříž | B3c |
| | Národní referenční laboratoř pro mykotoxiny a další přírodní toxiny, barviva, antibakteriální inhibiční látky a rezidua veterinárních léčiv<br>Státní veterinární ústav Jihlava<br>Rantířovská 93<br>586 05 Jihlava | B1, B2 (except B2d), B3d, B3e |
| Denmark | DTU Fødevareinstituttet<br>Mørkhøj Bygade 19<br>DK-2860 Søborg | A1, A2, A3, A4, A5, A6, B3 |
| | Laboratorium, mikrobiologi/kemi (Ringsted)<br>Søndervang 4<br>4100 Ringsted | B1, B2 |
| Germany | Bundesamt für Verbraucherschutz und Lebensmittelsicherheit<br>Postfach 1564<br>38005 Braunschweig | All groups |
| Estonia | Veterinaar- ja Toidulaboratoorium<br>Kreutzwaldi 30<br>51006 Tartu | A1, A2, A3, A4, A5, A6, B1, B2a, B2b, B2d, B2e, B2f, B3c |

| Member State | Reference laboratories | Groups of residues |
|---|---|---|
| | Terviseameti Tartu labor<br>Põllu 1A<br>50303 Tartu | B2c, B3a, B3b |
| | Põllumajandusuuringute Keskus<br>Teaduse 4/6<br>Saku<br>75501 Harjumaa | B3d |
| Ireland | State Laboratory<br>Young's Cross<br>Celbridge<br>Co. Kildare | A1, A3, A4, A6 (nitromidazoles only), B2b (nitromidazoles only), B2e, B2f (corticosteroids), B3d |
| | Veterinary Public Health Regulatory Laboratory<br>Young's Cross<br>Celbridge<br>Co. Kildare | A2, A5, A6 (except nitrofurans, nitromidazoles), B1, B2d, B2f (carbadox only), B3c |
| | Ashtown Food Research Centre, Teagasc<br>Ashtown<br>Dublin 15 | A6 (nitrofurans), B2a (anthelmintics except emamectin), B2b (anticoccidials), B2c |
| | Marine Institute<br>Rinville<br>Oranmore<br>Galway | B2a (emamectin), B2f (teflubenzuron and diflubenzuron), B3e (MG and LMG) |
| | Pesticide Control Laboratory<br>Young's Cross<br>Celbridge<br>Co. Kildare | B3a (organochlorine pesticides and 7 PCBs), B3b, B3f |
| Greece | Κτηνιατρικό Εργαστήριο Σερρών<br>Τέρμα Ομονοίας<br>621 10 Σέρρες<br><br>(Veterinary Diagnostic Laboratory Serres, Terma Omonias, 621 10 Serres) | A1, A3, A4, A6 (dapsone), B2f (carbadox, olaquindox, corticosteroids), B3a |
| | Ινστιτούτο Υγιεινής Τροφίμων Αθηνών<br>Νεαπόλεως 25<br>153 10, Αγ. Παρασκευή<br>Αθήνα<br><br>(Institute of Food Hygiene of Athens, Neapoleos 25, 153 10, Aghia Paraskevi, Athens, Greece) | A2, A5, A6 (chlorpromazine, nitromidazoles), B1, B2d, B3b, B3c, B3e |
| | Κτηνιατρικό Εργαστήριο Τρίπολης<br>Πέλαγος Αρκαδίας<br>22100 Τρίπολη<br><br>(Veterinary Laboratory of Tripolis, Pelagos Arkadias, 22100 Tripolis, Greece) | A6 (chloramphenicol and nitrofurans), B2c |
| | Κτηνιατρικό Εργαστήριο Χανίων<br>Μ. Μπότσαρη 66<br>73100 Χανιά<br><br>(Veterinary Laboratory of Chania, M. Botsari 66, 73100 Chania, Greece) | B1 in honey |
| | Κτηνιατρικό Εργαστήριο Λάρισας<br>7ο χλμ. Εθνικής οδού Λαρίσης-Τρικάλων<br>411 10 Λάρισα<br><br>(Veterinary Laboratory of Larissa, 7th km National Road Larissa-Trikala, 411 10, Larissa, Greece) | B2a, B2b |

| Member State | Reference laboratories | Groups of residues |
|---|---|---|
| | Ινστιτούτο Βιοχημείας, Τοξικολογίας και Διατροφής των Ζώων<br>Νεαπόλεως 25<br>153 10, Αγ. Παρασκευή<br>Αθήνα<br><br>(Institute of Biochemistry, Toxicology and Feed of Athens, Neapoleos 25, 153 10, Aghia Paraskevi, Athens, Greece) | B3d |
| | Κτηνιατρικό Εργαστήριο Θεσσαλονίκης<br>Λήμνου 3Α<br>54627 Θεσσαλονίκη<br><br>(Veterinary Laboratory of Thessalonica, Lemnou 3A, 54627, Thessalonica, Greece) | B2e |
| Spain | Centro Nacional de Alimentación (Agencia Española de Seguridad Alimentaría y Nutrición)<br>Carretera Pozuelo-Majadahonda, Km. 5,1<br>28220 Majadahonda (Madrid) | A1, A3, A4, A5, A6 (chloramphenicol, nitrofurans), B1, B2f (corticosteroids, carbadox, olaquindox), B3a, B3b, B3d, B3e, B3f |
| | Laboratorio Central de Sanidad Animal (Ministerio de Medio Ambiente y Medio Rural y Marino)<br>Camino del Jau s/n<br>18320 Santa Fe (Granada) | A2, A6 (nitromidazoles), B2a, B2b, B2c, B2d, B2e, B2f (except corticosteroids), B3f |
| | Laboratorio Arbitral Agroalimentario (Ministerio de Medio Ambiente y Medio Rural y Marino)<br>Carretera de La Coruña, Km 10,700<br>28071 Madrid | B3c, B3f |
| France | Laberca – Oniris<br>Atlanpôle, site de la Chantrerie, BP 50707<br>44307 Nantes Cedex 3 | A1, A2, A3, A4, A5, B2f (glucocorticoids), B3a (PCBs and dioxins), B3f |
| | ANSES, Laboratoire de Fougères<br>La Haute Marche, Javené<br>BP 90203<br>35302 Fougères | A6, B1, B2a, B2b, B2d, B2e, B2f (except glucocorticoids), B3e |
| | ANSES, Laboratoire de sécurité des aliments de Maisons-Alfort<br>23 avenue du Général de Gaulle<br>94706 Maisons-Alfort Cedex | B2c, B3a (except PCBs and dioxins), B3b, B3c, B3d |
| Italy | Istituto superiore di sanità<br>Dipartimento di Sanità pubblica veterinaria e sicurezza alimentare<br>Viale Regina Elena, 299<br>00161 Roma | A1, A2, A3, A4, A5, A6, B1, B2, B3a (excluding dioxins and PCBs), B3b, B3c, B3d, B3e, B2f |
| | Istituto Zooprofilattico Sperimentale dell'Abruzzo e del Molise «G. Caporale»<br>Via Campo Boario<br>64100 TERAMO | B3a (PCBs, dioxins and DL-PCBs) |
| Cyprus | Γενικό Χημείο του Κράτους<br>Υπουργείο Υγείας<br>Οδός Κίμωνος 44,<br>1451, Λευκωσία, Κύπρος<br><br>(General State Laboratory, Ministry of Health, Kimonos Street 44, 1451 Nicosia) | All groups |
| Latvia | Pārtikas drošības, dzīvnieku veselības un vides zinātniskais institūts<br>Lejupes iela 3<br>Rīga, LV-1076<br><br>(Institute of Food Safety, Animal Health and Environment, Lejupes Street 3, LV-1076 Riga) | All groups (excluding B3d aquaculture) |

| Member State | Reference laboratories | Groups of residues |
|---|---|---|
| Lithuania | Nacionalinis maisto ir veterinarijos rizikos vertinimo institutas<br>J. Kairiūkščio g. 10<br>LT-08409 Vilnius | All groups |
| Luxembourg | Institut scientifique de la santé publique<br>Rue J. Wytsman 14<br>1050 Bruxelles | All groups |
| Hungary | Mezőgazdasági Szakigazgatási Hivatal<br>Élelmiszer- és Takarmánybiztonsági Igazgatóság<br>Élelmiszer Toxikológiai Nemzeti Referencia Laboratórium<br>Mester u. 81.<br>Hungary<br>H-1095<br>Budapest 94<br>POB 1740<br>H-1465<br><br>(Central Agricultural Office, Food and Feed Safety Directorate, Food Toxicological NRL, Mester u. 81., Hungary, H-1095, Budapest 94, POB 1740, H-1465) | All groups |
| Malta | Laboratorju Veterinarju Nazzjonali.<br>Dipartiment għar-Regolazzjoni tal-Biedja u s-Sajd.<br>Ministeru għar-Rizorsi u l-Affarijiet Rurali. Albertown, Marsa.<br><br>(National Veterinary Laboratory<br>Agriculture and Fisheries Regulation Division<br>Ministry for Resources and Rural Affairs<br>Albertown, Marsa) | All groups |
| Netherlands | Wageningen UR<br>RIKILT — Instituut voor Voedselveiligheid<br>Akkermaalsbos 2<br>6708 WB Wageningen | All groups |
| Austria | Österreichische Agentur für Gesundheit und Ernährungssicherheit GmbH<br>CC Tierarzneimittel und Hormone, Wien<br>Spargelfeldstraße 191<br>1226 Wien | A1, A2, A3, A4, A5, A6, B1, B2a, B2b, B2d, B2e, B2f (corticoids) |
| | Österreichische Agentur für Gesundheit und Ernährungssicherheit GmbH<br>CC Rückstandsanalytik, Wien<br>Spargelfeldstraße 191<br>1226 Wien | B2c, B2f (amitraz), B3a (excluding dioxins and PCBs), B3b, B3f (neonicotinoids) |
| | Umweltbundesamt GmbH<br>Spittelauer Lände 5<br>1090 Wien | B3a (dioxins and PCBs) |
| | Österreichische Agentur für Gesundheit und Ernährungssicherheit GmbH<br>CC Strahlenschutz und Radiochemie Wien<br>Spargelfeldstraße 191<br>1226 Wien | B3c |
| | Österreichische Agentur für Gesundheit und Ernährungssicherheit GmbH<br>CC Cluster Chemie<br>Wieningerstraße 8<br>4021 Linz | B3d |
| | Lebensmitteluntersuchungsanstalt der Stadt Wien<br>Henneberggasse 3<br>1030 Wien | B3e |

| Member State | Reference laboratories | Groups of residues |
|---|---|---|
| Poland | Państwowy Instytut Weterynaryjny-Państwowy Instytut Badawczy w Puławach<br>Al. Partyzantów 57<br>24-100 Puławy | All groups |
| Portugal | Instituto Nacional de Recursos Biológicos/Laboratório Nacional de Investigação Veterinária<br>Estrada de Benfica 701<br>1549-011 Lisboa | All groups (excluding B3a dioxins and dl-PCBs and B3c aquaculture) |
| | Instituto Nacional de Recursos Biológicos/Instituto de Investigação das Pescas e do Mar<br>Av. de Brasília<br>1449-006 Lisboa | B3c (aquaculture) |
| | Autoridade de Segurança Alimentar e Económica Laboratório de Segurança Alimentar/Laboratório de Análises Tecnológicas e de Controlo<br>Estrada do Paço do Lumiar, 22<br>1649-038 Lisboa | B3a (dioxins and dl-PCBs) |
| Romania | Institute for Hygiene and Veterinary Public Health<br>Str. Câmpul Moșilor nr. 5, sectorul 2<br>021201 București | A1, A4, A6 (nitromidazoles, nitrofurans), B1 (antibiotics), B2a, B2b, B2c, B2e, B2f, B3a (organochlorinated pesticides and ndl-PCB), B3b, B3c, B3d, B3e |
| | Sanitary Veterinary Food Safety county Directorate<br>Str. Surorile Martir Caceu nr. 4<br>300858 Timișoara | A2, A5, B2d |
| | Sanitary Veterinary Food Safety county Directorate<br>Șos. Mangaliei nr. 78<br>900111 Constanța | A3, A6 (chloramphenicol) |
| | Sanitary Veterinary Food Safety county Directorate<br>Str. Piața Mărăști nr. 1<br>400609 Cluj-Napoca | A6 (dapsone), B1 (sulfonamides) |
| | Sanitary Veterinary Food Safety county Directorate<br>Str. Ilioarei nr. 16E, sectorul 3<br>032125 București | B3a (dioxins) |
| Slovenia | Univerza v Ljubljani, Veterinarska fakulteta<br>Nacionalni veterinarski inštitut<br>Gerbičeva 60<br>1000 Ljubljana | A1, A3, A4, A5, A6 (except chloramphenicol in urine and chloroform in urine), B1, B2a (avermectins), B2b, B2d, B2e, B2f, B3c (except mercury in aquaculture), B3d, B3e |
| | Zavod za zdravstveno varstvo Maribor<br>Prvomajska 1<br>2000 Maribor | A2, A6 (chloramphenicol in urine and chloroform in urine), B2a (benzimidazoles), B2c, B3a, B3b (except in honey) |
| | Zavod za zdravstveno varstvo Nova Gorica<br>Vipavska cesta 13<br>Rožna Dolina<br>5000 Nova Gorica | B3b (in honey) |
| | Inštitut za varovanje zdravja Republike Slovenije<br>Trubarjeva 2<br>1000 Ljubljana | B3c (mercury in aquaculture) |
| Slovakia | Štátny veterinárny a potravinový ústav Bratislava<br>Botanická 15<br>842 13 Bratislava | A1, A3, A4, A5, A6 (nitromidazoles), B2c, B2e, B3a, B3b |
| | Štátny veterinárny a potravinový ústav Košice<br>Hlinkova 1B<br>040 01 Košice | A2, B2a, B2b, B2d, B3c, B3d |

| Member State | Reference laboratories | Groups of residues |
|---|---|---|
| | Štátny veterinárny a potravinový ústav Dolný Kubín<br>Jánoskova 1611/58<br>026 01 Dolný Kubín | A6 (chloramphenicol, nitrofurans), B1, B2f, B3e |
| Finland | Finnish Food Safety Authority Evira<br>Mustialankatu 3<br>00790 Helsinki | All groups |
| Sweden | Statens livsmedelsverk<br>Box 622<br>751 26 Uppsala | All groups |
| United Kingdom | Agri-Food and Biosciences Institute<br>Veterinary Sciences Division<br>Stoney Road<br>Stormont<br>Belfast BT4 3SD<br>Northern Ireland | A1, A2, A3, A4, A5, A6 (nitrofurans except in honey, nitromidazoles), B2b, (nicarbazin), B2f |
| | Food and Environment Research Agency (FERA)<br>Sand Hutton<br>York<br>YO41 1LZ | A6 (chloramphenicol, nitrofurans in honey, dapsone). B1, B2a, B2b (ionophores) |
| | LGC Ltd<br>Queens Road<br>Teddington<br>Middlesex TW11 OLY | A6 (chlorpromazine), B2c, B2d, B2e, B3a, B3b, B3c, B3d, B3e' |

# COMMISSION IMPLEMENTING DECISION

## of 28 October 2011

## amending Implementing Decision 2011/402/EU on emergency measures applicable to fenugreek seeds and certain seeds and beans imported from Egypt

*(notified under document C(2011) 7744)*

**(Text with EEA relevance)**

(2011/718/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [1], and in particular Article 53(1)(b)(i) and (iii) thereof,

Whereas:

(1) Regulation (EC) No 178/2002 lays down the general principles governing food and feed in general, and food and feed safety in particular, at Union and national level. It provides for emergency measures where it is evident that food or feed imported from a third country is likely to constitute a serious risk to human health, animal health or the environment, and that such risk cannot be contained satisfactorily by means of measures taken by the Member State(s) concerned.

(2) Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs [2] lays down general rules on the hygiene of food stuffs. Those rules include hygiene requirements for the production of seeds and beans for direct human consumption to be followed by food business operators.

(3) Certain lots of fenugreek seeds imported from Egypt have been identified to be the causative agent of an outbreak in the Union of Shiga-toxin producing *Escherichia coli* bacteria (STEC), serotype O104:H4. Accordingly, Commission Implementing Decision 2011/402/EU [3] introduced a ban on the release for free circulation in the Union of seeds and beans from Egypt that fall within the CN codes listed in the Annex thereto. The ban expires on 31 October 2011.

(4) From 21 to 25 August 2011 the Commission's Food and Veterinary Office conducted an audit in Egypt in order to trace back the possible source of infection of the recent *E. coli* outbreaks (O104:H4 serotype) in the northern part of Germany and Bordeaux, France, and to evaluate the production and processing conditions of the suspect seeds in that third country.

(5) The findings of the audit and the actions being taken by Egypt concerning the shortcomings in the production of seeds for human consumption that may potentially be sprouted have been evaluated. That evaluation shows that the measures introduced by the Egyptian authorities are not sufficient to tackle the identified risks.

(6) According to Article 10 of Regulation (EC) No 852/2004, the hygiene of imported food should comply, among others, with the requirements laid down in Annex I of that Regulation. However, the actions indicated by the Egyptian authorities do not provide sufficient guarantees on an active commitment to carry out production in line with Annex I to Regulation (EC) No 852/2004. The European Food Safety Authority (EFSA) will adopt by the end of October 2011, a scientific opinion on the risk posed by Shiga-toxin producing *Escherichia coli* (STEC) and other pathogenic bacteria in seeds and sprouts, shoots and cress derived from seeds.

(7) Pending the possible introduction of additional control measures based on the EFSA opinion and in order to allow the time necessary for the competent authorities in Egypt to provide further feedback to the Commission and to provide effective guarantees on additional risk management measures, the temporary ban on the release for free circulation in the Union of seeds and beans from Egypt laid down in Implementing Decision 2011/402/EU should be prolonged until 31 March 2012.

(8) In order to ensure the effectiveness of this decision to avoid import of any goods listed in the Annex, this Decision shall apply as from 1 November 2011 because Implementing Decision 2011/402/EU provided that the release of seeds from Egypt as set out in the Annex was prohibited until 31 October 2011.

(9) Implementing Decision 2011/402/EU should therefore be amended accordingly.

[1] OJ L 31, 1.2.2002, p. 1.
[2] OJ L 139, 30.4.2004, p. 1.
[3] OJ L 179, 7.7.2011, p. 10.

(10) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

*Article 1*

Implementing Decision No 2011/402/EU is amended as follows:

(1) Article 2 is replaced by the following:

'*Article 2*

The release for free circulation in the Union of seeds and beans from Egypt as set out in the Annex shall be prohibited until 31 March 2012.';

(2) the Annex is replaced by the text set out in the Annex to this Decision.

*Article 2*

This Decision shall apply from 1 November 2011.

*Article 3*

This Decision is addressed to the Member States.

Done at Brussels, 28 October 2011.

*For the Commission*
John DALLI
*Member of the Commission*

*ANNEX*

*'ANNEX*

Seeds and beans from Egypt whose release for free circulation in the Union is prohibited until 31 March 2012:

| CN Code [1] | Description |
|---|---|
| ex 0704 90 90 | Rocket sprouts |
| ex 0706 90 90 | Beetroot sprouts, radish sprouts |
| ex 0708 | Sprouts of leguminous vegetables, fresh or chilled |
| ex 0709 90 90 | Soya bean sprouts |
| 0713 | Dried leguminous vegetables, shelled, whether or not skinned or split |
| 0910 99 10 | Fenugreek seed |
| 1201 00 | Soya beans, whether or not broken |
| 1207 50 | Mustard seeds |
| 1207 99 97 | Other oil seeds and oleaginous fruits, whether or not broken |
| 1209 10 00 | Sugar beet seed |
| 1209 21 00 | Lucerne (alfalfa) seed |
| 1209 91 | Vegetable seeds |
| ex 1214 90 90 | Lucerne (alfalfa) sprouts |

[1] The 'CN codes' mentioned in this Commission Implementing Decision refers to codes specified in Part Two of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).'

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