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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.

II

(Non-legislative acts)

DECISIONS

COMMISSION DECISION

of 25 July 2012

on state aid that France plans to grant to FagorBrandt (SA.23839 (C 44/2007))

(notified under document C(2012) 5043)

(Only the French text is authentic)

(Text with EEA relevance)

(2013/283/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof [1],

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

Having called on interested parties to submit their comments pursuant to the above Articles [2] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter dated 6 August 2007, France notified the Commission of restructuring aid for the FagorBrandt group.

(2) By letter dated 10 October 2007, the Commission informed France that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') in respect of the aid.

(3) The Commission's decision to initiate the procedure ('the opening decision') was published in the *Official Journal of the European Union* [3]. The Commission called on interested parties to submit their comments on the measure.

(4) The Commission received comments from three interested parties, namely two competitors and the aid recipient. Electrolux submitted comments by letter dated 14 December 2007. Following a meeting with the Commission's departments on 20 February 2008, Electrolux submitted additional comments by letters dated 26 February and 12 March 2008. A competitor who wishes to remain anonymous submitted comments by letter dated 17 December 2007 [4]. FagorBrandt submitted comments by letter dated 17 December 2007. By letters dated 15 January and 13 March 2008, the Commission forwarded these comments to France, inviting it to comment on them, which it did by letter dated 15 February 2008 and in a document presented at a meeting on 18 March 2008 (see paragraph 5).

[1] With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union ('TFEU'). The substance of the two articles has not changed. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood where appropriate as references to Articles 87 and 88 respectively of the EC Treaty. The TFEU also introduced certain changes in terminology, such as the replacement of 'Community' by 'Union', 'common market' by 'internal market' and 'Court of First Instance' by 'General Court'. The terminology used in this decision is that of the TFEU.

[2] OJ C 275, 16.11.2007, p. 18.

[3] See footnote 2.

[4] The interested party in question had requested, by telephone and by letter dated 16 December 2007, an extension of the one-month time limit within which to submit comments. The Commission raised no objection to the request.

(5) France submitted its comments on the opening decision to the Commission by letter dated 13 November 2007. On 18 March 2008, a meeting was held between the Commission's departments, the French authorities and FagorBrandt. Following that meeting, the French authorities submitted information by letters dated 24 April and 7 May 2008. A second meeting was held between the same parties on 12 June 2008. Following that meeting, the French authorities submitted information by letter dated 9 July 2008. On 15 July 2008, the Commission requested additional information, which the French authorities provided on 16 July 2008.

(6) On 21 October 2008 the Commission adopted a decision finding that the restructuring aid of EUR 31 million to be granted to FagorBrandt was compatible with the common market, subject to conditions ('the decision of 21 October 2008') ([5]).

(7) On 14 February 2012, in *Electrolux and Whirlpool Europe* v *Commission*, that decision was annulled by the General Court, on the ground that it contained two manifest errors of assessment: it took account of an invalid compensatory measure, and it failed to analyse the cumulative effect on competition of the aid it approved together with aid previously granted by the Italian authorities which had been held incompatible and had not yet been recovered ('the Italian aid') ([6]).

(8) The Commission must therefore adopt a final decision afresh. In order to do so, as the General Court has held ([7]), the Commission must take account only of the information that was available to it at the relevant time, that is to say on 21 October 2008 (see section 6.2.2, 'The relevant period for purposes of the assessment').

2. DESCRIPTION

(9) The aid at issue is restructuring aid. It amounts to EUR 31 million. It is to be provided by the French Ministry of Economic Affairs, Finance and Employment. The aid recipient is FagorBrandt SA, which has several subsidiaries that conduct its production and marketing business.

(10) The French authorities indicate that given the resources available FagorBrandt would not be able to overcome its difficulties without state aid. According to France, the direct grant of EUR 31 million will enable FagorBrandt to finance half the cost of its restructuring ([8]).

(11) The group ('FagorBrandt') belongs indirectly to Fagor Electrodomésticos S Coop ('Fagor'), a cooperative incorporated under Spanish law. The cooperative's capital is divided among approximately 3 500 members (worker-cooperators), none of whom may hold more than 25 %.

(12) Fagor in turn forms part of a grouping of cooperatives called Mondragón Corporación Cooperativa ('MCC'), within which each cooperative retains its legal and financial autonomy. Fagor belongs to the 'Household' division of MCC's 'Industry' sectoral group.

(13) In 2007 FagorBrandt had a turnover of EUR 903 million. It is present in all segments of the large household appliances market, which can be broken down into three main product groups: washing appliances (dishwashers, washing machines, tumble driers, washer-driers), refrigeration appliances (refrigerators, chest and upright freezers) and cooking appliances (conventional ovens, microwave ovens, cookers, hobs, extractor hoods).

3. GROUNDS FOR INITIATING THE PROCEDURE

(14) In the opening decision the Commission expressed doubts for the following five reasons: a risk of circumvention of the prohibition on restructuring aid to newly created firms; a risk of circumvention of the obligation to reimburse incompatible aid; doubt about the restoration of the firm's long-term viability; inadequacy of the compensatory measures; and doubt about whether the aid was limited to the necessary minimum, and in particular about the aid recipient's contribution.

3.1. Risk of circumvention of the prohibition on restructuring aid to newly created firms

(15) FagorBrandt was established in January 2002: accordingly, for the purposes of point 12 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty ('the restructuring aid guidelines') ([9]), it was a 'newly created firm' until January 2005, that is, three years after it was set up. This means that, both at the time when the company benefited from the tax exemption provided for in Article 44 *septies* of the French General Tax Code ('the Article 44 *septies* aid') and at the time when, in December 2003, the Commission declared that that aid was incompatible and ordered its

([5]) OJ L 160, 23.6.2009, p. 11.
([6]) Joined Cases T-115/09 and T-116/09, not yet published in the *European Court Reports*.
([7]) Judgment of the General Court in Case T-301/01 *Alitalia* v *Commission* [2008] ECR II-1753.
([8]) For a description of the restructuring plan see paragraphs 11 ff. of the opening decision.
([9]) OJ C 244, 1.10.2004, p. 2.

recovery ([10]), FagorBrandt was a newly created firm. Pursuant to point 12 of the restructuring aid guidelines, therefore, it was ineligible for restructuring aid. Consequently, the delay by France in recovering the aid declared incompatible in December 2003 until the time when the company no longer constituted a newly created firm, and became eligible for restructuring aid, might constitute a circumvention of the prohibition in point 12 of the restructuring aid guidelines

3.2. **Risk of circumvention of the obligation to reimburse incompatible aid**

(16) Observing that the notified aid seemed to serve largely to finance the reimbursement of the Article 44 *septies* aid, the Commission expressed concerns that it might constitute a circumvention of the obligation to reimburse that incompatible aid, rendering its recovery meaningless and redundant.

3.3. **Doubts about the company's long-term viability**

(17) As regards the restoration of the company's long-term viability, the Commission expressed two concerns. First, observing that the turnover forecast for 2007 was approximately 20 % up on the previous year, it wondered what factors that forecast was based on. Secondly, it noted that the restructuring plan did not indicate how FagorBrandt intended to reimburse the incompatible aid received by its Italian subsidiary.

3.4. **Inadequacy of the compensatory measures**

(18) The Commission doubted whether the absence of compensatory measures additional to those already taken as part of the restructuring plan was acceptable. It drew attention to the following:

(i) the restructuring aid guidelines (points 38 to 41) obliged aid recipients fulfilling the 'large enterprise' criterion to take compensatory measures;

(ii) without aid, FagorBrandt would be forced out of the market, but on the other hand FagorBrandt's competitors were for the most part European; the disappearance of FagorBrandt would accordingly enable its European competitors to increase their sales and output significantly;

(iii) it would appear, in the light of point 40 of the restructuring aid guidelines, that not all the measures already taken could be counted as compensatory measures; and

(iv) the guidelines applicable when the *Bull* ([11]) and *Euromoteurs* ([12]) cases cited by France were examined did not require companies to take compensatory measures. There were also other major differences between those cases and the present one.

3.5. **Doubts about the aid recipient's contribution**

(19) Finally, the Commission expressed doubts about whether the requirements of points 43 and 44 of the restructuring aid guidelines were met. Firstly, the French authorities had not included the reimbursement of the Article 44 *septies* aid in the costs of restructuring, and secondly they had not explained where certain amounts classed as 'recipient's own share' came from.

4. **COMMENTS FROM INTERESTED PARTIES**

4.1. **Comments from Electrolux**

(20) Electrolux states that, in order to meet the challenges of global competition, it has implemented major and very costly restructuring plans. To remain competitive, the company has had to take drastic measures such as closing eight plants in western Europe, the output of which has been mainly relocated to other existing plants in Europe and to new plants in Poland and Hungary. Most companies in the large electrical household appliances sector have carried out similar restructuring operations. Consequently, Electrolux is unhappy at the possibility of FagorBrandt receiving a subsidy to help it cope with a situation which the rest of the sector is having to manage without similar assistance. The aid will distort competition at other companies' expense.

4.2. **Comments from the second competitor**

(21) First of all, this competitor, which wishes to remain anonymous, considers that the planned aid will not enable the recipient to restore its long-term viability. It is of the opinion that substantial industrial reorganisation is needed if the company is to survive. It believes FagorBrandt will have insufficient means with which to finance

([10]) Commission Decision 2004/343/EC of 16 December 2003 on the State aid scheme implemented by France for the takeover of firms in difficulty (OJ L 108, 16.4.2004, p. 38).

([11]) Commission Decision of 1 December 2004 on the State aid which France is planning to implement for Bull, paragraphs 55 to 63 (OJ L 342, 24.12.2005, p. 81).

([12]) Commission Decision of 26 April 2006 on State Aid which France is planning to implement for Euromoteurs, paragraphs 30-31 and 42 (OJ L 307, 7.11.2006, p. 213).

the necessary investment. Nor will the aid enable FagorBrandt to attain the size needed to improve its position in negotiations with the major distributors, which prefer suppliers with a larger presence in the European Union.

(22) Secondly, it considers that the aid is not limited to the necessary minimum, inasmuch as FagorBrandt could obtain the financing needed for its restructuring from its shareholder and from the cooperative to which its shareholder belongs (MCC, of which the bank Caja Laboral forms part).

(23) Thirdly, it considers that the aid is likely to affect competition and trade between Member States. Most companies in the sector have their manufacturing base in Europe and can therefore be considered European. Asian and Turkish competitors have a significant presence only in certain product areas. FagorBrandt is the fifth largest operator at European level, with a strong position in the French, Spanish and Polish markets. The competitor considers, therefore, that in the absence of compensatory measures the Commission cannot declare the aid compatible.

(24) Fourthly, the granting of unlawful aid by France and Italy in the past leads to two conclusions: firstly, FagorBrandt's difficulties are recurring, raising the question of its viability; and secondly, the notified aid will probably be used to reimburse unlawful aid, thereby circumventing the reimbursement obligation.

4.3. **Comments from FagorBrandt**

(25) FagorBrandt's comments are similar to those of the French authorities, which are summarised below.

5. **COMMENTS FROM FRANCE**

5.1. **Comments from France on the opening decision**

(26) Regarding a possible circumvention of the prohibition on restructuring aid to newly created firms, the French authorities do not contest that, in accordance with point 12 of the restructuring aid guidelines, FagorBrandt was to be considered 'a newly created firm' during the three years following its formation. They point out, however, that the question of the possibility of restructuring aid to FagorBrandt started to be posed only in 2006, following the difficulties first encountered in 2004 and the company's worsening financial situation in 2005, that is to say during the fifth year of its existence. In other words, the company had no reason to seek restructuring aid before being in a situation calling for such aid, a situation which came about in 2006. The question of a possible circumvention of the 'three year' rule therefore simply does not arise.

(27) Regarding the possibility that the notified aid deprives the reimbursement obligation of its effectiveness, France states that the company's difficulties are not caused only by the reimbursement of the aid. The financial difficulties began in 2004 and the situation grew much worse in 2005 and 2006. As the Commission concluded in the opening decision, the company is indeed 'in difficulty' within the meaning of the restructuring aid guidelines. France concludes from this that the company is eligible on this score for restructuring aid if the other conditions for such aid are otherwise met. The question whether the company might survive beyond 2007 or 2008 if it did not have to reimburse the aid is irrelevant, as the reimbursement of the aid is obligatory and has been so since the Commission's negative decision on the Article 44 *septies* scheme in 2003. It is therefore in point of fact the accumulation of financial difficulties that justifies the request for aid, these difficulties being the result of the restructuring costs already borne by the company, the ongoing state of the restructuring process and all the other costs the company has to take into account, among which is the aid reimbursement.

(28) Regarding the restoration of long-term viability and the two corresponding doubts raised in the opening decision, the French authorities make a number of comments. The forecast 20 % growth in turnover in 2007 compared with 2006 is due primarily to the change in scope of FagorBrandt's activities in 2006. As for the failure to take into account the reimbursement of the unlawful aid received by the Italian subsidiary (against the background of the takeover by Brandt Italia of the electrical household appliance business of Ocean SpA), this reimbursement should not affect the company's viability, given that the amount ultimately borne by Brandt Italia should be less than EUR 200 000, the balance being borne by the vendor of the business in question.

(29) Regarding the absence of compensatory measures, France points out that in 2004 the company sold Brandt Components (Nevers plant). The company has also reduced its production capacity by ceasing manufacture of chest freezers and freestanding microwave ovens. France maintains that the aid has caused very little distortion and that this reduces the need for compensatory measures. FagorBrandt has a [0-5] % (*) share of the European market, which is very little compared with its main competitors. The French authorities consider, moreover, that the company's presence in the market helps to prevent oligopoly situations from arising. During the formal investigation procedure, the French authorities offered to take additional compensatory measures.

(*) Business secret.

(30) Regarding the Commission's doubts about the limitation of the aid to the minimum and the recipient's own contribution, the French authorities make the following comments. On the failure to take the reimbursement of the aid into account in the costs of restructuring, they point out that the reimbursement of incompatible aid cannot, *prima facie*, be counted as a restructuring cost. As for the 'recipient's own share', as it is called in the notification *(effort propre du bénéficiaire)*, the French authorities explain that this consists of bank loans.

5.2. **Comments from France on the interested parties' comments**

(31) In response to Electrolux's comments, France states that the restructuring measures taken by Electrolux and other competitors were aimed not at remedying a difficult economic situation but at bolstering positions in the large electrical household appliance market. France accordingly considers that there is no comparison between the situations of FagorBrandt and its competitors, which in any case have far greater financial resources at their disposal owing to their much bigger size.

(32) In response to the comments concerning FagorBrandt's long-term viability put forward by the company requesting anonymity, the French authorities state, firstly, that FagorBrandt has taken measures aimed initially at stemming losses and strengthening margins so as to be able ultimately to attain a better position in the market, notably by developing […].

(33) Concerning, secondly, the assertion that the aid is not limited to the minimum, inasmuch as FagorBrandt could obtain financing from its shareholders, the French authorities point out that MCC is a cooperative movement, not a holding company. In this cooperative movement, each cooperative, including Fagor and the bank Caja Laboral, is autonomous, and depends on the decisions of its own worker-cooperators, who are its owners. FagorBrandt can therefore count on the financial support only of Fagor, to the extent of the latter's existing capabilities. The acquisition of FagorBrandt has reduced the amount of cash available to Fagor, and Fagor cannot now provide any financing above a certain threshold.

(34) Thirdly, in answer to the supposed negative impact on competition, the French authorities point to contradictions in the comments from the interested party requesting anonymity. On the one hand, that party asserts that the aid would affect competition in the European market, while on the other it states that FagorBrandt is too small compared with the majors and that this threatens its viability. Moreover, as regards the absence of compensatory measures, the French authorities indicate that they have already taken meaningful compensatory measures and that they propose to take further such measures.

(35) Fourthly, in answer to the statements based on the earlier award of unlawful aid by France and Italy, France points out that those unlawful aid measures were directed, not at a restructuring programme for the company, but at a scheme to promote the maintenance of employment in France. It stresses, moreover, that, on the basis of the information FagorBrandt provided to the Commission on 17 December 2007, there is no actual relationship between the amount of aid granted (approximately EUR 20 million net after tax) and the amount of incompatible aid (approximately EUR 27,3 million including interest). Furthermore, the restructuring costs are estimated at EUR 62,5 million and hence are significantly higher than the amount of restructuring aid sought. Finally, France points to the fungible nature of the expenditure.

(36) As regards the comments submitted to the Commission by FagorBrandt, the French authorities state that they cannot but agree with these clarifications, all the more so since they complement their own observations.

6. **ASSESSMENT OF THE AID**

6.1. **Existence of aid within the meaning of Article 107(1) TFEU**

(37) The Commission considers that the measure constitutes state aid within the meaning of Article 107(1) of the TFEU. It takes the form of a grant given by the French Government, and is consequently financed out of state resources and is imputable to the State. It is aimed solely at FagorBrandt, and is thus a selective measure. The grant favours FagorBrandt by providing it with additional resources and preventing it from having to cease trading. It therefore threatens to distort competition between manufacturers of large electrical household appliances. In the market for large electrical household appliances there is extensive trade between Member States. The Commission concludes that the notified measure constitutes state aid. France does not dispute that conclusion.

6.2. **Legal basis of the assessment**

6.2.1. *Legal basis for a finding of compatibility*

(38) Article 107(1) of the TFEU imposes a general ban on state aid, and Article 107(2) and (3) provide for exceptions. The exceptions in Article 107(2) of the Treaty are clearly not applicable here.

(39) As for the exceptions in Article 107(3), the Commission would point out that the objective of the aid is not regional, and the exception in point (b) is clearly not applicable, so that only the exception in point (c) can apply. This provides for the authorisation of state aid granted to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. It is common ground that the aid at issue was granted with a view to restoring the long-term viability of a firm in difficulty. How the Commission assesses the compatibility of such aid is explained in the restructuring aid guidelines. It is therefore those guidelines that will serve as the legal basis for the assessment. The Commission considers that no other Community rules could apply in the present case.

France has, moreover, invoked no other exception provided for in the TFEU. Nor has any of the interested parties criticised this choice of legal basis, which was already announced in the opening decision.

6.2.2. *The relevant period for purposes of the assessment*

(40) The General Court has held that when one of its decisions is annulled the Commission is required to base its new analysis solely on information which was available to it at the time it adopted the decision ([13]), which in this case is 21 October 2008.

(41) No account is to be taken of events that may have taken place after 21 October 2008. Changes that may have taken place in the market or in the situation of the recipient of the aid must be excluded from the analysis. Nor will the Commission consider the period of implementation of the restructuring plan from October 2008 onward ([14]).

(42) In the same way, the Commission is not under an obligation to start the investigation of the case afresh or even to supplement it by resorting to new technical expertise ([15]). The annulment of an act concluding an administrative proceeding which comprises several stages does not necessarily entail the annulment of the entire procedure prior to the adoption of the contested act. In cases, such as the present one, where, in spite of the fact that investigation measures have been taken allowing an exhaustive analysis to be made of the compatibility of the aid, the analysis carried out by the Commission is incomplete, thus making the decision unlawful, the procedure for replacing that decision can be resumed at that point by means of a fresh analysis of the investigation measures taken previously ([16]).

(43) Since the Commission is required to base its new analysis solely on information which was available to it in October 2008, information in respect of which both the French authorities and FagorBrandt have already defined their position, it is unnecessary to consult them afresh ([17]). Finally, the right of interested parties to submit their comments was ensured when the opening decision was published in the *Official Journal* ([18]), and there is no provision in Regulation No 659/1999 requiring that that opportunity be made available to them again where the original plan has been amended during the investigation procedure ([19]).

([13]) Judgment in *Alitalia* v *Commission*, cited in footnote 7 above.
([14]) *Alitalia*, paragraph 137.
([15]) *Alitalia*, paragraphs 144 and 159.
([16]) Alitalia, paragraphs 99 to 101 and 142.
([17]) *Alitalia*, paragraph 174.
([18]) See footnote 2.
([19]) *Alitalia*, paragraph 174.

(44) The present decision is accordingly based solely on the information available on 21 October 2008.

6.3. **Eligibility of the company for restructuring aid**

(45) In order to be eligible for restructuring aid, the company must first qualify as a firm in difficulty as defined in section 2.1 of the restructuring aid guidelines.

(46) In paragraph 24 of the opening decision, the Commission indicated that the company appeared to be in difficulty within the meaning of point 11 of the restructuring aid guidelines. In paragraph 27 of the opening decision, the Commission also indicated that, in line with the scenario in point 13 of the restructuring aid guidelines, the company's difficulties had become too serious to be dealt with by its Spanish shareholder. Disagreeing with this preliminary assessment, the competitor requesting anonymity took the view that FagorBrandt could obtain from Fagor and MCC whatever financial support it needed to overcome its difficulties. It must therefore be considered whether the preliminary assessment contained in the opening decision needs to be modified. The Commission would observe that the competitor bases its assertion on a press article ([20]) which seems to indicate that Fagor can easily raise funds on the financial markets. It should be noted, however, that the article in question dates from April 2005 and that Fagor's financial situation deteriorated markedly thereafter. The French authorities point out in this connection that Fagor's financial debts (not including those of FagorBrandt) trebled in 2005, following the acquisition of all of FagorBrandt's shares and heavy industrial investment by Fagor. Moreover, Fagor injected EUR 26,9 million of capital into FagorBrandt in 2006. All of this almost exhausted the debt-servicing capacity of the cooperative, the indebtedness ratios of which greatly exceeded the generally permitted limits.

(47) The French authorities have also explained that the FagorBrandt group's sole shareholder, Fagor, is a cooperative society incorporated under Spanish law. Fagor's capital is divided among approximately 3 500 members, all of them worker-cooperators; no member may hold more than 25 % of the capital.

(48) As a result of this legal form Fagor is unable to launch increases in capital open to outside subscribers. In order to increase its capital it would have to rely on its own members, whose financial capacity is limited to their own personal savings. To finance its development the only courses open to it are to borrow from banks or to issue bonds.

([20]) *La Tribune*, 14 April 2005.

(49) MCC is a grouping of cooperatives of which Fagor forms part. Each cooperative in the grouping retains its legal and financial autonomy. In other words, there are no capital links between Fagor and MCC. MCC is a cooperative movement, not a holding company. In this grouping each cooperative, including Fagor and the bank Caja Laboral, is autonomous, and depends on the decisions of its own worker-cooperators, who are its owners. The relations between MCC and its members are not those of a conventional capital-based group.

(50) As a result of its legal form, MCC could not raise funds as a public limited company might, and cannot be considered a parent company for purposes of point 13 of the restructuring aid guidelines. FagorBrandt could therefore count on the support only of its parent association Fagor, to the extent that its capacity to contribute permitted.

(51) The Commission considers, therefore, that there is no need to revise the assessment contained in the opening decision as regards the company's eligibility under points 11 and 13 of the restructuring aid guidelines.

(52) Regarding the company's eligibility under the conditions set out in section 2.1 of the restructuring aid guidelines, the opening decision raises only one concern, namely the possible circumvention of the prohibition on restructuring aid to newly created firms (see section 3 above, 'Grounds for initiating the procedure').

(53) The Commission has analysed the company's financial situation, which is illustrated by Table 1 below. Clearly, during the first three years of its existence, the company — even if it had reimbursed the Article 44 *septies* aid — did not satisfy the tests of points 10 and 11 of the restructuring aid guidelines for being considered in difficulty As regards point 10 of the restructuring aid guidelines, even if the company had reimbursed the EUR 22,5 million of aid in 2004 (that is to say, in the months following the Commission's final negative decision), it would still not have lost half of its capital in 2004. As regards point 11 of the restructuring aid guidelines, even if the company had reimbursed the EUR 22,5 million of aid in 2004, it would have posted only one loss-making year (2004), which is insufficient for it to be considered in difficulty under that point. It was from 2005 onwards that the financial difficulties of the FagorBrandt group increased, with the result that the company might be considered a firm in difficulty within the meaning of the restructuring aid guidelines (that is to say, a firm which is unable to stem losses 'which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term'), starting possibly from the following year (bearing in mind the obligation to reimburse the Article 44 *septies* aid), but definitely from 2007.

Table 1

(EUR million)	2002	2003	2004	2005	2006	2007
Turnover	847,1	857,6	813,2	743,6	779,7	903,0
Gross margin	205,2	215,1	207,0	180,6	171,6	190,4
Profit or loss	15,5	13,8	(3,6)	(13,4)	(18,2)	(5,7)
Capital and reserves	69,8	83,4	79,8	70,6	79,4	73,6

(54) The Commission also notes that in the first quarter of 2005 the Fagor group decided to buy 90 % of the company's shares at a cost of EUR [150–200] million. This would indicate that the market did not consider the company to be in difficulty within the meaning of the restructuring aid guidelines, that is to say to be a company which, without outside intervention by the public authorities, was almost certainly condemned to go out of business in the short or medium term.

(55) On the basis of the above, the Commission considers that the company, which was established in January 2002, could not be deemed to be in difficulty during its first three years of existence even if it had reimbursed the Article 44 *septies* aid immediately. Consequently, it considers that the fact that France had not yet recovered the Article 44 *septies* aid in January 2005 — three years after the creation of FagorBrandt — did not have the effect of artificially keeping afloat a company which would otherwise have exited the market. It also considers that, during that period, the company had no reason to seek restructuring aid. The Commission accordingly takes the view that the fact that in January 2005 France had not yet recovered the Article 44 *septies* aid does not constitute a circumvention of the prohibition on restructuring aid in favour of newly created firms within the meaning of point 12 of the restructuring aid guidelines.

(56) In conclusion, the doubts about the company's eligibility have been removed and the Commission considers that the conditions laid down in section 2.1 of the restructuring aid guidelines are fulfilled.

6.4. **Previsions concerning previous unlawful and incompatible aid**

6.4.1. *The aid granted by France*

(57) On the basis of point 23 of the restructuring aid guidelines and the fact that the notified aid was *prima facie* aimed mainly at financing the reimbursement of the Article 44 *septies* aid, the Commission stated in paragraph 30 of the opening decision that it had misgivings about whether the notified aid constituted a circumvention of the reimbursement obligation and rendered that obligation meaningless and redundant.

(58) In assessing this question, the Commission has taken into account the following factors.

(59) Firstly, according to settled case-law, the reimbursement of incompatible aid with interest makes it possible to re-establish the situation which existed before the aid was granted and hence to eliminate the resulting distortion of competition. Consequently, in the present case, the reimbursement of the Article 44 *septies* aid with interest — which is a precondition for the payment of the new aid — is intended to re-establish the situation which existed before the aid was granted.

(60) Secondly, the company is eligible for restructuring aid. First of all, its financial difficulties do not stem primarily from the reimbursement of the incompatible aid. They stem from other sources, which are at the root of the losses incurred since 2004 (see Table 1 above). The future reimbursement of the incompatible aid will merely worsen these difficulties to a point where the company can no longer face up to them without state aid. Secondly, a business restructuring plan costing EUR 62,5 million has been implemented. This shows that the operational restructuring needed to re-establish business profitability is engendering very substantial costs — more substantial than the reimbursement of the Article 44 *septies* aid, which comes to EUR 22,5 million, not including interest. These elements indicate that Fagor-Brandt is a firm in difficulty whose existence is in danger. It can, therefore, like any company in such a situation, receive restructuring aid if it satisfies the other conditions laid down in the restructuring aid guidelines.

(61) Thirdly, in its 1991 decision in the *Deggendorf* case, the Commission, observing that 'The cumulative effect of the illegal aid which Deggendorf has been refusing to repay since 1986 and the present new … aid would give it an excessive and undue advantage which would adversely affect trading conditions to an extent contrary to the common interest', considered the new aid compatible on condition that 'The … authorities … suspend payment to Deggendorf of the aid … until such time as they have recovered the incompatible aids' ([21]). In a judgment delivered on 15 May 1997 the Court of Justice endorsed the Commission's approach ([22]). Since then, the Commission has adopted several decisions in which it follows the same line, finding a new aid measure to be compatible while at the same time requiring that its payment be suspended pending reimbursement of unlawful aid ([23]). The Commission would point out that, in the present case, once the new aid fulfils the conditions laid down by the restructuring aid guidelines, nothing seems to stand in the way of applying the *Deggendorf* approach, i.e. finding the new aid compatible provided its payment is suspended pending recovery of the Article 44 *septies* aid.

(62) In the light of the above considerations, the Commission's concerns have been allayed.

(63) In this context, the Commission would point out the following. Point 23 of the restructuring aid guidelines requires the Commission, when assessing restructuring aid, to 'take into account, first, the cumulative effect of the old aid and of the new aid and, secondly, the fact that the old aid has not been repaid.' As indicated in footnote 2 to point 23 of the restructuring aid guidelines, this provision is based on the rule in *Deggendorf* ([24]). In the present case, France has undertaken to recover the Article 44 *septies* aid before paying the new aid. In this Decision the Commission is required, on the basis of the findings in *Deggendorf*, to transform that commitment into a condition precedent to the compatibility of the notified aid. It will thus ensure that there is no combination of the old aid with the new aid and that the old aid is reimbursed.

6.4.2. *The unlawful Italian aid*

(64) On 21 October 2008 Brandt Italia, the Italian subsidiary of FagorBrandt, remained liable for the repayment of part of the aid granted by the Italian authorities. The Commission declared this aid incompatible in a Decision adopted on 30 March 2004 ([25]).

([21]) Commission Decision of 26 March 1991 on aid granted by the German Government to Deggendorf GmbH (OJ L 215, 2.8.1991, p. 16).

([22]) Judgment of the Court of Justice in Case C-355/95 P *TWD* v *Commission* [1997] ECR I-2549 (the *Deggendorf* judgment), at paragraphs 25-26. That judgment upheld the judgment of the General Court in Joined Cases T-244/93 and T-486/93 *TWD* v *Commission* [1995] ECR II-2265.

([23]) In this connection, the Commission Notice *Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid* (OJ C 272, 15.11.2007, p. 4) states that 'the Commission has … started to apply *Deggendorf* case law in a more systematic manner. This case law enables the Commission, if certain conditions have been satisfied, to order Member States to suspend the payment of a new compatible aid to a company until that company has reimbursed old unlawful and incompatible aid that is subject to a recovery decision.'

([24]) Judgments cited in footnote 22 above.

([25]) OJ L 352, 27.11.2004, p. 10. That Decision was challenged by Brandt Italia and by Italy before the General Court, which dismissed the actions on 12 September 2007 (Joined Cases T-239/04 and T-323/04). On 6 December 2007 the Court of Justice held that by failing to comply with the Commission Decision of 30 March 2004 Italy had failed to fulfil its obligations (Case C-280/05).

(65) In such a case, as has been explained in paragraph 61, the findings in *Deggendorf* confirm that the Commission does not exceed the limits of its discretion where it requires recovery of the previous aid as a condition precedent to the payment of fresh aid ([26]). If the Commission makes the grant of the planned aid subject to the prior recovery of earlier aid, it is not obliged to examine the cumulative effect of the aid on competition: the imposition of such a condition prevents the advantage conferred by the planned aid from combining with that conferred by the earlier aid ([27]).

(66) In its decision-making practice, therefore, rather than applying point 23 of the restructuring aid guidelines, which would allow it to examine the cumulative effect of the unlawful aid and the new aid, the Commission has preferred to require the recovery of the incompatible aid before the fresh aid is paid ([28]).

(67) In view of the particular circumstances of this case, however, the Commission will apply point 23 of the restructuring aid guidelines. The Commission here has to adopt a fresh Decision following the annulment by the General Court of the Commission's Decision of 21 October 2008. The Commission cannot consider information that was not in its possession at the time of the first Decision. It consequently cannot take account of fresh commitments that may have been given by the Member State or of the manner of any recovery of unlawful aid that may have taken place since that date.

(68) In line with the judgment of the General Court in *Electrolux and Whirlpool*, therefore, the Commission must examine the cumulative effect of the Italian aid and the restructuring aid notified ([29]).

(69) It must first be determined what is the amount of the Italian aid that needed to be considered on 21 October 2008.

([26]) Judgments cited in footnote 22 above.

([27]) Judgment in *Electrolux and Whirlpool*, cited in footnote 6, at paragraph 67.

([28]) See the following Commission Decisions: Commission Decision of 21 October 2003 on the research and development aid to the site at Zamudio (Basque Country) which Spain is planning to implement for the company 'Industria de Turbo Propulsores, SA' (ITP) (OJ L 61, 27.2.2004, p. 87, paragraphs 32–36, 55 and 117–119); Commission Decision of 16 March 2005 concerning State aid that Italy (Regione Lazio) intends to grant for the reduction of greenhouse gas emissions (OJ L 244, 7.9.2006, p. 8); and Commission Decision of 8 November 2006 on State aid C 11/06 (ex N 127/05) which Italy is planning to implement for AEM Torino (OJ L 366, 21.12.2006, p. 62, paragraphs 39–41).

([29]) Judgment cited in footnote 6, at paragraph 71: 'Since the Commission did not make the grant of the aid at issue conditional on the recovery of the incompatible Italian aid, it should therefore have examined the cumulative effect of the two types of aid, which it failed to do in the present case.'

The amount of the Italian aid

(70) FagorBrandt takes the view that the amount of the Italian aid to be repaid by Brandt Italia will probably be less than EUR 200 000.

(71) In 2003 FagorBrandt, through its subsidiary Brandt Italia, bought the Verolanuova works and its assets from Ocean, which was in court-supervised administration. The price Brandt Italia offered for the assets was EUR 10 million.

(72) Ocean's court-appointed administrators considered this sum to be insufficient, and the Italian authorities then sought to extend to takeover operations of this kind certain provisions of two schemes considered compatible with European law, the laid-off workers' mobility scheme *(mobilità)* and the lay-off fund *(cassa integrazione)*. Those provisions allowed firms recruiting unemployed workers to enjoy an exemption from social security contributions. The purpose of extending these measures was that the benefit to the purchaser would increase the value of the assets proportionally.

(73) The Italian authorities therefore enacted a decree-law, dated 14 February 2003, which provided that the purchaser of any company in special administration *(amministrazione straordinaria)* that employed more than 1 000 people would qualify for a reduction in social security contributions and an additional grant for every employee transferred. The acquisition by Brandt Italia of Ocean's electrical household appliances business, which took place on 7 March 2003, was eligible for the scheme set up by this legislation. The value of the exemptions, estimated at EUR 8,5 million, was consequently added to the purchase price offered by Brandt Italia, which now increased to EUR 18,5 million.

(74) On 30 March 2004 the Commission adopted a Decision finding that the Decree-law of 14 February 2003, converted into statute by an Act of 17 April 2003, was a state aid measure that was unlawful and incompatible with the internal market ([30]). When Brandt Italia learned of the Commission Decision, it obtained an order from the Ordinary Court *(Tribunale)* of Brescia, dated 5 July 2004, seizing the last instalment of the purchase price (EUR 5,7 million), and approached the supervisors of the Ocean proceedings with a view to recovering the amount paid in excess. Brandt Italia took the view that the Italian State was required to recover the unlawful aid from the real beneficiary.

([30]) OJ L 352, 27.11.2004, p. 10.

(75) Although the recipient of the aid granted under the scheme that the Commission had held unlawful was Brandt Italia, FagorBrandt considered that the ultimate benefit of the aid had been transferred almost entirely to the creditors recognised by the court-appointed administrators of Ocean, via an increase of EUR 8,5 million in the purchase price of the assets, compared with EUR 8 624 283 in benefits actually granted. The French authorities took the view that the balance for which Brandt Italia/FagorBrandt was still liable was consequently EUR 124 283 plus interest.

(76) The Italian authorities have provided the Commission with information that invalidates this reasoning.

(77) On 13 May 2008 the Italian authorities sent the Commission two judgments delivered by courts in Brescia. They concerned a dispute between the National Social Security Institute (INPS) and Brandt Italia over aid Brandt Italia had received in the form of exemptions from social security contributions.

(78) The first judgment, dated 1 February 2008, suspended a recovery order issued against Brandt Italia by the INPS on 18 December 2007. The INPS appealed against that judgment. On 29 April 2008 the appeal court annulled the suspension of the recovery order.

(79) A third judgment dates from 8 July 2008, and was sent to the Commission on 20 October 2008: it finds in favour of the INPS, on the substance, and upholds the order to Brandt Italia to repay the aid in full. Brandt Italia was notified of that judgment on 15 September 2008.

(80) In the light of this information the Commission must determine the amount of aid to be repaid by Brandt Italia/FagorBrandt that could reasonably have been estimated on 21 October 2008. The Commission observes that the judgment of the Ordinary Court of Brescia of 8 July 2008 ordered Brandt Italia to repay EUR 8 890 878,02.

(81) The Commission considers, however, that the sum seized, EUR 5,7 million, must be deducted from that figure. That sum was provisionally frozen by the judgment of the Ordinary Court of Brescia of 5 July 2004, and was not available to Brandt Italia thereafter. The order to freeze it was made by reason of the Commission's Decision of 30 March 2004: thus the sum was frozen as a precaution against the need to recover it. On 21 October 2008, therefore, it could reasonably be supposed that the sum would serve to repay part of the aid. This conclusion is supported by the following:

— In paragraph 18 of its Decision of 30 March 2004, the Commission said that the aid scheme it held incompatible might benefit the purchaser of a firm in difficulty or the firm in difficulty itself. It was reasonable to suppose, in other words, that Ocean would be liable for at least part of the sum to be recovered.

— The judgment of the Ordinary Court of Brescia of 8 July 2008 refers to the fact that this sum is being held in a frozen account, and considers it 'evident' that the sum may serve to repay the INPS in part.

(82) In the light of the circumstances set out in paragraphs 76 to 81, the Commission considers that the final amount of the Italian aid to be taken into account for purposes of the present analysis is EUR 3 190 878,02, plus interest running to 21 October 2008.

(83) The Commission takes the view that the date to be considered in order to determine the amount of interest is not the date of the actual recovery of the aid but the date of the decision that was annulled, because the Commission is here assessing the compatibility of the French aid on 21 October 2008. On 21 October 2008 the French aid was combined with the Italian aid including the interest running to that date. The Commission must take account of the cumulative effect of those two aid measures, but must not add interest running to the date of the actual recovery.

(84) The advantage conferred by the interest running from 21 October 2008 to the date of recovery will be removed by the recovery itself, in which that interest will of course have to be included.

The cumulative effect of the restructuring aid and the Italian aid

(85) FagorBrandt consequently had at its disposal a sum of EUR 3 190 878,02, plus interest, in addition to the EUR 31 million in aid it was granted by the French authorities. This advantage had an impact on competition: FagorBrandt had additional liquidity that it would not have had under normal market conditions (i.e. in the absence of the incompatible Italian aid).

(86) In line with point 23 of the restructuring aid guidelines and with the judgment in *Electrolux and Whirlpool*, the Commission proposes as part of its assessment of the compatibility of the restructuring aid to examine the cumulative effect of the restructuring aid and the Italian aid.

(87) This examination of the cumulative effect requires the Commission to verify two things. First, the Commission must check that the compensatory measures (see paragraphs 89 ff. and especially paragraphs 118 ff.) do offset the damage to competition caused by the additional liquidity available to FagorBrandt. Second, the Commission will also seek to ensure that the recipient's own contribution is free of any aid component (see paragraphs 154 ff.). This is because it is not impossible that the contribution envisaged by the firm may incorporate the sum in question.

(88) When it verifies these aspects the Commission may impose new conditions on the Member State, irrespective of any proposals the Member State has made (and in the present case the Commission cannot take account of any such proposals made after 21 October 2008). This is confirmed by point 46 of the restructuring aid guidelines: 'the Commission may impose any conditions and obligations it considers necessary in order to ensure that the aid does not distort competition to an extent contrary to the common interest, in the event that the Member State concerned has not given a commitment that it will adopt such provisions'.

6.5. **No undue distortion of competition**

6.5.1. *The need for compensatory measures*

(89) Point 38 of the restructuring aid guidelines provides that, in order for restructuring aid to be authorised by the Commission, compensatory measures must be taken to lessen the adverse effects of the aid on trading conditions. Otherwise, the aid will be regarded as 'contrary to the common interest' and declared incompatible with the common market. This condition often takes the form of a limitation on the presence which the company can maintain in its market or markets after the end of the restructuring period.

(90) In its notification, France asserted that compensatory measures did not appear necessary in this case, *inter alia* because the aid would not have any excessive distortive effects. In paragraphs 37, 38 and 40 of the opening decision, the Commission explained briefly why it rejected this assertion.

(91) In the paragraphs that follow, the Commission explains in greater detail why it considers that the aid causes distortion and why, contrary to what the French authorities assert, compensatory measures are needed.

(92) As already indicated, FagorBrandt manufactures large electrical household appliances and markets them to distributors (it does not distribute or sell to private individuals). The Commission has in the past considered that the geographic market for large electrical household appliances is at least Community-wide, owing, among other things, to the absence of entry barriers, technical harmonisation, and relatively low transport costs ([31]). The data provided by FagorBrandt and by the two competitors that submitted comments confirm that the market is Community-wide in scale.

(93) The Commission considers that restructuring aid automatically distorts competition, because it prevents the recipient from being forced out of the market, and thus hinders the development of competing firms. Such aid therefore obstructs the exit of the least efficient firms, which is, in the words of point 4 of the restructuring aid guidelines, 'a normal part of the operation of the market'. The notified aid to FagorBrandt therefore gives rise to distortion of competition of this kind. The Commission would observe, however, that the following factors tend to limit the scale of this distortion of competition. First, in the European market for large electrical appliances, FagorBrandt has a market share of at most [0–5] % ([32]). Second, there are four competitors in the market — Indesit, Whirlpool, BSH and Electrolux — with market

([31]) In its Decision of 21 June 1994 in *Electrolux/AEG* (OJ C 187, 9.7.1994, p. 14), the Commission concluded that for large electric household appliances the geographic market was western Europe. In a Decision of 24 January 1999 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case IV.F.1/36.718.*CECED*) (OJ L 187, 26.7.2000, p. 47), the Commission concluded that the geographic market was the EEA. That case concerned washing machines.

([32]) The combined market share of FagorBrandt and Fagor Electrodomésticos is at most [5–10] %.

shares of 10 % or more ([33]). The competitor requesting anonymity acknowledges that FagorBrandt is a relatively small player in the European market whose market share is diminishing (see above the doubts expressed by this competitor concerning the company's return to viability, which are related to its small size) ([34]). Third, the amount of the aid is small by comparison with FagorBrandt's European turnover (at less than 4 % of turnover in 2007), and smaller again by comparison with the turnovers of the four main market operators, which are larger than that of FagorBrandt ([35]).

(94) The previous paragraph analyses the distortion of competition brought about by the aid; it is also necessary, as indicated in point 38 of the restructuring aid guidelines, which in turn reflects Article 107(3)(c) of the TFEU, to analyse the scale of the 'adverse effects on trading conditions' between Member States. As observed in paragraph 38 of the opening decision, the aid distorts the location of economic activities, and hence trade, between Member States. The bulk of FagorBrandt's production activities and employees are located in France ([80–100] % of the volumes produced by the company are produced there). Without aid from the French State, FagorBrandt would soon exit the market. However, the products manufactured at FagorBrandt's production plants are in competition mainly with products manufactured by competitors in other Member States ([36]). Consequently, the disappearance of FagorBrandt would enable those European competitors appreciably to increase their sales and hence their production. The aid has the effect of maintaining production activities in France which would otherwise have moved partly to other Member States. It therefore has an adverse effect on trading conditions in that it reduces the opportunities for competitors based in other Member States to export to France ([37]). The aid also reduces the opportunities for selling to those countries where FagorBrandt is going to continue to export its products. In view of the scale of FagorBrandt's sales and the corresponding number of jobs, these adverse effects on trading conditions are not negligible.

(95) On the basis of the above analysis, the Commission considers that compensatory measures should be taken which are real (i.e. non-negligible) but nevertheless limited in scope.

6.5.2. *Analysis of the measures already implemented*

(96) In paragraph 39 of the opening decision, the Commission expressed doubts about whether the measures notified by the French authorities were acceptable as compensatory measures inasmuch as point 40 of the restructuring aid guidelines states that 'Write-offs and closure of loss-making activities which would at any rate be necessary to restore viability will not be considered reduction of capacity or market presence for the purpose of the assessment of the compensatory measures.' It appeared that all of the measures described by the French authorities fell under that exclusion. During the course of the formal investigation procedure, France repeated that it considered that the cessation of the manufacture of chest freezers and freestanding microwave ovens, together with the sale of Brandt Components, constituted three meaningful compensatory measures. The Commission accordingly conducted a detailed analysis of these measures and drew the following conclusions.

([33]) The Commission cannot accept France's argument that FagorBrandt's continued presence in the market has a positive effect because it prevents the creation of an oligopolistic situation. The French authorities have not backed up that assertion with specific evidence. The assertion is contradicted, moreover, by their notification, which describes a highly competitive market with diversified competition from, among others, distributor brands. Lastly, point 39 of the restructuring aid guidelines states that account will be taken of 'a monopoly or a tight oligopolistic situation', which is not the case here, given that, counting just the majors alone, the number of competitors already comes to four.

([34]) According to the data supplied by that competitor, FagorBrandt's market share in Europe, by volume, fell from 5,3 % in 2004 to 5,2 % in 2005 and 5 % in 2006 and 2007.

([35]) If this analysis is carried out at world level the difference is even bigger, as groups like Electrolux and Whirlpool have very substantial business interests outside Europe. For example, in 2005, the combined turnover of FagorBrandt and Fagor Electrodomésticos came to less than EUR 2 billion, whereas the worldwide turnover in large electrical household appliances of Whirlpool, Electrolux, BSH and Indesit, expressed in euros, came to EUR 11,8 billion, EUR 10,8 billion, EUR 7,3 billion and EUR 3,1 billion respectively.

([36]) As indicated, FagorBrandt will no longer itself manufacture […]. It will produce […]. In those segments the proportion of products manufactured outside the European Union is smaller. The proportion manufactured outside the European Union is biggest in the case of […].

([37]) [50–80] % of FagorBrandt's sales take place in the French market. The Court of Justice has repeatedly held that 'Where a Member State grants aid to an undertaking, domestic production may for that reason be maintained or increased with the result that undertakings established in other Member States have less chance of exporting their products to the market in that Member State'. See Case C-102/87 *France* v *Commission* [1988] 4067, paragraph 19; Joined Cases C-278/92, C-279/92 and C-280/92 *Spain* v *Commission* [1994] ECR I-4103, paragraph 40; Case C-310/99 *Italy* v *Commission* [2002] ECR I-2289, paragraphs 84 to 86; Case T-152/99 *HAMSA* v *Commission* [2002] ECR II-3049, paragraphs 220 and 221.

(97) Regarding the closure of the chest freezer manufacturing plant (at Lesquin) in 2005, France indicated in its notification of 6 August 2007 that this plant, 'which made chest freezers and wine cellars for the whole FagorBrandt group, had fallen to a size … which no longer enabled it to cover either its variable costs or its fixed costs and had generated an operating loss of EUR 5,8 million in 2004'. There can therefore be no doubt that what is involved here is a closure of a loss-making business rendered necessary in order to restore viability ([38]) and that, in accordance with point 40 of the restructuring aid guidelines, it cannot be taken into account as a compensatory measure.

(98) The cessation of production of freestanding microwave ovens at the Aizenay plant also involved a closure of a loss-making activity which was needed in order to re-establish viability — something which the French authorities explicitly acknowledged in their submissions ([39]). The unprofitability of that activity is not surprising given that freestanding microwave ovens are one of the market segments that products from low-cost countries have penetrated the most ([40]). Moreover, the Aizenay plant had lost important contracts under which it produced microwave ovens for other groups ([41]). In conclusion, on the basis of point 40 of the restructuring aid guidelines, this measure cannot be taken into account as a compensatory measure.

(99) By contrast, in March 2004 the company divested its subsidiary Brandt Components (Nevers plant) to the Austrian group ATB for EUR 3 million. What was involved here, therefore, was neither a write-off ([42]) nor a closure of an activity. This measure is therefore not excluded by the said provision in point 40 of the restructuring aid guidelines. The business divested in March 2004 ([43]) had in 2003 a turnover of EUR 35,4 million — equivalent to 4 % of the company's 2003 turnover — and 306 employees — equivalent to 6 % of the company's workforce. It was active in the design, development, manufacture and marketing of electric motors for washing machines. The divestment has accordingly led to a reduction in the company's presence in the washing machine component market.

(100) But this measure cannot be regarded as a valid compensatory measure. Brandt Components was sold about three and a half years before the notification of the aid under scrutiny. The measure does not reduce FagorBrandt's presence in the large electrical household appliance market ([44]), the main market in which FagorBrandt will remain present. Thus the measure did not have as its object — and could not have as its effect — a lessening of the distortion of competition generated by the planned aid.

([38]) The lack of profitability of the freezer business was widely reported in the French press. An article in *Ouest France* dated 8 July 2004 stated, for example, that 'In 2005, ElcoBrandt, the French domestic appliance group, will close its freezer manufacturing plant in Lesquin (Nord) because it is "no longer profitable". Elco took over the plant from Brandt two years ago. The 600 employees agreed to a redundancy programme under which 150 jobs were to be maintained, but they have now been lost.' More specifically, in an article published in *Les Échos* on 7 July 2004, Brandt executives were quoted as saying that 'Despite a major drive to boost competitiveness, consisting in buying 35 % of components from China and improving quality and productivity, the fall in market prices has outpaced us' and that 'Maintaining a chest freezer production activity no longer makes economic sense within the ElcoBrandt group. Each time we sell one of those products, we now make a loss of 25 %.'

([39]) In the notification, the French authorities state that one of the restructuring plan's objectives is 'to rationalise production by abandoning certain bottom-end segments which have become structurally loss-making in order to limit the losses related to the market share gains by low-cost country manufacturers (freestanding microwave ovens, freezers and small refrigerators).' In their letter of 15 February 2008, in which they comment on the comments from interested parties, the French authorities state that 'The French authorities would remind you that … the various measures already taken are intended initially to stem the losses (closure of a loss-making production plant, Lesquin, and abandonment of certain unprofitable product lines, including freestanding microwave ovens).' These two extracts confirm the earlier conclusions concerning the closure of the Lesquin plant.

([40]) This fact was stressed by the French authorities, notably in Annex 7 to the notification.

([41]) See, for example, the article entitled 'Brandt: end of Miele contract confirmed. After the withdrawal of Electrolux, another blow for Aizenay', appearing in *Ouest France* on 3 March 2005.

([42]) All the less so as the company made a gain of EUR 774 000 on the sale.

([43]) As indicated in section 2.2 of the opening decision, FagorBrandt began to restructure in 2004 when the lack of competitiveness and the first financial difficulties became apparent. The Commission considers, therefore, that this divestment is 'part of the same restructuring', as required by point 40 of the restructuring aid guidelines.

([44]) The French authorities state that the activity of Brandt Components enabled the company to benefit from a strongly integrated production of high-end washing machines, which is historically a strength of the FagorBrandt group. According to the French authorities, this type of integration is particularly highly sought after in the case of innovative products or products requiring specific know-how and is practised by the major operators in the sector (e.g. BSH or Miele). The Commission would observe, however, that, beyond the earlier assertions, the French authorities have not furnished any evidence such as might enable it to establish beyond doubt — and even less to quantify the resulting effect — that the divestment of Brandt Components will reduce FagorBrandt's ability to develop competitive washing machines and will consequently reduce the presence of FagorBrandt in the washing machine market. The Commission cannot therefore conclude that the divestment of Brandt Components has a real effect on the large electrical household appliance market.

6.5.3. *Additional compensatory measures proposed by the French authorities*

(101) To meet the concerns raised in the opening decision regarding the adequacy of the notified compensatory measures, the French authorities propose the cessation of the marketing of Vedette refrigeration appliances and cooking appliances for a period of five years. Moreover, they propose either the cessation of the marketing of Vedette dishwashers or the divestment of the […] brand.

(102) As indicated above, FagorBrandt achieves [50–80] % of its sales in the French market, where in 2006 the company had a market share of [10-20] % in terms of value and [10-20] % in terms of volume. This means that if FagorBrandt had ceased trading, it is mainly its competitors in the French market that would have benefited, in the form of increased sales. It is therefore those companies that are the most affected by the continued existence of FagorBrandt due to the aid. Conversely, FagorBrandt's sales in the Italian market are very limited. As a compensatory measure, therefore, the Commission would give preference to cessation of the marketing of dishwashers under the Vedette brand as opposed to divestment of the […] brand, products of the Vedette brand being sold exclusively in the French market whereas products […] are sold primarily […] ([45]).

(103) The scale of these additional compensatory measures must therefore be analysed to establish their adequacy.

Refrigeration products

(104) Sales of refrigeration products (refrigerators and freezers) of the Vedette brand were worth, in 2007, EUR [10–20] million, equivalent to [0–5] % of the FagorBrandt group's turnover.

(105) Cessation of the marketing of these refrigeration products for a period of five years will enable competitors in the French market to strengthen their position in the refrigeration segment. According to the 2007 GfK study, FagorBrandt's main competitors in the refrigerator market in France — where FagorBrandt had a market share based on value of […] % — were Whirlpool ([…] %), Indesit ([…] %) and Electrolux ([…] %). In the freezer market, the main competitors of FagorBrandt (which had […] %) were Whirlpool ([…] %), Liebherr ([…] %) and Electrolux ([…] %).

([45]) In the French market, Vedette is a brand positioned […] of the […] products market. The measures proposed do not therefore reduce the presence of FagorBrandt in the market for […] products. However, the great majority of the groups competing with FagorBrandt in the […] market already possess brands competing with Vedette in the […] products market. They will therefore benefit from the withdrawal of the Vedette products described above.

Cooking products

(106) Sales of cooking products of the Vedette brand were worth, in 2007, EUR [5–10] million, equivalent to [0–5] % of the FagorBrandt group's turnover.

(107) Cessation of the marketing of cooking products for a period of five years will therefore enable competitors to strengthen their position in the cooker market. According to the 2007 GfK study, FagorBrandt's main competitors in the cooking products market in France — where FagorBrandt had a market share based on value of […] % — were Indesit ([…] %), Electrolux ([…] %) and Candy ([…] %).

Dishwashers

(108) Sales of dishwashers of the Vedette brand were worth, in 2007, EUR [5–10] million, equivalent to [0–5] % of the FagorBrandt group's turnover.

(109) According to the 2007 GfK study, FagorBrandt's main competitors in the dishwashers market in France — where FagorBrandt had a market share based on value of […] % — were BSH ([…] %), Whirlpool ([…] %) and Electrolux ([…] %). Consequently, cessation of the marketing of dishwashers under the Vedette brand will enable competitors to expand their presence in the market.

Conclusion

(110) To sum up, the Vedette products the marketing of which will be stopped account for [0–5] % of the group's turnover ([46]). The French authorities indicate that this will necessitate significant adjustments within the company […].

6.5.4. *Conclusion regarding the compensatory measures proposed by the French authorities; imposition by the Commission of an additional compensatory measure*

(111) The compensatory measures proposed are the cessation of the marketing for a period of five years of certain products of the Vedette brand (cooking, refrigeration and dishwashing) ([47]) and the divestment of Brandt Components. The result is a real (i.e. non-negligible) reduction in market presence, the size of which is, however, limited.

([46]) In 2007, they accounted for [30–40] % of the Vedette brand's turnover and [0-10] % of FagorBrandt's sales of large electrical household appliances in the French market.

([47]) The purpose of this measure is to withdraw the Vedette products concerned from the market. Clearly, therefore, the effect of the measure would be lost if FagorBrandt were to grant another company a licence for the production and/or marketing of these products under the Vedette brand.

(112) However, the Commission considers that the only valid compensatory measure proposed by the French authorities is the measure relating to the Vedette brand, and that it is not sufficient. The Commission will therefore impose, as a condition of compatibility, the extension of the cessation of the marketing of products of the Vedette brand for a further three years. The ban proposed has a duration of five years; this will be extended by three years, making a total of eight.

(113) According to the information in the Commission's possession on 21 October 2008, the impact of this compensatory measure ('CM') in terms of loss of turnover can be evaluated in two ways, shown in Table 2 ([48]):

Table 2

EUR million	2009	2010	2011	2012	2013	2014	2015	2016
FagorBrandt turnover	[900-1 200]	[900-1 200]	[900-1 200]	[900-1 200]	[900-1 200]	[900-1 200]	[900-1 200]	[900-1 200]
Impact CM, higher estimate	– [40-60]	– [40-60]	– [40-60]	– [40-60]	– [40-60]	– [40-60]	– [40-60]	– [40-60]
Impact CM, lower estimate	– [55-75]	– [55-75]	– [55-75]	– [55-75]	– [55-75]	– [55-75]	– [55-75]	– [55-75]

(114) The figures shown in Table 2 for the years 2009 to 2012 are the figures supplied by the French authorities and FagorBrandt for the impact of the compensatory measure they propose (for the scale of the impact see also paragraphs 143 ff.).

(115) The first way to calculate the impact of the additional compensatory measure imposed by the Commission is to multiply by 3 the loss of turnover for the last year evaluated by the French authorities, namely 2012. In an optimistic scenario for the company, the impact estimated in this fashion is therefore 3 × EUR [40–60] million, or EUR [120-180] million.

(116) The second way to estimate the impact of the additional compensatory measure is to extrapolate figures for 2013 to 2016 by applying a linear increase of [1,5–3] % to the figures for 2012, in continuation of the estimated [1,5–3] % growth in the company's turnover from 2009 to 2012. This estimate of growth in turnover is considered reasonable, in the light of group strategy and market prospects, for the reasons set out in paragraphs 125 ff. In an optimistic scenario for the company, following this approach, the compensatory measure will deprive FagorBrandt of turnover of EUR [120–180] million.

(117) The compensatory measure proposed therefore appears to be adequate, and is enough by itself to bring about a proportionate reduction in the adverse effects of the grant of the aid: in an optimistic scenario, it deprives the company of turnover of between [120-180] million over the period 2014–2016. The turnover lost will allow competitors to increase their sales. It will also be more difficult for the company to reintroduce the Vedette products concerned after eight years of absence as a result of the measure (the only Vedette products currently marketed are washing machines). Even if the brand does not disappear entirely, the cost of a return will be proportional to the years of absence from the market. The longer the brand has been absent from the market, the less it will be recognised.

(118) It has to be considered whether this additional compensatory measure will also offset the competitive advantage conferred by the cumulative effect of the Italian aid and the restructuring aid. On 21 October 2008 FagorBrandt had at its disposal a sum of EUR 3 190 878,02, or about EUR 4 million including interest, which it ought not to have received. This advantage had an impact on competition: the company had additional liquidity. But the additional compensatory measure offsets the damage done to competition.

([48]) The table assumes that the measure does indeed begin on 1 January 2009.

(119) Table 3 shows the net loss (or negative free cash flow) resulting from the compensatory measure. The figures for the years 2009-2012 are the figures notified to the Commission by the French authorities. The figures for the years 2013–2016 are an extrapolation obtained by increasing the 2012 figures by [1,5–3] % each year ([49]).

Table 3

EUR million	2009	2010	2011	2012	2013	2014	2015	2016
Final profit or loss without CM	[0-5]	[5-10]	[10-15]	[10-15]	*[15-20]*	*[15-20]*	*[15-20]*	*[15-20]*
Impact CM, higher estimate	– [10-15]	– [5-10]	– [5-10]	– [5-10]	*– [5-10]*	*– [5-10]*	*– [5-10]*	*– [5-10]*
Impact CM, lower estimate	– [15-20]	– [5-10]	– [5-10]	– [5-10]	*– [5-10]*	*– [5-10]*	*– [5-10]*	*– [5-10]*

(120) In an optimistic scenario for the company, three additional years deprive FagorBrandt of liquidity amounting to EUR [10–20] million (if we multiply the 2012 figure by 3) or EUR [10–20] million (if we add the extrapolated figures). In other words, the imposition of this new compensatory measure very amply offsets the advantage conferred by liquidity of about EUR 4 million.

(121) The fact that the compensatory measures extend beyond the period of restructuring (which is to end on 31 December 2012) does not mean that they are inappropriate. The compensatory measures arise out of the granting of restructuring aid, but they are not part of the restructuring process itself: they are intended to compensate the assisted firm's competitors for the damage to competition they may suffer. The fact that the measures extend beyond the period of restructuring does not in any way deprive them of their purpose, given that they were put in place by reason of a restructuring operation facilitated by state aid, and that their object and effect is to compensate for the damage to competition that results from that aid.

(122) Consequently, the Commission considers that these measures can avert the risk of excessive distortion of competition within the meaning of points 38 to 40 of the restructuring aid guidelines.

6.6. **Restoration of the company's viability**

6.6.1. *Restructuring plan, market prospects and credibility of the forecasts in the plan*

(123) FagorBrandt's restructuring plan is already under way; essentially it provides for:

— a refocusing and development targeted on […];

— a rationalisation of purchasing policy and […];

— plant closures and disposals ([50]);

— workforce reductions ([51]);

— measures to help ensure the continuation of the business ([52]).

(124) Having examined the plan the Commission confirms what it suggested in the opening decision, namely that it believes the plan complies with the requirements of points 35 to 37 of the restructuring aid guidelines. In other words, the restructuring plan can be expected to restore the company's long-term viability.

(125) The Commission wishes to explain its analysis and conclusions regarding the prospects for the market and the credibility of the forecasts in the restructuring plan.

(126) The Commission has evaluated the forecasts in the restructuring plan, notably in terms of growth prospects. The Commission would point out once again that this Decision takes account only of information available in October 2008.

([49]) All other things being equal, the rate of [1,5–3] % is considered a reasonable hypothesis for turnover growth in the light of group strategy and market prospects (see paragraphs 125 ff.).

([50]) In March 2004 FagorBrandt sold its Nevers plant (electric motors), and in January 2005 it closed its Lesquin plant (freezers). In 2006 it stopped production of freestanding microwave ovens at its Aizenay plant.

([51]) The group put in place […]. Several other measures were taken in France in 2006. In 2006 the group also began to rationalise the plant in Verolanuova in Italy.

([52]) As part of the measures to help ensure the continuity of the business, following studies carried out in March 2004 and February 2005, the group […].

(127) According to CECED ([53]), the volume trend in the European market between 2005 and 2007 shows moderate growth in western Europe (approximately 2 % a year) and sustained growth in eastern Europe (approximately 7 % a year). However, the growth rate in eastern Europe is anything but a foregone conclusion, as it is subject to the fluctuations of the economy, with double-digit expansion and double-digit contraction readily alternating.

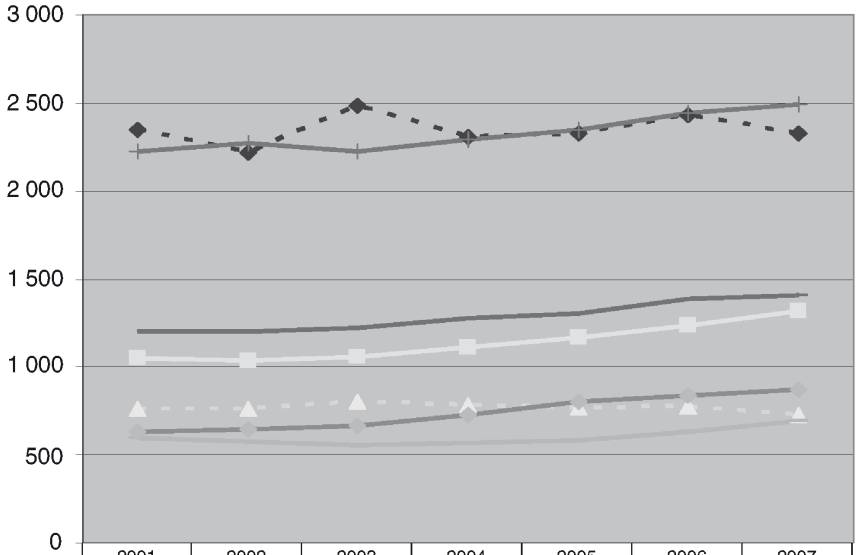
(128) Although in the long run a convergence in purchasing behaviour between eastern Europe and western Europe is possible, weak purchasing power in eastern European countries currently means that demand is concentrated on essential goods (washing machines and refrigerators) and entry-level appliances. It is these product markets, however, that Turkish and Asian competitors are entering.

(129) The markets showing potential as far as FagorBrandt is concerned are therefore those of western Europe, as they are larger in both value and volume and less dependent on low-end products where FagorBrandt can no longer be competitive and whereon the strong growth in eastern Europe is based.

(130) More particularly, FagorBrandt's reference market is the French market, where the group achieves [50–80] % of its sales, produces [80–100] % of its volumes and employs [80–100] % of the group's workforce. According to GIFAM ([54]), in 2007 the French market for large electrical household appliances grew by 1 % compared with 2006, in both volume and value terms. More specifically, the market for […] appliances, on which FagorBrandt wishes to concentrate, grew by […] % compared with 2006, whereas in the case of […] appliances sales fell by […] %.

(131) The trends by type of product show that the high-growth markets developing in Europe and particularly in France are essentially those for […] products. Growth in […] products is significant, whereas the market for refrigeration products is virtually at a standstill, as can be seen from the following table taken from the GIFAM study:

Table 4



	2001	2002	2003	2004	2005	2006	2007
Refrigerators	2 350	2 220	2 485	2 310	2 330	2 428	2 330
Freezers	760	760	800	785	770	775	730
Washing machines	2 225	2 270	2 225	2 290	2 350	2 446	2 490
Tumble dryers	595	580	555	570	585	631	690
Dishwashers	1 050	1 040	1 055	1 110	1 166	1 237	1 320
Hobs	1 200	1 200	1 220	1 280	1 305	1 384	1 410
Built-in cookers	630	645	665	730	800	840	870

([53]) CECED: European Committee of Domestic Equipment Manufacturers, an organisation bringing together 15 manufacturers of an at least European dimension and 26 trade associations present in several European countries (both members and non-members of the European Union).

([54]) GIFAM: Groupement interprofessionnel des fabricants d'appareils d'équipements ménagers, which groups together 50 or so companies present in the electrical household appliance markets.

(132) Consequently, FagorBrandt's decision to refocus in particular on […] and to develop […] seems consistent with the trend in the various segments and products.

(133) Having analysed the other basic components of the restructuring plan aimed at justifying the relevance of the forecasts relating to FagorBrandt's long-term operational profitability, the Commission considers that those forecasts are realistic.

Table 5

EUR million	2009	2010	2011	2012
FagorBrandt turnover	[900-1 200]	[900-1 200]	[900-1 200]	[900-1 200]
Final profit or loss	[0-5]	[5-10]	[10-15]	[10-15]

(134) The remainder of this analysis will be limited, therefore, to the two specific concerns regarding the realistic nature and adequacy of the restructuring plan raised in the opening decision.

(135) First of all, the Commission sought explanations for the expected 20 % increase in turnover in 2007. The French authorities explained that FagorBrandt's area of activity changed in 2006 owing to the transfer by Fagor to FagorBrandt of responsibility for distributing the Fagor brand in the British and French markets, followed by the transfer of Fagor's entire French business ([55]). That business's turnover was put at EUR [50-100] million for 2007 and was included in FagorBrandt's 2007 turnover. Taking an unchanged area of activity as a basis, the forecast increase in turnover would come to only [5–10] %. Since then, France has communicated to the Commission the turnover actually achieved in 2007. It came to EUR 903 million, compared with EUR 779,7 million in 2006 — a year-on-year increase of approximately 16 %.

(136) Secondly, the Commission noted that the restructuring plan did not indicate how FagorBrandt intended to reimburse the incompatible aid received by its Italian subsidiary, which might place the restoration of the company's viability in doubt. The French authorities state that the amount of the Italian aid to be repaid by Brandt Italia will probably be less than EUR 200 000 (see paragraphs 70 ff.). As the Commission has already stated, however (see paragraphs 76 ff.), the final amount of the Italian aid that should be taken into account for purposes of the present Decision is EUR 3 190 878,02, plus interest to 21 October 2008. But the Commission believes that the repayment of this sum will not jeopardise the company's return to viability if Fagor Brandt is required to increase its own contribution by a sum equal to EUR 3 190 878,02 plus interest (see paragraphs 149 ff.).

(137) On the basis of the above considerations, the Commission concludes that the doubts about the restoration of viability raised in the opening decision have been allayed.

6.6.2. *Doubts about the restoration of viability raised by an interested party*

(138) As indicated above, the competitor requesting anonymity challenges the claim that the restructuring operation can restore the company's long-term viability. First of all, it considers that the company should have transferred part of its production to low-cost production areas where it could benefit from economies of scale. Secondly, the company will be unable to afford the investment needed to improve its products in an industry which each year requires significant investment in plant, design and R&D. Thirdly, the company is still too small compared with its rivals In the paragraphs that follow, the Commission will seek to ascertain whether these comments by the competitor requesting anonymity call into question the Commission's conclusions concerning the restoration of viability

(139) On the need to transfer part of production to lower-cost countries, the Commission would observe that the French authorities have in fact answered this point. The French authorities stress that the development targeted by FagorBrandt (high-value-added and innovative products), like that of some of its strictly European competitors, is incompatible with the systematic transfer of production to low-cost countries. […] For the majors, the establishment of production units in low-cost countries also reflects a wish to expand sales there.

([55]) The Commission carried out an analysis of whether this increased integration of FagorBrandt in Fagor called into question the conclusions drawn in paragraph 27 of the opening decision concerning FagorBrandt's eligibility. It concluded that such was not the case, as the great majority of the factors mentioned in that paragraph remained valid.

(140) On the assertions by the competitor requesting anonymity regarding FagorBrandt's inability to afford the significant investment needed in order to remain competitive and regarding the company's excessive smallness compared with the majors, the Commission would observe that it itself pointed out in paragraph 8 of the opening decision that these factors had contributed to the company's difficulties. However, the restructuring plan seems to respond to the challenges. The company intends to concentrate on […]. The Commission would also observe that, despite their small size compared with the majors and their focus on production in the countries of western Europe, some companies in the sector manage to remain competitive by concentrating on certain products and segments (these are 'niche' players such as Miele, Smeg, Liebherr or Teka, or small manufacturers with only a national dimension, such as Candy or Gorenje). The ever closer integration of FagorBrandt into the Fagor group is also helping to resolve these size-related problems. To sum up, the Commission recognises that the points raised by the competitor represent challenges for FagorBrandt, but it considers that the restructuring plan is up to meeting those challenges and makes it sufficiently probable that viability will be restored.

(141) In the light of the above, the Commission considers that the comments from the competitor requesting anonymity do not call into question its assessment that the restructuring plan permits the restoration of FagorBrandt's long-term viability.

6.6.3. *Effect of the compensatory measures on the restoration of viability*

(142) Finally, still on the subject of the restoration of long-term viability, the Commission must, as is provided for in the last sentence of point 38 of the restructuring aid guidelines, verify whether the planned compensatory measures endanger the company's viability. As has been explained, the French authorities have proposed compensatory measures that were not included in the financial forecasts attached to the notification. The Commission considers these additional measures to be necessary, and they will consequently have to be implemented. Inasmuch as these measures — cessation of the marketing of refrigeration, cooking and dishwashing products under the Vedette brand for a period of five years — will bring about a worsening of the company's financial results, it must be examined whether they can be borne by the company.

(143) According to the French authorities, Tables 6 and 7 show the company's financial results after factoring in the implementation of the compensatory measures that the French authorities propose. Table 6 depicts an optimistic scenario, Table 7 a pessimistic one.

Table 6

Cessation of the marketing of refrigeration, cooking and dishwashing products under the Vedette brand	Best case					
	2007	2008	2009	2010	2011	2012
Turnover	903,0	[900-1 000]	[900-1 000]	[900-1 000]	[900-1 000]	[900-1 000]
Gross margin	[…]	[…]	[…]	[…]	[…]	[…]
Operating profit before non-recurrent items	[…]	[…]	[…]	[…]	[…]	[…]
Operating profit (EBIT)	[…]	[…]	[…]	[…]	[…]	[…]
Pre-tax profit	[…]	[…]	[…]	[…]	[…]	[…]
Profit or loss	– [5-10]	– [5-10]	– [5-10]	[0-5]	[5-10]	[5-10]
Free cash flow	[…]	[…]	[…]	[…]	[…]	[…]
Accumulated free cash flow	[…]	[…]	[…]	[…]	[…]	[…]

Table 7

Cessation of the marketing of refrigeration, cooking and dishwashing products under the Vedette brand	Worst case					
	2007	2008	2009	2010	2011	2012
Turnover	903,0	[900-1 000]	[900-1 000]	[900-1 000]	[900-1 000]	[900-1 000]
Gross margin	[…]	[…]	[…]	[…]	[…]	[…]
Operating profit before non-recurrent items	[…]	[…]	[…]	[…]	[…]	[…]
Operating profit (EBIT)	[…]	[…]	[…]	[…]	[…]	[…]
Pre-tax profit	[…]	[…]	[…]	[…]	[…]	[…]
Profit or loss	– [5-10]	– [5-10]	– [10-15]	[0-5]	[0-5]	[5-10]
Free cash flow	[…]	[…]	[…]	[…]	[…]	[…]
Accumulated free cash flow	[…]	[…]	[…]	[…]	[…]	[…]

(144) The withdrawal of several product families marketed under the Vedette brand will cause losses of turnover; the losses shown in the tables are based on the following hypotheses. The withdrawal may lead to:

a) a reduction in sales in the particular family of products of the Vedette brand the marketing of which is being suspended;

b) a reduction in sales in the other families of products marketed under the Vedette brand (negative range effect on products of the Vedette brand) ([56]);

c) a reduction in sales of other brands (negative portfolio effect on all brands of the FagorBrandt group).

(145) The optimistic scenario takes account only of the effects mentioned at (a) and (b) in paragraph 144: the loss related to the cessation of the marketing of a product is taken to be equivalent to a loss of [70–90] % of the turnover from the ceased product line (the remaining [10–30] % being recovered by FagorBrandt via the increase in sales of identical products sold under brands other than Vedette) and the loss of turnover from the other products marketed under the Vedette brand is taken to be [20–30] %. The pessimistic scenario takes account of the factor mentioned at (c) in paragraph 144: it presupposes a loss rate of [110–130] % for the ceased product line (as well as the loss of 100 % of turnover in the product line that has been dropped, there may be losses on other products and brands too), and a loss rate of [20–40] % for the other products sold under the Vedette brand. The French authorities explain that such a pessimistic hypothesis corresponds to the company's actual experience: it decided in 2003 to abandon the marketing of microwave ovens under the Vedette brand in France in order to concentrate on the Brandt brand, which had its own specific sales force. This had a highly negative knock-on effect, as not only was the entire turnover achieved under the Vedette brand lost, but the loss also affected the Brandt brand (total loss on these two brands of […] appliances over two years compared with initial sales of […] units, including […] under the Vedette brand, being equivalent to a loss of [120–140] % of the abandoned volumes ([57]).

([56]) This reduction is due to the impact of suspending the marketing of some products on the visibility of the Vedette brand among distributors.

([57]) The Commission considers, in the light of the information supplied by the French authorities, that the pessimistic scenario is unlikely to materialise. The French authorities base this scenario on experience with Vedette microwave ovens. As will be demonstrated, however, this is a product in respect of which FagorBrandt was no longer competitive (which is why it decided to cease in-house production) and in respect of which producers from low-cost countries have achieved a high rate of penetration. The hypothesis adopted by the French authorities whereby the whole of the decline in microwave oven sales observed over the two-year period is to be attributed entirely to the decision to stop marketing microwave ovens under the Vedette brand therefore seems to be an extreme one.

(146) On the basis of the analysis of the data in the two tables above and of the other data provided by the French authorities, the Commission would observe that the compensatory measures adopted will weaken the company, as they will lead to a worsening of its profits starting in 2009, the year of their implementation. However, the company will once more achieve a net positive result in 2010, increasing in subsequent years. The Commission considers therefore that, despite weakening the company, the compensatory measures will not prevent a restoration of viability.

(147) This conclusion is not called into question by the Commission's imposition of an additional compensatory measure, namely a three-year extension of the ban on marketing products under the Vedette brand.

(148) The impact of the additional compensatory measure on the company's final profits is shown in Table 3: it will be seen that profits remain positive over the years 2014 to 2016, growing by an estimated [1,5–3] % a year. The conclusion with regard to the compensatory measure imposed by the Commission is therefore the same: it will weaken the company, but it will not prevent it from returning to viability.

6.7. **Aid limited to the minimum: real contribution, free of aid**

(149) In order for aid to be authorised, the amount and intensity of the aid must, pursuant to points 43 to 45 of the restructuring aid guidelines, be limited to the strict minimum necessary to enable restructuring to be undertaken in the light of the existing financial resources of the company, its shareholders or the business group to which it belongs. Aid recipients must make a significant contribution to the restructuring plan from their own resources, including the sale of assets that are not essential to the firm's survival, or from external financing on market conditions.

(150) As indicated in paragraph 43 of the opening decision, the restructuring costs, as described in the French authorities' notification, come to EUR 62,5 million. The company expects to contribute EUR 31,5 million, and to receive aid amounting to EUR 31 million.

	EUR million	%
Restructuring costs	62,5	100 %
Financed by:		
Aid recipient's own share	4,6	7,4 %
Shareholder contribution	26,9	43 %
State aid	31	49,6 %

(151) In paragraph 44 of the opening decision, the Commission raised two points regarding these data. Firstly, it asked the French authorities to explain why they had not included the repayment of the Article 44 *septies* aid in the restructuring costs. Secondly, it asked for an explanation as to the nature of the recipient's own share.

(152) The French authorities answered the second point by stating that the recipient's own share consisted of bank loans raised by FagorBrandt on the market. Specifically, the company had contracted bank loans amounting to EUR [20–40] million in 2006, increased to EUR [20–40] million in 2007 ([58]). The bank loans had been secured by […]. The Commission considers that this amounts to 'external financing at market conditions' as referred to in point 43 of the restructuring aid guidelines and hence constitutes a valid contribution.

(153) In reply to the Commission's first point, the French authorities stated that the reimbursement of incompatible aid could not, on the face of it, be classed as a restructuring cost (or as a contribution by the recipient firm within the meaning of points 43 and 44 of the restructuring aid guidelines). It was for that reason that they had not counted the Article 44 *septies* aid among the restructuring costs. However, the reimbursement — estimated at approximately EUR [25–30] million (including interest) — was, of course, included in the business plan attached to the notification just like any other normal financial expenditure. The Commission considers it essential that the reimbursement be allowed for in the business plan, as is the case here ([59]).

([58]) Letter from the French authorities of 15 February 2008.

([59]) In its Decision of 26 April 2006 on State Aid which France is planning to implement for Euromoteurs (OJ L 307, 7.11.2006, p. 213), the Commission found that the fact that the restructuring plan submitted did not allow for the reimbursement of incompatible aid received by the company justified a finding that the plan did not enable the company's long-term viability to be restored.

(154) But the fact remains that on 21 October 2008 the Italian aid that had been received by Brandt Italia amounted to EUR 3 190 878,02, to which interest must be added. It cannot be ruled out, therefore, that the contribution envisaged by the firm may incorporate the sum in question. The recipient's own contribution would then fall below the 50 % threshold required by point 44 of the restructuring aid guidelines.

(155) In order to be sure that the recipient's own contribution is indeed free of aid and amounts to at least 50 % of the cost of restructuring, the Commission will make it a condition of this positive decision that the company's own contribution be increased by the amount of the Italian aid, namely EUR 3 190 878,02, to which must be added interest running to 21 October 2008.

(156) Specifically, the contribution to the cost of restructuring proposed by FagorBrandt must be increased by this amount (by borrowing, by a contribution from the shareholders or otherwise) before the end of the restructuring period, which has been set at 31 December 2012. The French authorities must produce evidence of this increase within two months after 31 December 2012.

(157) Turning to the assertion made by the competitor requesting anonymity that the aid is not limited to the minimum, the Commission confirms that, as well as ascertaining that the formal requirement of a contribution of at least 50 % has been met, it has also examined whether the aid is limited to the strict minimum in the light in particular of the tests in point 45 of the restructuring aid guidelines. The Commission considers that that is indeed the case, and that the amount of the aid does not provide the company with 'surplus cash which could be used for aggressive, market-distorting activities not linked to the restructuring process.'

(158) The Commission would observe in particular that after the aid has been granted, at the end of the restructuring period, the group will still be heavily indebted, with a debt-equity ratio still above 1. FagorBrandt will therefore have to use the cash generated to reduce its level of indebtedness.

6.8. **'One time, last time' principle**

(159) Points 72 ff. of the restructuring aid guidelines state that restructuring aid is to be granted only once in any period of ten years.

(160) In this case the Italian and French aid that FagorBrandt received earlier cannot be described as aid for rescue and restructuring. When that aid was granted, in 2002 and 2003 respectively, FagorBrandt was not in difficulty, as has been shown in paragraphs 45 to 56.

(161) The 'one time, last time' principle laid down in the restructuring aid guidelines has consequently been complied with.

6.9. **Full implementation of the plan**

(162) FagorBrandt's restructuring plan, including all of France's commitments, must be implemented in full ([60]). The Commission asks to be kept informed of progress with the implementation of the plan and of the related commitments.

7. **CONCLUSION**

(163) The aid may be declared compatible with the internal market provided all the conditions imposed are met,

HAS ADOPTED THIS DECISION:

Article 1

The aid amounting to EUR 31 million which France plans to grant to FagorBrandt is compatible with the internal market subject to the conditions laid down in Article 2.

Article 2

1. The French authorities shall suspend payment to FagorBrandt of the aid referred to in Article 1 of this Decision until such time as the recovery from FagorBrandt of the incompatible aid referred to in Commission Decision 2004/343/EC of 16 December 2003 ([61]) has become effective.

2. FagorBrandt's restructuring plan, as communicated to the Commission by France on 6 August 2007, must be implemented in full.

([60]) As indicated above, the restructuring plan started in 2004 and most of the restructuring measures have already been implemented.

([61]) Commission Decision 2004/343/EC of 16 December 2003 on the State aid scheme implemented by France for the takeover of firms in difficulty (OJ L 108, 16.4.2004, p. 38).

3. FagorBrandt's own contribution to the cost of restructuring, which FagorBrandt proposes should be EUR 31,5 million, must be increased by EUR 3 190 878,02 plus the interest on that sum running from the date on which the Italian aid was put at FagorBrandt's disposal until 21 October 2008. The increase must take place before the end of the period of restructuring of the undertaking, which has been set at 31 December 2012. The French authorities must produce evidence of this increase within two months after 31 December 2012.

4. FagorBrandt shall cease marketing refrigeration, cooking and dishwashing products of the Vedette brand for a period of eight years.

5. In order to ensure that the conditions laid down in paragraphs 1 to 4 of this Article are observed, France shall inform the Commission, by means of annual reports, of progress with the restructuring of FagorBrandt, the recovery of the incompatible aid described in paragraph 1, the payment of the compatible aid, and the implementation of the compensatory measures.

Article 3

France shall inform the Commission within two months of the date of notification of this Decision of the measures it has taken to comply with it.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 25 July 2012.

For the Commission
Joaquín ALMUNIA
Vice-President

COMMISSION DECISION

of 19 December 2012

on State aid SA.20829 (C 26/2010, ex NN 43/2010 (ex CP 71/2006)) Scheme concerning the municipal real estate tax exemption granted to real estate used by non-commercial entities for specific purposes implemented by Italy

(notified under document C(2012) 9461)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2013/284/EU)

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

1. PROCEDURE

(1) In 2006 the Commission received a number of complaints essentially concerning two schemes, one involving an exemption from the municipal tax on real estate and the other a corporate tax reduction. More specifically, the two schemes involved:

(a) exemption from the municipal tax on real estate ('*imposta comunale sugli immobili*', hereinafter 'ICI') for real estate used by non-commercial entities and intended exclusively for social assistance, welfare, health, cultural, educational, recreational, accommodation, sports and religious activities (Article 7(1)(i) of Legislative Decree No 504 of 30 December 1992);

(b) a 50 % corporate tax reduction for the entities listed in Article 6 of Presidential Decree No 601 of 29 September 1973 - primarily social welfare organisations, non-profit education and research bodies, and charitable and teaching institutions (including ecclesiastical institutions). This provision also includes social housing entities and cultural foundations and associations.

(2) Following the complaints received about the above ICI exemption, the Commission sent the Italian authorities an initial request for information on 5 May 2006. In the light of the information sent by Italy on 6 June 2006, and following the entry into force of some amendments to the ICI legislation, the Commission informed the complainants by letter of 8 August 2006 that, on the basis of a preliminary analysis, there were no grounds for pursuing the investigation.

(3) However, by letter dated 24 October 2006, the complainants again pointed out that the ICI exemption for non-commercial entities was contrary to Article 107(1) of the Treaty. By letter of 14 November 2006, the Commission informed them that, on the basis of the information available, there were no grounds for further investigating the ICI exemption.

(4) In January and September 2007, the Commission received further letters from the complainants about the ICI exemption. In their letter of 12 September 2007, they drew the Commission's attention to Article 149 of the Income Tax Code ('*Testo Unico delle Imposte sui Redditi*', hereinafter 'TUIR') approved by Presidential Decree No 917 of 22 December 1986. In their view, that Article granted favourable tax treatment only to ecclesiastical institutions and amateur sports clubs.

(5) On 5 November 2007, the Commission invited the Italian authorities and the complainants to provide further information about all the alleged preferential provisions cited by the complainants. The Italian authorities provided the requested information by letters dated 3 December 2007 and 30 April 2008. The complainants submitted additional information by letter of 21 May 2008.

(6) On 20 October 2008, the complainants sent a letter of formal notice (Article 265 of the Treaty), asking the Commission to open the formal investigation procedure and to adopt a formal decision on their complaints.

[1] OJ C 348, 21.12.2010, p. 17.

(7) On 24 November 2008, the Commission sent another request for information to the Italian authorities, to which they replied by letter of 8 December 2008.

(8) By letter dated 19 December 2008, the Commission informed the complainants that, on the basis of a preliminary analysis, it considered that the measures did not appear to constitute state aid and that accordingly there was no need to pursue the investigation.

(9) On 26 January 2009, the Italian Finance Ministry issued '*Circolare 2/DF*' (hereinafter 'the Circular') to clarify further the scope of the ICI exemption for non-commercial entities. On 2 March 2009, the complainants wrote to the Commission expressing their dissatisfaction with the legislation in force and criticising the Circular.

(10) By e-mail of 11 January 2010, the complainants again asked the Commission to initiate the formal investigation procedure, even in the light of the contents of the Circular. On 15 February 2010, the Commission, having taken note of the Circular, sent a letter to the complainants confirming the reasoning set out in their letter of 19 December 2008.

(11) On 26 April 2010, two complainants each brought an action for annulment before the General Court against the Commission's letter of 15 February 2010 ([2]). At the applicants' request, the Court ordered the removal of the case from the register on 18 November 2010 ([3]).

(12) By decision of 12 October 2010 (hereinafter 'the decision initiating the procedure') the Commission initiated the formal investigation procedure laid down in Article 108(2) of the Treaty in respect of the municipal real estate tax exemption granted to real estate used by non-commercial entities for specific purposes and in respect of Article 149(4) TUIR ([4]). On 21 December 2010, the decision initiating the procedure was published in the *Official Journal of the European Union* ([5]), inviting interested parties to submit their comments.

(13) By letter of 10 November 2010, the Italian authorities asked the Commission for copies of the letters sent to the complainants between 2006 and 2010. These were sent to Italy on 2 December 2010.

(14) Between 21 January and 4 April 2011, the Commission received comments on the decision initiating the procedure from 80 interested parties, which are listed in Annex 1 to this Decision.

(15) By letter of 2 March 2011, the Commission received comments from Italy on the decision initiating the procedure. The Commission then forwarded the third parties' comments to the Italian authorities, which submitted their reactions on 10 June 2011.

(16) On 19 July 2011, a technical meeting was held between the Italian authorities and the Commission.

(17) By letter dated 15 February 2012, Italy informed the Commission of its intention to adopt new legislation concerning the municipal real estate tax and announced that ICI had been replaced by the *Imposta Municipale Propria* (hereinafter 'IMU') as of 1 January 2012.

(18) Following Italy's adoption of Law No 27 of 24 March 2012, which included new provisions on the IMU exemption for non-commercial entities performing specific activities but left a number of aspects to be defined in future implementing legislation, the Commission sent the Italian authorities a request for information on 16 May 2012.

([2]) See Cases T-192/10, *Ferracci* v *Commission* (OJ C 179, 3.7.2010, p. 45) and T-193/10, *Scuola Elementare Maria Montessori* v *Commission* (OJ C 179, 3.7.2010, p. 46).

([3]) OJ C 30, 29.1.2011, p. 57.

([4]) In the decision initiating the procedure, the Commission concluded that the 50 % corporate tax reduction under Article 6 of Presidential Decree No 601/73 could entail existing aid (paragraph 18), indicating that it would deal with this measure under a separate procedure concerning existing aid, which was subsequently initiated in February 2011. The entities listed in Article 6 of Decree No 601/73 are as follows: (a) social assistance organisations and establishments, mutual aid societies, hospital organisations, social welfare and charitable organisations; (b) educational establishments and non-profit-making establishments for study and experimentation in the public interest; scientific bodies, academies, historical, literary, scientific foundations and associations pursuing exclusively cultural aims; (c) organisations whose aims are assimilated by law to charitable and educational aims; and (c bis) social housing institutions and their associations.

([5]) See footnote 1.

(19) On 27 June 2012, the Commission received additional information from the complainants, including comments on the new IMU legislation. On 6 July 2012, these observations were forwarded to Italy for comment.

(20) By letter dated 5 September 2012, Italy provided the Commission with the information requested and also its comments on the third parties' observations forwarded to it on 6 July 2012.

(21) Subsequently, by letter of 21 November 2012, the Italian authorities sent the Commission a copy of the IMU implementing regulation adopted on 19 November 2012.

2. DESCRIPTION OF THE MEASURES

2.1. Municipal real estate tax exemption for non-commercial entities

(22) In 1992 the Italian authorities introduced a municipal tax on real estate (ICI). As laid down in Legislative Decree No 504 of 30 December 1992, all physical and legal persons that were in possession of real estate (for reasons of ownership, right of usufruct, use, occupancy or leasehold) were liable for the tax. The tax was payable by both residents and non-residents, irrespective of the use made of the real estate, and it was calculated on the basis of the cadastral value.

(23) According to Article 7(1)(i) of Legislative Decree No 504/92, real estate used by non-commercial entities exclusively for social assistance, welfare, health, educational and accommodation services and cultural, recreational, sports and religious activities was exempted from ICI.

(24) According to Article 7(2a) of Decree Law No 203 of 30 September 2005 ([6]), the exemption provided for by Article 7(1)(i) of Legislative Decree No 504/92 was applicable to the activities listed there, even if they were of a commercial nature. According to Article 39 of Decree Law No 223 of 4 July 2006 ([7]), this exemption applied only if the activities in question were not exclusively of a commercial nature.

([6]) Converted into Law No 248 of 2 December 2005.
([7]) Converted into Law No 248 of 4 August 2006.

(25) The Italian authorities explained that the municipal real estate tax exemption provided for by Article 7(1)(i) applied only if two cumulative conditions were met:

i. the real estate must be used by non-commercial entities ([8]). The law defines non-commercial entities as public and private entities that are not companies and whose activities are not exclusively or primarily commercial;

ii. the real estate must be used exclusively for performing the activities listed in Article 7(1)(i).

(26) In Circular 2/DF of 26 January 2009, the Italian authorities clarified which entities could be considered non-commercial and the characteristics required of the activities performed by these entities for entitlement to the exemption.

(27) The Circular stated that non-commercial entities could be both public and private. Specifically, the following were considered to be public non-commercial entities: the State, regions, provinces, municipalities, chambers of commerce, health agencies, public bodies set up exclusively for welfare, assistance and health purposes, non-economic public entities, welfare and assistance bodies, universities and research institutes, and special public service bodies (the former 'IPAB'). Examples of private non-commercial bodies given in the Circular include the following: associations, foundations, committees, NGOs, amateur sports clubs, voluntary service organizations, bodies classified for tax purposes as non-profit organisations ('ONLUS') and ecclesiastical bodies belonging to the Catholic Church and other religious denominations.

(28) The Circular also specified that the activities performed in the real estate exempt from ICI should not be available on the market ([9]) - i.e. they should be carried on to satisfy social needs that were not always met by public structures or private commercial operators.

([8]) Specifically, Article 7(1)(i) of Legislative Decree No 504/92 refers to the entities defined in Article 87(1)(c) [now Article 73] of Presidential Decree No 917/86. The definition of non-commercial entities is contained in this latter provision.
([9]) See Circular, point 5.

(29) The Circular contained a number of criteria for each of the activities listed in Article 7(1)(i), which helped to establish when each of them should be considered not exclusively of a commercial nature ([10]).

(30) The ICI was replaced by the IMU as of 1 January 2012. The rules on the municipal real estate tax for non-commercial entities were also amended in the course of 2012, as explained in Section 5.

2.2. **Article 149 of the Income Tax Code**

(31) Article 149 comes under Title II, Chapter III of the Income Tax Code (TUIR). Title II lays down the rules on corporate tax and Chapter III lays down the tax provisions applicable to non-commercial entities, such as the rules for calculating the taxable base and the rules on the rates of taxation ([11]). Article 149 identifies the conditions that can trigger the loss of an entity's 'non-commercial status'.

(32) In particular, Article 149(1) TUIR states that a non-commercial body will lose that status if it carries on chiefly commercial activities during an entire tax period.

(33) Article 149(2) TUIR defines an entity's 'commercial status' in terms of more income being derived from commercial activities than from institutional revenue and in terms of higher value of fixed assets related to commercial activities than to other activities ([12]). The legal form adopted by the entities in question has no influence on the loss of their 'non-commercial status'.

(34) Article 149(4) TUIR states that the above provisions (i.e. Article 149(1) and (2) TUIR) do not apply to ecclesiastical bodies that have been granted civil law status or to amateur sports clubs.

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

(35) The Commission initiated the formal investigation procedure into the municipal real estate tax exemption (ICI exemption) for real estate used by non-commercial entities for specific purposes because it seemed to qualify as state aid within the meaning of Article 107(1) of the Treaty. The Commission likewise initiated the formal investigation procedure into Article 149(4) TUIR, according to which the provisions on loss of non-commercial status do not apply to ecclesiastical bodies and amateur sports clubs.

(36) To assess whether the measures at issue were selective, in line with established case law ([13]), the Commission first identified the reference tax system for each measure and then considered whether the measure departed from that system and, if so, whether it was justified by the nature and general structure of the tax system.

([10]) For instance, as already indicated in the decision initiating the procedure, in the areas of health and social activities the Circular requires an agreement with the public authorities. As regards education, the Circular seems to require compliance with the mandatory basic principles in order for the service to be considered on a par with the public system, and it also requires operating surpluses to be reinvested in the educational activity itself. As regards cinemas, the Circular requires operators to restrict themselves to particular market segments (films of cultural interest, films that have been issued a quality certificate, films for children) if they wish to obtain the tax exemption. The same applies to accommodation services in general, which must charge prices lower than the market price and not operate as normal hotels.

([11]) See Articles 143 *et seq.* of the TUIR. In general terms, the total income of non-commercial entities consist of real estate and capital income and other sources of income (Article 143 TUIR). Provided that specific conditions are met, non-commercial entities can opt for simplified systems for determining income (Article 145 TUIR).

([12]) The factors that can be used for assessment purposes pursuant to Article 149(2) TUIR are the following: more net fixed assets relating to business activities than other activities; more revenue from commercial activities than from the 'normal value' of supplies or services relating to institutional activities; more income from commercial activities than revenue from institutional activities (such as contributions, grants, donations and members' subscriptions).

([13]) See, *inter alia*, Case C-88/03 *Portugal* v *Commission* [2006] ECR I-7115, paragraph 56, and Case C-487/06 P *British Aggregates* [2008] ECR I-10505, paragraphs 81-83.

(37) As regards the ICI exemption, the Commission concluded that the reference system for assessing the measure in question was ICI itself. By granting an exemption to non-commercial entities using their real estate for specific activities, some of them deemed to be economic, the measure departed from the reference system (according to which every legal person in possession of real estate must pay the corresponding municipal tax, irrespective of what it was used for). Granting an exemption only to non-commercial entities that performed specific activities with a certain social value was not considered to be justified by the nature and general structure of the Italian system for municipal real estate tax.

(38) As regards Article 149(4) TUIR, the Commission identified income tax as the reference system. The Commission concluded that the measure was, at first sight, selective, since it seemed to offer the possibility – but only to ecclesiastical bodies and amateur sports clubs - to maintain their non-commercial status, even though they were no longer considered to be non-commercial entities. Such a measure could not be justified on the basis of the underlying principles of the Italian tax system.

(39) The Italian authorities had not provided information showing that the measures in question met the conditions of the *Altmark* case law ([14]). Since all the other criteria under Article 107(1) of the Treaty seemed to be met, the measures appeared to involve state aid.

(40) As regards compatibility, Article 107(2) of the Treaty did not appear to apply to the measures. Moreover, none of the exceptions under Article 107(3) seemed to apply, except for Article 107(3)(d) on the promotion of culture and heritage conservation. Indeed, as regards the ICI exemption, the Commission considered that this exception could have been applied to specific activities performed by non-commercial entities performing exclusively educational, cultural and recreational activities. Finally, the Commission did not rule out the possibility that certain activities might be classified as services of general economic interest in accordance with Article 106(2) of the Treaty. The Italian authorities had not, however, provided any information allowing it to assess the compatibility of the measures in question with the internal market.

(41) Consequently, the Commission had doubts as to the compatibility of the measures with the internal market and, in accordance with Article 4(4) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([15]), it decided to initiate the formal investigation procedure, inviting Italy and other interested parties to submit their comments.

(42) In the opinion of the Commission, both the ICI exemption and Article 149(4) TUIR could be classified as new aid. ICI, which was levied on an annual basis, had actually been introduced in 1992 and the tax exemption in question had not been notified or otherwise approved by the Commission. The exemption applied to a wide range of activities that were not closed to competition when ICI was introduced. Therefore, any departure from the normal rules of this tax regime had to be considered new aid since the requirements of Article 107(1) of the Treaty seemed to be met. Likewise, Article 149 TUIR ([16]) had been introduced in 1998 and it had not been notified or otherwise approved by the Commission. For this reason, the exception provided for by this measure should be classified as new aid since the requirements of Article 107(1) of the Treaty seemed to be met.

4. COMMENTS FROM THE ITALIAN AUTHORITIES AND THE INTERESTED THIRD PARTIES

(43) Pursuant to Article 20(2) of Regulation (EC) No 659/1999 and in response to the invitation published in the *Official Journal of the European Union* ([17]), the Commission received comments from the Italian authorities and from 80 interested third parties.

(44) To summarise, the Italian authorities consider that the entities that benefited from the ICI exemption were not 'undertakings' for the purposes of Union law. In any case, the activities carried on by such entities had an important public and social function. Thus, it was in keeping with the nature and logic of the taxation system to provide for differentiated tax treatment for purely economic activities, on the one hand, and social assistance, charity,

([14]) Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747.

([15]) OJ L 83, 27.3.1999, p. 1.
([16]) Former Article 111a TUIR.
([17]) See footnote 1.

solidarity and religious activities, on the other hand. The Italian authorities also contested the classification of the ICI measure as new aid. According to them, the measure should be assessed in the light of the continuity it provided with the earlier property taxes (which already applied before the entry into force of the EEC Treaty). Furthermore, on the basis of the letters of rejection sent to the complainants, the measure should be deemed to have been approved by the Commission. In any event, the Commission had created a legitimate expectation on the part of the recipients of the measure because of a reply to a parliamentary written question and also because it had informed the complainants of its preliminary position, of which the Italian authorities had also been apprised informally.

(45) As regards Article 149(4) TUIR, the Italian authorities claim that, despite what its wording suggests, ecclesiastical bodies and amateur sports clubs can lose their non-commercial status. In that case, those entities would no longer enjoy any tax relief.

(46) Of the 80 interested third parties, 78 of them (hereinafter 'the 78 interested parties') share the views of the Italian authorities, whereas two third parties (hereinafter 'the two interested parties' or 'the complainants') from among the original complainants, consider that both ICI and Article 149(4) TUIR constitute unlawful state aid measures, incompatible with the internal market. The arguments of the 78 interested parties will accordingly be presented together with the Italian authorities' position, while the arguments of the complainants will be addressed separately.

4.1. **Comments from the Italian authorities and the 78 interested parties**

4.1.1. *ICI: the specific activities carried on by non-commercial entities cannot be considered economic activities*

(47) The Italian authorities and the 78 interested parties claim that the specific activities carried on by non-commercial entities benefiting from the ICI exemption cannot be considered economic activities. They argue that these activities – mainly targeting very specific categories of recipients - do not constitute an offer of goods or services on the market and are thus not in competition with the activities carried on by commercial undertakings. Therefore, these non-commercial entities, which operate in sectors of public interest, cannot be considered undertakings, which is a prerequisite for the application of Article 107(1) TFEU.

(48) According to the Italian authorities and some of the 78 interested parties, in most cases these activities have specific characteristics. For example, they are performed in the public interest or for solidarity purposes, either free of charge or for reduced fees. In view of the specific features and the particular purposes of the non-commercial entities in question, it is not possible to classify them as undertakings.

4.1.2. *ICI: the measure is justified by the logic of the Italian taxation system*

(49) The Italian authorities and the 78 interested parties consider that the ICI exemption does not constitute a departure from the general tax system but merely represents the application of the guiding principles of that system.

(50) They maintain that it is consistent with the logic of the Italian taxation system to have differentiated tax treatment for economic and profit-making activities, on the one hand, and for assistance, charitable, religious and similar activities carried out by entities with specific aims, on the other hand ([18]). The latter activities are based on the solidarity principle, which is fundamental to both national and Union law. By making this differentiation, the legislator simply wished to take account of the different legal and factual situation of entities that carry on the above public interest activities with a high social value.

(51) Moreover, it is up to the Member State to define which activities are of public interest. The only limitation on the Member State is that the differentiated tax treatment must be coherent, i.e. it must be in line with the logic of the tax system as a whole and an adequate system of controls must also be set up. Both conditions are met in the case of the ICI exemption in question.

([18]) Furthermore, the entities in question mainly operate in limited geographical areas (at local level) and the activities are targeted at specific categories of users/recipients.

(52) The rationale of the ICI exemption is based on Articles 2 and 3 of the Italian Constitution, requiring fulfilment of the duties of political, economic and social solidarity towards citizens, and Article 38, which establishes the right to social welfare for people without the necessary means of subsistence. It should also be noted that non-commercial entities assist the State in performing specific tasks of social concern. The State has always recognized the specific role of these entities, as it is aware that it would be impossible for it alone to provide welfare, health, cultural, educational and sports services.

(53) The Italian authorities reiterated that, as indicated in the Circular, the two cumulative conditions described in paragraph 25 (subjective and objective requirement) had to be met for entitlement to the ICI exemption.

(54) As regards the subjective requirement (i.e. being a non-commercial entity), and more specifically religious bodies, the Italian authorities stressed that the category of non-commercial entities includes ecclesiastical institutions with civil-law status, belonging either to the Catholic Church or to other religious denominations ([19]).

(55) As regards the objective requirement (i.e. performing one of the activities listed by the legislation), the Italian authorities pointed out that the Italian Court of Cassation has repeatedly held that, for the purposes of granting the ICI exemption, it is essential to consider the activity actually carried on in the real estate. This means checking that this activity, even if it is included in the list of exempted activities, is not actually pursued on a commercial basis ([20]). In addition, as already established by the Council of State ([21]), if only part of an entire property (even if it is the largest part) is used for one of the purposes allowed by the law, the restrictive nature of the exemption is such that the tax relief cannot be granted to the whole property.

4.1.3. *The classification of the measure as existing aid*

(56) According to the Italian authorities, ICI represents the logical legislative progression from the earlier property taxes - with which it provides formal and material continuity. Exempting real estate used for specific activities with a high social value has always been a key element of all real estate legislation since 1931, well before the entry into force of the EEC Treaty.

(57) The Italian authorities and the 78 interested parties also consider the ICI exemption to have been approved by the Commission on the basis of the letters of rejection sent to the complainants, of which Italy was informed.

(58) For these reasons, the ICI exemption – if considered to be aid – should be considered existing aid.

4.1.4. *Compatibility*

(59) The Italian authorities decided not to submit any comments on the possible compatibility of the measures pursuant to Article 107(2) and (3) of the Treaty or on their possible classification as services of general economic interest under Article 106(2) and the *Altmark* case law.

(60) Some of the 78 interested parties maintain that the ICI exemption is compatible with Articles 106(2) and 107(3)(c) of the Treaty as the measure is necessary for performing socially useful activities based on the solidarity principle. Moreover, the exemption does not significantly distort competition and does not have an appreciable effect on trade between Member States.

4.1.5. *Legitimate expectation*

(61) The Italian authorities argue that the Commission's replies to the complainants concerning the ICI exemption, of which Italy was informally apprised, had created a legitimate expectation on the part of non-commercial entities as to the compatibility of the ICI exemption with Union law.

(62) They also maintain that the Commission's reply to a parliamentary written question of 2009 on the tax treatment of non-commercial entities had given rise to a legitimate expectation ([22]).

([19]) Under Italian law, for all religions accepted by the State, including the Catholic Church, religious aims are deemed equivalent to charitable and educational aims for tax purposes.

([20]) See judgments Nos 20776 of 26 October 2005, 23703 of 15 November 2007, 5485 of 29 February 2008 and 19731 of 17 September 2010. See also judgment No 8495 of 9 April 2010.

([21]) See Opinion No 266 of 18 June 1996.

([22]) Written Question E-177/2009 (OJ C 189, 13.7.2010).

(63) This would imply that, if the Commission considered the measure to be unlawful and incompatible aid, without accepting it as existing aid, it should not order recovery of the aid, pursuant to Article 14(1) of Regulation (EC) No 659/1999.

(64) According to some third parties, recovery should not in any case be ordered in respect of Article 149(4) TUIR since it would be very difficult and burdensome for the national authorities to quantify the hypothetical advantage gained.

4.1.6. *Article 149 TUIR*

(65) In their observations, the Italian authorities provided a detailed description of the specific taxation rules applicable to non-commercial entities, including ecclesiastical bodies and amateur sports clubs. The Italian authorities stress that Article 149(2) TUIR provides a non-exhaustive list of parameters that can be taken into account ([23]) in order to classify an entity as a commercial organisation. Even if one or more of these conditions are met, the non-commercial entity does not automatically lose its non-commercial status (since these parameters cannot be considered legal presumptions). The fact that these requirements are met would merely indicate that the activities carried on by the entity are potentially of a primarily commercial nature.

(66) As indicated in the Revenue Agency's Circular No 124/E of 12 May 1998, ecclesiastical bodies with civil-law status can be considered non-commercial entities only if the sole or principal scope of their activities is of a non-commercial nature.

(67) Therefore, according to Italy, Article 149(4) TUIR merely excludes the application of the specific time and business parameters set out in Article 149(1) and (2) ([24]). Article 149(4) TUIR does not exclude the possibility of ecclesiastical institutions losing their non-commercial status. In any event, according to some of the 78 interested parties, this measure does not imply any transfer of public resources and does not grant any advantage.

(68) The Italian authorities explained that the measure is aimed at preserving the exclusive responsibility borne by CONI (the Italian National Olympic Committee) for amateur sports clubs and by the Interior Ministry for granting and revoking civil-law status to ecclesiastical institutions ([25]). If, however, during a tax inspection of these institutions, the tax authorities establish that they perform predominantly commercial activities, they will immediately inform the Interior Ministry or the CONI. The tax authorities, for their part, will order the recovery of the difference in taxation from the body concerned.

(69) The Italian authorities confirmed that checks were carried out on both ecclesiastical institutions and amateur sports clubs. As regards ecclesiastical institutions, the Interior Ministry also carried out the checks for which it is responsible but did not find any form of abuse.

4.2. **Comments from the two interested parties**

(70) In their comments, the two interested parties ([26]) refer to all the documents and observations that they had already submitted to the Commission during the administrative proceedings prior to the decision to initiate the procedure. According to them, these documents prove that ecclesiastical institutions indeed carry on economic activities.

(71) As regards the ICI exemption, the two parties point out that the contested measure was introduced by Italy in 2005. After the entry into force of Decree Law No 203/2005, the ICI exemption applied to non-commercial entities carrying on the activities listed by the legislation, even if they were of a commercial nature ([27]). Following amendments to the ICI law in 2006, the ICI exemption became applicable to the same activities, provided that they were not exclusively commercial ([28]). The 2006 amendments did not, however, eliminate the state aid nature of the measure in question.

([23]) See footnote 12.
([24]) See paragraphs (31) *et seq.*
([25]) This also guarantees compliance with the international agreements signed between Italy and the Holy See as regards ecclesiastical institutions.
([26]) Out of the original complainants, only Pietro Ferracci and *Scuola Elementare Maria Montessori s.r.l.* submitted comments on the decision initiating the procedure.
([27]) Decree Law No 203/2005, converted into Law No 248 of 2 December 2005.
([28]) Decree Law No 223/2006, converted into Law No 248 of 4 August 2006.

(72) The Circular itself gave a selective advantage to entities that should really be considered undertakings. In many cases, the possibility of the activities described in the Circular being granted the ICI exemption depended solely on the entity not making any profits. However, based on the principles laid down in EU case law, the fact that an entity is non-profit-making is irrelevant for the purposes of applying state aid rules. Therefore the Circular did not solve the state aid issues relating to the ICI exemption, since this exemption continued to apply to non-commercial entities performing an economic activity but not to entities that performed the same activity but were profit-making.

(73) According to the complainants, it was in any case practically impossible to acquire specific data on the real estate belonging to the entities in question, mainly because these entities were not required to declare the real estate that was ICI exempted.

(74) As regards Article 149(4) TUIR, the complainants consider that it is not possible for ecclesiastical institutions to lose their non-commercial status.

(75) As far as the ICI exemption and Article 149(4) TUIR are concerned, the complainants agree with the Commission's preliminary conclusions on the presence of state resources and the existence of an advantage, and also as regards selectivity, distortion of competition and effects on trade.

(76) As for the compatibility of the measures at issue, the complainants agree with the Commission's preliminary conclusion that Articles 107(2) and 107(3)(a), (b) and (c) of the Treaty are not applicable. However, they disagree on the possibility of applying the exception under Article 107(3)(d) to certain entities that perform exclusively educational, cultural and recreational activities. The complainants also consider that the conditions of the *Altmark* case law are not met in the case at hand.

4.3. **Observations of the Italian authorities on the comments from third parties**

(77) The Italian authorities sent their observations on the third parties' comments by letter of 10 June 2011.

(78) First, even supposing that certain activities carried on by non-commercial entities benefiting from the exemption can actually be classified as economic activities, the Commission must still prove that the advantage granted is selective and that it is not justified by the logic of the Italian tax system.

(79) Second, as regards the generic observations made about the Circular, the Italian authorities consider that the Commission is called on to examine a measure that involves a tax exemption. This means that it must assess the interpretative criteria of the legislation indicated by the national authorities and also the existence of an adequate system of controls.

(80) In particular, regarding the alleged difficulties - referred to by the complainants - of gathering data on real estate belonging to non-commercial entities, the Italian authorities point out that the requirement to submit the ICI declaration was abolished in 2006. The Italian authorities also point out that both the cadastral system and the databases on real estate are currently being reorganised.

(81) As also acknowledged by the complainants, the Italian authorities note that Article 149(4) TUIR is neither a stand-alone provision nor one with material scope but instead a procedural provision that is relevant solely from the point of view of controls.

5. **THE NEW LEGISLATION ON MUNICIPAL REAL ESTATE TAX**

5.1. **Description of the new municipal real estate tax: IMU**

(82) As part of the so-called reform of fiscal federalism, it was decided under Legislative Decree No 23 of 14 March 2011 that IMU would replace ICI as of 1 January 2014. By Decree Law No 201 of 6 December 2011, converted into Law No 214 of 22 December 2011, Italy decided to bring forward the introduction of IMU to 2012.

(83) All persons in possession of real estate are liable for IMU. The taxable base is calculated on the basis of the real estate's value, which is determined by taking the cadastral income of the real estate and applying the criteria in Article 5 of the ICI Decree (Legislative Decree No 504/92), together with the criteria laid down by Decree Law No 201/2011. Multipliers, which vary according to the real estate's cadastral category, are applied to the value established in accordance with the above criteria. The standard IMU rate is 0,76 %.

(84) The cadastral system is therefore of fundamental importance for real estate taxes. The minimum unit relevant for cadastral purposes can be a building or part of a building or a set of buildings or an area, provided that they are autonomous in terms of function and income. The Italian cadastral system, which is due to be revised, identifies six categories of real estate. Group A includes real estate for housing or similar purposes; Group B includes real estate used for collective use, such as colleges, hospitals, public offices, schools; Group C includes real estate used for ordinary commercial purposes, such as shops, stores and buildings and premises used for sports; Group D includes real estate for special purposes, such as hotels, theatres, hospitals and buildings and premises used for sports; Group E includes real estate for special purposes, such as for land, sea and air transport services, toll bridges, lighthouses, buildings for public worship activities. Group F includes real estate registered in fictitious categories.

(85) With specific reference to the new IMU, Article 91a of Decree Law No 1 of 24 January 2012, converted into Law No 27 of 24 March 2012, introduced a number of changes to the taxation of real estate belonging to non-commercial entities that perform specific activities. In particular, the new law abolished the 2006 amendment that had broadened the scope of the ICI exemption to include real estate hosting specific activities that were '*not exclusively commercial in nature*' ([29]) (paragraph 4) and further specified that the IMU exemption was limited to the activities indicated by the law ([30]), performed by non-commercial entities on a non-commercial basis (paragraph 1). Decree Law No 1/2012 also introduced specific rules to allow a pro-rata payment of the IMU in cases where the same property is used for both commercial and non-commercial activities. In particular, Article 91a(2) states that, if a property is used for both commercial and non-commercial activities, as of 1 January 2013 the exemption will apply only to the portion of the property where non-commercial activities are carried on, if it is possible to identify the portion of the property devoted exclusively to these activities. In cases where it is not be possible to identify these autonomous parts of the property, as of 1 January 2013 the exemption will apply pro-rata to the non-commercial use of the property, as stated in a special declaration (Article 91a(3)). Decree Law No 1/2012 left a number of aspects to be dealt with in a future implementing regulation, to be adopted by the Minister for Economic Affairs and Finance. These aspects included: the terms and conditions for submitting the declaration; the relevant information for identifying the proportional use; and – following the changes introduced by Decree Law No 174/2012 ([31]) - general and specific conditions for an activity to be classified as being performed on a non-commercial basis.

(86) Having taken on board the favourable opinion and comments expressed by the Council of State ([32]), by Decree No 200 of 19 November 2012 the Minister for Economic Affairs and Finance adopted the IMU implementing regulation (hereinafter 'the Regulation') ([33]). It

([29]) Article 7(2a) of Decree Law No 203/2005; Article 91a(4) of Decree Law No 1/2012.

([30]) See Article 13(13) of Decree Law No 201/2011 and also Article 9(8) of Legislative Decree No 23/2011, which refers to Article 7(1)(i) of the ICI law. See paragraph (23) for the description of Article 7(1)(i) of the ICI law.

([31]) See Article 9(6) of Decree Law No 174 of 10 October 2012, converted, with amendments, into Law No 213 of 7 December 2012 (Official Gazette No 286 of 7 December 2012).

([32]) See Opinion No 4802/2012, issued on 13 November 2012 (case No 10380/2012).

([33]) Decree No 200 of 19 November 2012, published in Official Gazette No 274 of 23 November 2012.

establishes when the specific activities concerned by the IMU exemption, as defined in the Regulation itself, will be considered to be carried on on a 'non-commercial basis'. First, as a general requirement, the activities must be non-profit-making; furthermore, in line with EU law, because of their nature they must not be in competition with other market operators that are profit-making and they must abide by the principles of solidarity and subsidiarity ([34]). In addition to this, two concurrent sets of criteria must be met as regards non-commercial entities (subjective requirements) and as regards the specific activities performed by these entities (objective requirements). Concerning the subjective requirements, the Regulation lays down the general conditions that must be met by non-commercial entities for entitlement to the IMU exemption ([35]). In particular, the Regulation states that the non-commercial entity's articles of association or statutes must include a general prohibition on distributing any type of profits, operating surplus, funds and reserves. In addition to this, any profits must be reinvested exclusively in activities that contribute to the institutional aim of social solidarity. If the non-commercial entity is wound up, its assets must be attributed to another non-commercial entity that performs a similar activity. As regards the objective requirements ([36]), specific characteristics are defined for the different types of activity defined in Article 1 ([37]). For welfare and health activities, two alternative requirements must be met: a) the recipient is accredited by the State and has concluded a contract or an agreement with the public authorities; the activities are part of or complementary to the public system and services are provided to users free of charge or for an amount that is only a contribution to the cost of the universal service provision; b) if the entity is not accredited and has not concluded a contract or an agreement, the services are provided free of charge or for a symbolic fee which, in any event, must not exceed half the average price for similar activities in the same geographical area on a competitive basis, also taking into account the absence of any connection with the actual cost of the service. For educational activities, three cumulative requirements must be met: a) the activity must be on a par with public education and the school must apply a non-discriminatory enrolment policy; b) the school must also accept disabled pupils, apply collective working agreements, have structures that meet the applicable standards and publish its accounts; c) the activity must be provided either free of charge or for a symbolic fee covering only a fraction of the actual cost of the service, also taking into account the absence of any connection with the actual cost of such service. For accommodation services and cultural, recreational and sports activities, the recipient must provide the services free of charge or for a symbolic fee which, in any event, must not exceed half the average price for similar activities in the same geographical area, also taking into account the absence of any connection with the actual cost of the service.

([34]) See Article1(1)(p) of the Regulation of the Minister for Economic Affairs and Finance of 19 November 2012.

([35]) Article 3 of the Regulation of the Minister for Economic Affairs and Finance of 19 November 2012.

([36]) Article 4 of the Regulation of the Minister for Economic Affairs and Finance of 19 November 2012.

([37]) Further requirements are found in the definitions in Article 1 of the Regulation. In particular, for accommodation services, Article 1(1)(j) of the Regulation states that only certain categories of people will be given access and that opening periods must not be continuous. More specifically, as regards 'social accommodation', the Regulation indicates that the services must target people with temporary or permanent special needs or people who are disadvantaged due to physical, psychological, economic, social or family conditions. In any event, the exemption is excluded for activities that are carried out in hotels or similar establishments, as defined by Article 9 of Legislative Decree No 79 of 23 May 2011. As regards sports activities, Article 1(1)(m) provides that the entities concerned shall be non-profit sports associations affiliated to national sports federations or sports promotion entities under Article 90 of Law No 289/2002.

5.2. **Comments from the two interested parties on the IMU law**

(87) According to the two parties, Article 91a(2) and (3) of Decree Law No 1/2012 depart from the ordinary rules on the taxation of real estate.

(88) First, the two complainants comment on Article 91a(2), according to which, if the real estate has a mixed use, the IMU exemption applies only to the part of the property where non-commercial activities are carried on, when it is possible to identify the part that is used exclusively for these activities. For the other part of the real estate, which is autonomous in terms of function and income, Article 2(41), (42) and (44) of Decree Law No 262 of 24 November 2006 apply. These provisions govern the procedure applicable to real estate in cadastral Group E, whose cadastral income needs to be reclassified and re-valued. According to this law, in fact, real estate classified under Group E (real estate for special purposes) ([38]) cannot include buildings or parts of buildings with a commercial or industrial use or used for different purposes, if they are autonomous in terms of function and income.

([38]) See paragraph (84).

(89) The two interested parties submit that the reference to Decree Law No 262/2006, contained in Article 91a(2), should be read as a general reference to the procedure of cadastral reclassification. According to the two parties, if the procedure established by Decree Law No 262/2006 were applicable only to real estate belonging to cadastral Group E, the requirement to 'divide up' property with a mixed use would be applicable to only a very limited number of buildings, i.e. buildings in categories E7 and E9.

(90) The two parties also argue that the declaration under Article 91a(3) could pose avoidance issues and the new law would leave too much discretionary power to the public authorities. In addition, the new rules will apply only as of 1 January 2013 and therefore, in any case, the Commission should order the recovery of the aid unlawfully granted under the ICI exemption from 2006 to 2012.

5.3. **Observations from the Italian authorities on the comments from the two interested parties**

(91) The Italian authorities explained that the reference to Article 2(41), (42) and (44) of Decree Law No 262/2006 contained in Article 91a(2) should be read as a general reference to the type of procedure to be followed for dividing up a mixed use property. This procedure applies irrespective of the cadastral category.

(92) Italy also explained that, in general, the Italian tax system is based on the obligation for taxpayers to submit a tax declaration and that it is a very common legislative practice to leave the regulation of specific aspects to the implementing legislation. Moreover, as the law adopted in March 2012 introduces a new system for the declaration of real estate used by non-commercial entities, it was necessary to postpone the entry into force of the new system for those entities.

(93) As regards recovery, the Italian authorities said that it is not possible to identify retroactively which real estate belonging to non-commercial entities was used for not exclusively commercial activities (and which therefore benefited from the ICI exemption). The cadastral data do not in fact provide any information on the type of activity performed in a property ([39]). Nor is it possible to identify from the other tax databases which real estate was used by non-commercial entities for institutional activities performed on a non-exclusively commercial basis.

([39]) See also Circular No 4/2006 of 16 May 2006 of the *Agenzia del Territorio*.

6. **ASSESSMENT**

(94) In order to ascertain whether a measure constitutes aid, the Commission must assess whether the measure at issue fulfils all the conditions laid down in Article 107(1) of the Treaty. This provision states that: 'save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.' In line with this provision, the Commission will examine whether the measure: (i) is financed by the State or through state resources; (ii) provides a selective advantage; (iii) affects trade between Member States and distorts or threatens to distort competition.

(95) First the Commission needs to assess whether at least some of the non-commercial entities involved are in fact undertakings for the purposes of Union competition law.

6.1. **The classification of non-commercial entities as undertakings**

(96) In the decision initiating the procedure, the Commission noted that the non-commercial entities concerned by the measures in question performed, at least partially, economic activities and were therefore classified as undertakings on the basis of those activities.

(97) The Italian authorities and the 78 interested parties maintain that the specific activities carried on by non-commercial entities cannot be considered economic activities. In particular, they consider that, in the context of the ICI measure, activities such as assistance for young mothers in difficulty or management of a building in the mountains where children from a parish go on their summer holidays do not constitute an economic activity. These activities – targeting well-defined categories of recipients - do not constitute a supply of goods or services on the market by non-commercial entities and are not in competition with the activities performed by commercial undertakings. Therefore, these non-commercial entities, operating in the public interest, should not be considered undertakings, which is the prerequisite for the application of Article 107(1) of the Treaty. Moreover, according to the Italian authorities and some of the 78 interested parties, in many cases there is no actual market for such activities. Almost all of these activities also have specific characteristics, which can be summarised as follows:

a) they are provided free of charge or at reduced fees/prices;

b) they are provided for purposes of solidarity and social benefit, which fall outside the scope of commercial undertakings;

c) they have a reduced tax-paying capacity compared with commercial undertakings, which operate on market principles;

d) they generate deficits or low income; any profit must be reinvested in line with the entity's objectives.

(98) In view of these characteristics and the specific aims of the non-commercial entities in question, it is not possible to consider these entities to be undertakings.

(99) The Commission notes that, according to settled case law, the concept of undertaking covers every entity engaged in an economic activity, regardless of its legal status and the way it is financed ([40]). Therefore, the classification of a particular entity depends entirely on the nature of its activities. This general principle has three important consequences, which are described below.

(100) First, the status of an entity under a specific national law is immaterial. This means that its legal and organisational form is irrelevant. Therefore, even an entity which is classified as an association or a sports club under national law may nevertheless be regarded as an undertaking for the purposes of Article 107(1). The only relevant criterion is whether or not the entity concerned carries on an economic activity.

(101) Second, the application of the state aid rules does not depend on whether the entity is set up to generate profits, since non-profit entities can also offer goods and services on the market ([41]).

(102) Third, the classification of an entity as an undertaking is always relative to a specific activity. An entity that carries on both economic and non-economic activities is regarded as an undertaking only with regard to the former type of activity.

(103) An economic activity is any activity consisting of offering goods and services on a market. In this respect, the Commission considers that the characteristics and aspects referred to in paragraph 97 indicated by Italy and the 78 interested parties, which even by their own admission are not present in all cases, cannot *per se* exclude the economic nature of the activities involved.

(104) As already explained, according to Article 7(2a) of Decree Law No 203/2005, as amended by Decree Law No 223/2006 (now repealed), the activities listed in Article 7(1)(i) of the ICI law could be of a commercial nature, provided that they were not exclusively commercial in nature. The Circular of 29 January 2009 had drawn up a number of criteria for each of the activities listed in Article 7(1)(i), in order to establish when each of them must be considered non-exclusively commercial in nature. If the conditions indicated in the Circular were fulfilled, the non-commercial entities were exempted from ICI, even when the activities they carried on also included economic aspects. Indeed, as already stated in the decision initiating the procedure, in the health sector the main requirement was that the non-commercial entities had concluded an agreement or a contract with the public authorities. It is clear that this condition cannot *per se* exclude the economic nature of the activities concerned. Similarly, as regards education, the school had to comply with teaching standards, be accessible to disabled pupils, apply collective working agreements and a non-discriminatory enrolment policy and reinvest profits in the educational activity. Again, these requirements do not exclude the economic nature of the educational activities carried on in this way. As regards cinemas, they were required to show films of cultural interest or with a quality certificate or films for children. As regards accommodation services, the requirement was that these should not be open to the public at large but to predefined categories and that the service was not provided all year round. The service supplier also had to apply prices significantly lower than market prices and the structure could not operate as a normal hotel. Once again, these conditions do not rule out the economic nature of the activities concerned.

([40]) See *inter alia* Case C-41/90 *Höfner* [1991] ECR I-1979, paragraph 21; Case C-222/04, *Cassa di Risparmio di Firenze* [2006] ECR I-289, paragraphs 107 *et seq*.

([41]) Joined Cases 209/78 to 215/78 and 218/78 *Van Landewyck* [1980] ECR 3125, paragraph 21; Case C-244/94 *FFSA and others* [1995] ECR I-4013; Case C-49/07 *MOTOE* [2008] ECR I-4863, paragraphs 27 and 28.

(105) The Commission also observes that, even if in most cases the activities are carried on in the public interest, this element alone does not *per se* rule out the economic nature of such activities. In any case, even if an activity has a social aim, this alone is not enough to preclude it from being classified as an economic activity. Furthermore, non-commercial entities may indeed have a reduced tax-paying capacity, but this does not imply the absence of any economic activity. This factor is of no relevance to a real estate tax that is based on the possession of real estate and takes no account of other elements of tax-paying capacity.

(106) In the light of the above, given that the 2005 Law itself also allowed the ICI exemption for activities of a commercial nature and that the criteria laid down in the Circular and the information provided by Italy are not sufficient to rule out the economic nature of the activities performed, the Commission considers that the non-commercial entities at issue must be classified as undertakings, as far as those activities are concerned. The same holds true for the non-commercial entities under Article 149(4) TUIR, which are effectively allowed to carry on economic activities. This latter conclusion is not contested by the Italian authorities.

(107) In any event, in line with the case law of the Court of Justice ([42]), the Commission considers that, in order to classify a scheme as state aid, it is not necessary to demonstrate that all individual aid granted under that scheme qualifies as state aid under Article 107(1) of the Treaty. In order to conclude that a scheme contains aid elements within the meaning of Article 107(1), it is sufficient for situations to arise during its implementation that constitute aid. Hence, *mutatis mutandis*, in the context of this Decision it is not necessary to consider the nature of all the individual activities listed in Article 7(1)(i) of Legislative Decree No 504/92. As already indicated in paragraph 104, the Commission has in fact established that some of the individual applications of the contested aid scheme involved undertakings.

(108) In the light of the above, the Commission concludes that there is no reason to depart from the position taken in the decision initiating the procedure: the scheme in question also includes economic activities. The specific features of at least some of the activities are such that the Commission can classify them as economic activities. Since the recipients of the measures in question may perform economic activities, it is therefore possible to classify them as undertakings as far as those activities are concerned.

([42]) See Cases C-471/09 P to C-473/09 P *Diputación Foral de Álava and others/Commission*, not yet published in the ECR, paragraph 98; see also Joined Cases C-71/09 P, C-73/09 P and C-76/09 P *Comitato 'Venezia vuole vivere'* v *Commission*, not yet published in the ECR, paragraph 130 and the case law quoted there.

6.2. **The ICI exemption**

(109) In this section, the Commission will examine whether the ICI exemption granted to non-commercial entities, pursuant to Article 7(1)(i) of Legislative Decree No 504/92, in the version in force prior to the amendments introduced by Decree Law No 1/2012, was financed by the State or through state resources; granted a selective advantage, and was furthermore justified by the logic of the Italian taxation system; affected trade between Member States and distorted or threatened to distort competition.

6.2.1. *State resources*

(110) The measure involved the use of state resources and involved foregoing tax revenue for the amount corresponding to the reduced tax liability.

(111) A loss of tax revenue is effectively equivalent to consumption of state resources in the form of fiscal expenditure. By allowing entities, which could be classified as undertakings, to reduce their tax burden through exemptions, the Italian authorities were foregoing revenue to which they would have been entitled in the absence of the tax exemption.

(112) For these reasons, the Commission finds that the measure at issue caused a loss of state resources since it provided for a tax exemption.

6.2.2. *Advantage*

(113) According to the case law, the concept of aid embraces not only positive benefits, but also measures which in various forms mitigate the charges which are normally included in the budget of an undertaking ([43]).

(114) Therefore, since the ICI tax exemption reduced the charges normally included in the operating costs of any undertaking owning real estate in Italy, it gave the entities concerned an economic advantage in comparison with other undertakings that were not entitled to these tax advantages.

([43]) Case C-143/99 *Adria-Wien Pipeline* [2001] ECR I-8365, paragraph 38.

6.2.3. *Selectivity*

(115) To constitute state aid, a measure must be selective ([44]), in the sense that it must favour certain undertakings or the production of certain goods. According to established case law ([45]), in order to classify a domestic tax measure as 'selective', first, it is generally necessary to identify and examine the common or 'normal' tax system applicable in the Member State concerned. Second, it is in relation to this common or 'normal' tax system that it is necessary to establish whether any tax advantage granted by the measure at issue is selective. This must be done by demonstrating that the measure departs from that common system as it differentiates between economic operators that, in the light of the objective pursued by that system, are in a comparable factual and legal situation. Third, if this departure exists, it is necessary to examine whether it results from the nature or general scheme of the taxation system of which it forms part and could hence be justified by the nature or general scheme of the system. In this context, it is for the Member State to show that the differentiated tax treatment derives directly from the basic and guiding principles of its tax system ([46]).

a) Reference system

(116) ICI was an autonomous tax, due annually to the municipalities. In its decision initiating the procedure, the Commission concluded that the reference system for assessing the ICI exemption was the municipal real estate tax itself. Neither Italy nor any of the other interested parties contested this conclusion.

(117) The Commission therefore concludes that there is no reason to review the position taken in the decision initiating the procedure, namely that the reference system is the ICI itself.

b) Departure from the reference system

(118) Under the ICI legislation, all legal persons in possession of real estate, irrespective of the use made of it, were liable for ICI ([47]). Article 7 indicated which categories of real estate were exempted from this tax.

(119) The Commission notes that Article 7(1)(i) of Decree Law No 504/92 departed from the reference system, on the basis of which every person in possession of real estate had to pay the ICI tax, irrespective of the use made of it. As demonstrated above, the non-commercial entities in question could perform activities of a commercial nature, like any other undertaking that performed similar economic activities. In view of the objective pursued by the ICI tax system - i.e. taxation of the possession of real estate by the municipalities - non-commercial entities were therefore in a comparable legal and factual situation to the undertakings liable for ICI.

(120) For instance, according to the conditions laid down in the Circular, cinemas that were managed by non-commercial entities on a non-exclusively commercial basis were entitled to the ICI exemption. These services, offered on the market on a structured basis and against remuneration, none the less constitute economic activities. It is undisputed that, in cases where the activities listed in Article 7(1)(i) were performed by non-commercial entities, these entities benefited from the ICI exemption for the property in which these activities were performed, provided that the minimum requirements of the Circular were met. Commercial entities did not enjoy the same tax exemption, even if they performed the same activities and met the conditions of the Circular regarding the nature of the films.

(121) The Commission accordingly concludes that the ICI exemption under Article (1)(i), in the version in force before the amendments introduced by Decree Law No 1/2012, departed from the reference system and constituted a selective measure within the meaning of the case law.

c) Justification by the nature and general scheme of the tax system

(122) Since the Commission considers that the tax exemption at issue is selective, it will have to determine, in accordance with the case law of the Court of Justice, whether this exemption is justified by the nature and general scheme of the system of which it forms part. A measure that departs from the application of the general tax system may be justified by the nature and general scheme of the tax system if the Member State concerned can show that the measure results directly from the basic or guiding principles of its tax system.

([44]) See Case C-66/02 *Italy* v *Commission* [2005] ECR I-10901, paragraph 94.

([45]) See, *inter alia*, Case C-88/03 *Portugal* v *Commission* [2006] ECR I-7115, paragraph 56; Joined Cases C-78/08 to C-80/08 *Paint Graphos*, not yet published, paragraph 49.

([46]) See Case C-143/99 *Adria-Wien Pipeline GmbH and Wietersdorfer & Peggauer Zementwerke* [2001] ECR I-8365, paragraph 42.

([47]) Articles 1 and 3 of Legislative Decree No 504/92.

(123) The Italian authorities, supported by the 78 interested parties, consider that the ICI exemption represents the application of the guiding principles of the Italian tax system. According to them, differentiated treatment of activities which have a high social value and are provided in the public interest is in keeping with the logic of the taxation system. These activities are inspired by the solidarity principle, which is a fundamental principle of both domestic and Union law. In addition, the non-commercial entities concerned share specific social functions with the State. The rationale of the ICI exemption is based on Articles 2 and 3 of the Italian Constitution, requiring fulfilment of the duties of political, economic and social solidarity towards citizens, and Article 38, which establishes the right to social welfare for people without the necessary means of subsistence.

(124) In this regard, the Commission finds that the Italian authorities have not demonstrated that the measure at issue results directly from the basic or guiding principles of the Italian taxation system. The Articles of the Italian Constitution invoked by Italy do not actually refer to any guiding principle of the Italian tax system but merely to general principles of social solidarity.

(125) Second, the Commission notes that the objective pursued by state measures is not sufficient to exclude those measures from classification as 'aid' for the purposes of Article 107 of the Treaty ([48]). As the Court has also held on numerous occasions, Article 107(1) TFEU does not distinguish between the causes or objectives of state aid but defines them in relation to their effects ([49]). In the light of the above, the Commission further notes that having a social objective and pursuing activities in the public interest is not sufficient to exclude the measure at issue from being classified as state aid.

(126) Third, the Commission notes also that, as already stated, a measure which creates an exception to the application of a general tax system may be justified if it results directly from the basic or guiding principles of the (reference) tax system, in this instance the ICI. In this context, as stated in paragraph 26 of the Commission notice on the application of the state aid rules to measures relating to direct business taxation ([50]), a distinction must be made between, on the one hand, the external objectives assigned to a particular tax scheme (in particular, social or social objectives) and, on the other hand, the objectives which are inherent in the tax system itself. Consequently, tax exemptions which are the result of objectives unrelated to the reference tax system cannot circumvent the requirements under Article 107(1) of the Treaty ([51]). The primary purpose of the tax system in question is to collect revenue to finance state expenditure ([52]) by taxing possession of real estate. Thus, the Commission considers that the social objectives pursued by the entities falling within the scope of the ICI exemption are external to the logic of the ICI tax system and therefore cannot be relied upon to justify *prima facie* the selectivity of the measure.

(127) Fourth, in line with the case law ([53]), when determining if a measure can be justified by the nature or general scheme of the national system of which it forms part, it is necessary to establish not only if the measure forms an inherent part of the essential principles of the tax system applicable in the Member State concerned, but also if it complies with the principles of consistency and proportionality. However, given that the measure at issue does not result directly from the basic principles of the reference tax system, the Commission considers it superfluous to analyse the system of controls put in place by Italy to ensure compliance with the conditions for the ICI exemption for non-commercial entities, as described by the Italian authorities. In any event, the differentiated tax treatment of non-commercial entities, introduced by the measure at issue, is neither necessary nor proportionate in terms of the logic of the tax system.

(128) In the light of paragraphs 122 to 127, the Commission concludes that the selective nature of the tax measure in question is not justified by the logic of the tax system. Therefore, the contested measure must be considered to grant a selective advantage to non-commercial entities performing specific activities.

([48]) Joined Cases C-78/08 to C-80/08 *Paint Graphos*, paragraph 67; see also Case C-487/06 *British Aggregates* v *Commission* [2008] ECR I-10505, paragraph 84 and case law cited there.

([49]) Case C-487/06 *British Aggregates* v *Commission* [2008] ECR I-10505, paragraph 85.

([50]) OJ C 384, 10.12.1998, p. 3.

([51]) Joined Cases C-78/08 to C-80/08 *Paint Graphos*, paragraph 70.

([52]) See paragraph 26 of the Commission notice on the application of the state aid rules to measures relating to direct business taxation.

([53]) Joined Cases C-78/08 to C-80/08 *Paint Graphos*, paragraphs 73 *et seq*.

6.2.4. *Effects on trade between Member States and distortion of competition*

(129) Article 107(1) of the Treaty prohibits aid which affects trade between Member States and distorts or threatens to distort competition. According to the case law of the Court of Justice ([54]), to classify a national measure as state aid, the Commission is required, not to establish that the aid in question has a real effect on trade between Member States and that competition is actually being distorted, but only to examine whether the aid is liable to affect such trade and distort competition. It should also be noted, as explained in paragraph 107 above, that in order to decide on classifying a scheme as state aid, it is not necessary to demonstrate that all individual aid granted under that scheme qualifies as state aid under Article 107(1) of the Treaty. For this purpose, in order to conclude that a scheme contains aid elements within the meaning of Article 107(1), it is sufficient for situations to arise during its implementation that constitute aid.

(130) With regard more specifically to the condition that trade between Member States must be affected, it follows from the case law that the grant of aid by a Member State, in the form of tax relief, to some of its taxable persons must be regarded as likely to have an effect on trade and, consequently, as meeting that condition, where those taxable persons perform an economic activity in the field of such trade or it is conceivable that they are in competition with operators established in other Member States ([55]). Furthermore, when aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid. Moreover, it is not necessary for the recipient undertaking itself to be involved in intra-Union trade. Where a Member State grants aid to an undertaking, its activity on the domestic market may be maintained or increased as a result, so that the opportunities for undertakings established in other Member States to penetrate the market in that Member State are thereby reduced.

(131) With regard to the condition of the distortion of competition, it should be borne in mind that, in principle, aid intended to release an undertaking from costs which it would normally have to bear in its day-to-day management or normal activities distorts the conditions of competition ([56]).

(132) The Italian authorities did not submit any comment in this respect. Some of the 78 third interested parties consider that the ICI exemption is unable to cause any significant effect on trade or distortion of competition, given the specific features of the recipients of the scheme and the way they carry on the activities giving rise to the exemption.

(133) The Commission cannot agree with the views presented by those interested parties, according to which the exemption at issue, granted to non-commercial entities operating at local level, did not cause any significant effect on trade and distortion of competition. According to well established case law, in fact, an adverse effect on trade requires nothing more than a determination that the favoured undertaking is active in a market which is open to competition (import or export of goods or transnational provision of services) ([57]). It is irrelevant whether the affected markets are local, regional, national or Union-wide. Indeed, it is not the definition of the substantively and geographically relevant markets which is decisive, but rather the potential adverse effect on intra-Union trade. The relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that intra-Union trade might be affected ([58]). In fact, neither the insignificant amount of the aid nor the small size of the favoured undertakings rules out the presence of the aid ([59]).

([54]) Case C-372/97 *Italy* v *Commission* [2004] ECR I-3679, paragraph 44; Case C-148/04 *Unicredito Italiano* [2005] ECR I-11137, paragraph 54; Case C-222/04 *Cassa di Risparmio di Firenze* [2006] ECR I-289, paragraph 140; Joined Cases C-78/08 to C-80/08 *Paint Graphos*, not yet published, paragraph 78; Case T-303/10 *Wam Industriale Spa* v *Commission*, not yet published, paragraphs 25 *et seq*.

([55]) See Case C-88/03 *Portugal* v *Commission*, paragraph 91, and Case C-172/03 *Heiser* [2005] ECR I-1627, paragraph 35; Case C-494/06 P, *Commission* v *Wam* [2009] ECR I-3639, paragraph 51.

([56]) See Case C-156/98 *Germany* v *Commission* [2000] ECR I-6857, paragraph 30, and *Heiser*, paragraph 55.

([57]) See Case T-298/97 *Alzetta* ECR [2000] II-2319, paragraphs 93 *et seq*.

([58]) See Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959, '*Tubemeuse*', paragraph 43; Joined Cases C-278/92 to C-280/92 *Spain* v *Commission* [1994] ECR I-4103, paragraph 42, and Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraph 81.

([59]) Case T-171/02 *Sardegna* v *Commission* [2005] ECR II-2123, paragraph 86 *et seq*; Case C-113/00 *Spain* v *Commission* [2002] ECR I-7601, paragraph 30; Case T-288/97, *Friuli Venezia Giulia* v *Commission* [2001] ECR II-1169, paragraphs 44 and 46.

(134) In the case at hand, the Commission notes that at least some of the sectors benefiting from the ICI exemption, such as accommodation and health services, were and are indeed exposed to competition and trade within the Union. With reference to the measure at issue, the Commission considers that the conditions set out in the case law are met because the measure provides an advantage in terms of financing the activities of the entities concerned, releasing those entities from costs which they would have normally borne. The measure is therefore liable to distort competition.

(135) Therefore, the Commission concludes that the measure at issue is liable to affect trade between Member States and distort competition within the meaning of Article 107(1) of the Treaty.

6.2.5. *Conclusion on the classification of the contested measure*

(136) In the light of the above, the Commission concludes that the measure at issue fulfils all the conditions laid down in Article 107(1) of the Treaty and should thus be regarded as state aid.

6.2.6. *Classification of the measure as new aid*

(137) In the decision initiating the procedure, the Commission considered that the ICI exemption under Article 7(1)(i) of Legislative Decree No 504/92 constituted new aid. The ICI tax, an annual tax paid to the municipalities, was introduced in 1992. It was not notified to the Commission or approved by the Commission. The exemption applied to a wide range of activities which were open to competition at the time of its introduction.

(138) Italy submits that the approach taken by the Commission in the decision initiating the procedure is incorrect and that, if the ICI exemption were considered to be aid, it should be classified as existing aid. Italy maintains that ICI represents the logical legislative progression from the earlier property taxes, with which it provides formal and material continuity. Exempting real estate used for specific activities with a high social value has been a fundamental component of all taxes on real estate introduced since 1931, well before the entry into force of the EEC Treaty.

(139) The Italian authorities also argue that the Commission's replies to the complainants concerning the ICI exemption, of which Italy was informally notified, had created a legitimate expectation on the part of non-commercial entities as to the compatibility of the ICI exemption with Union law.

(140) Italy presented a detailed description of the real estate taxes that were in force before ICI. In 1931, Italy introduced the specific and general improvement taxes in the Single Act on Local Finance. Subsequently, in 1963, a tax on the appreciation of building areas was introduced by Law No 246 of 5 March 1963. Finally, the tax on the appreciation of immovable property (the so-called INVIM) was introduced by Presidential Decree No 643 of 26 October 1972. The appreciation in the value of immovable property was taken into account when calculating the specific and general improvement taxes. Similarly, the 1963 tax also targeted the capital gain of building areas. This capital gain was also taxed at the time of transfer of the properties by *inter vivos* deeds and, in general, at the end of every ten years of possession of the real estate. INVIM, introduced in 1972, replaced both the 1931 and the 1963 taxes. Under the INVIM law, the taxable persons were the transferor for consideration or the transferee without charge and, in each case, the tax was due every ten years. INVIM was abolished with the introduction of ICI. According to Italy, this analysis demonstrates the close continuity between the various real estate tax instruments used since 1931. Italy also notes that the rules on real estate tax exemptions have always taken into account the type of activity carried on by the entities that were entitled to the exemption. The fact that the categories of exempted recipients have increased over the years is simply due to the fact that the range of entities pursuing social interest activities has broadened.

(141) The Commission does not consider the Italian authorities' arguments to be correct. First, the Commission points out that ICI is completely different from the earlier property taxes that it replaces. In any case, there are a number of substantial differences between ICI and the previous real estate taxes, in terms of taxable persons, taxable base and events which gave rise to the obligation to pay these taxes. For instance, until the introduction of ICI, real estate taxes were calculated on the capital gain of the real estate whereas ICI was calculated on the basis of the real estate's cadastral value. In addition, whereas INVIM was due by the transferor for consideration or by the transferee without charge, ICI was due by every natural and legal person that possessed real estate.

Finally, whereas INVIM was generally paid every ten years, ICI had to be paid each year. In the light of the above, the Commission considers that the amendments introduced over time and, in particular, with the ICI Law, affect the actual substance of the original scheme and cannot be separated from it, so that the original scheme is transformed into a new aid scheme ([60]). The Commission has no reason to review the position set out in the decision initiating the procedure and confirms that the ICI exemption constituted new aid.

(142) As regards the alleged authorisation of the ICI measure, the Commission notes that the aid in question was never authorized by the Commission or the Council. If this had been the case, the aid would be considered existing aid, according to Article 1(b)(ii) of Regulation (EC) No 659/1999. However, the letters containing the Commission's preliminary assessment, which were sent to the complainants in the context of the administrative proceedings prior to the decision initiating the procedure, cannot be equated to Commission decisions. Indeed, a measure can be considered existing aid under Article 1(b)(ii) only if the aid has already been approved by an express decision of the Commission or the Council. In any event, the letter sent to the complainants on 15 February 2010 was challenged by two complainants before the General Court and did not become final; these Court actions were withdrawn only after the decision initiating the procedure. The Commission accordingly concludes that, in the absence of any Commission or Council decision, Article 1(b)(ii) of Regulation (EC) No 659/1999 does not apply. Therefore, the aid at issue cannot be considered existing aid - on the contrary, it constitutes new aid.

6.2.7. *Compatibility*

(143) In the decision initiating the procedure, the Commission considered that the aid scheme in question did not qualify for any of the exemptions laid down in Article 107(2) and (3) of the Treaty and that the Italian authorities had not demonstrated that the aid could be declared compatible under Article 106(2) of the Treaty.

([60]) Joined Cases T-195/01 and T-207/01 *Government of Gibraltar* v *Commission* [2002] ECR II-2309, paragraph 111.

(144) In the course of the procedure, the Italian authorities did not present any argument to indicate that the exceptions provided for in Article 107(2) and (3) and in Article 106(2) can apply to the scheme at issue. Some of the 78 interested parties considered that the scheme was compatible under Article 106(2) and Article 107(3)(c). In their view, the exemption was necessary for activities carried out in the public interest based on the solidarity principle. The two complainants consider that none of the exceptions laid down in the Treaty is applicable.

(145) The Commission considers that the exceptions provided for in Article 107(2), which concern aid of a social character granted to individual consumers, aid to make good the damage caused by natural disasters or exceptional occurrences and aid granted to certain areas of the Federal Republic of Germany, do not apply in this case.

(146) The same holds for the exception provided for in Article 107(3)(a), which authorises aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious unemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation. Nor can the measure in question be considered to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of Italy, as provided for by Article 107(3)(b).

(147) According to Article 107(3)(c), aid to facilitate the development of certain economic activities may be considered compatible where it does not adversely affect trading conditions to an extent contrary to the common interest. However, the Commission did not receive any factual information enabling it to assess whether the tax exemption granted by the measure under examination was related to specific investments or projects eligible

to receive aid under the EU rules and guidelines, or otherwise directly compatible with Article 107(3)(c). Therefore, the Commission cannot agree with the position of the third parties that claim the compatibility of the measure under Article 107(3)(c) on the basis of the need to allow non-commercial entities to carry out activities based on the solidarity principle and with a high social function. In particular, in view of the nature of the advantage, which is simply linked to the level of tax liability for the possession of real estate, it is not possible to establish that it is necessary and proportionate to attain an objective of common interest in all individual cases. Consequently, the Commission considers that the measure concerned cannot be considered compatible under any of the guidelines based on Article 107(3)(c).

(148) Article 107(3)(d) provides that aid to promote culture and heritage conservation, where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest, may be considered compatible with the internal market. In the decision initiating the procedure, the Commission considered that, in the case of some entities such as non-commercial entities that performed exclusively educational, cultural and recreational activities, it was not possible to rule out *a priori* that their object was the promotion of culture and heritage conservation and that they could accordingly come under Article 107(3)(d). However, neither Italy nor any of the interested parties provided the Commission with any information that could have demonstrated the compatibility of the measure at issue for specific entities, pursuant to Article 107(3)(d) ([61]). In this context, too, the very nature of the advantage makes it impossible to consider that the aid is necessary and proportionate in all individual cases.

(149) Finally, in the decision initiating the procedure, the Commission did not rule out that some of the activities benefiting from the measure in question could be classified under Italian law as services of general economic interest, in line with Article 106(2) of the Treaty and the *Altmark* case law. Some of the interested parties considered that the Commission should assess the measure under Article 106(2) but did not provide any relevant information for the analysis. The two parties consider that the measure does not fulfil the criteria of the *Altmark* case law. However, given that neither Italy nor the interested parties provided any information enabling the Commission to assess the measure under Article 106(2), the Commission concludes that it is not possible to establish if any of the activities at issue could be classified as services of general economic interest under that Article. Once again, it is not possible to establish whether, in each individual case, the aid is necessary and proportionate to cover the costs incurred in the discharge of public service obligations or in the performance of services of general economic interest.

(150) In the light of the above, the Commission concludes that the aid scheme in question is incompatible with the internal market.

6.3. **Article 149(4) TUIR**

(151) In the decision initiating the procedure, the Commission considered that the measure in question appeared to constitute state aid. In the following section, the Commission will examine whether Article 149(4) TUIR constitutes state aid within the meaning of Article 107(1) of the Treaty.

(152) The Italian authorities explained that Article 149(2) TUIR contains a non-exclusive list of parameters that can be taken into account ([62]) to assess the commercial nature of an entity. Should one or more of these conditions be met, it does not mean the automatic loss of the entity's non-commercial status (since these parameters cannot be considered legal presumptions) but instead gives an indication of the potentially commercial nature of the activity performed by the entity. As regards ecclesiastical institutions with civil-law status, Italy pointed out that Revenue Agency Circular No 124/E of 12 May 1998 explained that ecclesiastical institutions can benefit from the tax treatment granted to non-commercial entities only if performing commercial activities is not their prime object. In any case, ecclesiastical institutions with

([61]) In their observations on the comments from third parties, the Italian authorities claimed that Article 107(3)(d) of the Treaty could be applicable – in theory – only to certain activities listed in Article 7(1)(i). However, no further arguments were put forward to support this.

([62]) See footnote 12.

civil-law status must give priority to institutional activities of a chiefly idealistic persuasion. Therefore, Article 149(4) TUIR simply excludes the application of the specific time and business parameters under Article 149(1) and (2) to ecclesiastical institutions and amateur sports clubs, but it does not preclude these entities from losing their non-commercial status.

(153) The Italian authorities emphasised that the measure is aimed at preserving the exclusive competence enjoyed by CONI (the Italian National Olympic Committee) for amateur sports clubs and by the Interior Ministry for ecclesiastical institutions.

(154) In particular, as regards ecclesiastical institutions, Law No 222 of 20 May 1985 implementing the international agreements between Italy and the Holy See governs, *inter alia*, the powers attributed to the Interior Ministry. Italy stressed that the Interior Ministry has exclusive competence both for the recognition of the civil-law status of ecclesiastical institutions and the revocation of this status ([63]). Article 149(4) TUIR therefore confirms this exclusive competence by preventing the implicit revocation of the civil-law status of ecclesiastical institutions by the tax authorities. If the Interior Ministry revoked the civil-law status of an ecclesiastical institution, it would lose the status of a non-commercial entity and would no longer be able to benefit from the tax treatment applicable to non-commercial entities. According to Presidential Decree No 361/2000, the Interior Ministry, through the '*Prefetti*', also checks that ecclesiastical institutions continue to meet the requirements for maintaining their civil-law status.

(155) As regards amateur sports clubs, Italy confirmed that CONI is the only entity that can check that the clubs effectively carry on sports activities. The Italian authorities also clarified that amateur sports clubs can lose their non-commercial status if the CONI concludes that they do not carry on amateur sports activities. Amateur sports clubs must transmit their tax data using the special EAS form ([64]). However, if amateur sports clubs do not carry on any commercial activities, they do not need to submit this form. In the light of the above, the Italian authorities have put in place the appropriate instruments to check the activities carried out by amateur sports clubs – including from a tax point of view.

(156) Italy also explained that if the tax authorities find out that ecclesiastical institutions and amateur sports clubs perform primarily commercial activities, they immediately inform the Interior Ministry or the CONI. The Interior Ministry and CONI carry out their own checks, according to the statutory powers assigned to them. In parallel, the tax authorities ensure that the tax declaration of the non-commercial entity concerned is corrected and order the recovery of the difference in taxation.

(157) The Italian authorities confirmed that tax controls were indeed carried out on non-commercial entities ([65]). In this respect, the Revenue Agency recently issued specific operational instructions to the regional offices concerning non-commercial entities ([66]). As regards ecclesiastical institutions, the Interior Ministry also carried out a number of *ex officio* checks on these entities but has never found any cases of abuse.

(158) In the light of the above, the Commission considers that the legal instruments exist to ensure that abuse of the non-commercial status of ecclesiastical institutions and amateur sports clubs is effectively prevented or suppressed. The Italian authorities have also demonstrated that the competent authorities do exercise their powers of control and that both ecclesiastical institutions and amateur sports clubs can lose their non-commercial status if they carry out primarily economic activities. Therefore, ecclesiastical institutions and amateur sports clubs can lose their entitlement to the tax treatment granted to non-commercial entities in general. Consequently, there is no system of 'perpetual non-commercial status', as alleged by the complainants. The mere fact that specific procedures apply to the checks on the ecclesiastical institutions with civil-law status and amateur sports clubs in question does not involve an advantage.

([63]) In particular, as regards revocation, see Article 19 of Law No 222 of 20 May 1985.

([64]) See Article 30 of Law No 185 of 29 November 2008. See also Circular No 12/E of 9 April 2009 of the Tax Revenue Agency and the Decision of the Director of the Revenue Agency of 2 September 2009.

([65]) In 2010 and 2011, Italy carried out 2 030 checks on non-commercial entities and issued 5 086 tax assessment notices.

([66]) See Circular No 20/E of the Tax Revenue Agency of 16 April 2010.

(159) The Commission therefore concludes that Article 149(4) TUIR does not confer any selective advantage on ecclesiastical institutions or amateur sports clubs. Hence the measure does not constitute state aid within the meaning of Article 107(1) of the Treaty.

6.4. **The IMU exemption**

(160) Following the introduction of IMU - the new municipal real estate tax replacing ICI – at the request of the Italian authorities and in the light of the complainants' comments on this new law, the Commission agreed to establish whether the new IMU exemption regarding non-commercial entities performing specific activities complies with the state aid rules. The Commission will accordingly assess whether the IMU exemption in question constitutes state aid within the meaning of Article 107(1).

(161) The Commission notes that, from the date of entry into force of Decree Law No 1/2012, converted into Law No 27/2012, the exemption under Article 7(1)(i) of Legislative Decree No 504/92 applies to the real estate owned by non-commercial entities only if the activities listed there are carried on on a non-commercial basis. The provisions concerning the 'mixed use' of buildings, both in the case where parts of the buildings are autonomous in terms of function and revenue and where it is necessary to have a declaration by the entities concerned, will apply as of 1 January 2013.

(162) The Commission considers that the new rules spell out that the exemption can be guaranteed only if commercial activities are not carried on. Therefore, the hybrid situations which the ICI legislation had created, where commercial activities were carried on in some buildings that were entitled to a tax exemption, will no longer be possible.

(163) In general terms, the interpretation of the notion of economic activity depends, *inter alia*, on the specific circumstances, the way the activity is organised by the State, and the context in which it is organised. In order to establish the non-economic nature of an activity pursuant to Union case law, it is necessary to examine the nature, the aim and the rules that govern this activity. The fact that some activities can be classified as 'social' is not in itself sufficient to exclude their economic nature. However, the Court of Justice has also recognised that certain activities with a purely social function may be considered non-economic, especially in sectors closely related to the basic tasks and responsibilities of the State.

(164) None the less, as regards IMU, the Commission considers it essential first to establish whether the criteria laid down in Italian legislation to exclude the commercial nature of the activities entitled to the IMU exemption are in line with the notion of non-economic activity under Union law.

(165) In this respect, as illustrated above in paragraphs 82 *et seq*., the Italian authorities recently approved the implementing legislation provided for by Article 91a(3) of Decree Law No 1/2012. The Regulation of the Ministry of Economic Affairs and Finance of 19 November 2012 sets out the general and specific requirements needed to establish when the activities listed in Article 7(1)(i) of Legislative Decree No 504/92 are performed on a non-commercial basis.

(166) First, Article 1(1)(p) of the Ministerial Regulation of 19 November 2012 defines the concept of 'non-commercial basis'. The institutional activities are considered to be carried on on a non-commercial basis when: (a) they are not-profit making; (b) in keeping with the principles of Union law, by their nature they are not in competition with other market operators that are profit-making; and (c) they put into practice the principle of solidarity and subsidiarity. In this respect, the requirement under (b) is an important safeguard since, by referring expressly to Union law, it guarantees in general that the activity is not in competition with other profit-making market operators, which is an essential characteristic of non-economic activities ([67]).

(167) Second, Article 3 of the Regulation defines the general subjective requirements which must be included in the articles of association or statutes of non-commercial entities so that their activities are carried on on a non-commercial basis The criteria are as follows: (a) ban on distributing, even indirectly, any profits, operating

([67]) Case C-222/04 *Cassa di Risparmio di Firenze* [2006] ECR I-289, paragraphs 121-123.

surplus, funds, reserves or capital during the life of the entity, unless it is imposed by law or is in favour of entities that belong to the same structure and that perform the same activity; (b) any profit and surplus must be reinvested exclusively in developing activities that contribute to the institutional aim of social solidarity; and (c) if the non-commercial entity is wound up, its assets must be attributed to another non-commercial entity that performs a similar activity, unless otherwise provided by law.

(168) Third, Article 4 of the Regulation identifies additional objective requirements that must be met, together with the conditions indicated in Articles 1 and 3, in order for the activities listed in Article 7(1)(i) of the ICI law to be deemed to be carried on on a non-commercial basis.

(169) In particular, as regards welfare and health care activities, the Regulation states that these are carried on on a non-commercial basis if at least one of the following conditions is met: (a) the activities are accredited by the State and are performed under either a contract or an agreement with the State, the Regions or local authorities and they are part of or complementary to the public national health system and provide services to users free of charge or for an amount that is only a contribution to the cost of the universal service provision; (b) if the activities are not accredited and performed under a contract or an agreement, they must be provided free of charge or for a symbolic fee which, in any event, must not exceed half the average price for similar activities in the same geographical area on a competitive basis, also taking into account the absence of any connection with the actual cost of the service.

(170) With reference to the first condition, the Commission notes that, as explained by the Italian authorities, in order to benefit from the exemption the entities concerned must be an integral part of the national health service, which provides universal cover and is based on the principle of solidarity. In this system, public hospitals are directly funded from social security contributions and other state resources. These hospitals provide their services free of charge on the basis of universal cover or for a low fee which covers only a small fraction of the actual cost of the service. Non-commercial entities falling under the same category and fulfilling the same conditions are also considered an integral part of the national health system ([68]). In the light of the specific features of this case and in line with the principles laid down by Union case law ([69]), since the Italian national system provides a system of universal cover, the Commission concludes that the entities concerned, which perform the activities described above and fulfil all the statutory requirements, do not qualify as undertakings.

(171) As regards the second condition, the Regulation states that the activities must be performed either free of charge or for a symbolic fee. Services provided free of charge do not generally constitute an economic activity. In particular, this is the case if the services are not offered in competition with other market operators, as laid down in Article 1 of the Regulation. The same holds true for services that are provided for a symbolic fee. In this respect, it is important to note that the Regulation stipulates that, for the fee to be considered symbolic, it must bear no relationship to the cost of the service. The Regulation also states that the limit set of half the average price charged for similar activities performed on a competitive basis in the same geographical area can be used only to exclude entitlement to the exemption (as indicated by the words 'in any event'). It does not, however, imply that service providers which charge a price below that limit are entitled to the exemption. Therefore, given that the assistance and health care activities also meet the general and subjective requirements indicated in Articles 1 and 3 of the Regulation, the Commission concludes that such activities, performed in line with the principles of the current legislation, do not constitute economic activities.

(172) Educational activities, for their part, are deemed to be carried on on a non-commercial basis if a number of specific conditions are met. In particular, the activity must be on a par with public education and the school must apply a non-discriminatory enrolment policy; the school must also accept disabled pupils, apply collective working agreements, have structure that meet the applicable standards and publish its accounts. In

([68]) See, in particular, Article 1(18) of Legislative Decree No 502 of 30 December 1992.

([69]) See Case T-319/99 *FENIN* v *Commission* [2003] ECR II-357, paragraph 39, confirmed by Case C-205/03 P *FENIN* v *Commission* [2006] I-6295; Joined Cases C-264/01, C-306/01, C-354/01 and C-355/01 *AOK Bundesverband and Others* [2004] ECR I-2493, paragraphs 45 to 55; see also Case T-137/10, *CBI* v *Commission*, not yet published.

addition, the activity must be provided either free of charge or for a symbolic fee covering only a fraction of the actual cost of the service, also taking into account the absence of any connection therewith. In this respect, the Commission recalls that according to case law ([70]), courses offered by certain establishments forming part of a public education system and financed, entirely or mainly, by public funds do not constitute an economic activity. The non-economic nature of public education is in principle not affected by the fact that pupils or their parents must sometimes pay tuition or enrolment fees which contribute to the operating expenses of the system, provided that the financial contribution covers only a fraction of the actual cost of the service and, therefore, cannot be considered remuneration for the service provided. As also acknowledged by the Commission in its Communication on the application of the European Union state aid rules to compensation granted for the provision of services of general economic interest ([71]), these principles cover kindergartens, private and public primary schools, vocational training, secondary teaching activities in universities and also provision of education in universities. In the light of the above, the Commission considers that the symbolic fee referred to in the Regulation, representing only a fraction of the actual cost of the service, cannot be considered remuneration for the services provided. Therefore, under these specific circumstances, given the general and subjective requirements of Articles 1 and 3 of the Regulation, together with the specific objective requirements laid down in Article 4, the Commission considers that the education service provided by the entities concerned cannot be considered to be an economic activity.

(173) In respect of accommodation services, cultural and recreational activities and sports activities, Article 4 of the Regulation states that they must be provided either free of charge or for a symbolic fee which, in any event, must not exceed half the average price charged for similar activities performed on a competitive basis in the same geographical area, also taking into account the absence of any connection with the actual cost of the service. This requirement is identical to the second condition laid down for assistance and health care activities, examined in paragraph 171 above, hence the same considerations apply. If the services are provided free of charge, in principle they do not constitute an economic activity. The same holds true if they are provided for a symbolic fee. In this respect, it is important to note that the Regulation stipulates that, for the fee to be considered symbolic, it must bear no relationship to the cost of the service. It also states that the limit set of half the average price charged for similar activities performed on a competitive basis in the same geographical area can be used only to exclude entitlement to the exemption (as indicated by the words 'in any event'). It does not, however, imply that service providers which charge a price below that limit are entitled to the exemption.

(174) In the case of accommodation services and sports activities, the Commission also notes the further requirements based on the definitions of these activities in Article 1(1)(j) and (m) of the Regulation. As regards accommodation services, the Regulation limits the exemption to services provided by non-commercial entities that are accessible only to certain categories of people and are not open on a continuous basis. In particular, as regards 'social accommodation', the Regulation indicates that the activities must be targeted at people with temporary or permanent special needs or people who are disadvantaged due to physical, psychological, economic, social and family conditions. The entity can only request payment of a symbolic fee which, in any event, must not exceed half the average price charged for similar activities performed by commercial entities in the same geographical area, also taking into account the absence of any connection with the actual cost of the service. The Regulation also specifies that, in any event, the exemption is not applicable to activities that are carried on in hotels or similar establishments, as defined by Article 9 of Legislative Decree No 79 of 23 May 2011 ([72]). The exemption is therefore excluded for activities carried on, for instance, in hotels, motels and bed and breakfast establishments. Since, in the case at issue, the non-commercial entities offering accommodation must fulfil the general, subjective and objective requirements in Articles 1, 3 and 4 of the Regulation, the Commission considers that, in the light of the specific features of the present case, these activities, which meet the above conditions, do not constitute an economic activity for the purposes of Union law.

([70]) Case 263/86 *Humbel and Edel* [1988] ECR 5365, paragraphs 17 and 18; Case C-109/92 *Wirth* [1993] ECR I-6447, paragraphs 15 and 16; Case C-76/05 *Schwarz* [2007] ECR I-6849, paragraph 39. See also judgment of the EFTA Court of 21 February 2008 in Case E-5/07, *Private Barnehagers Landsforbund* v *EFTA Surveillance Authority*, paragraphs 80-83.

([71]) OJ C 8, 11.1.2012, p. 4.

([72]) Legislative Decree No 79 of 23 May 2011 - *Codice della normativa statale in tema di ordinamento e mercato del turismo, a norma dell'articolo 14 della legge 28 novembre 2005, No 246, nonché attuazione della direttiva 2008/122/CE, relativa ai contratti di multiproprietà, contratti relativi ai prodotti per le vacanze di lungo termine, contratti di rivendita e di scambio*- (Official Gazette No 129 of 6.6.2011 – Ordinary Supplement No 139). Article 9 of this Legislative Decree defines the following as hotels and similar structures: a) hotels; b) motels; c) holiday villages; d) tourist/service apartments; e) boarding houses; f) seasonal residential hotels; g) bed and breakfast establishments run as a business, h) health farms; i) any other tourist accommodation structures with similar features to one or more of the above categories.

(175) Therefore, given the specific circumstances of the present case and given that the non-commercial entities offering accommodation services, cultural, recreational and sports activities must also fulfil the requirements of Articles 1 and 3 of the Regulation, the Commission concludes that these activities, performed as described by the law, are not considered economic activities.

(176) The Commission therefore concludes that, on the basis of the information submitted by the Italian authorities, in the light of the specific and particular features of the present case, the activities analysed in the preceding paragraphs, performed by non-commercial entities in full compliance with the general, subjective and objective criteria laid down in Articles 1, 3 and 4 of the Regulation, are not of an economic nature. Therefore, the non-commercial entities concerned, when performing those activities in full compliance with the conditions laid down by the Italian legislation are not acting as undertakings for the purposes of Union law. Given that Article 107(1) of the Treaty applies only to undertakings, it follows that in the case in question the measure does not fall within the scope of that Article.

(177) Finally, the Commission notes that, from 1 January 2013, in the case of hybrid use of a building, it is possible under the Italian legislation to calculate the pro-rata commercial use of the real estate and to impose IMU on economic activities only. The Commission points out in this context that, if an entity performs both economic and non-economic activities, the partial exemption that it enjoys for the part of the real estate used for non-economic activities does not represent an advantage for that entity when it performs an economic activity as an undertaking. Therefore, the measure does not constitute state aid within the meaning of Article 107(1) in this type of situation either.

6.5. **Recovery**

(178) According to the Treaty and the established case law of the Court of Justice, when the Commission finds that aid is incompatible with the internal market, it is competent to decide that the State concerned must abolish or alter it ([73]). The Court has also consistently held that the obligation of a State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation ([74]). In this context, the Court has established that that objective is achieved once the recipient has repaid the amounts granted, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored ([75]).

(179) Following that case law, Article 14(1) of Regulation (EC) No 659/99 ([76]) stipulates that 'where negative decisions are taken in respect of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the recipient.'

(180) Thus, once the ICI exemption measure is considered unlawful and incompatible aid, it must in principle be recovered in order to re-establish the situation that existed on the market prior to the granting of the aid.

(181) However, Regulation (EC) No 659/99 imposes limits on ordering recovery. For example, Article 14(1) provides that 'the Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law' such as the protection of legitimate expectation. The Court of Justice has also recognised one exception to the obligation for a Member State to implement a recovery decision addressed to it, namely the existence of exceptional circumstances that would make it absolutely impossible for the Member State to execute the decision properly ([77]).

(182) Since these exceptions were raised by the Italian authorities in the context of the formal investigation, the Commission must examine whether they apply to the present case in order to determine if recovery is required.

6.5.1. *Legitimate expectation*

(183) The case law of the Court of Justice and the Commission's own decision-making practice have established that an order to recover aid would infringe a general principle of Union law if, as a result of the Commission's actions, a legitimate expectation exists on the part of the recipient of a measure that the aid has been granted in accordance with Union law.

([73]) Case C-70/72 *Commission* v *Germany* [1973] ECR 813, paragraph 13.

([74]) Joined Cases C-278/92, C-279/92 and C-280/92 *Spain* v *Commission* [1994] ECR I-4103, paragraph 75.

([75]) Case C-75/97 *Belgium* v *Commission* [1999] ECR I-030671, paragraphs 64-65.

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

([77]) Notice from the Commission — *Towards an effective implementation of Commission decisions* ordering Member States to recover unlawful and incompatible State aid, OJ C 272, 15.11.2007, p. 4, paragraph 18.

(184) The Court has repeatedly held that the right to rely on the principle of the protection of legitimate expectation extends to any person in a situation where an authority of the Union has caused him or her to have justified expectations. However, a person may not plead legitimate expectation unless he or she has been given precise assurances by the administrative body ([78]).

(185) In the present case, the Italian authorities and the 78 interested parties have essentially invoked the existence of legitimate expectation based on the Commission's reply to a parliamentary written question of 2009 ([79]). In its reply, the Commission declared that it had 'carried out a preliminary assessment and considered that there was no ground to proceed further, since it appears that the ICI tax regime is not liable to put ecclesiastic institutions in an advantageous competitive position'.

(186) The Commission maintains that this reply did not given rise to any legitimate expectation, for the following reasons.

(187) First, the Commission's statement was merely the result of a 'preliminary assessment'; the Commission did not state that it had taken a decision, but only that it considered that there was no ground to proceed further. Second, the Commission indicated tentatively that it appeared that the ICI exemption was not likely to confer any advantage on ecclesiastical institutions. Third, the question and the reply referred only to ecclesiastical institutions, which are a subcategory of the non-commercial entities concerned by the ICI exemption.

(188) In the light of the above, the Commission considers that it did not provide specific, unconditional and consistent assurances of a nature such that the recipients of the measure at issue entertained justified expectations that the scheme was lawful, in the sense that it did not fall within the scope of the state aid rules, and that consequently any advantage derived from it could not be subject to recovery proceedings. In conclusion, the Commission considers that it did not make any precise and unconditional statement to the effect that the ICI exemption at issue should not be considered state aid.

([78]) Case C-182/03 and C-217/03 *Belgium and Forum 187 ASBL* v *Commission* [2006] ECR I-5479, paragraph 147.

([79]) Written Question E-177/2009 (OJ C 189, 13.7.2010).

(189) Italy has also argued that the replies given by the Commission to the complainants on the ICI exemption, about which Italy was informally told, created a legitimate expectation on the part of the non-commercial entities as regards the compatibility of the ICI exemption with Union law. The Commission does not agree with the views expressed by Italy. Preliminary assessment letters sent by the Commission to the complainants, of which the Member State was only unofficially informed, do not constitute the Commission's final position. Whereas Commission decisions are made public and published in the Official Journal, this is not the case in a simple administrative procedure where - on the basis of the facts available - the Commission does not harbour serious doubts about the compatibility of the measures examined. Moreover, the letter sent to the complainants on 15 February 2010 was challenged by two complainants before the General Court and did not become final; these Court actions were withdrawn only subsequent to the decision initiating the procedure.

(190) The Commission therefore concludes that, in the present case, Italy and the 78 interested parties were not given any assurance by any institution of the Union which could justify legitimate expectation and therefore prevent the Commission from ordering recovery.

6.5.2. *Exceptional circumstances: absolute impossibility of recovery*

(191) Under Article 288 of the Treaty, the Member State to which a recovery decision is addressed is obliged to execute the decision. As indicated above, there is one exception to this obligation, namely where the Member States demonstrates the existence of exceptional circumstances that would make it absolutely impossible to execute the decision properly.

(192) Member States usually raise this argument in the context of the discussions with the Commission after the adoption of the decision ([80]). However, in this case, Italy already argued before the adoption of the decision that recovery should not be ordered because it would be absolutely impossible to implement it. Since Italy raised this issue in the context of the formal investigation, and since a general principle of law states that no one can be obliged to do the impossible, the Commission considers that it is necessary to deal with this question in the present Decision.

([80]) Case C-214/07 *Commission* v *Spain* [2008] ECR I-8357, paragraphs 13 and 22.

(193) It should first be recalled that the Court of Justice has constantly given a very strict interpretation to the concept of 'absolute impossibility'. The condition that recovery would be absolutely impossible is not fulfilled where Member States merely inform the Commission of the legal, political or practical difficulties involved in implementing the decision ([81]). The only instance where 'absolute impossibility' could be accepted is where recovery would, from the beginning, be impossible in objective and absolute terms ([82]).

(194) In the case at hand, the Italian authorities have argued that it would be absolutely impossible to define which real estate, belonging to non-commercial entities, was used for activities that were not of an exclusively commercial nature and to retrieve the information needed to determine the amount of tax that should have been paid.

(195) The Italian authorities explained that, because of the way the cadastre is structured, it is impossible to extrapolate retroactively from the cadastral databases the data concerning real estate belonging to non-commercial entities which was used for activities of a non-exclusively commercial nature of the type indicated in the ICI exemption. It is not possible to trace activities carried on in the real estate from the information contained in the cadastre. In other words, on the basis of the data in the cadastre, it is not possible to work out if, in a given property, an entity carried on either commercial or non-commercial activities. In fact, each single property (including portions of real estate with a separate classification) is registered in the cadastre only on the basis of its objective characteristics, which take into account physical and structural elements linked to its intended use.

(196) As regards tax databases, and in particular records of the tax declarations of non-commercial entities, Italy explained that it was possible to identify from them only the real estate used exclusively on a non-commercial basis. In this case, the buildings that produce revenue must be indicated in the standard tax declaration under Section RB on building revenue, whereas Section RS on mixed costs and receipts does not have to be filled in. On the other hand, if a non-commercial entity owns real estate in which commercial activities are also carried on, then both Sections RB and RS have to be filled in. However, if more than one building is indicated under Section RB, it is not possible to identify the real estate in which the activity that generated the revenue indicated in the tax declaration was carried on. In any case, it should be noted that Section RS of the standard form includes aggregate cost and revenue data concerning goods and services used for both commercial and non-commercial purposes (goods and services used arbitrarily for commercial activities and other activities). However, even when a single building is indicated under Section RB, because of the way the cadastral system is structured it is not possible to obtain a breakdown based on commercial/non-commercial uses of a building and therefore it is not possible to identify what portion of the building was used for the economic activity that generated the revenue stated in the tax declaration.

(197) Consequently, the Commission considers that the Italian authorities have demonstrated that the recipients of the aid cannot be identified and the aid itself cannot be objectively calculated due to the lack of available data. Basically, it is not possible to identify from the tax and cadastral databases the real estate belonging to non-commercial entities, which was used for non-exclusively commercial activities of the type indicated in the ICI exemption provisions. Consequently it is not possible to obtain the necessary information to calculate the amount of tax to be recovered. Therefore, enforcing a possible recovery order would be impossible in objective and absolute terms.

(198) In conclusion, the Commission finds that, given the specific nature of this case, it would be absolutely impossible for Italy to recover any aid illegally granted under the ICI exemption provisions. Recovery of the aid arising from the unlawful and incompatible exemption from this municipal tax on real estate should therefore not be ordered.

7. **CONCLUSION**

(199) The Commission finds that Italy has unlawfully implemented the exemption from the municipal tax on real estate under Article 7(1)(i) of Legislative Decree No 504/92 in breach of Article 108(3) of the Treaty.

(200) Since no grounds of compatibility can be identified for the scheme in question, it is found to be incompatible with the internal market. However, in the light of the exceptional circumstances invoked by Italy, recovery of the aid should not be ordered since Italy has demonstrated that it would be absolutely impossible to enforce.

([81]) Case C-404/00 *Commission* v *Spain* [2003] ECR I-6695, paragraph 47.

([82]) Case C-75/97 *Belgium* v *Commission* ('*Maribel I*') [1999] ECR I-3671, paragraph 86; Case C-214/07 *Commission* v *France* [2008] ECR I-8357, paragraphs 13, 22 and 48.

(201) The Commission considers that Article 149(4) TUIR does not constitute state aid within the meaning of Article 107(1) of the Treaty.

(202) Finally, in view of the specific nature of the IMU exemption measure for non-commercial entities that carry on exclusively specific non-commercial activities, in accordance with the conditions laid down by the Italian legislation, the Commission finds that these activities cannot be considered economic activities for the purposes of the state aid rules and that therefore the measure does not fall within the scope of Article 107(1),

HAS ADOPTED THIS DECISION:

Article 1

The state aid in the form of the ICI exemption, granted to non-commercial entities which carry on in the real estate exclusively the activities listed in Article 7(1)(i) of Legislative Decree No 504/92, unlawfully put into effect by Italy in breach of Article 108(3) of the Treaty, is incompatible with the internal market.

Article 2

Article 149(4) TUIR does not constitute state aid within the meaning of Article 107(1) of the Treaty.

Article 3

The IMU exemption, granted to non-commercial entities which carry on in the real estate exclusively the activities listed in Article 7(1)(i) of Legislative Decree No 504/92, does not constitute state aid within the meaning of Article 107(1) of the Treaty.

Article 4

This Decision is addressed to the Republic of Italy.

Done at Brussels, 19 December 2012.

For the Commission

Joaquín ALMUNIA

Vice-President

ANNEX 1

LIST OF THE INTERESTED THIRD PARTIES THAT SUBMITTED COMMENTS ON THE DECISION INITIATING THE PROCEDURE

Name/Address

1. Santa Maria Annunciata in Chiesa Rossa, Via Neera 24, Milano, Italia
2. Fondazione Pro-Familia, Piazza Fontana 2, Milano, Italia
3. Pietro Farracci, San Cesareo, Italia
4. Scuola Elementare Maria Montessori s.r.l., Roma, Italia
5. Parrocchia S. Luca Evangelista, Via Negarville 14, Torino, Italia
6. Parrocchia S. Nicolò di Bari, Piazza Principe Napoli 3, Tortorici (Messina), Italia
7. Parrocchia S. Nicolò di Bari, Via Libertà 30, Caronia (Messina), Italia
8. Parrocchia S. Nicolò di Bari, Piazza Matrice, S. Stefano di Camastra (Messina), Italia
9. Parrocchia S. Orsola, Contrada S. Orsola, S. Angelo di Brolo (Messina), Italia
10. Parrocchia Sacro Cuore di Gesù, Frazione Galbato, Gioiosa Marea (Messina), Italia
11. Parrocchia Sacro Cuore di Gesù, Corso Matteotti 51, Patti (Messina), Italia
12. Parrocchia Sacro Cuore di Gesù, Via Medici 411, S. Agata Militello (Messina), Italia
13. Istituto Sacro Cuore di Gesù, Via Medici 411, S. Agata Militello (Messina), Italia
14. Parrocchia Santi Nicolò e Giacomo, Discesa Sepolcri, Capizzi (Messina), Italia
15. Istituto Diocesano Sostentamento Clero, Via Cattedrale 7, Patti (Messina), Italia
16. Parrocchia Madonna del Buon Consiglio e S. Barbara, Con. Cresta, Naso (Messina), Italia
17. Parrocchia Maria SS. Annunziata, Frazione Marina, Marina di Caronia (Messina), Italia
18. Parrocchia Maria SS. Assunta, Via Battisti, Militello Rosmarino (Messina), Italia
19. Parrocchia Maria SS. Assunta, Via Monte di Pietà 131, Cesarò (Messina), Italia
20. Parrocchia Maria SS. Assunta, Piazza S. Pantaleone, Alcara Li Fusi (Messina), Italia
21. Parrocchia Maria SS. Assunta, Via Oberdan 6, Castell'Umberto (Messina), Italia
22. Parrocchia Maria SS. Assunta, Piazza Duomo, Tortorici (Messina), Italia
23. Parrocchia Maria SS. Assunta, Via Roma 33, Mirto (Messina), Italia
24. Parrocchia Maria SS. Del Rosario, Contrada Scala, Patti (Messina), Italia
25. Parrocchia Maria SS. Della Scala, Contrada Sceti, Tortorici (Messina), Italia

26. Parrocchia Maria SS. Della Visitazione, Contrada Casale, Gioiosa Marea (Messina), Italia

27. Parrocchia Maria SS. Delle Grazie, Via Campanile 3, Montagnareale (Messina), Italia

28. Parrocchia Maria SS. Delle Grazie, Via Cappellini 2, Castel di Lucio (Messina), Italia

29. Parrocchia Maria SS. Annunziata, Piazza Regina Adelasia 1, Frazzanò (Messina), Italia

30. Parrocchia Maria SS. Annunziata, Contrada Sfaranda, Castell'Umberto (Messina), Italia

31. Parrocchia Maria SS. Di Lourdes, Frazione Gliaca, Piraino (Messina), Italia

32. Parrocchia S. Giuseppe, Contrada Malvicino, Capo d'Orlando (Messina), Italia

33. Parrocchia s. Maria del Carmelo, Piazza Duomo 20, S. Agata Militello (Messina), Italia

34. Parrocchia S. Maria di Gesù, Via Giovanni XXIII 43, Raccuja (Messina), Italia

35. Parrocchia S. Maria Maddalena, Contrada Maddalena, Gioiosa Marea (Messina), Italia

36. Parrocchia S. Maria, Via S. Maria, San Angelo di Brolo (Messina), Italia

37. Parrocchia S. Michele Arcangelo, Via San Michele 5, Patti (Messina), Italia

38. Parrocchia S. Michele Arcangelo, Via Roma, Sinagra (Messina), Italia

39. Parrocchia S. Antonio, Via Forno Basso, Capo d'Orlando (Messina), Italia

40. Parrocchia S. Caterina, Frazione Marina, Marina di Patti (Messina), Italia

41. Parrocchia Cattedrale S. Bartolomeo, Via Cattedrale, Patti (Messina), Italia

42. Parrocchia Maria SS. Addolorata, Contrada Torre, Tortorici (Messina), Italia

43. Parrocchia S. Nicolò di Bari, Via Risorgimento, San Marco d'Alunzio (Messina), Italia

44. Parrocchia Immacolata Concezione, Frazione Landro, Gioiosa Marea (Messina), Italia

45. Parrocchia Maria SS Assunta, Piazza Mazzini 11, Tusa (Messina), Italia

46. Parrocchia Maria SS Assunta, Frazione Torremuzza, Motta d'Affermo (Messina), Italia

47. Parrocchia Maria SS Assunta, Salita Madre Chiesa, Ficarra (Messina), Italia

48. Parrocchia Maria SS. Della Catena, Via Madonna d. Catena 10, Castel di Tusa (Messina), Italia

49. Parrocchia Maria SS. Delle Grazie, Via N. Donna 2, Pettineo (Messina), Italia

50. Parrocchia Ognissanti, Frazione Mongiove, Mongiove di Patti (Messina), Italia

51. Parrocchia S. Anna, Via Umberto 155, Floresta (Messina), Italia

52. Parrocchia S. Caterina, Vico S. Caterina 2, Mistretta (Messina), Italia

53. Parrocchia S. Giorgio Martire, Frazione S. Giorgio, San Giorgio di Gioiosa M. (Messina), Italia

54. Parrocchia S. Giovanni Battista, Frazione Martini, Sinagra (Messina), Italia

55. Parrocchia S. Lucia, Via G. Rossini, S. Agata Militello (Messina), Italia

56. Parrocchia S. Maria delle Grazie, Via Normanni, S. Fratello (Messina), Italia

57. Parrocchia S. Maria, Piazzetta Matrice 8, Piraino (Messina), Italia

58. Parrocchia S. Michele Arcangelo, Piazza Chiesa Madre, Librizzi (Messina), Italia

59. Parrocchia S. Michele Arcangelo, Via Umberto I, Longi (Messina), Italia

60. Parrocchia S. Nicolò di Bari, Piazza S. Nicola, Patti (Messina), Italia

61. Parrocchia S. Nicolò di Bari, Via Ruggero Settimo 10, Gioiosa Marea (Messina), Italia

62. Parrocchia S. Nicolò di Bari, Via S. Nicolò, S. Fratello (Messina), Italia

63. Parrocchia Santa Maria e San Pancrazio, Via Gorgone, S. Piero Patti (Messina), Italia

64. Parrocchia Maria SS Assunta, Piazza Convento, S. Fratello (Messina), Italia

65. Parrocchia Maria SS. Del Rosario, Via Provinciale 7, Caprileone (Messina), Italia

66. Parrocchia Maria SS Assunta, Via Monachelle 10, Caprileone (Messina), Italia

67. Parrocchia Maria SS del Tindari, Via Nazionale, Caprileone (Messina), Italia

68. Parrocchia S. Febronia, Contrada Case Nuove, Patti (Messina), Italia

69. Parrocchia Maria SS. della Stella, Contrada S. Maria Lo Piano, S. Angelo di Brolo (Messina), Italia

70. Parrocchia S. Erasmo, Piazza del Popolo, Reitano (Messina), Italia

71. Parrocchia Maria SS. della Catena, Via Roma, Naso (Messina), Italia

72. Parrocchia S. Benedetto il Moro, Piazza Libertà, Acquedolci (Messina), Italia

73. Parrocchia S. Giuseppe, Frazione Tindari, Tindari (Messina), Italia

74. Parrocchia Santi Filippo e Giacomo, Via D. Oliveri 2, Naso (Messina), Italia

75. Parrocchia SS. Salvatore, Via Cavour 7, Naso (Messina), Italia

76. Santuario Maria SS del Tindari, Via Mons. Pullano, Tindari (Messina), Italia

77. Parrocchia S. Maria Assunta, Via Roma, Galati Mamertino (Messina), Italia

78. Fondazione Opera Immacolata Concezione O.N.L.U.S., Padova, Italia

79. Parrocchia San Giuseppe, Piazza Dante 11, Oliveri (Messina), Italia

80. Parrocchia S. Leonardo, Frazione San Leonardo, Gioiosa Marea (Messina), Italia

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

Regulation No 53 of the Economic Commission for Europe of the United Nations (UN/ECE) — Uniform provisions concerning the approval of category L_3 vehicles with regard to the installation of lighting and light-signalling devices

Incorporating all valid text up to:

Supplement 13 to the 01 series of amendments — Date of entry into force: 28 October 2011

Supplement 14 to the 01 series of amendments — Date of entry into force: 15 July 2013

CONTENTS

1. SCOPE

This Regulation applies to vehicles of category L_3 [1] with regard to the installation of lighting and light-signalling devices.

2. DEFINITIONS

For the purpose of this Regulation:

2.1. 'Approval of a vehicle' means the approval of a vehicle type with regard to the number and mode of installation of the lighting and light-signalling devices;

2.2. 'Vehicle type' means a category of vehicles which do not differ from each other in such essential respects as:

2.2.1. the dimensions and external shape of the vehicle;

2.2.2. the number and position of the devices;

2.2.3. the following shall likewise not be deemed to be 'vehicles of a different type':

2.2.3.1. vehicles which differ within the meaning of paragraphs 2.2.1 and 2.2.2 above but not in such a way as to entail a change in the kind, number, position and geometric visibility of the lamps prescribed for the vehicle type in question; and

2.2.3.2. vehicles on which lamps approved under one of the Regulations annexed to the 1958 Agreement, or lamps allowed in the country in which the vehicles are registered, are fitted, or are absent where their fitting is optional;

2.3. 'Transverse plane' means a vertical plane perpendicular to the median longitudinal plane of the vehicle;

2.4. 'Unladen vehicle' means a vehicle without a driver, or passenger, and unladen, but with its fuel tank full and its normal complement of tools;

2.5. 'Lamp' means a device designed to illuminate the road or to emit a light signal to other road users. Rear registration plate lamp and retro-reflectors are likewise to be regarded as lamps;

2.5.1. 'Equivalent lamps' means lamps having the same function and authorised in the country in which the vehicle is registered; such lamps may have different characteristics from those of the lamps with which the vehicle is equipped at the time of approval, on condition that they satisfy the requirements of this Regulation;

2.5.2. 'Independent lamps' means devices having separate illuminating surfaces, separate light sources and separate lamp bodies;

2.5.3. 'Grouped lamps' means devices having separate illuminating surfaces and separate light sources, but a common lamp body;

2.5.4. 'Combined' means devices having separate illuminating surfaces, but a common light source and a common lamp body;

[1] As defined in Annex 7 to the Consolidated Resolution on the Construction of Vehicles (R.E.3) (document TRANS/WP.29/78/Rev.1/Amend.2 as last amended by Amend.4).

2.5.5. 'Reciprocally incorporated' means devices having separate light sources or a single light source operating under different conditions (for example, optical, mechanical, electrical differences), totally or partially common illuminating surfaces and a common lamp body;

2.5.6. 'Driving beam (main-beam) headlamp' means the lamp used to illuminate the road over a long distance ahead of the vehicle;

2.5.7. 'Passing beam (dipped-beam) headlamp' means the lamp used to illuminate the road ahead of the vehicle without dazzling of causing undue discomfort to oncoming drivers and other road users;

2.5.7.1. 'Principal passing beam (principal dipped beam)' means the dipped beam produced without the contribution of infrared (IR) emitters and/or additional light sources for bend lighting.

2.5.8. 'Direction-indicator lamp' means the lamp used to indicate to other road-users that the driver intends to change direction to the right or to the left;

A direction-indicator lamp or lamps may also be used according to provisions of Regulation No 97.

2.5.9. 'Stop lamp' means the lamp used to indicate to other road-users to the rear of the vehicle that its driver is applying the service brake;

2.5.10. 'Rear-registration-plate illuminating device' means the device used to illuminate the space reserved for the rear registration plate; such a device may consist of several optical components;

2.5.11. 'Front position lamp' means the lamp used to indicate the presence of the vehicle when viewed from the front;

2.5.12. 'Rear position lamp' means the lamp used to indicate the presence of the vehicle when viewed from the rear;

2.5.13. 'Retro-reflector' means a device used to indicate the presence of a vehicle by the reflection of light emanating from a light source not connected to the vehicle, the observer being situated near the source;

For the purpose of this Regulation, retro-reflecting number plates are not considered as retro-reflectors;

2.5.14. 'Hazard warning signal' means the simultaneous operation of all of a vehicle's direction-indicator lamps to show that the vehicle temporarily constitutes a special danger to other road users;

2.5.15. 'Front fog lamp' means the lamp used to improve the illumination of the road in case of fog, snowfall, rainstorms or dust clouds;

2.5.16. 'Rear fog lamp' means the lamp used to make the vehicle more easily visible from the rear in dense fog;

2.5.17. 'Daytime running lamp' means a lamp facing in a forward direction used to make the vehicle more easily visible when driving during daytime.

2.6. 'Light-emitting surface' of a 'lighting device', 'light-signalling device' or a retro-reflector means all or part of the exterior surface of the transparent material as declared in the request for approval by the manufacturer of the device on the drawing, see Annex 3;

2.7. 'Illuminating surface' (see Annex 3);

2.7.1. 'Illuminating surface of a lighting device' (paragraphs 2.5.6, 2.5.7 and 2.5.15) means the orthogonal projection of the full aperture of the reflector, or in the case of headlamps with an ellipsoidal reflector of the 'projection lens', on a transverse plane. If the lighting device has no reflector, the definition of paragraph 2.7.2 shall be applied. If the light emitting surface of the lamp extends over part only of the full aperture of the reflector, then the projection of that part only is taken into account.

In the case of a passing beam headlamp, the illuminating surface is limited by the apparent trace of the cut-off on to the lens. If the reflector and lens are adjustable relative to one another, the mean adjustment should be used;

In the case where any combination of a headlamp producing the principal passing beam and additional lighting units or light sources designed to produce bend lighting are operated together, the individual illuminating surfaces, taken together, constitute the illuminating surface.

2.7.2. 'Illuminating surface of a light-signalling device other than a retro-reflector' (paragraphs 2.5.8, 2.5.9, 2.5.11, 2.5.12, 2.5.14 and 2.5.16) means the orthogonal projection of the lamp in a plane perpendicular to its axis of reference and in contact with the exterior light-emitting surface of the lamp, this projection being bounded by the edges of screens situated in this plane, each allowing only 98 per cent of the total luminous intensity of the light to persist in the direction of the axis of reference. To determine the lower, upper and lateral limits of the illuminating surface, only screens with horizontal or vertical edges shall be used;

2.7.3. 'Illuminating surface of a retro-reflector' (paragraph 2.5.13) means the orthogonal projection of a retro-reflector in a plane perpendicular to its axis of reference and delimited by planes continuous to the outermost parts of the retro-reflector's optical system and parallel to that axis. For the purposes of determining the lower, upper and lateral edges of the device, only horizontal and vertical planes shall be considered;

2.8. The 'apparent surface' for a defined direction of observation means, at the request of the manufacturer or his duly accredited representative, the orthogonal projection of:

either the boundary of the illuminating surface projected on the exterior surface of the lens (a-b),

or the light-emitting surface (c-d),

in a plane perpendicular to the of observation and tangential to the most exterior point of the lens (see Annex 3 to this Regulation);

2.9. 'Axis of reference' (or 'reference axis') means the characteristic axis of the lamp determined by the manufacturer (of the lamp) for use as the direction of reference (H = 0°, V = 0°) for angles of field for photometric measurements and for installing the lamp on the vehicle;

2.10. 'Centre of reference' means the intersection of the axis of reference with the exterior light-emitting surface; it is specified by the manufacturer of the lamp;

2.11. 'Angles of geometric visibility' means the angles which determine the field of the minimum solid angle in which the apparent surface of the lamp must be visible. That field of the solid angle is determined by the segments of the sphere of which the centre coincides with the centre of reference of the lamp and the equator is parallel with the ground. These segments are determined in relation to the axis of reference. The horizontal angles β, correspond to the longitude and the vertical angles α to the latitude. There must be no obstacle on the inside of the angles of geometric visibility to the propagation of light from any part of the apparent surface of the lamp observed from infinity. If measurements are taken closer to the lamp, the direction of observation must be shifted parallel to achieve the same accuracy.

On the inside of the angles of geometric visibility no account is taken of obstacles, if they were already presented when the lamp was type-approved.

If, when the lamp is installed, any part of the apparent surface of the lamp is hidden by any further parts of the vehicle, proof shall be furnished that the part of the lamp not hidden by obstacles still conforms to the photometric values prescribed for the approval of the device as an optical unit (see Annex 3 of this Regulation). Nevertheless, when the vertical angle of geometric visibility below the horizontal may be reduced to 5° (lamp at less than 750 mm above the ground) the photometric field of measurements of the installed optical unit may be reduced to 5° below the horizontal;

2.12. 'Extreme outer edge', on either side of the vehicle means the plane parallel to the median longitudinal plane of the vehicle and touching the lateral extremity of the vehicle, disregarding the projection or projections:

2.12.1. of rear-view mirrors,

2.12.2. of direction-indicator lamps,

2.12.3. of front and rear position lamps and retro-reflectors;

2.13. 'Over-all width' means the distance between the two vertical planes defined in paragraph 2.12 above;

2.14. 'A single lamp' means:

(a) a device or part of a device having one lighting or light-signalling function, one or more light source(s) and one apparent surface in the direction of the reference axis, which may be a continuous surface or composed of two or more distinct parts, or

(b) any assembly of two independent lamps, whether identical or not, having the same function, both approved as type 'D' lamp and installed so that the projection of their apparent surfaces in the direction of the reference axis occupies not less than 60 per cent of the smallest quadrilateral circumscribing the projections of the said apparent surfaces in the direction of the reference axis.

2.15. 'Distance between two lamps' which face in the same direction means the shortest distance between the two apparent surfaces in the direction of the reference axis. Where the distance between the lamps clearly meets the requirements of the Regulation, the exact edges of apparent surfaces need not be determined;

2.16. 'Operating tell-tale' means a visual or auditory signal (or any equivalent signal) indicating that a device has been switched on and whether or not it is operating correctly;

2.17. 'Circuit-closed tell-tale' means a visual (or any equivalent signal) indicating that a device has been switched on, but not indicating whether or not it is operating correctly;

2.18. 'Optional lamp' means a lamp, the installation of which is left to the discretion of the manufacturer;

2.19. 'Ground' means the surface on which the vehicle stands which should be substantially horizontal;

2.20. 'Device' means a component or combination of components used in order to perform one or several functions.

2.21. 'Colour of the light emitted from the device'. The definitions of the colour of the light emitted given in Regulation No 48 and its series of amendments in force at the time of application for type approval shall apply to this Regulation.

2.22. 'Gross vehicle mass' or 'maximum mass' means the technically permissible maximum laden mass as declared by the manufacturer.

2.23. 'Laden' means so loaded as to attain the gross vehicle mass as defined in paragraph 2.22.

2.24. 'Horizontal inclination' means the angle created between the beam pattern when the motorcycle is set as specified in paragraph 5.4, and the beam pattern when the motorcycle is banked (see drawing in Annex 6);

2.25. 'Horizontal inclination adjustment system (HIAS)' means a device that adjusts the horizontal inclination of the headlamp towards zero;

2.26. 'Bank angle' means: the angle made with the vertical by the vertical longitudinal median plane of the motorcycle, when the motorcycle is rotated about its longitudinal axis (see drawing in Annex 6);

2.27. 'HIAS signal' means any control signal or, any additional control input to the system or, a control output from the system to the motorcycle;

2.28. 'HIAS signal generator' means a device, reproducing one or more of the HIAS signals for system test;

2.29. 'HIAS test angle' means the angle δ created by the headlamp cut-off line and HH line (in case of an asymmetrical beam headlamp, the horizontal part of the cut-off shall be used), (see drawing in Annex 6).

2.30. 'Bend lighting' means a lighting function to provide enhanced illumination in bends

3. APPLICATION FOR APPROVAL

3.1. The application for approval of a vehicle type with regard to the installation of its lighting and light-signalling devices shall be submitted by the vehicle manufacturer or by his duly accredited representative.

3.2. It shall be accompanied by the undermentioned documents in triplicate and the following particulars:

3.2.1. a description of the vehicle type with regard to the items mentioned in paragraphs 2.2.1 to 2.2.3 above; the vehicle type duly identified shall be specified;

3.2.2. a list of the devices intended by the manufacturer to form the lighting and light-signalling equipment; the list may include several types of device for each function; each type shall be duly identified (national or international approval mark, if approved, name of manufacturer, etc.); in addition, the list may include in respect of each function the additional annotation 'or equivalent devices';

3.2.3. a layout drawing of the lighting and light-signalling installation as a whole, showing the position of the various devices on the vehicle; and

3.2.4. if necessary, in order to verify the conformity to the prescriptions of the present regulation, a layout drawing or drawings of each lamp showing the illuminating surface, as defined in paragraph 2.7.1 above, the light-emitting surface as defined in paragraph 2.6, the axis of reference as defined in paragraph 2.9 and the centre of reference as defined in paragraph 2.10. This information is not necessary in the case of the rear registration plate lamp (paragraph 2.5.10).

3.2.5. The application shall include a statement of the method used for the definition of the apparent surface (paragraph 2.8).

3.3. an unladen vehicle fitted with a complete set of lighting and light-signalling equipment, as prescribed in paragraph 3.2.2 above, and representative of the vehicle type to be approved shall be submitted to the technical service responsible for conducting approval tests.

4. APPROVAL

4.1. If the vehicle submitted for approval pursuant to this Regulation meets the requirements of the Regulation in respect of all the devices specified in the list, approval of that vehicle type shall be granted.

4.2. An approval number shall be assigned to each type approved. Its first two digits (at present 01 for the Regulation in its 01 series of amendments) shall indicate the series of amendments incorporating the most recent major technical amendments made to the Regulation at the time of issue of the approval.

The same Contracting Party may not assign the same number to another vehicle type or to the same vehicle type submitted with equipment not specified in the list referred to in paragraph 3.2.2 above, subject to the provisions of paragraph 7 of this Regulation.

4.3. Notice of approval or of extension or refusal or withdrawal of approval or production definitely discontinued of a vehicle type pursuant to this Regulation shall be communicated to the Parties to the Agreement which apply this Regulation, by means of a form conforming to the model in Annex 1 to this Regulation.

4.4. There shall be affixed, conspicuously and in a readily accessible place specified on the approval form, to every vehicle conforming to a vehicle type approved under this Regulation an international approval mark consisting of:

4.4.1. a circle surrounding the letter 'E' followed by the distinguishing number of country which has granted approval ([1]);

4.4.2. the number of this Regulation followed by the letter 'R', a dash, and the approval number to the right of the circle prescribed in paragraph 4.4.1.

4.5. If the vehicle conforms to a vehicle type approved, under one or more other Regulations annexed to the Agreement, in the country which has granted approval under this Regulation, the symbol prescribed in paragraph 4.4.1 need not be repeated; in such a case the Regulation and approval numbers and the additional symbols of all the Regulations under which approval has been granted in the country which has granted approval under this Regulation shall be placed in vertical columns to the right of the symbol prescribed in paragraph 4.4.1.

([1]) The distinguishing numbers of the Contracting Parties to the 1958 Agreement are reproduced in Annex 3 to Consolidated Resolution on the Construction of Vehicles (R.E.3), document TRANS/WP.29/78/Rev.2/Amend.1.

4.6. The approval mark shall be clearly legible and be indelible.

4.7. The approval mark shall be placed close to or on the vehicle data plate affixed by the manufacturer.

4.8. Annex 2 to this Regulation gives examples of the arrangement of the approval marks.

5. GENERAL SPECIFICATIONS

5.1. The lighting and light-signalling devices shall be so fitted that in normal conditions of use, and notwithstanding the vibrations to which they may be subjected, they retain the characteristics prescribed by this Regulation and enable the vehicle to comply with the requirements of this Regulation.

In particular, it shall not be possible for the lamps to be inadvertently maladjusted.

5.2. The illuminating lamps shall be so installed that correct adjustment of their orientation can easily be carried out.

5.3. For all light-signalling devices the reference axis of the lamp when fitted to the vehicle shall be parallel to the bearing plane of the vehicle on the road; in addition, it shall be perpendicular to the median longitudinal plane of the vehicle in the case of side retro-reflectors and parallel to that plane in the case of all light-signalling devices. A tolerance of ± 3° shall be allowed in each direction. In addition, if specifications for fitting are provided by the manufacturer they shall be complied with.

5.4. In the absence of specific instructions, the height and orientation of the lamps shall be verified with the vehicle unladen and placed on a flat horizontal surface, its median longitudinal plane being vertical and the handlebars being in the position corresponding to the straight ahead movement. The tyre pressures shall be those prescribed by the manufacturer for the particular conditions of loading required in this Regulation.

5.5. In the absence of specific instructions:

5.5.1. single lamps or reflectors shall be mounted such that their centre of reference lies in the median longitudinal plane of the vehicle;

5.5.2. lamps constituting a pair and having the same function shall:

5.5.2.1. be mounted symmetrically in relation to the median longitudinal plane;

5.5.2.2. be symmetrical to one another in relation to the median longitudinal plane;

5.5.2.3. satisfy the same colorimetric requirements; and

5.5.2.4. have identical nominal photometric characteristics;

5.5.2.5. come on and go off simultaneously;

5.6. Grouped, combined or reciprocally incorporated lamps

5.6.1. Lamps may be grouped, combined or reciprocally incorporated with one another provided that all requirements regarding colour, position, orientation, geometric visibility, electrical connections and other requirements, if any, are fulfilled.

5.6.1.1. The photometric and colorimetric requirements of a lamp shall be fulfilled when all other functions with which this lamp is grouped, combined or reciprocally incorporated are switched OFF.

However, when a front or rear position lamp is reciprocally incorporated with one or more other function(s) which can be activated together with them, the requirements regarding colour of each of these other functions shall be fulfilled when the reciprocally incorporated function(s) and the front or rear position lamps are switched ON.

5.6.1.2. Stop lamps and direction indicator lamps are not permitted to be reciprocally incorporated.

5.6.1.3. However, where stop lamps and direction indicator lamps are grouped, any horizontal or vertical straight line passing through the projections of the apparent surfaces of these functions on a plane perpendicular to the reference axis, shall not intersect more than two borderlines separating adjacent areas of different colour.

5.6.2. Where the apparent surface of a single lamp is composed of two or more distinct parts, it shall satisfy the following requirements:

5.6.2.1. Either the total area of the projection of the distinct parts on a plane tangent to the exterior surface of the transparent material and perpendicular to the reference axis shall occupy not less than 60 per cent of the smallest quadrilateral circumscribing the said projection, or the distance between two adjacent/tangential distinct parts shall not exceed 15 mm when measured perpendicularly to the reference axis.

5.7. The maximum height above ground shall be measured from the highest point and the minimum height from the lowest point of the apparent surface in the direction of the reference axis. For passing beam headlamps, the minimum height from the ground shall be measured from the lowest point of the effective outlet of the optical system (e.g. reflector, lens, projection lens) independent of its utilisation.

Where the (maximum and minimum) height above the ground clearly meets the requirements of the Regulation, the exact edges of any surface need not be determined.

When referring to the distance between lamps, the position, as regards width, shall be determined from the inner edges of the apparent surface in the direction of the reference axis.

Where the position, as regards width, clearly meets the requirements of the Regulation, the exact edges of any surface need not be determined.

5.8. In the absence of specific instructions, no lamps other than direction-indicator lamps and the vehicle-hazard warning signal shall be flashing lamps.

5.9. No red light shall be visible towards the front and no white light shall be visible towards the rear. Compliance with this requirement shall be verified as shown hereunder (see drawing in Annex 4):

5.9.1. visibility of red light towards the front; a red lamp must not be directly visible to an observer moving in zone 1 of a transverse plane situated 25 m forward of the foremost point on the vehicle;

5.9.2. visibility of white light towards the rear: a white lamp must not be directly visible to an observer moving in zone 2 of a transverse plane situated 25 m rearward of the rearmost point on the vehicle;

5.9.3. in their respective planes, the zones 1 and 2 explored by the eye of the observer are bound:

5.9.3.1. in height, by two horizontal planes 1 m and 2.2 m respectively above the ground;

5.9.3.2. in width, by two vertical planes which, forming to the front and the rear respectively an angle of 15° outwards from the vehicle's median longitudinal plane, pass through the point or points of contact of vertical planes parallel to the vehicle's median longitudinal plane and delimiting the vehicle's over-all width; if there are several points of contact, the foremost shall correspond to the forward plane and the rearmost to the rearward plane.

5.10. The electrical connections shall be such that the front position lamp or the passing beam headlamp, if there is no front position lamp, the rear position lamp and the rear-registration-plate illuminating device cannot be switched ON or OFF otherwise than simultaneously, unless otherwise specified.

5.11. In the absence of specific instructions, the electrical connection shall be such that the driving beam headlamp, the passing beam headlamp and the fog lamp cannot be switched on unless the lamps referred to in paragraph 5.10 above are likewise switched on. This requirement need not, however, be satisfied in the case of the driving beam headlamp and passing beam headlamp where their luminous warnings consist in switching on the passing beam headlamp intermittently, at short intervals, or in switching on the driving beam headlamp intermittently, or in switching on the passing beam headlamp and driving-beam headlamp alternately at short intervals.

5.11.1. If installed, the daytime running lamp shall automatically be ON when the engine is running. If the headlamp is switched on, the daytime running lamp shall not come on when the engine is running.

If no daytime running lamp is installed, the headlamp shall automatically be on when the engine is running.

5.12. Tell-tale lamps

5.12.1. Every tell-tale lamp shall be readily visible to a driver in the normal driving position.

5.12.2. Where a 'circuit-closed' tell-tale is prescribed by this Regulation, it may be replaced by an 'operating' tell-tale.

5.13. Colours of the lights

The colours of the lights referred to in this Regulation shall be as follows:

Driving beam headlamp:	white
Passing beam headlamp:	white
Direction-indicator lamp:	amber
Stop lamp:	red
Rear-registration plate lamp:	white
Front position lamp:	white or amber
Rear position lamp:	red
Rear retro-reflector, non-triangular:	red
Side retro-reflector, non-triangular:	amber at the front
	amber or red at the rear
Vehicle-hazard warning signal:	amber
Front fog lamp:	white or selective yellow
Rear fog lamp:	red

5.14. Every vehicle submitted for approval pursuant to this Regulation shall be equipped with the following lighting and light-signalling devices:

5.14.1. driving beam headlamp (paragraph 6.1);

5.14.2. passing beam headlamp (paragraph 6.2);

5.14.3. direction-indicator lamps (paragraph 6.3);

5.14.4. stop lamp (paragraph 6.4);

5.14.5. rear-registration-plate illuminating device (paragraph 6.5);

5.14.6. front position lamp (paragraph 6.6);

5.14.7. rear position lamp (paragraph 6.7);

5.14.8. rear retro reflector, non-triangular (paragraph 6.8);

5.14.9. side retro reflectors, non-triangular (paragraph 6.12);

5.15. It may, in addition, be equipped with the following lighting and light-signalling devices;

5.15.1. vehicle-hazard warning signal (paragraph 6.9);

5.15.2. fog lamps;

5.15.2.1. front (paragraph 6.10);

5.15.2.2. rear (paragraph 6.11);

5.15.3. daytime running lamp (paragraph 6.13).

5.16. The fitting of each of the lighting and light-signalling devices mentioned in paragraphs 5.14 and 5.15 above shall be effected in conformity with the relevant requirements in paragraph 6 of this Regulation.

5.17. The fitting of any lighting and light-signalling devices other than those mentioned in paragraphs 5.14 and 5.15 is prohibited for the purposes of type approval.

5.18. Lighting and light-signalling devices type-approved for four-wheeled vehicles of categories M_1 and N_1 and referred to in paragraphs 5.14 and 5.15 above may also be fitted to motorcycles.

6. INDIVIDUAL SPECIFICATIONS

6.1. DRIVING BEAM HEADLAMP

6.1.1. Number:

6.1.1.1. For motorcycles having a cylinder capacity ≤ 125 cm^3

One or two of approved type according to:

(a) Class B, C, D or E of Regulation No 113;

(b) Regulation No 112;

(c) Regulation No 1;

(d) Regulation No 8;

(e) Regulation No 20;

(f) Regulation No 57;

(g) Regulation No 72;

(h) Regulation No 98.

6.1.1.2. For motorcycles having a cylinder capacity > 125 cm^3

One or two of approved type according to:

(a) Class B, D or E of Regulation No 113;

(b) Regulation No 112;

(c) Regulation No 1;

(d) Regulation No 8;

(e) Regulation No 20;

(f) Regulation No 72;

(g) Regulation No 98.

Two of approved type according to:

(h) Class C of Regulation No 113.

6.1.2. Arrangement

No special requirement.

6.1.3. Position

6.1.3.1. Width

6.1.3.1.1. An independent driving lamp may be fitted above or below or to one side of another front lamp: if these lamps are on top of the other the reference centre of the driving lamp must be located within the medium longitudinal plane of the vehicle; if these lamps are side by side their reference centre must be symmetrical in relation to the median longitudinal plane of the vehicle.

6.1.3.1.2. A driving beam headlamp, that is reciprocally incorporated with another front lamp, must be fitted in such a way that its reference centre lies within the median longitudinal plane of the vehicle. However, when the vehicle is also fitted with an independent principal passing beam headlamp, or a principal passing beam headlamp that is reciprocally incorporated with a front position lamp alongside the driving beam headlamp, their reference centres must be symmetrical in relation to the median longitudinal plane of the vehicle.

6.1.3.1.3. Two driving lamps of which either one or both are reciprocally incorporated with another front lamp must be fitted in such a way that their reference centres are symmetrical in relation to the median longitudinal plane of the vehicle.

6.1.3.2. The length: at the front of the vehicle. This requirement is regarded as satisfied if the light emitted does not cause discomfort to the driver either directly or indirectly by means of the rear-view mirrors and/or reflective surfaces on the vehicle.

6.1.3.3. In any case, the distance between the edge of the illuminating surface of any independent driving lamp and the edge of that of the lamp producing the principal passing beam must not exceed 200 mm. The distance between the edge of the illuminating surface of any independent driving lamp and the ground must be from 500 mm to 1 300 mm.

6.1.3.4. In the case of two driving lamps: the distance separating the illuminating surfaces of two driving lamps must not exceed 200 mm.

6.1.4. Geometric visibility

The visibility of the illuminating surface, including its visibility in areas which do not appear to be illuminated in the direction of observation considered, shall be ensured within a divergent space defined by generating lines based on the perimeter of the illuminating surface and forming an angle of not less than 5° with the axis of reference of the headlamp.

6.1.5. Orientation

6.1.5.1. Forwards. The lamp(s) may move with the steering angle.

6.1.5.2. An HIAS may be installed for the driving beam.

6.1.6. Electrical connections

The passing beam(s) may remain illuminated with the driving beam(s).

6.1.7. Tell-tales

6.1.7.1. 'Circuit-closed' tell-tale.

Mandatory, non-flashing blue signal lamp.

6.1.7.2. 'HIAS failure' tell-tale

Mandatory, flashing amber signal lamp, which may be combined with the tell-tale referred to in paragraph 6.2.8.2. It shall be activated whenever a failure is detected with respect to the HIAS signals. It shall remain activated while the failure is present.

6.1.8. Other requirements

6.1.8.1. The aggregate maximum intensity of the driving beam headlamps which can be switched on simultaneously shall not exceed 430 000 cd which corresponds to a reference number of 100 (the approval value).

6.1.8.2. In the event of a driving beam HIAS failure, without the use of any special tools, it shall be possible to:

(a) Deactivate the HIAS until it is reset according to the manufacturer's instructions; and

(b) Reposition the driving beam so that its horizontal and vertical alignments are the same as a headlamp not equipped with HIAS.

The manufacturer shall provide a detailed description of the procedure for resetting the HIAS.

Alternatively, the manufacturer may choose to install an automatic system that either achieves both the tasks specified above or resets the HIAS. In this case, the manufacture shall provide the test house with a description of the automatic system and, until such time as harmonised requirements have been developed, demonstrate the means of verifying that the automatic system works as described.

6.2. PASSING BEAM HEADLAMP

6.2.1. Number:

6.2.1.1. For motorcycles having a cylinder capacity ≤ 125 cm^3

One or two of approved type according to:

(a) Class B, C, D or E of Regulation No 113;

(b) Regulation No 112;

(c) Regulation No 1;

(d) Regulation No 8;

(e) Regulation No 20;

(f) Regulation No 57;

(g) Regulation No 72;

(h) Regulation No 98.

6.2.1.2. For motorcycles having a cylinder capacity > 125 cm^3

One or two of approved type according to:

(a) Class B, D or E of Regulation No 113;

(b) Regulation No 112;

(c) Regulation No 1;

(d) Regulation No 8;

(e) Regulation No 20;

(f) Regulation No 72;

(g) Regulation No 98.

Two of approved type according to:

(a) Class C of draft Regulation No 113.

6.2.2. Arrangement

No special requirement.

6.2.3. Position

6.2.3.1. Width

6.2.3.1.1. An independent passing lamp may be installed above, below or to one side of another front lamp: if these lamps are one above the other the reference centre of the lamp producing the principal passing beam must be located within the median longitudinal plane of the vehicle; if these lamps are side by side their reference centre must be symmetrical in relation to the median longitudinal plane of the vehicle.

6.2.3.1.2. A headlamp producing the principal passing beam, that is reciprocally incorporated with another front lamp, must be fitted in such a way that its reference centre lies within the median longitudinal plane of the vehicle. However, when the vehicle is also fitted with an independent driving beam headlamp, or a driving beam headlamp that is reciprocally incorporated with a front position lamp alongside the headlamp producing the principal passing beam, their reference centres must be symmetrical in relation to the median longitudinal plane of the vehicle.

6.2.3.1.3. Two headlamps producing the principal passing beam, of which either one or both are reciprocally incorporated with another front lamp must be installed in such a way that their reference centres are symmetrical in relation to the median longitudinal plane of the vehicle.

6.2.3.1.4. If installed, additional lighting unit(s) which provide bend lighting, type approved as part of the passing beam according to Regulation No 113, shall be installed under the following conditions:

In the case of (a) pair(s) of additional lighting units, they shall be installed so that their reference centre(s) are symmetrical in relation to the median longitudinal plane of the vehicle.

In the case of a single additional lighting unit, its reference centre shall be coincident with the medium longitudinal plane of the vehicle.

6.2.3.2. Height: a minimum of 500 mm and a maximum of 1 200 mm above the ground.

6.2.3.3. Length: at the front of the vehicle. This requirement is regarded as satisfied if the light emitted does not cause discomfort to the driver either directly or indirectly by means of the rear-view mirrors and/or reflective surfaces of the vehicle.

6.2.3.4. In the case of two headlamps producing the principal passing beam the distance separating the illuminating surfaces must not exceed 200 mm.

6.2.4. Geometric visibility

Defined by angles α and β as specified in paragraph 2.11:

α = 15° upwards and 10° downwards;

β = 45° to the left and to the right for a single lamp;

β = 45° outwards and 10° inwards for each pair of lamps.

The presence of partitions or other items of equipment near the head-lamp shall not give rise to secondary effects causing discomfort to other road users.

6.2.5. Orientation

6.2.5.1. Forwards. The lamp(s) may move in line with the steering angle.

6.2.5.2. The vertical inclination of the headlamp producing the principal passing beam must remain between – 0,5 and – 2,5 per cent, except in the case where an external adjusting device is present.

6.2.5.3. For a headlamp producing the principal passing beam with a light source having an objective luminous flux which exceeds 2 000 lumen, the vertical inclination of the headlamp shall remain between – 0,5 and – 2,5 per cent. A headlamp levelling device may be used to satisfy the requirements of this paragraph but its operation shall be automatic [1].

6.2.5.4. The requirement in paragraph 6.2.5.3 shall be tested on the vehicle in the following conditions:

Condition A (rider alone):

A mass of 75 kg ± 1 kg, simulating the rider, shall be placed on the vehicle in such a way as to reproduce the axle loads declared by the manufacturer for this loading condition.

The vertical inclination (initial aiming) of the headlamp producing the principal passing beam shall be set, following the manufacturer's instructions, between – 1,0 and – 1,5 per cent.

[1] However, until 60 months after the date of entry into force of supplement 10 to the 01 series of amendments this operation may be manual without the use of tools. In such case the manufacturer shall provide in the vehicle owners' manual instruction regarding such manual headlamp levelling.

Condition B (fully laden motorcycle):

Masses, simulating the manufacturer's maximum total mass, shall be placed on the vehicle in such a way as to reproduce the axle loads declared by the manufacturer for this loading condition.

Before making the measurements, the vehicle shall be rocked 3 times up and down and then moved backwards and forwards for at least a complete wheel revolution.

6.2.5.5. An HIAS may be installed for the passing beam. The HIAS shall not adjust the horizontal inclination by more than the vehicle's bank angle.

6.2.5.6. The requirement in paragraph 6.2.5.5 shall be tested under the following conditions:

The test vehicle shall be set as specified in paragraph 5.4. Incline the vehicle and measure the HIAS test angle.

The vehicle shall be tested in the following two conditions

(a) The maximum horizontal inclination adjustment angle specified by the manufacturer (to left and to right);

(b) Half of the maximum horizontal inclination adjustment angle specified by the manufacturer (to left and to right).

And when the test vehicle is returned to the position as specified in paragraph 5.4, the HIAS test angle shall return to zero quickly.

The handlebar may be fixed in the straight ahead position so as not to move during the vehicle inclination.

For the test the HIAS shall be activated by means of an HIAS signal generator.

The system shall be considered to satisfy the requirements of paragraph 6.2.5.5, if all measured HIAS test angles are not less than zero. This may be demonstrated by the manufacturer using other means accepted by the authority responsible for type approval.

6.2.5.7. Additional light source(s) or additional lighting unit(s) may be activated only in conjunction with the principal passing beam to produce bend lighting. The illumination provided by the bend lighting shall not extend above the horizontal plane, that is parallel with the ground and containing the reference axis of the headlamp producing the principal passing beam for all bank angles as specified by the manufacture during type approval of the device according to Regulation No 113.

6.2.5.8. The requirement in paragraph 6.2.5.7 shall be tested as follows:

The test vehicle shall be set as specified in paragraph 5.4.

Measure the bank angles on both sides of the vehicle under every condition where the bend lighting is activated. The bank angles to measure are the bank angles specified by the manufacturer during type approval of the device according to Regulation No 113.

The handlebar may be fixed in the straight ahead position so as not to move during the vehicle inclination.

For the test, the bend lighting may be activated by means of a signal generator provided by the manufacturer.

The system is considered to satisfy the requirements of paragraph 6.2.5.7, if all measured bank angles on both sides of the vehicle are greater than or equal to the minimum bank angles given in the communication form for the type approval of the device according to Regulation No 113.

Conformity to paragraph 6.2.5.7 may be demonstrated by the manufacturer using other means accepted by the authority responsible for type approval.

6.2.6. Electrical connections

The control for changing over to the passing beam(s) shall switch off the driving beam(s) simultaneously.

Passing beam headlamps with a light source approved in accordance with Regulation No 99 shall remain switched on when the driving-beam is illuminated.

6.2.6.1. The additional light source(s) or additional lighting unit(s) used to produce bend lighting shall be so connected that it (they) cannot be activated unless the headlamp(s) producing the principal passing beam is(are) also activated.

The additional light source(s) or additional lighting unit(s) used to produce bend lighting on each side of the vehicle may only be automatically activated when the bank angle(s) is(are) greater or equal to the minimum bank angle(s) given in the communication form for the type approval of the device according to Regulation No 113.

However, the additional light source(s) or additional lighting unit(s) shall not be activated when the bank angle is less than 3 degrees.

The additional light source(s) or additional lighting unit(s) shall be deactivated when the bank angle(s) is (are) less than the minimum bank angle(s) given in the communication form for the type approval of the device according to Regulation No 113.

6.2.7. Tell-tales

6.2.7.1. 'Circuit-closed' tell-tale

Optional; non-flashing green signal lamp.

6.2.7.2. 'HIAS failure' tell-tale

Mandatory, flashing amber signal lamp, which may be combined with the tell-tale referred to in paragraph 6.1.8.2. It shall be activated whenever a failure is detected with respect to the HIAS signals. It shall remain activated while the failure is present.

6.2.7.3. In the event of a control system failure, additional light source(s) or additional lighting unit(s) producing bend lighting shall be switched OFF automatically.

6.2.8. Other requirements

In the event of a passing beam HIAS failure, without the use of any special tools, it shall be possible to:

(a) Deactivate the HIAS until it is reset according to the manufacturer's instructions; and

(b) Reposition the passing beam so that its horizontal and vertical alignments are the same as a headlamp not equipped with HIAS.

The manufacturer shall provide a detailed description of the procedure for resetting the HIAS.

Alternatively, the manufacturer may choose to install an automatic system that either achieves both tasks specified above or resets the HIAS. In this case, the manufacture shall provide the test house with a description of the automatic system and, until such time as harmonised requirements have been developed, demonstrate the means of verifying that the automatic system works as described.

6.3. DIRECTION-INDICATOR LAMP

6.3.1. Number

Two per side.

6.3.2. Arrangement

Two front indicators (category 1 as specified in Regulation No 6 or category 11 specified in Regulation No 50).

Two rear indicators (category 2 as specified in Regulation No 6 or category 12 specified in Regulation No 50).

6.3.3. Position

6.3.3.1. In width: For front indicators, the following requirements shall all be met:

(a) There shall be a minimum distance of 240 mm between illuminating surfaces,

(b) The indicators shall be situated outside the longitudinal vertical plane tangential to the outer edges of the illuminating surface of the driving beam(s) and/or principal passing beam(s),

(c) There shall be a minimum distance between the illuminating surface of the indicators and headlamp producing the principal passing beam closest to one another as follows:

Minimum indicator intensity (cd)	Minimum separation (mm)
90	75
175	40
250	20
400	≤ 20

For rear indicators, the clearance between the inner edges of the two illuminating surfaces shall be at least 180 mm on the condition that the prescriptions of paragraph 2.11 are applied even when the registration plate is mounted;

6.3.3.2. in height: not less than 350 mm nor more than 1 200 mm above the ground;

6.3.3.3. in length: the forward distance between the centre of reference of the rear indicators and the transverse plane which constitutes the rearmost limit of the vehicle's over-all length shall not exceed 300 mm.

6.3.4. Geometric visibility

Horizontal angles: 20° inwards, 80° outwards

Vertical angles: 15° above and below the horizontal.

The vertical angle below the horizontal may be reduced to 5°, however, if the height of the lamps is less than 750 mm.

6.3.5. Orientation

The front direction-indicators may move in line with the steering angle.

6.3.6. Electrical connections

Direction-indicator lamps shall switch on independently of the other lamps. All direction-indicator lamps on one side of a vehicle shall be switched on and off by means of one control.

6.3.7. May not be 'reciprocally incorporated' with any other lamp, except amber front position lamp.

6.3.8. 'Operating' tell-tale

Mandatory. This may be optical or auditory or both. If it is optical it shall be (a) flashing green lamp(s), which, in the event of defective operation of any of the direction-indicators, is extinguished, remains alight without flashing, or shows a marked change of frequency.

6.3.9. Other requirements

The characteristics indicated below shall be measured with no other load on the electrical system than that required for the operation of the engine and the lighting devices. For all vehicles:

6.3.9.1. the light flashing frequency shall be 90 ± 30 times per minute;

6.3.9.2. the flashing of the direction-indicators on the same side of the vehicle may occur synchronously or alternately;

6.3.9.3. operation of the light-signal control shall be followed within not more than one second by the appearance of the light and within not more than one-and-one-half seconds by the first extinction of the light.

6.3.9.4. In the event of failure, other than a short circuit, of one direction-indicator lamp, the other(s) direction-indicator lamp(s) indicating the same direction must continue to flash or remain alight, but the frequency in this condition may be different from that prescribed.

6.4. STOP LAMP

6.4.1. Number

One or two.

6.4.2. Arrangement

No special requirement.

6.4.3. Position

6.4.3.1. in height: not less than 250 mm nor more than 1 500 mm above the ground;

6.4.3.2. in length: at the rear of the vehicle.

6.4.4. Geometric visibility

Horizontal angle: 45° to left and to right for a single lamp;

45° outwards and 10° inwards for each pair of lamps;

Vertical angle: 15° above and below the horizontal.

The vertical angle below the horizontal may be reduced to 5°, however, if the height of the lamp is less than 750 mm.

6.4.5. Orientation

Towards the rear of the vehicle.

6.4.6. Electrical connections

Shall light up at any service brake application.

6.4.7. Tell-tale

Tell-tale optional; where fitted, this tell-tale shall be a tell-tale consisting of a non-flashing warning light which comes on in the event of the malfunctioning of the stop lamps.

6.4.8. Other requirements

None.

6.5. REAR-REGISTRATION-PLATE ILLUMINATING DEVICE

6.5.1. Number

One, approved as a category 2 device according to Regulation No 50. The device may consist of several optical components designed to illuminate the space reserved for the registration plate.

6.5.2.	Arrangement	Such that the device illuminates the space reserved for the registration plate.
6.5.3.	Position	
6.5.3.1.	in width:	
6.5.3.2.	in height:	
6.5.3.3.	in length:	
6.5.4.	Geometric visibility	
6.5.5.	Orientation	

6.5.6. Tell-tale

Optional: Its function shall be performed by the tell-tale prescribed for the position lamp.

6.5.7. Other requirements

When the rear registration plate lamp is combined with the rear position lamp, reciprocally incorporated in the stop lamp or in the rear fog lamp, the photometric characteristics of the rear registration plate lamp may be modified during the illumination of the stop lamp or the rear fog lamp.

6.6. FRONT POSITION LAMP

6.6.1. Number

One or two	if coloured white
or	
Two (one per side)	if coloured amber

6.6.2. Arrangement

No special requirement.

6.6.3. Position

6.6.3.1. Width:

an independent front position lamp may be fitted above or below, or to one side of another front lamp: if these lamps are one above the other, the reference centre of the front position lamp must be located within the median longitudinal plane of the vehicle; if these lamps are side by side, their reference centres must be symmetrical in relation to the median longitudinal plane of the vehicle;

a front position lamp, that is reciprocally incorporated with another front lamp, must be installed in such a way that its reference centre is situated in the median longitudinal plane of the vehicle. However, when the vehicle is also fitted with another front lamp alongside the front position lamp, their reference centres must be symmetrical in relation to the median longitudinal plane of the vehicle.

Two front position lamps, one or both of them reciprocally incorporated with another front lamp, must be installed in such a way that their reference centres are symmetrical in relation to the median longitudinal plane of the vehicle.

6.6.3.2. in height: not less than 350 mm nor more than 1 200 mm above the ground.

6.6.3.3. in length: at the front of the vehicle.

6.6.4. Geometric visibility

Horizontal angle: 80 degrees to the left and to the right for a single lamp:

the horizontal angle may be 80 degrees outwards and 20 degrees inwards for each pair of lamps.

Vertical angle: 15 degrees above and below the horizontal.

The vertical angle below the horizontal may be reduced to 5 degrees, however, if the height of the lamp is less than 750 mm.

6.6.5. Orientation

Forwards. The lamp(s) may move in line with the steering angle.

6.6.6. 'Circuit-closed' tell-tale

Mandatory. Non-flashing green signal lamp. This tell-tale shall not be required if the instrument illumination lighting can be switched on or off only simultaneously with the position lamp(s).

6.6.7. Other requirements

When the front position lamp is reciprocally incorporated in the front direction indicator lamp, the electrical connection shall be such that the position lamp on the same side as the direction indicator lamp is switched off when the direction indicator lamp is flashing.

6.7. REAR POSITION LAMP

6.7.1. Number

One or two.

6.7.2. Arrangement

No special requirements.

6.7.3. Position

6.7.3.1. in height: not less than 250 mm nor more than 1 500 mm above the ground;

6.7.3.2. in length: at the rear of the vehicle.

6.7.4. Geometric visibility

Horizontal angle: 80° to left and to right for a single lamp:

the horizontal angle may be 80° outwards and 45° inwards for each pair of lamps.

Vertical angle: 15° above and below the horizontal.

The vertical angle below the horizontal may be reduced to 5°, however, if the height of the lamp is less than 750 mm.

6.7.5. Orientation

Rearwards.

6.7.6. 'Circuit-closed' tell-tale

Optional: Its function shall be performed by the device prescribed for the front position lamp.

6.7.7. Other requirements

If a rear position lamp is reciprocally incorporated with a direction indicator, the electrical connection of the rear position lamp on the relevant side of the vehicle or the reciprocally incorporated part of it may be such that it is switched OFF during the entire period (both ON and OFF cycle) of activation of the direction indicator lamp.

6.8. REAR RETRO-REFLECTOR, NON-TRIANGULAR

6.8.1. Number

One or two.

6.8.2. Arrangement

No special requirement.

6.8.3. Position

in height: not less than 250 mm nor more than 900 mm above the ground;

6.8.4. Geometric visibility

Horizontal angle: 30° to left and to right for a single reflector;

30° outwards and 10° inwards for each pair of reflectors;

Vertical angle: 15° above and below the horizontal.

The vertical angle below the horizontal may be reduced to 5°, however, if the height of the lamp is less than 750 mm.

6.8.5. Orientation

Rearwards.

6.9. VEHICLE-HAZARD WARNING SIGNAL

6.9.1. The signal shall be given by simultaneous operation of the direction-indicator lamps in accordance with the requirements of paragraph 6.3 above.

6.9.2. Electrical connections

The signal shall be given by means of a separate control enabling all the direction-indicators to be supplied with current simultaneously.

6.9.3. 'Circuit-closed' tell-tale

Mandatory. Flashing red signal lamp or, in the case of separate tell-tales, the simultaneous operation of the tell-tale prescribed in paragraph 6.3.8

6.9.4. Other requirements

Light flashing 90 ± 30 times per minute.

Operation of the lamp-signal control shall be followed within not more than one second by the appearance of the light and within not more than one-and-one-half seconds by the first extinction of the light.

6.10. FRONT FOG LAMP

6.10.1. Number

One or two.

6.10.2. Arrangement

No special requirement.

6.10.3. Position

6.10.3.1. in width: for a single lamp the centre of reference shall be in the median longitudinal plane of the vehicle; or the edge of the illuminating surface which is nearest to that plane shall be not more than 250 mm away from it;

6.10.3.2. in height: not less than 250 mm above the ground. No point on the illuminating surface shall be higher than the highest point on the illuminating surface of the passing beam headlamp.

6.10.3.3. in length: at the front of the vehicle. This requirement shall be deemed to be satisfied if the light emitted does not cause discomfort to the driver either directly, or indirectly through the rear-view mirrors and/or other reflecting surfaces of the vehicle.

6.10.4. Geometric visibility

Defined by angles α and β as specified in paragraph 2.11:

α = 5° upwards and downwards;
β = 45° to left and to right for a single lamp, except for an off-centre light, in which case the inward angle β = 10°;
β = 45° outwards and 10° inwards for each pair of lamps

6.10.5. Orientation

Forwards. The lamp(s) may move in line with the steering angle.

6.10.6. May not be combined with any other front lamp.

6.10.7. 'Circuit-closed' tell-tale

Optional; non-flashing green signal.

6.10.8. Other requirements

None.

6.10.9. Electrical connections

It shall be possible to switch the fog lamp(s) on or off independently of the driving beam headlamp(s) and/or passing beam headlamp(s).

6.11. REAR FOG LAMP

6.11.1. Number

One or two.

6.11.2. Arrangement

No special requirement.

6.11.3. Position

6.11.3.1. in height: not less than 250 mm nor more than 900 mm above the ground;

6.11.3.2. in length at the rear of the vehicle.

6.11.3.3. the distance between the illuminating surface of the rear fog lamp and that of the stop lamp shall not be less than 100 mm.

6.11.4. Geometric visibility

Defined by angles α and β as specified in paragraph 2.11:

α = 5° upwards and downwards;
β = 25° to left and to right for a single lamp;
25° outwards and 10° inwards for each pair of lamps.

6.11.5. Orientation

Rearwards.

6.11.6. Electrical connections

They shall be such that the rear fog lamp can light up only when one or more of the following lamps are switched on: driving beam headlamp, passing beam headlamp, front fog lamp.

If there is a front fog lamp, it shall be possible to switch off the rear fog lamp independently of the front fog lamp.

The rear fog lamp(s) may continue to operate until the position lamps are switched off and they shall remain off until deliberately switched on again.

6.11.7. 'Circuit-closed' tell-tale

Mandatory. Non-flashing amber signal lamp.

6.11.8. Other requirements

None.

6.12. SIDE RETRO-REFLECTOR, NON-TRIANGULAR

6.12.1. Number per side

One or two.

6.12.2. Arrangement

No special requirement.

6.12.3. Position

6.12.3.1. on the side of the vehicle.

6.12.3.2. in height: not less than 300 mm nor more than 900 mm above the ground;

6.12.3.3. in length: should be placed in such a position that under normal conditions it may not be masked by the driver's or passenger's clothes.

6.12.4. Geometric visibility

Horizontal angles $\beta = 30°$ to the front and to the rear.

Vertical angles $\alpha = 15°$ above and below the horizontal.

The vertical angle below the horizontal may be reduced to 5°, however, if the height of the retro-reflector is less than 750 mm.

6.12.5. Orientation

The reference axis of the retro-reflectors must be perpendicular to the vehicle's median longitudinal plane and directed outwards. The front side retro-reflectors may move with the steering angle.

6.13. DAYTIME RUNNING LAMP

6.13.1. Presence

Optional for motorcycles.

6.13.2. Number

One or two of approved type according to Regulation No 87.

6.13.3. Arrangement

No special requirement.

6.13.4. Position

6.13.4.1. In width:

6.13.4.1.1. An independent daytime running lamp may be installed above, below or to one side of another front lamp: If these lamps are one above the other, the reference centre of the daytime running lamp shall be located within the medium longitudinal plane of the vehicle; if these lamps are side by side, the edge of the illuminating surface shall not be more than 250 mm from the median longitudinal plane of the vehicle.

6.13.4.1.2. A daytime running lamp, that is reciprocally incorporated with another front lamp (driving beam headlamp or front position lamp), shall be fitted in such a way that the edge of the illuminated surface lies not more than 250 mm from the median longitudinal plane of the vehicle.

6.13.4.1.3. Two daytime running lamps, of which either one or both are reciprocally incorporated with another front lamp, shall be installed in such a way that their reference centres are symmetrical in relation to the median longitudinal plane of the vehicle.

6.13.4.1.4. In the case of two daytime running lamps, the distance separating the illuminating surfaces shall not exceed 420 mm.

6.13.4.1.5. The maximum separation distance is not applicable when the daytime running lamps:

(a) Are grouped, combined or reciprocally incorporated with another headlamp, or

(b) Are within the projection of the frontal silhouette of the motorcycle on an orthogonal plane perpendicular to the longitudinal median plane of the vehicle.

6.13.4.2. In height:

Above the ground not less than 250 mm and not more than 1 500 mm.

6.13.4.3. In length:

At the front of the vehicle.

6.13.5. Geometric visibility

Horizontal: Outwards 20° and inwards 10°.

Vertical: Upwards 10° and downwards 10°.

6.13.6. Orientation

Towards the front. The lamp(s) may move in line with the steering angle.

6.13.7. Electrical connections

6.13.7.1. The daytime running lamp shall switch OFF automatically when the headlamps are switched ON, except when the latter are used to give intermittent luminous warnings at short intervals.

The rear position lamp shall be switched ON when the daytime running lamp(s) is/are switched ON. The front position lamp(s) and the rear-registration-plate illuminating device may be switched ON individually or together, when the daytime running lamp(s) is/are switched ON.

6.13.7.2. If the distance between the front direction-indicator lamp and the daytime running lamp is equal or less than 40 mm, the electrical connections of the daytime running lamp on the relevant side of the vehicle may be such that either:

(a) It is switched OFF; or

(b) Its luminous intensity is reduced during the entire period (both ON and OFF cycle) of activation of a front direction-indicator lamp.

6.13.7.3. If a direction indicator lamp is reciprocally incorporated with a daytime running lamp, the electrical connections of the daytime running lamp on the relevant side of the vehicle shall be such that the daytime running lamp is switched OFF during the entire period (both ON and OFF cycle) of activation of the direction-indicator lamp.

6.13.8. Tell-tale

Closed-circuit green tell-tale, optional.

6.13.9. Other requirements

The DRL symbol in ISO 2575:2004 — Road vehicles. Symbols for controls, indicators and tell-tales, may be used to inform the driver that the daytime running lamp is on.

7. MODIFICATIONS OF THE VEHICLE TYPE OR OF THE INSTALLATION OF ITS LIGHTING AND LIGHT-SIGNALLING DEVICES

7.1. Every modification of the vehicle type, or of the installation of its lighting or light-signalling devices, or of the list referred to in paragraph 3.2.2 above, shall be notified to the administrative department which approved that vehicle type. The department may then either;

7.1.1. consider that the modification made are unlikely to have appreciable adverse effects and that in any case the vehicle still complies with the requirements; or

7.1.2. require a further test report from the technical service responsible for conducting tests.

7.2. Confirmation or refusal of approval, specifying the alterations, shall be communicated by the procedure specified in paragraph 4.3 above to the Parties to the Agreement which apply this Regulation.

7.3. The Competent Authority issuing the extension of approval shall assign a series number for such an extension and inform thereof the other Parties to the 1958 Agreement applying this Regulation by means of a communication form conforming to the model in Annex 1 to this Regulation.

8. CONFORMITY OF PRODUCTION

The conformity of production procedures shall comply with those set out in the Agreement, Appendix 2 (E/ECE/324-E/ECE/TRANS/505/Rev.2), with the following requirements:

8.1. Motorcycles approved under this Regulation shall be so manufactured as to conform to the type approved, by meeting the requirements set out in paragraphs 5 and 6 above.

8.2. The minimum requirements for conformity of production control procedures set forth in Annex 5 to this Regulation shall be complied with.

8.3. The authority which has granted type approval may at any time verify the conformity control methods applied in each production facility. The normal frequency of these verifications shall be once a year.

9. PENALTIES FOR NON-CONFORMITY OF PRODUCTION

9.1. The approval granted in respect of a vehicle type pursuant to this Regulation may be withdrawn if the requirement laid down in paragraph 8.1 above is not met or if the vehicle has failed to pass the checks prescribed in paragraph 8 above.

9.2. If a Party to the Agreement which applies this Regulation withdraws an approval it has previously granted, it shall forthwith so notify the other Contracting Parties to the Agreement which apply this Regulation by means of a communication form conforming to the model in Annex 1 to this Regulation.

10. PRODUCTION DEFINITELY DISCONTINUED

If the holder of an approval completely ceases to manufacture a vehicle type approved in accordance with this Regulation, he shall so inform the authority which granted the approval. Upon receiving the relevant communication that authority shall inform thereof the other Parties to the Agreement applying this Regulation, by means of a communication form conforming to the model in Annex 1 to this Regulation.

11. TRANSITIONAL PROVISIONS

11.1. As from the official date of entry into force of Supplement 10 to the 01 series of amendments, no Contracting Party applying this Regulation shall refuse to grant approvals under this Regulation as amended by Supplement 10 to the 01 series of amendments.

11.2. As from 60 months after the date of entry into force mentioned in paragraph 11.1 above, Contracting Parties applying this Regulation shall grant approvals only if the vehicle type with regard to the number and mode of installation of the lighting and light-signalling devices corresponds to the requirements of the Supplement 10 to the 01 series of amendments to this Regulation.

11.3. Existing approvals granted under this Regulation before the date mentioned in paragraph 11.2 above shall remain valid. In the case of vehicles first registered more than 84 months after the date of entry into force mentioned in paragraph 11.1 above Contracting Parties applying this Regulation may refuse the vehicle type with regard to the number and mode of installation of the lighting and light-signalling devices which do not meet the requirements of the Supplement 10 to the 01 series of amendments to this Regulation.

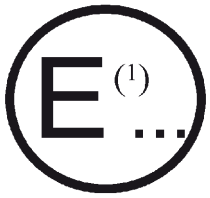
12. NAMES AND ADDRESSES OF TECHNICAL SERVICES RESPONSIBLE FOR CONDUCTING APPROVAL TESTS, AND OF ADMINISTRATIVE DEPARTMENTS

The Parties to the 1958 Agreement which apply this Regulation shall communicate to the United Nations secretariat the names and addresses of the technical services responsible for conducting approval tests and of the administrative departments which grant approval and to which forms certifying approval, extension or refusal or withdrawal of approval, issued, in other countries, are to be sent.

ANNEX 1

COMMUNICATION

(Maximum format: A4 (210 × 297 mm))



issued by: Name of administration

.....

.....

.....

concerning (2): APPROVAL GRANTED
APPROVAL EXTENDED
APPROVAL REFUSED
APPROVAL WITHDRAWN
PRODUCTION DEFINITELY DISCONTINUED

of a type of category L_3 vehicle with regard to the installation of lighting and light-signalling devices, pursuant to Regulation No 53.

Approval No ..... Extension No .....

1. Trade name or mark of the vehicle: .....

2. Manufacturer's name for the type of vehicle: .....

3. Manufacturer's name and address: .....

4. If applicable, name and address of the manufacturer's representative: .....

.....

5. Submitted for approval on: .....

6. Technical service responsible for conducting approval tests: .....

.....

7. Date of test report: .....

8. Number of test report: .....

9. Concise description: .....

Lighting devices on the vehicle:

9.1. Driving lamps: yes/no (2)

9.2. Passing lamps: yes/no (2)

9.3. Front fog lamps: yes/no (2)

9.4. —

9.5. Direction-indicators: yes/no (2)

9.6. —

9.7. —

9.8. Hazard warning signal: yes/no (2)

9.9. Stop lamps: yes/no (2)

9.10. Rear-registration-plate illuminating device: yes/no [2]

9.11. Front position (side) lamps: yes/no [2]

9.12. Rear position (side) lamps: yes/no [2]

9.13. Rear fog lamps: yes/no [2]

9.14. —

9.15. —

9.16. Rear retro-reflectors, non-triangular: yes/no [2]

9.17. —

9.18. —

9.19. Side retro-reflectors, non-triangular: yes/no [2]

9.20. Equivalent lamps: yes/no [2]

10. Any comments: .....

11. Masses as declared by the manufacturer [3]

11.1. Mass in running order:

Total mass: ..... kg

Mass on the front wheel: ..... kg

Mass on the rear wheel: ..... kg

11.2. Gross vehicle mass:

Total mass: ..... kg

Mass on the front wheel: ..... kg

Mass on the rear wheel: ..... kg

12. Position of the approval mark: .....

13. Reason(s) for extension (if applicable): .....

14. Approval granted/refused/extended/withdrawn: [2]

15. Place: .....

16. Date: .....

17. Signature: .....

18. The list of documents deposited with the Administrative Service which has granted the approval is annexed to this communication and may be obtained upon request.

---

[1] Distinguishing number of the country which has granted/extended/refused/withdrawn approval (see approval provisions in the Regulation).

[2] Strike out what does not apply.

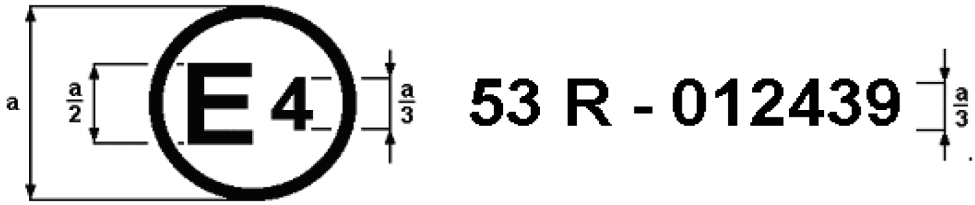
[3] These sections only need to be completed if the test according to paragraph 6.2.5.4 is performed.

ANNEX 2

ARRANGEMENT OF APPROVAL MARKS

MODEL A

(see paragraph 4.4 of this Regulation)

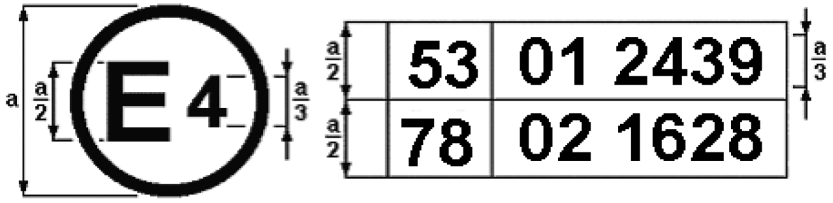


a = 8 mm min.

The above approval mark affixed to a motorcycle shows that the vehicle type concerned has, with regard to the installation of lighting and light-signalling devices, been approved in the Netherlands (E 4), pursuant to Regulation No 53, as amended by the 01 series of amendments. The approval number indicates that the approval was granted in accordance with the requirements of Regulation No 53.

MODEL B

(see paragraph 4.5 of this Regulation)



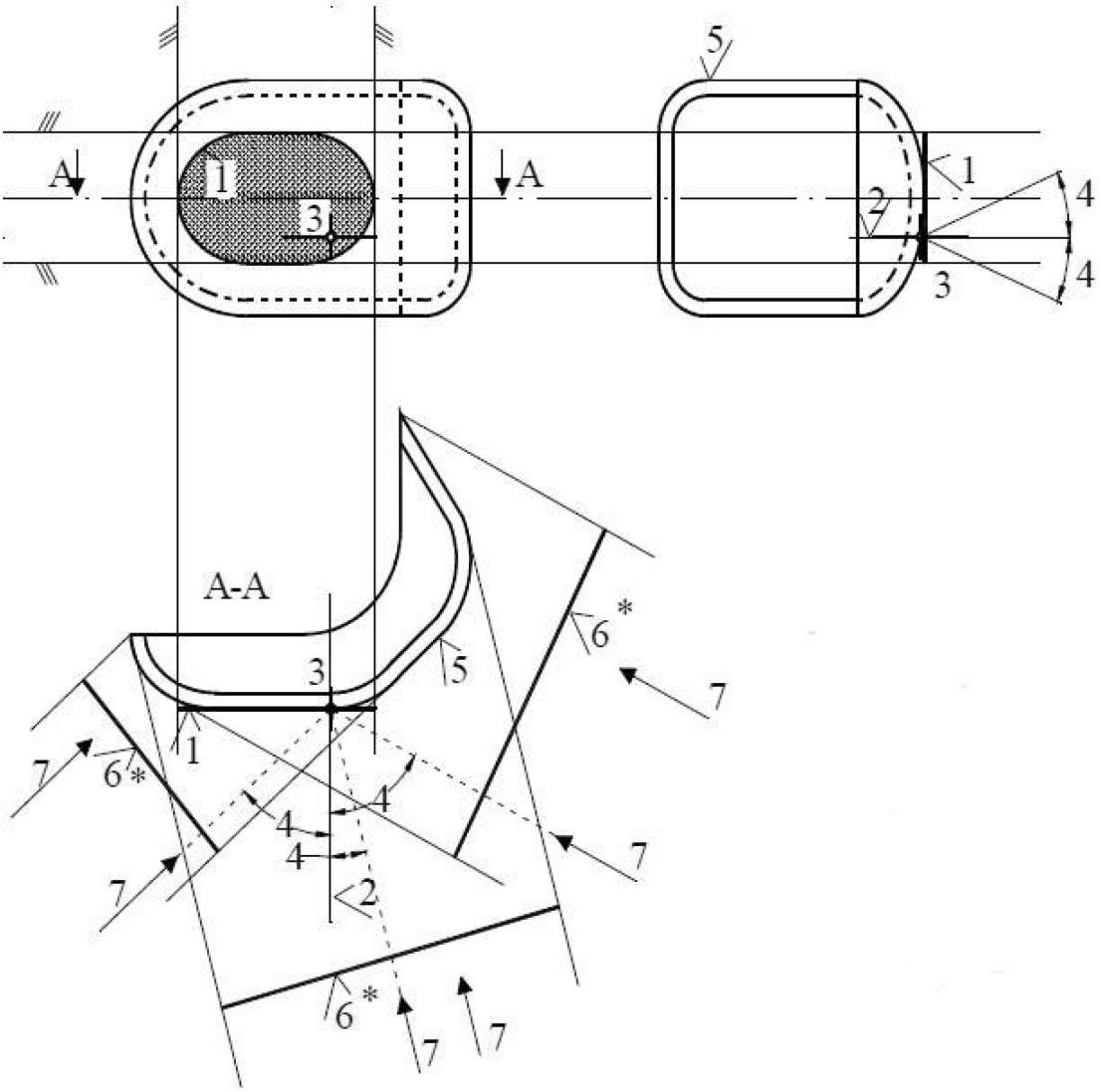
a = 8 mm min.

The above approval mark affixed to a motorcycle shows that the vehicle type concerned has been approved in the Netherlands (E 4) pursuant to Regulations No 53 and No 78 ([1]). The approval numbers indicate that, at the dates when the respective approvals were granted, Regulation No 53 included the 01 series of amendments and Regulation No 78 already included the 02 series of amendments.

([1]) The second number is given merely as an example.

ANNEX 3

LAMP SURFACES, AXIS AND CENTRE OF REFERENCE, AND ANGLES OF GEOMETRIC VISIBILITY



* This surface is to be considered as tangent to the light-emitting surface.

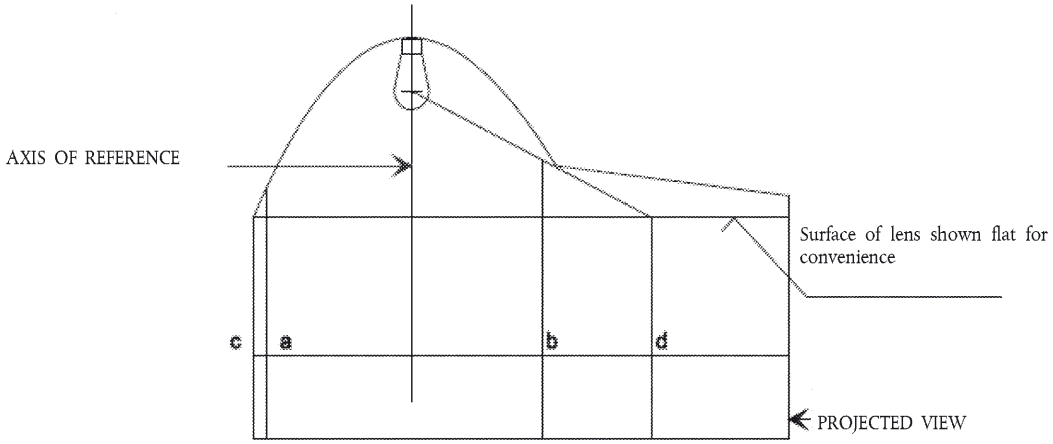
LEGEND

1. Illuminating surface
2. Axis of reference
3. Centre of reference
4. Angle of geometric visibility
5. Light-emitting surface
6. Apparent surface
7. Direction of observation

ILLUMINATING SURFACE IN COMPARISON WITH LIGHT-EMITTING SURFACE

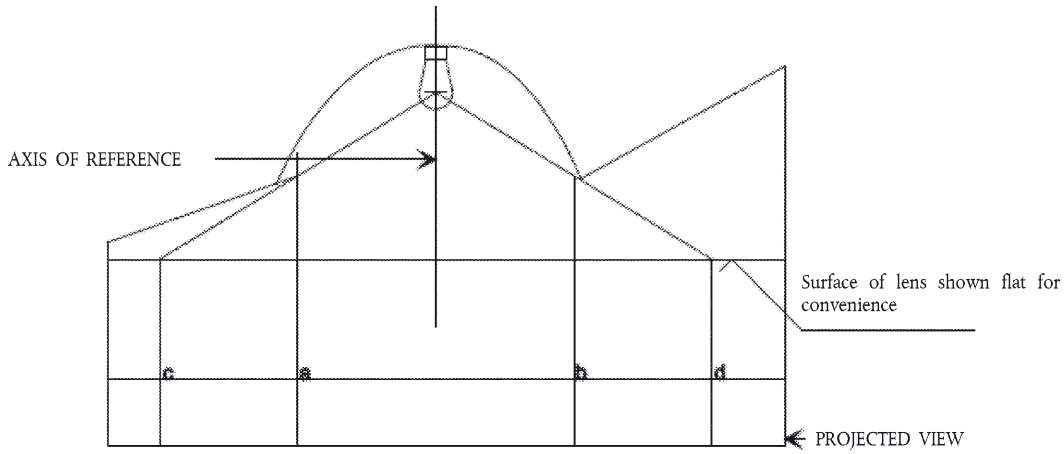
(See paragraphs 2.9 and 2.8 of this Regulation)

SKETCH A



	Illuminating surface	Light-emitting surface
Edges are	a and b	c and d

SKETCH B



	Illuminating surface	Light-emitting surface
Edges are	a and b	c and d

ANNEX 4

FORWARD VISIBILITY OF RED LIGHTS AND REARWARD VISIBILITY OF WHITE LIGHTS

(See paragraph 5.9 of this Regulation)

Figure 1

Forward visibility of a red light

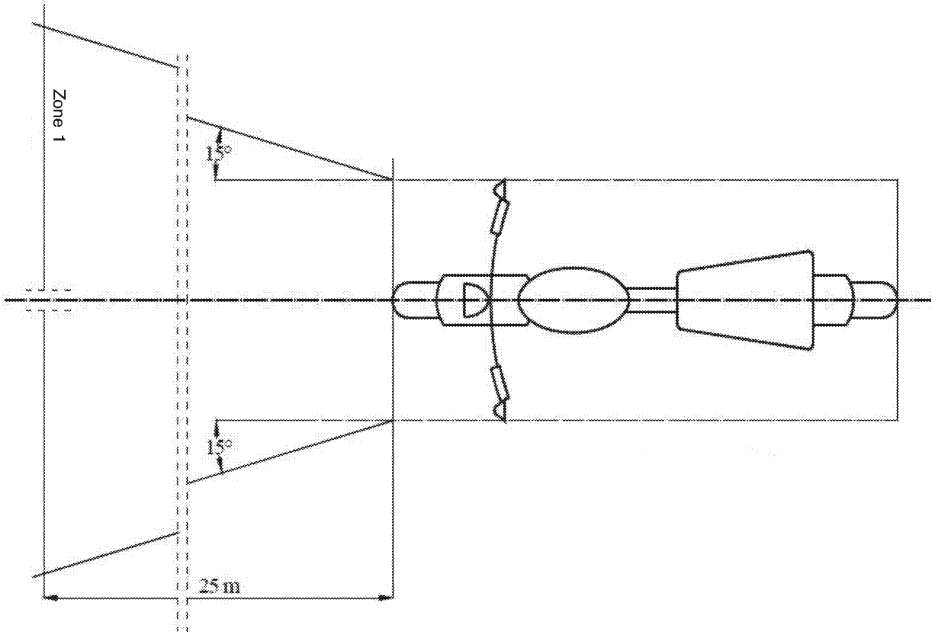
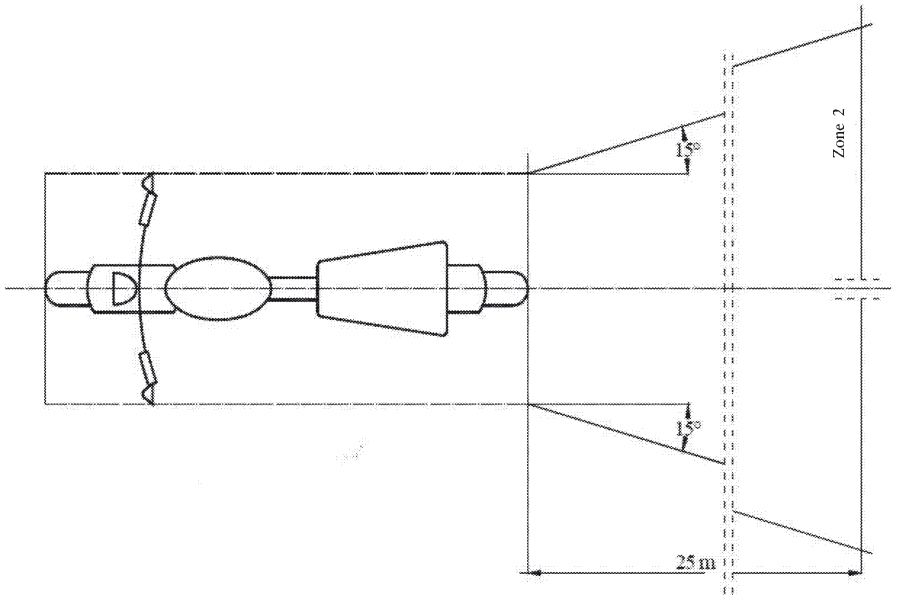


Figure 2

Rearward visibility of a white light



ANNEX 5

CONTROL OF CONFORMITY OF PRODUCTION

1. TESTS

1.1. Position of lamps

The position of the lamps as specified in paragraph 6 shall be checked in accordance with the general requirements set out in paragraph 5 of this Regulation. The values measured for the distances shall be such that the individual specifications applicable to each lamp are fulfilled.

1.2. Visibility of lamps

1.2.1. The angles of geometric visibility shall be checked in accordance with paragraph 2.11 of this Regulation. The values measured for the angles shall be such that the individual specifications applicable to each lamp are fulfilled except that the limits of the angles may have an allowance corresponding to the ± 3° variation permitted in paragraph 5.3 for the mounting of the light-signalling devices.

1.2.2. The visibility of red light towards the front and of white light towards the rear shall be checked in accordance with paragraph 5.9 of this Regulation.

1.3. Alignment of passing beam headlamps towards the front

1.3.1. Initial downward inclination

(The initial downward inclination of the cut-off of the passing beam shall be checked against the requirements of paragraph 6.2.5).

1.4. Electrical connections and tell-tales

The electrical connections shall be checked by switching on every lamp supplied by the electrical system of the motorcycle.

The lamps and tell-tales shall function in accordance with the provisions set out in paragraphs 5.10 to 5.12 of this Regulation and with the individual specifications, applicable to each lamp.

1.5. Light intensities

1.5.1. Driving beam headlamps

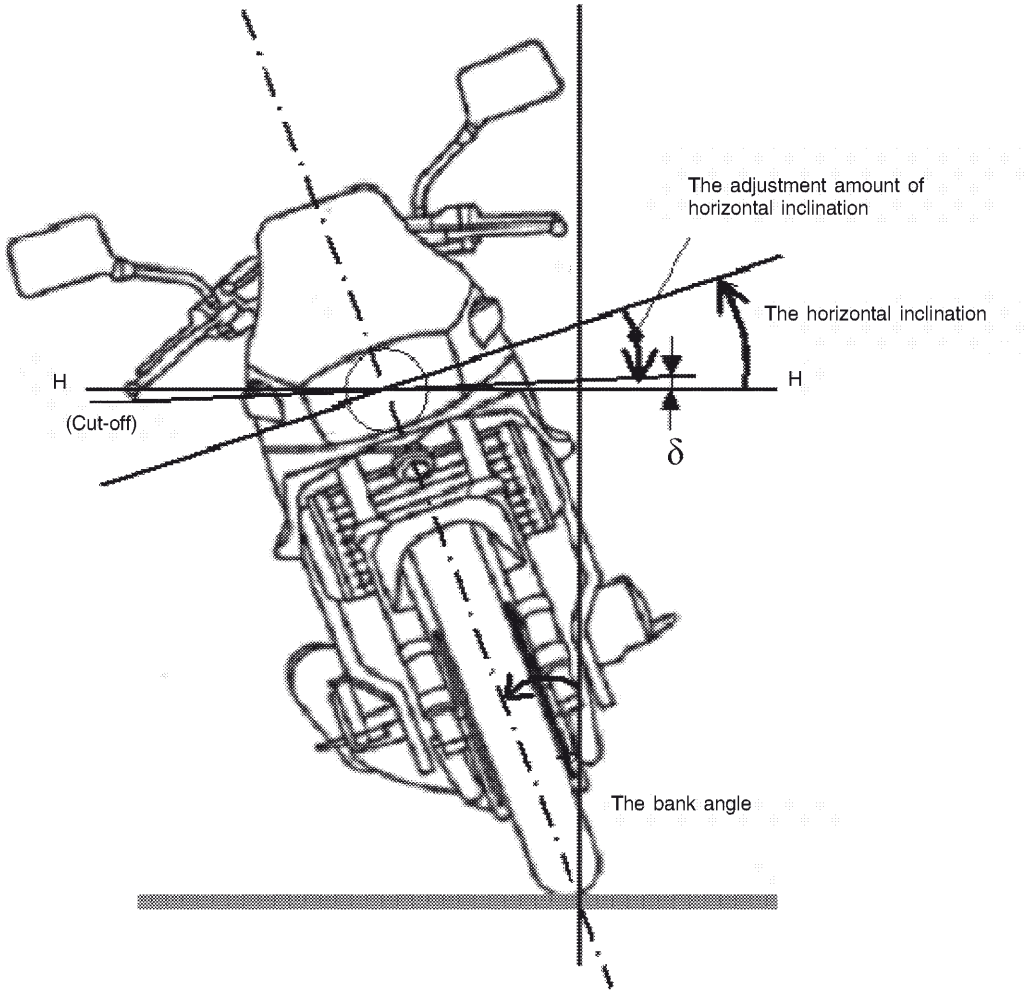
The aggregate maximum intensity of the driving beam headlamp(s) shall be such that the requirement in paragraph 6.1.9 of this Regulation is fulfilled.

1.6. The presence, number, colour, arrangement and, where applicable, the category of lamps shall be checked by visual inspection of the lamps and their markings. These shall be such that the requirements set out in paragraph 5.13 and the individual specifications applicable to each lamp are fulfilled.

ANNEX 6

EXPLANATION ABOUT 'THE HORIZONTAL INCLINATION', 'THE BANK ANGLE' AND THE ANGLE 'δ'

Figure 3



Note: This figure shows the motorcycle is banked to the right side.

Regulation No 74 of the Economic Commission for Europe of the United Nations (UN/ECE) — Uniform provisions concerning the approval of category L_1 vehicles with regard to the installation of lighting and light-signalling devices

Incorporating all valid text up to:

Supplement 6 to the 01 series of amendments — Date of entry into force: 22 July 2009

Supplement 7 to the 01 series of amendments — Date of entry into force: 18 November 2012

CONTENTS

1. SCOPE

This Regulation applies to vehicles of category L_1 [1] with regard to the installation of lighting and light-signalling devices.

2. DEFINITIONS

For the purpose of this Regulation,

2.1. 'Approval of a vehicle' means the approval of a vehicle type with regard to the number and mode of installation of the lighting and light-signalling devices;

2.2. 'Vehicle type' means a category of power-driven vehicles which do not differ from each other in such essential respects as:

2.2.1. the dimensions and external shape of the vehicle;

2.2.2. the number and position of the devices;

2.2.3. the following shall likewise not be deemed to be 'vehicles of a different type':

2.2.3.1. vehicles which differ within the meaning of paragraphs 2.2.1 and 2.2.2 above but not in such a way as to entail a change in the kind, number, position and geometric visibility of the lamps prescribed for the vehicle type in question;

2.2.3.2. vehicles on which lamps approved under one of the Regulations annexed to the 1958 Agreement, or lamps allowed in the country in which the vehicles are registered, are fitted, or are absent where their fitting is optional;

2.3. 'transverse plane' means a vertical plane perpendicular to the median longitudinal plane of the vehicle;

2.4. 'unladen vehicle' means a vehicle without a driver, or passenger, and unladen, but with its fuel tank full and its normal complement of tools;

2.5. 'lamp' means a device designed to illuminate the road or to emit a light signal to other road users. Rear registration plate lamp and retro-reflectors are likewise to be regarded as lamps;

2.5.1. 'Equivalent lamps' means lamps having the same function and authorised in the country in which the vehicle is registered; such lamps may have different characteristics from those of the lamps with which the vehicle is equipped at the time of approval, on condition that they satisfy the requirements of this Regulation;

2.5.2. 'Independent lamps' means devices having separate illuminating surfaces, separate light sources and separate lamp bodies;

2.5.3. 'Grouped lamps' means devices having separate illuminating surfaces and separate light sources, but a common lamp body;

2.5.4. 'Combined' means devices having separate illuminating surfaces, but a common light source and a common lamp body;

2.5.5. 'Reciprocally incorporated' means devices having separate light sources or a single light source operating under different conditions (for example, optical, mechanical, electrical differences), totally or partially common illuminating surfaces and a common lamp body;

2.5.6. 'Driving beam (main-beam) headlamp' means the lamp used to illuminate the road over a long distance ahead of the vehicle;

2.5.7. 'Passing beam (dipped-beam) headlamp' means the lamp used to illuminate the road ahead of the vehicle without dazzling of causing undue discomfort to oncoming drivers and other road users;

2.5.8. 'Front position lamp' means the lamp used to indicate the presence of the vehicle when viewed from the front;

[1] As defined in Annex 7 to the Consolidated Resolution on the Construction of Vehicles (R.E.3), (document TRANS/WP.29/78/Rev.1/Amend.2 as last amended by Amend.4).

2.5.9. 'Retro-reflector' means a device used to indicate the presence of a vehicle by the reflection of light emanating from a light source not connected to the vehicle, the observer being situated near the source;

For the purpose of this Regulation, retro-reflecting number plates are not considered as retro-reflectors:

2.5.10. 'Direction-indicator lamp' means the lamp used to indicate to other road-users that the driver intends to change direction to the right or to the left;

A direction-indicator lamp or lamps may also be used according to provisions of Regulation No 97.

2.5.11. 'Stop lamp' means the lamp used to indicate to other road-users to the rear of the vehicle that its driver is applying the service brake;

2.5.12. 'Rear position lamp' means the lamp used to indicate the presence of the vehicle when viewed from the rear;

2.5.13. 'Rear-registration-plate illuminating device' means the device used to illuminate the space reserved for the rear registration plate; such a device may consist of several optical component.

2.6. 'Light-emitting surface' of a 'lighting device', 'light-signalling device' or a retro-reflector means all or part of the exterior surface of the transparent material as declared in the request for approval by the manufacturer of the device on the drawing, see Annex 3;

2.7. 'Illuminating surface' (see Annex 3);

2.7.1. 'Illuminating surface of a lighting device' (paragraphs 2.5.6 and 2.5.7) means the orthogonal projection of the full aperture of the reflector, or in the case of headlamps with an ellipsoidal reflector of the 'projection lens', on a transverse plane. If the lighting device has no reflector, the definition of paragraph 2.7.2 shall be applied. If the light emitting surface of the lamp extends over part only of the full aperture of the reflector, then the projection of that part only is taken into account.

In the case of a passing beam headlamp, the illuminating surface is limited by the apparent trace of the cut-off on to the lens. If the reflector and lens are adjustable relative to one another, the mean adjustment should be used;

2.7.2. 'Illuminating surface of a light-signalling device other than a retro-reflector' (paragraphs 2.5.8, 2.5.10, 2.5.11 and 2.5.12) means the orthogonal projection of the lamp in a plane perpendicular to its axis of reference and in contact with the exterior light-emitting surface of the lamp, this projection being bounded by the edges of screens situated in this plane, each allowing only 98 per cent of the total luminous intensity of the light to persist in the direction of the axis of reference. To determine the lower, upper and lateral limits of the illuminating surface, only screens with horizontal or vertical edges shall be used;

2.7.3. 'Illuminating surface of a retro-reflector' (paragraph 2.5.9) means the orthogonal projection of a retro-reflector in a plane perpendicular to its axis of reference and delimited by planes continuous to the outermost parts of the retro-reflector's optical system and parallel to that axis. For the purposes of determining the lower, upper and lateral edges of the device, only horizontal and vertical planes shall be considered;

2.8. The 'apparent surface' for a defined direction of observation means, at the request of the manufacturer or his duly accredited representative, the orthogonal projection of:

either the boundary of the illuminating surface projected on the exterior surface of the lens (a-b),

or the light-emitting surface (c-d),

in a plane perpendicular to the direction of observation and tangential to the most exterior point of the lens (see Annex 3 to this Regulation);

2.9. 'Axis of reference' (or 'reference axis') means the characteristic axis of the lamp determined by the manufacturer (of the lamp) for use as the direction of reference (H = 0°, V = 0°) for angles of field for photometric measurements and for installing the lamp on the vehicle;

2.10. 'Centre of reference' means the intersection of the axis of reference with the exterior light-emitting surface; it is specified by the manufacturer of the lamp;

2.11. 'Angles of geometric visibility' means the angles which determine the field of the minimum solid angle in which the apparent surface of the lamp must be visible. That field of the solid angle is determined by the segments of the sphere of which the centre coincides with the centre of reference of the lamp and the equator is parallel with the ground. These segments are determined in relation to the axis of reference. The horizontal angles β, correspond to the longitude and the vertical angles α to the latitude. There must be no obstacle on the inside of the angles of geometric visibility to the propagation of light from any part of the apparent surface of the lamp observed from infinity. If measurements are taken closer to the lamp, the direction of observation must be shifted parallel to achieve the same accuracy.

On the inside of the angles of geometric visibility no account is taken of obstacles, if they were already presented when the lamp was type approved.

If, when the lamp is installed, any part of the apparent surface of the lamp is hidden by any further parts of the vehicle, proof shall be furnished that the part of the lamp not hidden by obstacles still conforms to the photometric values prescribed for the approval of the device as an optical unit (see Annex 3 of this Regulation). Nevertheless, when the vertical angle of geometric visibility below the horizontal may be reduced to 5° (lamp at less than 750 mm above the ground) the photometric field of measurements of the installed optical unit may be reduced to 5° below the horizontal.

2.12. 'Extreme outer edge', on either side of the vehicle means the plane parallel to the median longitudinal plane of the vehicle and tangent to the latter's lateral outer edge, disregarding rear-view mirrors, direction indicators, position lamps and retro-reflectors;

2.13. 'Over-all width' means the distance between the two vertical planes defined in paragraph 2.12 above;

2.14. 'A single lamp' means a device or part of a device, having one function and one apparent surface in the direction of the reference axis (see paragraph 2.8 of this Regulation) and one or more light sources.

For the purpose of installation on a vehicle, a 'single lamp' also means any assembly of two independent or grouped lamps, whether identical or not, having the same function, if they are installed so that the projection of their apparent surfaces in the direction of the reference axis occupies not less than 60 per cent of the smallest rectangle circumscribing the projections of the said apparent surfaces in the direction of the reference axis. In such a case, each of these lamps shall, where approval is required, be approved as a type 'D' lamp. This possible combination does not apply to driving beam headlamps and passing beam headlamps.

2.15. 'Distance between two lamps' which face in the same direction means the shortest distance between the two apparent surfaces in the direction of the reference axis. Where the distance between the lamps clearly meets the requirements of the Regulation, the exact edges of apparent surfaces need not be determined;

2.16. 'Operating tell-tale' means a visual or auditory signal (or any equivalent signal) indicating that a device has been switched on and whether or not it is operating correctly;

2.17. 'Circuit-closed tell-tale' means a visual (or any equivalent signal) indicating that a device has been switched on, but not indicating whether or not it is operating correctly;

2.18. 'Optional lamp' means a lamp, the installation of which is left to the discretion of the manufacturer;

2.19. 'Ground' means the surface on which the vehicle stands which should be substantially horizontal;

2.20. 'Device' means a component or combination of components used in order to perform one or several functions.

2.21. 'Colour of the light emitted from the device'. The definitions of the colour of the light emitted given in Regulation No 48 and its series of amendments in force at the time of application for type approval shall apply to this Regulation.

3. APPLICATION FOR APPROVAL

3.1. The application for approval of a vehicle type with regard to the installation of its lighting and light-signalling devices shall be submitted by the vehicle manufacturer or by his duly accredited representative.

3.2. It shall be accompanied by the following documents and particulars, in triplicate:

3.2.1. a description of the vehicle type with regard to the items mentioned in paragraphs 2.2.1 and 2.2.2 above; the vehicle type shall be specified;

3.2.2. a list of the devices intended by the manufacturer to form the lighting and light-signalling equipment: the list may include several types of device for each function; each type shall be duly identified (national or international approval mark, if approved, name of manufacturer, etc.); in addition, the list may include in respect of each function the additional annotation 'or equivalent devices';

3.2.3. a layout drawing of the lighting and light-signalling installation as a whole, showing the position of the various devices on the vehicle;

3.2.4. if necessary, in order to verify the conformity to the prescriptions of the present Regulation, a layout drawing or drawings of each lamp showing the illuminating surface, as defined in paragraph 2.7.1 above, the light-emitting surface as defined in paragraph 2.6, the axis of reference as defined in paragraph 2.9 and the centre of reference as defined in paragraph 2.10. This information is not necessary in the case of the rear registration plate lamp (paragraph 2.5.13).

3.2.5. The application shall include a statement of the method used for the definition of the apparent surface (paragraph 2.8).

3.3. An unladen vehicle fitted with a complete set of lighting and light-signalling equipment, as prescribed in paragraph 3.2.2 above, and representative of the vehicle type to be approved shall be submitted to the Technical Service responsible for conducting approval tests.

4. APPROVAL

4.1. If the vehicle type submitted for approval pursuant to this Regulation meets the requirements of the Regulation in respect of all the devices specified in the list, approval of that vehicle type shall be granted.

4.2. An approval number shall be assigned to each type approved. Its first two digits (at present 01 for the Regulation in its 01 series of amendments) shall indicate the series of amendments incorporating the most recent major technical amendments made to the Regulation at the time of issue of the approval. The same Contracting Party shall not assign this number to another vehicle type or to the same vehicle type submitted with equipment not specified in the list referred to in paragraph 3.2.2 above, subject to the provisions of paragraph 7 of this Regulation.

4.3. Notice of approval or of extension or refusal of approval or of production definitely discontinued of a vehicle type pursuant to this Regulation shall be communicated to the Parties to the Agreement applying this Regulation, by means of a form conforming to the model in Annex 1 to this Regulation.

4.4. There shall be affixed, conspicuously and in a readily accessible place specified on the approval form, to every vehicle conforming to a vehicle type approved under this Regulation an international approval mark consisting of:

4.4.1. a circle surrounding the letter 'E' followed by the distinguishing number of country which has granted approval; [1]

4.4.2. the number of this Regulation followed by the letter 'R', a dash, and the approval number to the right of the circle prescribed in paragraph 4.4.1.

[1] The distinguishing numbers of the Contracting Parties to the 1958 Agreement are reproduced in Annex 3 to Consolidated Resolution on the Construction of Vehicles (R.E.3), document TRANS/WP.29/78/Rev.2/Amend.1.

4.5. If the vehicle conforms to a vehicle type approved, under one or more other Regulations annexed to the Agreement, in the country which has granted approval under this Regulation, the symbol prescribed in paragraph 4.4.1 need not be repeated; in such a case the Regulation and approval numbers and the additional symbols of all the Regulations under which approval has been granted in the country which has granted approval under this Regulation shall be placed in vertical columns to the right of the symbol prescribed in paragraph 4.4.1.

4.6. The approval mark shall be clearly legible and be indelible.

4.7. The approval mark shall be placed close to or on the vehicle data plate affixed by the manufacturer.

4.8. Annex 2 to this Regulation gives examples of the arrangement of the approval marks.

5. GENERAL SPECIFICATIONS

5.1. The lighting and light-signalling devices shall be so fitted that in normal conditions of use, and not withstanding the vibrations to which they may be subjected, they retain the characteristics prescribed by this Regulation and enable the vehicle to comply with the requirements of this Regulation. In particular, it shall not be possible for the lamps to be inadvertently maladjusted.

5.2. The illuminating lamps shall be so installed that correct adjustment of their orientation can easily be carried out.

5.3. For all light-signalling devices, including those mounted on the side, the reference axis of the lamp when fitted to the vehicle shall be parallel to the bearing plane of the vehicle on the road; in addition, it shall be perpendicular to the median longitudinal plane of the vehicle in the case of side retro-reflectors and parallel to that plane in the case of all other devices.

A tolerance of ± 3° shall be allowed in each direction.

In addition, if specifications for fitting are provided by the manufacturer they shall be complied with.

5.4. In the absence of specific instructions, the height and orientation of the lamps shall be verified with the vehicle unladen and placed on a flat horizontal surface, its median longitudinal plane being vertical and the handlebars being in the position corresponding to the straight ahead movement.

5.5. In the absence of specific instructions:

5.5.1. single lamps or reflectors shall be mounted such that their centre of reference lies in the median longitunal plane of the vehicle;

5.5.2. lamps constituting a pair and having the same function shall:

5.5.2.1. be mounted symmetrically in relation to the median longitudinal plane;

5.5.2.2. be symmetrical to one another in relation to the median longitudinal plane;

5.5.2.3. satisfy the same colorimetric requirements;

5.5.2.4. have identical nominal photometric characteristics; and

5.5.2.5. come on and go off simultaneously.

5.6. Lamps may be grouped, combined or reciprocally incorporated with one another provided that all the requirements regarding colour, position, orientation, geometric visibility, electrical connections and other requirements, if any, for each lamp are fulfilled.

5.7. The maximum height above ground shall be measured from the highest point and the minimum height from the lowest point of the apparent surface in the direction of the reference axis. For passing beam headlamps, the minimum height from the ground shall be measured from the lowest point of the effective outlet of the optical system (e.g. reflector, lens, projection lens) independent of its utilisation.

Where the (maximum and minimum) height above the ground clearly meets the requirements of the Regulation, the exact edges of any surface need not be determined.

When referring to the distance between lamps, the position, as regards width, shall be determined from the inner edges of the apparent surface in the direction of the reference axis.

Where the position, as regards width, clearly meets the requirements of the Regulation, the exact edges of any surface need not be determined.

5.8. In the absence of specific instructions, no lamps other than direction-indicator lamps and the vehicle-hazard warning signal shall be flashing lamps.

5.9. No red light shall be visible towards the front and no white light shall be visible towards the rear. Compliance with this requirement shall be verified as shown hereunder (see drawing in Annex 4):

5.9.1. visibility of red light towards the front: there must be no direct visibility of a red light if viewed by an observer moving within zone 1 of a transverse plane situated 25 m in front of the vehicle;

5.9.2. visibility of white light towards the rear: there must be no direct visibility of a white lamp if viewed by an observer moving within zone 2 of a transverse plane situated 25 m behind the vehicle;

5.9.3. zones 1 and 2, as seen by the observer, are limited in their respective planes as follows:

5.9.3.1. in height, by two horizontal planes 1 m and 2,2 m respectively above the ground;

5.9.3.2. in width, by two vertical planes which, forming to the front and the rear respectively an angle of 15° outwards from the vehicle's median longitudinal plane, pass through the point or points of contact of vertical planes parallel to the vehicle's median longitudinal plane and delimiting the vehicle's over-all width; if there are several points of contact, the foremost shall correspond to the forward plane and the rearmost to the rearward plane.

5.10. The electrical connections shall be such that the front position lamp, or the passing beam headlamp, if there is no front position lamp, and the rear position lamp and any rear registration plate illuminating device cannot be switched on or off otherwise than simultaneously.

5.11. In the absence of specific instructions, the electrical connection shall be such that the driving beam headlamp and the passing beam headlamp cannot be switched on unless the lamps referred to in paragraph 5.10 above are likewise switched on. This requirement need not, however, be satisfied in the case of the driving beam headlamp and passing beam headlamp where their luminous warnings consist in switching on the passing-beam headlamp intermittently, at short intervals, or in switching on the passing beam headlamp and driving beam headlamp alternately at short intervals.

5.11.1. The headlamp shall automatically be on when the engine is running.

5.12. Tell-tale lamps

5.12.1. Every tell-tale lamp shall be readily visible to a driver in the normal driving position.

5.12.2. Where a 'circuit-closed' tell-tale is prescribed by this Regulation, it may be replaced by an 'operating' tell-tale.

5.13. Colours of the lights [1]

The colours of the lights referred to in this Regulation shall be as follows:

driving beam headlamp: white

passing beam headlamp: white

front position lamp: white

[1] Measurement of the chromaticity coordinates of the light emitted by the lamps is not part of this Regulation.

front retro-reflector non-triangular:	white
side retro-reflector, non-triangular:	amber at the front
	amber or red at the rear
pedal retro-reflector:	amber
rear retro-reflector, non-triangular:	red
direction-indicator lamp:	amber
stop lamp:	red
rear position lamp:	red
rear-registration plate lamp:	white

5.14. Every vehicle submitted for approval pursuant to this Regulation shall be equipped with the following lighting and light-signalling devices:

5.14.1. passing beam headlamp (paragraph 6.2);

5.14.2. rear position lamp (paragraph 6.10);

5.14.3. side retro-reflector, non-triangular (paragraph 6.5);

5.14.4. rear retro-reflector, non-triangular (paragraph 6.7);

5.14.5. pedal retro-reflectors (paragraph 6.6), only for mopeds with pedals;

5.14.6. stop lamp (paragraph 6.9);

5.14.7. Rear registration plate illuminating device, where such a plate is required (paragraph 6.11).

5.15. It may, in addition, be equipped with the following lighting and light-signalling devices:

5.15.1. driving beam headlamp (paragraph 6.1);

5.15.2. front position lamp (paragraph 6.3);

5.15.3. front retro-reflector, non-triangular (paragraph 6.4).

5.15.4. direction-indicator lamps (paragraph 6.8)

5.16. The fitting of each of the lighting and light-signalling devices mentioned in paragraphs 5.14 and 5.15 above shall be effected in conformity with the relevant requirements in paragraph 6 of this Regulation.

5.17. The fitting of any lighting and light-signalling devices other than those mentioned in paragraphs 5.14 and 5.15 is prohibited with the exception of an appropriate illuminating device for the rear-registration plate if it exists and its lighting is required.

5.18. Lighting and light-signalling devices type-approved for motorcycles and referred to in sections 5.16 and 5.17 may also be fitted to mopeds.

6. INDIVIDUAL SPECIFICATIONS

6.1. DRIVING BEAM HEADLAMP

6.1.1. Number

One or two of approved type according to:

(a) Regulation No 113;

(b) Class A of Regulation No 112;

(c) Regulation No 1;

(d) Regulation No 57;

(e) Regulation No 72;

(f) Regulation No 76.

6.1.2. Arrangement

No special requirement.

6.1.3. Position

6.1.3.1. Width

6.1.3.1.1. an independent driving lamp may be fitted above or below or to one side of another front lamp: if these lamps are on top of the other the reference centre of the driving lamp must be located within the medium longitudinal plane of the vehicle; if these lamps are side by side their reference centre must be symmetrical in relation to the median longitudinal plane of the vehicle.

6.1.3.1.2. a driving beam headlamp that is reciprocally incorporated with another front lamp must be fitted in such a way that its reference centre lies within the median longitudinal plane of the vehicle. However, when the vehicle is also fitted with an independent passing beam headlamp or a passing beam headlamp that is reciprocally incorporated with a front position lamp alongside the driving beam headlamp their reference centres must be symmetrical in relation to the median longitudinal plane of the vehicle.

6.1.3.1.3. two driving lamps of which either one or both are reciprocally incorporated with another front lamp must be fitted in such a way that their reference centres are symmetrical in relation to the median longitudinal plane of the vehicle.

6.1.3.2. Length: at the front of the vehicle. This requirement is regarded as satisfied if the light emitted does not cause discomfort to the driver either directly or indirectly by means of the rear-view mirrors and/or reflective surfaces on the vehicle.

6.1.3.3. In any case, the distance between the edge of the illumination surface of any independent driving lamp and the edge of that of the passing lamp must not exceed 200 mm.

6.1.3.4. The distance separating the illuminating surfaces of two driving lamps must not exceed 200 mm.

6.1.4. Geometric visibility

The visibility of the illuminating surface, including its visibility in areas which do not appear to be illuminated in the direction of observation considered, shall be ensured within a divergent space defined by generating lines based on the perimeter of the illuminating surface and forming an angle of not less than 5° with the axis of reference of the headlamp.

6.1.5. Orientation

Forwards. The lamp(s) may move in line with the steering angle.

6.1.6. May not be 'combined' with any other lamp.

6.1.7. Electrical connections

The passing beam(s) may remain illuminated with the driving beam(s).

6.1.8. 'Circuit-closed' tell-tale

Mandatory, non-flashing blue signal lamp.

6.2. PASSING BEAM HEADLAMP

6.2.1. Number

One or two of approved type according to:

(a) Regulation No. 113 (*);

(b) Class A of Regulation No 112;

(c) Regulation No 1;

(d) Regulation No 56;

(e) Regulation No 57;

(f) Regulation No 72;

(g) Regulation No 76

(h) Regulation No 82.

6.2.2. Arrangement

No special requirement.

6.2.3. Position

6.2.3.1. Width

6.2.3.1.1. an independent passing lamp may be installed above, below or to one side of another front lamp: if these lamps are one above the other the reference centre of the passing lamp must be located within the medium longitudinal plane of the vehicle; if these lamps are side by side their reference centre must be symmetrical in relation to the median longitudinal plane of the vehicle.

6.2.3.1.2. a passing beam headlamp, that is reciprocally incorporated with another front lamp, must be fitted in such a way that its reference centre lies within the median longitudinal plane of the vehicle. However, when the vehicle is also fitted with an independent driving beam headlamp, or a driving beam headlamp that is reciprocally incorporated with a front position lamp alongside the passing beam headlamp, their reference centres must be symmetrical in relation to the median longitudinal plane of the vehicle.

6.2.3.1.3. two passing lamps, of which either one or both are reciprocally incorporated with another front lamp must be installed in such a way that their reference centres are symmetrical in relation to the median longitudinal plane of the vehicle.

6.2.3.2. Height: a minimum of 500 mm and a maximum of 1 200 mm above the ground.

6.2.3.3. Length: at the front of the vehicle. This requirement is regarded as satisfied if the light emitted does not cause discomfort to the driver either directly or indirectly by means of the rear-view mirrors and/or reflective surfaces of the vehicle.

6.2.3.4. In the case of two passing lamps the distance separating the illuminating surfaces must not exceed 200 mm.

6.2.4. Geometric visibility

Defined by angles α and β as specified in paragraph 2.11:

α = 15° and 10° downwards;

β = 45° to the left and to the right for a single lamp;

β = 45° outwards and 10° inwards for each pair of lamps.

The presence of partitions or other items of equipment near the head-lamp shall not give rise to secondary effects causing discomfort to other road users.

(*) Headlamps of Class A of Regulation No 113 with LED modules only on vehicles with a maximum design speed not exceeding 25 km/h.

6.2.5. Orientation

Forwards. The lamp(s) may move in line with the steering angle.

6.2.6. May not be 'combined' with any other lamp.

6.2.7. Electrical connections

The control for changing over to the passing beam(s) shall switch off the driving beam(s) simultaneously.

6.2.8. Tell tale

Optional, circuit-closed, green, non-flashing.

6.3. FRONT POSITION LAMP

6.3.1. Number

One or two.

6.3.2. Arrangement

No special requirement.

6.3.3. Position

6.3.3.1. Width:

an independent front position lamp may be fitted above or below, or to one side of another front lamp: if these lamps are one above the other the reference centre of the front position lamp must be located within the median longitudinal plane of the vehicle; if these lamps are side by side their reference centres must be symmetrical in relation to the median longitudinal plane of the vehicle;

a front position lamp that is reciprocally incorporated with another front lamp must be installed in such a way that its reference centre is situated in the median longitudinal plane of the vehicle. However, when the vehicle is also fitted with another front lamp alongside the front position lamp, their reference centres must be symmetrical in relation to the median longitudinal plane of the vehicle.

Two front position lamps, one or both of them reciprocally incorporated with another front lamp must be installed in such a way that their reference centres are symmetrical in relation to the median longitudinal plane of the vehicle.

6.3.3.2. in height: not less than 350 mm nor more than 1 200 mm above the ground;

6.3.3.3. in length: at the front of the vehicle.

6.3.4. Geometric visibility

the vertical angle: 15° upwards and downwards;

however, the vertical angle below the horizontal may be reduced to 5° if the height of the lamps is less than 750 mm

the horizontal angle: 80° to the left and to the right for a single lamp;

the horizontal angle may be 80° outwards and 45° inwards for each pair of lamps.

6.3.5. Orientation

Forwards. The lamp(s) may move in line with the steering angle.

6.3.6. Tell tale

Either an optional, circuit-closed, green, non-flashing tell tale or instrument illumination.

6.3.7. Other requirements

None.

6.4. FRONT RETRO-REFLECTOR, NON-TRIANGULAR

6.4.1. Number

One.

6.4.2. Arrangement

No special requirement.

6.4.3. Position

in height: not less than 400 mm nor more than 1 200 mm above the ground;

6.4.4. Geometric visibility

Horizontal angle: 30° to the left and to the right.

Vertical angle: 15° above and below the horizontal.

The vertical angle below the horizontal may be reduced to 5°, however, if the height of the reflector is less than 750 mm.

6.4.5. Orientation

Forwards. The reflector may move in line with the steering angle.

6.4.6. Other requirements

None.

6.5. SIDE RETRO-REFLECTOR, NON-TRIANGULAR

6.5.1. Number per side

One or two.

6.5.2. Arrangement

No special requirement.

6.5.3. Position

6.5.3.1. on the side of the vehicle.

6.5.3.2. in height: not less than 300 mm or more than 1 000 mm above the ground;

6.5.3.3. in length: should be placed in such a position that under normal conditions it may not be masked by the driver's or passenger's clothes.

6.5.4. Geometric visibility

Horizontal angle: 30° to the front and to the rear.

Vertical angle: 15° above and below the horizontal.

The vertical angle below the horizontal may be reduced to 5°, however, if the height of the lamp is less than 750 mm.

6.5.5. Orientation

The reference axis of the retro-reflectors must be perpendicular to the vehicle's median longitudinal plane and directed outwards. The front side retro-reflectors may move with the steering angle.

6.6. PEDAL RETRO-REFLECTORS

6.6.1. Number

Four retro-reflectors or retro-reflector groups.

6.6.2. Arrangement

No special requirement.

6.6.3. Other requirements

The outer faces of the illuminating surface of the retro-reflectors shall be recessed into the body of the pedal.

The retro-reflectors shall be mounted in the pedal body in such a way as to be clearly visible both to the front and to the rear of the vehicle. The reference axis of such retro-reflectors, the shape of which shall be adapted to that of the pedal body, shall be perpendicular to the pedal axis.

Pedal retro-reflectors shall be fitted only to those pedals of the vehicle which, by means of cranks or similar devices, can be used to provide a means of propulsion alternative to the engine.

They shall not be fitted to pedals which serve as controls for the vehicle or which serve only as footrests for the rider or passenger.

They shall be visible to the front and the rear.

6.7. REAR RETRO-REFLECTOR, NON-TRIANGULAR

6.7.1. Number

One or two.

6.7.2. Arrangement

No special requirement.

6.7.3. Position

6.7.3.1. in height: not less than 250 mm nor more than 900 mm above the ground.

6.7.3.2. in length: at the rear of the vehicle.

6.7.4. Geometric visibility

Horizontal angle: 30° to left and to right for a single reflector;

30° outwards and 10° inwards for each pair of reflectors;

Vertical angle: 15° above and below the horizontal.

The vertical angle below the horizontal may be reduced to 5°, however, if the height of the lamp is less than 750 mm.

6.7.5. Orientation

Rearwards.

6.8. DIRECTION-INDICATOR LAMP

6.8.1. Number

Two per side.

6.8.2. Arrangement

Two front indicators (category 11 ([1]));

Two rear indicators (category 12 ([1])).

6.8.3. Position

6.8.3.1. in width:

([1]) May be replaced by indicators of categories 1 and 2 respectively of Regulation No 6.

6.8.3.1.1. For front indicators, the following requirements shall all be met:

(1) there shall be a minimum distance of 240 mm between illuminating surfaces;

(2) the indicators shall be situated outside the longitudinal vertical plane tangential to the outer edges of the illuminating surface of the headlamp(s);

(3) there shall be a minimum distance between the illuminating surface of the indicators and passing beam headlamp closest to one another as follows:

Minimum indicator intensity (cd)	Minimum separation (mm)
90	75
175	40
250	20
400	≤ 20

6.8.3.1.2. For rear indicators, the clearance between the inner edges of the two apparent surfaces shall be at least 160 mm.

6.8.3.2. In height: not less than 350 mm or more than 1 200 mm above the ground.

6.8.3.3. in length: the forward distance between the centre of reference of the rear indicators and the transverse plane which constitutes the rearmost limit of the vehicle's over-all length shall not exceed 300 mm.

6.8.4. Geometric visibility

Horizontal angle: 20° inwards and 80° outwards.

Vertical angle: 15° above and below the horizontal.

The vertical angle below the horizontal may be reduced to 5°, however, if the height of the lamp is less than 750 mm.

6.8.5. Orientation

The front indicators may move in line with the steering angle.

6.8.6. May not be 'combined' with any other lamp.

6.8.7. May not be 'reciprocally incorporated' with any other lamp.

6.8.8. Electrical connections

Direction-indicator lamps shall light up independently of the other lamps. All the direction-indicator lamps on one side of a vehicle shall be switched on and off by means of one control.

6.8.9. Other requirements

The characteristics indicated below shall be measured with no other load on the electrical system except that which is required for the operation of the engine and lighting devices.

6.8.9.1. In the case of all vehicles which supply direct current to the direction indicators, the light flashing frequency shall be 90 ± 30 times per minute.

6.8.9.1.1. The flashing of the direction indicators on the same side of the vehicle may occur synchronously or alternately.

6.8.9.1.2. Operation of the light-signal control shall be followed within not more than one second by the appearance of the light from any of the indicators and within not more than one-and-a-half seconds by the first extinction of the light.

6.8.9.2. In the case of a vehicle which supplied alternating current to the direction indicators, where the speed of the engine is between 50 per cent and 100 per cent of the engine speed corresponding to the maximum design speed of the vehicle; the light flashing frequency shall be 90 ± 30 times per minute.

6.8.9.2.1. The flashing of the direction indicators on the same side of the vehicle may occur synchronously or alternately.

6.8.9.2.2. Operation of the lamp-signal control shall be followed within not more than one second by the appearance of the light from any of the indicators and within not more than one-and-one-half seconds by the first extinction of the light.

6.8.9.3. In the case of a vehicle which supplies alternating current to the direction indicators, where the speed of the engine is between the idling speed indicated by the manufacturer and 50 per cent of the engine speed corresponding to the maximum speed of the vehicle, the lamp flashing frequency shall be between 90 + 30 and 90 - 45 times per minute;

6.8.9.3.1. The flashing of the direction indicators on the same side of the vehicle may occur synchronously or alternately.

6.8.9.3.2. Operation of the lamp-signal control shall be followed within not more than one second by the appearance of the light from any of the indicators and within not more than one-and-one-half seconds by the first extinction of the light.

6.8.10. In the event of failure, other than a short circuit, of one direction indicator lamp, the other must continue to flash or remain alight but the frequency in this condition shall be different from that prescribed, unless the vehicle is equipped with a tell-tale.

6.8.11. Tell tale

Mandatory if the direction indicators are not visible to the rider: operational, green, flashing and/or audible. In the event of an indicator malfunction the tell tale shall; go off, stay on or change frequency.

6.9. STOP LAMP

6.9.1. Number

One or two.

6.9.2. Arrangement

No special requirement.

6.9.3. Position

6.9.3.1. in height: not less than 250 mm or more than 1 500 mm above the ground;

6.9.3.2. in length: at the rear of the vehicle.

6.9.4. Geometric visibility

Horizontal angle: 45° to left and to right for a single lamp:

45° outwards and 10° inwards for each pair of lamps:

Vertical angle: 15° above and below the horizontal.

The vertical angle below the horizontal may be reduced to 5°, however, if the height of the lamp is less than 750 mm.

6.9.5. Orientation

Rearwards.

6.9.6. Electrical connections

Shall light up at any service brake application.

6.9.7. Other requirements

The luminous intensity of the stop lamp shall be markedly greater than that of the rear position lamp.

6.9.8. Tell tale

Prohibited.

6.10. REAR POSITION LAMP

6.10.1. Number

One or two.

6.10.2. Arrangement

No special requirement.

6.10.3. Position

6.10.3.1. in height: not less than 250 mm nor more than 1 500 mm above the ground;

6.10.3.2. in length at the rear of the vehicle.

6.10.4. Geometric visibility

Horizontal angle: 80° to left and to right for a single lamp:

the horizontal angle may be 80° outwards and 45° inwards for each pair of lamps:

Vertical angle: 15° above and below the horizontal.

The vertical angle below the horizontal may be reduced to 5°, however, if the height of the lamp is less than 750 mm.

6.10.5. Orientation

Rearwards.

6.10.6. Tell tale

Optional, shall be combined with that for the front position lamp.

6.10.7. Other requirements

None.

6.11. REAR-REGISTRATION-PLATE ILLUMINATING DEVICE

6.11.1. Number

One. The device may consist of several optical components designed to illuminate the space reserved for the registration plate.

6.11.2. Arrangement

6.11.3. Position

6.11.3.1. in width:

6.11.3.2. in height:

6.11.3.3. in length:

6.11.4. Geometric visibility

6.11.5. Orientation

} Such that the device illuminates the space reserved for the registration plate.

6.11.6. Tell-tale

Optional: Its function shall be performed by the tell-tale prescribed for the position lamp.

6.11.7. Other requirements

When the rear registration plate lamp is combined with the rear position lamp, reciprocally incorporated in the stop lamp, the photometric characteristics of the rear registration plate lamp may be modified during the illumination of the stop lamp.

7. REGISTRATION OF VEHICLES

Nothing shall prevent a Government from requiring or prohibiting the presence of a driving lamp as mentioned in paragraph 5.15.1 on vehicles registered in its territory, provided that it so notifies the Secretary General of the United Nations at the time of its communication the application of this Regulation.

8. CONFORMITY OF PRODUCTION

The conformity of production procedures shall comply with those set out in the Agreement, Appendix 2 (E/ECE/324 - E/ECE/TRANS/505/Rev.2), with the following requirements:

8.1. Mopeds approved under this Regulation shall be so manufactured as to conform to the type approved by meeting the requirements set out in paragraphs 5 and 6 above.

8.2. The minimum requirements for conformity of production control procedures set forth in Annex 5 to this Regulation shall be complied with.

8.3. The authority which has granted type approval may at any time verify the conformity control methods applied in each production facility. The normal frequency of these verifications shall be once a year.

9. PENALTIES FOR NON-CONFORMITY OF PRODUCTION

9.1. The approval granted in respect of a vehicle type pursuant to this Regulation may be withdrawn if the requirements set forth above are not met.

9.2. If a Contracting Party to the Agreement applying this Regulation withdraws an approval it has previously granted, it shall forthwith so notify the other Contracting Parties applying this Regulation, by means of a communication form conforming to the model in Annex 1 to this Regulation.

10. MODIFICATION AND EXTENSION OF APPROVAL OF A VEHICLE TYPE WITH REGARD TO THE INSTALLATION OF LIGHTING AND LIGHT-SIGNALLING DEVICES

10.1. Every modification of the vehicle type shall be notified to the Administrative Department which approved that vehicle type. The department may then either:

10.1.1. Consider that the modifications made are unlikely to have an appreciable adverse effect and that in any case the vehicle still complies with the requirements; or

10.1.2. Require a further test report from the Technical Service responsible for conducting the tests.

10.2. Confirmation or refusal of approval, specifying the alterations shall be communicated by the procedure specified in paragraph 4.3 above to the Parties to the Agreement which apply this Regulation.

10.3. The Competent Authority issuing the extension of approval shall assign a series number for such an extension and inform thereof the other Parties to the 1958 Agreement applying this Regulation by means of a communication form conforming to the model in Annex 1 to this Regulation.

11. PRODUCTION DEFINITELY DISCONTINUED

If the holder of the approval completely ceases to manufacture a vehicle type approved in accordance with this Regulation, he shall so inform the authority which granted the approval. Upon receiving the relevant communication that authority shall inform thereof the other Parties to the 1958 Agreement applying this Regulation by means of a communication form conforming to the model in Annex 1 to this Regulation.

12. TRANSITIONAL PROVISIONS

12.1. As from the official date of entry into force of the 01 series of amendments, no Contracting Party applying this Regulation shall refuse to grant approvals under this Regulation as amended by the 01 series of amendments.

12.2. As from 24 months after the date of entry into force mentioned in paragraph 12.1 above, Contracting Parties applying this Regulation shall grant approvals only if the vehicle type with regard to the number and mode of installation of the lighting and light-signalling devices corresponds to the requirements of the 01 series of amendments to this Regulation.

12.3. Existing approvals granted under this Regulation before the date mentioned in paragraph 12.2 above shall remain valid. In the case of vehicles first registered more than four years after the date of entry into force mentioned in paragraph 12.1 above Contracting Parties applying this Regulation may refuse the vehicle type with regard to the number and mode of installation of the lighting and light-signalling devices which do not meet the requirements of the 01 series of amendments to this Regulation.

13. NAMES AND ADDRESSES OF TECHNICAL SERVICES RESPONSIBLE FOR CONDUCTING APPROVAL TESTS AND OF ADMINISTRATIVE DEPARTMENTS

The Parties to the Agreement which apply this Regulation shall communicate to the United Nations Secretariat the names and addresses of the Technical Services responsible for conducting approval tests and of the Administrative Departments which grant approval and to which forms certifying approval or refusal or withdrawal of approval, issued, in other countries, are to be sent.

ANNEX 1

COMMUNICATION

(maximum format: A4 (210 × 297 mm))

issued by: Name of administration

.....

.....

.....

concerning: (2) APPROVAL GRANTED
APPROVAL EXTENDED
APPROVAL REFUSED
APPROVAL WITHDRAWN
PRODUCTION DEFINITELY DISCONTINUED

of a vehicle type (moped) with regard to the installation of lighting and light-signalling devices pursuant to Regulation No 74

Approval No: ..... Extension No: .....

1. Trade name or mark of the vehicle: .....

2. Vehicle type: .....

3. Manufacturer's name and address: .....

4. If applicable, name and address of manufacturer's representative .....

5. Lighting devices on the vehicles submitted for approval (3) (4)

5.1. Driving lamp: yes/no (2)

5.2. Passing lamp: yes/no (2)

5.3. Front position lamp: yes/no (2)

5.4. White front retro-reflector, non-triangular: yes/no (2)

5.5. Amber side retro-reflectors, non-triangular: yes/no (2)

5.6. Amber pedal retro-reflectors: yes/no (2)

5.7. Rear red retro-reflector, non-triangular: yes/no (2)

5.8. Direction-indicator lamp: yes/no (2)

5.9. Stop lamp: yes/no (2)

5.10. Rear position lamp: yes/no (2)

5.11. Rear-registration-plate illuminating device: yes/no (2)

6. Maximum design speed: ..... km/h

7. Variants: .....

8. Vehicle submitted for approval on: .....

9. Technical Service responsible for conducting approval tests: .....

10. Date of report issued by that service: .....

11. Number of report issued by that service: .....

12. Approval granted/refused/extended/withdrawn ([2])

13. Reason(s) of extension (if applicable): .....

14. Position of approval mark on the vehicle: .....

15. Place: .....

16. Date: .....

17. Signature: .....

([1]) Distinguishing number of the country which has granted/extended/refused/withdrawn approval see approval provisions in the Regulation.

([2]) Strike out what does not apply.

([3]) Show for each device, on a separate form (list prescribed in paragraph 3.2.2 of this Regulation), the types of devices, duly identified, meeting the installation requirements of this Regulation.

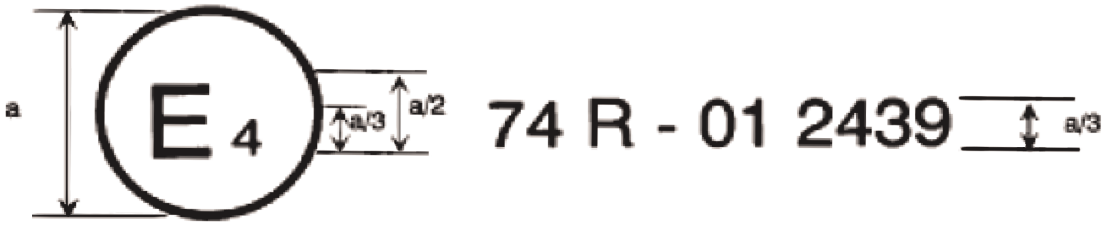
([4]) Attach diagrams of the vehicles, as indicated in paragraph 3.2.3 of this Regulation.

ANNEX 2

ARRANGEMENTS OF APPROVAL MARKS

MODEL A

(See paragraph 4.4 of this Regulation)

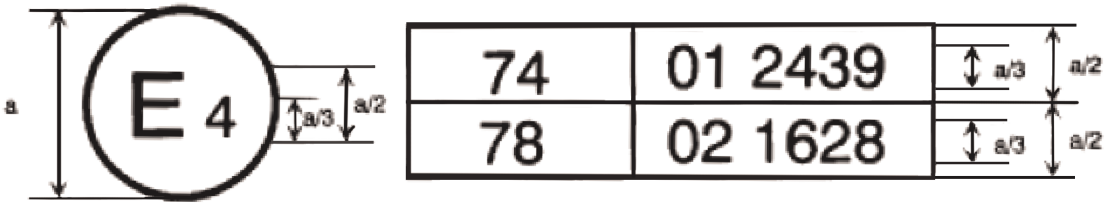


a = 8 mm min.

The above approval mark affixed to a moped shows that the vehicle type concerned has, with regard to the installation of lighting and light-signalling devices, been approved in the Netherlands (E4), pursuant to Regulation No 74 under approval number 012439. The first two digits of the approval number indicate that the approval was granted in accordance with the requirements of Regulation No 74, as amended by the 01 series of amendments.

MODEL B

(See paragraph 4.5 of this Regulation)



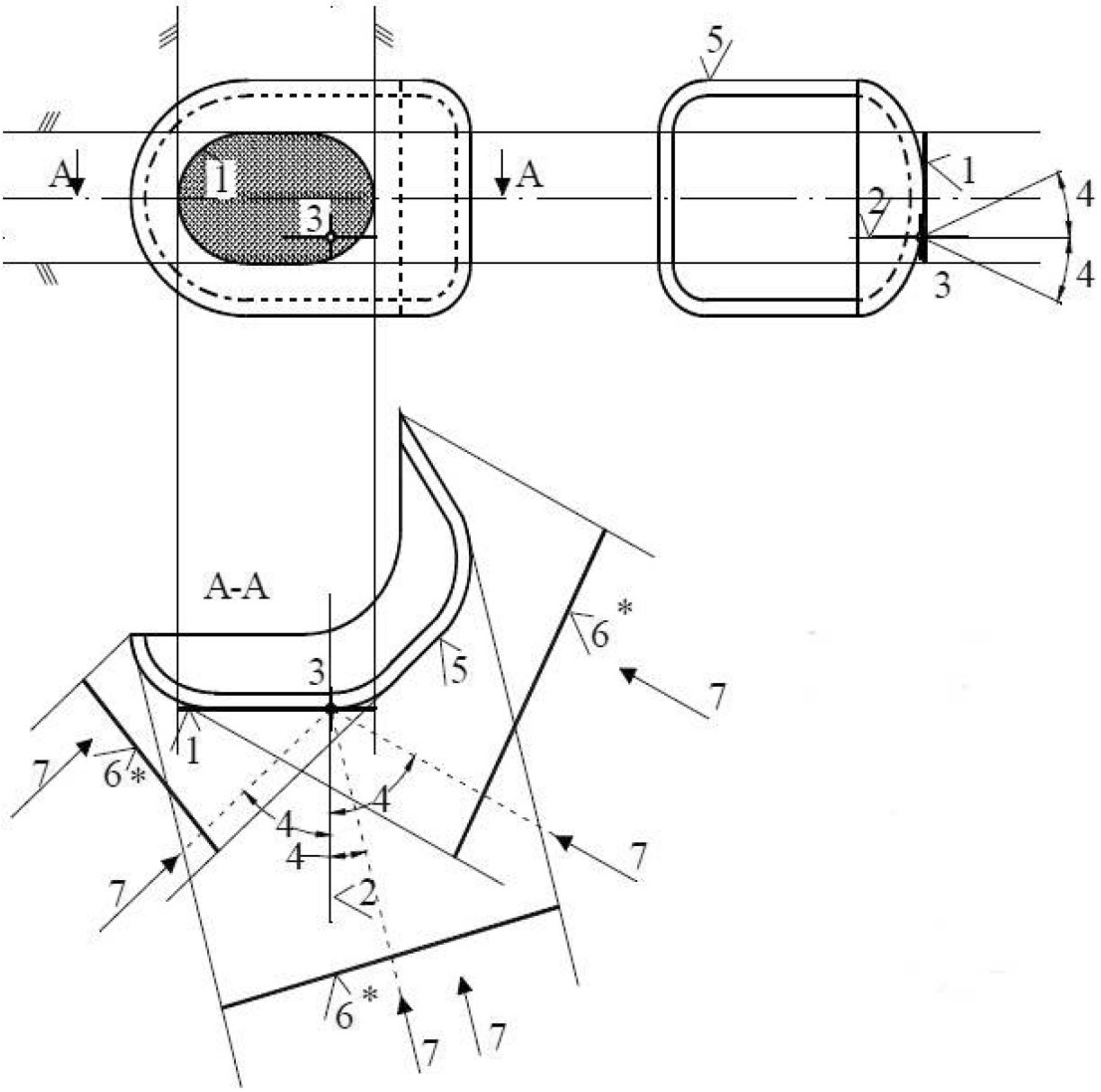
a = 8 mm min.

The above approval mark affixed to a moped shows that the vehicle type concerned has been approved in the Netherlands (E4) pursuant to Regulations No 74 and No 78. [1] The approval numbers indicate that, at the dates when the respective approvals were given, Regulation No 74 included the 01 series of amendments and Regulation No 78 already included the 02 series of amendments.

[1] The latter is given merely as an example.

ANNEX 3

LAMP SURFACES, AXIS AND CENTRE OF REFERENCE, AND ANGLES OF GEOMETRIC VISIBILITY



* This surface is to be considered as tangent to the light-emitting surface

LEGEND

1 Illuminating surface

2 Axis of reference

3 Centre of reference

4 Angle of geometric visibility

5 Light-emitting surface

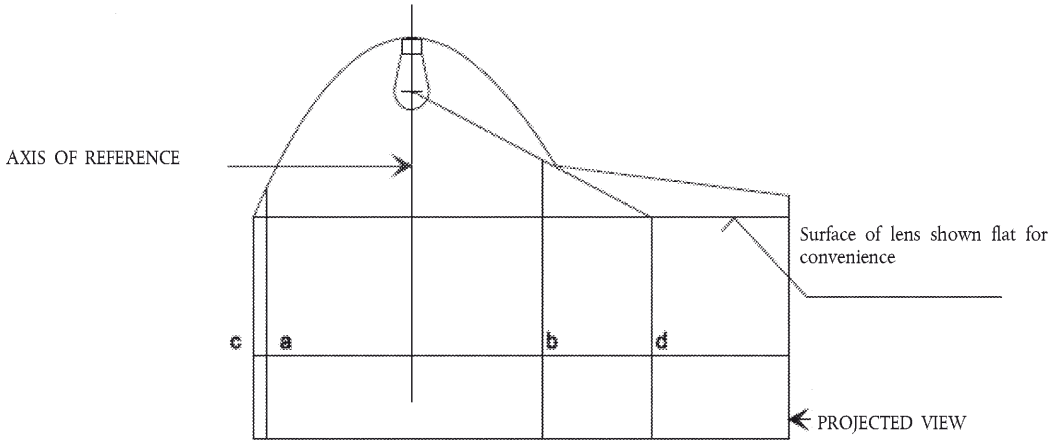
6 Apparent surface

7 Direction of observation

ILLUMINATING SURFACE IN COMPARISON WITH LIGHT-EMITTING SURFACE

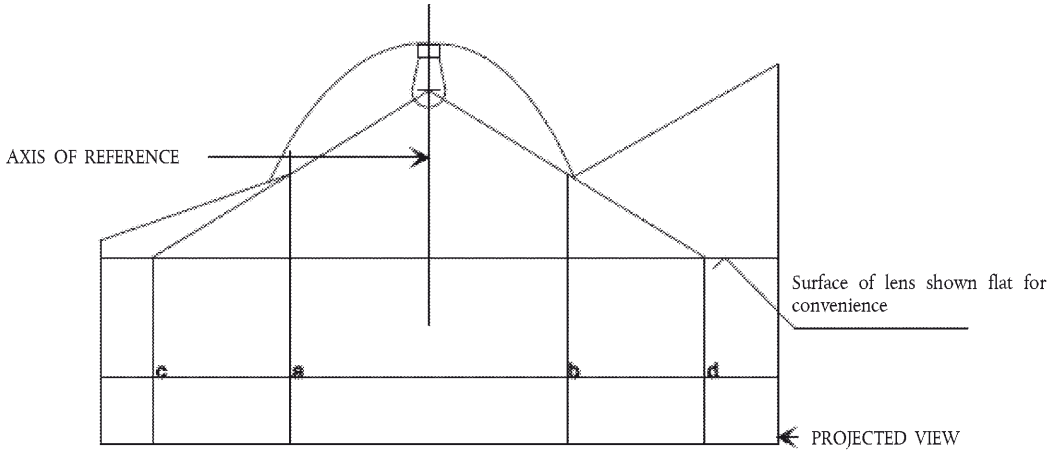
(See paragraphs 2.9 and 2.8 of this Regulation)

SKETCH A



	Illuminating surface	Light-emitting surface
Edges are	a and b	c and d

SKETCH B



	Illuminating surface	Light-emitting surface
Edges are	a and b	c and d

ANNEX 4

FORWARD VISIBILITY OF RED LIGHTS AND REARWARD VISIBILITY OF WHITE LIGHTS

(See paragraph 5.9 of this Regulation)

Figure 1

Forward visibility of a red light

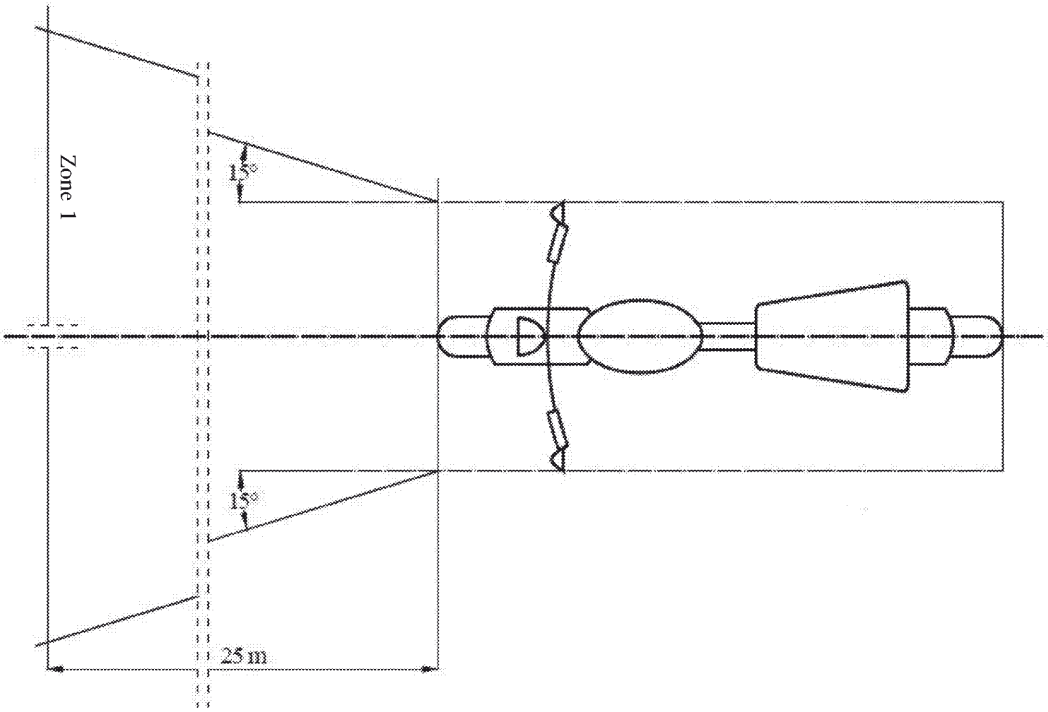
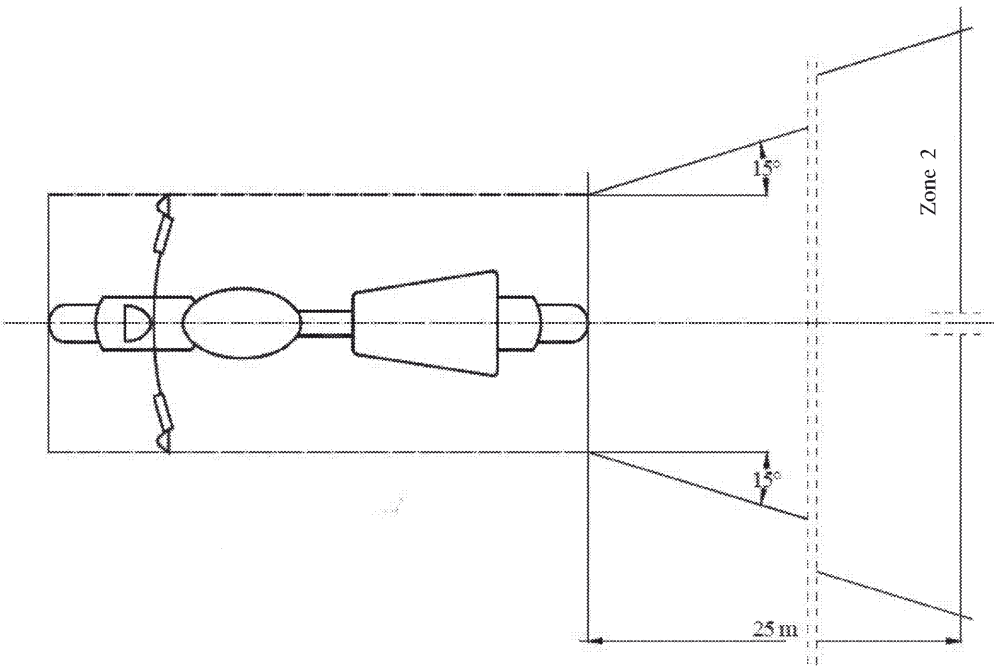


Figure 2

Rearward visibility of a white light



ANNEX 5

CONTROL OF CONFORMITY OF PRODUCTION

1. TESTS

1.1. Position of lamps

The position of the lamps as specified in paragraph 6 shall be checked in accordance with the general requirements set out in paragraph 5 of this Regulation.

The values measured for the distances shall be such that the individual specifications applicable to each lamp are fulfilled.

1.2. Visibility of lamps

1.2.1. The angles of geometric visibility shall be checked in accordance with paragraph 2.11 of this Regulation.

The values measured for the angles shall be such that the individual specifications applicable to each lamp are fulfilled except that the limits of the angles may have an allowance corresponding to the ± 3° variation permitted in paragraph 5.3 for the mounting of the light-signalling devices.

1.2.2. The visibility of red light towards the front and of white light towards the rear shall be checked in accordance with paragraph 5.9 of this Regulation.

1.3. Electrical connections and tell-tales

The electrical connections shall be checked by switching on every lamp supplied by the electrical system of the moped. The lamps and tell-tales shall function in accordance with the provisions set out in paragraph 5.10 of this Regulation and with the individual specifications applicable to each lamp.

1.4. The presence number, colour, arrangement and, where applicable, the category of lamps shall be checked by visual inspection of the lamps and their markings.

These shall be such that the requirements set out in paragraph 5.13 and the individual specifications applicable to each lamp are fulfilled.

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