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[1] Text with EEA relevance

EN

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

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

EN

[1] Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) No 1159/2013

of 12 July 2013

supplementing Regulation (EU) No 911/2010 of the European Parliament and of the Council on the European Earth monitoring programme (GMES) by establishing registration and licensing conditions for GMES users and defining criteria for restricting access to GMES dedicated data and GMES service information

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 911/2010 of the European Parliament and of the Council of 22 September 2010 on the European Earth monitoring programme (GMES) and its initial operations (2011 to 2013) ([1]), and in particular Article 9(2) thereof,

Whereas:

(1) GMES data and information policy should be consistent with other relevant Union policies, instruments and actions. In particular, it should be compliant with the requirements of Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) ([2]). This policy should respect the rights and principles recognized in the Charter of Fundamental Rights of the EU, in particular the right for private life, the protection of personal data, the right to intellectual property, the freedom of arts and science and the freedom to conduct business.

(2) GMES data and information policy should strongly contribute to the open data policy promoted by the Union, initiated by Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information ([3]) and reinforced by Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents ([4]) adopted in the context of the Commission Communication of 26 August 2010 entitled 'A Digital Agenda for Europe' ([5]).

(3) Registration and licensing conditions for GMES users should be established and criteria for restricting access to GMES dedicated data and GMES service information should be defined. The access conditions of other data and information used as inputs to GMES services should be defined by their providers.

(4) The Commission, in its Communication of 28 October 2009 entitled 'Global Monitoring for Environment and Security (GMES): Challenges and Next Steps for the Space Component' ([6]), indicated its intention to pursue the implementation of a free and open access policy for the Sentinels.

(5) Access to Sentinel data should be free, full and open, in line with the Joint Principles for a Sentinel Data Policy ([7]) adopted by the Programme Board for Earth Observation (PB-EO) of the European Space Agency.

(6) Third countries or international organisations contributing to the operations of GMES under Article 7 of Regulation (EU) No 911/2010 should have access to GMES dedicated data and GMES service information under the same conditions which apply to Member States.

(7) As indicated in recital 28 of Regulation (EU) No 911/2010, GMES should be considered as a European contribution to building the Global Earth Observation System of Systems (GEOSS). Therefore, the GMES open dissemination should be fully compatible with GEOSS data sharing principles.

([1]) OJ L 276, 20.10.2010, p. 1.
([2]) OJ L 108, 25.4.2007, p. 1.
([3]) OJ L 345, 31.12.2003, p. 90.
([4]) OJ L 330, 14.12.2011, p. 39.
([5]) COM(2010) 245 final/2 of 26 August 2010.
([6]) COM(2009) 589 final.
([7]) ESA/PB-EO(2009)98, rev. 1.

(8) To serve the objectives of GMES data and information policy stated in Article 9 of Regulation (EU) No 911/2010, users should be provided with the necessary authorisation to use GMES dedicated data and GMES service information to the fullest extent possible. Users should also be allowed to re-distribute GMES dedicated data and GMES service information, with or without modifications.

(9) GMES dedicated data and GMES service information should be free of charge for the users to capitalise on the social benefits arising from an increased use of GMES dedicated data and GMES service information.

(10) The GMES open dissemination policy may be reviewed and where necessary adapted, taking into consideration the needs of users, the needs of the Earth observation industry and technological developments.

(11) In the interest of a wide distribution of GMES data and information, it is appropriate not to provide for any express or implied warranty, including as regards quality and suitability for any purpose.

(12) The Commission should apply restrictions on the GMES open dissemination, where the free, full and open access to some GMES dedicated data and GMES service information would affect the rights and principles enshrined in the Charter of Fundamental Rights of the EU such as the right for private life privacy, the protection of personal data or intellectual property rights on data used as inputs in the production process of GMES services,.

(13) Where necessary, restrictions should protect the security interests of the Union, as well as the national security interests of the Member States. As far as national security interests are concerned, such restrictions should respect the obligations of Member States that have adhered to a common defence organisation under international treaties. The assessment of the sensitivity criteria for restricting the dissemination of GMES dedicated data and GMES service information should ensure the *ex-ante* clearance of security issues allowing for the uninterrupted delivery of GMES dedicated data and GMES service information.

(14) The sensitivity criteria should capture the different parameters which are likely to constitute a risk for the security of the Union or its Member States. The threats to critical infrastructure, as defined under Article 2(a) of Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection [1], should be taken into account as an important sensitivity criterion.

(15) Where necessary, Member States should be able to request that restrictions be applied to the provision of specific GMES dedicated data and GMES service information. In examining such requests, or under its own initiative, the Commission should ensure an efficient and effective response to protect the security interests of the Union or the Member States, while striving for the least possible interruption of data and information flows to users.

(16) GMES dissemination platforms may face technical limitations which could make it impossible for them to honour all the requests for data or information. In such exceptional circumstances, the technical accessibility of GMES dedicated data and GMES service information should be reserved to users from countries and international organisations contributing to the operations of GMES activities to ensure service continuity. Where appropriate, the benefit of the reservation of services should be made conditional upon some form of registration. Such reservation should not prevent those users who have obtained data or information benefiting from the reservation from exercising the rights granted under this Regulation, including the right to re-distribute such data or information.

(17) Four levels of registration of users should be provided as regards the access to GMES dedicated data and GMES service information. First, in the interest of a wide use of GMES dedicated data and GMES service information, discovery and view services within the meaning of Article 11(1)(a) and (b) of Directive 2007/2/EC should be provided without registration. Secondly, it should be possible to require a light form of registration as regards download services within the meaning of Article 11(1)(c) of Directive 2007/2/EC. The registration process should not deter users from accessing the data and information, but it should be possible to use it to collect user statistics. Thirdly, an intermediate level of registration should allow the implementation of the reservation of access to certain groups of users. Fourthly, a strict registration procedure should be used to address the need to restrict access for security reasons requiring the unequivocal identification of the user,

[1] OJ L 345, 23.12.2008, p. 75.

HAS ADOPTED THIS REGULATION:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes

(a) conditions for full and open access to information produced by the GMES services and of data collected through the GMES dedicated infrastructure;

(b) criteria for restricting access to that information and data;

(c) conditions for registration of GMES users.

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

(a) 'GMES services' means the service component referred to in Article 2(2)(a) of Regulation (EU) No 911/2010;

(b) 'GMES service information' means information and its metadata produced by GMES services;

(c) 'GMES dedicated data' means data collected through the GMES dedicated infrastructure and their metadata;

(d) 'metadata' means structured information on data or information allowing their discovery, inventory and use;

(e) 'GMES dissemination platform' means technical systems used to disseminate GMES dedicated data and GMES service information to users;

(f) 'discovery services', means discovery services as defined in point 1.(a) of Article 11 of Directive 2007/2/EC;

(g) 'view services' means view services as defined in point 1.(b) of Article 11 of Directive 2007/2/EC;

(h) 'download services' means 'download services' as defined in point 1.(c) of Article 11 of Directive 2007/2/EC.

CHAPTER 2

OPEN DISSEMINATION OF GMES DEDICATED DATA AND GMES SERVICE INFORMATION – LICENSING CONDITIONS

Article 3

The open dissemination principles

Users shall have free, full and open access to GMES dedicated data and GMES service information under the conditions laid down in Articles 4 to 10, subject to the restrictions laid down in Articles 11 to 16.

Article 4

Financial conditions

Free access shall be given to GMES dedicated data and GMES service information made available through GMES dissemination platforms under pre-defined technical conditions referred to in Article 5(1).

Article 5

Conditions regarding characteristics, format and dissemination media

1. For each type of GMES dedicated data and GMES service information, the providers of these data and information shall define at least one set of characteristics, format and dissemination media under the supervision of the Commission and shall communicate that definition on GMES dissemination platforms.

2. GMES dedicated data and GMES service information shall comply with the requirements of Directive 2007/2/EC to the extent that the data and information fall within the scope of those provisions.

Article 6

Conditions regarding GMES dissemination platforms

GMES dedicated data and GMES service information shall be disseminated to users through GMES dissemination platforms provided by, or under the supervision of, the Commission.

Article 7

Conditions regarding use

1. Access to GMES dedicated data and GMES service information shall be given for the purpose of the following use in so far as it is lawful:

(a) reproduction;

(b) distribution;

(c) communication to the public;

(d) adaptation, modification and combination with other data and information;

(e) any combination of points (a) to (d).

2. GMES dedicated data and GMES service information may be used worldwide without limitations in time.

Article 8

Conditions regarding information to be given by users

1. When distributing or communicating GMES dedicated data and GMES service information to the public, users shall inform the public of the source of that data and information.

2. Users shall make sure not to convey the impression to the public that the user's activities are officially endorsed by the Union.

3. Where that data or information has been adapted or modified, the user shall clearly state this.

Article 9

Absence of warranty

GMES dedicated data and GMES service information are provided to users without any express or implied warranty, including as regards quality and suitability for any purpose.

Article 10

Conditions in the event of restrictions to the open dissemination

Where the Commission restricts access to GMES dedicated data and GMES service information to certain users in accordance with Article 12, those users shall register under a procedure allowing their unequivocal identification before they are allowed access.

CHAPTER 3

RESTRICTIONS

Article 11

Conflicting rights

Where the open dissemination of certain GMES dedicated data or GMES service information conflicts with international agreements or the protection of intellectual property rights attached to data and information used as inputs in the production processes of GMES service information, or would affect in a disproportionate manner the rights and principles recognized in the Charter of Fundamental Rights of the EU, such as the right for private life or the protection of personal data, the Commission shall take the necessary measures pursuant to Article 13(1) of Regulation (EU) No 911/2010 to avoid any such conflict or to restrict the dissemination of the GMES dedicated data or GMES service information in question.

Article 12

Protection of security interests

1. Where the open dissemination of GMES dedicated data and GMES service information presents an unacceptable degree of risk to the security interests of the Union or its Member States due to the sensitivity of the data and information, the Commission shall restrict their dissemination pursuant to Article 13(1) of Regulation (EU) No 911/2010.

2. The Commission shall assess the sensitivity of the GMES dedicated data and GMES service information using the sensitivity criteria set out in Articles 13 to 16.

Article 13

Sensitivity criteria for GMES dedicated data

1. Where GMES dedicated data are produced by a space-based observation system meeting at least one of the characteristics listed in the Annex, the Commission shall assess the data sensitivity on the basis of the following criteria:

(a) the technical characteristics of the data, including spatial resolution and spectral bands;

(b) the time between acquisition and dissemination of the data;

(c) the existence of armed conflicts, threats to international or regional peace and security, or to critical infrastructures within the meaning of point (a) of Article 2 of Directive 2008/114/EC in the area the GMES dedicated data relate to;

(d) the existence of security vulnerabilities or the likely use of GMES dedicated data for tactical or operational activities harming the security interests of the Union, its Member States or international partners.

2. Where GMES dedicated data are produced by a space-based observation system which does not meet any of the characteristics listed in the Annex, the GMES dedicated data are presumed not to be sensitive.

Article 14

Sensitivity criteria for GMES service information

The Commission shall assess the sensitivity of GMES service information using the following criteria:

(a) the sensitivity of inputs used in the production of GMES service information;

(b) the time between acquisition of inputs and dissemination of the GMES service information;

(c) the existence of armed conflicts, threats to international or regional peace and security, or to critical infrastructures within the meaning of point (a) of Article 2 of Directive 2008/114/EC in the area the GMES service information relates to;

(d) the existence of security vulnerabilities or the likely use of GMES service information for tactical or operational activities harming the security interests of the Union, its Member States or international partners.

Article 15

Request for reassessment of sensitivity

Where the conditions under which the assessment made according to Article 13 or 14 have changed, the Commission may reassess the sensitivity of GMES dedicated data or GMES service information on its own initiative or at the request of a Member State with a view to restricting, suspending or allowing the acquisition of GMES dedicated data or the dissemination of GMES service information. Where a Member State has submitted a request, the Commission shall have regard to the limits of the restriction in time and scope requested.

Article 16

Balance of interests

1. In the assessment of the sensitivity of the GMES dedicated data and GMES service information in accordance with Article 12, security interests shall be balanced against the interests of users and the environmental, societal and economic benefits of the collection, production and open dissemination of the data and information in question.

2. The Commission shall consider, when making its security assessment, whether restrictions will be effective if similar data are in any event available from other sources.

CHAPTER 4

RESERVATION OF ACCESS AND REGISTRATION

Article 17

Reservation of access

1. Where the requests *for access exceed the capacity of the GMES dissemination* platforms, access to GMES resources may be reserved to any of the following users:

(a) the public services, industry, research organisations and citizens in the Union;

(b) the public services, industry, research organisations and citizens in third countries contributing to the operations of GMES;

(c) international organisations contributing to the operations of GMES.

2. The users for whom access is reserved in accordance with paragraph 1 shall register in order to gain access, providing their identity, contact information, area of activity and country of establishment.

Article 18

Registration

1. To access download services, users shall register online on the GMES dissemination platforms. Registration shall be free of charge. Users shall be required to register only once and shall be accepted automatically. The registration process shall require the following:

(a) the creation by the user of a user account and password;

(b) statistical information limited to no more than 10 items to be given by the user.

2. No registration shall be required for discovery services and view services.

CHAPTER 5

FINAL PROVISIONS

Article 19

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

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

Done at Brussels, 12 July 2013.

For the Commission
The President
José Manuel BARROSO

ANNEX

Characteristics of space-based observation system as referred to in Article 13

(a) The system is technically capable of generating data of a geometric resolution of 2,5 metres or less in at least one horizontal direction.

(b) The system is technically capable of generating data of a geometric resolution of 5 metres or less in at least one horizontal direction in the 8–12 microns spectral range (thermal infrared).

(c) The system is technically capable of generating data of a geometrical resolution of 3 metres or less in at least one horizontal direction in the spectral range from 1 millimetre to 1 metre (microwave).

(d) The system has more than 49 spectral channels and is technically capable of generating data of a geometric resolution of 10 metres or less in at least one horizontal direction in at least one spectral channel.

COMMISSION IMPLEMENTING REGULATION (EU) No 1160/2013

of 7 November 2013

entering a name in the register of protected designations of origin and protected geographical indications [Rigotte de Condrieu (PDO)]

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [1], and in particular Article 52(2) thereof,

Whereas:

(1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, France's application to register the name 'Rigotte de Condrieu' was published in the *Official Journal of the European Union* [2].

(2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Rigotte de Condrieu' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 7 November 2013.

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

[1] OJ L 343, 14.12.2012, p. 1.
[2] OJ C 130, 7.5.2013, p. 15.

ANNEX

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

Class 1.3. Cheeses

FRANCE

Rigotte de Condrieu (PDO)

COMMISSION IMPLEMENTING REGULATION (EU) No 1161/2013

of 7 November 2013

entering a name in the register of protected designations of origin and protected geographical indications [Pecorino di Picinisco (PDO)]

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [1], and in particular Article 52(2) thereof,

Whereas:

(1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Italy's application to register the name 'Pecorino di Picinisco' was published in the *Official Journal of the European Union* [2].

(2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Pecorino di Picinisco' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 7 November 2013.

For the Commission,
On behalf of the President,
Dacian CIOLOŞ
Member of the Commission

[1] OJ L 343, 14.12.2012, p. 1.
[2] OJ C 57, 27.2.2013, p. 28.

ANNEX

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

Class 1.3. Cheeses

ITALY

Pecorino di Picinisco (PDO)

COMMISSION IMPLEMENTING REGULATION (EU) No 1162/2013

of 7 November 2013

entering a name in the register of protected designations of origin and protected geographical indications [Puzzone di Moena/Spretz Tzaorì (PDO)]

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [1], and in particular Article 52(2) thereof,

Whereas:

(1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Italy's application to register the name 'Puzzone di Moena'/'Spretz Tzaorì' was published in the *Official Journal of the European Union* [2].

(2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Puzzone di Moena'/'Spretz Tzaorì' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 7 November 2013.

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

[1] OJ L 343, 14.12.2012, p. 1.
[2] OJ C 77, 15.3.2013, p. 21.

ANNEX

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

Class 1.3. Cheeses

ITALY

Puzzone di Moena/Spretz Tzaorì (PDO)

COMMISSION IMPLEMENTING REGULATION (EU) No 1163/2013

of 7 November 2013

entering a name in the register of protected designations of origin and protected geographical indications [Mohant (PDO)]

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [1], and in particular Article 52(2) thereof,

Whereas:

(1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Slovenia's application to register the name 'Mohant' was published in the *Official Journal of the European Union* [2].

(2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, that name should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 7 November 2013.

For the Commission,
On behalf of the President,
Dacian CIOLOŞ
Member of the Commission

[1] OJ L 343, 14.12.2012, p. 1.
[2] OJ C 160, 6.6.2013, p. 7.

ANNEX

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

Class 1.3. Cheeses

SLOVENIA

Mohant (PDO)

COMMISSION IMPLEMENTING REGULATION (EU) No 1164/2013

of 7 November 2013

entering a name in the register of protected designations of origin and protected geographical indications [Waterford Blaa/Blaa (PGI)]

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [1], and in particular Article 52(2) thereof,

Whereas:

(1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Ireland's application to register the name 'Waterford Blaa'/'Blaa' was published in the *Official Journal of the European Union* [2].

(2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Waterford Blaa'/'Blaa' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 7 November 2013.

For the Commission,
On behalf of the President,
Dacian CIOLOŞ
Member of the Commission

[1] OJ L 343, 14.12.2012, p. 1.
[2] OJ C 134, 14.5.2013, p. 49.

ANNEX

Agricultural products and foodstuffs listed in Annex I(I) to Regulation (EU) No 1151/2012:

Class 2.4. Bread, pastry, cakes, confectionery, biscuits and other baker's wares

IRELAND

Waterford Blaa/Blaa (PGI)

COMMISSION IMPLEMENTING REGULATION (EU) No 1165/2013

of 18 November 2013

approving the active substance orange oil, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ([1]), and in particular Article 13(2) and Article 78(2) thereof,

Whereas:

(1) In accordance with Article 80(1)(a) of Regulation (EC) No 1107/2009, Council Directive 91/414/EEC ([2]) is to apply, with respect to the procedure and the conditions for approval, to active substances for which a decision has been adopted in accordance with Article 6(3) of that Directive before 14 June 2011. For orange oil the conditions of Article 80(1)(a) of Regulation (EC) No 1107/2009 are fulfilled by Commission Decision 2009/438/EC ([3]).

(2) In accordance with Article 6(2) of Directive 91/414/EEC France received on 22 February 2008 an application from Oro Agri for the inclusion of the active substance orange oil in Annex I to Directive 91/414/EEC. Decision 2009/438/EC confirmed that the dossier was 'complete' in the sense that it could be considered as satisfying, in principle, the data and information requirements of Annexes II and III to Directive 91/414/EEC.

(3) For that active substance, the effects on human and animal health and the environment have been assessed, in accordance with the provisions of Article 6(2) and (4) of Directive 91/414/EEC, for the uses proposed by the applicant. The designated rapporteur Member State submitted a draft assessment report on 12 August 2009. In accordance with Article 11(6) of Commission Regulation (EU) No 188/2011 ([4]) additional information was requested from the applicant on 13 June 2012. The evaluation of the additional data by France was submitted in the format of an updated draft assessment report in November 2012.

(4) The draft assessment report was reviewed by the Member States and the European Food Safety Authority (hereinafter 'the Authority'). The Authority presented to the Commission its conclusion ([5]) on the pesticide risk assessment of the active substance orange oil on 1 March 2013. The draft assessment report and the conclusion of the Authority were reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 3 October 2013 in the format of the Commission review report for orange oil.

(5) It has appeared from the various examinations made that plant protection products containing orange oil may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) and Article 5(3) of Directive 91/414/EEC, in particular with regard to the uses which were examined and detailed in the Commission review report. It is therefore appropriate to approve orange oil.

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

(7) A reasonable period should be allowed to elapse before approval in order to permit Member States and the interested parties to prepare themselves to meet the new requirements resulting from the approval.

([1]) OJ L 309, 24.11.2009, p. 1.

([2]) Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1).

([3]) Commission Decision 2009/438/EC of 8 June 2009 recognising in principle the completeness of the dossier submitted for detailed examination in view of the possible inclusion of orange oil in Annex I to Council Directive 91/414/EEC (OJ L 145, 10.6.2009, p. 47).

([4]) Commission Regulation (EU) No 188/2011 of 25 February 2011 laying down detailed rules for the implementation of Council Directive 91/414/EEC as regards the procedure for the assessment of active substances which were not on the market 2 years after the date of notification of that Directive (OJ L 53, 26.2.2011, p. 51).

([5]) *EFSA Journal* 2013; 11(2):3090. Available online: www.efsa.europa.eu

(8) Without prejudice to the obligations provided for in Regulation (EC) No 1107/2009 as a consequence of approval, taking into account the specific situation created by the transition from Directive 91/414/EEC to Regulation (EC) No 1107/2009, the following should, however, apply. Member States should be allowed a period of six months after approval to review authorisations of plant protection products containing orange oil. Member States should, as appropriate, vary, replace or withdraw authorisations. By way of derogation from that deadline, a longer period should be provided for the submission and assessment of the complete Annex III dossier, as set out in Directive 91/414/EEC, of each plant protection product for each intended use in accordance with the uniform principles.

(9) The experience gained from inclusions in Annex I to Directive 91/414/EEC of active substances assessed in the framework of Commission Regulation (EEC) No 3600/92 [1] has shown that difficulties can arise in interpreting the duties of holders of existing authorisations in relation to access to data. In order to avoid further difficulties it therefore appears necessary to clarify the duties of the Member States, especially the duty to verify that the holder of an authorisation demonstrates access to a dossier satisfying the requirements of Annex II to that Directive. However, this clarification does not impose any new obligations on Member States or holders of authorisations compared to the Directives which have been adopted until now amending Annex I to that Directive or the Regulations approving active substances.

(10) In accordance with Article 13(4) of Regulation (EC) No 1107/2009, the Annex to Commission Implementing Regulation (EU) No 540/2011 [2] should be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

Approval of active substance

The active substance orange oil, as specified in Annex I, is approved subject to the conditions laid down in that Annex.

Article 2

Re-evaluation of plant protection products

1. Member States shall in accordance with Regulation (EC) No 1107/2009, where necessary, amend or withdraw existing authorisations for plant protection products containing orange oil as an active substance by 31 October 2014.

By that date they shall in particular verify that the conditions in Annex I to this Regulation are met, with the exception of those identified in the column on specific provisions of that Annex, and that the holder of the authorisation has, or has access to, a dossier satisfying the requirements of Annex II to Directive 91/414/EEC in accordance with the conditions of Article 13(1) to (4) of that Directive and Article 62 of Regulation (EC) No 1107/2009.

2. By way of derogation from paragraph 1, for each authorised plant protection product containing orange oil as either the only active substance or as one of several active substances, all of which were listed in the Annex to Implementing Regulation (EU) No 540/2011 by 30 April 2014 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, on the basis of a dossier satisfying the requirements of Annex III to Directive 91/414/EEC and taking into account the column on specific provisions of Annex I to this Regulation. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 29(1) of Regulation (EC) No 1107/2009.

Following that determination Member States shall:

(a) in the case of a product containing orange oil as the only active substance, where necessary, amend or withdraw the authorisation by 31 October 2015 at the latest; or

(b) in the case of a product containing orange oil as one of several active substances, where necessary, amend or withdraw the authorisation by 31 October 2015 or by the date fixed for such an amendment or withdrawal in the respective act or acts which added the relevant substance or substances to Annex I to Directive 91/414/EEC or approved that substance or those substances, whichever is the latest.

Article 3

Amendments to Implementing Regulation (EU) No 540/2011

The Annex to Implementing Regulation (EU) No 540/2011 is amended in accordance with Annex II to this Regulation.

[1] Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market (OJ L 366, 15.12.1992, p. 10).

[2] Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ L 153, 11.6.2011, p. 1).

Article 4

Entry into force and date of application

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

It shall apply from 1 May 2014.

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

Done at Brussels, 18 November 2013.

For the Commission
The President
José Manuel BARROSO

ANNEX I

Common Name, Identification Numbers	IUPAC Name	Purity [1]	Date of approval	Expiration of approval	Specific provisions
Orange oil CAS No 8028-48-6 (Orange extract) 5989-27-5 (D-limonene) CIPAC No 902	(*R*)-4-isopropenyl-1-methyl-cyclohexene or *p*-mentha-1,8-diene	≥ 945 g/kg (of D-limonene) The active substance shall comply with the specifications of Ph. Eur. (Pharmacopoeia Europea) 5.0 (*Aurantii dulcis aetheroleum*) and ISO 3140:2011(E)	1 May 2014	30 April 2024	For the implementation of the uniform principles as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on orange oil, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 3 October 2013 shall be taken into account. In this overall assessment Member States shall pay particular attention to: (a) the protection of operators and workers; (b) the risk to birds and mammals. Conditions of use shall include risk mitigation measures, where appropriate. The applicant shall submit confirmatory information as regards (1) the metabolite fate of orange oil and the route and rate of degradation in soil; (2) the validation of endpoints used in the ecotoxicological risk assessment. The applicant shall submit that information to the Commission, Member States and the Authority by 30 April 2016.

[1] Further details on identity and specification of active substance are provided in the review report.

ANNEX II

In Part B of the Annex to Implementing Regulation (EU) No 540/2011, the following entry is added:

Number	Common Name, Identification Numbers	IUPAC Name	Purity (*)	Date of approval	Expiration of approval	Specific provisions
'56	Orange oil CAS No 8028-48-6 (Orange extract) 5989-27-5 (D-limonene) CIPAC No 902	(*R*)-4-isopropenyl-1-methylcyclohexene or *p*-mentha-1,8-diene	≥ 945 g/kg (of D-limonene) The active substance shall comply with the specifications of Ph. Eur. (Pharmacopoeia Europea) 5.0 (*Aurantii dulcis aetheroleum*) and ISO 3140:2011(E)	1 May 2014	30 April 2024	For the implementation of the uniform principles as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on orange oil, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 3 October 2013 shall be taken into account. In this overall assessment Member States shall pay particular attention to: (a) the protection of operators and workers; (b) the risk to birds and mammals. Conditions of use shall include risk mitigation measures, where appropriate. The applicant shall submit confirmatory information as regards the metabolite fate of orange oil and the route and rate of degradation in soil and on the validation of endpoints used in the ecotoxicological risk assessment. The applicant shall submit that information to the Commission, Member States and the Authority by 30 April 2016.'

(*) Further details on identity and specification of active substance are provided in the review report.

COMMISSION IMPLEMENTING REGULATION (EU) No 1166/2013

of 18 November 2013

amending Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substance dichlorprop-P

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC [1], and in particular the second alternative of Article 21(3) and Article 78(2) thereof,

Whereas:

(1) Commission Directive 2006/74/EC [2] included dichlorprop-P as active substance in Annex I to Council Directive 91/414/EEC [3], under the condition that the Member States concerned ensure that the notifier at whose request dichlorprop-P was included in that Annex provide further confirmatory information on animal metabolism and the risk assessment on acute and short-term exposure for birds and on acute exposure for herbivorous mammals.

(2) Active substances included in Annex I to Directive 91/414/EEC are deemed to have been approved under Regulation (EC) No 1107/2009 and are listed in Part A of the Annex to Commission Implementing Regulation (EU) No 540/2011 [4].

(3) The notifier submitted additional information with a view to confirm the risk assessment for birds and mammals for the use in cereals, grassland and grass seed crops to the rapporteur Member State Denmark within the time period provided for its submission.

(4) Denmark assessed the additional information submitted by the notifier. It submitted its assessment, in the form of an addendum to the draft assessment report, to the other Member States, the Commission and the European Food Safety Authority, hereinafter 'the Authority', on 22 July 2011.

(5) The Commission consulted the Authority which presented its opinion on the risk assessment of dichlorprop-P on 13 November 2012 [5].

(6) In the light of the additional information provided by the notifier, the Commission considered that the further confirmatory information required had not fully been provided and that a high risk for birds and mammals could not be excluded except by imposing further restrictions.

(7) The Commission invited the notifier to submit its comments on the review report for dichlorprop-P.

(8) It is confirmed that the active substance dichlorprop-P is to be deemed to have been approved under Regulation (EC) No 1107/2009. In order to minimise the exposure of birds and mammals, it is, however, appropriate to further restrict the uses of this active substance and to provide for specific risk mitigation measures for the protection of those species.

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

(10) Member States should be provided with time to withdraw authorisations for plant protection products containing dichlorprop-P.

(11) For plant protection products containing dichlorprop-P, where Member States grant any grace period in accordance with Article 46 of Regulation (EC) No 1107/2009, this period should, at the latest, expire one year after the withdrawal or the amendment of the respective authorisations.

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

[1] OJ L 309, 24.11.2009, p. 1.

[2] Commission Directive 2006/74/EC of 21 August 2006 amending Council Directive 91/414/EEC to include dichlorprop-P, metconazole, pyrimethanil and triclopyr as active substances (OJ L 235, 30.8.2006, p. 17).

[3] Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1).

[4] Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ L 153, 11.6.2011, p. 1).

[5] *EFSA Journal* 2012;10(11):2950. Available online: www.efsa.europa.eu/efsajournal.htm

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Implementing Regulation (EU) No 540/2011

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

Article 2

Transitional measures

Member States shall in accordance with Regulation (EC) No 1107/2009, where necessary amend or withdraw existing authorisations for plant protection products containing dichlorprop-P as active substance by 9 June 2014.

Article 3

Period of grace

Any grace period granted by Member States in accordance with Article 46 of Regulation (EC) No 1107/2009 shall be as short as possible and shall expire by 9 June 2015 at the latest.

Article 4

Entry into force

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

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

Done at Brussels, 18 November 2013.

For the Commission
The President
José Manuel BARROSO

ANNEX

The column 'Specific provisions' of row 133, dichlorprop-P, of Part A of the Annex to Implementing Regulation (EU) No 540/2011 is replaced by the following:

'PART A

Only uses as herbicide may be authorised.

As regards cereals, only application in spring may be authorised, at rates not exceeding 800 g active substance per hectare per application.

Use on grassland shall not be authorised.

PART B

For the implementation of the uniform principles as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on dichlorprop-P, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 23 May 2006 shall be taken into account.

In this overall assessment Member States shall pay particular attention to the protection of birds, mammals, aquatic organisms and non-target plants.

Conditions of authorisation shall include risk mitigation measures, where appropriate.'

COMMISSION IMPLEMENTING REGULATION (EU) No 1167/2013

of 18 November 2013

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

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

(1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.

(2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 18 November 2013.

For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 157, 15.6.2011, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	AL	46,1
	MA	40,6
	MK	55,3
	TR	116,2
	ZZ	64,6
0707 00 05	AL	45,1
	MK	57,9
	TR	126,2
	ZZ	76,4
0709 93 10	MA	86,2
	TR	152,0
	ZZ	119,1
0805 20 10	MA	80,7
	ZZ	80,7
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	IL	78,7
	TR	69,3
	UY	56,3
	ZZ	68,1
0805 50 10	TR	71,5
	ZZ	71,5
0806 10 10	BR	245,1
	LB	251,9
	PE	258,8
	TR	163,3
	US	347,2
	ZZ	253,3
0808 10 80	BR	93,9
	CL	102,3
	MK	38,5
	NZ	93,9
	US	181,0
	ZA	200,2
	ZZ	118,3
0808 30 90	CN	57,5
	TR	128,9
	ZZ	93,2

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

DECISIONS

COMMISSION DECISION

of 25 July 2012

on measure SA.23324 — C 25/07 (ex NN 26/07) — Finland Finavia, Airpro and Ryanair at Tampere-Pirkkala airport

(notified under document C(2012) 5036)

(Only the Finnish and Swedish versions are authentic)

(Text with EEA relevance)

(2013/664/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],

Whereas:

1. PROCEDURE

(1) In February 2005 the Commission received a complaint from Blue1 Oy ('Blue1'), a Finnish airline that is part of the SAS Group. Blue1 alleged, among other things, that Ryanair Ltd ('Ryanair') was receiving aid due to lower-than-average airport charges at Tampere-Pirkkala airport ('TMP airport' or 'the airport').

(2) The Commission requested Finland to provide further information in relation to the complaint by letters of 2 March 2005 and 23 May 2006. Finland replied by letters of 27 April 2005 and 27 July 2006.

(3) By letter dated 10 July 2007 the Commission informed Finland of its decision to initiate the procedure provided for in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) [2] ('the opening decision') in respect of the agreement between Airpro Oy and Ryanair and the implementation of the low-cost strategy by Finavia and Airpro Oy at TMP airport. Finland provided its comments on the opening decision on 28 November 2007.

(4) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* [3]. The Commission invited interested parties to submit their comments on the measure in question within one month of the publication date.

(5) The Commission received comments on the subject from four interested parties (Ryanair, SAS Group, Air France and the Association of European Airlines). It transmitted these comments to Finland by letter dated 13 February 2008. Finland transmitted its comments on 15 April 2008.

(6) By letter dated 25 June 2010 the Commission requested further information. Finland replied by letter dated 1 July 2010. By letter dated 5 April 2011 the Commission requested further information on the financing of the airport. Finland replied by letter dated 5 May 2011. However, Finland's reply was incomplete. Therefore, the Commission sent a reminder pursuant to Article 10(3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [4]. Finland replied by letter dated 15 June 2011.

2. DESCRIPTION OF THE MEASURES AND GROUNDS FOR INITIATING THE PROCEDURE

2.1. Background to the investigation

TMP airport

(7) TMP airport is located in Pirkkala, 13 kilometres south-west of the City of Tampere in southern Finland. It is the third largest airport in Finland (measured in number of passengers, see table in paragraph (10)). Besides handling civil aviation, the airport also serves as a base for the Finnish Air Force.

[1] OJ C 244, 18.10.2007, p. 13.

[2] 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 two sets of provisions are identical in substance. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should, where appropriate, be understood 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' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this Decision.

[3] See footnote 2.

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

(8) TMP airport has two scheduled passenger terminals:

— Terminal 1 (also 'T1') was built in 1998 and is currently used by Finnair, Flybe, SAS, Blue1 and Air Baltic. In 2003 the capacity of T1 was 550 000 passengers a year.

— Terminal 2 (also 'T2') was initially used as a cargo hangar by DHL and (after it became vacant in 2002) converted into a low-cost terminal. T2 currently serves Ryanair only. The capacity of T2 is 425 000 passengers a year.

(9) TMP airport, with the exception of T2, is owned and operated by Finavia Oyj ([5]) ('Finavia'). T2 is rented out by Finavia to its subsidiary Airpro Oy ([6]) ('Airpro'). Airpro operates the terminal and provides ground handling services there. Furthermore, Airpro entered into an agreement with Ryanair […] (*) starting from 3 April 2003.

(10) Passenger traffic at the airport increased from 304 025 in 2003 to 617 397 in 2010. This is due to the development of passenger numbers at T2. In 2010, Ryanair's passenger share at TMP airport amounted to approximately […]. The following table summarises the development of passenger numbers at TMP airport from 2003 to 2010:

Year	Number of passengers, T1	Number of passengers, T2	Total number of passengers at TMP airport
2003	[…]	[…]	304 025
2004	[…]	[…]	495 892
2005	[…]	[…]	597 102
2006	[…]	[…]	632 010
2007	[…]	[…]	687 711
2008	[…]	[…]	709 356
2009	[…]	[…]	628 105
2010	[…]	[…]	617 397

([5]) Until the end of 2009 Finavia Oyj (formerly known as the Finnish Civil Aviation Administration) was a state enterprise. On 1 January 2010 Finavia was transformed into a public limited company by Act 877/2009 on the transformation of the Civil Aviation Administration into a public limited company. It manages 25 airports in Finland. Only three Finnish airports are not managed by Finavia. Besides operating Finnish airports, Finavia provides air navigation services at its own airports and it is also responsible for the supervision of Finnish airspace. Finavia's real estate operations are managed by its subsidiary Lentoasemakiinteistöt Oyj. That company offers facility services to companies operating at the airport and operates as a developer of construction projects and owner of premises located at the airports.

([6]) Airpro Oy is a wholly-owned subsidiary of Finavia (100 %). It develops and provides airport and travel services at Finavia's airports. Airpro has a subsidiary providing ground handling services called RTG Ground Handling Ltd.

(*) Business secret

2.2. **The measures under investigation and the initial assessment by the Commission**

(11) The opening decision raised the following questions:

— firstly, whether Finavia acted as a market economy investor when it decided to convert a cargo hangar into T2, a low-cost terminal, in which case this investment decision does not involve State aid in favour of Airpro; and if not, whether such aid could be considered compatible with the internal market; and

— secondly, whether a market economy operator would have entered into an agreement similar to Airpro's agreement with Ryanair; and if not, whether the aid contained in the agreement could be deemed compatible with the internal market.

(12) As regards the first question, the Commission expressed doubts as to whether Finavia was guided by prospects of long-term profitability when it decided to transform the cargo hangar into a low-cost terminal. Furthermore, the Commission had doubts as to whether the investments made by Finavia to transform this former cargo hangar into a low-cost terminal could also be considered a selective advantage in favour of Airpro that it would not have obtained under normal market conditions.

(13) As regards the second question, the Commission had to examine whether, in this particular case, the behaviour of Airpro had been guided by prospects of long-term profitability and whether the advantage allegedly conferred on Ryanair was an advantage it would not have obtained under normal market conditions. The Commission expressed, in particular, doubts as to whether the 'all-inclusive charge' paid by Ryanair was based on costs for the provision of services to the airline by Airpro. Furthermore, Finland did not provide the Commission either with the terms of the agreement with Ryanair or with the business plan evaluating the profitability of the agreement for Airpro. Hence in its opening decision the Commission expressed doubts as to whether the behaviour of Airpro had been guided by prospects of long-term profitability. Accordingly, it could not be excluded that the agreement provided Ryanair with an advantage it would not have benefited from under normal market conditions.

(14) The Commission expressed doubts as to whether the conditions for compatibility as set out in the Community guidelines on financing of airports and start-up aid to airlines departing from regional airports ([7]) ('the 2005 Aviation Guidelines') had been satisfied in the present case, and whether the State aid measures could be declared compatible with the internal market pursuant to Article 107(3)(c) of the TFEU.

3. COMMENTS FROM FINLAND

3.1. The low-cost strategy of Finavia and Airpro at TMP airport

(15) Finland began its observations by providing background information on Finavia's and Airpro's low-cost strategy at TMP airport. Finland explained that T2 was built in 1979 for temporary use as an airport building. In 1995 it was converted into a cargo hangar suitable for freight operations and was used by DHL. In 2002 DHL terminated the lease agreement and the terminal became vacant.

(16) Finland indicated that, as Finavia was not able to attract any other cargo operator to Tampere or to rent out the hangar, it decided to convert the hangar into a low-cost terminal suitable for basic ground handling services. The initial construction costs of T2 had by that time already been depreciated and the refurbishment of the terminal required only minor renovations ([8]). The following table details the investment costs of the refurbishment of T2, amounting to EUR 760 612.

Refurbishment works	Investment costs in EUR
Planning	[…]
Copies, permits, travel	[…]
Construction engineering	[…]
Heating/pipes/air conditioning	[…]
Electricity	[…]
Low-voltage installations	[…]
Conveyors	[…]
Security screening equipment	[…]
Total amount	**760 612**

(17) In view of the above calculation Finland indicated that even if Finavia had been able to find another tenant to use T2 as a cargo hangar, it would have been necessary to carry out certain construction engineering works amounting to approximately EUR 100 000. Furthermore, the conveyors could always be used at Finavia's other airports.

(18) Finland explained further that Finavia's intention was to make the new low-cost terminal available to all airlines willing to accept the lower quality of service. The following table provides a comparison of the level of service and of facilities at T1 and T2 at TMP airport:

	Terminal 1 (T1)	Terminal 2 (T2)
Operational model	Traditional model: check-in operations, security checks, transportation, sorting, loading and unloading of luggage are carried out by different professional groups and companies.	Low-cost model: the same persons perform all the tasks of the different professional groups at T1, such as check-in, security checks, loading and unloading of luggage. The functions are located in a restricted area of the terminal, which requires only minimum staff and speeds up passenger flows.
Ground handling capacity	Three to five (depending on the type of aeroplane) simultaneous take-offs or landings.	One outbound aeroplane an hour
Facilities	Facilities providing good service including a sophisticated luggage transportation system, pleasant waiting rooms with associated services, facilities to accommodate the needs of several ground handling providers, etc.	Basic facilities that correspond mainly to warehouse standards (e. g. concrete floors), with only few windows.

([7]) OJ C 312, 9.12.2005, p. 1.

([8]) The renovation works included the creation of a check-in lobby, office facilities, toilet facilities and facilities for outbound and inbound passengers, facilities for personal security checks and for luggage, a cafeteria/restaurant and the refurbishment of electricity, piping, heating and air-conditioning systems as well as modifications of the infrastructure outside the terminal for pedestrians and motorists.

(19) Finland indicated that as T2 could provide ground handling services for only one outbound aeroplane an hour, it was suitable only for point-to-point carriers using large aircraft. At the same time, in order to optimise the use of its staff, the operator of the terminal required airlines to enter into long-term agreements and also agreements on timetables; for instance flights could not always be operated at the times requested by the airlines, as was the case in T1. According to Finland, the optimisation of staff expenses and the service levels provided allowed cost savings of approximately […] compared to T1.

(20) Finland indicated that before starting the refurbishment of T2 and adopting a low-cost strategy there, the issue was discussed several times at the meetings of Finavia's board of directors. A business plan was also prepared for this purpose. The following table summarises the business plan (worst-case scenario) for the refurbishment of T2 and the implementation of a low-cost strategy: […]

(21) Finland indicated that the *ex ante* business plan was based on prudent assumptions, leading to an underestimation of the revenues and an overestimation of the costs expected in the last years of the period under consideration. Under the other scenarios the low-cost strategy was expected to be even more profitable. The all-inclusive charges paid by the airlines using T2 varied in the different scenarios between […] per aircraft turnaround. As the decision on the low-cost strategy was made by Finavia's board of directors on the basis of calculations and studies, it was not imputable to the State. The measures were not the result of requirements or orders by authorities, nor were the authorities involved in the adoption of the measures.

(22) Finland indicated that Finavia and Airpro operated in compliance with business principles and financed their operations from the service charges and revenues collected from customers and from other business operations. In particular, neither Finavia nor Airpro received funding from the State budget: they operated profitably and annually distributed part of their profit to the State in accordance with the profit requirements imposed on them.

(23) Finland indicated that the Ministry of Transport and Communications decided on Finavia's performance targets. These performance targets, however, concern the group as a whole and individual business decisions were taken at Finavia's own discretion. In the past few years (2003 to 2005) Finavia's profit requirement had been approximately 4 % of the invested capital. The following table summarises Finavia's performance:

Key financial data of Finavia in million EUR (actual figures)

Year	2003	2004	2005
Revenues	219	234	243
Profit	17	15	22
Dividends paid to the State	6	5	10

(24) Finland indicated that Finavia did not prepare airport-specific financial statements, as all its airports were part of the same legal entity. However, since 2000 Finavia had nevertheless collected airport-specific information based on its own internal calculations (actual data). This information was based on airports' volume trends and associated revenue and on the costs of the resources used at airports, namely personnel, contracted services and the depreciation of fixed assets. The overall performance of Finavia at TMP airport (excluding services provided by Airpro) is summarised in the following table: […]

(25) Besides commercial operations, the financial results of Finavia at TMP airport also included operations falling within the public policy remit, such as air traffic control and use of the runway at TMP airport for military purposes. Finland explained that the runway at TMP airport had to be available for military purposes 24 hours a day, 365 days a year. The runway was indeed used for military purposes (at least 30 % of the actual aircraft movements a year). The air traffic control cost amounted to approximately […]. The above figures took into account the rent paid by Airpro to Finavia for the use of T2 and the landing charges as well as other airport charges for the services provided to airlines using T2.

(26) As regards Airpro, Finland explained further that it was a limited company and legally distinct from Finavia. The following table summarises the actual financial results of Airpro's operations at TMP airport: […]

(27) Airpro's financial results at TMP airport included costs, such as the rent for T2 at TMP airport, Airpro's own costs for personnel and equipment, and also the cost of services provided by Finavia. The financial statements included revenues, such as the all-inclusive charge paid by Ryanair, parking fees and other commercial revenues.

(28) Consequently, Finland argued that Finavia and Airpro acted as market economy investors when they decided to implement the low-cost strategy and convert the cargo hangar into a low-cost passenger terminal.

(29) Finland argued that even if the financing of the refurbishment of T2 were considered State aid, it would be compatible on the basis of Article 107(3)(c) of the TFEU, as it complied with the compatibility criteria set out in the 2005 Aviation Guidelines.

(30) Finland argued further that the measures could be considered to meet objectives of general interest, which in its view related not only to the general-interest nature of airport operations, but also to the diversification of traffic connections in the region in a manner that met the needs of the residents and society. According to Finland, therefore, the alterations to T2 were proportional to their purpose and to the result achieved.

(31) In addition, Finland stated that the operations of airports had special characteristics that needed to be taken into account. For example TMP airport helped to improve mobility at more congested airports in accordance with the Union's objective. Operating TMP airport contributed to regionally balanced development in a sparsely populated country such as Finland. In this regard, it was particularly important to safeguard traffic connections from the more remote regions in Finland to Europe, since other forms of transport were not a viable alternative. The costs incurred for the construction of the terminal were proportional to the purpose as well as necessary. On the basis of the business plans and the actual figures, the infrastructure in question had sufficient medium-term prospects for use. T2 was open in a fair and non-discriminatory manner to all airlines. So far, however, no airline but Ryanair had shown interest in it.

(32) According to Finland the infrastructure in question did not affect trade to an extent contrary to the interests of the Union. TMP airport was small and therefore the impact of the measures at Union level was not significant. In addition, the benefits of the measures for the region outweighed any negative impact at Union level.

3.2. **The lease agreement between Finavia and Airpro for T2 at TMP airport**

(33) Finland indicated that on 23 February 2003 Finavia concluded a lease agreement with Airpro concerning T2 for the period between 1 April 2003 and 31 March 2013 (referred to also as 'the lease agreement'). Even though Finavia originally paid for the costs of the refurbishment, Airpro would reimburse Finavia for these costs in its rent. Finland also provided a copy of the lease agreement.

(34) Pursuant to the lease agreement, Airpro pays a monthly rent amounting to […] plus […] VAT for the use of the facilities. Accordingly, the rent including VAT totals […] a month. The agreement provides that in addition to the basic rent the rent also includes the costs incurred for turning the cargo hangar into a low-cost passenger terminal, plus the related interest.

(35) Finland indicated that at the time of concluding the lease agreement, the alterations to T2 were still ongoing and the refurbishment costs of the terminal had to be estimated in order to determine the amount of rent. The costs were estimated at EUR 700 000 and their monthly impact on the rent was expected to be approximately […]. In addition to the estimated refurbishment costs Finavia estimated that the costs of additional works and arrangements made after the commencement of the operations of T2 would be approximately […] and their monthly impact on the rent would be […]. In accordance with the calculations above, Airpro compensated Finavia for the costs incurred by the alterations to T2 with a monthly rent amounting to […].

(36) Finland argued that the monthly rent paid by Airpro was not below the market price. The rent paid by Airpro was actually higher than the rent paid by the previous tenant, DHL. DHL paid a monthly rent amounting to […] excluding VAT for the use of the facilities, which corresponded to approximately […] ([9]). The share of VAT amounted to […], so the total monthly rent including VAT was […], which corresponded to approximately […].

(37) Finland noted further that without the implementation of the low-cost strategy and conversion of the cargo hangar into a low-cost terminal, T2 might have remained vacant, which would have encumbered the finances of TMP airport.

([9]) The exchange rate of the euro as decided on 31 December 1998: FIM 5.94573.

3.3. **The implementation of the low-cost strategy by Airpro and the agreement of 3 April 2003 between Airpro and Ryanair**

(38) As regards the implementation of the low-cost strategy by Airpro, Finland explained that discussions with airlines had started earlier. There had been ongoing discussions for example with Ryanair for a few years before the decision was taken to implement a low-cost strategy at TMP airport.

(39) According to Finland the letter sent by Airpro to a number of airlines inviting them to consider starting up operations at the low-cost terminal was only one part of the marketing strategy for T2. T2 at TMP airport was actively marketed at the Routes trade fair ([10]) for several years starting in 2002. It was assumed that other airlines, in addition to Ryanair, would also be interested in establishing their operations at this terminal.

(40) Finland provided a copy of the marketing letter. The letter indicates the charges applicable at T2, such as the charge for ground handling and terminal use, the amount of which depends on the aircraft type used. In addition to the charges applicable at T2, the airlines are to pay the normal landing, terminal navigation and security charges.

(41) Finland provided a copy of the agreement with a period of validity of […] concluded between Airpro and Ryanair on 3 April 2003 ('the agreement'). The agreement sets out the operational and financial conditions under which Ryanair is to establish and operate commercial flights to and from T2 at TMP airport. The agreement took effect on the day after the signature of that agreement (i.e. 4 April 2003) and will end on […].

(42) For services provided at TMP airport Ryanair is to pay a single charge for each aircraft turnaround (departure and arrival), i.e. an all-inclusive charge, for each B737-800 aircraft or other variant of the B-737 aircraft with a maximum MTOW ([11]) of 67 000 kg as from 4 April 2003. This charge includes the landing and take-off charge, lighting charges, noise and night fees, the terminal navigation charge, ramp and passenger handling charges including the security and safety charges, and the passenger charge.

([10]) The Routes trade fair is an annual flight route sale fair for airlines and airports.

([11]) The Maximum Take-off Weight (MTOW) of an aircraft is the maximum weight at which the pilot of the aircraft is allowed to attempt to take off, due to structural or other limits. In other words the MTOW is the heaviest weight at which the aircraft has been shown to meet all airworthiness requirements

(43) As summarised in the tables below the all-inclusive charge depends on the daily frequencies of Ryanair at the airport and on the year of the agreement: […]

(44) In the agreement, Ryanair commits itself to commencing operations at TMP airport with […] daily turnarounds. Furthermore Ryanair agrees to give […] notice of any reduction in the number of daily turnarounds at the airport.

(45) […]

(46) Pursuant to the agreement Ryanair expected to generate approximately […] departing passengers at TMP airport during the first 12 months and approximately […] departing passengers during the following 12 months.

(47) Pursuant to the agreement, T2 at TMP airport has a maximum capacity of one turnaround an hour between 7:00 and 24:00. Ryanair and Airpro will agree beforehand on the flight schedules.

(48) Airpro will operate a passenger service desk in a prime location in the main airport terminal (T1) and will provide reservations facility for Ryanair's passengers. Pursuant to the agreement Ryanair pays a commission to Airpro at the rate of […] for all Ryanair flights (excluding taxes, fees and other charges) sold by Airpro and paid by debit/credit card.

(49) The agreement also provides for arrangements during the necessary maintenance of the runway at TMP airport during summer 2003, when the airport will be closed to all traffic. During this period the traffic of TMP airport will be diverted to Pori airport and Airpro will arrange bus transportation for Ryanair's passengers.

(50) According to Finland the agreement between Airpro and Ryanair was on commercial terms and did not involve State aid. Other airlines had also had the possibility to agree with Airpro on similar contractual terms and conditions to those obtained by Ryanair. For example

the marketing brochure *The Case for Tampere-Pirkkala Airport*, which had been prepared for the 2004 trade fair, highlighted the fact that T2 was open to all operators, as at that time the terminal still had capacity available for two more airlines.

(51) Finland considered further that the charges paid by Ryanair at TMP airport were cost-based and generated an economic profit for Airpro's and Finavia's operations at TMP airport. Airpro collected charges from Ryanair for services it provided and also for services provided by Finavia. Airpro subsequently disbursed to Finavia the charges resulting from Ryanair's operations at the airport pursuant to Finavia's Aeronautical Information Publication ('AIP') ([12]). Any differences in charges were based on the nature and scale of the services concerned.

(52) Finland indicated that all airlines using TMP airport paid the same charges for services of the same quality. For instance, the passenger charge collected for the services provided at T2 depended on the quality of the services provided at the terminal. Neither Finavia nor Airpro played any role in the collection of the passenger service charge marked on Ryanair's air ticket, which was collected by Ryanair from its passengers. Contrary to the allegations of Blue1, Ryanair was not exempted from paying the passenger charge. The fact that Airpro's operations at T2 were profitable was evidence that Ryanair had to pay a charge for the services provided by Airpro.

(53) Finavia collected the following charges from Ryanair through Airpro at TMP airport, amounting to […] in total:

— landing charge ([13]): […]

— air navigation services charge: […]

(54) As regards the air traffic navigation charges, Finland stated that they depended on the weight of the aircraft, the length of the flight and the content of the services used. Finavia's profits also included an annual route charge ([14]), which amounted to approximately […] in 2006 and would increase with the additional frequencies operated by Ryanair.

(55) Finland explained further that in 2005 the operating benefit from Ryanair's operations at TMP airport totalled […]. Finally, Finland argued that pursuant to the agreement, Ryanair had also committed itself to increasing traffic and to meeting the passenger targets indicated in the agreement.

4. OBSERVATIONS FROM THIRD PARTIES

(56) The Commission has received observations from four interested parties.

4.1. Ryanair

(57) Ryanair began its observations dated 16 November 2007 by stating that in its opinion the initiation of a formal investigation procedure was unfair and unnecessary. It also stated that it regretted that the Commission had not given Ryanair the possibility to participate in the preliminary examination.

(58) On the substance of the case Ryanair was of the opinion that the Commission should have based itself on standard commercial arrangements and decided that the agreement complied with the market economy operator principle and hence did not involve State aid. As in Ryanair's opinion both Finavia and Airpro benefitted from its presence at TMP airport, both were acting as market economy operators and the financing of T2 was void of any aid.

(59) As regards the development of the low-cost terminal at TMP airport, Ryanair explained that there were ongoing projects to differentiate services provided by airports in the Union in order to serve the needs of low-cost airlines and their passengers. The differentiated level of services provided by airports resulted in differentiated charges paid by airlines. TMP airport was among the first to follow the model of differentiated service levels at the same airport. Ryanair confirmed that the airport operator Finavia had decided on the development of T2 on the basis of a sound business plan that was swiftly implemented and resulted in an increase in Finavia's revenue. Therefore, Ryanair was of the opinion that the development of the low-cost terminal did not contain any elements of State aid towards Finavia's activity at TMP airport.

([12]) According to Finland, AIP Finland is prepared in accordance with Annex 15 to the Convention on International Civil Aviation and the Aeronautical Information Services Manual (ICAO Doc 8126). The general section of AIP also deals with Finavia's air traffic charges.

([13]) Assuming that MTOW of the aircraft is 69 900 kg.

([14]) This charge is collected by Eurocontrol and disbursed by it to Finavia.

(60) With regard to the management of T2, Ryanair explained that competition between terminals at the same airport resulted in improved efficiency and reduced costs. In Ryanair's view, the higher efficiency standards at T2 improved the efficiency of T1 to the benefit of all airlines using the airport. To Ryanair's knowledge, Airpro was renting the terminal on commercial terms. Finavia benefitted additionally from increased traffic at the airport and an increase in revenue from landing and air traffic control charges. Consequently, in Ryanair's view no State aid was involved in the commercial agreements between Finavia and Airpro with regard to the management of T2.

(61) As regards the agreement concluded between Ryanair and Airpro, Ryanair first stated that its business model was based on increasing efficiency, which was passed on to passengers in the form of lower air fares. The all-inclusive fee paid at TMP airport included all charges applicable to airlines at the airport. The differentiated charges for the use of T2 were justified by the level of services provided. With regard to the discount on airport charges related to the increase in frequencies, Ryanair argued that this was normal commercial behaviour applied in all industries. Most of the conditions of the agreement between Ryanair and Airpro at T2 were generally applicable to all airlines willing to fly from T2. Therefore, Ryanair was of the opinion that its agreement with Airpro was not selective. Ryanair further argued that both Finavia and Airpro benefitted from its presence at TMP airport.

4.2. **SAS Group**

(62) SAS Group submitted its comments by letter dated 16 November 2007. SAS Group pointed out that its comments focused on the link between Finavia and Airpro, the costs of the conversion of T2, and the preferential treatment of Ryanair at TMP airport.

(63) As regards the link between Finavia and Airpro, SAS Group stated that the managing director of TMP airport was a member of the board of directors of Airpro when Finavia decided to lease T2 to Airpro. In addition, the close link between Finavia and Airpro was evident in the publication *Tampere-Pirkkala Airport Finland's Future-Ready Airport*.

(64) SAS Group argued that Finavia was cross-subsidising T2 with revenues from T1. SAS Group was in particular of the opinion that no passenger charges were paid at T2. Furthermore, Airpro administered the car park located outside T2 and kept the revenues generated by the car park. The parking charges at the car park next to T2 were twice as high as those at T1.

(65) As regards the costs for the services at T2, SAS Group argued that Finland had not granted it access to this information. SAS Group had no information on whether T2 or TMP airport were profitable and whether Airpro paid for the infrastructure supplied by Finavia. For example Finavia had acquired security screening equipment for T2. SAS Group stated that according to Finland and Airpro the price level at T2 related to the level of services. SAS Group argued that the level of services was normally based on the ground handling concept agreed between an airline and the ground handling company and not on the space or facilities available.

(66) SAS Group argued further that the arrangements concerning T2 at TMP airport favoured one business model and were clearly contrary to Article 107(1) of the TFEU.

4.3. **Air France**

(67) Air France provided comments by letter dated 16 November 2007. Air France started by explaining its commercial situation in Finland. In Finland, Air France did not operate services from and to TMP airport. However it operated five daily frequencies between Charles de Gaulle airport in Paris and Helsinki airport (located approximately 180 kilometres from TMP airport) through a code sharing arrangement with Finnair.

(68) Air France said it endorsed the 2005 Aviation Guidelines and the preliminary assessment conducted by the Commission as regards the financial arrangement at TMP airport. In particular, Air France was of the opinion that an exception from the payment of the passenger fee provided benefits to Ryanair and was clearly of a discriminatory nature, and therefore should not be considered compatible with the internal market.

4.4. **Association of European Airlines**

(69) The Association of European Airlines ('AEA') provided its comments by letter of 16 November 2007. AEA's comments were entirely in line with those provided by SAS Group and Air France.

5. COMMENTS FROM FINLAND ON THIRD-PARTY COMMENTS

(70) Finland received the comments of the four interested parties.

(71) As regards Ryanair's comments, Finland observed that the airline had commented on both general developments in the aviation market in Europe and on developments at TMP airport. With respect to these aspects, Finland referred to its earlier observations submitted following the opening of the formal investigation procedure.

(72) Finland observed that SAS Group's comments raised new issues that needed to be clarified. Finland stated that, as it had already pointed out, Airpro was a legally distinct company and did not benefit from any support from its owner Finavia.

(73) Finland indicated that TMP airport's managing director was not a member of the board of directors of Airpro at the time when the lease agreement was signed. TMP airport's managing director was on Airpro's board of directors only from May 2003 to April 2007. As regards the marketing publication concerning TMP airport and its low-cost strategy, Finland argued that such marketing operations could not prejudge the legal and economic links between the companies concerned. SAS Group, which operated from T1 at TMP airport, was not mentioned in the publication, because the publication was aimed at marketing TMP airport's low-cost strategy.

(74) As regards SAS Group's allegations concerning possible cross-subsidisation between T2 and T1 at TMP airport, Finland stated that it had already provided evidence that Airpro's operations at TMP airport were profitable and that Airpro did not receive any subsidies from Finavia.

(75) As regards the different infrastructure adjustments related to the refurbishment of T2, Finland indicated that the rent paid by Airpro to Finavia covered these costs plus interest. With regard to the purchase of security screening equipment for T2 by Finavia, Finland indicated that these costs were reflected in the rent paid. The car park located next to T2 was part of the area rented out to Airpro. Airpro was free to set the charges as long as it did so in a transparent way.

(76) As regards SAS's allegations concerning differentiated pricing at TMP airport's T2, Finland referred to its comments on the opening of the procedure.

6. EXISTENCE OF AID

(77) Article 107(1) TFEU states that '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'.

(78) The criteria set out in Article 107(1) are cumulative. A measure constitutes aid within the meaning of Article 107(1) of the TFEU only if all of the following conditions are fulfilled. The financial support must:

— be granted by the State or through state resources;

— favour certain undertakings or the production of certain goods;

— distort or threaten to distort competition; and

— affect trade between Member States.

6.1. Do the financial arrangements in the context of implementing the low-cost strategy at TMP airport constitute State aid?

(79) In assessing whether there is any aid component in the financial arrangements related to the low-cost strategy at TMP airport, in particular with regard to the conversion of a vacant cargo hangar into a low-cost terminal and the subsequent lease agreement with Airpro, the Commission has to examine whether in similar circumstances a market economy investor would have entered into the same or similar commercial arrangements as Finavia ([15]).

([15]) In order to carry out its assessment the Commission ordered a study from Ecorys ('the Commission's expert'). The Commission's expert analysed the financial data and assumptions underpinning the business plan for the low-cost strategy of Finavia and Airpro, the lease agreement between Finavia and Airpro for the operation of T2, and the agreement.

(80) Pursuant to the principles established in the case-law, the Commission has to compare the conduct of Finavia to a market economy investor who can be guided by prospects of long-term profitability ([16]). In addition, pursuant to the *Charleroi* judgment ([17]), when assessing the measures in question the Commission has to take into account all the relevant features of the measures and their context. In other words, the Commission has to analyse the decision of Finavia to refurbish the cargo hangar at TMP airport and the planned implementation of the low-cost strategy at TMP airport by Airpro on the basis of an integrated approach taking into account all the features of the measures in question.

(81) The Court declared in the *Stardust Marine* Judgment that, '[…] in order to examine whether or not the State has adopted the conduct of a prudent investor operating in a market economy, it is necessary to place oneself in the context of the period during which the financial support measures were taken in order to assess the economic rationality of the State's conduct, and thus to refrain from any assessment based on a later situation' ([18]).

(82) In order to be able to apply the market economy investor test the Commission has to place itself in the context of the period when Finavia took the decision to refurbish the vacant cargo hangar and subsequently to rent it out to Airpro i.e. the beginning of 2003. The Commission must also base its assessment on the information and assumptions which were at the disposal of the operator when the decisions on the financial arrangements for the implementation of the low-cost strategy were taken.

(83) Finland argues that Finavia acted rationally and substantiates its arguments with a copy of Finavia's *ex ante* business plan and the actual results of Finavia and Airpro at TMP airport.

(84) In this context, the Commission notes that the cargo hangar at TMP airport became vacant after DHL had terminated its rental agreement. Finavia was losing the monthly rent of approximately […]. After some months, it became evident that Finavia would not be able to attract another air cargo company to TMP airport. In addition, low-cost airlines were not ready to use Terminal 1 at the airport, because the costs of the ground-handling services were higher than these airlines were ready to accept. However, the 2002 forecasts for the aviation transport sector indicated a high growth potential for low-cost carriers, such as Ryanair, of approximately 30 % a year.

(85) The Commission observes further that the empty cargo hangar was fully depreciated and the refurbishment costs for transforming the hangar into a low-cost passenger terminal amounted to EUR 760 612. Even if the cargo hangar had not been converted into a passenger terminal, Finavia would have nonetheless had to undertake certain refurbishment works amounting to approximately EUR 100 000.

(86) In addition, Finavia was obliged to keep TMP airport's runway available for military purposes 24 hours a day, 365 days a year. Therefore, an increase in traffic at the airport might well result in a better allocation of resources and a reduction in possible overcapacities. At the same time, the diversification of airlines using the airport might also reduce the business risks of the airport (such as the risk of unused capacity in the event that one of the airlines terminated its operations) and improve the efficient utilisation of the runway.

(87) This situation is explained in Finavia's business plan for implementing the low-cost strategy. As shown in the worst-case scenario in Finavia's business plan, the investment project was expected to make a positive contribution: the average profit margin ([19]) was expected to be around […] (see table in paragraph (20)), which according to the data available to the Commission is broadly in line with the profit margins of other airports in the Union ([20]). The Commission observes further that the *ex ante* business plan was based on prudent assumptions which led to an underestimation of the revenue and an overestimation of the costs in the last years of the period under consideration. In addition, the *ex ante* business plan did not take into account the profit gained by Finavia from the landing charges, as these costs were deducted from the expected revenue. Furthermore the refurbishment costs and an appropriate remuneration for the capital invested were fully reflected in the rent paid by Airpro to Finavia, which was also deducted from the expected revenue.

([16]) Case C-305/89 *Italy* v *Commission* [1991] ECR I-1603, paragraph 20 (the '*Alfa Romeo*' case); Case T-296/97 *Alitalia* v *Commission* [2000] ECR II-3871, paragraph 84.

([17]) Case T-196/04 *Ryanair* v *Commission* [2008] ECR II-3643, paragraph 59 (the '*Charleroi*' case).

([18]) Case C-482/99 *France* v *Commission* [2002] ECR I-4397, paragraph 71 (the '*Stardust Marine*' case).

([19]) The profit margin (the return on sales) compares the net profit to sales (revenues). This ratio shows whether an undertaking's return on sales is sufficient, as it determines how much profit is being produced for one euro of sales revenue; it is an indicator of profitability and efficiency.

([20]) See Table 6 of Commission Decision of 27 January 2010 in State aid case C 12/2008 *Slovakia – agreement between Bratislava Airport and Ryanair*, OJ L 27, 1.2.2011, p. 24.

(88) In order to assess the low-cost strategy of Finavia and Airpro on the basis of an integrated approach, the Commission's expert consolidated the revenues and costs of the *ex ante* business plan (base-case scenario). In particular, the inter-company payments (such as the rent paid by Airpro to Finavia for the use of T2, landing charges and terminal navigation charges) were taken into account as revenue. The following table summarises the revenue and cost calculations related to the implementation of the low-cost strategy at TMP airport as described above and its contribution to the earnings before interest and taxes ('EBIT') at a consolidated level (i.e. for Finavia and Airpro) over the next ten years: […] ([21])

(89) The Commission observes that on the basis of the *ex ante* business plan and the positive NPV ([22]) Finavia's decision to implement the low-cost strategy at TMP airport was in line with the behaviour of a market economy investor. The positive NPV of the low-cost strategy increased the equity value of Finavia. The Commission further notes that the assumptions of the *ex ante* business plan and the expected results of the low-cost strategy are further supported by the actual positive results of Airpro's activity at TMP airport (see in particular the table in paragraph (26)). Moreover, the combined actual financial results of TMP airport (taking into account the financial results of Airpro's and Finavia's activity at TMP airport, see tables in paragraphs (24) and (26)) show that due to the operation of the low-cost terminal the entire airport's activity became profitable.

(90) In view of the above, the Commission can conclude that Finavia's decision to implement the low-cost strategy at TMP airport and the underlying financial arrangements are in line with the market economy investor test and therefore free of any economic advantage that does not correspond to normal market conditions.

(91) As one of the cumulative criteria in Article 107(1) of the TFEU is not fulfilled, the Commission considers that Finavia's decision to implement the low-cost strategy at TMP airport and the underlying financial arrangements are void of any State aid within the meaning of Article 107(1) of the TFEU.

([21]) […]

([22]) The NPV indicates whether the income from a given project exceeds the (opportunity) costs of capital. A project is considered an economically profitable investment when it generates a positive NPV. Investments producing lower income than the (opportunity) costs of capital are not economically profitable. The (opportunity) costs of capital are reflected in the discount rate.

(92) As regards a possible cross-subsidisation of Airpro by Finavia (such as lost rent revenue or compensation for operating losses), the Commission notes that given that all financial arrangements related to the low-cost strategy at TMP airport are based on an *ex ante* business plan in accordance with the market economy investor principle, that Airpro pays a market rent for the use of T2 and the full costs of Airpro's activity at TMP airport are covered by the charges paid by the airlines using T2 (i.e. Ryanair), and that Finavia's activity at TMP airport is profitable only due to the operation of T2, the cross-subsidisation of Airpro by Finavia can be excluded.

6.2. **Does the agreement between Airpro and Ryanair constitute State aid?**

(93) As regards the agreement between Airpro and Ryanair, Finland has argued that Airpro acted as a market economy operator would have done in a similar situation. If this is the case, Ryanair has not been favoured by the agreement and no State aid is involved.

(94) In assessing whether the agreement was concluded under normal market conditions, the Commission has to examine whether in similar circumstances an airport operating under normal market economy conditions and guided by prospects of long-term profitability would have entered into the same or similar commercial arrangements as Airpro ([23]). Furthermore, the Commission has to analyse the expected impact of the agreement on Airpro's and Finavia's activity at TMP airport on the basis of an integrated approach taking into account all the features of the measure in question ([24]).

(95) In order to be able to apply the private investor test, the Commission has to place itself in the context of the period when the agreement was signed. The Commission must also base its assessment on the information and assumptions available to the operator when the agreement was signed. Airpro signed the agreement with Ryanair on 3 April 2003 for a period of validity of […].

(96) Pursuant to the agreement, Ryanair committed itself to commencing operations at TMP airport with […] daily

([23]) *Alfa Romeo*, paragraph 20, *Alitalia* v *Commission*, paragraph 84.

([24]) *Charleroi*, paragraph 59.

turnarounds. On this basis Ryanair expected to generate approximately […] departing passengers at TMP airport during the first 12 months, and approximately […] departing passengers during the following 12 months. The agreement provides for a schedule of charges per turnaround depending on the number of daily frequencies (see in particular the tables in paragraph (43)). The average price for one turnaround (based on three flights a day) is […]. The following table compares the charges paid by airlines using T1 at TMP airport and the average price paid by Ryanair:

Service provided	Airport charges applicable at Terminal 1 (T1) in EUR	Airport charges paid by Ryanair (average fee) at Terminal 2 (T2)
Landing charge	442	442
Terminal navigation charges	92	92
Security charge	410	410
Terminal (passenger) services and ground handling	[…]	[…]
Total price per turnaround	[…]	[…]

(97) The Commission observes that Ryanair pays the same landing, terminal navigation and security charges as airlines using T1 at TMP airport. According to the information provided by Finland Ryanair is not exempted from the passenger fee. The only difference in the price paid by Ryanair relates to the charges paid for terminal (passenger) services and ground handling. However the quality of the services provided to Ryanair and its passengers at T2 is lower than the quality of services provided at T1, and the reduction achieved in underlying costs, in particular personnel costs, represents approximately […] of Airpro's total costs (including the rent, landing and terminal navigation charges paid to Finavia). Contrary to T1, the number of staff at T2 is kept at a low level and the staff performs a variety of operations related to check-in, security checks and ground handling. According to the information provided by the airport to the Commission's expert, T2's personnel costs are about […] lower than T1's. In addition, the Commission observes that the airport charges paid by Ryanair for the terminal (passenger) services and ground handling are only around […] lower than the charges paid at T1. The divergence between the cost savings (around […]) and the difference in the charges paid by airlines using the two terminals (around […]) reflects the additional profit margin generated by Airpro (around […], see also table in paragraph (20)). Hence, the Commission considers that the difference between the charges paid by Ryanair at T2 and those paid at T1 is justified.

(98) On the basis of the above, Airpro was able to forecast the revenue generated by the agreement with Ryanair. Airpro assumed that in year 1 Ryanair would perform […] daily turnarounds with a load factor of […]; as of year 2 it was expected that Ryanair would operate […] daily turnarounds for the remaining period of validity of the agreement with the same load factor as in year 1. The result takes into account Airpro's aeronautical and non-aeronautical revenues (including the car park revenue, etc.). Airpro's costs over the period of validity of the agreement were estimated by using the projected costs related to the implementation of the low-cost strategy at TMP airport. For instance, the costs of personnel were expected to amount to […] per turnaround (and […] when calculated on the basis of daily aircraft turnaround).

(99) The following table summarises the revenue and cost calculations related to the agreement and the positive contribution of the agreement to the equity value of Airpro during its period of validity. These calculations are based on the business plan provided by Finland and the assumptions set out above. […] [25]

(100) The Commission notes that during its period of validity the agreement with Ryanair was expected to generate a positive contribution to Airpro's equity value, with an NPV amounting to EUR 0,5 million. Furthermore Airpro's and Finavia's overall activity at TMP airport was expected to be positive over the period of validity of the agreement.

(101) The Commission also observes that the revenues stemming from the agreement cover all of Airpro's costs at TMP airport and all of Finavia's costs related to the agreement. The full-cost approach in this case includes the cost of capital (i.e. depreciation costs for the airport infrastructure) and operating costs (such as costs of personnel, energy, material, etc.). It also includes costs for security and safety measures that may represent measures falling within the public policy remit which would not be considered an economic activity within the meaning of Article 107(1) of the TFEU. Thus the calculated NPV is underestimated and the positive contribution of the agreement may indeed be even higher.

[25] […]

(102) The Commission observes that on the basis of the *ex ante* business plan the decision of Airpro, as a subsidiary of Finavia, to conclude the agreement in question with Ryanair was in line with the conduct of a market economy investor. The Commission further notes that the assumptions of the *ex ante* business plan and the expected results of the agreement are further supported by the actual positive results of Airpro's activity at TMP airport (see in particular the table in paragraph (26)). Moreover, the combined actual financial results of TMP airport (taking into account the financial results of Airpro's and Finavia's activity at TMP airport, see in particular the tables in paragraphs (24) and (26)) show that not only the operations of the low-cost terminal but also those of the airport as a whole became profitable.

(103) On the basis of the foregoing, the Commission concludes that Airpro's decision to enter into the agreement in question with Ryanair is in line with the market economy investor test and therefore free of any economic advantages that do not correspond to normal market conditions.

(104) As the cumulative criteria in Article 107(1) of the TFEU are not fulfilled, the Commission considers that the agreement of 3 April 2003 between Airpro and Ryanair is void of any State aid within the meaning of Article 107(1) of the TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The measures taken by Finavia Oyj and Airpro Oy consisting of the financial arrangements related to the implementation of the low-cost strategy at Tampere-Pirkkala airport, in particular the refurbishment costs of Terminal 2 and the lease agreement for Terminal 2 concluded between Finavia Oyj and Airpro Oy on 23 February 2003, do not constitute aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 2

The agreement concluded between Airpro Oy and Ryanair Ltd on 3 April 2003 does not constitute aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 3

This Decision is addressed to the Republic of Finland.

Done at Brussels, 25 July 2012.

For the Commission
Joaquín ALMUNIA
Vice-President

COMMISSION DECISION

of 17 July 2013

on State aid SA.33726 (11/C) [ex SA.33726 (11/NN)] — granted by Italy (deferral of payment of the milk levy in Italy)

(notified under document C(2013) 4046)

(Only the Italian text is authentic)

(2013/665/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 called on interested parties to submit their comments pursuant to that Article, and having regard to those comments,

Whereas:

I. PROCEDURE

(1) After becoming aware of the entry into force, on 27 February 2011, of the law converting Decree-Law No 225 of 29 December 2010 into law, which granted a deferral of payment of an instalment of the milk levies payable by Italian milk producers under the scheme for payment by instalments approved by Council Decision 2003/530/EC of 16 July 2003 on the compatibility with the common market of an aid that the Italian Republic intends to grant to its milk producers [1], [2], the Commission asked the Italian authorities, by means of a letter dated 17 March 2011, for further information on the matter in question.

(2) The Italian authorities sent the Commission this additional information by letter dated 24 June 2011 and registered on 29 June 2011.

(3) After examining the information provided by the Italian authorities and taking into account the fact that the deferral of payment in question had taken place without the Commission having been notified of it in advance, or having authorised it, the Commission informed the Italian authorities by fax dated 14 October 2011 that a file for non-notified aid had been opened, under reference number SA.33726 (2011/NN).

(4) By letter of 11 January 2012, the Commission informed Italy of its decision to initiate the procedure provided for under Article 108(2) of the Treaty as regards the aforementioned deferral and the programme for payment by instalments approved by Decision 2003/530/EC as amended by the addition of the deferral, which constitutes a new aid (SA.33726 (11/C)]), asking the Italian authorities to comment on the opening of the procedure within one month..

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

(6) The Commission received comments from interested parties which it forwarded to Italy, giving it the opportunity to respond.

(7) By e-mail dated 13 February 2012, the Italian Permanent Representation to the European Union sent the Commission a letter from the Italian authorities requesting a two-month extension for commenting on the opening of the procedure. That extension was granted in a message sent by fax dated 21 February 2012.

(8) By e-mails dated 26 April 2012 and 27 April 2012, the Italian Permanent Representation to the European Union sent the Commission the Italian authorities' reply to the opening of the procedure under Article 108(2) of the Treaty.

(9) The Italian authorities did not comment on the interested parties' comments.

II. DESCRIPTION

The Council's decision

(10) Article 1 of Decision 2003/530/EC states that:

'The aid the Italian Republic intends to grant to milk producers, by itself making payment to the Community of the amount due from them to the Community by virtue of the additional levy on milk and milk products for the period 1995/1996 to 2001/2002 and by

[1] Now internal market.
[2] OJ L 184, 23.7.2003, p. 15.
[3] OJ C 37, 10.2.2012, p. 30.

allowing these producers to repay their debt by way of deferred payment over a number of years without interest, is exceptionally considered to be compatible with the common market on condition that:

— repayment shall be in full by yearly instalments of equal size,

— the repayment period shall not exceed 14 years, starting from 1 January 2004'.

The law converting Decree-Law No 225 of 29 December 2010 into law (Law No 10 of 26 February 2011, hereinafter referred to as 'Law No 10/2011')

(11) Law No 10/2011 introduces into Article 1 of Decree-Law No 225 of 29 December 2010 a paragraph 12 *duodecies* providing for the deferral to 30 June 2011 of payment of the instalment of the milk levy due on 31 December 2010. The cost of this deferral was charged to an overall budget allocation of EUR 5 million covering multiple purposes.

(12) In their letter of 24 June 2011, the Italian authorities explained that the grant equivalent for this measure would be counted among the *de minimis* aid for Italy provided under Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the EC Treaty [1] to *de minimis* aid in the sector of agricultural production [2].

III. GROUNDS FOR OPENING THE FORMAL PROCEDURE

(13) The Commission decided to initiate the proceedings provided for under Article 108(2) of the Treaty for the following reasons:

— the Italian authorities had expressed their intention to classify the grant equivalent for the deferral of payment in question under the '*de minimis*' system provided for in Regulation (EC) No 1535/2007; however, not only were there legal questions surrounding the applicability of that Regulation, as the Italian authorities had failed to provide any information on whether the individual and national aid ceilings established by the Regulation would be complied with, but also the Regulation itself forbids the granting of *de minimis* aid which raises the State aid above the permitted maximum. Since the aid approved by the Council constituted the maximum aid amount that Italy could grant to its milk producers, adding the grant equivalent of the deferral of payment included in the *de minimis* scheme means exceeding of the maximum aid approved by the Council;

— it therefore follows that the Commission could not rule out the possibility of the deferral in question involving a component of aid (as it amounted to the equivalent of an interest-free loan, hereinafter referred to as the 'related aid'), a situation which none of the information provided by the Italian authorities could justify in the light of the rules applicable to State aid in the agricultural sector (Community Guidelines for State aid in the agriculture and forestry sector 2007 to 2013) [3];

— the deferral amounts to a breach of Decision 2003/530/EC (on the basis that one of its conditions – i.e. instalments of equal size – is no longer complied with). It therefore means that the whole system of staggered payments becomes a new aid scheme for those who have benefited from it (on the basis that it was not included under Decision 2003/530/EC), a situation which does not appear to be permitted under any provision of the guidelines referred to above.

IV. COMMENTS BY THE ITALIAN AUTHORITIES ON THE OPENING OF THE FORMAL PROCEEDINGS

(14) In their letter sent by e-mail on 26 April 2012, the Italian authorities first reported on the application of the system of staggered payments of milk levies approved under Council Decision 2003/530/EC, explaining that there were 11 271 beneficiaries under the scheme. Of these, 9 965 (i.e. 88,41 % of the total) had paid their instalments of levies due on 31 December 2010 on time. 1 291 had done so by the deferred deadline and 15 had not made any payments, resulting in their exclusion from the programme.

(15) The Italian authorities then explained that, in order to calculate the grant equivalent of the aid received by beneficiaries of the deferral, account was taken of interest for the period between 1 January 2011 and the date of actual payment of the instalments which were the subject of the deferral, using the three-month Euribor rate as of 1 October 2010, plus 100 basis points (1,942 %). The results of that calculation indicated a grant equivalent of between EUR 0,08 and EUR 694,19 and also showed that 1 187 of the 1 291 beneficiaries of the deferral had benefited from aid of less than EUR 100,00. According to the authorities, these figures indicate that the deferral of payment under Law No 10/2011 did not compromise the smooth running of the programme for payment by instalment, which continues to be in compliance with the provisions of Decision 2003/530/EC, as evidenced by the fact that only 11,45 % of producers involved in the programme in question benefited from the deferral.

[1] Now Articles 107 and 108 of the Treaty.
[2] OJ L 337, 21.12.2007, p. 35.
[3] OJ C 319, 27.12.2006, p. 1.

(16) For these reasons, the Italian authorities confirm, as stated in the letter of 24 June 2011 (see paragraph 13 above), that the deferral granted in respect of payment of the levy constitutes *de minimis* aid. They also point out that they have established that the individual ceiling referred to in Article 3(2) of Regulation (EC) No 1535/2007 has been complied with in full, as has the ceiling of EUR 320 505 000 over a period of three fiscal years established for Italy under the same Regulation, and that the grant equivalent of the deferral of payment was equal to a total of EUR 50 877,41. Lastly, they reported that they were in the process of checking whether these ceilings had been complied with, taking into account the other *de minimis* aid schemes granted during 2009, 2010 and 2011.

(17) As regards the Commission's position that the aid approved by Decision 2003/530/EC had to be considered, given its nature and exceptional character, to be a single maximum aid which cannot be cumulated with any other form of measure, the Italian authorities stressed firstly that the decision in question had recognised the existence of the exceptional circumstances which led the Council to consider the aid to be compatible with Article 107 of the Treaty, subject to certain conditions being met. They also highlighted the fact that the checks carried out showed that the programme for payment by instalments complied with the provisions of Decision 2003/530/EC, since all producers had made the seventh instalment payment, with the exception of 15 producers who had already been removed from the scheme. In their view the exceptional nature of the circumstances resulting in the adoption of Decision 2003/530/EC does not in itself prevent recipients of the aid approved by the Council from accessing any other benefit. The Treaty refers only to the exceptional circumstances mentioned above, without restricting in any way the nature of the aid authorised or the detailed rules for its implementation; it simply makes the derogation from Article 107 and the regulations referred to in Article 109 of the Treaty subject to the adoption of a unanimous Council decision. In this specific case, the exceptional character which led to the adoption of Decision 2003/530/EC is fully reflected in the way in which the decision in question was adopted, namely on a unanimous basis, and relates to the circumstances requiring the adoption of the aid rather than the aid itself.

(18) The Italian authorities also claimed that the deferral of payment constitutes *de minimis* aid and should therefore be considered an isolated measure, given its low take-up rate among producers, the low value of the amounts in question, and the absence of changes made to the programme for payment by instalments, the structure of which has remained the same, both as regards the total number of instalments and the expiry date.

(19) Lastly, the Italian authorities have once again stated that, in accordance with the Italian Ministerial Decree of 30 July 2003 implementing the Council Decision, participants in the programme for payment by instalment are required give up any legal action in respect of payment of the levies due and debtors who do not make payments are excluded from the programme. The Italian authorities assert that this condition would involve the initiation of enforced recovery procedures resulting in producers bringing new appeals. It would therefore be reasonable to avoid legal disputes for the recovery of very low amounts through proceedings that cost more than the amounts to be recovered. In this respect, the Italian authorities refer to Article 32(6) of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy [1], which states that, in duly justified cases, Member States may decide not to pursue recovery procedures if the costs already incurred and likely to result from the recovery are greater than the amount to be recovered. In their opinion, this provision should be applied by analogy to this case. In any event, similar provisions are also made by Article 25(4) of Law No 289/2002 (the 2003 financial law), in accordance with which the sum of EUR 12 is considered a low amount and not subject to recovery. Of the beneficiaries of the deferral, 559 received aid less than EUR 12.

(20) In the letter sent by e-mail on 26 April 2012, the Italian authorities provided a list of beneficiaries of the deferral and the amount of aid which each of them received.

V. COMMENTS BY INTERESTED PARTIES ON THE OPENING OF THE PROCEDURE

(21) On 7 March 2012, the Commission received comments from a third party on the opening of the procedure.

(22) The interested party essentially wished to know why the Commission had restricted the opening of the procedure to the deferral of payment provided for under Law No 10/2011 and not extended it to the provisions of Article 40 *bis* of Law No 122/2010, which provides for the deferral of payment of the instalments paid under an additional programme of payment by instalment set up by Law No 33/2009 and urged the Commission to extend the scope of the procedure accordingly. In this respect, the interested party made the point that a complaint regarding the provisions of Article 40 *bis* of Law No 122/2010 had already been submitted to the Commission and the case closed by the Commission.

[1] OJ L 209, 11.8.2005, p. 1.

(23) On 10 March 2012, the Commission received comments from a second interested party on the opening of the procedure.

(24) The interested party in question drew the Commission's attention to the provisions of Article 1(4) of Decree-Law No 16/2012, allowing firms in financial difficulty to pay sums due in regular instalments. It asked the Commission to intervene, pointing out that these measures were not compatible with the single market.

(25) On 14 March 2012, the Commission received comments from a further interested party on the opening of the procedure.

(26) In these comments, the interested party also made reference to Decree-Law No 16/2012, stressing the resulting difference in treatment between farmers and also the accuracy of the data used by AGEA (*Agenzia per le Erogazioni in Agricoltura* — the Italian paying agency) in order to calculate the additional levy.

VI. **ASSESSMENT**

VI.1. **Existence of aid**

(27) In accordance with Article 107(1) of the Treaty, aid granted by a Member State or by means of State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, insofar as it affects trade between Member States, is to be deemed incompatible with the common market.

(28) The measure in question, namely the aid connected to the deferral of payment (the granting of the equivalent of an interest-free loan, see paragraph 13, second indent above), but also the new aid arising from the breach of Decision 2003/530/EC (interest not paid on annual instalments already made and capital and interest not yet paid in respect of remaining years until the expiry of the payment by instalment, i.e. until 31 December 2017) (new aid, see paragraph 13, third indent) falls under the following definition:

(29) The measure is imputable to the State since it results from a national law; it is financed using public resources in the sense that the Italian State, by granting the deferral of payment of an annual instalment established in Decision 2003/530/EC and by creating a new aid through that deferral, has denied itself for a specific period of time a sum of money that could be used for other purposes.

(30) This situation favours certain undertakings, in particular milk-producing agricultural holdings.

(31) It may also have an impact on trade, given the Italian position on the market [1].

(32) Equally, it has the potential to distort competition, since the undertakings which benefited from it have secured an advantage (the deferral does not earn interest and is therefore equivalent to an interest-free loan) which could not have been acquired under normal market conditions and which has placed the undertaking concerned in a more advantageous competitive situation compared to undertakings which have not received it [2].

(33) However, in the light of the additional information provided by the Italian authorities in response to the opening of the procedure under Article 108(2) of the Treaty, there is a need to establish whether the measure in question can be considered *de minimis* aid in accordance with Regulation (EC) No 1535/2007, and therefore not be considered State aid within the meaning of Article 107(1) of the Treaty.

(34) In their letter sent by email on 26 April 2012, the Italian authorities explained that the interest connected to the deferral of payments was between EUR 0,08 and EUR 694,19. They also stated that checks carried out had shown that the ceiling established for Italy over three fiscal years had not been exceeded, but that they would still have to verify whether there continued to be a risk of an individual ceiling being exceeded in the event of cumulated *de minimis* aid for the 2009, 2010 and 2011 fiscal years.

(35) The Commission can certainly note that the amount of interest relating to the deferral, taken in isolation, does not exceed the EUR 7 500 provided for in Article 3(2) of Regulation (EC) No 1535/2007. It also notes that the

[1] In 2009 Italy was the fifth largest producer of cow's milk in the EU, producing 11.364 million tonnes. In 2010 it imported 1 330 602 tonnes and exported 4 722 tonnes of milk.

[2] Under European Court of Justice case law, the mere fact that the competitive situation of a company has been improved by the granting of an advantage which the company could not have obtained under normal market conditions and which competing undertakings do not enjoy is sufficient to prove distortion of competition (Case 730/79 - *Philip Morris v Commission* [1980] ECR I - 2671).

total aid amount granted by the deferral, i.e. EUR 50 877,41, has not resulted in the ceiling of EUR 320 505 000 allowed for Italy in the Annex to the Regulation being exceeded. Nevertheless, the Commission does not have any new information to indicate that the individual ceiling of EUR 7 500 has not been exceeded in any cases, also taking into account all *de minimis* aid received by the same beneficiary during the period of three fiscal years, because as of 26 April 2012, it had not received any information from the Italian authorities involved in performing these checks. It cannot therefore conclude that that individual aid ceiling has been respected in all cases, particularly since the Commission also has to take into account the new aid arising from the breach of Decision 2003/530/EC. Indeed, it has to examine the measure in question in its entirety (i.e. the aid related to the granting of the deferral, the granting of the equivalent of an interest-free loan and the new aid arising from the breach of Decision 2003/530/EC): a considerable number of beneficiaries (more than 1 250) have benefited from this deferral and the amount of the aid also includes part of the principal sum (i.e. that corresponding to the annual instalments due on 31 December of the years 2013, 2014, 2015, 2016 and 2017) plus interest, which far exceeds the interest relating to the deferral of payment taken into account by the Italian authorities in support of their arguments.

(36) Article 3(7) of Regulation (EC) No 1535/2007 also states that '*de minimis* aid shall not be cumulated with State aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that laid down by Community rules in the specific circumstances of each case'.

(37) In this regard, the Commission has already indicated, by initiating the procedure provided for in Article 108(2) of the Treaty, that this deferral was in addition to the aid approved by the Council, which should be regarded as the maximum which could be granted in this context.

(38) The Italian authorities also take the view that the deferral of payment should be regarded as a stand-alone measure, given the low take-up rate amongst producers, the low value of the amounts in question, and the fact that no changes have been made to the programme for payment by instalments, the structure of which has remained the same, both as regards the total number of instalments and the expiry date.

(39) The Commission does not share this opinion. Indeed, it is clear that the deferral of payment is directly linked to a reimbursement, the payment in instalments of which was provided for in detail in Decision 2003/530/EC. The first indent of Article 1(1) of that Decision clearly states that the repayment 'shall be […] by yearly instalments of equal size'. The deferral cannot therefore be considered as being entirely unrelated to the system of instalments established by Decision 2003/530/EC.

(40) The Italian authorities also dispute the fact that the aid authorised by the Council is the maximum amount that may be granted to milk producers. They take the view that the decision in question has recognised the existence of exceptional circumstances resulting in the approval of the programme for repayment in instalments, but that this exceptional character does not in itself justify beneficiaries having no possibility of any other support, since the Treaty only refers to exceptional circumstances, without restricting the nature of the aid authorised or the detailed rules for its implementation. In this specific case, the exceptional character which led to the adoption of Council Decision 2003/530/EC is fully reflected in the way in which the decision in question was adopted, namely on a unanimous basis, and relates to the circumstances requiring the adoption of the aid rather than the aid itself.

(41) The Commission does not agree with the Italian authorities. In fact, although the third paragraph of Article 108(2) of the Treaty states that '[…] the Council may, acting unanimously, decide that aid […] shall be considered compatible with the internal market […] if such a decision is justified by exceptional circumstances' and also Recital 8 to Decision 2003/530/EC states that '[…] exceptional circumstances exist which justify considering the aid […] to be compatible with the common market', the fact remains that the Council itself, in the operative part of the Decision, established that the aid is considered to be compatible with the internal market 'exceptionally' and not 'taking account of the exceptional circumstances'. The term 'exceptionally' clearly indicates the Council's intention to draw attention to the granting of the aid, assigning it a unique nature, despite the existence of exceptional circumstances as mentioned in Recital 8. While the reference to unanimity made by the Italian authorities can indeed demonstrate that the procedure was exceptional, it does not call into question the unique nature of the aid as set out in the Decision.

(42) In view of the fact that the aid approved by the Council, given its unique nature, was the maximum amount permissible in that given context, i.e. the equivalent of aid at 100 %, the addition of the deferral of payment would entail the automatic application of the provisions of Article 3(7) of Regulation (EC) No 1535/2007, meaning that the grant equivalent of the deferral cannot be considered to fall within the scope of that Regulation, and therefore constitutes State aid. Its compatibility with the internal market must be assessed in the light of the rules on competition in force when the deferral was granted, as must that of the new aid arising from the breach of Decision 2003/530/EC.

VI.2 **Compatibility of the aid with the internal market**

(43) The competition rules which applied when the deferral was granted are contained in the Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013.

(44) The position of the Italian authorities in their letter sent by e-mail on 26 April 2012 was based on the argument that the deferral of payment should be regarded as part of a *de minimis* scheme. The authorities did not therefore provide any explanation of compatibility of the deferral of payment with the internal market, or that of the new aid falling outside the framework of Decision 2003/530/EC, in the light of the rules laid down in the guidelines referred to above.

(45) The Commission therefore has no new information to dispel the doubts it had when it initiated the procedure provided for in Article 108(2) of the Treaty. The aid connected to the deferral of payments and, therefore, the new aid established by the breach of Decision 2003/530/EC therefore constitutes unilateral aid which is solely intended to improve the financial situation of producers without contributing to the development of the sector. It is therefore operating aid which is incompatible with the internal market within the meaning of point 15 of the Guidelines referred to above.

VI.3 **Recovery**

The need to remove the aid

(46) In accordance with the Treaty and European Court of Justice case law, if aid is found to be incompatible with the internal market, the Commission is authorised to decide whether the State concerned must abolish or alter the aid [1]. European Court of Justice case law also states that a State's obligation to abolish aid which the Commission regards as incompatible with the internal market is intended to restore the previously existing situation. In this context, the Court has declared that this objective has been achieved once the recipient has repaid the amounts awarded to him, thus losing the advantage gained over market competitors, and thus restoring the situation in existence prior to the payment of the aid [2].

(47) In keeping with that case law, Article 14 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 [3] states that, where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary (in the present case, all beneficiaries that have benefited from the deferral of payment).

(48) Italy is therefore required to take all necessary measures to recover the incompatible aid from the beneficiaries. In accordance with paragraph 42 of the Notice from the Commission 'Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid' [4], Italy has four months from the entry into force of this Decision to implement its provisions. Interest is to be paid on the amounts to be recovered, calculated on the basis of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty [5].

(49) This Decision is to be implemented immediately, in particular as regards the recovery of all incompatible individual aid granted.

Benefits and amounts to be recovered

(50) In view of the very specific context in which the aid was granted (the aid having been added to a programme forming a package approved by the Council) and the consequences of the aid (the breach of Decision 2003/530/EC for those who had benefited from the deferral of payment, while the aid had already been approved, exceptionally, by the Decision), the following should be recovered in respect of those parties who had benefited from the deferral of payment:

[1] Case C-70/72 *Commission v Germany* [1973] ECR I - 813, paragraph 13.
[2] Joined cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* [1994] ECR I - 4103, paragraph 75, Case C-75/97 *Belgium v Commission* [1999] ECR I-30671, paragraphs 64-65
[3] OJ L 83, 27.3.1999, p. 1.
[4] OJ C 272, 15.11.2007, p. 4.
[5] OJ L 140, 30.4.2004, p. 1.

a) interest linked to the deferral of payment of the levy instalment which was due on 31 December 2010, plus any interest on arrears accrued until the date of recovery;

b) interest accrued on annual instalments which were due on 31 December of the years 2004, 2005, 2006, 2007, 2008 and 2009 (the capital for those annual instalments was paid before the deferral for payment resulted in a breach of Decision 2003/530/EC), plus interest on arrears accrued until the date of recovery;

c) interest accrued on annual instalments which were due on 31 December of the years 2011 and 2012 (no information shows that the capital had not been paid by the deadline), plus interest on late payments accrued until the date of recovery;

d) capital and interest connected to the annual instalments due on 31 December of the years 2013, 2014, 2015, 2016 and 2017, the final date of the repayment schedule established in accordance with Decision 2003/530/EC.

Assessment of the comments from interested parties regarding the recovery

(51) The importance attached by the Italian authorities to the low value of the amounts to be recovered and the risk of producers making new appeals to the national courts do not change the fact that State aid which does not meet the conditions required in order to benefit from the derogations provided for in Article 107 of the Treaty, and which is therefore incompatible with the internal market, should be recovered from the beneficiaries in order to restore the competitive situation in existence prior to the granting of the aid. Indeed, European Court of Justice case law indicates that the removal of illegal aid which is declared incompatible with the single market is the logical result of such illegality, since the sole purpose of recovery is reinstate a previously existing situation ([1]). The objective of reinstating a previously existing situation is achieved once the illegal aid incompatible with the internal market has been repaid by the beneficiary, and once the latter has consequently been deprived of the previously existing advantage over market competitors. In such cases, the situation prior to the granting of the aid has therefore been resumed ([2]).

(52) Furthermore, as regards the low value of the amounts for recovery, the Italian authorities appear to restrict the scope of recovery only to the interest which has to be added to the annual payment for the year subject to the deferral. However, recovery, which affects only those who actually benefited from the deferral of payment, must include all aid declared as incompatible, in addition to any interest due (please refer to paragraph 50 above).

(53) Finally, the argument that producers might appeal to national courts cannot be considered relevant, because according to European Court of Justice case law, the mere possibility of internal difficulties, even insurmountable ones, cannot justify a failure by a Member State to comply with its obligations under Union law ([3]).

(54) Consequently, Italy could apply the *de minimis* rules applicable to the agricultural sector for recovery of the individual aid from beneficiaries which met all the requirements of the applicable *de minimis* regulation (Regulation (EC) No 1535/2007) at the time that the unlawful aid incompatible with the internal market was granted. Paragraph 49 of the Notice from the Commission 'Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid in the case of aid schemes unlawful and incompatible with the internal market' ([4]) stated that a Member State will be required to carry out a detailed analysis of each individual aid granted on the basis of the scheme in question. In order to quantify the precise amount of the aid to be recovered from each individual beneficiary under the scheme, Italy will therefore need to establish the extent to which the aid has been granted to a specific project, which, at the time of granting, met all conditions of a block exemption regulation or an aid scheme approved by the Commission. In such cases, the Member State may also apply the substantive *de minimis* criteria applicable at the time of the granting of an unlawful and incompatible aid which is the subject of a recovery decision pursuant to Article 2 of Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid ([5]). Under this criterion, the individual aid granted under this measure does not constitute aid for beneficiaries which, at the time of granting, met the conditions stipulated in the *de minimis* Regulation in force (Regulation (EC) No 1535/2007).

([1]) Order of 12 December 2012, Case T-260/00 - *Cooperativa San Marco fra Lavoratori della Piccola Pesca and Others v Commission*, not yet published, paragraph 55.

([2]) Case C-348/93 *Commission v Italy* [1995] ECR I-673, paragraph 27.

([3]) Judgment of 19 May 1999 in Case C-6/97 *Italy v Commission* [1999] ECR I-2981, paragraph 34.

([4]) OJ C 272, 15.11.2007, p. 4.

([5]) OJ L 142, 14.5.1998, p. 1.

VI.4 **Assessment of the comments from interested parties regarding other proceedings**

(55) As regards the comments made by the first interested party (paragraph 22), the Commission would stress that the postponement of the payment pursuant to Article 40 *bis* of Law No 122/2010, for one instalment payable under an additional programme for payment by instalment established by Law No 33/2009, is not covered by the proceedings under this Decision, since it does not concern the additional instalment programme established by Decision 2003/530/EC.

(56) Concerning the comments made by the other two interested parties on Decree-Law No 16/2012 (paragraphs 24 and 26), the Commission is currently examining the comments in question. However, it is of the opinion that they need to be examined separately for reasons of administrative efficiency, *inter alia*, relating to the fact that the joining of the two proceedings by a widening of proceedings and the application of all related administrative formalities would significantly delay closure of the proceedings under this Decision.

VII. **CONCLUSION**

(57) The Commission finds that Italy has unlawfully implemented the deferral of payment in question, rendering unlawful also the aid to which it relates (see paragraph 13, second indent, above) and the new aid scheme determined by the infringement of Decision 2003/530/EC (see paragraph 13, third indent). Consequently, none of the aid can be considered compatible with the single market because the Italian authorities have not provided any information to indicate compatibility under the competition rules applicable to the agricultural sector (see paragraphs 43 to 45). (They have merely argued that the deferral of payment should be viewed in isolation i.e. without taking account of the impact on Decision 2003/530/EC, and could be considered a *de minimis* scheme). The Commission has therefore been unable to resolve the doubts already expressed by the initiating of the procedure provided for in Article 108(2) of the Treaty.

(58) The incompatible aid should be recovered with interest from the relevant beneficiaries, in other words those who have actually made use of the deferral of payment in question,

HAS ADOPTED THIS DECISION:

Article 1

1. The deferral of payment of the milk levy due on 31 December 2010, introduced as paragraph 12 *duodecies* of Article 1 of Decree-Law No 225 of 29 December 2010 by Law No 10/2011 and unlawfully applied by Italy, in breach of Article 108(3) of the Treaty on the Functioning of the European Union, constitutes State aid which is incompatible with the internal market.

2. The aid resulting from failure to comply with the conditions laid down in Decision 2003/530/EC, as determined by the deferral of payment referred to in Article 1 and unlawfully applied by Italy, in breach of Article 108(3) of the Treaty on the Functioning of the European Union, is incompatible with the internal market.

Article 2

1. Italy is required to recover the incompatible aid referred to in Article 1(1) and (2) above from the beneficiaries of the deferral referred to in Article 1(1).

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

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

4. The recovery, which concerns only those parties to have actually benefited from the deferral of payment referred to in Article 1 and who have therefore benefited from the aid referred to in Article 2 shall apply to the following:

a) interest linked to the deferral of payment of the levy instalment due on 31 December 2010, plus any interest on arrears accrued until the date of recovery;

b) interest accrued on annual instalments which were due on 31 December of the years 2004, 2005, 2006, 2007, 2008 and 2009 (the capital for those annual instalments was paid before the deferral for payment resulted in a breach of the Council Decision), plus interest on arrears accrued until the date of recovery;

c) interest accrued on annual instalments which were due on 31 December of the years 2011 and 2012 (no information shows that the capital had not been paid by the deadline), plus interest on late payments accrued until the date of recovery;

d) capital and interest connected to the annual instalments due on 31 December of the years 2013, 2014, 2015, 2016 and 2017, the final date of the repayment schedule established in accordance with the Council Decision.

5. Individual aid granted under the scheme referred to in Article 1 shall not constitute aid if, at the time it was granted, it met the conditions laid down in a regulation adopted pursuant to Article 2 of Regulation (EC) No 994/98, which was applicable at the time the aid was granted.

Article 3

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

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

Article 4

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

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

b) the total amount (capital and interest) to be recovered from each beneficiary that received aid which cannot be covered by the *de minimis* rule;

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

d) the documents showing that the beneficiaries have been ordered to repay the aid.

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

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 17 July 2013.

For the Commission

Dacian CIOLOȘ

Member of the Commission

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 4/2013 OF THE ACP-EU COMMITTEE OF AMBASSADORS

of 7 November 2013

appointing members to the Executive Board of the Technical Centre for Agriculture and Rural Cooperation (CTA)

(2013/666/EU)

THE ACP-EU COMMITTEE OF AMBASSADORS,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 [1], as first amended in Luxembourg on 25 June 2005 [2] and as amended for the second time in Ouagadougou on 22 June 2010 [3], and in particular Article 3(5) of Annex III thereto,

Having regard to Decision No 4/2006 of the ACP-EC Committee of Ambassadors of 27 September 2006 on the Statutes and Rules of Procedure of the Technical Centre for Agriculture and Rural Cooperation (CTA) [4], and in particular Article 4(3) thereof,

Whereas:

(1) The term of office of the members of the Executive Board of the Technical Centre for Agricultural and Rural Cooperation, as extended by Decision No 2/2013 of the ACP-EU Committee of Ambassadors [5], expired on 21 August 2013.

(2) It is therefore necessary to appoint new members,

HAS DECIDED AS FOLLOWS:

Article 1

Without prejudice to any subsequent decisions that the Committee might have to take in the framework of its prerogatives, the following are hereby appointed members of the Executive Board of the Technical Centre for Agriculture and Rural Cooperation:

— Prof. Eric TOLLENS,

for a term of two years, ending on 6 November 2015, and

— Prof. Baba Y. ABUBAKAR

— Prof. Augusto Manuel CORREIA

— Ms Helena JOHANSSON

— Dr Faustin R. KAMUZORA

— Prof. Clement K. SANKAT,

for a term of five years, ending on 6 November 2018.

Article 2

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

Done at Brussels, 7 November 2013.

For the ACP-EU Committee of Ambassadors
The Chairman
R. KAROBLIS

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[1] OJ L 317, 15.12.2000, p. 3.
[2] Agreement amending the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ L 209, 11.8.2005, p. 27).
[3] Agreement amending for the second time the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, as first amended in Luxembourg on 25 June 2005 (OJ L 287, 4.11.2010, p. 3).
[4] OJ L 350, 12.12.2006, p. 10.
[5] OJ L 163, 15.6.2013, p. 30.

DECISION No 5/2013 OF THE ACP-EU COMMITTEE OF AMBASSADORS

of 7 November 2013

on the Statutes of Technical Centre for Agricultural and Rural Cooperation (CTA)

(2013/667/EU)

THE ACP-EU COMMITTEE OF AMBASSADORS,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 [1], as first amended in Luxembourg on 25 June 2005 [2] and amended for the second time in Ouagadougou on 22 June 2010 [3] ('the ACP-EU Agreement'), and in particular Article 3(5) and (6) of Annex III thereto,

Whereas:

(1) The second revision of the ACP-EU Agreement has amended its Annex III to review the mission given to the Technical Centre for Agricultural and Rural Cooperation (CTA) and to clarify and reinforce the governance of this organism, in particular the supervision by the Committee of Ambassadors and the responsibilities of the Executive Board.

(2) Decision No 2/2010 of the ACP-EU Council of Ministers [4] provides for the provisional application of the second amendment of the ACP-EU Agreement as from 31 October 2010.

(3) As a consequence, the statutes of the Technical Centre for Agricultural and Rural Cooperation (CTA) (hereinafter referred to as 'the Centre') should be amended accordingly.

(4) Pursuant to Article 3(5) of Annex III to the ACP-EU Agreement, the Committee of Ambassadors lays down the statutes of the Centre. It is therefore appropriate for the Committee of Ambassadors to adopt a Decision to that effect,

HAS DECIDED AS FOLLOWS:

Sole Article

The statutes of the Technical Centre for Agricultural and Rural Cooperation (CTA) annexed to this Decision are hereby adopted.

The European Union and the ACP States shall be bound, each to the extent to which it is concerned, to take the measures necessary to implement this Decision.

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

Done at Brussels, 7 November 2013.

For the ACP-EU Committee of Ambassadors
The Chairman
R. KAROBLIS

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[1] OJ L 317, 15.12.2000, p. 3.

[2] Agreement amending the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ L 209, 11.8.2005, p. 27).

[3] Agreement amending for the second time the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, as first amended in Luxembourg on 25 June 2005 (OJ L 287, 4.11.2010, p. 3).

[4] Decision No 2/2010 of the ACP-EU Council of Ministers of 21 June 2010 on transitional measures applicable from the date of signing to the date of entry into force of the Agreement amending for the second time the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, as first amended in Luxembourg on 25 June 2005 (OJ L 287, 4.11.2010, p. 68).

ANNEX

STATUTES OF THE TECHNICAL CENTRE FOR AGRICULTURAL AND RURAL COOPERATION (CTA)

Article 1

Subject

1. The Technical Centre for Agricultural and Rural Cooperation (CTA) (hereinafter 'the Centre'), within the meaning of Annex III to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part ([1]), as first amended in Luxembourg on 25 June 2005 ([2]) and amended for the second time in Ouagadougou on 22 June 2010 ([3]) (hereinafter 'the ACP-EU Agreement'), shall be a joint ACP-EU technical body. It shall have legal personality and shall enjoy in all States party to the ACP-EU Agreement the most extensive legal capacity given to legal persons of the same kind under their laws.

2. The staff of the Centre shall enjoy the customary privileges, immunities and facilities provided for in the second subparagraph of Article 1 of Protocol 2 on privileges and immunities of the ACP-EU Agreement and referred to in Declarations VI and VII annexed to the ACP-EU Agreement.

3. The Centre shall be a non-profit making body.

4. The headquarters of the Centre shall be situated provisionally in Wageningen in the Netherlands, with a local office in Brussels.

Article 2

Principles and objectives

1. The Centre shall act in accordance with the provisions and objectives of the ACP-EU Agreement. It shall pursue the objectives laid down in Article 3 of Annex III to the ACP-EU Agreement, under the supervision of the Committee of Ambassadors.

2. The Centre shall elaborate the details of its objectives in an overall strategy paper.

3. The Centre shall perform its activities in close cooperation with the institutions and other bodies referred to in the ACP-EU Agreement and the declarations annexed thereto. The Centre may, where necessary, call upon regional and international institutions, particularly those which are located in the European Union or ACP States and dealing with matters relating to agricultural and rural development.

Article 3

Financing

1. The budget of the Centre shall be financed in accordance with the rules laid down in the ACP-EU Agreement in respect of development finance cooperation.

2. The Centre's budget may receive additional resources from other parties for the purposes of achieving the objectives set by the ACP-EU Agreement and implementing the strategy paper drawn up by the Centre.

Article 4

Committee of Ambassadors

1. The Committee of Ambassadors shall be the supervisory authority of the Centre in accordance with Article 3(5) of Annex III to the ACP-EU Agreement. It shall appoint the members of the Executive Board and the Director of the Centre on a proposal from the Executive Board. It shall monitor the overall strategy of the Centre and supervise the work of the Executive Board.

2. The Committee of Ambassadors shall give a discharge to the Director in respect of the implementation of the budget. In order to grant the discharge, the Committee of Ambassadors shall receive a recommendation from the Executive Board, based on the examination of the annual financial statements and the opinion expressed by the Auditor, together with the replies given by the Director.

([1]) OJ L 317, 15.12.2000, p. 3.

([2]) Agreement amending the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ L 209, 11.8.2005, p. 27).

([3]) Agreement amending for the second time the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, as first amended in Luxembourg on 25 June 2005 (OJ L 287, 4.11.2010, p. 3).

3. The Committee of Ambassadors may review and modify at any time the decisions taken by the Centre. It shall be regularly informed by the Executive Board and, upon request of the Committee of Ambassadors, also by the Director of the Centre.

Article 5

Executive Board

1. The Executive Board shall be set up to support, monitor and control the technical, administrative and financial aspects of all the Centre's activities.

2. The Executive Board shall be composed on a parity basis of six members in total, three ACP nationals and three European Union nationals, who are selected by the parties to the ACP-EU Agreement and appointed by the Committee of Ambassadors on the basis of their professional qualifications in the fields of agriculture and rural development and/or information and communication policies, science, management and technology.

3. In order to ensure the operational continuity of the Executive Board, the Committee of Ambassadors shall endeavour not to replace all the members of the Executive Board within the same calendar year.

4. The members of the Executive Board shall be appointed by the Committee of Ambassadors in accordance with the procedures laid down by the Committee for a period of up to five years, subject to a mid-term review.

5. The Executive Board shall hold three ordinary meetings a year. It may also hold extraordinary meetings whenever necessary in order to perform its duties, at the request of the Committee of Ambassadors, or at the request of the Chairperson of the Executive Board or at the request of the Director. The Centre shall act as secretariat to the Executive Board.

6. The members of the Executive Board shall carry out their tasks independently, shall not seek or take any instructions from third parties and shall act solely in the interests of the Centre. The position of member of the Executive Board shall be incompatible with any other activity remunerated by the Centre.

7. The members of the Executive Board shall elect a Chairperson and a Vice-Chairperson among themselves for a period of up to five years in accordance with the provisions laid down in its Rules of Procedure. The position of Chairperson shall be filled by a national of the party (ACP or European Union) other than the one holding the position of Director of the Centre. The position of Vice-Chairperson shall be filled by a national of the party other than the one holding the position of Chairperson.

8. Meetings of the Executive Board shall be attended by observers from the European Commission, the General Secretariat of the Council of the European Union and the Secretariat of the ACP States.

9. The Executive Board may invite other members of the Centre's management and staff and/or external experts to advise on specific questions.

10. The Executive Board shall take its decisions by a simple majority of the members present or represented, in accordance with its Rules of Procedure. Each member of the Executive Board shall have one vote. In the case of a split vote, the Chairperson shall have the casting vote.

11. Minutes shall be drawn up after each meeting. Discussions in the Executive Board shall be confidential.

12. The Executive Board shall adopt its own Rules of procedure and shall submit them to the Committee of Ambassadors for information.

Article 6

Tasks of the Executive Board

1. The Executive Board shall closely monitor and supervise the Centre's activities. The Executive Board shall be accountable to the Committee of Ambassadors.

2. The Executive Board shall:

(a) lay down the draft financial regulations in conformity with European Development Fund (EDF) rules and these statutes and shall submit them to the Committee of Ambassadors for approval;

(b) lay down and approve the staff regulations and the rules of operation of the Centre in conformity with EDF rules and these statutes and shall submit them to the Committee of Ambassadors for information;

(c) supervise the Centre's activities and ensure that its mission and the rules are properly implemented;

(d) adopt the annual and multiannual work programmes and the budget of the Centre and submit them to the Committee of Ambassadors for information;

(e) submit periodic reports and evaluations of the Centre's activities to the Committee of Ambassadors;

(f) adopt the Centre's overall strategy paper and submit it to the Committee of Ambassadors for information;

(g) approve the organisational structure, personnel policy and the organisation chart of the Centre;

(h) assess the Director's performance and work plan on an annual basis and submit a report in that regard to the Committee of Ambassadors;

(i) approve the recruitment of new members of staff and the renewal, extension or termination of contracts of the existing members of staff;

(j) approve the annual financial statements, based on the examination of the audit report;

(k) transmit the annual financial statements and audit report, together with a recommendation to the attention of the Committee of Ambassadors, in view of granting the discharge in relation to the implementation of the budget to the Director;

(l) approve the annual reports and transmit them to the Committee of Ambassadors for verification that the Centre's activities are consistent with the objectives laid down by the ACP-EU Agreement and the overall strategy paper of the Centre;

(m) propose the appointment of the Director of the Centre to the Committee of Ambassadors;

(n) if necessary, propose, by means of a duly reasoned proposal, after exhausting all reconciliation and remedies and respecting the right to be heard, that the Committee of Ambassadors dismisses the Director;

(o) propose to the Committee of Ambassadors the extension of the term of office of the Director for a second and final term based on thorough evaluation of his/her performance during the first term;

(p) report to the Committee of Ambassadors on any important issues that arise in the course of the performance of its duties; and

(q) report to the Committee of Ambassadors on the measures taken in the light of the observations and recommendations of the Committee of Ambassadors, accompanying its discharge decision.

3. Following a competitive tender procedure, the Executive Board shall select, from at least three bids, a firm of auditors for a period of three years. Such firm shall be a member of an internationally recognised supervisory body. The auditors selected shall examine whether the annual financial statements have been drawn up properly and in accordance with International Accounting Standards and give a true and fair overview of the financial situation of the Centre. The auditors shall also comment on the soundness of the Centre's financial management.

4. The Executive Board shall recommend to the Committee of Ambassadors to grant discharge to the Director in relation to the implementation of the budget following the audit of the Centre's annual financial statements.

Article 7

Director

1. The Centre shall be headed by a Director appointed by the Committee of Ambassadors on a proposal from the Executive Board for a period of up to five years. The Committee of Ambassadors' Co-chairs shall sign the Director's letter of appointment. Upon the recommendation of the Executive Board, on the basis of outstanding performance, the Committee of Ambassadors may under exceptional circumstances renew the appointment of the Director for a maximum period of five years. No extension shall be possible beyond this period. The approval of the second and final term shall be based on a thorough evaluation, based on verifiable performance criteria, submitted to the Committee of Ambassadors by the Executive Board.

2. The Director shall be responsible for the Centre's legal and institutional representation and for the execution of the Centre's remit and tasks.

3. The Director shall be responsible for submitting to the Executive Board for its approval:

(a) the Centre's overall strategy paper;

(b) the annual and multiannual activity/work programmes;

(c) the Centre's annual budget;

(d) the annual report, periodic reports and evaluations;

(e) the organisational structure, personnel policy and organisation chart of the Centre; and

(f) the recruitment of new members of staff and the renewal, extension and termination of the contracts of the existing members of staff.

4. The Director shall be responsible for the organisation and day-to-day management of the Centre. The Director shall report to the Executive Board on any implementing measures of the rules of operation of the Centre.

5. The Director shall report to the Executive Board on any major issues arising in the exercise of his/her duties, and, when necessary, shall inform the Committee of Ambassadors thereof.

6. The Director shall present his/her annual performance management plan and report on achievements to the Executive Board for assessment and subsequent transmission to the Committee of Ambassadors.

7. The Director shall be responsible for submitting the annual financial statements to the Executive Board for approval and transmission to the Committee of Ambassadors.

8. The Director shall take all the appropriate steps to act on the observations and recommendations of the Committee of Ambassadors, accompanying its decision on discharge in relation to the implementation of the budget.

CORRIGENDA

Corrigendum to Council Regulation (EU) No 566/2012 amending Regulation (EC) No 975/98 on denominations and technical specifications of euro coins intended for circulation

(Official Journal of the European Union L 169 of 29 June 2012)

On page 9:

for: *'Article 1g*

Issuing Member States shall update their national sides of regular coins in order to fully comply with this Regulation by 20 June 2062.',

read: *'Article 1g*

Issuing Member States shall update their national sides of regular coins in order to fully comply with this Regulation by 20 July 2062.';

On page 10:

for: *'Article 1j*

Articles 1c, 1d, 1e and 1h(2):

(a) shall not apply to circulation coins which have been issued or produced prior to 19 June 2012;

(b) shall, during a transitional period ending on 20 June 2062, not apply to the designs that are already legally in use on circulation coins on 19 June 2012. Circulation coins that have been issued or produced during the transitional period may remain legal tender without limit in time.',

read: *'Article 1j*

Articles 1c, 1d and 1e and Article 1h(2):

(a) shall not apply to circulation coins which have been issued or produced prior to 19 July 2012;

(b) shall, during a transitional period ending on 20 July 2062, not apply to the designs that are already legally in use on circulation coins on 19 July 2012. Circulation coins that have been issued or produced during the transitional period may remain legal tender without limit in time.'.

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