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[1] Text with EEA relevance

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[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 2092/2005

of 20 December 2005

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], and in particular Article 4(1) thereof,

Whereas:

(1) Regulation (EC) No 3223/94 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 the Annex thereto.

(2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 21 December 2005.

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

Done at Brussels, 20 December 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

Director-General for Agriculture and Rural Development

[1] OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

ANNEX

to Commission Regulation of 20 December 2005 establishing the 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	052	74,1
	204	51,6
	212	87,2
	999	71,0
0707 00 05	052	155,7
	204	82,1
	220	196,3
	628	155,5
	999	147,4
0709 90 70	052	149,3
	204	110,0
	999	129,7
0805 10 20	052	59,0
	204	62,2
	220	66,6
	388	33,2
	624	59,8
	999	56,2
0805 20 10	052	59,8
	204	59,3
	999	59,6
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	77,0
	220	36,8
	400	81,3
	464	143,2
	624	79,1
	999	83,5
0805 50 10	052	55,8
	999	55,8
0808 10 80	096	18,3
	400	86,7
	404	95,4
	720	69,0
	999	67,4
0808 20 50	052	138,4
	400	99,6
	720	42,4
	999	93,5

(1) Country nomenclature as fixed by Commission Regulation (EC) No 750/2005 (OJ L 126, 19.5.2005, p. 12). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 2093/2005

of 20 December 2005

opening an invitation to tender for the reduction in the duty on maize imported into Spain from third countries

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals [1], and in particular Article 12(1) thereof,

Whereas:

(1) Pursuant to the Community's international obligations in the context of the Uruguay Round of multilateral trade negotiations [2], the Community has undertaken to import a certain quantity of maize into Spain.

(2) Commission Regulation (EC) No 1839/95 of 26 July 1995 laying down detailed rules for the application of tariff quotas for imports of maize and sorghum into Spain and imports of maize into Portugal [3], lays down the special additional detailed rules necessary for implementing the invitation to tender.

(3) In view of the current market demand in Spain, an invitation to tender for the reduction in the duty on maize is appropriate.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

1. An invitation to tender is hereby opened for the reduction in the import duty referred to in Article 10(2) of Regulation (EC) No 1784/2003 on maize to be imported into Spain.

2. Regulation (EC) No 1839/95 shall apply.

Article 2

The invitation to tender shall be open until 29 June 2006. During that period, weekly invitations shall be issued with quantities and closing dates laid down by a notice of invitation to tender.

Article 3

Import licences issued under these invitations to tender shall be valid 50 days from the date they are issued within the meaning of Article 10(4) of Regulation (EC) No 1839/95.

Article 4

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, 20 December 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

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[1] OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (JO L 187, 19.7.2005, p. 11).
[2] OJ L 336, 23.12.1994, p. 22.
[3] OJ L 177, 28.7.1995, p. 4. Regulation as last amended by Regulation (EC) No 1558/2005 (JO L 249, 24.9.2005, p. 6).

COMMISSION REGULATION (EC) No 2094/2005

of 20 December 2005

opening an invitation to tender for the reduction in the duty on sorghum imported into Spain from third countries

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals [1], and in particular Article 12(1) thereof,

Whereas:

(1) Pursuant to the Community's international obligations in the context of the Uruguay Round of Multilateral Trade Negotiations [2], the Community has undertaken to import a certain quantity of sorghum into Spain.

(2) Commission Regulation (EC) No 1839/95 of 26 July 1995 laying down detailed rules for the application of tariff quotas for imports of maize and sorghum into Spain and imports of maize into Portugal [3], lays down the special additional detailed rules necessary for implementing the invitations to tender.

(3) Taking into account the current market demand in Spain, an invitation to tender for the reduction in the duty on sorghum is appropriate.

(4) Council Regulation (EC) No 2286/2002 of 10 December 2002 on the arrangements applicable to agricultural products and goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) [4] provides in particular for a 60 % reduction in the duty applicable to imports of 100 000 tonnes of sorghum per calendar year, and a 50 % reduction over this quota. Cumulation of this benefit and the benefit resulting from the invitation to tender for the reduction in the import duty would disturb the Spanish cereals market. Such cumulation must therefore be ruled out.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

1. An invitation to tender is hereby opened for the reduction in the import duty referred to in Article 10(2) of Regulation (EC) No 1784/2003 on sorghum to be imported into Spain.

2. Regulation (EC) No 1839/95 shall apply.

3. The reduction in the import duty for sorghum laid down in Annex II to Regulation (EC) No 2286/2002 shall not apply in the case of this invitation to tender.

Article 2

The invitation to tender shall be open until 29 June 2006. During that time weekly invitations shall be issued, with quantities and closing dates laid down by a notice of invitation to tender.

Article 3

Import licences issued under this invitation to tender shall be valid for 50 days from the date they are issued, within the meaning of Article 10(4) of Regulation (EC) No 1839/95.

Article 4

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

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[1] OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).
[2] OJ L 336, 23.12.1994, p. 22.
[3] OJ L 177, 28.7.1995, p. 4. Regulation as last amended by Regulation (EC) No 1558/2005 (OJ L 249, 24.9.2005, p. 6).
[4] OJ L 348, 21.12.2002, p. 5.

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

Done at Brussels, 20 December 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

COMMISSION REGULATION (EC) No 2095/2005

of 20 December 2005

laying down detailed rules for the application of Council Regulation (EEC) No 2075/92 as regards communication of information on tobacco

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organisation of the market in raw tobacco [1], and in particular Article 21 thereof,

Whereas:

(1) In order to enable the Commission to monitor market developments in the raw tobacco sector covered by the common market organisation established by Regulation (EEC) No 2075/92, Member States are required to communicate the necessary information.

(2) To that end, Commission Regulation (EC) No 604/2004 of 29 March 2004 on the communication of information on tobacco from the 2000 harvest onwards [2] was adopted.

(3) The information to be communicated should provide a general overview of the entire Community tobacco market, and should in particular take into account the provisions of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers [3] and its implementing rules.

(4) In the interest of efficient administration, the communicated information should be grouped by group of tobacco variety and time limits should be set for its submission.

(5) It is therefore appropriate to adapt the provisions on the information to be communicated accordingly.

(6) For the sake of clarity and rationality, Regulation (EC) No 604/2004 should be repealed and replaced by a new regulation.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Tobacco,

HAS ADOPTED THIS REGULATION:

Article 1

For each harvest, the Member States shall communicate to the Commission by electronic transmission the information set out in Annexes IA, IB, II and III in accordance with the time limits given therein.

Article 2

The Member States shall take the measures necessary to ensure that the economic operators concerned provide them with the information required within the relevant time limits.

Article 3

1. Regulation (EC) No 604/2004 is repealed.

However, it shall continue to apply to communications in respect of the 2005 harvest.

2. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex IV.

Article 4

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

It shall apply from 1 January 2006.

[1] OJ L 215, 30.7.1992, p. 70. Regulation as last amended by Regulation (EC) No 1679/2005 (OJ L 271, 15.10.2005, p. 1).
[2] OJ L 97, 1.4.2004, p. 34.
[3] OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Commission Regulation (EC) No 118/2005 (OJ L 24, 27.1.2005, p. 15).

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

Done at Brussels, 20 December 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX IA

Information to be communicated to the Commission by 31 July of the year of harvest concerned at the latest

Harvest: ..... Declarant Member State: .....

Total number of farmers producing tobacco: .....

Total number of first processors: .....

ANNEX IB

Information to be communicated to the Commission by 31 July of the year of harvest concerned at the latest

Harvest: ..... Declarant Member State: .....

Group of varieties: .....

	Member State of production (declarant)	Member State of production Name:	Member State of production Name:	Member State of production Name:
1. CULTIVATION CONTRACTS				
1.1. Number of cultivation contracts recorded				
1.2. Quantity of tobacco (in tonnes) of the moisture content referred to in Annex XXVIII to Regulation (EC) No 1973/2004 covered by the contracts				
1.3. Total area covered by the contracts (in hectares)				
2. FARMERS PRODUCING TOBACCO				
2.1. Total number of farmers producing tobacco				
2.2. Number of farmers belonging to a producer association				
3. FIRST PROCESSING ENTERPRISES				
3.1. Number of first processing enterprises concluding cultivation contracts				
4. PRICES [1]				
4.1. Maximum price (EUR per kg) agreed in the cultivation contracts, in relevant currency excluding taxes and other levies. Indicate the reference quality				
4.2. Minimum price (EUR per kg) agreed in the cultivation contracts, in relevant currency excluding taxes and other levies. Indicate the reference quality				

[1] Member States using their national currency shall apply the conversion rate of 1 January of the year of the harvest.

ANNEX II

Summary information to be communicated to the Commission by 30 June of the year following the year of harvest concerned at the latest

Cumulative figures for the harvest concerned

Harvest: ..... Declarant Member State: .....

Group of varieties: .....

	Member State of production (declarant)	Member State of production Name:	Member State of production Name:	Member State of production Name:
1. Quantity delivered (in tonnes) 1.1. Total quantity of raw tobacco of the minimum quality standard and moisture content referred to in Annex XXVIII to Regulation (EC) No 1973/2004 1.2. Quantity of raw tobacco of the minimum quality standard and moisture content referred to in Annex XXVIII to Regulation (EC) No 1973/2004 delivered through producer associations				
2. Actual quantity of raw tobacco (in tonnes) of the minimum quality standard delivered before adjustment of the weight on the basis of the moisture content				
3. Average price (EUR per kg), excluding taxes and other levies, paid by the first processing enterprises ([1])				

([1]) Member States using their national currency shall apply the conversion rate of 1 January of the calendar year following the harvest.

ANNEX III

Information to be communicated to the Commission by 31 July of the year following that of the harvest at the latest

Movement of stocks (in tonnes) held by the first processors

Declarant Member State: .....

Date of declaration: .....

Group of varieties	Harvest concerned	Quantities released to the Community market during the previous marketing year (1)	Quantities released to markets of third countries during the previous marketing year (1)	Stock position on the final day of the previous marketing year (1)

(1) The marketing year is considered to run from 1 July of the year of the harvest to 30 June of the year following that of the harvest.

ANNEX IV

Correlation table

Regulation (EC) No 604/2004	This Regulation
Articles 1 and 2	Articles 1 and 2
Article 3	—
Article 4	Article 3
Article 5	Article 4
Annexes I, II and III	Annexes IB, II and III
—	Annex IA
Annex IV	—
Annex V	Annex IV

COMMISSION REGULATION (EC) No 2096/2005

of 20 December 2005

laying down common requirements for the provision of air navigation services

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation) ([1]), and in particular Articles 4 and 6 thereof,

Whereas:

(1) Pursuant to Regulation (EC) No 550/2004, the Commission is required to establish common requirements for the provision of air navigation services throughout the Community. A Regulation providing direct application is the most suitable instrument for this purpose.

(2) The provision of air navigation services within the Community should be subject to certification by Member States. Air navigation service providers which comply with the common requirements should receive a certificate in accordance with Article 7 of Regulation (EC) No 550/2004. Those air navigation service providers which may operate without a certificate should endeavour to ensure maximum compliance with the common requirements as far as their legal status allows.

(3) The application of the common requirements to be laid down pursuant to Article 6 of Regulation (EC) No 550/2004 should be without prejudice to Member States' sovereignty over their airspace and to the requirements of the Member States relating to public order, public security and defence matters, as set out in Article 13 of Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) ([2]). The common requirements should not cover military operations and training within the scope of Article 1(2) of Regulation (EC) No 549/2004.

(4) The definition of common requirements for the provision of air navigation services should take due account of the legal status of air navigation service providers in the Member States. Furthermore, when an organisation pursues activities other than the provision of air navigation services, the common requirements to be laid down pursuant to Article 6 of Regulation (EC) No 550/2004 should not apply to such other activities or to resources allocated to activities outside the provision of air navigation services, unless provision is made to the contrary.

(5) The application of common requirements to air navigation service providers should be proportionate to the risks linked with the specific features of each service such as the number and/or the nature and characteristics of processed movements. Should certain air navigation service providers elect not to avail themselves of the opportunity to provide cross-border services and thereby waive the right to mutual recognition within the single European sky, a national supervisory authority should be entitled to allow those providers to comply commensurately with, respectively, certain general requirements for the provision of air navigation services and certain specific requirements for the provision of air traffic services. Consequently, the conditions attached to the certificate should reflect the nature and the scope of the derogation.

(6) In order to ensure the proper functioning of the certification scheme, Member States should provide the Commission with all relevant information on the derogations granted by their national supervisory authority in the context of their annual reports.

(7) The different types of air navigation services are not necessarily subject to the same requirements. It is therefore necessary to adjust common requirements to the special features of each type of service.

(8) The onus of proving compliance should lie with the air navigation service providers, for the period of validity of the certificate and for all the services covered.

([1]) OJ L 96, 31.3.2004, p. 10.
([2]) OJ L 96, 31.3.2004, p. 1.

(9) In order to ensure the effective application of common requirements, a system of regular supervision and inspection of compliance with those common requirements and with the conditions specified in the certificate should be established. The national supervisory authority should examine the suitability of a provider prior to issuing a certificate and should assess the ongoing compliance of the air navigation service providers it has certified on a yearly basis. Consequently, it should establish and update annually an indicative inspection programme covering all the providers it has certified, on the basis of an assessment of the risks. The programme should allow the inspection of all relevant parts of the air navigation service providers within a reasonable time-frame. When assessing the compliance of designated providers of air traffic services and meteorological services, the national supervisory authority should be entitled to check relevant requirements stemming from international obligations on the Member State in question.

(10) Peer reviews of national supervisory authorities should further a common approach to the supervision of air navigation service providers throughout the Community. The Commission, in cooperation with the Member States, should arrange these peer reviews, which should be co-ordinated with the activities undertaken within the framework of Eurocontrol's ESARR Implementation Monitoring and Support programme (ESIMS) and the Universal Safety Oversight Audit Programme (USOAP) run by the International Civil Aviation Organisation (ICAO). This will avoid duplication of work. In order to allow the exchange of experience and best practice during a peer review, the national experts should preferably originate from a national supervisory authority or a recognised organisation.

(11) Eurocontrol has developed Safety Regulatory Requirements (ESARRs) which are of the highest importance for the safe provision of air traffic services. In accordance with Regulation (EC) No 550/2004, the Commission should identify and adopt the relevant provisions of ESARR 3 on the use of safety management systems by air traffic management (ATM) service providers, ESARR 4 on risk assessment and mitigation in ATM and ESARR 5 on ATM services' personnel, requirements for engineering and technical personnel undertaking operational safety related tasks. Pursuant to Article 5 of Regulation (EC) No 550/2004, the Commission has presented a proposal for a directive of the European Parliament and of the Council on a Community Air Traffic Controller Licence [1] which covers the provisions of ESARR 5 for air traffic controllers. It is therefore not appropriate to repeat these provisions in this Regulation. However, provisions should be included to require a national supervisory authority to check whether the personnel of a provider of air traffic services, in particular air traffic controllers, is properly licensed, if so required.

(12) It is similarly not appropriate to repeat the ESARR 2 provisions on reporting and assessment of safety occurrences in ATM, which are covered by Council Directive 94/56/EC of 21 November 1994 establishing the fundamental principles governing the investigation of civil accidents and incidents [2] and by Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation [3]. However, new provisions on safety occurrences should be introduced to require a national supervisory authority to check whether a provider of air traffic services, and also a provider of communication, navigation or surveillance services, meet the arrangements required to cover the reporting and assessment of such occurrences. The relevant provisions of ESARR 1 on safety oversight in ATM, and of ESARR 6 on software in ATM systems, should be identified and adopted by way of separate Community acts.

(13) It should be recognised in particular that, first, safety management is that function of air traffic services which ensures that all safety risks have been identified, assessed and satisfactorily mitigated, and that, secondly, a formal and systematic approach to safety management will maximise safety benefits in a visible and traceable way. The Commission should update and specify further the safety requirements applying to air traffic services, in order to ensure the highest possible level of safety without prejudice to such future role as may be defined for the European Aviation Safety Agency in this area.

(14) Air navigation service providers should operate in compliance with the relevant ICAO standards. With a view to facilitating the cross-border provision of services, the Member States and the Commission, acting in close cooperation with Eurocontrol, should work towards minimising the differences notified by Member States in the application of ICAO standards in the field of air navigation services in order to reach a common set of standards between Member States within the single European sky in particular with a view to developing common rules of the air.

[1] COM(2004) 473, not yet published in the Official Journal.

[2] OJ L 319, 12.12.1994, p. 14.

[3] OJ L 167, 4.7.2003, p. 23.

(15) Different national arrangements as to liability should not prevent an air navigation service provider from entering into agreements on the cross-border provision of services, once they have set up arrangements to cover losses for damages arising from liabilities under the applicable law. The method employed should follow national legal requirements. Member States which allow the provision of air navigation services in all or part of the airspace under their responsibility without certification in accordance with Regulation (EC) No 550/2004 should cover the liabilities of those providers.

(16) While ESARR 4 defines a maximum tolerable probability for ATM directly contributing to accidents in the ECAC (European Civil Aviation Conference) region, maximum tolerable probabilities for all severity classes have not yet been established. The Member States and the Commission, acting together with Eurocontrol, should complete and update these probabilities and develop mechanisms to apply them in different circumstances.

(17) The measures provided for in this Regulation are in accordance with the opinion of the Single Sky Committee established by Article 5 of Regulation (EC) No 549/2004,

HAS ADOPTED THIS REGULATION:

Article 1

Subject-matter and scope

This Regulation lays down the common requirements for the provision of air navigation services. However, unless Annex I or II makes provision to the contrary, those common requirements do not apply to:

(a) activities other than the provision of air navigation services by a provider;

(b) resources allocated to activities outside the provision of air navigation services.

This Regulation identifies and adopts the mandatory provisions of the following Eurocontrol Safety Regulatory Requirements (ESARRs) which are relevant for the certification of air navigation service providers:

(a) ESARR 3 on the use of safety management systems by air traffic management (ATM) service providers, issued on 17 July 2000;

(b) ESARR 4 on risk assessment and mitigation in ATM, issued on 5 April 2001;

(c) ESARR 5 on ATM services' personnel, requirements for engineering and technical personnel undertaking operational safety related tasks, issued on 11 April 2002.

Article 2

Definitions

1. For the purposes of this Regulation the definitions established by Regulation (EC) No 549/2004 shall apply.

2. In addition to the definitions referred to in paragraph 1 the following definitions shall apply:

(a) 'aerial work' shall mean an aircraft operation in which an aircraft is used for specialised services such as agriculture, construction, photography, surveying, observation and patrol, search and rescue or aerial advertisement;

(b) 'commercial air transport' shall mean any aircraft operation involving the transport of passengers, cargo or mail for remuneration or hire;

(c) 'functional system' shall mean a combination of systems, procedures and human resources organised to perform a function within the context of ATM;

(d) 'general aviation' shall mean any civil aircraft operation other than commercial air transport or aerial work;

(e) 'national supervisory authority' shall mean the body or bodies nominated or established by Member States as their national authority pursuant to Article 4 of Regulation (EC) No 549/2004;

(f) 'hazard' shall mean any condition, event, or circumstance which could induce an accident;

(g) 'operating organisation' shall mean an organisation responsible for the provision of engineering and technical services supporting air traffic, communication, navigation or surveillance services;

(h) 'risk' shall mean the combination of the overall probability, or frequency of occurrence of a harmful effect induced by a hazard and the severity of that effect;

(i) 'safety assurance' shall mean all planned and systematic actions necessary to afford adequate confidence that a product, a service, an organisation or a functional system achieves acceptable or tolerable safety;

(j) 'safety objective' shall mean a qualitative or quantitative statement that defines the maximum frequency or probability at which a hazard can be expected to occur;

(k) 'safety requirement' shall mean a risk-mitigation means, defined from the risk-mitigation strategy that achieves a particular safety objective, including organisational, operational, procedural, functional, performance, and interoperability requirements or environment characteristics;

(l) 'services' shall mean either an air navigation service or a bundle of air navigation services.

3. 'Air navigation service provider' shall be understood to include an organisation having applied for a certificate to provide such services.

Article 3

Granting of certificates

1. In order to obtain the certificate necessary to provide air navigation services, and without prejudice to Article 7(5) of Regulation (EC) No 550/2004, air navigation service providers shall comply with the general common requirements set out in Annex I as well as with the specific additional requirements set out in Annexes II to V to this Regulation according to the type of service they provide, subject to the derogations under Article 4.

2. A national supervisory authority shall verify an air navigation service provider's compliance with the common requirements before issuing a certificate to that provider.

3. An air navigation service provider shall comply with the common requirements no later than the time at which the certificate is issued pursuant to Article 7 of Regulation (EC) No 550/2004.

Article 4

Derogations

1. By way of derogation from the provisions of Article 3(1), certain air navigation service providers may elect not to avail themselves of the opportunity to provide cross-border services and may waive the right to mutual recognition within the single European sky.

They may, in those circumstances, apply for a certificate which is limited to the airspace under the responsibility of the Member State referred to in Article 7(2) of Regulation (EC) No 550/2004.

In order to make such an application, a provider of air traffic services shall provide services or plan to provide them only with respect to one or more of the following categories:

(a) general aviation;

(b) aerial work;

(c) commercial air transport limited to aircraft with less than 10 tonnes of maximum take-off mass or less than 20 passenger seats;

(d) commercial air transport with less than 10 000 movements per year, regardless of the maximum take-off mass and the number of passenger seats, 'movements' being counted as the sum of take-offs and landings and calculated as an average over the previous three years.

In order to make such an application, an air navigation service provider other than a provider of air traffic services shall have a gross annual turnover of EUR 1 000 000 or less in relation to the services it provides or plans to provide.

Where, owing to objective practical reasons, an air navigation service provider is unable to provide evidence that it meets those criteria, a national supervisory authority may accept analogous figures or forecasts in relation to the ceilings defined in the third and fourth subparagraphs.

When presenting such an application, an air navigation service provider shall submit to the national supervisory authority, simultaneously, the relevant evidence regarding the qualifying criteria.

2. A national supervisory authority may grant specific derogations to applicants who fulfil the criteria of paragraph 1, commensurately with their contribution to air traffic management in the airspace under the responsibility of the Member State.

Those derogations may relate only to the requirements of Annex I, subject to the following exceptions:

(a) part 1 technical and operational competence and capability;

(b) part 3.1 safety management;

(c) part 5 human resources;

(d) part 8.1 open and transparent provision of services.

3. In addition to the derogations referred to in paragraph 2, a national supervisory authority may grant derogations to applicants who provide aerodrome flight information services by operating regularly not more than one working position at any aerodrome. It shall do so commensurately with the applicants' contribution to air traffic management in the airspace under the responsibility of the Member State.

Those derogations may relate only to the following requirements of Annex II, part 3:

(a) safety management responsibility as well as external services and supplies (under part 3.1.2);

(b) safety surveys (under part 3.1.3);

(c) safety requirements for risk assessment and mitigation with regard to changes (part 3.2).

4. No derogations shall be granted from the requirements contained in Annexes III, IV or V.

5. In conformity with Annex II of Regulation (EC) No 550/2004, a national supervisory authority shall:

(a) specify the nature and the scope of the derogation in the conditions attached to the certificate by indicating its legal basis;

(b) limit the validity of the certificate in time; and

(c) monitor whether the air navigation service providers continue to qualify for the derogation.

Article 5

Demonstration of compliance

1. The air navigation service provider shall provide all the relevant evidence to demonstrate compliance with the applicable common requirements at the request of the national supervisory authority. The air navigation service provider may make full use of existing data.

2. A certified air navigation service provider shall notify the national supervisory authority of planned changes to its provision of services which may affect its compliance with the applicable common requirements or with the conditions attached to the certificate.

3. A certified provider of air traffic services shall notify the national supervisory authority of planned safety related changes to the provision of air traffic services.

4. Where a certified air navigation service provider does not comply any longer with the applicable common requirements or with the conditions attached to the certificate, the competent national supervisory authority shall take a decision within a time period not exceeding one month. By this decision, the national supervisory authority shall require the air navigation service provider to take corrective action.

The decision shall immediately be notified to the relevant air navigation service provider.

The national supervisory authority shall check that the corrective action has been implemented before notifying its approval to the relevant air navigation service provider. Where the national supervisory authority considers that corrective action has not been properly implemented within the agreed timetable, it shall take appropriate enforcement measures in accordance with Article 7(7) of Regulation (EC) No 550/2004 and Article 9 of Regulation (EC) No 549/2004 while taking into account the need to ensure the continuity of services.

Article 6

Facilitation of compliance monitoring

In accordance with Article 2(2) of Regulation (EC) No 550/2004, air navigation service providers shall facilitate inspections and surveys by the national supervisory authority or by a recognised organisation acting on the latter's behalf, including site visits and visits without prior notice.

The authorised persons shall be empowered to perform the following acts:

(a) to examine the relevant records, data, procedures and any other material relevant to the provision of air navigation services;

(b) to take copies of or extracts from such records, data, procedures and other material;

(c) to ask for an oral explanation on site;

(d) to enter relevant premises, lands or means of transport.

Such inspections and surveys shall be carried out in compliance with the legal provisions of the Member State in which they are to be undertaken.

Article 7

Ongoing compliance

The national supervisory authority shall, on the basis of the evidence at its disposal, monitor annually the ongoing compliance of the air navigation service providers which it has certified.

To this end, the national supervisory authority shall establish and update annually an indicative inspection programme covering all the providers it has certified and based on an assessment of the risks associated with the different operations constituting the services provided. It shall consult the air navigation service providers concerned as well as any other national supervisory authority concerned, if appropriate, before establishing such a programme.

The programme shall indicate the envisaged interval of the inspections of the different sites.

Article 8

Safety regulation of engineering and technical personnel

With regard to the provision of air traffic, communication, navigation or surveillance services, the national supervisory authority or any other authority designated by a Member State to fulfil this task shall:

(a) issue appropriate safety rules for engineering and technical personnel who undertake operational safety-related tasks;

(b) ensure adequate and appropriate safety oversight of the engineering and technical personnel assigned by any operating organisation to undertake operational safety-related tasks;

(c) on reasonable grounds and after due enquiry, take appropriate action in respect of the operating organisation and/or its technical and engineering personnel who do not meet the provisions of Annex II, part 3.3;

(d) verify that appropriate methods are in place to ensure that third parties assigned to operational safety-related tasks meet the provisions of Annex II, part 3.3.

Article 9

Peer review procedure

1. The Commission, acting in cooperation with the Member States shall arrange peer reviews of national supervisory authorities in accordance with paragraphs 2 to 6.

2. A peer review shall be carried out by a team of national experts. A team shall be comprised of experts coming from at least three different Member States. Experts shall not participate in peer reviews in the Member State where they are employed. The Commission shall establish and maintain a pool of national experts designated by Member States, which shall cover all aspects of the common requirements as listed in Article 6 of Regulation (EC) No 550/2004.

3. Not less than three months before a peer review, the Commission shall inform the Member State and the national supervisory authority concerned of the peer review, the date on which it is scheduled to take place and the identity of the experts taking part in it.

The Member State whose national supervisory authority is subject to review shall approve the team of experts before it can carry out the review.

4. Within a period of three months following the review, the review team shall draw up, by consensus, a report which may contain recommendations. The Commission shall convene a meeting with the experts and the national supervisory authority to discuss the report.

5. The Commission shall forward the report to the Member State concerned. The latter may, within three months of receipt, present its observations; those observations shall include, where relevant, the measures which it has taken or intends to take to respond to the review within a given timescale.

Unless otherwise agreed with the Member State concerned, the review report and the follow-up shall not be published.

6. The Commission shall inform the Member States through the Single Sky Committee of the main findings of these reviews on an annual basis.

Article 10

Entry into force

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

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

Done at Brussels, 20 December 2005.

For the Commission
Jacques BARROT
Vice-President

ANNEX I

GENERAL REQUIREMENTS FOR THE PROVISION OF AIR NAVIGATION SERVICES

1. TECHNICAL AND OPERATIONAL COMPETENCE AND CAPABILITY

An air navigation service provider shall be able to provide services in a safe, efficient, continuous and sustainable manner consistent with any reasonable level of overall demand for a given airspace. To this end, it shall maintain adequate technical and operational capacity and expertise.

2. ORGANISATIONAL STRUCTURE AND MANAGEMENT

2.1. **Organisational structure**

An air navigation service provider shall set up and manage its organisation according to a structure that supports the safe, efficient and continuous provision of services.

The organisational structure shall define:

(a) the authority, duties and responsibilities of the nominated post holders, in particular of the management personnel in charge of safety, quality, security, finance and human resources related functions;

(b) the relationship and reporting lines between different parts and processes of the organisation.

2.2. **Organisational management**

An air navigation service provider shall produce a business plan covering a minimum period of five years. The business plan shall:

(a) set out the overall aims and goals of the air navigation service provider and its strategy towards achieving them in consistency with any overall longer term plan of the provider and with relevant Community requirements relevant for the development of infrastructure or other technology;

(b) contain appropriate performance objectives in terms of quality and level of service, safety and cost-effectiveness.

An air navigation service provider shall produce an annual plan covering the forthcoming year which shall specify further the features of the business plan and describe any changes to it.

The annual plan shall cover the following provisions on the level and quality of service such as the expected level of capacity, safety and delays to flights incurred as well as on financial arrangements:

(a) information on the implementation of new infrastructure or other developments and a statement how they will contribute to improving the level and quality of services;

(b) indicators of performance against which the level and quality of service may be reasonably assessed;

(c) the service provider's expected short-term financial position as well as any changes to or impacts on the business plan.

3. SAFETY AND QUALITY MANAGEMENT

3.1. **Safety management**

An air navigation service provider shall manage the safety of all its services. In doing so, it shall establish formal interfaces with all stakeholders which may influence directly the safety of its services.

3.2. **Quality management system**

An air navigation service provider shall have in place at the latest two years after entry into force of this Regulation a quality management system which covers all air navigation services it provides according to the following principles. It shall:

(a) define the quality policy in such a way as to meet the needs of different users as closely as possible;

(b) set up a quality assurance programme that contains procedures designed to verify that all operations are being conducted in accordance with applicable requirements, standards and procedures;

(c) provide evidence of the functioning of the quality system by means of manuals and monitoring documents;

(d) appoint management representatives to monitor compliance with, and adequacy of, procedures to ensure safe and efficient operational practices;

(e) perform reviews of the quality system in place and take remedial actions, as appropriate.

An EN ISO 9001 certificate, issued by an appropriately accredited organisation, covering the air navigation services of the provider shall be considered as a sufficient means of compliance. The air navigation service provider shall accept the disclosure of the documentation related to the certification to the national supervisory authority upon the latter's request.

3.3. **Operations manuals**

An air navigation service provider shall provide and keep up-to-date operations manuals relating to the provision of its services for the use and guidance of operations personnel. It shall ensure that:

(a) operations manuals contain instructions and information required by the operations personnel to perform their duties;

(b) relevant parts of the operations manuals are accessible to the personnel concerned;

(c) the operations personnel are expeditiously informed of the amendments to the operations manual applying to their duties as well as of their entry into force.

4. SECURITY

An air navigation service provider shall establish a security management system to ensure:

(a) the security of its facilities and personnel so as to prevent unlawful interference with the provision of services;

(b) the security of operational data it receives or produces or otherwise employs, so that access to it is restricted only to those authorised.

The security management system shall define:

(a) the procedures relating to security risk assessment and mitigation, security monitoring and improvement, security reviews and lesson dissemination;

(b) the means designed to detect security breaches and to alert personnel with appropriate security warnings;

(c) the means of containing the effects of security breaches and to identify recovery action and mitigation procedures to prevent re-occurrence.

An air navigation service provider shall ensure the security clearance of its personnel, if appropriate, and coordinate with the relevant civil and military authorities to ensure the security of its facilities, personnel and data.

5. HUMAN RESOURCES

An air navigation service provider shall employ appropriately skilled personnel to ensure the provision of its services in a safe, efficient, continuous and sustainable manner. In this context, it shall establish policies for the recruitment and training of personnel.

6. FINANCIAL STRENGTH

6.1. **Economic and financial capacity**

An air navigation service provider shall be able to meet its financial obligations, such as fixed and variable costs of operation or capital investment costs. It shall use an appropriate cost accounting system. It shall demonstrate its ability through the annual plan as referred to in part 2.2 of this Annex as well as through balance sheets and accounts as practicable under its legal statute.

6.2. **Financial audit**

In accordance with article 12(2) of Regulation (EC) No 550/2004, an air navigation service provider shall demonstrate that it is undergoing an independent audit on a regular basis.

7. LIABILITY AND INSURANCE COVER

An air navigation service provider shall have in place arrangements to cover its liabilities arising from applicable law.

The method employed to provide the cover shall be appropriate to the potential loss and damage in question, taking into account the legal status of the air navigation service provider and the level of commercial insurance cover available.

An air navigation service provider which avails itself of services of another air navigation service provider shall ensure that the agreements cover the allocation of liability between them.

8. QUALITY OF SERVICES

8.1. **Open and transparent provision of services**

An air navigation service provider shall provide its services in an open and transparent manner. It shall publish the conditions of access to its services and establish a formal consultation process with the users of its services on a regular basis, either individually or collectively, and at least once a year.

An air navigation service provider shall not discriminate on grounds of nationality or identity of the user or the class of users in accordance with applicable Community law.

8.2. **Contingency plans**

At the latest one year after certification, an air navigation service provider shall have in place contingency plans for all the services it provides in the case of events which result in significant degradation or interruption of its services.

9. REPORTING REQUIREMENTS

An air navigation service provider shall be able to provide an annual report of its activities to the relevant national supervisory authority. This report shall cover its financial results without prejudice to Article 12 of Regulation (EC) No 550/2004, as well as its operational performance and any other significant activities and developments in particular in the area of safety.

The annual report shall include as a minimum:

— an assessment of the level and quality of service generated and of the level of safety provided,

— the performance of the air navigation service provider compared to the performance objectives established in the business plan, reconciling actual performance against the annual plan by using the indicators of performance established in the annual plan,

— developments in operations and infrastructure,

— the financial results, as long as they are not separately published in accordance with Article 12(1) of Regulation (EC) No 550/2004,

— information about the formal consultation process with the users of its services,

— information about the human resources policy.

The air navigation service provider shall make the content of the annual report available to the public under conditions set by the national supervisory authority in accordance with national law.

ANNEX II

SPECIFIC REQUIREMENTS FOR THE PROVISION OF AIR TRAFFIC SERVICES

1. OWNERSHIP

A provider of air traffic services shall make explicit to the national supervisory authority referred to in Article 7(2) of Regulation (EC) No 550/2004:

— its legal status, its ownership structure and any arrangements having a significant impact on the control over its assets,

— any links with organisations not involved in the provision of air navigation services, including commercial activities in which it is engaged either directly or through related undertakings, which account for more than 1 % of its expected revenue. Furthermore, it shall notify any change of any single shareholding which represents 10 % or more of its total shareholding.

A provider of air traffic services shall take all necessary measures to prevent any situation of conflict of interests that could compromise the impartial and objective provision of its services.

2. OPEN AND TRANSPARENT PROVISION OF SERVICES

In addition to the provision of Annex I, part 8.1 and where a Member State decides to organise the provision of specific ATS services in a competitive environment, a Member State may take all appropriate measures to ensure that providers of these specific air traffic services shall neither engage in conduct that would have as its object or effect the prevention, restriction or distortion of competition, nor shall they engage in conduct that amounts to an abuse of a dominant position in accordance with applicable national and Community law.

3. SAFETY OF SERVICES

3.1. **Safety management system**

3.1.1. *General safety requirements*

A provider of air traffic services shall, as an integral part of the management of its services, have in place a safety management system (SMS) which:

— ensures a formalised, explicit and proactive approach to systematic safety management in meeting its safety responsibilities within the provision of its services; operates in respect of all its services and the supporting arrangements under its managerial control; and includes, as its foundation, a statement of safety policy defining the organisation's fundamental approach to managing safety (safety management),

— ensures that everyone involved in the safety aspects of the provision of air traffic services has an individual safety responsibility for their own actions, that managers are responsible for the safety performance of their respective departments or divisions and that the top management of the provider carries an overall safety responsibility (safety responsibility),

— ensures that the achievement of satisfactory safety in air traffic services shall be afforded the highest priority (safety priority),

— ensures that while providing air traffic services, the principal safety objective is to minimise its contribution to the risk of an aircraft accident as far as reasonably practicable (safety objective).

3.1.2. *Requirements for safety achievement*

Within the operation of the SMS, a provider of air traffic services shall:

— ensure that personnel are adequately trained and competent for the job they are required to do, in addition to being properly licensed if so required and satisfying applicable medical fitness requirements (competency),

— ensure that a safety management function is identified with organisational responsibility for development and maintenance of the safety management system; ensure that this point of responsibility is independent of line management, and accountable directly to the highest organisational level. However, in the case of small organisations where combination of responsibilities may prevent sufficient independence in this regard, the arrangements for safety assurance shall be supplemented by additional independent means; and ensure that the top management of the service provider organisation is actively involved in ensuring safety management (safety management responsibility),

— ensure that, wherever practicable, quantitative safety levels are derived and are maintained for all functional systems (quantitative safety levels),

— ensure that the SMS is systematically documented in a manner, which provides a clear linkage to the organisation's safety policy (SMS documentation),

— ensure adequate justification of the safety of the externally provided services and supplies, having regard to their safety significance within the provision of its services (external services and supplies),

— ensure that risk assessment and mitigation is conducted to an appropriate level to ensure that due consideration is given to all aspects of the provision of ATM (risk assessment and mitigation). As far as changes to the ATM functional system are concerned, the provisions of part 3.2 of this Annex shall apply,

— ensure that ATM operational or technical occurrences which are considered to have significant safety implications are investigated immediately, and any necessary corrective action is taken (safety occurrences). It shall also demonstrate that it has implemented the requirements on the reporting and assessment of safety occurrences in accordance with applicable national and Community law.

3.1.3. *Requirements for safety assurance*

Within the operation of the SMS, a provider of air traffic services shall ensure that:

— safety surveys are carried out as a matter of routine, to recommend improvements where needed, to provide assurance to managers of the safety of activities within their areas and to confirm compliance with the relevant parts of the SMS (safety surveys),

— methods are in place to detect changes in functional systems or operations which may suggest any element is approaching a point at which acceptable standards of safety can no longer be met, and that corrective action is taken (safety monitoring),

— safety records are maintained throughout the SMS operation as a basis for providing safety assurance to all associated with, responsible for or dependent upon the services provided, and to the national supervisory authority (safety records).

3.1.4. *Requirements for safety promotion*

Within the operation of the SMS, a provider of air traffic services shall ensure that:

— all personnel are aware of the potential safety hazards connected with their duties (safety awareness),

— the lessons arising from safety occurrence investigations and other safety activities are disseminated within the organisation at management and operational levels (lesson dissemination),

— all personnel are actively encouraged to propose solutions to identified hazards, and changes are made to improve safety where they appear needed (safety improvement).

3.2. **Safety requirements for risk assessment and mitigation with regard to changes**

3.2.1. *Section 1*

Within the operation of the SMS, a provider of air traffic services shall ensure that hazard identification as well as risk assessment and mitigation are systematically conducted for any changes to those parts of the ATM functional system and supporting arrangements within his managerial control, in a manner which addresses:

(a) the complete life cycle of the constituent part of the ATM functional system under consideration, from initial planning and definition to post-implementation operations, maintenance and de-commissioning;

(b) the airborne, ground and, if appropriate, spatial components of the ATM functional system, through cooperation with responsible parties; and

(c) the equipment, procedures and human resources of the ATM functional system, the interactions between these elements and the interactions between the constituent part under consideration and the remainder of the ATM functional System.

3.2.2. *Section 2*

The hazard identification, risk assessment and mitigation processes shall include:

(a) a determination of the scope, boundaries and interfaces of the constituent part being considered, as well as the identification of the functions that the constituent part is to perform and the environment of operations in which it is intended to operate;

(b) a determination of the safety objectives to be placed on the constituent part, incorporating:

— an identification of ATM-related credible hazards and failure conditions, together with their combined effects,

— an assessment of the effects they may have on the safety of aircraft, as well as an assessment of the severity of those effects, using the severity classification scheme provided in Section 4,

— a determination of their tolerability, in terms of the hazard's maximum probability of occurrence, derived from the severity and the maximum probability of the hazard's effects, in a manner consistent with Section 4;

(c) the derivation, as appropriate, of a risk mitigation strategy which:

— specifies the defences to be implemented to protect against the risk-bearing hazards,

— includes, as necessary, the development of safety requirements potentially bearing on the constituent part under consideration, or other parts of the ATM functional system, or environment of operations, and

— presents an assurance of its feasibility and effectiveness;

(d) verification that all identified safety objectives and safety requirements have been met:

— prior to its implementation of the change,

— during any transition phase into operational service,

— during its operational life, and

— during any transition phase until decommissioning.

3.2.3. *Section 3*

The results, associated rationales and evidence of the risk assessment and mitigation processes, including hazard identification, shall be collated and documented in a manner which ensures that:

— complete arguments are established to demonstrate that the constituent part under consideration, as well as the overall ATM functional system are, and will remain tolerably safe by meeting allocated safety objectives and requirements. This shall include, as appropriate, specifications of any predictive, monitoring or survey techniques being used,

— all safety requirements related to the implementation of a change are traceable to the intended operations/-functions.

3.2.4. *Section 4*

Hazard identification and severity assessment

A systematic identification of the hazards shall be conducted. The severity of the effects of hazards in a given environment of operations shall be determined using the classification scheme shown in the following table, while the severity classification shall rely on a specific argument demonstrating the most probable effect of hazards, under the worst-case scenario.

Severity class	Effect on operations
1 (Most severe)	Accident ([1])
2	Serious incident ([1])
3	Major incident associated with the operation of an aircraft, in which safety of aircraft may have been compromised, having led to a near collision between aircraft, with ground or obstacles
4	Significant incident involving circumstances indicating that an accident, a serious or major incident could have occurred, if the risk had not been managed within safety margins, or if another aircraft had been in the vicinity
5 (Least severe)	No immediate effect on safety

([1]) As defined in Council Directive 94/56/EC of 21 November 1994 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents (OJ L 319, 12.12.1994, p. 14).

In order to deduce the effect of a hazard on operations and to determine its severity, the systematic approach/-process shall include the effects of hazards on the various elements of the ATM functional system, such as the air crew, the air traffic controllers, the aircraft functional capabilities, the functional capabilities of the ground part of the ATM functional system, and the ability to provide safe air traffic services.

Risk classification scheme

Safety objectives based on risk shall be established in terms of the hazards maximum probability of occurrence, derived both from the severity of its effect, and from the maximum probability of the hazard's effect.

As a necessary complement to the demonstration that established quantitative objectives are met, additional safety management considerations shall be applied so that more safety is added to the ATM system whenever reasonable.

3.3. **Safety requirements for engineering and technical personnel undertaking operational safety related tasks**

A provider of air traffic services shall ensure that technical and engineering personnel including personnel of subcontracted operating organisations who operate and maintain ATM equipment approved for its operational use have and maintain sufficient knowledge and understanding of the services they are supporting, of the actual and potential effects of their work on the safety of those services, and of the appropriate working limits to be applied.

With regard to the personnel involved in safety related tasks including personnel of subcontracted operating organisations, the provider of air traffic services shall document the adequacy of the competence of the personnel; the rostering arrangements in place to ensure sufficient capacity and continuity of service; the personnel qualification schemes and policy, the personnel training policy, training plans and records as well as arrangements for the supervision of non-qualified personnel. It shall have procedures in place for cases where the physical or mental condition of the personnel is in doubt.

A provider of air traffic services shall maintain a register of information on the numbers, status and deployment of the personnel involved in safety related tasks. The register shall:

(a) identify the accountable managers for safety related functions;

(b) record the relevant qualifications of technical and operational personnel, against required skills and competence requirements;

(c) specify the locations and duties to which technical and operational personnel are assigned, including any rostering methodology.

4. WORKING METHODS AND OPERATING PROCEDURES

A provider of air traffic services shall be able to demonstrate that its working methods and operating procedures are compliant with the standards in the following annexes to the Convention on International Civil Aviation as far as they are relevant for the provision of air traffic services in the airspace concerned:

— Annex 2 on rules of the air (10th edition, July 2005),

— Annex 10 on aeronautical telecommunications, Volume 2 on communication procedures (6th edition, October 2001 including all amendments up to No 79),

— Annex 11 on air traffic services (13th edition, July 2001 including all amendments up to No 43).

ANNEX III

SPECIFIC REQUIREMENTS FOR THE PROVISION OF METEOROLOGICAL SERVICES

1. TECHNICAL AND OPERATIONAL COMPETENCE AND CAPABILITY

A provider of meteorological services shall ensure that meteorological information, necessary for the performance of their respective functions and in a form suitable for users, is made available to:

— operators and flight crew members for pre-flight and in-flight planning,

— providers of air traffic services and flight information services,

— search and rescue services units, and

— airports.

A provider of meteorological services shall confirm the level of attainable accuracy of the information distributed for operations, including the source of such information, whilst also ensuring that such information is distributed in a sufficiently timely manner, and updated as required.

2. WORKING METHODS AND OPERATING PROCEDURES

A provider of meteorological services shall be able to demonstrate that its working methods and operating procedures are compliant with the standards in the following annexes to the Convention on International Civil Aviation as far as they are relevant for the provision of meteorological services in the airspace concerned:

— Annex 3 on meteorological service for international air navigation (15th edition, July 2004),

— Annex 11 on air traffic services (13th edition, July 2001 including all amendments up to No 43),

— Annex 14 on aerodromes (Volume I: 4th edition, July 2004; Volume II, 2nd edition, July 1995 including all amendments up to No 3).

ANNEX IV

SPECIFIC REQUIREMENTS FOR THE PROVISION OF AERONAUTICAL INFORMATION SERVICE

1. TECHNICAL AND OPERATIONAL COMPETENCE AND CAPABILITY

A provider of an aeronautical information service shall ensure that information and data is available for operations in a form suitable for:

— flight operating personnel, including flight crew, as well as flight planning, flight management systems and flight simulators, and

— providers of air traffic services which are responsible for flight information services, aerodrome flight information services and the provision of pre-flight information.

A provider of aeronautical information services shall ensure the integrity of data and confirm the level of accuracy of the information distributed for operations, including the source of such information, before such information is distributed.

2. WORKING METHODS AND OPERATING PROCEDURES

A provider of aeronautical information services shall be able to demonstrate that its working methods and operating procedures are compliant with the standards in the following annexes to the Convention on International Civil Aviation as far as they are relevant for the provision of aeronautical information services in the airspace concerned:

— Annex 3 on meteorological service for international air navigation (15th edition, July 2004),

— Annex 4 on aeronautical charts (10th edition, July 2001 including all amendments up to No 53),

— Annex 15 on aeronautical information services (12th edition, July 2004).

ANNEX V

SPECIFIC REQUIREMENTS FOR THE PROVISION OF COMMUNICATION, NAVIGATION OR SURVEILLANCE SERVICES

1. TECHNICAL AND OPERATIONAL COMPETENCE AND CAPABILITY

A provider of communication, navigation or surveillance services shall ensure the availability, continuity, accuracy and integrity of its services.

A provider of communication, navigation or surveillance services shall confirm the quality level of the services it is providing and shall demonstrate that its equipment is regularly maintained and where required calibrated.

2. SAFETY OF SERVICES

A provider of communication, navigation or surveillance services shall comply with the requirements of Annex II, part 3 on the safety of services.

3. WORKING METHODS AND OPERATING PROCEDURES

A provider of communication, navigation or surveillance services shall be able to demonstrate that its working methods and operating procedures are compliant with the standards of Annex 10 on aeronautical telecommunications to the Convention on International Civil Aviation (Volume I: 5th edition, July 1996; Volume II: 6th edition, October 2001; Volume III: 1st edition, July 1995; Volume IV: 3rd edition, July 2002; Volume V: 2nd edition, July 2001 including all amendments up to No 79) as far as they are relevant for the provision of communication, navigation or surveillance services in the airspace concerned.

COMMISSION REGULATION (EC) No 2097/2005

of 20 December 2005

reopening the fishery for Northern prawn in NAFO zone 3L by vessels flying the flag of Lithuania

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy [1], and in particular Article 26(4) thereof,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to common fisheries policy [2], and in particular Article 21(3) thereof,

Whereas:

(1) Council Regulation (EC) No 27/2005 of 22 December 2004 fixing for 2005 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required [3], lays down quotas for 2005.

(2) On 6 June 2005 Lithuania closed the fishery for Northern prawn in NAFO zone 3L, for vessels flying its flag.

(3) Commission Regulation (EC) No 1170/2005 [4] prohibits fishing for Northern prawn in NAFO zone 3L, by vessels flying the flag of Lithuania or registered in Lithuania.

(4) On 30 October 2005 Japan transferred to Lithuania 144 tonnes of Northern prawn quota in the waters of NAFO zone 3L. Fishing for Northern prawn in the waters of NAFO zone 3L by vessels flying the flag of or registered in Lithuania should consequently be authorised. Commission Regulation (EC) No 1170/2005 should therefore be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

Reopening of fishery

The fishery for Northern prawn in NAFO zone 3L by vessels flying the flag of Lithuania or registered in Lithuania should be reopened on 1 December 2005.

Article 2

Repeal

Commission Regulation (EC) No 1170/2005 is hereby repealed,

Article 3

Entry into force

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

It shall apply from 1 December 2005.

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

Done at Brussels, 20 December 2005.

For the Commission
Jörgen HOLMQUIST
Director-General for Fisheries and Maritime Affairs

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[1] OJ L 358, 31.12.2002, p. 59.
[2] OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 768/2005 (OJ L 128, 21.5.2005, p. 1).
[3] OJ L 12, 14.1.2005, p. 1. Regulation as last amended by Regulation (EC) No 1936/2005 (OJ L 311, 26.11.2005, p. 1).
[4] OJ L 188, 20.7.2005, p. 25.

COMMISSION REGULATION (EC) No 2098/2005

of 20 December 2005

reopening the fishery for sprat in ICES zone IIIa by vessels flying the flag of Denmark

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy [1], and in particular Article 26(4) thereof,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to common fisheries policy [2], and in particular Article 21(3) thereof,

Whereas:

(1) Council Regulation (EC) No 27/2005 of 22 December 2004 fixing for 2005 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required [3], lays down quotas for 2005.

(2) On 9 October 2005 Denmark closed the fishery for sprat in ICES zone IIIa, for vessels flying its flag.

(3) Commission Regulation (EC) No 1779/2005 [4] prohibits fishing for sprat in ICES zone IIIa, by vessels flying the flag of Denmark or registered in Denmark.

(4) On 15 November 2005 Sweden transferred to Denmark 1 000 tonnes of sprat quota in the waters of ICES zone IIIa. Fishing for sprat in the waters of ICES zone IIIa by vessels flying the flag of or registered in Denmark should consequently be authorised. Commission Regulation (EC) No 1779/2005 should therefore be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

Reopening of fishery

The fishery for sprat in ICES zone IIIa by vessels flying the flag of Denmark or registered in Denmark should be reopened on 28 November 2005.

Article 2

Repeal

Commission Regulation (EC) No 1779/2005 is hereby repealed.

Article 3

Entry into force

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

It shall apply from 28 November 2005.

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

Done at Brussels, 20 December 2005.

For the Commission
Jörgen HOLMQUIST
Director-General for Fisheries and Maritime Affairs

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[1] OJ L 358, 31.12.2002, p. 59.
[2] OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 768/2005 (OJ L 128, 21.5.2005, p. 1).
[3] OJ L 12, 14.1.2005, p. 1. Regulation as last amended by Regulation (EC) No 1936/2005 (OJ L 311, 26.11.2005, p. 1).
[4] OJ L 288, 29.10.2005, p. 12. Prohibition of fishing for sprat by vessels flying the flag of Denmark.

COMMISSION REGULATION (EC) No 2099/2005

of 20 December 2005

reopening the fishery for hake in ICES zone Vb (EC waters), VI, VII, XII, XIV by vessels flying the flag of Spain

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy [1], and in particular Article 26(4) thereof,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to common fisheries policy [2], and in particular Article 21(3) thereof,

Whereas:

(1) Council Regulation (EC) No 27/2005 of 22 December 2004 fixing for 2005 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required [3], lays down quotas for 2005.

(2) On 4 November 2005 Spain closed the fishery for hake in ICES zone Vb (EC waters), VI, VII, XII, XIV, for vessels flying its flag.

(3) Commission Regulation (EC) No 1894/2005 [4] prohibits fishing for hake in ICES zone Vb (EC waters), VI, VII, XII, XIV, by vessels flying the flag of Spain or registered in Spain.

(4) On 28 November 2005 the United Kingdom transferred to Spain 300 tonnes of hake quota in the waters of ICES zone Vb (EC waters), VI, VII, XII, XIV. Fishing for hake in the waters of ICES zone Vb (EC waters), VI, VII, XII, XIV by vessels flying the flag of or registered in Spain should consequently be authorised. Commission Regulation (EC) No 1894/2005 should therefore be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

Reopening of fishery

The fishery for hake in ICES zone Vb (EC waters), VI, VII, XII, XIV by vessels flying the flag of Spain or registered in Spain should be reopened on 1 December 2005.

Article 2

Repeal

Commission Regulation (EC) No 1894/2005 is hereby repealed.

Article 3

Entry into force

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

It shall apply from 1 December 2005.

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

Done at Brussels, 20 December 2005.

For the Commission
Jörgen HOLMQUIST
Director-General for Fisheries and Maritime Affairs

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[1] OJ L 358, 31.12.2002, p. 59.
[2] OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 768/2005 (OJ L 128, 21.5.2005, p. 1).
[3] OJ L 12, 14.1.2005, p. 1. Regulation as last amended by Regulation (EC) No 1936/2005 (OJ L 311, 26.11.2005, p. 1).
[4] OJ L 302, 19.11.2005, p. 26. Prohibition of fishing for hake by vessels flying the flag of Spain.

COMMISSION REGULATION (EC) No 2100/2005

of 20 December 2005

amending for the 60th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan [1], and in particular Article 7(1), first indent, thereof,

Whereas:

(1) Annex I to Regulation (EC) No 881/2002 lists the persons, groups and entities covered by the freezing of funds and economic resources under that Regulation.

(2) On 15 December 2005, the Sanctions Committee of the United Nations Security Council decided to amend the list of persons, groups and entities to whom the freezing of funds and economic resources should apply. Annex I should therefore be amended accordingly.

(3) In order to ensure that the measures provided for in this Regulation are effective, this Regulation must enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 881/2002 is hereby amended as set out 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, 20 December 2005.

For the Commission
Eneko LANDÁBURU
Director-General of External Relations

[1] OJ L 139, 29.5.2002, p. 9. Regulation as last amended by Commission Regulation (EC) No 2018/2005 (OJ L 324, 10.12.2005, p. 21).

ANNEX

The following entry shall be added to Annex I to Regulation (EC) No 881/2002 under the heading 'Natural persons':

Sajid Mohammed **Badat** (*alias* (a) Abu Issa, (b) Saajid **Badat**, (c) Sajid **Badat**, (d) Muhammed **Badat**, (e) Sajid Muhammad **Badat**, (f) Saajid Mohammad **Badet**, (g) Muhammed **Badet**, (h) Sajid Muhammad **Badet**). Date of birth: (a) 28.3.1979, (b) 8.3.1976. Place of birth: Gloucester, United Kingdom. Passport No: (a) United Kingdom passport number 703114075, (b) United Kingdom passport number 026725401. Other information: Currently in custody in the United Kingdom. Previous address is Gloucester, United Kingdom.

COMMISSION REGULATION (EC) No 2101/2005

of 20 December 2005

amending the representative prices and additional duties for the import of certain products in the sugar sector fixed by Regulation (EC) No 1011/2005 for the 2005/2006 marketing year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector [1],

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses [2], and in particular the second sentence of the second subparagraph of Article 1(2), and Article 3(1) thereof,

Whereas:

(1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups for the 2005/2006 marketing year are fixed by Commission Regulation (EC) No 1011/2005 [3]. These prices and duties were last amended by Commission Regulation (EC) No 2019/2005 [4].

(2) The data currently available to the Commission indicate that the said amounts should be changed in accordance with the rules and procedures laid down in Regulation (EC) No 1423/95,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 1 of Regulation (EC) No 1423/95, as fixed by Regulation (EC) No 1011/2005 for the 2005/2006 marketing year are hereby amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 21 December 2005.

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

Done at Brussels, 20 December 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

Director-General for Agriculture and Rural Development

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[1] OJ L 178, 30.6.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 39/2004 (OJ L 6, 10.1.2004, p. 16).

[2] OJ L 141, 24.6.1995, p. 16. Regulation as last amended by Regulation (EC) No 624/98 (OJ L 85, 20.3.1998, p. 5).

[3] OJ L 170, 1.7.2005, p. 35.

[4] OJ L 324, 10.12.2005, p. 23.

ANNEX

Amended representative prices and additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99 applicable from 21 December 2005

(EUR)

CN code	Representative price per 100 kg of the product concerned	Additional duty per 100 kg of the product concerned
1701 11 10 (1)	28,49	2,74
1701 11 90 (1)	28,49	7,29
1701 12 10 (1)	28,49	2,60
1701 12 90 (1)	28,49	6,86
1701 91 00 (2)	28,38	11,04
1701 99 10 (2)	28,38	6,52
1701 99 90 (2)	28,38	6,52
1702 90 99 (3)	0,28	0,37

(1) Fixed for the standard quality defined in Annex I.II to Council Regulation (EC) No 1260/2001 (OJ L 178, 30.6.2001, p. 1).
(2) Fixed for the standard quality defined in Annex I.I to Regulation (EC) No 1260/2001.
(3) Fixed per 1 % sucrose content.

COMMISSION REGULATION (EC) No 2102/2005

of 20 December 2005

determining the world market price for unginned cotton

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Protocol 4 on cotton, annexed to the Act of Accession of Greece, as last amended by Council Regulation (EC) No 1050/2001 [1],

Having regard to Council Regulation (EC) No 1051/2001 of 22 May 2001 on production aid for cotton [2], and in particular Article 4 thereof,

Whereas:

(1) In accordance with Article 4 of Regulation (EC) No 1051/2001, a world market price for unginned cotton is to be determined periodically from the price for ginned cotton recorded on the world market and by reference to the historical relationship between the price recorded for ginned cotton and that calculated for unginned cotton. That historical relationship has been established in Article 2(2) of Commission Regulation (EC) No 1591/2001 of 2 August 2001 laying down detailed rules for applying the cotton aid scheme [3]. Where the world market price cannot be determined in this way, it is to be based on the most recent price determined.

(2) In accordance with Article 5 of Regulation (EC) No 1051/2001, the world market price for unginned cotton is to be determined in respect of a product of specific characteristics and by reference to the most favourable offers and quotations on the world market among those considered representative of the real market trend. To that end, an average is to be calculated of offers and quotations recorded on one or more European exchanges for a product delivered cif to a port in the Community and coming from the various supplier countries considered the most representative in terms of international trade. However, there is provision for adjusting the criteria for determining the world market price for ginned cotton to reflect differences justified by the quality of the product delivered and the offers and quotations concerned. Those adjustments are specified in Article 3(2) of Regulation (EC) No 1591/2001.

(3) The application of the above criteria gives the world market price for unginned cotton determined hereinafter,

HAS ADOPTED THIS REGULATION:

Article 1

The world price for unginned cotton as referred to in Article 4 of Regulation (EC) No 1051/2001 is hereby determined as equalling 21,557 EUR/100 kg.

Article 2

This Regulation shall enter into force on 21 December 2005.

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

Done at Brussels, 20 December 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

Director-General for Agriculture and Rural Development

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[1] OJ L 148, 1.6.2001, p. 1.
[2] OJ L 148, 1.6.2001, p. 3.
[3] OJ L 210, 3.8.2001, p. 10. Regulation as amended by Regulation (EC) No 1486/2002 (OJ L 223, 20.8.2002, p. 3).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 14 December 2004

Direct tax incentives in favour of companies taking part in trade fairs abroad

(notified under document number C(2004) 4746)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2005/919/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

I. PROCEDURE

(1) Italy enacted Decree-Law No 269 of 30 September 2003 laying down urgent measures to promote development and correct the trend in public finances (DL 269/2003), published in *Official Gazette of the Italian Republic* No 229 of 2 October 2003. Article 1(1)(b) of DL 269/2003 provides for specific tax incentives for participation in trade fairs abroad and was subsequently converted, without amendments, into Law No 326 of 24 November 2003 (L 326/2003), published in *Official Gazette of the Italian Republic* No 274 of 25 November 2003.

(2) By letter dated 22 October 2003 (D/56756), the Commission invited the Italian authorities to provide information about the incentives in question and their entry into force, with a view to establishing whether they constituted aid within the meaning of Article 87 of the EC Treaty. By the same letter, the Commission reminded Italy of its obligation under Article 88(3) of the EC Treaty to notify the Commission of any measures constituting aid before their implementation.

(3) By letters of 11 November 2003 (A/37737) and 26 November 2003 (A/38138), the Italian authorities provided the information requested. By letter dated 19 December 2003 (D/58192), the Commission again reminded Italy of its obligations under Article 88(3) of the EC Treaty and invited the Italian authorities to inform the possible beneficiaries of the tax incentives in question of the consequences envisaged by the Treaty and by 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 [2] in the event that the incentives in question were found to constitute aid implemented without prior authorisation by the Commission.

(4) By letter of 18 March 2004 (SG 2004 D/201066), the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of Italy's tax incentives in favour of undertakings taking part in trade fairs abroad. By letter of 1 June 2004 (A/35042), the Italian authorities submitted their observations.

[1] OJ C 221, 3.9.2004, p. 2.

[2] OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.

(5) The Commission decision to initiate the formal investigation procedure was published in the *Official Journal of the European Communities*, with an invitation to interested parties to submit their observations ([3]). No comments were received.

II. DESCRIPTION OF THE MEASURE

(6) Article 1(1)(b) of DL 269/2003 provides that any undertakings liable to corporate income tax in Italy and in business on the date the scheme entered into force may reduce their taxable income by the amount of the expenses directly incurred with respect to their participation in trade fairs abroad. The provision applies exclusively to the expenses incurred by beneficiaries during the first tax year following the one when DL 269/2003 entered into force (2 October 2003); thus, for undertakings whose business cycle follows the calendar year, the measure affects the determination of their 2004 taxable income. Article 1(1)(b) of DL 269/2003 provides that the reduction in taxable income is in addition to the ordinary deduction from the beneficiary's declared income of the costs associated with participation in trade fairs abroad.

(7) As regards the general rules for deducting business costs associated with participation in trade fairs abroad, Article 108(2) of the Italian Income Tax Code (TUIR) makes a distinction between advertising and promotion costs, including trade fair costs, on the one hand, and agency costs, on the other. While advertising and promotion costs are deductible in full in the tax year in which they are incurred or in equal instalments in that and the following four years, agency costs may only be deducted up to one third of their amount, in equal instalments over a period of five years.

(8) With respect to the possible different categories of expenses associated with participation in trade fairs, the wording of Article 1(1)(b) of DL 269/2003 indicates that the incentives provided under the scheme are limited to the costs of exhibiting products and that no other costs incurred in connection with participation in trade fairs are included in the amount eligible for aid under the scheme.

(9) The Italian authorities have indicated that the benefit applies irrespective of the classification of the expenses, which are usually subject to differentiated tax treatment, as seen above. Italy explained that all the expenses associated with participation in trade fairs are treated alike in order to overcome the difficulty in classifying expenditure items in the various categories. However, Article 1(1)(b) of DL 269/2003 expressly excludes from the eligible amount sponsoring costs, which form part of advertising costs and are ordinarily deductible in full under Article 108(2) TUIR.

III. GROUNDS FOR INITIATING THE PROCEDURE

(10) In its letter of 18 March 2004 initiating the formal investigation procedure, the Commission considered that the measure fulfilled the criteria for being classed as state aid under Article 87(1) of the EC Treaty.

(11) In particular, the Commission took the view that the scheme conferred a selective advantage on the beneficiaries because it appeared to benefit only companies engaged in exhibiting products for export, while excluding other business activities. For example, Italian companies trading their goods exclusively on the Italian market, those providing services, companies trading in goods that are not suitable for being exhibited at trade fairs, and those taking part in trade fairs in Italy are excluded from the scheme.

(12) The Commission was also of the opinion that the scheme favoured Italian undertakings participating in trade fairs abroad, thereby strengthening their position with respect to their foreign competitors, including both foreign traders competing with the undertakings in question in the Italian and foreign markets and foreign competitors established in Italy competing with the beneficiaries on the Italian market.

([3]) See footnote 1.

(13) The Commission finally considered that the selective character of the tax advantages at issue could not be justified by the nature or general scheme of the Italian tax system, nor did it appear to compensate for possible expenses incurred abroad on account of participation in such trade fairs, as the aid is not contingent upon any specific foreign tax or financial burden being imposed. Neither did any of the exceptions provided for in Article 87(2) and (3) of the EC Treaty seem to apply. The advantages were linked to expenses not eligible for aid under any of the block exemption regulations or Community guidelines; under the Block Exemption Regulation for SMEs in particular, aid for participation in trade fairs is admissible only if it does not exceed 50 % of the eligible costs and for the first participation by an SME in a particular fair or exhibition, while the tax incentive in question concerns all companies and all costs associated with taking part in any trade fairs abroad.

IV. **COMMENTS FROM ITALY**

(14) In response to the appraisal made by the Commission in its letter of 18 March 2004 initiating the formal investigation, the Italian authorities raised three main observations aimed at demonstrating that the scheme at issue does not discriminate between potential beneficiaries in the different branches of the distributive trades, but constitutes a general measure open to all undertakings engaged in trading activities.

(15) First, according to the Italian authorities, the measure is applicable without distinction to all sectors of the economy and is open to all undertakings liable to Italian business taxation, provided they incur costs with respect to participation in trade fairs abroad. The Italian authorities also point out that the tax incentive in question also applies to undertakings having a permanent establishment abroad. They add that the tax incentive is strictly linked to the costs incurred in taking part in trade fairs abroad, and does not provide any disproportionate tax benefits. The Italian authorities consider that the scheme does not promote participation in trade fairs abroad as a separate business activity, but as an investment open to all undertakings, which the Italian Government intends to encourage as a general economic policy objective. The Italian authorities finally clarify that the advantage applies to undertakings having a permanent establishment abroad insofar as the expenditure incurred in taking part in trade fairs is charged to the head office in Italy.

(16) Second, the Italian authorities argue that the measure does not put non-exporting undertakings at a disadvantage, but that, on the contrary, it offers an incentive for them to find it worthwhile to participate in fairs of this kind. Where an undertaking operated in a sector producing goods or services that cannot be traded or exported, it would not be in competition with other undertakings operating in sectors producing the same goods or services.

(17) Third, the Italian authorities stress that the measure is in force for one year only, and that therefore the advantage given to undertakings participating in trade fairs abroad does not significantly distort the functioning of the common market.

V. **ASSESSMENT OF THE MEASURE**

1. **State aid within the meaning of Article 87(1) of the EC Treaty**

(18) Having considered the observations submitted by the Italian authorities, the Commission maintains the position it expressed in the letter of 18 March 2004 initiating the formal investigation procedure, namely that the scheme under examination constitutes state aid because it cumulatively fulfils all the relevant criteria laid down in Article 87(1) of the EC Treaty.

(19) First, to be considered aid a measure must afford the beneficiaries an advantage that reduces the costs they would normally bear in the course of their business. All undertakings in Italy are liable for corporate income tax charged on their net profits resulting from the difference between their gross revenues and their business expenses as indicated in their accounts. The scheme affords the beneficiaries an economic advantage consisting in the reduction of their taxable profits by an amount corresponding to the costs incurred through taking part in trade fairs abroad, in addition to the ordinary deduction from gross revenues permitted for tax purposes. A beneficiary undertaking incurring such

costs posts in its accounts a corresponding negative adjustment having the effect of lowering the corporate income tax burden for the tax year in question. This advantage finally results in lower payments of tax due for the year, constituting a financial benefit for the beneficiary.

(20) In its submissions, Italy observed that the scheme in question does not confer any significant competitive advantages on its beneficiaries in that its effects are limited to the costs actually incurred, and the same mechanisms are applied as for the other deductions allowed by the Italian Income Tax Code (TUIR).

(21) The Commission considers, however, that, as the Italian authorities have recognised, the deduction at issue is extraordinary with respect to the normal deduction allowed for tax purposes and should therefore be viewed as an advantage reducing costs normally borne by undertakings liable to corporate income tax in Italy. The Commission therefore confirms its appraisal that the scheme in question provides its beneficiaries with an economic and financial advantage taking the form of a reduction of taxable profits in Italy.

(22) Second, the advantage must be granted by the State or through state resources. As the Italian authorities did not submit any objections, the Commission confirms the appraisal made when initiating the formal investigation procedure, according to which the advantage is attributable to the State as it consists in the forgoing of tax revenues normally collected by the Italian Treasury.

(23) Third, the measure must be specific or selective in that it favours 'certain undertakings or the production of certain goods'. The Italian authorities essentially maintain that the measure is open to all undertakings taxable in Italy and carrying out certain investments which are favoured by the Italian Government, according to the economic policy objectives pursued by the scheme in question.

(24) After attentive scrutiny, the Commission confirms its opinion that the exceptional tax deduction scheme enacted by Italy constitutes a specific scheme favouring only the undertakings incurring certain eligible expenses concerned with participation in trade fairs abroad and excluding other undertakings not participating in these fairs. Even if it is in principle open to all undertakings participating in trade fairs abroad on a voluntary basis, the scheme effectively favours only the undertakings engaged in exporting and is not open to other business sectors. According to the case law of the Court of Justice, advantages granted to undertakings that carry on export activities and incur certain expenses related to those activities are selective in nature ([4]).

(25) The Commission cannot accept the argument put forward by the Italian authorities that undertakings not involved in trading and exporting cannot be compared with those involved in trading and therefore that the scheme is general. The Commission considers that, since the advantage conferred by excluding certain specific expenses from the tax base is limited only to undertakings carrying on export activities and comes on top of the ordinary tax deduction, it cannot be considered a general measure. The Commission further notes that the Italian authorities have not demonstrated that the measure is justified by the nature or general scheme of the tax system. In any event, the advantages conferred on the beneficiaries are not consistent with the internal logic of the Italian tax system and are of an exceptional and temporary nature.

(26) The Commission therefore confirms its view that the scheme is specific because, for example, it favours only undertakings that are engaged in exporting and accordingly 'exhibit products' at trade fairs abroad, as opposed to service undertakings, undertakings trading in goods not suitable for being exhibited at trade fairs, and undertakings taking part in trade fairs in Italy.

([4]) Judgment of the Court of 10 December 1969 joined Cases 6 and 11/69 Commission of the European Communities v French Republic [1969] ECR 523; Judgment of the Court of 7 June 1988 Case 57/86 Hellenic Republic v Commission of the European Communities [1988] ECR 2855; Judgment of 15 July 2004 Case C-501/00 Kingdom of Spain v Commission of the European Communities [2004] ECR I-6717.

(27) The Commission also confirms its initial doubts as to whether all the companies subject to tax in Italy are entitled to the same level of benefits with respect to trade fairs in which they take part abroad. The Italian authorities have confirmed that the expenses eligible for the incentive at issue also include those incurred by a foreign permanent establishment of an Italian company which assumes a degree of independence from its head office, as provided by Article 162 TUIR or under the relevant tax conventions in force with the country where the permanent establishment is situated.

(28) However, Italy maintains that the advantage in question is applicable only if, in accordance with Article 1(1)(b) of DL 269/2003, the expenses in question are directly incurred by an Italian beneficiary. This obliges foreign establishments or branches of Italian companies to charge the expenses in question directly to an Italian office in order to benefit from the tax reduction in question, effectively excluding foreign establishments of Italian-based undertakings from the advantage at issue. The Commission concludes that for this reason too the scheme does not seem open to all undertakings on an equal basis.

(29) Finally, the measure must affect competition and trade between Member States. Italy essentially maintains that the measure does not affect competition at all or, alternatively, that its effects on competition are insignificant given the short duration of the scheme in question.

(30) Considering the effects of the measure, the Commission confirms the appraisal made when initiating the formal investigation. In line with settled case law of the Court ([5]), for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition. In particular, the Commission confirms that the measure distorts competition and trade between Member States because its objectives and effects are specifically concerned with improving the trading conditions of the beneficiaries in exporting their goods to foreign markets and therefore directly affect companies active in international trade, including intra-Community trade. Moreover, even aid for extra-Community export activities may affect intra-Community trade and distort competition within the Community ([6]).

(31) The Commission cannot accept the argument concerning the scheme's limited effects on competition, because the fact that the measure remains in force for only one year does not rule out the possibility that the amounts involved may be large enough to have significant effects on certain markets. This is particularly true where the beneficiaries are large companies that normally take part in many trade fairs. Moreover, given that the aid is not limited in absolute terms, its amount could be substantial. In any event, the limited amount of the aid would not be enough to rule out the possibility of competition and trade between Member States being distorted.

(32) In addition, it seems reasonable to assume that the short period of validity of the measure will not allow undertakings that do not normally take part in trade fairs to benefit from the advantage provided, in particular if these companies have to take decisions such as whether or not to enter a new market. The measure therefore seems more aimed at benefiting firms that already commonly use trade fairs, including companies whose main business objective is specifically to organise and manage the exhibition of products at trade fairs, which would disproportionately benefit from the incentive at issue because they are not expressly excluded from the scope of Article 1(1)(b) of DL 269/2003.

2. **Legality of the scheme**

(33) The Italian authorities have put the scheme into effect without prior notification to the Commission and have therefore failed to fulfil their obligation under Article 88(3) of the EC Treaty. Insofar as the measure constitutes state aid within the meaning of Article 87(1) of the EC Treaty and has been put into effect without prior approval from the Commission, it is to be classed as illegal aid.

([5]) See, for instance, Judgment of the Court of First Instance of 30 April 1998 Case T-214/95 *Het Vlaamse Gewest* (Flemish Region) v Commission of the European Communities [1998] ECR II-717.

([6]) Judgment of the Court of 21 March 1990 Case C-142/87 Kingdom of Belgium v Commission of the European Communities [1990] ECR I-959.

3. **Compatibility**

(34) Insofar as the measure constitutes state aid within the meaning of Article 87(1) of the EC Treaty, its compatibility must be assessed in the light of the exceptions provided for in Article 87(2) and (3) of the EC Treaty.

(35) The Italian authorities have not explicitly challenged the Commission's assessment, set out in its letter of 18 March 2004 initiating the formal investigation, that none of the exceptions provided for in Article 87(2) and (3) of the EC Treaty, whereby state aid may be considered compatible with the common market, applies in the present case. The Commission therefore confirms its assessment as set out in points 25 to 32 of its letter of 18 March 2004.

(36) The advantages in question are linked to expenses that are not eligible for aid under any of the block exemption regulations or Community guidelines. With special reference to participation in trade fairs, Article 5(b) of Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (*) ([7]) provides that aid for participation in trade fairs is only admissible if it does not exceed 50 % of the eligible costs and for the first participation by an SME in a particular fair or exhibition, while the tax incentive in question concerns all companies and all costs associated with taking part in any trade fairs abroad.

(37) The exceptions provided for in Article 87(2) of the EC Treaty, which concern aid of a social character granted to individual consumers, aid to make good the damage caused by natural disasters or exceptional occurrences and aid granted to certain areas of the Federal Republic of Germany, do not apply in this case.

(38) Neither does the scheme qualify for the exception allowed by Article 87(3)(a) of the EC Treaty for aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment.

(39) In the same way, the scheme cannot be considered to be a project of common European interest or to remedy a serious disturbance in Italy's economy, as provided for by Article 87(3)(b) of the EC Treaty; nor does it have as its object the promotion of culture and heritage conservation as provided for by Article 87(3)(d) of the EC Treaty.

(40) Finally, the scheme in question must be examined in the light of Article 87(3)(c) of the EC Treaty. This Article provides for the authorisation of aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent that is contrary to the common interest. The tax advantages granted by the scheme are not linked to specific investments, job creation or specific projects. They simply constitute a reduction in the costs that would normally have to be borne by the firms concerned in the course of their export business and must therefore be regarded as export linked operating aid. In line with the Commission's standard practice, such aid is considered to be incompatible with the common market.

(41) The Commission observes furthermore that, even if the measure were found to facilitate the development of certain economic activities, such as the internationalisation of Italian businesses, and thus result in increased volumes of trade, the Commission cannot rule out the possibility that the extent of the relative effects on intra-Community trade would be contrary to the common interest.

VI. **CONCLUSIONS**

(42) The Commission concludes that the tax incentives granted under this measure constitute operating aid that does not qualify for any of the exceptions to the prohibition and is therefore incompatible with the common market. The Commission also finds that Italy has illegally implemented the measure in question.

(*) The text contains a material error. This sentence should read: 'With special reference to participation in trade fairs, Article 5(b) of Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to state aid to small and medium-sized enterprises […]'. The Regulation is to be found in OJ L 10, 13.1.2001, p. 33 and not p. 1 as incorrectly stated at the end of footnote 7.

([7]) OJ L 10, 13.1.2001, p. 1.

(43) Where illegally granted state aid is found to be incompatible with the common market, the natural consequence of such a finding is that the aid should be recovered from the beneficiaries. Through recovery of the aid, the competitive position that existed before the aid was granted is restored as far as possible.

(44) Although the present procedure was closed before the end of the tax year in which the scheme is in force and therefore before the tax liability of most beneficiaries has become definitive, the Commission cannot rule out the possibility that firms may already have benefited from the aid in terms, for example, of lower part payments of taxes relating to the current tax year. The Commission notes that, following the opening of the formal investigation, the Italian authorities publicly warned the scheme's potential beneficiaries of the possible consequences should the Commission find that the measure in question constituted incompatible aid. The Commission nevertheless considers it necessary that, in order to recover any aid already made available to the beneficiaries, Italy should enjoin the potential beneficiaries of the scheme, within two months of the adoption of this Decision, to reimburse the aid with interest in accordance with 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 [8]. In particular, where the aid has been already made available through reductions in payments of taxes due for the current tax year, Italy must collect the entire tax due by means of the final scheduled payment for 2004. In any event, full recovery must be completed at the latest by the end of the first tax year following the date of notification of the present Decision.

(45) Italy must provide the Commission, using the questionnaire in the Annex to this Decision, with a list of the beneficiaries concerned and indicate clearly the measures planned and already taken to secure immediate and effective recovery of the illegal state aid. Within two months of the adoption of this Decision, all documents giving evidence that recovery proceedings have been initiated against the beneficiaries of the illegal aid (such as circulars, recovery orders, etc.) must also be transmitted to the Commission.

(46) This Decision concerns the scheme as such and must be implemented immediately, including recovery of aid granted under the scheme. However, it is without prejudice to the possibility that all or part of the aid granted in individual cases may be deemed compatible, in particular under Article 5(b) of the Block Exemption Regulation for SMEs,

HAS ADOPTED THIS DECISION:

Article 1

The state aid scheme in the form of tax incentives in favour of companies taking part in trade fairs abroad, provided for by Article 1(1)(b) of Decree-Law No 269 of 30 September 2003, which Italy has unlawfully put into effect in breach of Article 88(3) of the EC Treaty, is incompatible with the common market.

Italy shall abolish the aid scheme referred to in the first paragraph.

Article 2

1. Italy shall take the necessary measures to recover from the beneficiaries the aid referred to in Article 1 and unlawfully made available to them.

Recovery shall be effected without delay and in accordance with the procedures of national law.

2. Where the aid has already been made available by means of lower part payments of taxes due for the current tax year, Italy shall collect the entire tax due by means of the final scheduled payment for 2004.

In all other cases, Italy shall recover the tax due at the latest by the end of the first tax year following the date of notification of this Decision.

3. The aid to be recovered shall bear interest, running from the date on which it was first put at the disposal of the beneficiaries until its actual recovery and calculated in accordance with the Articles 9, 10 and 11 of Regulation (EC) No 794/2004.

[8] OJ L 140, 30.4.2004, p. 1.

Article 3

Within two months of the date of notification of this Decision, Italy shall inform the Commission, using the questionnaire in the Annex to the Decision, of the measures taken to comply with it.

Within the same period of time as that referred to in the first paragraph, Italy shall:

(a) enjoin all beneficiaries of the aid referred to in Article 1 to reimburse the illegal aid, with interest;

(b) transmit all documents giving evidence that the recovery proceedings have been initiated against the beneficiaries of the illegal aid.

Article 4

This Decision is addressed to the Republic of Italy.

Done at Brussels, 14 December 2004.

For the Commission

Neelie KROES

Member of the Commission

ANNEX

Information regarding the implementation of the Commission Decision on aid scheme C 12/04 — Italy — Tax incentives in favour of companies taking part in trade fairs abroad

1. *Total number of beneficiaries and total amount of aid to be recovered*

1.1. Please explain in detail how the amount of aid to be recovered from individual beneficiaries will be calculated

— The principal

— The interest.

1.2. What is the total amount of unlawful aid granted under this scheme that is to be recovered (gross aid equivalent; at … prices)?

1.3. What is the total number of beneficiaries from whom unlawful aid granted under this scheme is to be recovered?

2. *Measures already taken and planned to recover the aid*

2.1. Please describe in detail what measures have already been taken and what measures are planned to ensure immediate and effective recovery of the aid. Please also indicate where relevant the legal basis for the measures taken/planned.

2.2. By what date will the recovery of the aid be completed?

3. *Information by individual beneficiary*

Please provide details for each beneficiary from whom unlawful aid granted under the scheme is to be recovered in the table overleaf.

Identity of the beneficiary	Amount of unlawful aid granted (*) Currency: ….	Amounts reimbursed (°) Currency: ….

(*) Amount of aid put at the disposal of the beneficiary (in gross aid equivalent; at … prices).
(°) Gross amounts reimbursed (including interest).

COMMISSION DECISION

of 20 July 2005

on a State aid implemented by Germany for a meat processing company, Greußener Salamifabrik GmbH

(notified under document number C(2005) 2725)

(Only the German text is authentic)

(2005/920/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Whereas:

I. PROCEDURE

(1) The measure was notified in accordance with Article 88(3) of the EC Treaty by letter of 6 November 1997. It appeared that the beneficiary had already received a related aid at an earlier stage. Therefore, the measure was registered as non-notified aid. By letters dated 4 February 1998, 10 June 1998 and 4 February 1999 Germany provided the Commission with further information.

(2) By letter dated 7 June 1999 the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(3) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. The Commission invited interested parties to submit their comments on the aid.

(4) The Commission received comments from interested parties. It forwarded them to Germany, which was given the opportunity to react; its comments were received by letter dated 23 February 2000.

(5) By letter of 18 May 2005, registered as received on 23 May 2005, Germany asked the Commission to take a Decision on the basis of the information available to it, pursuant to Article 7(7) 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].

II. DESCRIPTION

(6) The benefiting company, Greußener Salamifabrik GmbH, was a meat-processing company producing and marketing several kinds of sausages and meat products. The beneficiary did not slaughter animals itself but processed meat. According to information provided by Germany, the insolvency procedure was initiated for Greußener Salamifabrik on 1 October 1999. The Commission was not informed about the outcome of the procedure. However, it would appear that at least the assets of the company are still operating under the name 'Greußener Salami- und Schinkenfabrik GmbH'. The remarks of the present Decision, however, refer to the pre-insolvency company Greußener Salamifabrik GmbH.

(7) A steady decrease in the turnover of Greußener Salamifabrik led to losses and to a negative operating cash flow from 1995 onwards. A document prepared by Dr. Zimmermann & Partner in September 1996 points to an extremely critical cash flow situation of the company. The fact that the company was in financial difficulty was stated in the Commission Decision initiating the procedure [4] and has not been contested in the course of the investigation procedure. A reorganisation of Greußener Salamifabrik was considered necessary. To finance this reorganisation, the company took out additional loans (a loan of DEM 375 000 at the Dresdner Bank AG and a loan of DEM 725 000 at the Sparkasse Erfurt) in the fourth quarter of 1996. For both these loans an 80 % State guarantee, thus covering the total amount of DEM 880 000, was granted via the Thüringer Aufbaubank. The guarantee was not notified to the Commission, contrary to the provisions of the Commission letter to Member States SG(89) D/4328 of 5 April 1989, hereinafter referred to as Aid 1.

[1] OJ C 238, 21.8.1999, p. 15.
[2] See footnote 1.
[3] OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.
[4] See footnote 1.

(8) As of 8 January 1997 Ergewa GmbH took over 75 % of the shares of the beneficiary. The new owner wrote off DEM 1,2 million as bad debt related to exports to Russia and devaluation of stock. Combined with a further decrease in sales, this measures resulted in a deteriorated balance sheet making a second restructuring necessary.

(9) The German authorities made clear in their notification letter of 6 November 1997 that as Greußener Salamifabrik failed to reach its turnover and income targets for 1997, the company was permanently threatened by insolvency and was considered no longer to be able to meet its repayment obligation towards banks. Therefore, a new restructuring plan for Greußener Salamifabrik GmbH was elaborated by Schitag, Ernst & Young Deutsche Allgemeine Treuhand AG in August 1997. This new restructuring plan consisted of three parts:

(a) financial measures, such as:

— a partial debt relief by creditors,

— a refinancing of existing debts,

— a capital contribution from shareholders;

(b) a new marketing strategy;

(c) cost-saving measures.

1. **Financial measures**

(10) As part of the restructuring, Sparkasse Erfurt renounced an outstanding debt amounting to DEM 1 700 000. In compensation, the guarantee previously given by Thüringer Aufbaubank (a State bank) for a loan of DEM 725 000 (cf. recital 7) was partly liquidated and DEM 370 000 (64 % of the guaranteed amount) were paid to Sparkasse Erfurt in the context of this restructuring. Additionally, another guarantee given in 1993 by a private bank, Bürgschaftsbank Thüringen GmbH for a loan amounting to DEM 1 000 000 was partly liquidated which resulted in a payment of DEM 590 000 (74 % of the guaranteed amount) to Sparkasse Erfurt.

(11) Furthermore, Dresdner Bank Erfurt refinanced a DEM 2 500 000 loan, formerly granted by Sparkasse Erfurt. Dresdner Bank was only prepared to give this loan under an 80 % guarantee to be granted by Thüringer Aufbaubank.

(12) This new guarantee, covering an amount of DEM 2 000 000, as well as the partial mobilisation of the DEM 370 000 under the old guarantee were notified to the Commission by letter of 6 November 1997 pursuant to Article 88(3) of the EC Treaty as well as to the Commission letter to Member States SG(89) D/4328 of 5 April 1989. These two measures are hereinafter referred to as Aid 2. The German authorities stated in their letter of 4 February 1999, and reiterated in their letter of 18 May 2005, that the guarantee by Thüringer Aufbaubank covering DEM 2 000 000 was given subject to the Commission authorisation.

(13) The loan of DEM 2 500 000 by Dresdner Bank Erfurt was paid out to Greußener Salamifabrik.

(14) Finally, Ergewa GmbH, the 75 % shareholder of the company, injected DEM 1 500 000 in the form of a subordinated loan to Greußener Salamifabrik.

2. **Marketing strategy**

(15) In the field of marketing, the restructuring plan described three areas for improvement: product development, product policy and sales promotion. In general, Greußener Salamifabrik GmbH would become more market oriented.

3. **Cost-saving measures**

(16) In an earlier reorganisation the easiest cost-cutting measures had been taken already. However, the reorganisation plan mentioned further cost saving measures to reduce electricity consumption and transport costs.

(17) According to information provided to the Commission services, these measures combined would have led to a return of viability of the company and to a return of profitability. However, to regain profitability the turnover would have had to increase from DEM 6 845 000 in 1996 to DEM 7 million in 1998 and to DEM 8 million in 1999.

(18) The Commission initiated the procedure provided for under Article 88(2) of the EC Treaty in respect of the abovementioned measures in favour of Greußener Salamifabrik GmbH, which can be summed up as follows:

— the 80 % guarantee given by Thüringer Aufbaubank for two bank loans totalling DEM 1,1 million in December 1996 (with the guarantee amount being DEM 880 000),

— the partial mobilisation of one of the guarantees amounting to DEM 370 000 in the course of the restructuring/debt rescheduling in 1997,

— the second 80 % guarantee by Thüringer Aufbaubank for a bank loan amounting to DEM 2,5 million (with the guarantee amount being DEM 2 million) in 1997.

(19) As the guarantees were given to a company that was in financial difficulties, the Commission considered the aid element of these guarantees to be at the time of their granting equal to 100 % of the guaranteed amount, namely DEM 880 000 in 1996 and DEM 2 000 000 in 1997, in total DEM 2,88 million.

(20) The Commission initiated the procedure provided for under Article 88(2) of the EC Treaty in respect of the above measures because it had doubts on the following points: compliance with the Commission letter SG(89) D/4328 of 5 April 1989 concerning State guarantees and compliance with the Community guidelines of 1994 and 1997 on State aid for rescuing and restructuring firms in difficulty ([5]). In the latter case specific doubts were raised concerning the effect of the restructuring which should be a return to viability of the company, compliance with the one time — last time principle, and compliance with the condition to fully implement the restructuring plan.

(21) Aid 1 was given in the form of State guarantees which means that the aid had to comply with the letter to the Member States SG(89) D/4328 of 5 April 1989. In this letter the Commission stated it would accept guarantees only if their mobilisation would be contractually linked to specific conditions which might go as far as the compulsory declaration of bankruptcy of the benefiting company. It seemed no such conditions were attached to the guarantees granted under the measure.

(22) The aids were granted because the company was in financial difficulty and needed restructuring. This means the aid had to be considered in the light of the Community guidelines on State aid for rescuing and restructuring firms in difficulty applicable at the time when the guarantee was granted. As far as Aid 1 is concerned, the Commission had no information to evaluate the compatibility of the aid with the abovementioned guidelines. As for Aid 2, it seemed that three of the conditions of the restructuring guidelines were not met. It seemed as if the aid would not lead to a return of viability of the benefiting company. Moreover, it seemed the company tried to regain its viability by outgrowing its problems. This expansion would seem to unduly distort competition. Finally, it was not clear whether the restructuring plan was adhered to.

([5]) OJ C 368, 23.12.1994, p. 12 and OJ C 283, 19.9.1997, p. 2.

III. COMMENTS FROM INTERESTED PARTIES

(23) The Commission received comments from Kemper Fleischwarenfabrik (Nortrup), from the Bundesverband der Deutschen Fleischwarenindustrie e.V. (Bonn) and from an interested party that prefers to remain anonymous. All three parties argued that an increased turnover could only be realised by lowering prices which would be detrimental to the sector. The Bundesverband der Deutschen Fleischwarenindustrie e.V. pointed out that every year 1 % of the meat-processing companies in Germany are forced to halt their activities. In this highly competitive market only the best undertakings can survive. By artificially keeping a company afloat, the interests of the sector are harmed. Moreover, the proposed new marketing strategy was the common strategy followed by almost all companies. According to the Bundesverband, such a strategy would not be successful without a large marketing budget, which was not available.

IV. COMMENTS FROM GERMANY

(24) Apart from requests to prolong the period in which Germany could react, Germany gave its comments by letters of 22 July 1999, 28 July 1999, 6 August 1999 and 23 February 2000.

(25) In the first letter Germany stated that the ownership of the company had partly changed hands.

(26) In the second letter Germany mentioned that the guarantee contract showing the conditions under which the guarantee could be mobilised would be sent. A restructuring plan of the first restructuring was presented and the planned results following the second restructuring would be sent as well. Furthermore, Germany stated more information would follow which would explain why the targeted turnover was not reached after the second restructuring.

(27) In the same letter of 28 July 1999 Germany stressed that the company would not increase its capacity, it would only produce the same amounts of products as in the past (years 1994/1995). The problems of the company were due to external factors such as swine fever, the implosion of the Russian market and the advent of BSE. Finally, Germany argued it was unlikely that the aid would distort competition as the beneficiary was an SME which was only active in Thüringen.

(28) In the third letter of 6 August 1999 Germany presented the guarantee contract and the restructuring plan of the first restructuring.

(29) In its letter of 23 February 2000 Germany stated that the insolvency procedure had been initiated for Greußener Salamifabrik GmbH. Germany mentioned that the banks had withdrawn their credit. Furthermore, a letter of Greußener's main bank, Dresdner Bank, was handed over. In this letter the bank stated it was obvious that competitors would be against the aid.

V. ASSESSMENT OF THE AID

Market organisations

(30) The measure grants aid to an undertaking that is active in meat processing. Article 40 of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [6] and Article 21 of Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pigmeat [7] lay down that Articles 87, 88 and 89 of the EC Treaty apply to products covered by these Regulations. The sectors concerned by the aid scheme in question are therefore subject to the Community rules on granting State aids.

Prohibition of State aids under Article 87(1) of the EC Treaty

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

(32) The aid was granted in the form of State guarantees. The guarantees enabled the beneficiary undertaking to raise money in order to remain active instead of being eliminated or restructured.

(33) Aid 1 was granted in 1996. Non-notified State aid has to be assessed on the basis of the legislation in force at the time of its granting. The legal basis applicable for State guarantees in 1996 was the Commission letter to the Member States SG(89) D/4328 of 5 April 1989. According to this letter the Commission regards all guarantees given by a State as falling within the scope of Article 87(1) of the EC Treaty. Moreover, pursuant to point 2.3 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (1994 guidelines), funding guaranteed by the State to an enterprise that is in financial difficulties is presumed to involve State aid. As described in point 7, the beneficiary was a firm in financial difficulties at the time of granting of Aid 1. According to point 2.1 of the 1994 guidelines, deteriorating profitability, diminishing turnover and declining cash flow are typical symptoms for firms in difficulties.

(34) Aid 2 was notified in 1997. Notified aid has to be assessed on the basis of the legal framework applicable at the time of its assessment. Point 4 of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees [8] sets out the four conditions that have to be met for an individual State guarantee not to constitute State aid under Article 87(1) of the EC Treaty. As the German authorities made clear that the borrower Greußener Salamifabrik GmbH had to be classified as a firm in difficulties at the time of the granting of the second guarantee (cf. recital 9), already the first condition is not met.

(35) Therefore, the measure is considered to grant an aid through State resources (via the Thüringer Aufbaubank).

(36) As the guarantees were given to a company that was in financial difficulties, the Commission considers the aid element to be equal to 100 % of the guaranteed amount, namely DEM 880 000 for the first and DEM 2 000 000 for the second guarantee, in total DEM 2,88 million.

[6] OJ L 160, 26.6.1999, p. 21. Regulation as last amended by Commission Regulation (EC) No 1899/2004 (OJ L 328, 30.10.2004, p. 67).

[7] OJ L 282, 1.11.1975, p. 1. Regulation as last amended by the 2003 Act of Accession.

[8] OJ C 71, 11.3.2000, p. 14.

(37) The aid is selective in that it favours a single company, Greußener Salamifabrik GmbH.

(38) According to the case law of the Court of Justice, improvement in the competitive position of a company resulting from a State aid generally points to a distortion of competition compared with other competing companies not receiving such assistance ([9]). Neither the relatively low level of aid nor the relatively modest size of the beneficiary company rules out the possibility of trade between Member States being distorted ([10]).

(39) A measure affects trade between Member States if it hampers imports from other Member States or facilitates exports to other Member States; the deciding factor is whether there is a risk that intra-Community trade will develop differently or is liable to develop differently as a result of the measure in question.

(40) The products to which the aid in question relates are involved in trade between Member States ([11]) and are thus exposed to competition. Therefore, there is a risk that intra-Community trade has developed differently as a result of the measure.

(41) The measure in question thus constitutes aid within the meaning of Article 87(1) of the EC Treaty.

Article 87(2) of the EC Treaty: exceptions

(42) Exceptions to the prohibition laid down in Article 87(1) of the EC Treaty are set out in paragraphs 2 and 3 of that Article.

(43) The exceptions listed in Article 87(2) are not applicable, given the nature of the aid measure and its objectives. Nor has Germany claimed that Article 87(2) is applicable.

Article 87(3) of the EC Treaty: exceptions at the Commission's discretion

(44) Article 87(3) of the EC Treaty lists aids which may be considered to be compatible with the common market. Their compatibility with the Treaty has to be studied from the point of view of the Community, not solely that of a given Member State. To ensure the proper operation of the common market, the exceptions provided for in Article 87(3) must be interpreted in a strict manner.

(45) As regards Article 87(3)(a) of the EC Treaty, it is pointed out that the beneficiary of the aid is located in a region where the economic situation can be described as extremely unfavourable in relation to the Community as a whole according to the Guidelines on national regional aid ([12]) (having a per capita gross domestic product, measured in purchasing power standards, of less than 75 % of the Community average). However, the abovementioned regional aid guidelines (and a previous version of these guidelines ([13])) state that the specific provisions concerning the granting of State aid in Article 87(3)(a) regions are not applicable in the agriculture sector. Therefore, Article 87(3)(a) of the EC Treaty cannot justify an aid for the production, processing or marketing of Annex I products.

(46) As regards Article 87(3)(b) of the EC Treaty, it is noted that the measure concerned is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy in Germany.

(47) Nor is the aid designed or intended or appropriate to the objectives referred to in Article 87(3)(d) of the EC Treaty.

Article 87(3)(c)of the EC Treaty

(48) Aid to facilitate the development of certain economic activities or of certain economic areas may be deemed by the Commission to be compatible with the common market under Article 87(3)(c) of the EC Treaty if the aid does not adversely affect trading conditions to an extent contrary to the common interest.

([9]) Judgment of the Court of 17 September 1980 Case 730/79 *Philip Morris Holland BV v Commission of the European Communities* [1980] ECR 2671, paragraphs 11 and 12.

([10]) Judgment of the Court of 21 March 1990 Case C-142/87 *Kingdom of Belgium v Commission of the European Communities* [1990] ECR I-959, paragraph 43, and Judgment of the Court of 14 September 1994 Joined Cases C-278/92, C-279/92 and C-280/92 *Kingdom of Spain v Commission of the European Communities* [1994] ECR I-4103, paragraphs 40 to 42.

([11]) The meat sector in general is subject to significant intra-EU trade. In 1996, some 8 million tonnes of meat (carcass weight) were traded within the EU. This represented some 23 % of total 1996 meat production. (*Source*: Eurostat).

([12]) OJ C 74, 10.3.1998, p. 9.

([13]) OJ C 31, 3.2.1979, p. 9.

(49) Normally, the Commission would assess compatibility with Article 87(3)(c) of the EC Treaty of aid granted to companies in financial difficulty on the basis of the 2004 Community guidelines on State aid for rescuing and restructuring firms in difficulty ([14]) (2004 guidelines). However, in accordance with points 103 and 104 of these guidelines, the Commission assesses aid notified prior to 10 October 2004 as well as non-notified rescue and restructuring aid granted in full before the publication of the 2004 guidelines on the basis of the guidelines in force at the time of notification or at the time the aid was granted, as the case may be. Aid 1 was granted in 1996 and Aid 2 was notified in November 1997. At the time, the 1994 Community guidelines on State aid were in force. According to point 2.2 of the 1994 guidelines, special rules for rescue and restructuring aid could be applied to individual beneficiaries in the agriculture sector at the discretion of the Member State concerned. Germany has not asked for the application of special rules. Therefore, the measure is assessed under the conditions and provisions of the 1994 guidelines.

Aid 1

(50) Aid 1 concerns an 80 % State guarantee on loans worth DEM 1,1 million. The Commission initiated the procedure provided for under Article 88(2) of the EC Treaty on the following grounds:

— it was not certain whether the guarantee complied with the specific conditions required for a State guarantee,

— there was no restructuring plan which would show the aid was compatible with the rescue and restructuring guidelines.

(51) Germany has sent a copy of the guarantee contract. This copy shows that the guarantee can only be invoked when the benefiting company is in financial difficulties (bankruptcy- or a similar procedure) and when the sale of other assets owned by the company cannot lead to redemption of the guaranteed loan. Therefore, the specific condition mentioned in the Commission letter to Member States SG(89) D/4328 of 5 April 1989 ([15]) has been met and the guarantee thus complied with the specific conditions required for a State guarantee.

(52) However, as the beneficiary of the guarantee, Greußener Salamifabrik GmbH, had to be regarded as a firm in difficulty at the time of the granting of the guarantee, the aid has to be assessed under the rules for rescuing and restructuring firms in difficulties applicable at that time (cf. recital 49). The guarantee was granted in the context of a restructuring of the beneficiary company.

(53) Germany has sent a copy of a report drafted by Dr. Zimmermann & Partner dated 9 September 1996. According to Germany, this report was the restructuring plan that was adopted at the time of the first State aid. The report has two major shortcomings as a restructuring plan: the status of the report is not clear and the report does not seem to concern any restructuring.

(54) The report seems to be a description of the company, dated 9 September 1996. According to the report, difficulties are caused by the BSE-crisis and by the loss of export markets in Eastern Europe. However, figures have been changed by hand, presumably at a later date. The status of those amendments is not clear. Furthermore, it is not clear whether the plan was adopted by the owners of the company.

(55) The report depicts the cost structure and the need for capital in September 1996. Apart from a description of a reinforcement of the existing management it is not clear how the company is to be restructured. If the report was meant as a restructuring plan at the time, which is not clear, it seemed to suggest that the company could outgrow its difficulties without any restructuring.

(56) To be compatible with the 1994 guidelines, the following conditions would have to be met:

(a) the aid would lead to a restoration of viability;

(b) the aid would avoid undue distortion of competition;

(c) the aid amount would be in proportion to the restructuring costs and benefits;

(d) the restructuring would be monitored and would be reported on.

([14]) OJ C 244, 1.10.2004, p. 2.

([15]) This letter has been superseded by the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (OJ C 71, 11.3.2000, p. 14).

(57) The report drafted by Dr. Zimmermann & Partner showed a yearly decrease in turnover from 1994 onward. Still, according to the report, turnover would increase again in the following year. The report did not give an explanation of this expected development. However, the return to viability depended on this change of trend. According to point 3.2.2(i) of the 1994 guidelines 'the improvement in viability must mainly result from internal measures contained in the restructuring plan and may only be based on external factors such as … price and demand increases …, if the market assumptions made are generally acknowledged'. As this condition is not met, the Commission does not consider the aid in form of a guarantee to lead to a restoration of viability.

(58) The restoration of viability would have been the result of an increase of turnover. Although, this increased turnover apparently could be realised with the existing capacity, the restoration would depend on the loss of market share of competitors (if the market would be stable, however, according to the 'restructuring' report, the demand was decreasing). Therefore, the Commission also concludes that the aid does not avoid an undue distortion of competition since a return to viability would have led to a disadvantage of competitors.

(59) The condition concerning the balance between costs and benefits of the restructuring plan is difficult to assess. Normally, beneficiaries are expected to make a significant contribution from their own resources or from external commercial financing. According to the report drafted by Dr. Zimmermann & Partners the owner of the benefiting company would inject new capital but it was unclear whether this was done. Therefore, the Commission cannot conclude that the aid complies with the 1994 guidelines on this point.

(60) Finally, it is unclear how the 'restructuring' would be monitored or reported on. Consequently, this condition of the guidelines is not met either.

(61) Greußener Salamifabrik GmbH met the criteria to fall under the definition of small and medium-sized enterprises (SMEs). Point 3.2.4 of the 1994 guidelines provides that the Commission is justified in taking a less restrictive attitude towards restructuring aids granted to SMEs as those tend to affect trading conditions less than that to large firms. However, this more lenient approach towards SMEs in assessing restructuring aid particularly concerns the obligation of capacity reduction in markets of structural overcapacity and the reporting obligation. In spite of the more lenient approach applicable to SMEs, the aid was already found not to lead to a restoration of viability (cf. recital 57) and to distort competition unduly.

(62) For the abovementioned reasons, the Commission considers Aid 1, granted in the form of State guarantees to Greußener Salamifabrik GmbH for an amount of maximally DEM 880 000, to be incompatible with Articles 87 and 88 of the EC Treaty. Since the aid has been granted illegally and is incompatible, it has to be recovered.

Aid 2

(63) The second aid concerns the partial mobilisation and payment of DEM 370 000 to Sparkasse Erfurt under the first guarantee in the context of the debt rescheduling/restructuring undergone in 1997 as well as an 80 % State guarantee on a DEM 2,5 million loan taken out in 1997 at Dresdner Bank.

(64) As it is stated in point 62 that the first State guarantee was found to be illegal and incompatible aid to Greußener Salamifabrik GmbH under Articles 87 and 88 of the EC Treaty, the part-mobilisation of the first guarantee under the second restructuring plan is covered by these findings.

(65) The 80 % State guarantee on a DEM 2,5 million loan has to be assessed under the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (cf. recital 34). The general conditions for guarantees applied by Thüringer Aufbaubank, provided to the Commission, show that guarantees can only be invoked when the benefiting company is in financial difficulties (bankruptcy- or a similar procedure) and when the sale of other assets owned by the company cannot lead to redemption of the guaranteed loan (cf. also recital 51). Therefore, the specific conditions for guarantees under point 5.3 of the abovementioned Commission Notice are met.

(66) Pursuant to point 2.1 of the 1994 guidelines, typical symptoms for a firm in difficulties are deteriorating profitability, increasing size of losses, diminishing turnover, growing inventories, excess capacity, declining cash flow, increasing debt, rising interest charges and low net asset value.

(67) As the German authorities communicated that the company was permanently threatened by insolvency, Greußener Salamifabrik GmbH was found to be a firm in difficulty at the time of the granting of the guarantee (cf. recitals 9 and 34). Therefore the aid has to be assessed under the applicable rules for rescuing and restructuring firms in difficulties. As set out in recital 49, these are the 1994 guidelines. The Commission initiated the procedure provided for under Article 88(2) of the EC Treaty against this aid because it was doubted whether the following conditions from the 1994 guidelines were met:

(a) restructuring aid should be granted once only;

(b) the aid should lead to a restoration of viability;

(c) the aid should not unduly distort competition;

(d) the implementation of the restructuring plan should be monitored and reported on.

(68) According to point 3.2.2(i) of the 1994 guidelines, aid for restructuring shall basically only be granted once. Germany has not commented upon this point.

(69) The fact that another guarantee was granted in the course of a second restructuring violates the basic principle of the one-off character of restructuring aid.

(70) The Commission doubted whether the restructuring plan, presented to justify the second restructuring aid (i.e. the second guarantee), would lead to a restoration of viability. The restoration of viability seemed to be based on a higher turnover. This increased turnover seemed unlikely, especially since the first projected turnover figures were already proven to be too optimistic at the time of the initiation of the procedure. Germany has not provided any justification or explanation for the projected increases in turnover. Therefore, the Commission maintains its doubts on the fulfilment of the condition that the restructuring plan should lead to restoration of viability.

(71) As far as the condition on the avoidance of an undue distortion of competition is concerned, Germany presented two arguments. First of all, Germany stated that the company concerned was too small to distort competition or influence Community trade. Secondly, Germany stated that the company would not expand its capacity but would make better use of existing capacity.

(72) The first argument is rebutted by the jurisprudence of the Court of Justice (cf. recital 38). As to the second argument, according to point 3.2.2(ii) of the 1994 guidelines, the Commission only asks for a reduction of capacity if there is a structural excess of production capacity in the European Community. At the initiation of the procedure the Commission found that there was no overcapacity in the sector concerned. However, the Commission wondered how the measure could be considered in the common interest if it was based on increased production. Increased production would automatically lead to a decrease in market share for competitors.

(73) Germany has in no way explained how the increased production could be absorbed by the market without negative consequences for competitors. Moreover, Germany has not given any data on the balance between the benefit for the company concerned and the costs for the sector as a whole. Therefore, the Commission cannot assess whether the measure avoids an undue distortion of competition.

(74) Germany did not provide any information on the monitoring of the restructuring plan.

(75) As of 8 January 1997 Ergewa GmbH took over 75 % of the shares of the beneficiary. It is not clear whether Ergewa falls under the SME definition under the 1994 guidelines and thus changes the status of Greußener Salamifabrik GmbH, being a more than 25 % shareholder. However, even taking into account the more lenient approach for SMEs provided for in point 3.2.4 of the 1994 guidelines, it was made clear in recital 72 that no overcapacity existed in the sector concerned and furthermore no assessment could be made on the monitoring requirement due to a lack of information. Therefore, the fact that the beneficiary company could probably still fall under the SME definition in 1997, does not change the evaluation of the present aid.

(76) For the abovementioned reasons, the Commission considers Aid 2, granted in the form of a State guarantee for an amount of up to DEM 2 million to Greußener Salamifabrik GmbH to be incompatible with Articles 87 and 88 of the EC Treaty. The German authorities stated in their letter of 4 February 1999, and reiterated in their letter of 18 May 2005, that the guarantee had been given subject to the Commission authorisation. Therefore, as no payments have been made under the guarantee, the incompatible aid does not have to be recovered.

VI. **CONCLUSION**

(77) The Commission finds that the State aid measures in the form of State guarantees worth DEM 880 000 (Aid 1) and DEM 2 000 000 (Aid 2), totalling DEM 2,88 million on loans worth DEM 1 100 000 and DEM 2 500 000 respectively, totalling DEM 3,6 million are incompatible with the common market.

(78) Incompatible aid granted illegally has to be recovered. The Commission notes that the insolvency procedure was initiated for Greußener Salamifabrik on 1 October 1999. As it is not known to the Commission whether the company has ceased its existence as a result of the insolvency proceedings, the recovery may still have to take place.

(79) The Commission draws the attention of the German authorities to the fact that according to point 6.4 and 6.5 of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees the question whether the illegality of the aid affects the legal relationship between the State and third parties is a matter which has to be examined under national law. National courts may have to examine whether national law prevents the guarantee contracts from being honoured and in that assessment the Commission considers that they should take account of the breach of Community law,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany has granted in the form of a guarantee in 1996 to Greußener Salamifabrik GmbH amounting to DEM 880 000 is incompatible with the common market.

Article 2

1. Germany shall take all appropriate measures to recover from the recipient the payments made under the guarantee referred to in Article 1.

2. Recovery of the aid shall be effected without delay and in accordance with the procedures of national law in so far as they allow the immediate and effective execution of the decision. The amounts to be recovered shall include interest from the date on which it was at the disposal of the recipient until the date of its actual recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant-equivalent of regional aid.

Article 3

The State aid which Germany planned to grant to the Greußener Salamifabrik GmbH in the form of a guarantee amounting to DEM 2 million is incompatible with the common market.

This aid may not therefore be granted.

Article 4

Germany shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 5

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 20 July 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

(Acts adopted under Title V of the Treaty on European Union)

POLITICAL AND SECURITY COMMITTEE DECISION EUPOL KINSHASA/2/2005

of 22 November 2005

extending the mandate of the Head of Mission of the EU Police Mission in Kinshasa (DRC), EUPOL 'Kinshasa'

(2005/921/CFSP)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union and in particular Article 25(3) thereof,

Having regard to Council Joint Action 2004/847/CFSP of 9 December 2004 on the European Union Police Mission in Kinshasa (DRC) regarding the Integrated Police Unit (EUPOL 'Kinshasa') [1], and in particular Article 5 and 8 thereof,

Whereas:

(1) On 9 December 2004, the Political and Security Committee adopted Decision EUPOL Kinshasa/1/2004 [2] appointing Mr Adílio Custódio as Head of Mission of EUPOL 'Kinshasa'.

(2) The abovementioned Decision expires on 31 December 2005.

(3) On 7 November 2005 the Council agreed to extend EUPOL 'Kinshasa' for a further period of 12 months.

(4) The Secretary—General/High Representative has proposed the extension of the mandate of Mr Adílio Custódio as Head of Mission of EUPOL 'Kinshasa' until the end of the Mission.

(5) The mandate of the Head of Mission of EUPOL 'Kinshasa' should therefore be extended until the end of the Mission,

HAS DECIDED AS FOLLOWS:

Article 1

The mandate of Mr Adílio Custódio as Head of Mission of EUPOL 'Kinshasa' is hereby extended until the end of the Mission.

Article 2

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

It shall apply until the end of the Mission EUPOL 'Kinshasa'.

Done at Brussels, 22 November 2005.

For the Political and Security Committee
The President
J. KING

[1] OJ L 367, 14.12.2004, p. 30.
[2] OJ L 396, 31.12.2004, p. 61.

POLITICAL AND SECURITY COMMITTEE DECISION EUPM/1/2005

of 25 November 2005

concerning the appointment of the Head of Mission/Police Commissioner of the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH)

(2005/922/CFSP)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union and in particular the third paragraph of Article 25 thereof,

Having regard to Council Joint Action 2005/824/CFSP of 24 November 2005 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH) [1], and, in particular, Article 9(1) thereof,

Whereas:

(1) Article 9(1) of Joint Action 2005/824/CFSP provides that the Council authorises the Political and Security Committee to take the relevant decisions in accordance with Article 25 of the Treaty, including the decision to appoint, upon a proposal by the Secretary-General/High Representative, a Head of Mission/Police Commissioner.

(2) The Secretary-General/High Representative has proposed the appointment of Mr Vincenzo Coppola,

HAS DECIDED AS FOLLOWS:

Article 1

Mr Vincenzo Coppola is hereby appointed Head of Mission/Police Commissioner of the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH), from the day the mission is launched. Until that date, he shall act as Head of the planning team.

Article 2

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

It shall apply until 31 December 2006.

Done at Brussels, 25 November 2005.

For the Political and Security Committee
The President
J. KING

[1] OJ L 307, 25.11.2005, p. 55.

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 2084/2005 of 19 December 2005 on import licences in respect of beef and veal products originating in Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia

(Official Journal of the European Union L 333 of 20 December 2005)

On page 30, Article 1, second paragraph:

for: '— 34 t originating in Botswana;',

read: '— 34,1 t originating in Botswana;'.