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Contents

I *Acts whose publication is obligatory*

Commission Regulation (EC) No 498/2006 of 28 March 2006 establishing the standard import values for determining the entry price of certain fruit and vegetables 1

★ **Commission Regulation (EC) No 499/2006 of 28 March 2006 on initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Regulation (EC) No 769/2002 on imports of coumarin originating in the People's Republic of China by imports of coumarin consigned from Indonesia and Malaysia, whether declared as originating in Indonesia and Malaysia or not, and making such imports subject to registration** ... 3

Commission Regulation (EC) No 500/2006 of 28 March 2006 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 6

Commission Regulation (EC) No 501/2006 of 28 March 2006 altering the export refunds on white sugar and raw sugar exported in the natural state fixed by Regulation (EC) No 446/2006 8

Commission Regulation (EC) No 502/2006 of 28 March 2006 providing for a further allocation of import rights under Regulation (EC) No 1081/1999 for bulls, cows and heifers other than for slaughter of certain Alpine and mountain breeds 10

II *Acts whose publication is not obligatory*

Commission

2006/249/EC:

★ **Commission Decision of 20 April 2004 on the State aid which Italy intends to provide to firms marketing beef and veal in the province of Brescia** *(notified under document number C(2004) 1377)* 11

(Continued overleaf)

EN

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

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

Contents (continued)

2006/250/EC:

★ **Commission Decision of 3 May 2005 on the aid scheme 'Enterprise Capital Funds' which the United Kingdom is planning to implement** *(notified under document number C(2005) 1144)* [1] 16

2006/251/EC:

★ **Commission Decision of 28 March 2006 amending Decision 2006/135/EC as regarding the establishment of areas A and B in certain Member States due to outbreaks of highly pathogenic avian influenza** *(notified under document number C(2006) 1144)* [1] 33

2006/252/EC:

★ **Commission Decision of 27 March 2006 amending Decision 1999/217/EC as regards the register of flavouring substances used in or on foodstuffs** *(notified under document number C(2006) 899)* [1] 48

2006/253/EC:

★ **Commission Decision of 6 September 2005 on the adequate protection of personal data contained in the Passenger Name Record of air passengers transferred to the Canada Border Services Agency** *(notified under document number C(2005) 3248)* [1] 49

2006/254/EC:

★ **Commission Decision of 28 March 2006 concerning certain interim protection measures relating to Classical Swine Fever in Germany** *(notified under document number C(2006) 1321)* [1] 61

EN

[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 498/2006

of 28 March 2006

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 29 March 2006.

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

Done at Brussels, 28 March 2006.

For the Commission

J. L. DEMARTY

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 28 March 2006 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	98,7
	204	50,0
	212	102,0
	999	83,6
0707 00 05	052	137,9
	628	155,5
	999	146,7
0709 90 70	052	119,0
	204	54,7
	999	86,9
0805 10 20	052	72,3
	204	46,0
	212	50,4
	220	41,9
	624	67,0
	999	55,5
0805 50 10	624	66,0
	999	66,0
0808 10 80	388	76,0
	400	126,1
	404	92,9
	508	82,3
	512	74,8
	528	90,2
	720	81,9
	999	89,2
0808 20 50	388	83,2
	512	60,9
	528	73,6
	720	43,0
	999	65,2

(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 499/2006

of 28 March 2006

on initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Regulation (EC) No 769/2002 on imports of coumarin originating in the People's Republic of China by imports of coumarin consigned from Indonesia and Malaysia, whether declared as originating in Indonesia and Malaysia or not, and making such imports subject to registration

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation), and in particular Articles 13(3), 14(3) and 14(5) thereof,

After having consulted the Advisory Committee,

Whereas:

A. **REQUEST**

(1) The Commission has received a request pursuant to Article 13(3) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on imports of coumarin originating in the People's Republic of China.

(2) The request was lodged on 13 February 2006 by the European Chemical Industry Council (CEFIC) on behalf of the sole producer representing 100 % of the Community production of coumarin.

B. **PRODUCT**

(3) The product concerned by the possible circumvention is coumarin originating in the People's Republic of China, normally declared under CN code ex 2932 21 00 (the product concerned). This code is given for information only.

(4) The product under investigation is coumarin consigned from Indonesia and Malaysia (the product under investigation) normally declared under the same codes as the product concerned.

C. **EXISTING MEASURES**

(5) The measures currently in force and possibly being circumvented are anti-dumping measures imposed by Council Regulation (EC) No 769/2002 [2].

D. **GROUNDS**

(6) The request contains sufficient *prima facie* evidence that the anti-dumping measures on imports of coumarin originating in the People's Republic of China are being circumvented by means of the transhipment via Indonesia and Malaysia of coumarin.

(7) The evidence submitted is as follows:

The request shows that a significant change in the pattern of trade involving exports from the People's Republic of China, Indonesia and Malaysia to the Community has taken place following the imposition of measures on the product concerned, and that there is insufficient due cause or justification other than the imposition of the duty for such a change.

This change in the pattern of trade appears to stem from the transhipment of coumarin originating in the People's Republic of China via Indonesia and Malaysia.

Furthermore, the request contains sufficient *prima facie* evidence that the remedial effects of the existing anti-dumping measures on the product concerned are being undermined both in terms of quantity and price. Significant volumes of imports of coumarin from Indonesia and Malaysia appear to have replaced imports of the product concerned. In addition, there is sufficient evidence that this increase in imports is made at prices well below the non-injurious price established in the investigation that led to the existing measures.

Finally, the request contains sufficient *prima facie* evidence that the prices of coumarin are dumped in relation to the normal value previously established for the product concerned.

Should circumvention practices via Indonesia and Malaysia covered by Article 13 of the basic Regulation, other than transhipment, be identified in the course of the investigation, the investigation may cover these practices also.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

[2] OJ L 123, 9.5.2002, p. 1. Regulation as amended by Regulation (EC) No 1854/2003 (OJ L 272, 23.10.2003, p. 1).

E. **PROCEDURE**

(8) In the light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13 of the basic Regulation and to make imports of coumarin consigned from Indonesia and Malaysia, whether declared as originating in Indonesia and Malaysia or not, subject to registration, in accordance with Article 14(5) of the basic Regulation.

(a) **Questionnaires**

(9) In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the exporters/producers and to the associations of exporters/producers in Indonesia and Malaysia, to the exporters/producers and to the associations of exporters/producers in the People's Republic of China, to the importers and to the associations of importers in the Community which cooperated in the investigation that led to the existing measures or which are listed in the request and to the authorities of the People's Republic of China, Indonesia and Malaysia. Information, as appropriate, may also be sought from the Community industry.

(10) In any event, all interested parties should contact the Commission forthwith, but not later than the time-limit set in Article 3 of this Regulation in order to find out whether they are listed in the request and, if necessary, request a questionnaire within the time-limit set in Article 3(1) of this Regulation, given that the time-limit set in Article 3(2) of this Regulation applies to all interested parties.

(11) The authorities of the People's Republic of China, Indonesia and Malaysia will be notified of the initiation of the investigation.

(b) **Collection of information and holding of hearings**

(12) All interested parties are hereby invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

(c) **Exemption of imports from registration or measures**

(13) In accordance with Article 13(4) of the basic Regulation, imports of the product under investigation may be exempted from registration or measures if such importation does not constitute circumvention.

(14) Since the possible circumvention takes place outside the Community, exemptions may be granted, in accordance with Article 13(4) of the basic Regulation, to producers of the product concerned that can show that they are not related to any producer subject to the measures and that are found not to be engaged in circumvention practices as defined in Articles 13(1) and 13(2) of the basic Regulation. Producers wishing to obtain an exemption should submit a request duly supported by evidence within the time-limit indicated in Article 3(3) of this Regulation.

F. **REGISTRATION**

(15) Pursuant to Article 14(5) of the basic Regulation, imports of the product under investigation should be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied retroactively from the date of registration of such imports consigned from Indonesia and Malaysia.

G. **TIME-LIMITS**

(16) In the interest of sound administration, time-limits should be stated within which:

— interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,

— producers in Indonesia and Malaysia may request exemption from registration of imports or measures,

— interested parties may make a written request to be heard by the Commission.

(17) Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the time-limits mentioned in Article 3 of this Regulation.

H. **NON-COOPERATION**

(18) In cases in which any interested party refuses access to or does not provide the necessary information within the time-limits, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

(19) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available. If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated,

HAS ADOPTED THIS REGULATION:

Article 1

An investigation is hereby initiated pursuant to Article 13(3) of Regulation (EC) No 384/96, in order to determine if imports into the Community of coumarin consigned from Indonesia and Malaysia, whether originating in Indonesia and Malaysia or not, falling within CN code ex 2932 21 00 (TARIC code 2932 21 00 16), are circumventing the measures imposed by Regulation (EC) No 769/2002.

Article 2

The Customs authorities are hereby directed, pursuant to Article 13(3) and Article 14(5) of Regulation (EC) No 384/96, to take the appropriate steps to register the imports into the Community identified in Article 1 of this Regulation.

Registration shall expire nine months following the date of entry into force of this Regulation.

The Commission, by Regulation, may direct Customs authorities to cease registration in respect of imports into the Community of products manufactured by producers having applied for an exemption of registration and having been found not to be circumventing the anti-dumping duties.

Article 3

1. Questionnaires should be requested from the Commission within 15 days of the date of publication of this Regulation in the *Official Journal of the European Union*.

2. Interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views in writing and submit questionnaire replies or any other information within 40 days from the date of the publication of this Regulation in the *Official Journal of the European Union*, unless otherwise specified.

3. Producers in Indonesia and Malaysia requesting exemption of imports from registration or measures should submit a request duly supported by evidence within the same 40-day time-limit.

4. Interested parties may also apply to be heard by the Commission within the same 40-day time-limit.

5. Any information relating to the matter, any request for a hearing or for a questionnaire as well as any request for exemption of imports from registration or measures must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. All written submissions, including the information requested in this Regulation, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as '*Limited*' ([1]) and, in accordance with Article 19(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled '*For inspection by interested parties*'.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate B
Office: J-79 5/16
B-1049 Brussels
Fax (32-2) 295 65 05.

Article 4

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

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

Done at Brussels, 28 March 2006.

For the Commission
Peter MANDELSON
Member of the Commission

([1]) This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 19 of the basic Regulation and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement).

COMMISSION REGULATION (EC) No 500/2006

of 28 March 2006

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 494/2006 [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 29 March 2006.

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

Done at Brussels, 28 March 2006.

For the Commission

J. L. DEMARTY

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 89, 28.3.2006, p. 20.

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 29 March 2006

(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)	35,47	0,65
1701 11 90 (1)	35,47	4,26
1701 12 10 (1)	35,47	0,51
1701 12 90 (1)	35,47	3,97
1701 91 00 (2)	38,95	5,78
1701 99 10 (2)	38,95	2,65
1701 99 90 (2)	38,95	2,65
1702 90 99 (3)	0,39	0,29

(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 501/2006

of 28 March 2006

altering the export refunds on white sugar and raw sugar exported in the natural state fixed by Regulation (EC) No 446/2006

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], and in particular the third subparagraph of Article 27(5) thereof,

Whereas:

(1) The export refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EC) No 446/2006 [2]

(2) Since the data currently available to the Commission are different to the data at the time Regulation (EC) No 446/2006 was adopted, those refunds should be adjusted,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(1)(a) of Regulation (EC) No 1260/2001, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EC) No 446/2006 are hereby altered to the amounts shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 29 March 2006.

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

Done at Brussels, 28 March 2006.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

[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 80, 17.3.2006, p. 40.

ANNEX

AMENDED AMOUNTS OF REFUNDS ON WHITE SUGAR AND RAW SUGAR EXPORTED WITHOUT FURTHER PROCESSING APPLICABLE FROM 29 MARCH 2006 [a]

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	S00	EUR/100 kg	24,99 [1]
1701 11 90 9910	S00	EUR/100 kg	23,53 [1]
1701 12 90 9100	S00	EUR/100 kg	24,99 [1]
1701 12 90 9910	S00	EUR/100 kg	23,53 [1]
1701 91 00 9000	S00	EUR/1 % of sucrose × 100 kg product net	0,2717
1701 99 10 9100	S00	EUR/100 kg	27,17
1701 99 10 9910	S00	EUR/100 kg	25,58
1701 99 10 9950	S00	EUR/100 kg	25,58
1701 99 90 9100	S00	EUR/1 % of sucrose × 100 kg of net product	0,2717

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11).

The other destinations are:

S00: all destinations (third countries, other territories, victualling and destinations treated as exports from the Community) with the exception of Albania, Croatia, Bosnia and Herzegovina, Serbia and Montenegro (including Kosovo, as defined in UN Security Council Resolution No 1244 of 10 June 1999), the former Yugoslav Republic of Macedonia, save for sugar incorporated in the products referred to in Article 1(2)(b) of Council Regulation (EC) No 2201/96 (OJ L 297, 21.11.1996, p. 29).

[a] The amounts set out in this Annex are not applicable with effect from 1 February 2005 pusrsuant to Council Decision 2005/45/EC of 22 December 2004 concerning the conclusion and the provisional application of the Agreement between the European Community and the Swiss Confederation amending the Agreement between the European Economic Community and the Swiss Confederation of 22 July 1972 as regards the provisions applicable to processed agricultural products (OJ L 23, 26.1.2005, p. 17).

[1] This amount is applicable to raw sugar with a yield of 92 %. Where the yield for exported raw sugar differs from 92 %, the refund amount applicable shall be calculated in accordance with Article 28(4) of Regulation (EC) No 1260/2001.

COMMISSION REGULATION (EC) No 502/2006

of 28 March 2006

providing for a further allocation of import rights under Regulation (EC) No 1081/1999 for bulls, cows and heifers other than for slaughter of certain Alpine and mountain breeds

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [1],

Having regard to Commission Regulation (EC) No 1081/1999 of 26 May 1999 opening and providing for the administration of tariff quotas for imports of bulls, cows and heifers other than for slaughter of certain Alpine and mountain breeds, repealing Regulation (EC) No 1012/98 and amending Regulation (EC) No 1143/98 [2], and in particular Article 9(3) thereof,

Whereas:

Article 1 of Regulation (EC) No 1081/1999 provides for the opening, for the period 1 July 2005 to 30 June 2006, of two tariff quotas each of 5 000 head for bulls, cows and heifers other than for slaughter of certain Alpine and mountain breeds. Article 9 of that Regulation provides for a further allocation, for both quotas, of quantities not covered by import licence applications at 15 March 2006,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities referred to in Article 9(1) of Regulation (EC) No 1081/1999 shall be:

— 4 163 head for serial number 09.0001,

— 3 458 head for serial number 09.0003.

Article 2

This Regulation shall enter into force on 29 March 2006.

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

Done at Brussels, 28 March 2006.

For the Commission

J. L. DEMARTY

Director-General for Agriculture and Rural Development

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[1] OJ L 160, 26.6.1999, p. 21. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

[2] OJ L 131, 27.5.1999, p. 15. Regulation as amended by Regulation (EC) No 1096/2001 (OJ L 150, 6.6.2001, p. 33).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 20 April 2004

on the State aid which Italy intends to provide to firms marketing beef and veal in the province of Brescia

(notified under document number C(2004) 1377)

(Only the Italian text is authentic)

(2006/249/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 invited interested parties to make their comments pursuant to that Article,

Whereas:

I. PROCEDURE

(1) By letter of 27 July 2001, registered as received on 1 August 2001, the Office of the Italian Permanent Representative to the European Union notified the Commission of aid for the purchase of equipment to ensure the provenance and quality of beef and veal.

(2) By letters of 15 October 2001 (registered as received on 16 October 2001) and 26 February 2002 (registered as received on 27 February 2002), the Office of the Italian Permanent Representative to the European Union sent the Commission the additional information requested from the Italian authorities by letters of 12 September 2001 and 28 November 2001.

(3) By letter of 24 April 2002, the Commission notified Italy of its decision to initiate in respect of that aid the procedure provided for in Article 88(2) of the EC Treaty.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [1] on 18 June 2002. The Commission invited interested parties to submit their comments on the aid in question.

(5) The Commission received no comments from interested parties.

(6) By letter of 25 June 2002, registered as received on 27 June 2002, Italy sent the Commission further information on the planned measure.

II. DESCRIPTION

Title

(7) Aid for the purchase of equipment to ensure the provenance and quality of beef and veal.

Amount of the aid

(8) Funds budgeted for this measure amounted to €103 291,38 (ITL 200 million), to be provided by the Brescia Chamber of Commerce.

[1] OJ C 145, 18.6.2002, p. 2.

Duration

(9) To the end of 2001.

Beneficiaries

(10) Small and medium-sized firms employing no more than 20 people whose registered office and operations were located in the province of Brescia, which had no pending disputes with social security bodies, were up to date with their contributions to the Chamber of Commerce, were not in administration, had not compounded with their creditors and were not bankrupt.

Description of the aid

(11) The aid measure was to contribute to the purchase of scales linked to a computer system (hardware and software) which could certify the provenance of beef and veal and the inspection by the Brescia Centre for the qualitative improvement of milk and beef and veal.

(12) In the original version of the measure, the beneficiaries of the aid were small and medium-sized firms in the services sector which sold meat and, to a much lesser extent, firms selling meat direct to consumers. However, the latter category is now excluded, as the Italian authorities stated in their letter of 25 June 2002. In the final version only small and medium-sized firms engaged in marketing (slaughterhouses) which sell certified beef and veal are eligible.

(13) In the original version of the measure, the aid was modulated as follows:

40 % of the purchase price of the scales for meat-marketing firms;

50 % for firms selling meat direct to the consumer in the disadvantaged areas of the province;

40 % for firms selling meat direct to the consumer in the non-disadvantaged areas of the province.

However, following the exclusion of the firms selling meat direct to the consumer, the intensity of the aid is now 40 %.

(14) The contribution granted to each firm may not exceed €1 291,15 (ITL 2,5 million).

(15) This aid may not be cumulated with other aid granted by the State or other public bodies.

(16) Applications made before the date of publication of call for expressions of interest are not eligible. The grant of the aid is in any case subject to its approval by the Commission.

III. INITIATION OF THE PROCEDURE UNDER ARTICLE 88(2) OF THE EC TREATY

(17) The Commission initiated the procedure under Article 88(2) of the Treaty because it had doubts as to whether the scheme was compatible with the common market.

(18) The first ground for its doubts arose from certain gaps in the information communicated by Italy.

(19) First of all, the Italian authorities had provided no information on compliance with minimum environmental, hygiene and animal welfare standards. The Chamber of Commerce simply noted that compliance with these standards was not something for which it was responsible.

(20) Secondly, the Chamber of Commerce made no comments on the existence of market outlets for the products in question.

(21) Because of these omissions, the Commission had doubts about compliance with some of the conditions laid down at points 4.2 and 4.3 of the Community Guidelines on State aid in the agricultural sector.

(22) A further problem which arose during the preliminary enquiry was the check on the non-cumulation of grants. In view of the organisation of the scheme, the Commission suggested establishing, in liaison with the Region of Lombardy, a system for checking on the non-cumulation of the aid. In the further information it sent to the Commission, the Chamber of Commerce expressed its willingness to check 10 % of the applications made. The Commission considered that figure inadequate because it could not exclude the possibility of beneficiaries receiving grants from a number of sources and so exceeding the eligible percentages.

IV. COMMENTS BY ITALY

(23) In its letter of 25 June 2002, registered as received on 26 June 2002, Italy undertook to grant the aid only to slaughterhouses marketing beef and veal certified in accordance with the rules laid down by the Ministry of Agricultural and Forestry Policies. These holdings had been previously inspected for compliance with environmental, hygiene and animal welfare standards.

(24) Italy also stated that the existence of market outlets was assured by the fact that beneficiaries were firms engaged in retail trade.

(25) As regards compliance with the criterion of the non-cumulation of aid, the Italian authorities gave assurances that the rules on cumulation would be checked for all beneficiaries in liaison with the Region of Lombardy.

V. **APPRAISAL OF THE AID**

(26) 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, in so far as it affects trade between Member States, incompatible with the common market. The measures covered by the decision in question correspond to this definition for the following reasons.

(27) The finance provided by the Chambers of Commerce may be regarded as public finance within the meaning of Article 87(1) of the Treaty since firms are required to join these public law bodies and pay subscriptions to them. Furthermore, in the past, the Commission has regarded measures adopted by Italian Chambers of Commerce as State aids [1].

(28) The measures favour certain small and medium-sized firms engaged in the marketing of agricultural products.

(29) The measures may have an effect on trade in view of the importance of the marketing of processed products (which account for a substantial part of agricultural trade: e.g. in 1998 Italy imported agricultural products worth ECU 15,222 billion and exported products worth ECU 9,679 billion; during that year trade in agricultural products within the EU amounted to ECU 128,256 billion in imports and ECU 132,458 billion in exports).

(30) However, in cases covered by Article 87(2) and (3) of the Treaty, some measures may enjoy derogations to be considered compatible with the common market.

(31) The only possible derogation in this case is laid down in Article 87(3)(c), according to which aid may be considered compatible with the common market if it is found 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 contrary to the common interest.

(32) To benefit from the derogation referred to in Article 87(3)(c) of the Treaty, aid for investments in the sector of the processing and marketing of agricultural products must comply with the relevant provisions of Regulation (EC) No 1/2004 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products [2]. Where that Regulation does not apply, or if all the requirements laid down are not met, the aid must be appraised in the light of the relevant provisions of the Community guidelines for State aid in the agriculture sector [3] (hereinafter referred to as 'the Community guidelines'.

(33) Since the scheme in question is limited to small and medium-sized firms engaged in marketing, Regulation (EC) No 1/2004 applies. In particular, the appraisal of the compatibility of aid for investment in the processing and/or marketing of agricultural products must be based on Article 7 of that Regulation.

(34) Under Article 7 of Regulation (EC) No 1/2004, aid for investment in the processing and/or marketing of agricultural products may be granted provided it satisfies the following conditions:

a) the aid may be granted only to agricultural holdings which are economically viable;

b) these firms must comply with minimum standards as regards the environment, hygiene and animal welfare;

c) the intensity of the aid may not exceed 50 % of eligible investments in the Objective 1 regions and 40 % elsewhere;

d) eligible expenditure includes the construction, purchase and improvement of real estate, new machinery and equipment, general expenditure;

[1] See Aid N 708/2000, approved by the Commission on 24 January 2001 (letter SG (2001) D/285437).

[2] OJ L 1, 3.1.2004, p. 1.

[3] OJ C 232, 12.8.2000, p. 19.

e) there must be adequate proof of the existence in future of normal market outlets for the products in question. An assessment of the existence of normal market outlets should be carried out by a public body or a third party independent of the beneficiary of the aid;

f) aid should not be restricted to a specific agricultural product.

(35) However, the description of the measure shows that, contrary to the requirement at f) above, this investment is restricted to the beef/veal sector. Accordingly, not all the criteria laid down in Regulation (EC) No 1/2004 are satisfied and so the aid should be appraised in the light of the Community guidelines.

(36) In the information which it sent by the letter of 25 June 2002, the Italian authorities stated that the aid would be granted only to marketing firms (slaughterhouses) selling certified beef and veal. As a result of that change, the provisions which must be respected for the derogation under Article 87(3) (c) of the Treaty to apply are those at point 4.2 of the Community guidelines ("Aid for investment in the processing and marketing of agricultural products").

(37) Under point 4.2 of the Community guidelines, aid for investment in the processing and/or marketing sector may be authorised if the following conditions are satisfied:

a) the beneficiaries must be holdings which have demonstrated their profitability;

b) these holdings must comply with minimum rules as regards the environment, hygiene and animal welfare;

c) the intensity of the aid may not exceed 50 % of the eligible investment in Objective 1 regions and 40 % elsewhere;

d) eligible expenditure includes the construction, purchase and improvement of real property, the purchase of new machinery and equipment and general expenditure;

e) there must be normal market outlets for the products in question.

(38) As regards the criterion of economic viability, the conditions of eligibility for the aid, and specifically the exclusion of firms in administration, which have compounded with their creditors or are bankrupt, ensure compliance with the criterion at a).

(39) As far as the minimum rules as regards the environment, hygiene and animal welfare are concerned, which was one of the reasons why the Commission initiated proceedings under Article 88(2) of the Treaty, the Italian authorities, in their letter of 25 June 2002, undertook to grant the aid only to slaughterhouses which marketed beef and veal which was certified in accordance with the rules authorised by the Ministry of Agricultural and Forestry Policies. These holdings had already been checked as regards their compliance with the rules on the environment, hygiene and animal welfare. Accordingly, the criterion at b) may be considered to have been met.

(40) Since only marketing firms are eligible for the aid, the amount of the aid is fixed at 40% of the eligible expenditure with no possibility of modulation. That intensity complies with the criterion at c).

(41) The aid is intended for the purchase of scales or equipment which fall within the definition of eligible expenditure at d).

(42) As regards market outlets, in their letter of 25 June 2002 the Italian authorities provided information, the lack of which had led the Commission to doubt whether the aid was compatible with the common market. In particular, since the beneficiaries are economically viable marketing firms and the proposed investment does not increase productive capacity, the criterion at e) may be considered satisfied.

(43) Another point which had led the Commission to initiate proceedings under Article 88(2) of the Treaty is the mechanism for checking on the cumulation of aid, which appeared inadequate. However, in their letter of 25 June 2002 the Italian authorities undertook to check all the applications for aid in liaison with the Region of Lombardy. This removed the doubts which the Commission had had.

VI. **CONCLUSIONS**

(44) In the light of the above, the Commission considers that the aid which the Brescia Chamber of Commerce intends to grant to firms marketing beef and veal for the purchase of scales is compatible with the common market, since it complies with point 4.2 of the Community guidelines for the agricultural sector. The aid measure may therefore benefit from the derogation under Article 87(3)(c) of the EC Treaty,

HAS ADOPTED THE FOLLOWING DECISION:

Article 1

The State aid which Italy intends to implement for certain firms marketing beef and veal in the province of Brescia is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty.

Implementation of this aid is therefore authorised.

Article 2

This decision is addressed to the Italian Republic.

Done in Brussels, 20 April 2004.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION DECISION

of 3 May 2005

on the aid scheme 'Enterprise Capital Funds' which the United Kingdom is planning to implement

(notified under document number C(2005) 1144)

(Only the English version is authentic)

(Text with EEA relevance)

(2006/250/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 those provisions [1] and having regard to their comments,

Whereas:

I. PROCEDURE

1. By letter dated 25 November 2003, registered at the Commission on 26 November 2003, the UK authorities notified, pursuant to Article 88(3) of the EC Treaty, the above-mentioned measure to the Commission.

2. By letter D/58191 dated 19 December 2003, the Commission requested further information concerning the notified measure.

3. By letter dated 30 January 2004, registered at the Commission on 3 February 2004, and by letter dated 19 March 2004, registered at the Commission on 25 March 2004, the UK authorities submitted the information requested.

4. By letter dated 7 May 2004, the Commission informed the United Kingdom of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the measure.

5. The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission called on interested parties to submit their comments.

6. By letter dated 11 June 2004, registered at the Commission on 16 June 2004, the United Kingdom submitted a response to the Commission's decision to initiate the procedure.

7. The Commission received observations from 20 interested parties:

(a) by letter dated 20 September 2004, registered at the Commission on 23 September 2004;

(b) by letter dated 9 September 2004, registered at the Commission on 28 September 2004;

(c) by letter dated 22 September 2004, registered at the Commission on 29 September 2004;

(d) by letter dated 1 October 2004, registered at the Commission on 4 October 2004;

(e) by letter dated 6 October 2004, registered at the Commission on the same day;

(f) by letter dated 6 October 2004, registered at the Commission on the same day;

(g) by letter dated 7 October 2004, registered at the Commission on the same day;

(h) by letter dated 6 October 2004, registered at the Commission on 7 October 2004;

(i) by letter dated 7 October 2004, registered at the Commission on the same day;

(j) by letter dated 8 October 2004, registered at the Commission on the same day;

(k) by letter dated 8 October 2004, registered at the Commission on the same day;

(l) by letter dated 8 October 2004, registered at the Commission on the same day;

(m) by letter dated 8 October 2004, registered at the Commission on the same day;

[1] OJ C 225, 9.9.2004, p. 2.
[2] See footnote 1.

(n) by letter dated 8 October 2004, registered at the Commission on the same day;

(o) by letter dated 8 October 2004, registered at the Commission on 11 October 2004;

(p) by letter dated 6 October 2004, registered at the Commission on 11 October 2004;

(q) by letter dated 8 October 2004, registered at the Commission on 11 October 2004;

(r) by letter dated 8 October 2004, registered at the Commission on 11 October 2004;

(s) by letter dated 7 October 2004, registered at the Commission on 11 October 2004;

(t) by letter dated 8 October 2004, registered at the Commission on 12 October 2004.

8. By letter D/57629 dated 25 October 2004, the Commission forwarded these observations to the United Kingdom in order to give the United Kingdom the opportunity to react.

9. The opinion from the United Kingdom in response to the comments of third parties was received by letter dated 23 November 2004, registered at the Commission on 24 November 2004.

II. DETAILED DESCRIPTION OF THE MEASURE

II.1. Objective of the measure

10. The measure intends to increase the amount of equity funding for small and medium-sized enterprises (SMEs) in the United Kingdom seeking to raise equity financing between GBP 250 000 (EUR 357 000) and GBP 2 million (EUR 2,9 million).

11. The measure will provide leverage for licensed Enterprise Capital Funds (ECFs). The leverage, interest on the leverage and a profit share will be repaid by each ECF.

12. ECFs will be required to invest capital in SMEs by means of equity or quasi-equity instruments.

II.2. Description of the measure

Legal basis of the measure

13. The legal basis of the scheme is Section 8 of the 'Industrial Development Assistance Act 1982'.

Budget of the measure

14. As the leverage provided to the Enterprise Capital Funds will have to be repaid, the measure is designed to be self-financing over the medium term.

15. In terms of accounting for the scheme in its pathfinder phase, the United Kingdom has allocated GBP 44 million (EUR 63,8 million) to cover the cash-flow cost of the initial leverage.

Duration of the measure

16. The United Kingdom seeks approval for a period of 10 years.

Administration of the measure

17. The Department of Trade and Industry (DTI) will have statutory responsibility through its executive agency Small Business Service (SBS).

18. The Small Business Service (SBS) will supervise the application for ECF status.

19. The SBS will monitor ongoing investments undertaken by ECFs without having any direct control over ECFs' individual investment decisions.

20. The SBS will also ensure that each ECF complies with its business plan and adheres to the terms of its successful bid.

Beneficiaries of the measure

21. The scheme is exclusively aimed at unquoted small and medium-sized enterprises [3] in the United Kingdom.

22. Firms in difficulty as defined by the Community guidelines on State aid for rescuing and restructuring firms in difficulty [4] are excluded from investment.

[3] The definition of 'small and medium-sized enterprises' as used by the UK authorities for the purposes of the scheme corresponds fully to the definition of that term given in Annex I to 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 (OJ L 10, 13.1.2001, p. 33).

[4] OJ C 244, 1.10.2004, p. 2.

23. Enterprise Capital Funds ('ECFs') will not invest in sensitive sectors under State aid restrictions or in sectors to which the Commission Communication on State Aid and Risk Capital [5] does not apply. Low-risk sectors including property, land, finance and investment companies, or finance-type leasing companies will not be eligible for investment under the scheme.

24. Enterprise Capital Funds will also be prevented from investing in other ECFs

Size of investments

25. Enterprise Capital Funds will make investments in beneficiary SMEs in the GBP 250 000 (EUR 357 000) to GBP 2 million (EUR 2,9 million) range per single investment round.

26. Additional investments in beneficiary SMEs beyond the GBP 2 million (EUR 2,9 million) limit will not be permitted in cases where the ECF is investing on less advantageous terms than other commercial investors.

27. Follow-on investments will be permitted so long as the total equity funding raised by the beneficiary SME from ECFs and other equity investors does not exceed the GBP 2 million (EUR 2,9 million) limit.

28. In exceptional cases, after a period of at least 6 months from the ECF's initial investment in a beneficiary SME, follow-on investments in excess of the GBP 2 million (EUR 2,9 million) limit will also be permitted, where necessary, to prevent dilution. This will be subject to an upper limit of 10 percent of each ECF's committed capital that may be invested in any single beneficiary SME.

II.3. **Mechanics of the measure**

The role of the Enterprise Capital Funds

29. The Enterprise Capital Funds set up under the measure will combine private and public money for on-investment into SMEs.

30. Following a licensing process conferring ECF status, ECFs will be entitled to receive public leverage at an interest rate at or close to the ten-year government bond rate.

Restrictions on public leverage and repayment obligations

31. Public leverage to licensed Enterprise Capital Funds will be limited to no more than twice the private capital raised by the fund.

32. The leverage, interest on the leverage and a profit-share for the public contribution must be repaid by the Enterprise Capital Funds. This will ensure that the programme will be self-financing over the medium term.

Minimising public intervention

33. The exact amounts of public leverage, profit share and repayment priorities will be determined by a competitive bidding process in order to ensure minimal public support.

34. Open invitations for application through publication of the scheme in the *Official Journal of the European Union* and the relevant trade press will ensure that public support is the minimum necessary to achieve the intended objective.

35. In applying for ECF status potential funds will need to specify the required amount of public leverage (up to the upper limit of two times private capital), the profit share between public and private investors, as well as the prioritisation of repayments on:

(a) interest on the leverage;

(b) leverage;

(c) private capital;

(d) profit distribution.

Conditions for ECF eligibility

36. Potential ECF operators will submit a robust business plan including:

(a) the proposed management team, their relevant experience and evidence that they possess the competencies necessary to run an ECF effectively;

(b) the amount of private capital to be raised and the intended sources of capital;

[5] OJ C 235, 21.8.2001, p. 3.

(c) evidence of investor interest for the proposed ECF business plan;

(d) the proposed ECF's investment strategy, including the proportion of the fund which is intended to be invested in early stage and start up companies;

(e) repayment arrangements, including the sequencing of repayments of leverage, interest repayments on the leverage, profit distribution, as well as the public's profit share.

37. ECFs will be required to abide by British Venture Capital Association (BVCA) guidelines on accounting standards.

Assuring profit-driven investment decisions

38. Bids in which the public leverage is exposed to greater risk than the private capital will not be accepted.

39. Private investors in Enterprise Capital Funds may be exposed to greater downside risk than the public, thereby removing the scope for moral hazard to influence decisions of ECF operators and ensuring commercial best practice in the operation and decision making of the ECFs.

Drawing down of pubic leverage by the ECFs

40. Once an ECF has secured commitments for the agreed level of private capital, it will be entitled to draw down public leverage.

41. Each ECF will be free to draw down as little or as much leverage as it wishes, subject to the overall constraint imposed by the maximum leverage ratio agreed when ECF approval is granted.

42. At any point in time, the maximum leverage entitlement will be determined by applying this ratio to the amount of private capital already drawn down into the fund.

43. A maximum leverage ratio of 2:1 (public leverage will be capped at up to two times the private capital) will be applied for any ECF.

III. GROUNDS FOR INITIATING THE PROCEDURE

44. The Commission Communication on State Aid and Risk Capital [6] (hereinafter referred to as 'the Communication') recognises a role for public funding of risk capital measures limited to addressing identifiable market failures.

45. The Communication states that specific factors adversely affecting the access of SMEs to capital, such as imperfect or asymmetric information or high transaction costs, can cause a market failure that would justify state aid.

46. The Communication further specifies that there is no general risk capital market failure in the Community, but rather market gaps for some types of investments at certain stages of enterprises' lives as well as particular difficulties in regions qualifying for assistance under Articles 87(3)(a) and (c) of the EC Treaty ('assisted areas').

47. The Communication goes on to explain that in general, the Commission will require provision of evidence of market failure before being prepared to authorise risk capital measures.

48. The Commission may however be prepared to accept the existence of market failure without further provision of evidence in cases where each tranche of finance for an enterprise from risk capital measures which are wholly or partially financed through state aid will contain a maximum of EUR 500 000 in non-assisted areas, EUR 750 000 in Article 87(3)(c) areas, or EUR 1 million in Article 87(3)(a) areas.

49. It follows that for those cases where the above-mentioned tranches are exceeded, the Commission will demand a demonstration of market failure justifying the proposed risk capital measure before assessing the compatibility of the measure in accordance with the positive and negative criteria listed under point VIII.3 of the Communication.

50. The Enterprise Capital Funds scheme proposed by the United Kingdom foresees risk capital investments in the range of GBP 250 000 (EUR 357 000) to GBP 2 million (EUR 2,9 million) per investment tranche for SMEs in the United Kingdom.

[6] OJ C 235, 21.08.2001, p. 3 ff.

51. According to the 'Regional Aid Map 2000 – 2006' for the United Kingdom, the United Kingdom consists of regions currently classified as assisted areas pursuant to Article 87(3)(a) of the EC Treaty, as assisted areas pursuant to Article 87(3)(c) thereof, as well as of non-assisted areas ([7]).

52. In line with point VI.5 of the Communication, the Commission would thus be prepared to accept the existence of market failure without further provision of evidence if risk capital funding for SMEs in the United Kingdom wholly or partially financed through state aid would be limited to the maximum amount of EUR 1 million for assisted areas pursuant to Article 87(3)(a) EC, EUR 750 000 for assisted areas pursuant to Article 87(3)(c) EC, and EUR 500 000 for non-assisted areas, respectively.

53. According to the Communication, risk capital investments proposed under the Enterprise Capital Funds scheme exceeding the above-mentioned thresholds would necessitate the provision of evidence of market failure by the United Kingdom.

54. In order to demonstrate the existence of market failure, the United Kingdom submitted two studies ([8]), concluding that there is a gap in the provision of venture capital for SMEs in the United Kingdom in the deal size range of GBP 250 000 (EUR 357 000) to GBP 2 million (EUR 2,9 million) for the following reasons:

(a) A failure in the provision of equity-type growth finance in the United Kingdom that has persisted at least since 1999 as evidenced from the most recent 2003 UK survey:

i. Although access to finance, particularly debt finance, has improved for the majority of businesses in the UK, small businesses with the potential for high growth still have problems in attracting equity capital. They can fall between the scope of individual business angels to provide sufficient financial backing and the desire of formal venture capitalists to incur the relatively higher costs of investing in SMEs

ii. A larger level of demand for equity type finance than is presently being met exclusively by professional investors. If the supply of equity finance would be increased, particularly in the equity gap region, awareness of equity could be raised overall and firms would be more willing to use external sources as a mechanism for financing growth

(b) Qualitative evidence that there are shortfalls in the funding for small entrepreneurial and high growth businesses. This equity gap has the greatest impact for firms wishing to attract initial investments between approximately GBP 250 000 and GBP 2 million (EUR 357 000 and EUR 2.9 million):

(i) Capital rationing does exist within the UK economy and particularly affects SMEs seeking small amounts of external finance for early stage, firm growth and development. The availability of external finance, and particularly sources of equity from professional investors, is particularly problematic below an investment size in the region of GBP 1,5 to GBP 2 million (EUR 2,17 million to EUR 2,9 million)

(ii) A majority of UK professional equity providers are not interested in investments which are smaller than GBP 3 million (EUR 4,35 million). While smaller tranches of money from informal investors/business angels and government/private schemes such as the regional venture capital funds are helping to address funding sources below GBP 500 000 (EUR 725 000), the UK does not yet have a system in operation that would allow the provision of 'tiered' or 'escalator' funding to attractive but capital constrained businesses

(iii) The evidence also points to a gap that has been growing over time, driven in part by the success of the private equity industry moving to larger size investments. The prognosis is that this gap is likely to grow in scale as fixed cost issues will encourage professional venture capital firms to increase the size of both their funds and their minimum acceptable deal sizes.

55. By letter dated 7 May 2004, the Commission informed the United Kingdom of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the Enterprise Capital Funds scheme.

56. In its letter, the Commission stated that it had doubts whether the arguments presented by the United Kingdom in order to justify the existence of market failure could sufficiently justify the granting of risk capital investment tranches considerably exceeding the maximum amounts anticipated by the Communication.

([7]) State Aid N 265/2000 – United Kingdom: 'Regional Aid Map 2000 – 2006'. OJ C 272, 23.9.2000, at p. 43.

([8]) 'Assessing the Scale of the "Equity Gap" in the UK Economy', 2003; 'Assessing the Finance Gap', 2003.

57. The Commission went on to explain that it considered a more thorough analysis of the issue to be necessary. Such an analysis would need to include any observations made by interested parties. Only after consideration of third party comments could the Commission decide whether the measure proposed by the United Kingdom affects trading conditions to an extent contrary to the common interest.

IV. **COMMENTS FROM INTERESTED PARTIES**

58. In response to the publication in the *Official Journal of the European Union* of its decision to open the formal procedure, the Commission received observations by the following interested parties:

— Nelfunding

— England's Regional Development Agencies

— Confederation of British Industry

— Nederlandse Vereniging van Participatiemaatschappijen

— VNO-NCW

— Cavendish Asset Management

— The University of Warwick

— Stonesfield Capital Ltd.

— YFM Group

— Close Venture Management Ltd.

— Bundesministerium der Finanzen Deutschland

— Enterprise Corporate Finance Ltd.

— The Institute of Chartered Accountants in England & Wales

— Pénzügyminisztérium

— Interregnum

— Permanente Vertegenwoordiging van het Koninkrijk der Nederlanden

— 3i Group plc

— Northwest Development Agency

— One NorthEast

— Lietuvos Respublikos Ukio Ministerija

59. All comments received were positive and underlined the importance of the measure as well as the appropriateness of the proposed maximum investment amounts.

60. The arguments put forward by the above-mentioned interested parties can be classified and summarised as follows.

Comments from Member States

61. In its comments on the opening of the formal investigation procedure, Germany highlighted the following facts:

a. According to expert surveys conducted in Germany, there is a gap for the provision of venture capital and private equity financing for small and medium-sized enterprises in the range of up to EUR 5 million.

b. It is generally difficult to demonstrate market failure as stipulated by the Communication and there is a need for the Commission to elaborate clear criteria in order to support Member States in appraising market gaps in specific domains.

62. The Netherlands emphasised the following evidence in their comments on the opening of the formal investigation procedure:

a. The problem in the venture capital market occurs particularly at the bottom end of the capital market. For high tech start-ups, a gap between supply and demand in the range of EUR 100 000 to EUR 2,5 million per financing round has been noted for the Netherlands.

b. The thresholds set out in the Communication were based on market knowledge before 2001, when in the midst of the ICT boom private equity seemed abundant even for seed and early stage investments. The venture capital market has evolved rapidly since and the equity gap extends significantly beyond the thresholds laid down in the Communication. Venture capital funds drift towards ever larger deals and towards well established businesses.

63. In its comments on the opening of the formal investigation procedure, Hungary highlighted the following facts:

a. The ECF model proposed by the United Kingdom is a model deserving consideration for application in Hungary as well.

b. In 2003, a marked switch towards larger deal sizes could be observed in Hungary. Whereas deals below EUR 2,5 million accounted for 14% of total private investment in Hungary, deals above EUR 5 million made up for the remaining 86% of private investment. There were virtually no deals in the deal size range between EUR 2,5 and EUR 5 million.

c. An unduly strict interpretation of the already tight thresholds contained in the Communication could prevent public action in support of filling the above-mentioned important equity gap and could thereby block the growth potential of SMEs.

d. Instead of fixing maximum thresholds, the Commission should develop a control system that would enable it to survey the evolution of the markets depending upon the relative level of development of the Member States and their capital markets.

64. Lithuania accentuated the following experiences in its comments on the opening of the formal investigation procedure:

a. Private equity investment is more concentrated on large funds and investment into relatively established larger businesses, while levels of investment in smaller, young businesses are proportionally lower.

b. The ECF scheme might be an important part of the strategy to tackle barriers to successful entrepreneurship and therefore are in keeping with the Community objectives for entrepreneurship and innovation.

Comments from Associations and Academics

65. The Confederation of British Industry (CBI) fully supports the UK proposal for establishing ECFs. CBI identified the market gap as stretching from GBP 250 000 (EUR 357 000) to GBP 3 million (EUR 4,3 million) and therefore believes that ECFs meet a clearly defined market gap in the funding of growth companies.

66. The Nederlandse Vereniging van Participatiemaatschappijen (NVP) states that there is an evident equity gap at the bottom end of the market up to EUR 2,5 million. Whereas this gap may vary from Member State to Member State, the difference will not be significant.

67. The Confederation of Netherlands Industry and Employers VNO-NCW supports the observations made by the CBI and the NVP, particularly with regard to the size of the equity gap.

68. The Institute of Chartered Accountants in England and Wales believes that there is an equity gap that could be as high as GBP 5 million (EUR 7 million) for the following reasons:

(a) The majority of professional private equity providers are not interested in pursuing deals which are smaller than GBP 3 million (EUR 4,3 million).

(b) Experience tends to suggest that few venture capital houses in the UK are actively investing in businesses at or below GBP 2 million (EUR 2,9 million). Therefore the volume of small companies that receive investment at or near GBP 2 million (EUR 2,9 million) from these sources is very limited in any twelve month period. Others may be interested in this size range, but either as part of a much larger round above GBP 2 million (EUR 2,9 million), or where they are participating in the financing of a management buy out (MBO) or the change of ownership of a company, rather than its organic development.

(c) The professional venture capital community in the UK has established an active medium and large scale private equity industry, whose main focus is to acquire either large stakes in, or the control of, significantly profitable and large scale businesses. During the last 5 to 6 years, the number of venture capital houses with committed funds to invest in a reasonable volume of smaller companies with a specific range of up to GBP 2 million (EUR 2,9 million) appears to have diminished.

The Institute believes that the proposed ECF scheme will provide a valuable source of finance for businesses seeking a relatively modest amount of equity capital and will stimulate other investors to participate in small investment amounts where they can follow a fund that is dedicated to this sector, as opposed to investing opportunistically from time to time.

69. England's Regional Development Agencies state that a recent study by the Advantage West Midlands RDA shows that the barriers to accessing growth finance are most acute for those firms seeking between GBP 250 000 (EUR 357 000) to GBP 2 million (EUR 2,9 million) as demonstrated by the following facts:

(a) The study shows that the equity gap has grown since 1999/2000 as formal venture capital has migrated towards larger deal sizes of GBP 2-3 million (EUR 2,9-4,2 million).

(b) At the lower end of the risk capital market, the UK has a number of existing interventions that have successfully provided small amounts of growth capital to SMEs. However, recent reports indicate that there are significant numbers of businesses that require amounts well in excess of the GBP 250 000 (EUR 357 000) limit.

70. The Northwest Regional Development Agency makes the following observations:

(a) The funding needs of investee companies trying to raise follow-on funding between EUR 750 000 and EUR 2,9 million have been below the interest level of mainstream venture capital.

(b) The UK venture capital industry is moving its minimum thresholds per investment nearer to GBP 5 million (EUR 7 million).

(c) The real equity gap in the UK is probably at GBP 3 million (EUR 5,2 million) to GBP 5 million (EUR 7 million).

(d) The recognition of market failure below GBP 2 million (EUR 2,9 million) by the Commission will make a significant and crucial difference to the stimulation of high growth potential businesses in the UK.

71. The University of Warwick, after having conducted face-to-face discussions with technology transfer professionals from over 50 UK universities, comments on the early stage venture capital market and particularly on the issues facing university sector spin-off companies by highlighting the following aspects:

(a) Whereas it seems relatively straightforward for university spin-offs to raise small amounts of grant and equity funding up to GBP 500 000 (EUR 700 000), there is a thinning of sources of capital above GBP 500 000 (EUR 700 000). The main, and often only, source of risk equity at this stage is technology specialist venture capital.

(b) There are relatively few venture capital companies specialising in this area, all of them resource constrained. The shortage of equity at this level has both constrained and delayed the growth of individual spin-off companies.

(c) From the reference group, less than 1 spin-off company in 15 has raised equity in the GBP 500 000 (EUR 700 000) to GBP 1 million (EUR 1,4 million) range.

(d) The problems faced by university spin-off companies seeking to raise equity in the range GBP 1 million (EUR 1,4 million) to GBP 2 million (EUR 2,9 million) are overwhelmingly similar. Because they are at the same stage of development, companies looking for less than GBP 2 million (EUR 2,9 million) will face the same challenges due to the shortage of sources.

(e) Of the universities referenced, none had investment capital for spin-off companies in the GBP 1 million (EUR 1,4 million) to GBP 2 million (EUR 2,9 million) range. For university spin-off companies, there are more sources of equity available if more than GBP 2 million (EUR 2,9 million) is required.

Comments from Private Venture Capital Companies

72. Northern Enterprise Limited (Nelfunding) believes that there is market failure for risk capital investments below GBP 2 million (EUR 2,9 million) in the UK, and that this is adversely affecting SME development as a consequence.

73. Stonesfield Capital Limited is actively investing in the equity gap between GBP 500 000 (EUR 700 000) and GBP 2 million (EUR 2,9 million) targeted by the Enterprise Capital Funds and submitted the following comments:

(a) The supply of capital available throughout the UK for investments in the size range between GBP 500 000 (EUR 700 000) and GBP 2 million (EUR 2,9 million) is extremely limited. There is a severe equity gap for small businesses looking to raise these sums of money and the gap is widening rather than closing.

(b) According to the most recent 'Report on Investment Activity 2003' published by the British Venture Capital Association, there has been a 32% fall in the amount invested in early stage companies between 2001 and 2003.

(c) The performance of early stage funds has also declined markedly over the same period. The overall long term return to investors per annum for early stage funds was 14,1% in 2001 and fell to 4,7% in 2003.

(d) Both the decline in investment and performance over this period has led to a number of early stage venture investors pulling out of the market.

(e) These market dynamics have also been reflected in the average size of investment in early stage opportunities. In 2001 the average deal size was approximately GBP 1 million (EUR 1,4 million). This has increased to GBP 1,6 million (EUR 2,3 million) by 2003.

(f) This demonstrates that investors in the venture market are investing larger sums of money typically in an attempt to reduce risk, thereby contributing to a widening of the equity gap up to GBP 2 million (EUR 2,9 million).

(g) Companies requiring between GBP 1 million (EUR 1,4 million) to GBP 2 million (EUR 2,9 million) struggle the most to raise the required funds. This is because GBP 2 million (EUR 2,9 million) falls below the radar screen for most venture capitalists.

(h) The amount of funds raised to invest in early stage venture opportunities has fallen 73% from 2001 to 2003. In 2001, GBP 1,4 billion (EUR 2 billion) was raised to invest in early stage venture capital opportunities, compared to GBP 369 million (EUR 517 million) in 2003. Only 1% of the GBP 369 million (EUR 517 million) raised in 2003 was targeted at deals less than GBP 10 million (EUR 14 million).

(i) SMEs cannot justify an increase in capital requirements in excess of GBP 2 million (EUR 2,9 million) because their size and stage of development mean that they are not mature enough and the dilution to the entrepreneur would be too great. This leaves a significant funding hole that needs to be filled if these SMEs are to grow into successful larger businesses. The provision of funding between GBP 500 000 (EUR 700 000) and GBP 2 million (EUR 2,9 million) is essential for many small businesses to survive and prosper.

74. The YFM Group submitted the following observations:

(a) The latest British Venture Capital Association (BVCA) statistics show that in 2003 BVCA members invested GBP 724 million (EUR 1 billion) in sums of less than GBP 2 million (EUR 2,9 million) in 1 015 UK based companies.

(b) If one strips out sub GBP 500 000 (EUR 700 000) deals the picture changes dramatically. In 2000, GBP 482 million (EUR 675 million) was invested in sums of between GBP 500 000 (EUR 700 000) and GBP 2 million (EUR 2,9 million) with 348 companies benefiting. By 2003 the amount invested had fallen to GBP 286 million (EUR 400 million), a 41% drop on the 2000 figure, with 277 companies benefiting.

(c) These figures include management buy outs (MBOs), management buy-ins (MBIs), later stage expansions, secondary purchases and deals where bank debt has been refinanced. If these transactions were to be stripped out to focus on start up and early stage deals, the figures for monies invested and companies benefiting would be discounted yet further.

(d) Funding for start up and early stage propositions, regardless of the size of the deals completed, fell from a grand total of GBP 703 million (EUR 984 million) in 2000 to GBP 263 million (EUR 368 million) in 2003, a fall of 63%.

(e) Stimulated by the European Commission and UK government efforts, the number and value of transactions in the sub GBP 500 000 (EUR 700 000) marketplace is expanding.

(f) However, at the next level up, the migration of UK financial houses to larger and larger transactions is leaving a funding gap. Supply side constraints are becoming a major issue. Companies that have received investments in the sub GBP 500 000 (EUR 700 000) range and that are likely to need significant amounts of follow-on finance are unable to raise the monies they need because of a funding gap in the GBP 500 000 (EUR 700 000) to GBP 2 million (EUR 2,9 million) range.

75. Close Venture Management Limited highlighted the following facts:

(a) There is strong evidence that the equity gap, which has evolved over time, now covers the GBP 500 000 (EUR 700 000) to GBP 2 million (EUR 2,9 million) range. With time and increasing amounts of funds under management, venture capital investors left the sub GBP 2 million (EUR 2,9 million) segment behind.

(b) This is symptomatic of a common and inevitable trend. As investment managers establish a successful track record they raise more funds which in turn allows them to do bigger deals. As there are inherent scale economies in the venture/private equity industry, investment managers will typically leave the smaller deals behind as soon as they are able to do so.

(c) This means that there are extremely few professional or institutional investors in the sub GBP 2 million (EUR 2,9 million) segment in the UK. Currently, about 60% of all the deals between GBP 500 000 (EUR 700 000) and GBP 2 million (EUR 2,9 million) is frustrated demand with no readily available suppliers of risk capital to go to.

76. Enterprise Corporate Finance Limited has become increasingly frustrated in its endeavours to raise capital in the range between GBP 500 000 (EUR 700 000) and GBP 2 million (EUR 2,9 million) for their client companies:

(a) The main reason is not a lack of quality in the investment opportunities themselves but the increasing reluctance of venture funding to make small investments in such ventures.

(b) The marketplace has become significantly worse over the last few years to the extent that transactions requiring less than GBP 5 million (EUR 7 million) have a very slight probability of receiving funding, notwithstanding the merits of the investee company.

(c) The problem is significantly worse for those companies seeking funds in the GBP 250 000 (EUR 357 000) to GBP 2 million (EUR 2,9 million) bracket due mainly to prohibitively high costs and a lack of appropriate commercial skill. The lion's share of venture funding is targeted towards more substantial and mature businesses with assets and a track record of producing profits.

77. In its comment, 3i emphasises the following:

(a) In the past two to three years the venture capital market has gone through a significant transformation as investment returns from early stage and smaller growth companies have declined.

(b) This, combined with an industry-wide trend of making larger investments and more prudent investment strategies, has resulted in a decline in the supply of investment flowing into the smaller end of the market.

3i currently estimates that the equity gap has increased from GBP 500 000 (EUR 700 000) to GBP 1 million (EUR 1,4 million) to as much as GBP 2 million (EUR 2,9 million).

3i has significantly reduced its own investment in this segment of the market. Whereas it invested approximately EUR 1,1 billion in early-stage venture capital investments across Europe in 2001, investment in similar companies has declined significantly with 3i investing approximately EUR 150 million in this segment of the market in 2004.

78. Cavendish Asset Management Limited supports the observations made by the Institute of Chartered Accountants in England and Wales described under point 68 above.

V. **COMMENTS FROM THE UNITED KINGDOM**

79. The comments from the United Kingdom on the decision of the Commission to open the formal procedure pursuant to Article 88(2) of the EC Treaty as well as on the observations from third parties will be summarised in points (80) to (96).

80. While access to debt finance has improved for the majority of businesses in the UK since the mid 1990s, an important minority of SMEs with high growth potential still have problems in attracting equity finance.

81. Equity finance is suitable for businesses at an early stage of development that are not yet generating a sufficient stream of revenue to service debt interest repayments. It is also suitable for businesses developing new technologies, products or markets that offer the potential to achieve substantial rates of growth, but also hold a significant risk of failure.

82. The public consultation on access to growth capital for small businesses, aggregated BVCA data and academic research all point to an equity gap in the United Kingdom affecting businesses seeking to raise between GBP 250 000 (EUR 357 000) and GBP 2 million (EUR 2,9 million) of equity finance.

83. The equity gap has extended upwards in recent years, particularly since 1999, driven in part by the success of the private equity industry moving to larger size investments. Average deal sizes have risen substantially, as venture capital firms seek to benefit from increased economies of scale.

84. The equity gap has been accentuated for early stage SMEs in recent years due to a marked shift in the types of investments made by venture capitalists. Evidence shows venture capital investments have drifted towards later-stage, management buy out (MBO) and management buy in (MBI) investments.

85. The most recent BVCA data available for 2003 demonstrate that there is a continued emphasis on later-stage deals, and particularly on large buy-outs. Early stage investment accounted for just 6,5% of UK venture capital investment in 2003, or less than 0,02% of GDP. This contrasts with an average of 0,05% of GDP invested in early stage in the years 1998-2001.

86. The expected use of newly-raised venture capital funds is becoming increasingly focused on larger deals in well-established companies. The most recent data from the BVCA indicate that only 4% of funds raised are expected to be allocated to early-stage investment, 3% to expansion deals, and 1% to MBOs of less than GBP 10 million. It was expected that only 3% of funds raised would be allocated to early stage and expansion technology investments, compared to 5% in 2002.

87. Furthermore, data suggest that of those investments that take place within the equity gap of GBP 250 000 (EUR 357 000) and GBP 2 million (EUR 2,9 million), only 1 in 4 are initial, un-syndicated investments. Of approximately 1 000 investments in the sub GBP 2 million (EUR 2,9 million) range in 2000-2002, more than 70% were follow-on investments.

88. As venture capitalists are migrating towards larger fund sizes, there is little evidence of a flow of new venture capital investment teams into the lower end of the market. The importance of reputation in the venture capital sector creates a significant entry hurdle for prospective new fund management teams seeking to compete in the venture market. This trend will result in a worsening shortage of talent and experience in the equity gap segment of the market that will become increasingly hard to replace as time progresses, with quality fund managers raising larger funds, and hence making larger deals. Given the skills needed for successful smaller-scale and early-stage investing, ensuring a good flow of quality new entrants is a precondition for a dynamic early stage market.

89. The UK concludes that there appears to be full agreement among all respondents that there is a risk capital market failure that makes it difficult for SMEs with high growth potential to get funding. All third party comments have supported the UK's view that the market has changed and that an equity gap now exists beyond the level set in the Communication.

90. The United Kingdom has sought to demonstrate that a funding gap exists in investment sizes up to GBP 2 million (EUR 2,9 million). A number of respondents suggest this is a modest estimate and that the gap may now reach as high as GBP 5 million (EUR 7 million). The United Kingdom believes however that the evidence is strongest in support of GBP 2 million (EUR 2,9 million) as the appropriate figure.

91. The United Kingdom highlights that responses from those businesses operating within the UK venture capital sector are in line with those of its own detailed consultation. Respondents universally acknowledged the existence of a risk capital funding gap at the GBP 2 million (EUR 2,9 million) level or above. These respondents have practical experience of this market and have researched it from a commercial point of view. Their experience supports the United Kingdom's own research, which says that funds operating in this area are not able to attract private investors because of perceptions of risk and the economics of making smaller investments. The United Kingdom is therefore satisfied that the Enterprise Capital Funds scheme will not displace existing private provision in this market.

92. The United Kingdom also welcomes the level of support for the practical design of the ECF model. The United Kingdom welcomes the understanding amongst respondents that the proposed fund structure means that a distortion of competition will not occur and that the incentive will be for sound commercial investment decisions. The key driver for this is that the proposed ECFs give no down-side protection to the private investors. This sharpens their incentive to select good fund managers who will invest their funds to best effect. If an ECF does not make a positive return the private investor will lose his or her money. The United Kingdom believes that this is a more powerful commercial incentive than an alternative model where there is a lower proportion of public investment but where public funds are at risk before the private investment and private investors can get their money back from loss making funds.

93. By including key aspects of each fund's structure within the competitive bidding process the United Kingdom will pay the minimum necessary in fund management charges and subordination. The bidding process will set out some minimum requirements, such as the *pari passu* loss position and a prioritised return to the public but it includes the flexibility for applicants to specify alternative terms where these are more generous to the public. This opens up the possibility that private investors may be exposed to greater downside risk than the public or that less than the anticipated leverage is required where a bidder could show that this would prove attractive to investors in its fund.

94. The United Kingdom further notes that the responses from other Member States highlight a desire to update the current Communication. The risk capital market across the European Union has changed markedly since the publication of the Communication in 2001. In view of this the United Kingdom agrees that there will need to be some fundamental revisions in the Communication when it is revised in 2006. This will almost certainly need to go beyond looking at tranche sizes to look at other issues such as the balance of private sector risk as compensation for greater public funding and greater use of instruments such as block exemptions.

95. The United Kingdom considers that the ECF scheme will make an important contribution to tackling what remains an important barrier to innovation and entrepreneurship and to meeting the goals set out at Lisbon and in the Entrepreneurship Action Plan. The ECF scheme will also help meet the recommendations of the Kok report which noted that finance for SMEs in Europe is currently too lending based and called for more use of risk capital.

96. The United Kingdom concludes that the support shown both by the public and private sectors and by other Member States as well as those operating in the venture capital market positively reflects the need for an investment vehicle of the ECF type.

VI. **ASSESSMENT OF THE MEASURE**

97. The Commission has examined the scheme in light of Article 87 of the EC Treaty and in particular on the basis of the Commission Communication on State Aid and Risk Capital [9]. The results of this assessment are summarised below.

VI.1. **Legality**

98. By notifying the scheme, the UK authorities have complied with their obligations under Article 88(3) EC.

VI.2. **Existence of State aid**

99. According to the provisions of the Communication, the assessment of the presence of State aid must consider the possibility that a measure may confer aid on at least three different levels:

(a) aid to investors;

(b) aid to any fund or other vehicle through which the measure operates;

(c) aid to the companies invested in.

[9] See footnote 6.

100. At the level of investors, the Commission considers that there is State aid within the meaning of Article 87(1) of the EC Treaty. The involvement of state resources is demonstrated by the fact that the UK authorities will provide public leverage to the Enterprise Capital Funds. Private investors in Enterprise Capital Funds, who may be undertakings within the meaning of the EC Treaty may be entitled to higher returns than the public and may thus receive an advantage. Even though no person or organisation is debarred from investing in the funds, the limited size of the funds will not guarantee that all potential investment will be accepted and the Commission therefore considers that there is selectivity. Finally, the scheme affects trade between Member States, as investment in capital is an activity that is the subject of considerable trade between Member States.

101. At the level of the funds, the Commission in general tends to the view that a fund is a vehicle for the transfer of aid to investors and/or enterprises invested in, rather than being an aid beneficiary itself. However, in certain cases, notably measures involving transfers in favour of existing funds with numerous and diverse investors, the fund may have the character of an independent enterprise. Under the present scheme, the Enterprise Capital Funds will be newly created and will be prevented from diversifying into other activities than those intended by the scheme. The Commission therefore does not consider the Enterprise Capital Funds to be separate aid beneficiaries. This principle is in line with the Commission decisions on the 'Viridian Growth Fund' ([10]), the 'Coalfields Enterprise Fund' ([11]) and the 'Community Development Venture Fund' ([12]).

102. At the level of the companies invested in, the Commission considers that there is State aid within the meaning of Article 87(1) of the EC Treaty. State resources are involved because the investments of the fund in beneficiary SMEs will contain public funding. The measure distorts competition by conferring an advantage on the beneficiary SMEs as they would otherwise not be able to obtain risk capital funding at the same conditions and/or volume. The measure is selective as it is targeted at specific SMEs in the United Kingdom. The measure has the potential to affect trade between Member States, as there is the possibility that the target SMEs are engaged or will be engaged in activities involving intra-Community trade.

([10]) Commission Decision 2001/406/EC of 13 February 2001 on the aid scheme 'Viridian Growth Fund' notified by the United Kingdom (State Aid C 46/2000): OJ L 144, 30.5.2001, p. 23.
([11]) State Aid N 722/2000: OJ C 133, 5.6.2002, p. 11.
([12]) State Aid N 606/2001: OJ C 133, 5.6.2002, p. 10.

103. The Commission therefore concludes that State aid within the meaning of Article 87(1) EC is present at the level of the investors and at the level of the beneficiary SMEs.

VI.3. **Evidence of market failure**

104. In line with the provisions of the Communication, the Commission may be prepared to accept the existence of market failure without further provision of evidence in cases where each tranche of finance for an enterprise from risk capital measures which are wholly or partially financed through state aid will contain a maximum of EUR 500 000 in non-assisted areas, EUR 750 000 in Article 87(3)(c) areas, or EUR 1 million in Article 87(3)(a) areas.

105. The measure proposed by the United Kingdom foresees risk capital investments in the range of GBP 250 000 (EUR 357 000) to GBP 2 million (EUR 2,9 million) per investment tranche for SMEs in the United Kingdom.

106. According to the 'Regional Aid Map 2000 – 2006' for the United Kingdom, the United Kingdom consists of regions currently classified as assisted areas pursuant to Article 87(3)(a) of the EC Treaty, as assisted areas pursuant to Article 87(3)(c) EC, as well as of non-assisted areas ([13]).

107. In line with the provisions of the Communication, the Commission has informed the United Kingdom that in view of the fact that the proposed risk capital investments under the present scheme exceed the above-mentioned thresholds anticipated by the Communication, the United Kingdom would have to provide evidence of market failure.

108. The arguments put forward by the United Kingdom as well as the observations made by third parties demonstrating the existence of a market gap in the investment range of GBP 250 000 (EUR 357 000) and GBP 2 million (EUR 2,9 million) will be summarised in the following.

([13]) State Aid N 265/2000 – United Kingdom: 'Regional Aid Map 2000 – 2006': see footnote 8.

Economic rationale for equity gaps in the risk capital market for SMEs

109. The most important single source of external finance for SMEs is bank debt, principally in the form of overdrafts and fixed-term loans, which together account for around half of all external finance. ([14]) Bank debt is most suitable where businesses are generating sufficient cash flow to service interest payments. The availability of debt finance has improved significantly over the past decade. There is no real evidence of firms having difficulties assessing bank finance. Nevertheless, lenders can still face considerable uncertainty when assessing the prospects of individual businesses. They often rely on collateral to support SME lending, especially where the borrower lacks an established track record in business. Not all business owners are able to offer suitable security.

110. Market imperfections in the debt market arise from information asymmetries, whereby the lender is only partially informed about the prospects of a business. Information asymmetries mean that lenders are unable to quantify the level of risk involved in a particular SME. It is therefore difficult to assess the quality of investment propositions, and even harder to charge an interest rate that accurately reflects the level of risk involved. Banks typically make lending decisions on the basis of criteria such as credit history, past bank account management, the applicant's track record in business and willingness to invest their own money in the business, and evidence of repayment capability based on a business plan. However, an individual may not have a previous track record and may have no personal capital to invest in the business. As a result, lenders also place significant emphasis on the entrepreneur's willingness to provide collateral to underwrite the loan. While lenders' reliance on collateral enables many businesses to secure debt finance, this approach to SME lending can create difficulties for entrepreneurs who lack suitable assets to offer as security.

111. While debt and asset-based finance are sufficient to meet the needs of most firms, an important minority require equity finance. Equity investors inject capital in exchange for shares in the business, enabling them to receive a proportion of its future profits. This form of financing is most appropriate when the business is at an early stage of development, and is not yet generating a sufficient stream of revenue to service debt interest repayments and/or the business is developing new technologies, products or markets with the potential to achieve substantial rates of growth, but also with significant risk of failure.

112. Equity finance accounts for only 8 per cent of all external finance for SMEs, but this statistic understates its importance in a modern, enterprising economy. Businesses that are most likely to need equity finance are often highly innovative, and have the potential to make an important contribution to productivity growth. In addition, the finance provided by venture capital is sometimes accompanied by management support, advice and other expertise.

113. While equity finance is an important driver of growth of individual businesses, and more widely across the economy, there is a strong body of evidence that structural features of the private equity market give rise to a significant and growing 'equity gap' facing businesses seeking modest amounts of growth capital. These structural causes relate to both the supply and demand sides of the market.

114. The information problems highlighted for the debt market are also applicable to the equity market. On the supply side, there are commonly three issues involved, namely information asymmetries, transaction costs, and the perception of risk and reward.

115. 'Information asymmetries' mean that equity investors can face significant costs in identifying suitable investment opportunities. These information problems are typically greatest for smaller, younger firms and especially innovative businesses seeking to develop unproven technologies, products and markets. Information difficulties present a significant impediment to smaller-scale equity investments, because the costs of investment do not vary proportionally with the size of investment. In comparison with large companies that are quoted on public stock markets, the flow of information about small, unquoted companies seeking investment is much more limited. Investors can therefore incur significant search costs when seeking out suitable opportunities. Furthermore, it is often difficult to assess the prospects of a business, especially where the management team, product or technology is unproven. Before equity investors can make informed investment choices, they must therefore undertake a process of due diligence. These information gathering costs do not vary proportionally with the size of the investment and, for smaller investments, can be prohibitively large relative to the potential financial rewards from making the investment. Finally, having invested in a business, equity investors need to monitor the ongoing performance of their investment. They will often do this by taking a seat on the board, and may contribute significant time and effort to providing management support, especially where a business' management team is relatively inexperienced. This can make an important contribution to the performance of the investee business but, again, these costs do not vary proportionally with investment size.

([14]) Bank of England: 'Finance for Small Firms – A Tenth Report', 2003.

116. There are significant fixed costs involved in making equity investments, for example in negotiating the terms of investment and putting in place the necessary legal agreements ('transaction costs'). As with other fixed costs, these transaction costs tend to militate against investing in smaller sums.

117. Investment decisions will be driven by perceptions of risk and likely financial returns. If investors have incorrect expectations, this will result in a sub-optimal allocation of capital.

118. Demand-side constraints are equally significant in limiting the flow of equity finance from investors to SMEs. Research has highlighted a number of issues that deter small businesses from seeking equity capital. Loss of control and restricted management freedom are the concerns most commonly cited by SMEs, but the costs of securing equity finance and a lack of knowledge of external sources of finance are also common obstacles. Many of those businesses that actively seek equity investment are also constrained by a lack of 'investment readiness'. SMEs may be hampered by a limited awareness and understanding of the various forms of risk finance available and how to access it, and by insufficiently developed or poorly presented business plans. Inadequate business preparation and planning will deter potential investors, not least by increasing the information and due diligence costs involved.

119. An equity gap arises where viable businesses are unable to attract investment from either informal investors or venture capitalists, which are the principal sources of equity finance for SMEs. Informal investors (business angels and other informal investors) have access to limited financial resources and therefore generally invest relatively small amounts of equity. By contrast, formal venture capital investors typically incur far greater costs in evaluating potential investments. For the structural reasons mentioned above, these costs are often prohibitive where a business is seeking only a modest amount of equity finance.

120. An equity gap therefore affects businesses that are seeking a sum of money that is beyond the financial means of most informal investors, but below the level at which it is viable for venture capitalists to invest.

Evidence for an upward-moving equity gap in the UK venture capital market

121. According to recent BVCA data ([15]), large MBO funds showed good returns in 2003 and over the longer term, whereas average returns from early stage and technology funds continued to be depressed in 2003.

122. As to the overall performance by investment stage, funds focusing on early stage investments made an average return of - 18,1% in 2003 compared to an average 3-years return of - 25,1% and an average 5-years return of - 12,5%.

123. Funds specialising in development stage investments recorded an average return of - 3,4% in 2003 compared to an average 3-years return of - 8,2% and an average 5-years return of 2,7%.

124. At the same time, funds concentrating on MBOs (management buy outs) performed significantly better. For mid-sized MBOs, the average return in 2003 was 12,2%, compared to an average 3-years return of 2,9% and an average 5-years return of 6,7%. The difference becomes even more evident when looking at large MBOs, with an average return of 15,3% in 2003, an average 3-years return of 9,1%, and a corresponding return figure of 13,6% for a 5-years period.

125. The data presented above underlines the current pattern in the UK venture capital market. Venture capital providers migrate towards larger deal sizes as the associated returns are higher, thereby widening the equity gap between smaller-scale early stage and expansion investments and larger-scale investments in well-established companies.

126. This trend towards ever larger investment sizes is further underlined by recent figures on investment activity in the United Kingdom ([16]). The average financing across all stages of investment increased to GBP 4,3 million (EUR 6 million) in 2003 from GBP 3,8 million (EUR 5,3 million) in 2002. This is explained by the fact that smaller-scale expansion stage investments fell by 57% to GBP 477 million (EUR 670 million) in 2003 from GBP 1,2 billion (EUR 1,7 billion) in 2002. The average amount received by an expanding company fell from GBP 2 million (EUR 2,9 million) in 2002 to GBP 800 000 (EUR 1,1 million) in 2003.

127. Of the total funds raised in 2003, the vast majority of 92% (GBP 8,2 billion or EUR 11,5 billion) has been invested into MBOs and MBIs, up from an 87% allocation in 2002. The report anticipates that only 3% (GBP 290 million or EUR 406 million) will be invested into expansion stage companies, compared to 6% in 2002. For early stage investments 4% of total funds raised in 2003 (GBP 368 million or EUR 515 million) compare to 3% in 2002.

([15]) BVCA: 'Performance Measurement Survey 2003', 2004.

([16]) BVCA: 'Report on Investment Activity 2003', 2004.

128. Within the MBO/MBI category, 58% is expected to be allocated to the largest MBOs/MBIs (over GBP 100 million or EUR 140 million total deal value), compared to 45% in 2002. 20% will be allocated to MBOs/MBIs between GBP 50 million (EUR 70 million) and GBP 100 million (EUR 140 million), up from 17% in 2002, and 13% will be allocated to MBOs/MBIs of between GBP 10 million (EUR 14 million) and GBP 50 million (EUR 70 million), compared to 24% in 2002. Like in 2002, a mere 1% will be allocated to MBOs/MBIs of up to GBP 10 million (EUR 14 million).

129. Both the decline in investment and performance presented above has led to early stage venture investors pulling out of the market. This is further highlighted by the fact that the average financing (across all stages of investment) is steadily moving upwards and has reached GBP 4.3 million (EUR 6 million) in 2003. Investors in the UK venture market are investing larger sums of money typically in an attempt to reduce risk, thereby contributing to a widening of the equity gap.

130. The amount of funds raised to invest in early stage venture opportunities has fallen 73% from 2001 to 2003. In 2001, GBP 1,4 billion (EUR 2 billion) was raised to invest in early stage venture capital opportunities, compared to GBP 369 million (EUR 517 million) in 2003. Only 1 % of these GBP 369 million (EUR 517 million) raised in 2003 was targeted at deals less than GBP 10 million (EUR 14 million).

131. In its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the proposed aid measure, the Commission stated that in view of the proposed maximum investment amounts proposed under the scheme, which considerably exceed the maximum investment amounts anticipated by the Communication, potential observations made by interested parties were necessary in order to decide whether the measure affects trading conditions to an extent contrary to the common interest.

132. All comments received from interested third parties were positive and underlined the importance of the measure in general as well as the appropriateness of the proposed maximum investment amounts.

133. Taking into account the information presented in the initial notification, the comments submitted by interested third parties as well as the additional information delivered by the United Kingdom following the Commission's decision to open the procedure pursuant to Article 88(2) of the EC Treaty, the Commission concludes that the United Kingdom has provided sufficient evidence for the existence of an equity gap in the deal size range between GBP 250 000 (EUR 357 000) and GBP 2 million (EUR 2,9 million) in the venture capital market of the United Kingdom.

VI.4. **Compatibility of the measure – Conformity with the positive elements of the Communication**

Restriction of investments

134. ECFs will be restricted to investments in small and medium-sized enterprises within the Commission definition. This is to be considered positively.

Focus on risk capital market failure

135. ECFs will be required to invest capital in SMEs by means of equity or quasi-equity instruments. Investments that are composed wholly of debt instruments with no equity features will not be permitted. The Commission considers this as a positive element.

Decisions to invest should be profit-driven

136. A link between investment performance and the remuneration of the commercial managers responsible for investment decisions is established. The public authorities will not be involved in the investment choices and decision making of ECFs apart from setting restrictions to ensure that investments are limited to SMEs. Investment decisions will be taken by commercial managers of the ECFs with an interest in ensuring a maximum return for the fund. The administrative body SBS will only approve ECFs where operators have a clear incentive to maximise returns. The terms on which the public authorities will invest in ECFs will give private investors very strong incentives to ensure that their funds are profit-driven and perform successfully. These incentives arise because private investors will have to pay interest on the public capital, and fully repay capital to both the public and private investors, before any profits can be distributed. As a result, private investors will bear at least a proportionate share of any losses made by ECFs. ECFs or their operators will be required to act in line with industry standards (British Venture Capital Association BVCA guidelines). All these elements have to be assessed positively.

Level of distortion of competition should be minimised

137. The UK authorities will ensure that the ECF scheme is publicised and that applications are invited from across the EEA with notices in the *Official Journal of the European Union* and the relevant trade press. There will be no restriction on location for any investor or operator. This is again considered as a positive element.

Sectoral focus

138. Enterprise Capital Funds will not invest in sensitive sectors under State aid restrictions or in sectors to which the Communication does not apply. Low-risk sectors including property, land, finance and investment companies, or finance-type leasing companies will not be eligible for investment under the scheme. This has to be regarded positively.

Investment on the basis of business plans

139. All investments undertaken by ECFs will be made on the basis of robust business plans. This is a further positive element.

Avoidance of cumulation

140. The UK authorities have committed themselves that the beneficiary SMEs' eligibility for other publicly funded grants, loans or other forms of investment aid outside of this notification will be reduced by 30% of the aid intensity that would otherwise be permissible. The Commission considers this to be a positive element.

VII. **CONCLUSION**

141. The Commission therefore concludes that the aid granted under the Enterprise Capital Funds scheme fulfils the conditions of the Commission Communication on State Aid and Risk Capital. It has therefore found the measure to be compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty.

HAS ADOPTED THIS DECISION:

Article 1

The State aid which the United Kingdom is planning to implement is compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty.

Implementation of the aid is accordingly authorised.

Article 2

The United Kingdom shall submit an annual report on the implementation of the aid.

Article 3

This Decision is addressed to the United Kingdom.

Done at Brussels, 3 May 2005.

For the Commission

Neelie KROES

Member of the Commission

COMMISSION DECISION

of 28 March 2006

amending Decision 2006/135/EC as regarding the establishment of areas A and B in certain Member States due to outbreaks of highly pathogenic avian influenza

(notified under document number C(2006) 1144)

(Text with EEA relevance)

(2006/251/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ([1]), and in particular Article 9(4) thereof,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ([2]), and in particular Article 10(4) thereof,

Having regard to Regulation (EC) No 998/2003 of 26 May 2003 of the European Parliament and of the Council on the animal health requirements applicable to the non-commercial movement of pet animals and amending Council Directive 92/65/EEC ([3]), and in particular Article 18 thereof,

Having regard to Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC ([4]), and in particular Article 66(2) thereof,

Whereas:

(1) Sweden has notified the Commission and the other Member States of an outbreak of highly pathogenic avian influenza A virus of subtype H5 in poultry in certain areas of its territory and has taken, pending the determination of the neuraminidase (N) type, the appropriate measures provided for in Commission Decision 2006/135/EC of 22 February 2006 concerning certain protection measures in relation to highly pathogenic avian influenza in the Community ([5]).

(2) Following that outbreak, Sweden took the necessary measures in accordance with Decision 2006/135/EC. After notification of those measures, the Commission has examined them in collaboration with the Member State concerned, and is satisfied that areas A and B established by that Member State are at sufficient distance to the outbreak in poultry and epidemiologically related cases in wild birds. It is therefore necessary to establish areas A and B in Sweden and to fix the duration of that regionalisation.

(3) At the same time certain details of the regionalisation of France should be adapted.

(4) It is therefore necessary to amend Parts A and B of Annex I to Decision 2006/135/EC accordingly.

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

HAS ADOPTED THIS DECISION:

Article 1

Annex I to Decision 2006/135/EC is replaced by the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 28 March 2006.

For the Commission
Markos KYPRIANOU
Member of the Commission

([1]) OJ L 395, 30.12.1989, p. 13. Directive as last amended by Directive 2004/41/EC (OJ L 157, 30.4.2004, p. 33); corrected version (OJ L 195, 2.6.2004, p. 12).
([2]) OJ L 224, 18.8.1990, p. 29. Directive as last amended by Directive 2002/33/EC of the European Parliament and of the Council (OJ L 315, 19.11.2002, p. 14).
([3]) OJ L 146, 13.6.2003, p. 1. Regulation as last amended by Commission Regulation (EC) No 18/2006 (OJ L 4, 7.1.2006, p. 3).
([4]) OJ L 10, 14.1.2006, p. 16.
([5]) OJ L 52, 23.2.2006, p. 41. Decision as amended by Decision 2006/175/EC (OJ L 62, 3.3.2006, p. 27).

ANNEX

Annex I to Decision 2006/135/EC is replaced by the following:

'ANNEX I

PART A

Area A as referred to in Article 2(1):

ISO Country Code	Member State	Area A		Date until applicable
		Code	Name	
FR	FRANCE	Postcode	The municipalities of:	27.3.2006
	Surveillance zone	01005	AMBERIEUX-EN-DOMBES	
		01045	BIRIEUX	
		01052	BOULIGNEUX	
		01053	BOURG-EN-BRESSE	
		01069	CERTINES	
		01072	CEYZERIAT	
		01074	CHALAMONT	
		01083	CHANEINS	
		01084	CHANOZ-CHATENAY	
		01085	LA CHAPELLE-DU-CHATELARD	
		01090	CHATENAY	
		01092	CHATILLON-LA-PALUD	
		01093	CHATILLON-SUR-CHALARONNE	
		01096	CHAVEYRIAT	
		01105	CIVRIEUX	
		01113	CONDEISSIAT	
		01129	CRANS	
		01145	DOMPIERRE-SUR-VEYLE	
		01151	DRUILLAT	
		01156	FARAMANS	
		01195	JASSERON	
		01198	JOYEUX	
		01207	LAPEYROUSE	
		01211	LENT	
		01235	MARLIEUX	
		01244	MEXIMIEUX	
		01248	MIONNAY	
		01249	MIRIBEL	
		01254	MONTAGNAT	
		01260	LE MONTELLIER	
		01261	MONTHIEUX	
		01262	MONTLUEL	
		01264	MONTRACOL	
		01272	NEUVILLE-LES-DAMES	
		01289	PERONNAS	
		01297	PIZAY	
		01299	LE PLANTAY	
		01314	PRIAY	
		01318	RANCE	
		01319	RELEVANT	

ISO Country Code	Member State	Area A		Date until applicable
		Code	Name	
		01322	REYRIEUX	
		01325	RIGNIEUX-LE-FRANC	
		01328	ROMANS	
		01333	SAINT-ANDRE-DE-CORCY	
		01335	SAINT-ANDRE-LE-BOUCHOUX	
		01336	SAINT-ANDRE-SUR-VIEUX-JONC	
		01342	SAINTE-CROIX	
		01349	SAINT-ELOI	
		01356	SAINT-GEORGES-SUR-RENON	
		01359	SAINT-GERMAIN-SUR-RENON	
		01362	SAINT-JEAN-DE-THURIGNEUX	
		01369	SAINT-JUST	
		01371	SAINT-MARCEL	
		01381	SAINT-NIZIER-LE-DESERT	
		01382	SAINTE-OLIVE	
		01383	SAINT-PAUL-DE-VARAX	
		01385	SAINT-REMY	
		01389	SAINT-TRIVIER-SUR-MOIGNANS	
		01393	SANDRANS	
		01398	SAVIGNEUX	
		01405	SERVAS	
		01412	SULIGNAT	
		01424	TRAMOYES	
		01425	LA TRANCLIERE	
		01430	VARAMBON	
		01434	VERSAILLEUX	
		01443	VILLARS-LES-DOMBES	
		01446	VILLENEUVE	
		01449	VILLETTE-SUR-AIN	
		01450	VILLIEU-LOYES-MOLLON	
		01001	L'ABERGEMENT-CLEMENCIAT	
		01004	AMBERIEU-EN-BUGEY	
		01007	AMBRONAY	
		01008	AMBUTRIX	
		01021	ARS-SUR-FORMANS	
		01024	ATTIGNAT	
		01025	BAGE-LA-VILLE	
		01027	BALAN	
		01028	BANEINS	
		01030	BEAUREGARD	
		01032	BELIGNEUX	
		01038	BENY	
		01041	BETTANT	
		01042	BEY	
		01043	BEYNOST	
		01046	BIZIAT	
		01047	BLYES	
		01049	LA BOISSE	

ISO Country Code	Member State	Area A		Date until applicable
		Code	Name	
		01054	BOURG-SAINT-CHRISTOPHE	
		01062	BRESSOLLES	
		01065	BUELLAS	
		01075	CHALEINS	
		01088	CHARNOZ-SUR-AIN	
		01089	CHATEAU-GAILLARD	
		01095	CHAVANNES-SUR-SURAN	
		01099	CHAZEY-SUR-AIN	
		01115	CONFRANCON	
		01136	CRUZILLES-LES-MEPILLAT	
		01140	CURTAFOND	
		01142	DAGNEUX	
		01144	DOMMARTIN	
		01146	DOMPIERRE-SUR-CHALARONNE	
		01149	DOUVRES	
		01150	DROM	
		01157	FAREINS	
		01165	FRANCHELEINS	
		01166	FRANS	
		01167	GARNERANS	
		01169	GENOUILLEUX	
		01177	GRAND-CORENT	
		01183	GUEREINS	
		01184	HAUTECOURT-ROMANECHE	
		01188	ILLIAT	
		01194	JASSANS-RIOTTIER	
		01197	JOURNANS	
		01199	JUJURIEUX	
		01202	LAGNIEU	
		01203	LAIZ	
		01213	LEYMENT	
		01225	LURCY	
		01238	MASSIEUX	
		01241	MEILLONNAS	
		01243	MESSIMY-SUR-SAONE	
		01245	BOHAS-MEYRIAT-RIGNAT	
		01246	MEZERIAT	
		01250	MISERIEUX	
		01252	MOGNENEINS	
		01258	MONTCEAUX	
		01259	MONTCET	
		01263	MONTMERLE-SUR-SAONE	
		01266	MONTREVEL-EN-BRESSE	
		01273	NEUVILLE-SUR-AIN	
		01275	NEYRON	
		01276	NIEVROZ	
		01285	PARCIEUX	

ISO Country Code	Member State	Area A		Date until applicable
		Code	Name	
		01290	PEROUGES	
		01291	PERREX	
		01295	PEYZIEUX-SUR-SAONE	
		01301	POLLIAT	
		01303	PONCIN	
		01304	PONT-D'AIN	
		01317	RAMASSE	
		01321	REVONNAS	
		01334	SAINT-ANDRE-D'HUIRIAT	
		01339	SAINT-BERNARD	
		01343	SAINT-CYR-SUR-MENTHON	
		01344	SAINT-DENIS-LES-BOURG	
		01345	SAINT-DENIS-EN-BUGEY	
		01346	SAINT-DIDIER-D'AUSSIAT	
		01347	SAINT-DIDIER-DE-FORMANS	
		01348	SAINT-DIDIER-SUR-CHALARONNE	
		01350	SAINT-ETIENNE-DU-BOIS	
		01351	SAINT-ETIENNE-SUR-CHALARONNE	
		01353	SAINTE-EUPHEMIE	
		01355	SAINT-GENIS-SUR-MENTHON	
		01361	SAINT-JEAN-DE-NIOST	
		01363	SAINT-JEAN-LE-VIEUX	
		01365	SAINT-JEAN-SUR-VEYLE	
		01366	SAINTE-JULIE	
		01368	SAINT-JULIEN-SUR-VEYLE	
		01374	SAINT-MARTIN-DU-MONT	
		01375	SAINT-MARTIN-LE-CHATEL	
		01376	SAINT-MAURICE-DE-BEYNOST	
		01378	SAINT-MAURICE-DE-GOURDANS	
		01379	SAINT-MAURICE-DE-REMENS	
		01387	SAINT-SULPICE	
		01390	SAINT-VULBAS	
		01408	SIMANDRE-SUR-SURAN	
		01418	THIL	
		01420	THOISSEY	
		01422	TOSSIAT	
		01423	TOUSSIEUX	
		01426	TREFFORT-CUISIAT	
		01427	TREVOUX	
		01428	VALEINS	
		01429	VANDEINS	
		01431	VAUX-EN-BUGEY	
		01447	VILLEREVERSURE	
		01451	VIRIAT	
		01457	VONNAS	
		38557	VILLETTE-D'ANTHON	

ISO Country Code	Member State	Area A		Date until applicable
		Code	Name	
		69003	ALBIGNY-SUR-SAONE	
		69005	AMBERIEUX	
		69009	ANSE	
		69013	ARNAS	
		69019	BELLEVILLE	
		69033	CAILLOUX-SUR-FONTAINES	
		69034	CALUIRE-ET-CUIRE	
		69049	CHASSELAY	
		69052	CHAZAY-D'AZERGUES	
		69055	LES CHERES	
		69063	COLLONGES-AU-MONT-D'OR	
		69068	COUZON-AU-MONT-D'OR	
		69071	CURIS-AU-MONT-D'OR	
		69077	DRACE	
		69085	FLEURIEU-SUR-SAONE	
		69087	FONTAINES-SAINT-MARTIN	
		69088	FONTAINES-SUR-SAONE	
		69115	LIMAS	
		69117	LISSIEU	
		69122	LUCENAY	
		69125	MARCILLY-D'AZERGUES	
		69140	MORANCE	
		69143	NEUVILLE-SUR-SAONE	
		69153	POLEYMIEUX-AU-MONT-D'OR	
		69156	POMMIERS	
		69163	QUINCIEUX	
		69168	ROCHETAILLEE-SUR-SAONE	
		69191	SAINT-CYR-AU-MONT-D'OR	
		69206	SAINT-GEORGES-DE-RENEINS	
		69207	SAINT-GERMAIN-AU-MONT-D'OR	
		69211	SAINT-JEAN-D'ARDIERES	
		69233	SAINT-ROMAIN-AU-MONT-D'OR	
		69242	TAPONAS	
		69256	VAULX-EN-VELIN	
		69264	VILLEFRANCHE-SUR-SAONE	
		69266	VILLEURBANNE	
		69271	CHASSIEU	
		69275	DECINES-CHARPIEU	
		69277	GENAS	
		69278	GENAY	
		69279	JONAGE	
		69280	JONS	
		69282	MEYZIEU	
		69284	MONTANAY	
		69285	PUSIGNAN	
		69286	RILLIEUX-LA-PAPE	
		69292	SATHONAY-CAMP	
		69293	SATHONAY-VILLAGE	

ISO Country Code	Member State	Area A		Date until applicable
		Code	Name	
SE	SWEDEN			
	Within the Kalmar Län, the following localities	Post code	Locality	24.4.2006
	Protection zone	572 75	FIGEHOLM	
		572 95	FIGEHOLM	
	Surveillance zone	572 75	FIGEHOLM	
		572 76	FÅRBO	
		572 92	OSKARSHAMN	
		572 95	FIGEHOLM	
		572 96	FÅRBO	
	Extended surveillance zone (20 km)	380 75	BYXELKROK	
		570 91	KRISTDALA	
		572 37	OSKARSHAMN	
		572 40	OSKARSHAMN	
		572 41	OSKARSHAMN	
		572 61	OSKARSHAMN	
		572 63	OSKARSHAMN	
		572 75	FIGEHOLM	
		572 76	FÅRBO	
		572 91	OSKARSHAMN	
		572 92	OSKARSHAMN	
		572 95	FIGEHOLM	
		572 96	FÅRBO	
		590 91	HJORTED	
		590 93	GUNNEBO	

PART B

Area B as referred to in Article 2(2):

ISO Country Code	Member State	Area B		Date until applicable
		Code	Name	
FR	FRANCE	Post code	The municipalities of	27.3.2006
		01002	L'ABERGEMENT-DE-VAREY	
		01026	BAGE-LE-CHATEL	
		01040	BEREZIAT	
		01050	BOISSEY	
		01051	BOLOZON	
		01056	BOYEUX-SAINT-JEROME	
		01068	CERDON	
		01077	CHALLES	
		01102	CHEVROUX	
		01106	CIZE	
		01107	CLEYZIEU	
		01123	CORMORANCHE-SUR-SAONE	
		01125	CORVEISSIAT	
		01127	COURMANGOUX	
		01130	CRAS-SUR-REYSSOUZE	

ISO Country Code	Member State	Area B		Date until applicable
		Code	Name	
		01134	CROTTET	
		01154	ETREZ	
		01159	FEILLENS	
		01172	GERMAGNAT	
		01179	GRIEGES	
		01196	JAYAT	
		01214	LEYSSARD	
		01224	LOYETTES	
		01229	MALAFRETAZ	
		01231	MANZIAT	
		01232	MARBOZ	
		01236	MARSONNAS	
		01242	MERIGNAT	
		01277	NIVOLLET-MONTGRIFFON	
		01284	OZAN	
		01306	PONT-DE-VEYLE	
		01309	POUILLAT	
		01312	PRESSIAT	
		01320	REPLONGES	
		01331	SAINT-ALBAN	
		01332	SAINT-ANDRE-DE-BAGE	
		01384	SAINT-RAMBERT-EN-BUGEY	
		01386	SAINT-SORLIN-EN-BUGEY	
		01404	SERRIERES-SUR-AIN	
		01411	SOUCLIN	
		01421	TORCIEU	
		01445	VILLEMOTIER	
		38011	ANTHON	
		38026	LA BALME-LES-GROTTES	
		38085	CHARVIEU-CHAVAGNEUX	
		38097	CHAVANOZ	
		38190	HIERES-SUR-AMBY	
		38197	JANNEYRIAS	
		38535	VERNAS	
		38539	VERTRIEU	
		69004	ALIX	
		69020	BELMONT-D'AZERGUES	
		69023	BLACE	
		69029	BRON	
		69036	CERCIE	
		69040	CHAMPAGNE-AU-MONT-D'OR	
		69045	CHARENTAY	
		69047	CHARNAY	
		69059	CIVRIEUX-D'AZERGUES	
		69065	CORCELLES-EN-BEAUJOLAIS	
		69072	DARDILLY	
		69074	DENICE	
		69076	DOMMARTIN	

ISO Country Code	Member State	Area B		Date until applicable
		Code	Name	
		69092	GLEIZE	
		69106	LACHASSAGNE	
		69108	LANCIE	
		69114	LIERGUES	
		69116	LIMONEST	
		69121	LOZANNE	
		69126	MARCY	
		69159	POUILLY-LE-MONIAL	
		69194	SAINT-DIDIER-AU-MONT-D'OR	
		69197	SAINT-ETIENNE-DES-OULLIERES	
		69212	SAINT-JEAN-DES-VIGNES	
		69215	SAINT-JULIEN	
		69218	SAINT-LAGER	
		69246	THEIZE	
		69267	VILLIE-MORGON	
		69287	SAINT-BONNET-DE-MURE	
		69290	SAINT-PRIEST	
		69299	COLOMBIER-SAUGNIEU	
		69381	LYON 1ER ARRONDISSEMENT	
		69383	LYON 3E ARRONDISSEMENT	
		69384	LYON 4E ARRONDISSEMENT	
		69386	LYON 6E ARRONDISSEMENT	
		69389	LYON 9E ARRONDISSEMENT	
		71090	LA CHAPELLE-DE-GUINCHAY	
		71150	CRECHES-SUR-SAONE	
		71372	ROMANECHE-THORINS	
		71481	SAINT-SYMPHORIEN-D'ANCELLES	
SE	SWEDEN			
	The entire Kalmar Län, except area A, including the localities of	Post code	Locality	24.4.2006
		360 23	ÄLMEBODA	
		360 50	LESSEBO	
		360 52	KOSTA	
		360 53	SKRUV	
		360 60	VISSEFJÄRDA	
		360 65	BODA GLASBRUK	
		360 70	ÅSEDA	
		360 77	FRÖSEKE	
		361 30	EMMABODA	
		361 31	EMMABODA	
		361 32	EMMABODA	
		361 33	EMMABODA	
		361 42	LINDÅS	
		361 53	BROAKULLA	
		361 91	EMMABODA	
		361 92	EMMABODA	

ISO Country Code	Member State	Area B		Date until applicable
		Code	Name	
		361 93	BROAKULLA	
		361 94	ERIKSMÅLA	
		361 95	LÅNGASJÖ	
		370 17	ERINGSBODA	
		370 34	HOLMSJÖ	
		370 45	FÅGELMARA	
		371 93	KARLSKRONA	
		380 30	ROCKNEBY	
		380 31	LÄCKEBY	
		380 40	ORREFORS	
		380 41	GULLASKRUV	
		380 42	MÅLERÅS	
		380 44	ALSTERBRO	
		380 52	TIMMERNABBEN	
		380 53	FLISERYD	
		380 62	MÖRBYLÅNGA	
		380 65	DEGERHAMN	
		380 74	LÖTTORP	
		380 75	BYXELKROK	
		382 30	NYBRO	
		382 31	NYBRO	
		382 32	NYBRO	
		382 33	NYBRO	
		382 34	NYBRO	
		382 35	NYBRO	
		382 36	NYBRO	
		382 37	NYBRO	
		382 38	NYBRO	
		382 39	NYBRO	
		382 40	NYBRO	
		382 41	NYBRO	
		382 42	NYBRO	
		382 43	NYBRO	
		382 44	NYBRO	
		382 45	NYBRO	
		382 46	NYBRO	
		382 90	ÖRSJÖ	
		382 91	NYBRO	
		382 92	NYBRO	
		382 93	NYBRO	
		382 94	NYBRO	
		382 96	NYBRO	
		382 97	ÖRSJÖ	
		383 30	MÖNSTERÅS	
		383 31	MÖNSTERÅS	
		383 32	MÖNSTERÅS	
		383 33	MÖNSTERÅS	

ISO Country Code	Member State	Area B		Date until applicable
		Code	Name	
		383 34	MÖNSTERÅS	
		383 35	MÖNSTERÅS	
		383 36	MÖNSTERÅS	
		383 37	MÖNSTERÅS	
		383 38	MÖNSTERÅS	
		383 39	MÖNSTERÅS	
		383 91	MÖNSTERÅS	
		383 92	MÖNSTERÅS	
		384 30	BLOMSTERMÅLA	
		384 31	BLOMSTERMÅLA	
		384 40	ÅLEM	
		384 91	BLOMSTERMÅLA	
		384 92	ÅLEM	
		384 93	ÅLEM	
		385 30	TORSÅS	
		385 31	TORSÅS	
		385 32	TORSÅS	
		385 33	TORSÅS	
		385 34	TORSÅS	
		385 40	BERGKVARA	
		385 41	BERGKVARA	
		385 50	SÖDERÅKRA	
		385 51	SÖDERÅKRA	
		385 90	SÖDERÅKRA	
		385 91	TORSÅS	
		385 92	GULLABO	
		385 93	TORSÅS	
		385 94	BERGKVARA	
		385 95	TORSÅS	
		385 96	GULLABO	
		385 97	SÖDERÅKRA	
		385 98	BERGKVARA	
		385 99	TORSÅS	
		386 30	FÄRJESTADEN	
		386 31	FÄRJESTADEN	
		386 32	FÄRJESTADEN	
		386 33	FÄRJESTADEN	
		386 34	FÄRJESTADEN	
		386 35	FÄRJESTADEN	
		386 90	FÄRJESTADEN	
		386 92	FÄRJESTADEN	
		386 93	FÄRJESTADEN	
		386 94	FÄRJESTADEN	
		386 95	FÄRJESTADEN	
		386 96	FÄRJESTADEN	
		387 30	BORGHOLM	
		387 31	BORGHOLM	
		387 32	BORGHOLM	

ISO Country Code	Member State	Area B		Date until applicable
		Code	Name	
		387 33	BORGHOLM	
		387 34	BORGHOLM	
		387 35	BORGHOLM	
		387 36	BORGHOLM	
		387 37	BORGHOLM	
		387 38	BORGHOLM	
		387 50	KÖPINGSVIK	
		387 51	KÖPINGSVIK	
		387 52	KÖPINGSVIK	
		387 90	KÖPINGSVIK	
		387 91	BORGHOLM	
		387 92	BORGHOLM	
		387 93	BORGHOLM	
		387 94	BORGHOLM	
		387 95	KÖPINGSVIK	
		387 96	KÖPINGSVIK	
		388 30	LJUNGBYHOLM	
		388 31	LJUNGBYHOLM	
		388 32	LJUNGBYHOLM	
		388 40	TREKANTEN	
		388 41	TREKANTEN	
		388 50	PÅRYD	
		388 91	VASSMOLÖSA	
		388 92	LJUNGBYHOLM	
		388 93	LJUNGBYHOLM	
		388 94	VASSMOLÖSA	
		388 95	HALLTORP	
		388 96	LJUNGBYHOLM	
		388 97	HALLTORP	
		388 98	TREKANTEN	
		388 99	PÅRYD	
		392 30	KALMAR	
		392 31	KALMAR	
		392 32	KALMAR	
		392 33	KALMAR	
		392 34	KALMAR	
		392 35	KALMAR	
		392 36	KALMAR	
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		392 38	KALMAR	
		392 41	KALMAR	
		392 43	KALMAR	
		392 44	KALMAR	
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		392 46	KALMAR	
		392 47	KALMAR	
		393 50	KALMAR	
		393 51	KALMAR	

ISO Country Code	Member State	Area B		Date until applicable
		Code	Name	
		393 52	KALMAR	
		393 53	KALMAR	
		393 54	KALMAR	
		393 55	KALMAR	
		393 57	KALMAR	
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		393 59	KALMAR	
		393 63	KALMAR	
		393 64	KALMAR	
		393 65	KALMAR	
		394 70	KALMAR	
		394 71	KALMAR	
		394 77	KALMAR	
		395 90	KALMAR	
		570 16	KVILLSFORS	
		570 19	PAULISTRÖM	
		570 30	MARIANNELUND	
		570 31	INGATORP	
		570 72	FAGERHULT	
		570 75	FÅGELFORS	
		570 76	RUDA	
		570 80	VIRSERUM	
		570 81	JÄRNFORSEN	
		570 82	MÅLILLA	
		570 83	ROSENFORS	
		570 84	MÖRLUNDA	
		570 90	PÅSKALLAVIK	
		570 91	KRISTDALA	
		572 30	OSKARSHAMN	
		572 31	OSKARSHAMN	
		572 32	OSKARSHAMN	
		572 33	OSKARSHAMN	
		572 34	OSKARSHAMN	
		572 35	OSKARSHAMN	
		572 36	OSKARSHAMN	
		572 37	OSKARSHAMN	
		572 40	OSKARSHAMN	
		572 41	OSKARSHAMN	
		572 50	OSKARSHAMN	
		572 51	OSKARSHAMN	
		572 60	OSKARSHAMN	
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		572 62	OSKARSHAMN	
		572 91	OSKARSHAMN	
		572 93	OSKARSHAMN	
		572 96	FÅRBO	
		574 96	VETLANDA	

ISO Country Code	Member State	Area B		Date until applicable
		Code	Name	
		574 97	VETLANDA	
		577 30	HULTSFRED	
		577 31	HULTSFRED	
		577 32	HULTSFRED	
		577 33	HULTSFRED	
		577 34	HULTSFRED	
		577 35	HULTSFRED	
		577 36	HULTSFRED	
		577 37	HULTSFRED	
		577 38	HULTSFRED	
		577 39	HULTSFRED	
		577 50	SILVERDALEN	
		577 51	SILVERDALEN	
		577 90	HULTSFRED	
		577 91	HULTSFRED	
		577 92	HULTSFRED	
		577 93	HULTSFRED	
		577 94	LÖNNEBERGA	
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		579 31	HÖGSBY	
		579 32	HÖGSBY	
		579 33	HÖGSBY	
		579 40	BERGA	
		579 90	BERGA	
		579 92	HÖGSBY	
		579 93	GRÖNSKÅRA	
		590 42	HORN	
		590 80	SÖDRA VI	
		590 81	GULLRINGEN	
		590 83	STOREBRO	
		590 90	ANKARSRUM	
		590 91	HJORTED	
		590 92	TOTEBO	
		590 93	GUNNEBO	
		590 94	BLACKSTAD	
		590 95	LOFTAHAMMAR	
		590 96	ÖVERUM	
		590 98	EDSBRUK	
		593 30	VÄSTERVIK	
		593 31	VÄSTERVIK	
		593 32	VÄSTERVIK	
		593 33	VÄSTERVIK	
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		593 38	VÄSTERVIK	
		593 39	VÄSTERVIK	

ISO Country Code	Member State	Area B		Date until applicable
		Code	Name	
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		593 62	VÄSTERVIK	
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		593 93	VÄSTERVIK	
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		597 91	ÅTVIDABERG	
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		597 97	ÅTVIDABERG	
		598 30	VIMMERBY	
		598 31	VIMMERBY	
		598 32	VIMMERBY	
		598 34	VIMMERBY	
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		598 38	VIMMERBY	
		598 39	VIMMERBY	
		598 40	VIMMERBY	
		598 91	VIMMERBY	
		598 92	VIMMERBY	
		598 93	VIMMERBY	
		598 94	VIMMERBY	
		598 95	VIMMERBY	
		598 96	VIMMERBY	
		615 92	VALDEMARSVIK	
		615 94	VALDEMARSVIK	
		615 95	VALDEMARSVIK’	

COMMISSION DECISION

of 27 March 2006

amending Decision 1999/217/EC as regards the register of flavouring substances used in or on foodstuffs

(notified under document number C(2006) 899)

(Text with EEA relevance)

(2006/252/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2232/96 of the European Parliament and of the Council of 28 October 1996 laying down a Community procedure for flavouring substances used or intended for use in or on foodstuffs [1], and in particular Article 4(3) thereof,

Whereas:

(1) Regulation (EC) No 2232/96 lays down the procedure for the establishment of rules in respect of flavouring substances used or intended to be used in foodstuffs. That Regulation provides for the adoption of a register of flavouring substances (the register) following notification by the Member States of a list of the flavouring substances which may be used in or on foodstuffs marketed in their territory and on the basis of scrutiny by the Commission of that notification. That register was adopted by Commission Decision 1999/217/EC [2].

(2) In addition, Regulation (EC) No 2232/96 provides for a programme for the evaluation of flavouring substances in order to check whether they comply with the general criteria for the use of flavouring substances set out in the Annex to that Regulation.

(3) The Joint FAO/WHO Expert Committee on Food Additives (JECFA) concluded during its 65th meeting of 7 to 16 June 2005 that the acetamide (FL 16.047) is clearly carcinogenic in both mice and rats, and although the mechanism of tumour formation is unknown, the possibility of a genotoxic mechanism can not be discounted. The JECFA considered it inappropriate for such a compound to be used as a flavouring agent. Accordingly acetamide does not comply with the general criteria set out in the Annex to Regulation (EC) No 2232/96 and should be deleted from the register.

(4) Decision 1999/217/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DECISION:

Article 1

In Part A of the Annex to Decision 1999/217/EC, the row set out in the table for the substance attributed with FL-number 16.047 (acetamide) is deleted.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 27 March 2006.

For the Commission
Markos KYPRIANOU
Member of the Commission

[1] OJ L 299, 23.11.1996, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).
[2] OJ L 84, 27.3.1999, p. 1. Decision as last amended by Decision 2005/389/EC (OJ L 128, 21.5.2005, p. 73).

COMMISSION DECISION

of 6 September 2005

on the adequate protection of personal data contained in the Passenger Name Record of air passengers transferred to the Canada Border Services Agency

(notified under document number C(2005) 3248)

(Text with EEA relevance)

(2006/253/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1], and in particular Article 25(6) thereof,

Whereas:

(1) Pursuant to Directive 95/46/EC, Member States are required to provide that the transfer of personal data to a third country may take place only if the third country in question ensures an adequate level of protection and if the Member States' laws implementing other provisions of the Directive are complied with prior to the transfer.

(2) The Commission may find that a third country ensures an adequate level of protection. In that case, personal data may be transferred from the Member States without additional guarantees being necessary.

(3) Pursuant to Directive 95/46/EC the level of data protection should be assessed in the light of all the circumstances surrounding a data transfer operation or a set of data transfer operations, particular consideration being given to a number of elements relevant for the transfer and listed in Article 25(2) thereof.

(4) In the framework of air transport, the 'Passenger Name Record' (PNR) is a record of each passenger's travel requirements which contains all information necessary to enable reservations to be processed and controlled by the booking and participating airlines [2]. For the purposes of this Decision, the terms 'passenger' and 'passengers' include crew members. 'Booking airline' means an airline with which the passenger made his original reservations or with which additional reservations were made after commencement of the journey. 'Participating airlines' means any airline on which the booking airline has requested space, on one or more of its flights, to be held for a passenger.

(5) The Canada Border Services Agency (the CBSA) requires each carrier operating passenger flights bound for Canada to provide it with electronic access to PNR to the extent that PNR is collected and contained in the air carrier's automated reservation systems and departure control systems.

(6) The requirements for personal data contained in the PNR of air passengers to be transferred to the CBSA, are based on section 107.1 of the Customs Act and paragraph 148(d) of the Immigration and Refugee Protection Act and upon implementing regulations adopted under those statutes [3].

(7) The Canadian legislation in question concerns the enhancement of security and the conditions under which persons may enter the country, matters on which Canada has the sovereign power to decide within its jurisdiction. The requirements laid down are not, moreover, inconsistent with any international commitments which Canada has undertaken. Canada is a democratic country, governed by the rule of law and with a strong civil liberties tradition. The legitimacy of its law-making process and strength and independence of its judiciary are not in question. Press freedom is a further strong guarantee against the abuse of civil liberties.

(8) The Community is fully committed to supporting Canada in the fight against terrorism within the limits imposed by Community law. Community law provides for striking the necessary balances between security concerns and privacy concerns. For example, Article 13 of Directive 95/46/EC provides that Member States may legislate to restrict the scope of certain requirements of that Directive, where it is necessary to do so for reasons of national security, defence, public security and the prevention, investigation, detection and prosecution of criminal offences.

[1] OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

[2] For the purposes of this Decision, the term 'PNR' includes Advance Passenger Information (API) data as provided in section 4 of the Commitments of the CBSA.

[3] Passenger Information (Customs) Regulations and Regulation 269 of the Immigration and Refugee Protection Regulations.

(9) The data transfers concerned involve specific controllers, namely airlines operating flights from the Community to Canada, and only one recipient in Canada, namely the CBSA.

(10) Any arrangement to provide a legal framework for PNR transfers to Canada, in particular through this Decision should be time-limited. A period of three and a half years has been agreed. During this period, the context may change significantly and the Community and Canada agree that a review of the arrangements will be necessary.

(11) The processing by CBSA of personal data contained in the PNR of air passengers transferred to it is governed by conditions set out in the Commitments by the Canadian Border Services Agency in relation to the application of its PNR program (henceforth referred to as the 'Commitments') and in Canadian domestic legislation to the extent indicated in the Commitments.

(12) As regards domestic law in Canada, the Privacy Act, the Access to Information Act and Section 107 of the Customs Act are relevant in the present context in so far as they control the conditions under which the CBSA may resist requests for disclosure and thus keep PNR confidential. The Privacy Act governs the disclosure of PNR to the person whom it concerns, closely linked to the data subject's right of access. The Privacy Act only applies to anyone present in Canada. However, in addition, the CBSA grants access to PNR information held on a foreign national if he or she is not present in Canada.

(13) As regards the Commitments, and as provided in section 43 thereof, the statements in the Commitments either have been incorporated in existing Canadian law, or are enshrined in domestic regulations formulated specifically for that purpose and thus will have legal effect. The Commitments will be published in full in the Canada Gazette. As such, they represent a serious and well-considered commitment on the part of the CBSA and their compliance will be subject to joint review by Canada and the Community. Non-compliance could be challenged as appropriate through legal, administrative and political channels and if persistent, would give rise to the suspension of the effects of this Decision.

(14) The standards by which the CBSA will process passengers' PNR data on the basis of Canadian legislation and the Commitments cover the basic principles necessary for an adequate level of protection for natural persons.

(15) As regards the purpose limitation principle, air passengers' personal data contained in the PNR transferred to the CBSA will be processed for a specific purpose and subsequently used or further communicated only insofar as this is compatible with the purpose of the transfer. In particular, PNR data will be used strictly for purposes of preventing and combating: terrorism and related crimes; other serious crimes, including organised crime, that are transnational in nature.

(16) As regards the data quality and proportionality principle, which needs to be considered in relation to the important public interest grounds for which PNR data are transferred, PNR data provided to the CBSA will not subsequently be changed by it. A maximum of 25 PNR data categories will be transferred and the CBSA will consult and agree with the European Commission regarding revision of the 25 required PNR data elements set out in Attachment A, prior to effecting any such revision. Additional personal information sought as a direct result of PNR data will be obtained from sources outside the government only through lawful channels. As a general rule, PNR will be deleted after a maximum of three years and six months.

(17) As regards the transparency principle, the CBSA will provide information to travellers as to the purpose of the transfer and processing, and the identity of the data controller, as well as other information.

(18) As regards the security principle, technical and organisational security measures are taken by the CBSA, which are appropriate to the risks presented by the processing.

(19) The rights of access, correction and notation are recognized in the Privacy Act to those individuals present in Canada. The CBSA will extend these rights in respect of PNR information in its possession to foreign nationals who are not present in Canada. The exceptions foreseen are broadly comparable with the restrictions which may be imposed by Member States under Article 13 of Directive 95/46/EC.

(20) Onward transfers will be made to other government authorities, including foreign government authorities on a case-by-case basis, for purposes that are identical to or consistent with those set out in the statement of purpose limitation concerning a minimum amount of data. Transfers may also be made for the protection of the vital interest of the data subject or of other persons, in particular as regards significant health risks or in any judicial proceedings or as otherwise required by law. Receiving agencies are obligated by the express terms of disclosure to use the data only for those purposes and may not transfer the data onwards without the agreement of the CBSA. No other foreign, federal, provincial or local authority has direct electronic access to PNR data through the CBSA databases. The CBSA will deny public disclosure of PNR on the basis of exemptions from the relevant provisions of the Access to Information Act and the Privacy Act.

(21) The CBSA does not receive sensitive data in the sense of Article 8 of Directive 95/46/EC.

(22) As regards the enforcement mechanisms to ensure compliance by the CBSA with these principles, the training and information of the CBSA staff is provided for, as well as sanctions with regard to individual staff members. The CBSA's respect for privacy in general will be under the scrutiny of the independent Office of the Canadian Privacy Commissioner under the conditions set out in the Canadian Charter of Rights and Freedoms and the Privacy Act. The Privacy Commissioner may address complaints referred to it by the data protection authorities in Members States on behalf of residents of the Community, if the resident believes his or her complaint has not been satisfactorily dealt with by the CBSA. Compliance with the Commitments will be the subject of annual joint review to be conducted by the CBSA and a Commission-led team.

(23) In the interest of transparency and in order to safeguard the ability of the competent authorities in the Member States to ensure the protection of individuals as regards the processing of their personal data, it is necessary to specify the exceptional circumstances in which the suspension of specific data flows may be justified, notwithstanding the finding of adequate protection.

(24) The Working Party on Protection of Individuals with regard to the Processing of Personal Data established under Article 29 of Directive 95/46/EC has delivered opinions on the level of protection provided by the Canadian authorities for passengers' data, which has guided the Commission throughout its negotiations with the CBSA. The Commission has taken note of these opinions in the preparation of this Decision [1].

(25) The measures provided for in this Decision are in accordance with the opinion of the Committee established under Article 31(1) of Directive 95/46/EC,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of Article 25(2) of Directive 95/46/EC, the Canadian Customs Border Services Agency (herinafter referred to as the CBSA) is considered to ensure an adequate level of protection for PNR data transferred from the Community concerning flights bound for Canada in accordance with the Commitments set out in the Annex.

Article 2

This Decision concerns the adequacy of protection provided by the CBSA with a view to meeting the requirements of Article 25(1) of Directive 95/46/EC and shall not affect other conditions or restrictions implementing other provisions of that Directive that pertain to the processing of personal data within the Member States.

Article 3

1. Without prejudice to their powers to take action to ensure compliance with national provisions adopted pursuant to provisions other than Article 25 of Directive 95/46/EC, the competent authorities in Member States may exercise their existing powers to suspend data flows to the CBSA in order to protect individuals with regard to the processing of their personal data in the following cases:

(a) where a competent Canadian authority has determined that the CBSA is in breach of the applicable standards of protection; or

[1] Opinion 3/2004 on the level of protection ensured in Canada for the transmission of Passenger Name Record and Advanced Passenger Information from airlines, adopted by the Working Party on 11 February 2004, available at http://europa.eu.int/comm/internal_market/privacy/docs/wpdocs/2004/wp88_en.pdf
Opinion 1/2005 on the level of protection ensured in Canada for the transmission of Passenger Name Record and Advance Passenger Information from airlines, adopted by the Working Party on 19 January 2005, available at http://europa.eu.int/comm/internal_market/privacy/docs/wpdocs/2005/wp103_en.pdf

(b) where there is a substantial likelihood that the standards of protection set out in the Annex are being infringed, there are reasonable grounds for believing that the CBSA is not taking or will not take adequate and timely steps to settle the case at issue, the continuing transfer would create an imminent risk of grave harm to data subjects and the competent authorities in the Member State have made reasonable efforts in the circumstances to provide the CBSA with notice and an opportunity to respond.

2. Suspension shall cease as soon as the standards of protection are assured and the competent authorities of the Member States concerned are notified thereof.

Article 4

1. Member States shall inform the Commission without delay when measures are adopted pursuant to Article 3.

2. The Member States and the Commission shall inform each other of any changes in the standards of protection and of cases where the action of bodies responsible for ensuring compliance with the standards of protection by the CBSA as set out in the Annex fails to secure such compliance.

3. If the information collected pursuant to Article 3 and pursuant to paragraphs 1 and 2 of this Article provides evidence that the basic principles necessary for an adequate level of protection for natural persons are no longer being complied with, or that any body responsible for ensuring compliance with the standards of protection by the CBSA as set out in the Annex is not effectively fulfilling its role, the CBSA shall be informed and, if necessary, the procedure referred to in Article 31(2) of Directive 95/46/EC shall apply with a view to repealing or suspending this Decision.

Article 5

The functioning of this Decision shall be monitored and any pertinent findings reported to the Committee established under Article 31 of Directive 95/46/EC, including any evidence that could affect the finding in Article 1 of this Decision that protection of personal data contained in the PNR of air passengers transferred to the CBSA is adequate within the meaning of Article 25 of Directive 95/46/EC.

Article 6

Member States shall take all the measures necessary to comply with the Decision within four months of the date of its notification.

Article 7

This Decision shall expire three years and six months after the date of its notification, unless extended in accordance with the procedure set out in Article 31(2) of Directive 95/46/EC.

Article 8

This Decision is addressed to the Member States.

Done at Brussels, 6 September 2005.

For the Commission
Franco FRATTINI
Vice-President

ANNEX

COMMITMENTS BY THE CANADA BORDER SERVICE AGENCY IN RELATION TO THE APPLICATION OF ITS PNR PROGRAM

Legal authority to collect API and PNR information

1. All carriers are required, under Canadian law to provide the Canada Border Services Agency (CBSA) with Advance Passenger Information (API) and Passenger Name Record (PNR) information relating to all persons on board flights bound for Canada. The lawful authority of the CBSA to obtain and collect such information is found in section 107.1 of the *Customs Act, and the Passenger Information (Customs) Regulations* made thereunder, and in paragraph 148(1)(d) of the *Immigration and Refugee Protection Act* and Regulation 269 of the *Immigration and Refugee Protection Regulations* made thereunder.

Purpose for which API and PNR information is collected

2. API and PNR information will be collected by the CBSA only in respect of flights arriving in Canada. The CBSA will use API and PNR information collected from European and other carriers only to identify persons at risk to import goods related to, or persons who are inadmissible to Canada because of their potential relationship to, terrorism or terrorism-related crimes, or other serious crimes, including organized crime, that are transnational in nature.

3. API and PNR information will be used by the CBSA to target persons who will be subjected to closer questioning or examination on arrival in Canada, or who require further investigation, for one of the purposes described in section 2. No enforcement action will be taken by the CBSA or other Canadian law enforcement officials only by reason of the automated processing of API and PNR data.

API and PNR information collected

4. The list of API data elements that will be collected by the CBSA for the purposes set out in section 2 is set out in paragraphs 3(a) to (f) of the *Passenger Information (Customs) Regulations* made under the *Customs Act*. [1] The list of PNR data elements that will be collected by the CBSA for the purposes set out in section 2 is set out in Attachment A. For greater certainty, 'sensitive data elements' within the meaning of Article 8.1 of Directive 95/46/EC (hereinafter referred to as 'the Directive'), and all 'open text' or 'general remarks' fields, will not be included within these 25 data elements.

5. The CBSA will not require a carrier to collect PNR information that the carrier does not record for its own purposes, and will not require the carrier to collect any additional information for purposes of making it available to the CBSA. Therefore the CBSA recognizes that it will collect those data elements listed in Attachment A only to the extent that a carrier has chosen to place them in its automated reservation systems and departure control systems (DCS).

6. The CBSA will consult and agree with the European Commission regarding revision of the 25 required PNR data elements set out in Attachment A, prior to effecting any such revision,

   (a) if the CBSA becomes aware of any additional PNR data element that may be available and is of the view that the element is required for the purposes set out in section 2; or

   (b) if the CBSA at any time becomes aware that a particular PNR data element is no longer required for the purposes set out in section 2.

Method of accessing API and PNR information

7. The CBSA's Passenger Information System (hereinafter referred to as 'PAXIS') has been configured to receive API and PNR information pushed from a carrier.

[1] Paragraphs 3 (a) to (f) contain the following API data: (a) a person's surname, first name and any middle names; (b) date of birth; (c) gender; (d) citizenship or nationality; (e) the type of travel document that identifies that person, the name of the country in which the travel document was issued and the number of the travel document; (f) the reservation record locator number, if any, and in the case of a person on charge of the commercial conveyance or any other crew member without a reservation record locator number, notification of their status as a crew member.

Retention of, and access, to API and PNR information

8. Where the API and PNR information relates to a person who is not the subject of an investigation in Canada for a purpose described in section 2, it will be retained in the PAXIS system for a maximum of 3.5 years. During this period, the information will be retained in an increasingly de-personalized manner, as follows:

(a) From initial receipt to 72 hours, all available API and PNR information will be accessible only to a limited number of CBSA targetters and intelligence officers, who will use the information to identify those who require closer questioning or examination on arrival in Canada, for one of the purposes set out in section 2.

(b) After 72 hours to the end of two years from receipt, a person's PNR record will be retained in the PAXIS system but accessible only by CBSA intelligence officers located at an international airport in Canada or at CBSA national headquarters in Ottawa. The name of the person to whom the information relates will be unavailable for viewing by these officials unless it is required in order to proceed with an investigation in Canada for one of the purposes described in section 2. The PNR record will be re-personalized only where the official reasonably believes that the name of the person is required in order to proceed with the investigation. During this period, the depersonalized information will be used by CBSA intelligence analysts for trend analysis and the development of future risk indicators related to the purposes set out in section 2.

(c) After two years from receipt, the PNR record will be retained in the PAXIS system for a further maximum period of 1.5 years, but all data elements which could serve to identify the person to whom the information relates will be available for viewing only if approved by the President of the CBSA for a purpose described in section 2. During this period, the depersonalized information will be used by CBSA intelligence analysts for trend analysis and the development of future risk indicators related to the purposes set out in section 2.

(d) API information will be stored separately from PNR information in the PAXIS system. It will be retained in the PAXIS system for a maximum of 3.5 years but during that period, API information relating to a person will not be used to gain access to PNR information about the same person, unless the PNR record is re-personalized in the circumstances described in paragraph b.

9. Where the API and PNR information relates to a person who is the subject of an investigation in Canada for a purpose described in section 2, it will be placed in an enforcement database of the CBSA. These databases contain only information with respect to persons who have been investigated or subjected to an enforcement action under CBSA legislation. Access to these databases is made available only to those CBSA officials whose duties require such access and is closely monitored. API and PNR information that is transferred to such an enforcement database will be retained in that system for no longer than is necessary, and in any case for a period of no more than six years, at which time it will be destroyed unless it is required to be retained for an additional period by virtue of the *Privacy Act* or the *Access to Information Act*, as explained in paragraph 10 b.

10. Where personal information is used by the CBSA for purposes of making a decision affecting the interests of the data subject to whom it relates, it must be retained by the CBSA for a period of two years from the date of such use in order that the data subject may access the information upon which such a decision has been made, unless the individual consents to its earlier disposal or where a request for access to the information has been received, until such time as the individual has had the opportunity to exercise all his rights under the *Privacy Act* or the *Access to Information Act*.

(a) In the case of information retained in the PAXIS database, this two-year requirement will be subsumed in the maximum 3.5 year period for which the information will be retained in that database.

(b) In the case of information retained in an enforcement database, API and PNR information could be retained where necessary for a period of no more than six years for use by the CBSA for the investigative purposes described in section nine, and then a further maximum period of two additional years, during which time it would be available for access by the data subject in accordance with the *Privacy Act* or the *Access to Information Act*, but unavailable for administrative use by the CBSA.

11. API and PNR information will, at the expiry of the retention periods described in sections 8 through 10, be destroyed in accordance with the provisions of the National Archives Act ([1]).

Disclosures of API and PNR information to other Canadian departments and agencies

12. All disclosures of API and PNR information by the CBSA are governed by the *Privacy Act*, the *Access toInformation Act* and the CBSA's own legislation. Although the *Privacy Act* and the *Access to Information Act* grant a right of access to records unless an exemption or exclusion applies, these Acts do not otherwise require any mandatory disclosure of API and PNR information. A copy of the CBSA's administrative policy governing the disclosure, access to and use of API and PNR information, Memorandum D-1-16-3 entitled *Interim Administrative Guidelines for the Disclosure, Access to and Use of Passenger Name Record (PNR) Data*, (hereinafter referred to as the 'CBSA's PNR disclosure policy') will be published and available for public access on the CBSA website. This policy, further described in section 37 of these Commitments, directs that API and PNR information could be shared with other Canadian government departments only for the purposes set out in section 2, unless the disclosure is made to comply with the subpoena or warrant issued, or an order made by, a court, person or body with jurisdiction in Canada to compel the production of the information or for the purposes of any judicial proceedings.

13. API and PNR information will not be disclosed in bulk. The CBSA will only release select API and PNR information on a case-by-case basis and only after assessing the relevance of the specific PNR information to be disclosed. Only those particular API and PNR elements which are clearly demonstrated as being required in the particular circumstances will be provided. In all cases, the minimum amount of information possible will be provided.

14. The CBSA will only disclose API and PNR information where the proposed recipients undertake to afford it the same protections which are afforded to the information by the CBSA. Canadian government recipients of PNR information are also bound by the requirements of the *Privacy Act* to the extent they are listed in the Schedule to this act. The *Privacy Act* applies to personal information which is information about an identifiable individual, recorded in any form, and under the control of a Canadian federal government department or agency subject to the Act. Such a department or agency is precluded from collecting any personal information unless it 'relates directly to an operating program or activity of the institution'.

15. The CBSA requires, as a matter of practice and as a condition precedent to disclosure, that Canadian federal or provincial law enforcement authorities undertake not to further disclose the information received, without the permission of the CBSA, unless required by law.

Disclosure of API and PNR information to other countries

16. The CBSA can share API and PNR information with the government of a foreign state, in accordance with an arrangement or agreement under subsection 8(2) of the *Privacy Act* and subsection 107(8) of the *Customs Act*.

17. Such arrangements or agreements could include a memorandum of understanding developed specifically for purposes of the CBSA's PNR Program, or a treaty pursuant to which CBSA authorities are required to provide assistance and information. In either case, the information will only be shared for a purpose consistent with those set out in section 2, and only if the receiving country undertakes to afford the information with protections consistent with these Commitments. In all cases, the minimum amount of information possible will be provided to the other country.

([1]) This Act sets out the formalities that must be followed before government records are destroyed.

18. API and PNR information retained in PAXIS will be shared only with a country that has received an adequacy finding under the Directive, or is covered by it.

19. API and PNR information retained in an enforcement database described in section 9 can be shared in accordance with treaty obligations under a Customs Mutual Assistance Agreement or a Mutual Legal Assistance Agreement. In this case, API and PNR elements will only be shared on a case by case basis and provided that the CBSA is in possession of evidence that directly links the request to the investigation or prevention of crimes referred to in section 2 and only to the extent that the data elements provided are strictly necessary to pursue the specific enquiry in question.

Disclosure of API and PNR information in the vital interest of the data subject

20. Notwithstanding anything in these Commitments to the contrary, the CBSA may disclose API and PNR information to relevant Canadian or other government departments and agencies, where such disclosure is necessary for the protection of the vital interests of the data subject or of other persons, in particular as regards significant health risks.

Notification to data subject

21. The CBSA will provide information to the traveling public regarding the API and PNR requirements and the issues associated with its use, including general information regarding the authority under which the data will be collected, the purpose for the collection, protection that will be afforded to the data, the manner and extent to which the data will be shared, the identity of responsible CBSA officials, procedures available for redress and contact information for persons with questions or concerns.

Legal review mechanisms of the CBSA's PNR program

22. The PNR program may be subject to compliance reviews and investigations by the Privacy Commissioner of Canada and the Office of the Auditor General of Canada.

23. Canada's independent data protection authority, the Privacy Commissioner of Canada, can investigate the compliance by government departments and agencies with the *Privacy Act*, and can monitor the extent to which the CBSA complies with these Commitments. Following accepted standard objectives and criteria, the Privacy Practices and Review Branch of the Office of the Privacy Commissioner may conduct compliance reviews and may also conduct investigations. The Privacy Commissioner of Canada may disclose information that, in her opinion, is necessary to carry out an investigation under the Act or establish the grounds for findings and recommendations contained in any report made under the Act.

24. The Office of the Auditor General of Canada conducts independent audits of Canadian federal government operations. These audits provide members of the Canadian Parliament and the public with objective information to help them examine the Government's activities and hold it to account.

25. Final copies of the Office of the Privacy Commissioner and Office of the Auditor General reports are made available to the public through annual reports to Parliament and, at their discretion, are readily available on the Internet. The CBSA will provide the Commission with access to copies of any such reports that relate in any way to the PNR program.

Joint review of the CBSA's PNR program

26. In addition to the above review processes which are provided for under Canadian law, the CBSA will participate on an annual basis or as appropriate, and as agreed with the Commission, in a joint review of the PNR program relating to transfers of API and PNR data to the CBSA.

Redress

Legal Framework

27. The Canadian *Charter of Rights and Freedoms*, which is part of the Canadian Constitution, applies to all government actions, including legislation. Section 8 of the *Charter* provides the right to be secure against unreasonable search and seizure and protects a reasonable expectation of privacy. Section 24 of the *Charter* permits a person whose rights have been infringed to apply to a court of competent jurisdiction for such remedy as the court considers appropriate and just in the circumstances.

28. The right of a foreign national to access records under the control of a Canadian federal government department, by virtue of Extension Order Number 1 of the *Access to Information Act* (ATIA), is granted to anyone present in Canada. Subject to exemptions in the Act, a foreign national present in Canada or alternatively a person present in Canada with the consent of the foreign national not present in Canada, could make an ATIA request for records concerning the foreign national and be given access to such records, subject to specific and limited exemptions and exclusions in the Act.

29. Under the *Privacy Act*, the right to access personal information and request corrections or notations is extended by virtue of Extension Order Number 2, to anyone present in Canada. Therefore subject to exemptions in the Act, a foreign national may exercise these rights if he were present in Canada.

Administrative Framework

30. In addition, however, the government department who holds personal information about a person may administratively afford access, correction and notation rights to foreign nationals who are not present in Canada. The CBSA will extend these rights in respect of API and PNR information in its possession to EU citizens or other persons that are not present in Canada, provided that the disclosure is otherwise permitted by law.

31. The Privacy Commissioner may initiate a complaint if the Commissioner is 'satisfied that there are reasonable grounds to investigate a matter under [the Privacy] Act' and has broad powers of investigation in respect of any complaint. Additionally, the Privacy Commissioner may address complaints referred to it by the Data Protection Authorities (DPAs) of any of the Member States of the European Union (EU) on behalf of an EU resident, to the extent such resident has authorized the DPA to act on his or her behalf and believes that his or her data protection complaint regarding API and PNR information has not been satisfactorily dealt with by CBSA as set out in paragraph 30 above. The Privacy Commissioner will report its conclusions and advise the DPA or DPAs concerned regarding actions taken, if any.

32. The Privacy Commissioner also has special powers to investigate the extent to which Canadian government departments and agencies are complying with the *Privacy Act*, with respect to the collection, retention, use, disclosure and disposal of personal information.

Security of Information

33. Access to the PAXIS system will only be provided only to a restricted number of CBSA targetters or intelligence officers located in passenger targeting units in Canadian regional offices and at the CBSA's Headquarters in Ottawa, Canada. These officers will access the PAXIS system in secure work locations that are inaccessible to members of the public.

34. In order to access the PAXIS system, officers will be required to use two separate logins, using a system-generated user ID and password. The first login will provide access to the CBSA's Local Area Network, while the second will provide access to the Integrated Customs System platform, which in turn provides access to the PAXIS application. Access to the CBSA network and any data contained in the PAXIS system will be strictly controlled and restricted to the selected user group, and every query and review of passenger data in the system will be audited. The audit record generated will contain the user name, the work location of the user, the date and time of access and the PNR file locator number for the information accessed. The CBSA will also restrict access to particular API and PNR data elements within the system on a 'need to know' (user type/profile basis). These access controls will ensure that access to API and PNR information is provided only to the persons described in section 33, for the purposes set out in section 2.

35. Access, use and disclosure of API and PNR information is governed by the *Privacy Act*, the *Access to Information Act* as well as by section 107 of the *Customs Act* and the administrative policy described in section 37 of these Commitments, which reflect the protections and safeguards outlined in the present document. Section 160 of the *Customs Act* and internal codes of conduct provide for criminal and other sanctions in the event that these policies are not respected and, as noted above, the Privacy Commissioner is empowered under the *Privacy Act* to commence an investigation in respect of the disclosure of personal information.

36. The CBSA's PNR disclosure policy sets out the procedures which must be followed by all CBSA employees who have access to API and PNR information. The policy of the CBSA is to protect the confidentiality of the information and to manage it in accordance with the authorities in Canadian legislation, as well as CBSA and Canadian Government policies related to the management and security of information, as described in section 38.

37. The CBSA's PNR disclosure policy provides:

(a) that an official may disclose, allow access to or use API and PNR information only when authorized to do so by law and in accordance with the policy;

(b) that officials should take all appropriate means to ensure that only essential information is disclosed to third parties;

(c) that information will only be disclosed for a specific authorized purpose and limited to the minimum amount of information required for that purpose;

(d) that information will only be provided to or accessed by individuals with an operational requirement to see it; and

(e) that, subject to the *Privacy Act*, the *Access to Information Act* and the *National Archives Act*, any information disclosed will be destroyed or returned once it has been used, in accordance with CBSA and Treasury Board of Canada information management policies.

38. The CBSA's PNR disclosure policy falls under the umbrella of several CBSA-wide policies for the protection and management of information collected under the various statutes administered by the CBSA. In addition all CBSA employees are bound by Government of Canada security policies in respect of the protection of electronic systems and data protection. [1]

39. All CBSA employees are familiar with these policies and the consequences of non-compliance, and adherence with them is a condition of their employment.

Reciprocity

40. The *Aeronautics Act* allows Canadian air carriers operating flights from any destination, or any carriers operating flights departing from Canada, to provide a foreign state with information concerning persons on board such flights and bound for that state, where the laws of that state require the information to be provided.

41. In the event that the European Community, the European Union or any of its Member States decides to adopt an airline passenger identification system and passes legislation which would require all air carriers to provide European authorities with access to API and PNR data for persons whose current travel itinerary includes a flight to the European Union, section 4.83 of the *Aeronautics Act* would permit air carriers to comply with this requirement.

[1] Referenced policies include: the *Government Security Policy* published by the Treasury Board of Canada Secretariat on February 1, 2002 and the *Operational Security Standard: Management of Information Technology Security (MITS)* published by the Treasury Board of Canada Secretariat on May 31, 2004.

Review and termination of commitments

42. These Commitments will apply for a term of three years and six months (3.5 years), beginning on the date upon which an agreement enters into force between Canada and the European Community, authorizing the processing of API and PNR data by carriers for purposes of transferring such data to the CBSA, in accordance with the Directive. After these Commitments have been in effect for two years and six months (2.5 years), the CBSA will initiate discussions with the Commission with the goal of extending the Commitments and any supporting arrangements, upon mutually acceptable terms. If no mutually acceptable arrangements can be concluded prior to the expiration date of these Commitments, the Commitments will no longer apply to any data collected from that moment onwards. Data collected while these Commitments were in force will remain protected by the terms of these Commitments until any such data is deleted.

43. CBSA fulfils its Commitments via the application of existing Canadian law, or, where not already covered by Canadian legislation, in regulations formulated specifically for that purpose or through administrative processes.

ATTACHMENT 'A'

PNR DATA ELEMENTS REQUIRED BY CBSA FROM AIR CARRIERS

1. Name
2. API data
3. PNR record locater code
4. Date of intended travel
5. Date of reservation
6. Date of ticket issuance
7. Travel agencies
8. Travel agent
9. Contact telephone information
10. Billing address
11. All forms of payment information
12. Frequent Flyer Information
13. Ticketing Field Information
14. Ticket number
15. Split/divided PNR
16. Go show information
17. No show history
18. All travel Itinerary Information
19. Standby Information
20. Other names on PNR
21. Order of check in
22. Bag tag numbers
23. Seat information
24. Seat number
25. One way tickets

COMMISSION DECISION

of 28 March 2006

concerning certain interim protection measures relating to Classical Swine Fever in Germany

(notified under document number C(2006) 1321)

(Text with EEA relevance)

(2006/254/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market [1], and in particular Article 10(3) thereof,

Whereas:

(1) Outbreaks of Classical Swine Fever have occurred in Germany.

(2) In view of the trade in live pigs and certain pig products, these outbreaks are liable to endanger the herds of other Members States.

(3) Germany has taken measures within the framework of Council Directive 2001/89/EC [2] on Community measures for the control of Classical Swine Fever.

(4) The animal health conditions and the certification requirements for trade in live pigs are laid down in Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine [3].

(5) The animal health conditions and certification requirements for trade in porcine semen are laid down in Council Directive 90/429/EEC of 26 June 1990 laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the porcine species [4].

(6) The animal health conditions and certification requirements for trade in porcine ova and embryos are laid down in Commission Decision 95/483/EC of 9 November 1995 determining the specimen certificate for intra-Community trade in ova and embryos of swine [5].

(7) Pending the meeting of the Standing Committee on the Food Chain and Animal Health and in collaboration with the Member State concerned, it is appropriate to adopt interim protection measures.

(8) This Decision shall be reviewed by the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

1. Without prejudice to the measures of Directive 2001/89/EC, and in particular Articles 9, 10 and 11 thereof, Germany shall ensure that:

(a) no pigs are transported from and to pig holdings situated within the areas described in the Annex;

(b) transport of pigs for slaughter proceeding from holdings situated outside the areas described in the Annex to slaughterhouses located in the said areas and transit of pigs through the said areas shall only be allowed via major roads or railways and in accordance with the detailed instructions provided for by the competent authorities to prevent that during transport the pigs in question come in direct or indirect contact with other pigs.

2. By derogation from paragraph 1(a) the competent authorities may authorise the transport of pigs directly to a slaughterhouse situated in the area described in the Annex, or in exceptional cases in designated slaughterhouses outside that area in Germany, for immediate slaughter.

[1] OJ L 224, 18.8.1990, p. 29. Directive as last amended by Directive 2002/33/EC of the European Parliament and of the Council (OJ L 315, 19.11.2002, p. 14).
[2] OJ L 316, 1.12.2001, p. 5. Directive as amended by the 2003 Act of Accession.
[3] OJ 121, 29.7.1964, p. 1977/64. Directive as last amended by the 2003 Act of Accession.
[4] OJ L 224, 18.8.1990, p. 62. Directive as last amended by Council Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).
[5] OJ L 275, 18.11.1995, p. 30.

Article 2

1. Germany shall ensure that no pigs, except pigs send for immediate slaughter directly to the slaughterhouse, are dispatched to other Member States and to third countries, unless the pigs:

(a) come from a holding situated in an area outside the areas described in the Annex, and

(b) have been resident on the holding of origin for at least 30 days prior to loading, or since birth if less than 30 days of age, and

(c) come from a holding where no live pigs have been introduced during the 30 day period immediately prior to the dispatch of the pigs in question.

2. The competent veterinary authority of Germany shall ensure that the notification of the dispatch of pigs to other Member States is communicated to the central and local veterinary authorities of the Member State of destination and any Member State of transit at least three days before the dispatch.

Article 3

1. Germany shall ensure that no consignments of porcine semen are dispatched to other Member States and to third countries unless the semen originates from boars kept at a collection centre referred to in Article 3(a) of Council Directive 90/429/EEC and situated outside the areas described in the Annex.

2. Germany shall ensure that no consignments of ova and embryos of swine are dispatched to other Member States and to third countries unless the ova and embryos originate from swine kept at a holding situated outside the areas described in the Annex.

Article 4

Germany shall ensure that:

(a) the health certificate provided for in Council Directive 64/432/EEC accompanying pigs dispatched from Germany must be completed by the following:

'Animals in accordance with Commission Decision 2006/254/EC of 28 March 2006 concerning certain protection measures relating to Classical Swine Fever in Germany'

(b) the health certificate provided for in Council Directive 90/429/EEC accompanying boar semen dispatched from Germany must be completed by the following:

'Semen in accordance with Commission Decision 2006/254/EC of 28 March 2006 concerning certain protection measures relating to Classical Swine Fever in Germany'

(c) the health certificate provided for in Commission Decision 95/483/EC accompanying ova and embryos of swine dispatched from Germany must be completed by the following:

'Ova/Embryos (*delete as appropriate*) in accordance with Commission Decision 2006/254/EC of 28 March 2006 concerning certain protection measures relating to Classical Swine Fever in Germany'

Article 5

Germany shall ensure that vehicles which have been used for the transport of pigs or had entered a holding where pigs are kept are cleaned and disinfected after each operation and the transporter shall furnish proof to the competent veterinary authority of such disinfection.

Article 6

The Member States shall amend the measures they apply to trade so as to bring them into compliance with this Decision and they shall give immediate appropriate publicity to the measures adopted. They shall immediately inform the Commission thereof.

Article 7

This Decision is addressed to the Member States.

Done at Brussels, 28 March 2006.

For the Commission

Markos KYPRIANOU

Member of the Commission

ANNEX

The entire territory of the federal state of NorthRhine-Westfalia in Germany.