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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)

EN

[1] Text with EEA relevance

(Continued on inside back cover)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

EN

I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COMMISSION REGULATION (EC) No 814/2007

of 12 July 2007

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 13 July 2007.

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

Done at Brussels, 12 July 2007.

For the Commission

Jean-Luc 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 756/2007 (OJ L 172, 30.6.2007, p. 41).

ANNEX

to Commission Regulation of 12 July 2007 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	MK	48,1
	TR	83,4
	XS	23,6
	ZZ	51,7
0707 00 05	TR	108,0
	ZZ	108,0
0709 90 70	TR	87,6
	ZZ	87,6
0805 50 10	AR	54,6
	UY	71,5
	ZA	55,4
	ZZ	60,5
0808 10 80	AR	86,8
	BR	83,3
	CL	95,4
	CN	104,9
	NZ	97,9
	US	104,5
	UY	60,7
	ZA	88,4
	ZZ	90,2
0808 20 50	AR	78,2
	CL	87,7
	CN	59,8
	NZ	144,9
	ZA	114,1
	ZZ	96,9
0809 10 00	TR	202,1
	ZZ	202,1
0809 20 95	TR	284,1
	US	501,5
	ZZ	392,8
0809 30 10, 0809 30 90	TR	129,4
	ZZ	129,4
0809 40 05	IL	128,3
	ZZ	128,3

(1) Country nomenclature as fixed by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 815/2007

of 12 July 2007

entering a designation in the register of protected designations of origin and protected geographical indications: Εξαιρετικό παρθένο ελαιόλαδο 'Τροιζηνία' (Exeretiko partheno eleolado 'Trizinia') (PDO)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1], and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

(1) In accordance with the first subparagraph of Article 6(2) of Regulation (EC) No 510/2006 and pursuant to Article 17(2) thereof, Greece's application to enter the designation 'Εξαιρετικό παρθένο ελαιόλαδο "Τροιζηνία" (Exeretiko partheno eleolado "Trizinia")' in the register was published in the *Official Journal of the European Union* [2].

(2) As no objections within the meaning of Article 7 of Regulation (EC) No 510/2006 were received by the Commission, this designation should be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The designation contained in the Annex to this Regulation shall be entered in the register.

Article 2

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

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

Done at Brussels, 12 July 2007.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

[1] OJ L 93, 31.3.2006, p. 12. Regulation as amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

[2] OJ C 128, 1.6.2006, p. 11 (corrigendum: OJ C 63, 17.3.2007, p. 7).

ANNEX

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

Group 1.5. **Oils and fats — Extra virgin olive oil**

GREECE

Εξαιρετικό παρθένο ελαιόλαδο 'Τροιζηνία' (Exeretiko partheno eleolado 'Trizinia') (PDO)

COMMISSION REGULATION (EC) No 816/2007

of 12 July 2007

opening annual tariff quotas for the importation from Turkey of certain goods resulting from the processing of agricultural products covered by Council Regulation (EC) No 3448/93

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products [1], and in particular, Article 7(2) thereof,

Whereas:

(1) Decision No 1/95 of the EC Turkey Association Council [2] implements the final phase of the Customs Union. Its Section V establishes the trade arrangements for processed agricultural products.

(2) Decision No 1/97 of the EC Turkey Association Council [3] establishes arrangements applicable to certain processed agricultural products.

(3) Decision No 1/2007 of the EC Turkey Association Council [4] establishes new trade improvements applicable to certain processed agricultural products which aim to deepen and widen the Customs Union and to improve economic convergence as a result of the enlargement of the Community on 1 May 2004. These improvements lay down concessions in the form of duty free tariff quotas. For imports outside of the quotas the current trade provisions continue to apply.

(4) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [5], lays down rules for the management of tariff quotas. It is appropriate to provide that the tariff quotas opened by this Regulation are to be managed in accordance with those rules.

(5) Commission Regulation (EC) No 2026/2005 of 13 December 2005 opening tariff quotas for 2006 and the following years for the importation into the European Community of certain goods from Turkey resulting from the processing of agricultural products covered by Council Regulation (EC) No 3448/93 [6] should be repealed. Quantities imported under this Regulation between 1 January 2007 and the date of repealing should be deducted from the quantity of the corresponding new quota.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee on horizontal questions concerning trade in processed agricultural products not listed in Annex I,

HAS ADOPTED THIS REGULATION:

Article 1

The Community tariff quotas for the importation from Turkey of the goods set out in the Annex are opened for the period from 1 January to 31 December of each year from 2007 under the conditions set out in that Annex.

Admission to the benefit of those tariff quotas shall be subject to the presentation of an A.TR. movement certificate in accordance with Decision No 1/2006 of the EC-Turkey Customs Cooperation Committee.

Article 2

The Community tariff quotas referred to in Article 1 shall be managed by the Commission in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

Article 3

Regulation (EC) No 2026/2005 shall be repealed on the date of entering into force of this Regulation. The quantity of tariff quota with order number 09.0232 shall be reduced by the quantities of pasta imported under Regulation (EC) No 2026/2005 (order number 09.0205) between 1 of January 2007 and the date of entering into force of this Regulation.

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[1] OJ L 318, 20.12.1993, p. 18. Regulation as last amended by Regulation (EC) No 2580/2000 (OJ L 298, 25.11.2000, p. 5).
[2] OJ L 35, 13.2.1996, p. 1.
[3] OJ L 126, 17.5.1997, p. 26.
[4] Not yet published in the Official Journal.
[5] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 214/2007 (OJ L 62, 1.3.2007, p. 6).
[6] OJ L 327, 14.12.2005, p. 3.

Article 4

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

It shall be applicable from 1 January 2007.

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

Done at Brussels, 12 July 2007.

For the Commission
Günter VERHEUGEN
Vice-President

ANNEX

Duty free tariff quotas applicable upon imports into the EU of processed agricultural products from Turkey

Order number	CN code	Product description	Annual duty free tariff quota (in tonnes net weight)
	(1)	(2)	(3)
09.0228	1704	Sugar confectionery (including white chocolate), not containing cocoa:	
	1704 10	– Chewing gum, whether or not sugar-coated:	
		-- Containing less than 60 % by weight of sucrose (including invert sugar expressed as sucrose):	
	1704 10 11	--- Gum in strips	
	1704 10 19	--- Other	5 000
		-- Containing 60 % or more by weight of sucrose (including invert sugar expressed as sucrose):	
	1704 10 91	--- Gum in strips	
	1704 10 99	--- Other	
09.0229	1704 90	– Other:	
	1704 90 30	-- White chocolate	
		-- Other:	
	1704 90 51	--- Pastes, including marzipan, in immediate packings of a net content of 1 kg or more	
	1704 90 55	--- Throat pastilles and cough drops	
	1704 90 61	--- Sugar-coated (panned) goods	
		--- Other:	
	1704 90 65	---- Gum confectionery and jelly confectionery including fruit pastes in the form of sugar confectionery	
	1704 90 71	---- Boiled sweets whether or not filled	10 000
	1704 90 75	---- Toffees, caramels and similar sweets	
		---- Other:	
	1704 90 81	----- Compressed tablets	
	ex 1704 90 99	----- Other:	
		------ Containing less than 70 % by weight of sucrose (including invert sugar expressed as sucrose)	
		------ Containing 70 % or more by weight of sucrose (including invert sugar expressed as sucrose):	
		------- Halva and Loukhum	

	(1)	(2)	(3)
09.0230	1806	Chocolate and other food preparations containing cocoa:	
	1806 10	– Cocoa powder, containing added sugar or other sweetening matter:	
	1806 10 20	–– Containing 5 % or more but less than 65 % by weight of sucrose (including invert sugar expressed as sucrose) or isoglucose expressed as sucrose	
	1806 20	– Other preparations in block, slabs or bars weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg:	
	1806 20 10	–– Containing 31 % or more by weight of cocoa butter or containing a combined weight of 31 % or more of cocoa butter and milk fat	
	1806 20 30	–– Containing a combined weight of 25 % or more, but less than 31 % of cocoa butter and milk fat	
		–– Other:	
	1806 20 50	––– Containing 18 % or more by weight of cocoa butter	
	1806 20 70	––– Chocolate milk crumb	
	ex 1806 20 80	––– Chocolate flavour coating:	
		––––– Containing less than 70 % by weight of sucrose (including invert sugar expressed as sucrose)	
	ex 1806 20 95	––– Other:	
		––––– Containing less than 70 % by weight of sucrose (including invert sugar expressed as sucrose)	
		– Other, in blocks, slabs or bars:	
	1806 31 00	–– Filled	
	1806 32	–– Not filled:	5 000
	1806 32 10	––– With added cereal, fruit or nuts	
	1806 32 90	––– Other	
	1806 90	– Other:	
		–– Chocolate and chocolate products:	
		––– Chocolates (including pralines), whether or not filled:	
	1806 90 11	––––– Containing alcohol	
	1806 90 19	––––– Other	
		––– Other:	
	1806 90 31	––––– Filled	
	1806 90 39	––––– Not filled	
	1806 90 50	–– Sugar confectionery and substitutes therefor made from sugar substitution products, containing cocoa	
	1806 90 60	–– Spreads containing cocoa	
	1806 90 70	–– Preparations containing cocoa for making beverages	
	ex 1806 90 90	–– Other:	
		––– Containing less than 70 % by weight of sucrose (including invert sugar expressed as sucrose)	

	(1)	(2)	(3)
09.0231	1901	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:	900
	1901 20 00	– Mixes and doughs for the preparation of bakers' wares of heading 1905	
09.0232	1902	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared:	20 000
		– Uncooked pasta, not stuffed or otherwise prepared:	
	1902 11 00	–– Containing eggs	
	1902 19	–– Other:	
	1902 19 10	––– Containing no common wheat flour or meal	
	1902 19 90	––– Other	
	1902 20	– Stuffed pasta whether or not cooked or otherwise prepared:	
		–– Other:	
	1902 20 91	––– Cooked	
	1902 20 99	––– Other	
	1902 30	– Other pasta:	
	1902 30 10	–– Dried	
	1902 30 90	–– Other	
	1902 40	– Couscous:	
	1902 40 10	–– Unprepared	
	1902 40 90	–– Other	
09.0233	1904	Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, cornflakes); cereals (other than maize (corn)), in grain form, or in the form of flakes or other worked grains (except flour, groats and meal), pre-cooked, or otherwise prepared, not elsewhere specified or included:	500
	1904 10	– Prepared foods obtained by the swelling or roasting of cereals or cereal products:	
	1904 10 10	–– Obtained from maize	
	1904 10 30	–– Obtained from rice	
	1904 10 90	–– Other	

	(1)	(2)	(3)
09.0234	1904 20	– Prepared foods obtained from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals:	
	1904 20 10	-- Preparation of the Müsli type based on unroasted cereal flakes	
		-- Other:	100
	1904 20 91	--- Obtained from maize	
	1904 20 95	--- Obtained from rice	
	1904 20 99	--- Other	
09.0235	1904 30 00	Bulgur wheat	10 000
09.0236	1904 90	– Other:	
	1904 90 10	-- Rice	2 500
	1904 90 80	-- Other	
09.0237	1905	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:	
		– Sweet biscuits; waffles and wafers:	
	1905 31	-- Sweet biscuits:	
		--- Completely or partially coated or covered with chocolate or other preparations containing cocoa:	
	1905 31 11	---- In immediate packings of a net content not exceeding 85 g	10 000
	1905 31 19	---- Other	
		--- Other:	
	1905 31 30	---- Containing 8 % or more by weight of milk fats	
		---- Other:	
	1905 31 91	----- Sandwich biscuits	
	1905 31 99	----- Other	
09.0238	1905 32	-- Waffles and wafers:	
	1905 32 05	--- With a water content exceeding 10 % by weight	
		--- Other:	
		---- Completely or partially coated or covered with chocolate or other preparations containing cocoa:	
	1905 32 11	----- In immediate packings of a net content not exceeding 85 g	3 000
	1905 32 19	----- Other	
		---- Other:	
	1905 32 91	----- Salted, whether or not filled	
	1905 32 99	----- Other	

	(1)	(2)	(3)
09.0239	1905 40	– Rusks, toasted bread and similar toasted products:	
	1905 40 10	–– Rusks	120
	1905 40 90	–– Other	
09.0240	1905 90	– Other:	
	1905 90 10	–– Matzos	
	1905 90 20	–– Communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products	
		–– Other:	
	1905 90 30	––– Bread, not containing added honey, eggs, cheese or fruit, and containing by weight in the dry matter state not more than 5 % of sugars and not more than 5 % of fat	10 000
	1905 90 45	––– Biscuits	
	1905 90 55	––– Extruded or expanded products, savoury or salted	
		––– Other:	
	1905 90 60	———– With added sweetening matter	
09.0242	2106	Food preparations not elsewhere specified or included:	
	2106 10	– Protein concentrates and textured protein substances:	
	2106 10 80	–– Other	4 000
	2106 90	– Other:	
	2106 90 98	––– Other	

COMMISSION REGULATION (EC) No 817/2007

of 12 July 2007

granting no export refund for butter in the framework of the standing invitation to tender provided for in Regulation (EC) No 581/2004

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1], and in particular the third subparagraph of Article 31(3) thereof,

Whereas:

(1) Commission Regulation (EC) No 581/2004 of 26 March 2004 opening a standing invitation to tender for export refunds concerning certain types of butter [2] provides for a permanent tender.

(2) Pursuant to Article 5 of Commission Regulation (EC) No 580/2004 of 26 March 2004 establishing a tender procedure concerning export refunds for certain milk products [3] and following an examination of the tenders submitted in response to the invitation to tender, it is appropriate not to grant any refund for the tendering period ending on 10 July 2007.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the permanent tender opened by Regulation (EC) No 581/2004, for the tendering period ending on 10 July 2007 no export refund shall be granted for the products and destinations referred to in Article 1(1) of that Regulation.

Article 2

This Regulation shall enter into force on 13 July 2007.

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

Done at Brussels, 12 July 2007.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

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[1] OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

[2] OJ L 90, 27.3.2004, p. 64. Regulation as last amended by Regulation (EC) No 276/2007 (OJ L 76, 16.3.2007, p. 16).

[3] OJ L 90, 27.3.2004, p. 58. Regulation as last amended by Regulation (EC) No 128/2007 (OJ L 41, 13.2.2007, p. 6).

COMMISSION REGULATION (EC) No 818/2007

of 12 July 2007

fixing the definitive rate of refund and the percentage of system B export licences to be issued in the fruit and vegetables sector (tomatoes, oranges, lemons and apples)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables [1],

Having regard to Commission Regulation (EC) No 1961/2001 of 8 October 2001 on detailed rules for implementing Council Regulation (EC) No 2200/96 as regards export refunds on fruit and vegetables [2], and in particular Article 6(7) thereof,

Whereas:

(1) Commission Regulation (EC) No 134/2007 [3] fixed the indicative quantities for the issue of B system export licences.

(2) The definitive rate of refund for tomatoes, oranges, lemons and apples covered by licences applied for under system B between 1 March and 30 June 2007 should be fixed at the indicative rate, and the percentage of licences to be issued for the quantities applied for should be laid down,

HAS ADOPTED THIS REGULATION:

Article 1

For applications for system B export licences submitted pursuant to Article 1 of Regulation (EC) No 134/2007 between 1 March and 30 June 2007, the percentages of licences to be issued and the rates of refund applicable are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 13 July 2007.

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

Done at Brussels, 12 July 2007.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

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[1] OJ L 297, 21.11.1996, p. 1. Regulation as last amended by Commission Regulation (EC) No 47/2003 (OJ L 7, 11.1.2003, p. 64).

[2] OJ L 268, 9.10.2001, p. 8. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

[3] OJ L 52, 21.2.2007, p. 12.

ANNEX

Percentages for the issuing of licences and rates of refund applicable to system B licences applied for between 1 March to 30 June 2007 (tomatoes, oranges, lemons and apples)

Product	Rate of refund (EUR/t net)	Percentages of licences to be issued for the quantities applied for
Tomatoes	20	100 %
Oranges	28	100 %
Lemons	50	100 %
Apples	22	100 %

COMMISSION REGULATION (EC) No 819/2007

of 12 July 2007

on the issuing of system A3 export licences in the fruit and vegetables sector (tomatoes, oranges, lemons, table grapes, apples and peaches)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables [1], and in particular the third subparagraph of Article 35(3) thereof,

Whereas:

(1) Commission Regulation (EC) No 678/2007 [2] opens an invitation to tender setting the indicative refund rates and indicative quantities for system A3 export licences, which may be issued, other than those tendered for as part of food aid.

(2) In the light of the tenders submitted, the maximum refund rates and the percentages of quantities to be awarded for tenders quoting those maximum rates should be set.

(3) In the case of tomatoes, oranges, lemons, table grapes, apples and peaches, the maximum rate necessary to award licences for the indicative quantity up to the quantities tendered for is not more than one-and-a-half times the indicative refund rate,

HAS ADOPTED THIS REGULATION:

Article 1

In the case of tomatoes, oranges, lemons, table grapes, apples and peaches, the maximum refund rates and the percentages for reducing the quantities awarded under the invitation to tender opened by Regulation (EC) No 678/2007 shall be fixed in the Annex.

Article 2

This Regulation shall enter into force on 13 July 2007.

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

Done at Brussels, 12 July 2007.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

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[1] OJ L 297, 21.11.1996, p. 1. Regulation as last amended by Commission Regulation (EC) No 47/2003 (OJ L 7, 11.1.2003, p. 64).

[2] OJ L 157, 11.6.2007, p. 9.

ANNEX

Issuing of system A3 export licences in the fruit and vegetable sector (tomatoes, oranges, lemons, table grapes, apples and peaches)

Product	Maximum refund rate (EUR/t net)	Percentage awarded of quantities tendered for quoting the maximum refund rate
Tomatoes	30	100 %
Oranges	—	100 %
Lemons	60	100 %
Table grapes	23	100 %
Apples	35	100 %
Peaches	20	100 %

COMMISSION REGULATION (EC) No 820/2007

of 12 July 2007

fixing the export refunds on white and raw sugar exported without further processing

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the market in the sugar sector [1], and in particular the second subparagraph of Article 33(2) thereof,

Whereas:

(1) Article 32 of Regulation (EC) No 318/2006 provides that the difference between prices on the world market for the products listed in Article 1(1)(b) of that Regulation and prices for those products on the Community market may be covered by an export refund.

(2) Given the present situation on the sugar market, export refunds should therefore be fixed in accordance with the rules and certain criteria provided for in Articles 32 and 33 of Regulation (EC) No 318/2006.

(3) The first subparagraph of Article 33(2) of Regulation (EC) No 318/2006 provides that the world market situation or the specific requirements of certain markets may make it necessary to vary the refund according to destination.

(4) Refunds should be granted only on products that are allowed to move freely in the Community and that comply with the requirements of Regulation (EC) No 318/2006.

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

HAS ADOPTED THIS REGULATION:

Article 1

Export refunds as provided for in Article 32 of Regulation (EC) No 318/2006 shall be granted on the products and for the amounts set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 13 July 2007.

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

Done at Brussels, 12 July 2007.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

[1] OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 247/2007 (OJ L 69, 9.3.2007, p. 3).

ANNEX

Export refunds on white and raw sugar exported without further processing applicable from 13 July 2007 [a]

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	S00	EUR/100 kg	30,45 [1]
1701 11 90 9910	S00	EUR/100 kg	31,56 [1]
1701 12 90 9100	S00	EUR/100 kg	30,45 [1]
1701 12 90 9910	S00	EUR/100 kg	31,56 [1]
1701 91 00 9000	S00	EUR/1 % sucrose × 100 kg of net product	0,3311
1701 99 10 9100	S00	EUR/100 kg	33,11
1701 99 10 9910	S00	EUR/100 kg	34,31
1701 99 10 9950	S00	EUR/100 kg	34,31
1701 99 90 9100	S00	EUR/1 % sucrose × 100 kg of net product	0,3311

NB: The destinations are defined as follows:

S00: all destinations except Albania, Croatia, Bosnia and Herzegovina, Serbia, Montenegro, Kosovo, the former Yugoslav Republic of Macedonia, Andorra, Gibraltar, Ceuta, Melilla, Holy See (Vatican City), Liechtenstein, Communes of Livigno and Campione d'Italia, Heligoland, Greenland, Faeroe Islands and the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control.

[a] The amounts set out in this Annex are not applicable with effect from 1 February 2005 pursuant to Council Decision 2005/45/EC of 22 December 2004 concerning the conclusion and application of 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 multiplied, for each exporting operation concerned, by a conversion factor obtained by dividing by 92 the yield of the raw sugar exported, calculated in accordance with paragraph 3 of Point III of the Annex I of Regulation (EC) No 318/2006.

COMMISSION REGULATION (EC) No 821/2007

of 12 July 2007

fixing the maximum export refund for white sugar in the framework of the standing invitation to tender provided for in Regulation (EC) No 958/2006

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector [1], and in particular the second subparagraph and point (b) of the third subparagraph of Article 33(2) thereof,

Whereas:

(1) Commission Regulation (EC) No 958/2006 of 28 June 2006 on a standing invitation to tender to determine refunds on exports of white sugar for the 2006/2007 marketing year [2] requires the issuing of partial invitations to tender.

(2) Pursuant to Article 8(1) of Regulation (EC) No 958/2006 and following an examination of the tenders submitted in response to the partial invitation to tender ending on 12 July 2007, it is appropriate to fix a maximum export refund for that partial invitation to tender.

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

HAS ADOPTED THIS REGULATION:

Article 1

For the partial invitation to tender ending on 12 July 2007, the maximum export refund for the product referred to in Article 1(1) of Regulation (EC) No 958/2006 shall be 39,313 EUR/100 kg.

Article 2

This Regulation shall enter into force on 13 July 2007.

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

Done at Brussels, 12 July 2007.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

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[1] OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 247/2007 (OJ L 69, 9.3.2007, p. 3).

[2] OJ L 175, 29.6.2006, p. 49. Regulation as amended by Regulation (EC) No 203/2007 (OJ L 61, 28.2.2007, p. 3).

COMMISSION REGULATION (EC) No 822/2007

of 12 July 2007

fixing the maximum export refund for white sugar in the framework of the standing invitation to tender provided for in Regulation (EC) No 38/2007

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector [1], and in particular the second subparagraph and point (b) of the third subparagraph of Article 33(2) thereof,

Whereas:

(1) Commission Regulation (EC) No 38/2007 of 17 January 2007 opening a standing invitation to tender for the resale for export of sugar held by the intervention agencies of Belgium, the Czech Republic, Spain, Ireland, Italy, Hungary, Poland, Slovakia and Sweden [2] requires the issuing of partial invitations to tender.

(2) Pursuant to Article 4(1) of Regulation (EC) No 38/2007 and following an examination of the tenders submitted in response to the partial invitation to tender ending on 11 July 2007, it is appropriate to fix a maximum export refund for that partial invitation to tender.

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

HAS ADOPTED THIS REGULATION:

Article 1

For the partial invitation to tender ending on 11 July 2007, the maximum export refund for the product referred to in Article 1(1) of Regulation (EC) No 38/2007 shall be 445,05 EUR/tonne.

Article 2

This Regulation shall enter into force on 13 July 2007.

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

Done at Brussels, 12 July 2007.

For the Commission
Jean-Luc DEMARTY
Director-General for Agriculture and Rural Development

[1] OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 247/2007 (OJ L 69, 9.3.2007, p. 3).
[2] OJ L 11, 18.1.2007, p. 4. Regulation as amended by Regulation (EC) No 203/2007 (OJ L 61, 28.2.2006, p. 3).

COMMISSION REGULATION (EC) No 823/2007

of 12 July 2007

prohibiting fishing for forkbeards in ICES areas VIII and IX (Community waters and waters not under the sovereignty or jurisdiction of third countries) by vessels flying the French flag

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

(1) Council Regulation (EC) No 2015/2006 of 19 December 2006 fixing for 2007 and 2008 the fishing opportunities for Community fishing vessels for certain deep-sea fish stocks [3] lays down quotas for 2007 and 2008.

(2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of, or registered in, the Member State referred to therein have exhausted the quota allocated for 2007.

(3) It is therefore necessary to prohibit fishing for that stock and its retention on board, transhipment and landing,

HAS ADOPTED THIS REGULATION:

Article 1

Quota exhaustion

The fishing quota allocated for 2007 to the Member State referred to in the Annex to this Regulation for the stock referred to therein shall be deemed to be exhausted from the date stated in that Annex.

Article 2

Prohibitions

Fishing for the stock referred to in the Annex to this Regulation by vessels flying the flag of, or registered in, the Member State referred to therein shall be prohibited from the date stated in that Annex. After that date it shall also be prohibited to retain on board, tranship or land such stock caught by those vessels.

Article 3

Entry into force

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

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

Done at Brussels, 12 July 2007.

For the Commission
Fokion FOTIADIS
Director-General for Fisheries and Maritime Affairs

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[1] OJ L 358, 31.12.2002, p. 59.
[2] OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1967/2006 (OJ L 409, 30.12.2006, p. 9; corrigendum: OJ L 36, 8.2.2007, p. 6).
[3] OJ L 384, 29.12.2006, p. 28.

ANNEX

No	19
Member State	FRANCE
Stock	GFB/89-
Species	Forkbeards *(Phycis blennoides)*
Area	Community waters and waters not under the sovereignty or jurisdiction of third countries in areas VIII and IX
Date	17.6.2007

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 5 June 2007

abrogating Decision 2003/89/EC on the existence of an excessive deficit in Germany

(2007/490/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 104(12) thereof,

Having regard to the recommendation from the Commission,

Whereas:

(1) By Council Decision 2003/89/EC ([1]), following a recommendation from the Commission in accordance with Article 104(6) of the Treaty, it was decided that an excessive deficit existed in Germany. The Council noted that the general government deficit was 3,7 % of GDP in 2002, significantly exceeding the 3 % of GDP Treaty reference value, while general government gross debt was expected to reach 60,9 % of GDP, slightly above the 60 % of GDP Treaty reference value.

(2) On 21 January 2003, in accordance with Article 104(7) of the Treaty and Article 3(4) of Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure ([2]), the Council addressed a recommendation to Germany with a view to bringing the excessive deficit situation to an end as rapidly as possible and by 2004 at the latest. The recommendation was made public. In view of the unique circumstances created by the Council conclusions of 25 November 2003 and of the ruling of the European Court of Justice of 13 July 2004 ([3]), the year 2005 should be considered to be the relevant deadline for the correction of the excessive deficit.

(3) In accordance with the Protocol on the excessive deficit procedure annexed to the Treaty, the Commission provides the data for the implementation of the procedure. As part of the application of the Protocol, Member States are to notify data on government deficits and debt and other associated variables twice a year, namely before 1 April and before 1 October, in accordance with Article 4 of Council Regulation (EC) No 3605/93 of 22 November 1993 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community ([4]).

(4) Following a provisional notification by Germany in February 2006, actual data provided by the Commission (Eurostat) indicated that the excessive deficit had not been corrected by 2005. Acting in accordance with Article 10(3) of Regulation (EC) No 1467/97, and based on a recommendation from the Commission, the Council on 14 March 2006 immediately took a Decision under Article 104(9) of the Treaty giving notice to Germany to take measures for the deficit reduction judged necessary in order to remedy the situation of excessive deficit as rapidly as possible and at the latest by 2007 ([5]). Specifically, the Council decided that in 2006 and 2007 Germany should ensure a cumulative improvement in its cyclically-adjusted balance net of one-off and temporary measures by at least one percentage point.

(5) In accordance with Article 104(12) of the Treaty, a Council Decision on the existence of an excessive deficit is to be abrogated when the excessive deficit in the Member State concerned has, in the view of the Council, been corrected.

([1]) OJ L 34, 11.2.2003, p. 16.
([2]) OJ L 209, 2.8.1997, p. 6. Regulation as amended by Regulation (EC) No 1056/2005 (OJ L 174, 7.7.2005, p. 5).
([3]) Case C-27/04, *Commission v Council*, [2004] ECR I-6649.
([4]) OJ L 332, 31.12.1993, p. 7. Regulation as last amended by Regulation (EC) No 2103/2005 (OJ L 337, 22.12.2005, p. 1).
([5]) Council Decision 2006/344/EC (OJ L 126, 13.5.2006, p. 20).

(6) Based on data provided by the Commission (Eurostat) in accordance with Article 8g(1) of Regulation (EC) No 3605/93 following the notification by Germany before 1 April 2007 and on the Commission services' spring 2007 forecast, the following conclusions are warranted:

— the general government deficit, after rising from 3,7 % of GDP in 2002 to 4,0 % of GDP in 2003, was reduced to 3,7 % of GDP in 2004, to 3,2 % of GDP in 2005, and finally to 1,7 % of GDP in 2006. This is lower than the target of 3,3 % of GDP set in the February 2006 update of the stability programme and well below the 3 % of GDP deficit reference value one year before the time limit set by the Council,

— in previous years of favourable cyclical conditions, Germany had not created enough budgetary leeway to accommodate the extended slow growth period between 2002 and 2005 with average real GDP growth at 0,5 % per year. A series of tax cuts, carried out until 2005, burdened the budget further, while offsetting measures on the expenditure side were implemented only with some delay. Consolidation measures included restraint in public sector wages, accompanied by a reduction in staff levels, the reform of the public health system in 2004, a reduction of subsidies and public investment, but also the fact that low wage growth in the private sector dampened pension outlays. Furthermore, in 2006, direct taxes, especially those related to profits, yielded stronger revenues than economic developments would have suggested. The cyclically-adjusted balance improved from 2002 onwards, without recourse to significant one-off measures. Particularly in 2006, the estimated structural balance, excluding one-off and other temporary measures, as a percentage of GDP improved by close to one percentage point,

— for 2007, the Commission services' spring 2007 forecast projects that the deficit will be reduced further to 0,6 % of GDP, driven by continuing high GDP growth and, in particular, the increase in the standard VAT rate from 16 % to 19 % as of January 2007. No one-offs are envisaged. In the spring 2007 notification, the German authorities estimated the 2007 deficit at 1,2 % of GDP. Moreover, the Commission services project an improvement in the structural balance as a percentage of GDP amounting to ¾ percentage point in 2007. Thus, Germany appears to comply with the recommended improvement in the structural balance of at least one percentage point in 2006 and 2007 in cumulative terms. For 2008, the spring forecast projects, with unchanged policies, a further decline in the deficit to 0,3 % of GDP. This indicates that the deficit has been brought below the 3 % of GDP ceiling in a credible and sustainable manner. With unchanged policies, the structural deficit is expected to decline only marginally in 2008. This should be seen against the need to make progress towards the medium-term objective for the budgetary position, which for Germany is a balanced budget in structural terms,

— after rising from 60,3 % of GDP in 2002 to a peak of 67,9 % of GDP in 2005, the debt ratio stabilised in 2006 and is projected to decline to 65,4 % of GDP in 2007 and to about 63½ % by 2008 on a no-policy change basis according to the Commission services' spring 2007 forecast, thus coming closer to the reference value more rapidly than projected in the most recent update of the stability programme.

(7) In the view of the Council, the excessive deficit in Germany has been corrected and Decision 2003/89/EC should therefore be abrogated,

HAS ADOPTED THIS DECISION:

Article 1

From an overall assessment it follows that the excessive deficit situation in Germany has been corrected.

Article 2

Decision 2003/89/EC is hereby abrogated.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Luxembourg, 5 June 2007.

For the Council
The President
P. STEINBRÜCK

COUNCIL DECISION

of 10 July 2007

on guidelines for the employment policies of the Member States

(2007/491/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 128(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Having regard to the opinion of the European Economic and Social Committee [2],

Having consulted the Committee of the Regions,

Having regard to the opinion of the Employment Committee [3],

Whereas:

(1) The reform of the Lisbon Strategy in 2005 has placed the emphasis on growth and jobs. The Employment Guidelines of the European Employment Strategy set out in the Annex to Council Decision 2005/600/EC of 12 July 2005 on Guidelines for the employment policies of the Member States [4] and the Broad Economic Policy Guidelines set out in Council Recommendation 2005/601/EC of 12 July 2005 on the broad guidelines for the economic policies of the Member States and the Community (2005 to 2008) [5] have been adopted as an integrated package, whereby the European Employment Strategy has the leading role in the implementation of the employment and labour market objectives of the Lisbon Strategy.

(2) The Union should mobilise all appropriate national and Community resources — including cohesion policy — in the Lisbon strategy's three dimensions (economic, social and environmental) in order better to exploit their synergies in a general context of sustainable development.

(3) The Employment Guidelines and the Broad Economic Policy Guidelines should be fully reviewed only every three years, while in the intermediate years until 2008 their updating should remain strictly limited to ensure the degree of stability that is necessary for effective implementation.

(4) The examination of the Member States' National Reform Programmes contained in the Commission's Annual Progress Report and in the Joint Employment Report shows that Member States should continue to make every effort to address the priority areas of:

— attracting more people to, and retaining more people in, employment, increasing labour supply and modernising social protection systems,

— improving the adaptability of workers and enterprises, and

— increasing investment in human capital through better education and skills.

(5) The European Council of 23-24 March 2006 stressed the central role of employment policies in the framework of the Lisbon agenda and the necessity of increasing employment opportunities for priority categories, within a life-cycle approach. In this connection, it approved the European Pact for Gender Equality that should further heighten the profile of gender mainstreaming and give impetus to improving the perspectives and opportunities of women on a broad scale.

(6) The removal of obstacles to mobility for workers, as elaborated by the Treaties, including the Treaties of accession, should strengthen the functioning of the internal market and enhance its growth and employment potential.

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[1] Opinion of 15 February 2007 (not yet published in the Official Journal).
[2] Opinion of 25 April 2007 (not yet published in the Official Journal).
[3] Opinion of 2 February 2007 (not yet published in the Official Journal).
[4] OJ L 205, 6.8.2005, p. 21.
[5] OJ L 205, 6.8.2005, p. 28.

(7) In the light of both the Commission's examination of the National Reform Programmes and the conclusions of the European Council, the focus should now be on effective and timely implementation, paying special attention to the agreed quantitative targets as laid down in the guidelines for 2005-2008.

(8) Member States should take the Employment Guidelines into account when programming their use of Community funding, in particular their use of the European Social Fund.

(9) In view of the integrated nature of the guideline package, Member States should fully implement the Broad Economic Policy Guidelines,

HAS ADOPTED THIS DECISION:

Article 1

The guidelines for Member States' employment policies as set out in the Annex to Council Decision 2005/600/EC are maintained for 2007 and shall be taken into account by the Member States in their employment policies.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 10 July 2007.

For the Council

The President

F. TEIXEIRA DOS SANTOS

COMMISSION

COMMISSION DECISION

of 24 January 2007

on the State aid C 38/2005 (ex NN 52/2004) implemented by Germany for the Biria Group

(notified under document number C(2007) 130)

(Only the German text is authentic)

(Text with EEA relevance)

(2007/492/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

I. PROCEDURE

(1) On 23 January and 20 August 2002 the Commission received a complaint with regard to state aid in form of a public guarantee for the Biria Group.

(2) Following an exchange of correspondence between them, Germany informed the Commission by letter of 24 January 2003, registered as received on 28 January, that the plan to provide a guarantee, which had been made conditional on approval being given by the Commission, had been withdrawn. The complainant was informed of this by letter of 17 February 2003.

(3) By letters of 1 July 2003, registered as received on 9 July, and of 8 August 2003, registered as received on 5 September, the complainant submitted further information concerning another public guarantee for the Biria Group and public participations in group companies.

(4) The Commission requested information from Germany by letter of 9 September 2003, to which Germany replied by letter of 14 October 2003, registered as received on 16 October. It requested on 9 December 2003 further information which Germany submitted by letter of 19 March 2004, registered as received on the same day.

(5) On 18 October 2004 the Commission issued an information injunction as it had doubts as to whether the aid measures granted to the Biria Group complied with the schemes under which they had allegedly been granted. In response to the information injunction, Germany submitted further information by letter of 31 January 2005, registered as received on the same day.

(6) On 20 October 2005 the Commission initiated the formal investigation procedure with respect to three alleged state aid measures. In the same decision it took the view that several other aid measures that were alleged to have been granted unlawfully either did not constitute aid or had been granted on the basis of and in line with approved aid schemes. The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission invited interested parties to submit comments on the possible aid measures. Comments were received by letter of 27 January 2006, registered as received on 30 January, from a third party that wished to remain anonymous, by letter of 6 February 2006, registered as received on the same day, from Prophete GmbH & Co. KG, Rheda-Wiedenbrück, and Pantherwerke AG, Löhne, and by letters of 6 February, registered as received on the same day, and of 27 February 2006, registered as received on the same day, from Vaterland-Werke GmbH & Co. KG, Neuenrade.

[1] OJ C 2, 5.1.2006, p. 14.

[2] See footnote 1.

(7) The comments were transmitted to Germany by letters of 6 February and 2 March 2006. Germany replied by letters of 5 April, registered as received on 7 April, and of 12 May 2006, registered as received on the same day, respectively.

(8) Germany's response to the initiation of the formal investigation procedure was submitted by letter of 23 January 2006, registered as received on the same day.

(9) The Commission requested on 6 February 2006 further information which Germany submitted by letter of 5 April 2006, registered as received on 7 April. The Commission sent another request for information on 19 July 2006, to which Germany replied by letter of 25 September, registered as received on 26 September.

II. **DESCRIPTION**

2.1. **The beneficiary**

(10) The Biria Group is active in the production and marketing of bicycles. The parent company, Biria AG, is located in Neukirch, Saxony, an assisted area under Article 87(3)(a) of the EC Treaty.

(11) In 2003 the group had a turnover of EUR 93.2m (2002: EUR 83.8m) and recorded profits of EUR 3.7m (2002: losses of EUR 5.8m). With 415 employees in 2003 (2002: 490 employees), it thus ranks as a large undertaking.

(12) The parent company, Biria AG, was founded in 2003 as a result of a merger between Biria AG as was and one of its subsidiaries, Sachsen Zweirad GmbH. At the same time, the name of the latter was changed from Sachsen Zweirad GmbH into Biria GmbH. In April 2005 Biria GmbH was transformed into Biria AG. In 2003 Biria GmbH (now Biria AG) had an annual turnover of EUR 55.7m and recorded profits of EUR 3.6m. The sole owner of Biria AG is Mr Mehdi Biria.

(13) Apart from the parent company, the most important companies in the group are Bike Systems GmbH & Co. Thüringer Zweiradwerk KG (hereinafter 'Bike Systems'), which is owned by Biria via Biria's subsidiary Bike Systems Betriebs- und Beteiligungsgesellschaft mbH ('BSBG') and by Checker Pig GmbH.

(14) Bike Systems is located in Nordhausen, Thuringia, an assisted area under Article 87(3)(a) of the EC Treaty. In 2003 it had a turnover of EU-6.1m and recorded losses of EUR 0.6m. It had 157 employees. It produces bicycles exclusively for its parent company BSBG ('Lohnherstellungsvertrag'). BSBG is responsible for the distribution of the bicycles.

(15) Checker Pig GmbH is located in Dresden, Saxony, an assisted area under Article 87(3)(a) of the EC Treaty. In 2003 it had a turnover of EU-6.9m and recorded losses of EUR 0.4m. It had 43 employees.

(16) On 7 November 2005 Biria AG sold the majority of its assets to two companies in the Lone Star Group, a private equity fund. The real estate remains with Biria AG, which rents it to Lone Star Group. The assets were sold for EUR 11.5m. An external expert had put the market price of the assets at EU-10.7m. The company(companies) owned by Lone Star Group now seems(seem) to operate under the name Biria GmbH.

(17) According to the information submitted by Germany, the sale was carried out through an open, transparent and unconditional tender. The tender was published on the Internet and in several print media. The involvement of a new investor could take the form of an asset deal, an asset deal 'en bloc' or a share deal. The Lone Star Group ultimately took over the assets by way of an asset deal.

(18) According to Germany, the efforts to sell the company got under way before the Commission decision to initiate the formal investigation procedure on 20 October 2005. The first bids were to be submitted by 4 October 2005.

2.2. **The financial measures**

(19) Measure 1: In March 2001 gbb Beteiligungs-AG ('gbb'), a subsidiary of Deutsche Ausgleichsbank, a public-law development bank, provided until end-2010 a silent participation ('stille Einlage') to Bike Systems amounting to EUR 2 070 732. According to Germany, the participation was provided on market conditions and so did not constitute state aid.

(20) Measure 2: On 20 March 2003 the Land of Saxony provided — originally until end-2008 — an 80 % guarantee for an operating credit of EUR 5.6m in favour of Sachsen Zweirad GmbH. The guarantee was given back in January 2004 and replaced by a guarantee to Biria GmbH (see Measure 3). The guarantee was provided under the guarantee scheme for Saxony ([3]), an aid scheme approved by the Commission.

(21) Measure 3: On 9 December 2003 the Land of Saxony provided an 80 % guarantee for an operating credit amounting to EUR 24 875m in favour of Biria GmbH (now Biria AG) to finance the planned increase in turnover and the restructuring of the group's financing plan. The credit consists of EUR 8m to repay working capital loans, EUR 7.45m as an advance on current account ('Kontokorrentkredit') and EU-9 425m for seasonal financing needs ('Saisonfinanzierungslinie'). The guarantee was provided under the guarantee scheme for Saxony, an aid scheme approved by the Commission. It was provided on condition that the guarantee for Sachsen Zweirad GmbH (Measure 2) would be given back. It thus entered into force only on 5 January 2004 after the guarantee to Sachsen Zweirad had been given back.

III. REASONS FOR INITIATING THE FORMAL INVESTIGATON PROCEDURE

(22) The Commission initiated the formal investigation procedure since it had doubts as to whether the silent participation was provided on market conditions as claimed by Germany. In its view, Bike Systems had just come out of insolvency through the adoption of an insolvency plan and so its future prospects were uncertain. It should thus have been considered as a company in difficulty at that time. The Commission doubted that the remuneration was appropriate taking into account the risk and that the silent participation was provided on market conditions. As regards possible exemptions under Article 87(2) and (3) of the EC Treaty, the Commission had no information as to whether the conditions laid down in the Community Guidelines on state aid for rescuing and restructuring firms in difficulty ([4]) ('Community Guidelines') had been met.

(23) Another reason for initiating the formal investigation procedure was that the Commission came to the provisional conclusion that the conditions of the approved aid scheme under which the guarantees to Sachsen Zweirad GmbH and Biria GmbH had allegedly been provided were not met and that the guarantees were thus not covered by the aid scheme. The Commission considered that Sachsen Zweirad GmbH and Biria GmbH were companies in difficulty at the time the guarantees were provided. Moreover, since Sachsen Zweirad GmbH and Biria GmbH were large undertakings, the guarantees would have been notifiable individually to the Commission under the aid scheme. As regards possible exemptions under Article 87(2) and (3) of the EC Treaty, the Commission had doubts that the conditions of the Community Guidelines were met.

([3]) N 73/1993 Guarantee scheme of the Land of Saxony (SEC(93) D/9273) of 7 June 1993.

([4]) OJ C 288, 9.10.1999, p. 2.

IV. COMMENTS FROM INTERESTED PARTIES

(24) The Commission received comments from a third party that wished to remain anonymous, from Prophete GmbH & Co. KG and Pantherwerke AG, and from Vaterland-Werke GmbH & Co. KG.

4.1. Comments from a competitor that wished to remain anonymous

(25) In its comments on the initiation of the formal investigation procedure, the competitor that wished to remain anonymous argues that, because of the state guarantee of EUR 24.5m, Biria AG could sell bicycles to the competitor's customers at below production costs even though the competitor has the most cost-efficient production site in Germany.

(26) The competitor points out that in 2003 Biria AG could only show profits because of a waiver of bank claims amounting to EUR 8.567m. In 2004 and 2005 Biria AG again recorded losses.

(27) The competitor also notes that Biria was sold to the Lone Star Group by way of an asset deal. According to the competitor, Sachsen-LB and the Mittelständische Beteiligungsgesellschaft probably waived large amounts of their claims. The new Biria GmbH, which is owned by the Lone Star Group, took over all the assets from Biria AG as was.

4.2. Comments from Prophete GmbH & Co. KG and Pantherwerke AG

(28) In its comments on the initiation of the formal investigation procedure, Prophete GmbH & Co. KG and Pantherwerke AG ('Prophete and Pantherwerke') allege that, because of the state aid, Biria can offer its products at prices that it could not maintain under normal market conditions. The two companies are competitors of Biria and are thus directly affected by the aid.

(29) The Biria Group is the largest producer of bicycles in Germany with an annual production of around 700 000 bicycles. The companies in the group are active in two segments of the bicycle market, i.e. non-specialised trade and specialised trade.

(30) The non-specialised trade segment concerns all retail sales by the larger retail chains and catalogue sales. Bicycles in this segment are priced at between EUR 100 and EUR 199. Prophete and Pantherwerke estimate that the size of the market is around 1.5m bicycles and that, with sales of 650 000 bicycles, the Biria Group has a market share of around 50 % in this segment.

(31) According to Prophete and Pantherwerke, the Biria Group also has a dominant position in the specialised trade segment. The size of the market is between 150 000 and 200 000 bicycles priced at up to EUR 400. Pantherwerke is a direct competitor of Biria in this segment.

(32) Prophete and Pantherwerke have stated for several years that the prices offered by the Biria Group are invariably lower than those offered by other producers. This difference cannot be explained by economic factors since, although the Biria Group has a higher purchase volume because of its dominant market position, this is not reflected in more advantageous conditions. Prophete and Pantherwerke estimate that, on account of its low prices, the Biria Group has suffered significant losses in recent years.

(33) As regards the silent participation, Prophete and Pantherwerke have doubts that, given the economic situation of Bike Systems in March 2001, a private investor would have acquired such a silent participation.

(34) As regards the two guarantees for Sachsen Zweirad GmbH and Biria in 2003 and 2004, Prophete and Pantherwerke regard them as not being compatible with the Community rules on state aid. They take the view that the companies were in difficulty at the time the guarantees were provided. They argue that the new company Biria has to be viewed as the legal successor to the two former companies from which it emerged. In their opinion, the opening balance of the newly created company is not meaningful.

(35) It is claimed that the two guarantees violated the 'one time–last time' principle as the economic activities of the companies forming the Biria Group could be sustained only with repeated state support.

(36) No compensatory measures were taken to offset adverse effects on competitors. No restriction was placed on the market presence of the Biria Group. Instead, the plan of the Biria Group is to expand its activities further through an aggressive pricing policy. On its homepage Biria announced planned sales of 850 000 bicycles in 2005, which would have implied a further increase in sales compared with 2004. Prophete and Pantherwerke also point out that, according to a press release, the owner of Biria AG has sold the business to the Lone Star Group, a private equity fund.

4.3. **Comments from Vaterland-Werke GmbH & Co. KG**

(37) In its comments on the initiation of the formal investigation procedure, Vaterland-Werke GmbH & Co. KG (Vaterland-Werke) points out that, with a total production of between 700 000 and 800 000 bicycles, the Biria Group is the largest bicycle manufacturer in Germany. The only comparable company is MIFA Mitteldeutsche Fahrradwerke with an annual production of around 700 000 bicycles. Other competitors produce only between 250 000 and 400 000 bicycles a year.

(38) Vaterland-Werke and Biria are both active in the non-specialised trade, which includes sales by the larger retail chains and catalogue sales by large mail order companies. There is fierce competition in the market and Biria is known as an aggressive competitor selling at below production costs. Such behaviour is possible only because of external financing sources, i.e. in the case of Biria because of state aid. This situation threatens the existence of all small competitors that do not receive state aid. Vaterland-Werke is particularly affected and free capacities cannot be filled with alternative work orders. It concludes that, in a market with surplus capacities, any capacity extension undertaken by a producer with the help of state aid imposes a burden on other competitors.

(39) As regards the silent participation, Vaterland-Werke has doubts that, in view of the economic situation of Bike Systems in March 2001, a private investor would have acquired such a participation.

(40) As regards the two guarantees for Sachsen Zweirad GmbH and Biria in 2003 and 2004, Vaterland-Werke regards them as not being compatible with the Community rules on state aid. It takes the view that the companies were in difficulty at the time the guarantees were provided. It argues that the new company Biria has to be viewed as the legal successor to the two former companies from which it emerged. In its opinion, the opening balance of the newly created company is not meaningful.

(41) It is claimed that the two guarantees violated the 'one time–last time' principle as the economic activities of the companies forming the Biria Group could be sustained only with repeated state support.

(42) No compensatory measures were taken to offset adverse effects on competitors. No restriction was placed on the market presence of the Biria Group. Instead, the plan of the Biria Group is to expand its activities further through an aggressive pricing policy. On its homepage Biria announced planned sales of 850 000 bicycles in 2005, which would have implied a further increase in sales compared with 2004. Vaterland-Werke also points out that, according to a press release, the owner of Biria AG has sold the business to the Lone Star Group, a private equity fund.

V. **COMMENTS FROM GERMANY**

(43) In its comments on the initiation of the formal investigation procedure, Germany argues that the silent participation by gbb was provided on market conditions. It agrees with the Commission that the risk attaching to a silent participation is higher than that attaching to a traditional bank loan. Nevertheless, it argues that the conditions of the silent participation are such that the provisions of the Commission notice on the method for setting the reference and discount rates ([5]) were complied with. According to the notice, the reference rate is a floor rate which may be increased in situations involving a particular risk. In such cases, the premium may amount to 400 basis points or more.

(44) Germany points out that the remuneration for the silent participation amounts to 12.25 % (8.75 % fixed and 3.5 % depending on the realisation of profits). The remuneration is thus 600 basis points above the Commission's reference rate of 6.33 %. gbb thus took into account the fact that the company was going through a period of restructuring and that the risk attaching to the silent participation was therefore higher as a result of the company's reorganisation and the lack of collateral. This increased risk is reflected in the additional premium of 200 basis points.

(45) In addition, Germany argues that the decision to provide the silent participation was taken on the basis of a forecast indicating an increase in company turnover from EUR 0.89m in 2001 to EUR 3.38m in 2003. It therefore concludes that the agreed remuneration for the silent participation of 12.25 % was an appropriate reflection of the associated risk. In its view, the fact that part of the remuneration is variable is irrelevant as this is common in the case of silent participations and corresponds to the behaviour of a market economy investor.

(46) As regards the guarantee for Sachsen Zweirad GmbH, Germany argues that the company was not in difficulty at the time it was provided and that the company did not show any of the typical signs of a company in difficulty as defined by the Community Guidelines. Among other things, the company had positive own capital of EUR 404m for 2003 (until the merger with Biria in October 2003) and generated a profit of EUR 2.1m. Its economic situation had improved in 2003 compared with 2001/2002 thanks to consolidation efforts launched at the end of 2002 and to an improved market situation.

(47) Germany points out that, although the company's liquidity situation was difficult, it was not 'serious'. There had been no danger that the private banks would not extend their credit lines. Moreover, high interest payments would not have led to liquidity problems as claimed by the Commission.

(48) As regards the guarantee for Biria GmbH (now Biria AG), Germany points out that the basis for it was the new plan of the Biria Group for streamlining its organisation and concentrating procurement, production responsibilities and distribution at Biria GmbH. Apart from the financing needed to increase turnover, the plan also included a reorganisation of group financing.

(49) Germany claims that Biria GmbH (now Biria AG) was not in difficulty at the time the guarantee was provided. In its view, a distinction has to be made between Biria AG as was and the new Biria AG. The latter can be considered in difficulty only if it had inherited the difficulties of the old company (in the event of there being any). This is, however, not the case with the new Biria AG, which resulted from a merger of Sachsen Zweirad GmbH and Biria as was. Sachsen Zweirad AG, which was not in difficulty, dominated the merger economically. It cannot therefore be automatically assumed that the new Biria AG would be in difficulty. Even if Biria AG as was had been in difficulty, the merger with Sachsen Zweirad GmbH would have meant that the new Biria AG would not automatically have found itself in difficulty.

(50) Germany also explained that the withdrawal by one of the private banks from the financing operation was due to a revamping of the bank's strategy following a merger. The other two banks ended their involvement at the same time at this private bank. This cannot however, be seen as a sign of a lack of confidence as one of the banks still provided financing for two separate projects.

([5]) OJ C 273, 9.9.1997, p. 3.

(51) Germany points out that the merger of Sachsen Zweirad GmbH and Biria AG was not designed to circumvent the state aid rules and classification of the company as a company in difficulty but was the consequence of a new plan for the group.

(52) In reply to the comments by a competitor who wished to remain anonymous, Germany argues that the figures on the cost structure of the competitor and Biria are not comparable. The turnover of the competitor has increased while the sales of the Biria Group have decreased. At the same time, the EBITDA of the competitor fell while that of Biria Group remained constant. This shows that Biria does not sell at dumping prices and that the competitor has engaged in more aggressive price behaviour than the Biria Group.

(53) Germany argues that the economic disadvantages apparently suffered by the competitor because of the Biria Group's behaviour are not borne out by facts or presented in a coherent manner. It also points out that it is normal in a competitive market for a company to be undercut by a competitor.

(54) As regards the sale of the assets of the Biria Group to the Lone Star Group, which was mentioned by the competitor, Germany provided details on the sale as well as on the repayment of private and public claims.

(55) In reply to the comments by Prophete and Pantherwerke and by Vaterland-Werke, Germany points out that the market for bicycles is divided into three segments, and not two as claimed by these companies. The three segments are specialised trade, mail order/catalogue sales and self-service premises. Biria has a strong position in the mail order segment due less to aggressive pricing than to just-in-time deliveries, while in the self-service segment MIF AG is the leading supplier, with Biria having less than 10 % of the market.

(56) Germany rejects the assertion by Vaterland-Werke that the Biria Group planned to expand its activities further through an aggressive pricing policy and makes references to information already submitted in the context of the investigation procedure. It points out that Biria AG produced 670 000 bicycles in 2003 and that production has been falling since.

VI. **ASSESSMENT**

6.1. **The relevant undertaking**

(57) The aid was granted to Sachsen Zweirad GmbH and Biria GmbH (now Biria AG) as well as to Bike Systems, a subsidiary of Biria GmbH. On 7 November 2005 Biria AG sold the majority of its assets to two companies in the Lone Star Group, a private equity fund. The Commission notes that, judging by the information provided, the assets were sold following an open, transparent and unconditional tender. According to Germany, an expert opinion put the sales price of the assets at EU-10.7m. The price paid by the Lone Star Group (EUR 11.5m) was thus above the estimated price.

(58) On the basis of the information at its disposal, the Commission therefore comes to the conclusion that there is no evidence to suggest that any advantage accrued to the Lone Star Group as a result of the aid or that the Lone Star Group would thus be a direct or indirect beneficiary of the state aid granted to Biria GmbH (now Biria AG) and Bike Systems.

6.2. **Measure purportedly provided on market conditions**

(59) According to Germany, ggb's silent participation in Bike Systems (Measure 1) was provided on market conditions. A silent participation is comparable in terms of risk to a subordinated loan and should thus be treated as a high-risk loan. In the case of bankruptcy or liquidation, it is paid back only after all other liabilities have been honoured. The risk associated with the participation thus exceeds that associated with a traditional bank investment loan, which is normally secured on the conditions required by the bank and reflected in the Commission's reference rate. The remuneration to be paid for such a participation should thus significantly exceed the reference rate.

(60) The Commission's reference rate at the time was 6.33 %. The participation was provided with a fixed remuneration of 8.75 % plus a variable remuneration of 3.5 %, depending on the profits made. The agreed remuneration is thus higher than the Commission's reference rate.

(61) However, Bike Systems had just came out of insolvency through the adoption of an insolvency plan. Its future prospects were uncertain as only a limited operational restructuring had been carried out. According to the company's annual report for 2001, the company still recorded losses that year. Its own capital was still negative although, thanks to hidden reserves, this did not trigger insolvency. Bike Systems must, therefore, be regarded as a company in difficulty at that time.

(62) Accordingly, the Commission considers that the remuneration was not proportional to the risk and that the silent participation was not provided on market conditions. The silent participation thus conferred on Bike Systems an advantage that the company would not have obtained on the market.

6.3. **Aid purportedly covered by approved aid schemes**

(63) The guarantee in favour of Sachsen Zweirad GmbH for an operating credit of EUR 5.6m (Measure 2) and the guarantee in favour of Biria GmbH (now Biria AG) for an operating credit of EUR 24.875m (Measure 3) were granted under the loan guarantee scheme of the Land of Saxony. This approved scheme allows guarantees for loans of more than DEM 5m (EUR 2.6m) to healthy companies for the financing of new investments and, in special cases, for supplementary financing of investment and working capital. In exceptional cases, the scheme also allows for the financing of consolidation and restructuring measures. The provision of guarantees for the restructuring of a large undertaking must, however, be notified to the Commission in each individual case.

(64) According to Germany, the conditions of the scheme were met and the guarantees therefore comply with the scheme. Germany considers that Sachsen Zweirad GmbH and Biria GmbH (now Biria AG) were not in difficulty at the time the guarantees were provided to secure working capital loans, something which is admissible under the aid scheme.

(65) The Commission does not agree that the guarantees are compatible with the aid scheme under which they were allegedly provided. As will be explained in more detail below, the Commission, unlike Germany, considers that Sachsen Zweirad GmbH was a company in difficulty at the time a guarantee was provided in March 2003 and that, in its turn, Biria GmbH was also a company in difficulty at the time a guarantee was provided in December 2003. The provision of guarantees for the restructuring of a company in difficulty must, however, be notified to the Commission in each individual case.

Guarantee for Sachsen Zweirad GmbH (Measure 2)

(66) Germany argues that Sachsen Zweirad GmbH did not show any of the typical signs of a company in difficulty within the meaning of the Community Guidelines ([6]). The Commission points out that the typical signs of a firm being in difficulty, which are mentioned in point 6 of the Community Guidelines, give merely an indication of when a company can be considered to be in difficulty and do not have to be met cumulatively. Sachsen Zweirad GmbH recorded operating losses of EUR 1.274m in 2001 and EUR 0.733m in 2002. The losses were taken over by the parent company Biria under the profits and loss transfer agreement. Turnover decreased in 2002 compared with 2001.

(67) According to the annual report for 2002, Sachsen Zweirad GmbH also faced liquidity problems. It is explicitly stated in the annual report that its liquidity situation was tight because of high expenditures for the pre-financing of the group's inventory and because of its growth and that its survival could be ensured only if the banks were prepared to keep open or to restructure the existing credit lines.

(68) Germany argues that there never had been any danger of the banks not extending their credit lines. However, this does not invalidate the fact that the liquidity situation of the company was tight. According to the annual report, a large majority of the credits had a remaining period to maturity of less than five years, which is by no means optimal for financing business activities and increases the risks facing the company. The short-term nature of the credits also led to high interest payments (albeit slightly lower in 2002 compared with 2001), placing a further burden on the company's liquidity.

(69) The Commission thus comes to the conclusion that Sachsen Zweirad GmbH has to be viewed as a company in difficulty at the time the guarantee was provided and that the guarantee has accordingly to be viewed as a restructuring guarantee. Since the provision of such a guarantee to a large undertaking has to be notified individually to the Commission, the conditions of the approved aid scheme under which the guarantee had allegedly been provided were not met and the guarantee was not covered by the aid scheme.

Guarantee for Biria GmbH (Measure 3)

(70) Biria GmbH (now Biria AG) was created with effect from 1 October 2003 through a merger of Biria AG as was with its subsidiary Sachsen Zweirad GmbH.

([6]) See footnote 4.

(71) According to Germany, Biria GmbH (now Biria AG) has to be clearly distinguished from its predecessors Biria AG as was and Sachsen Zweirad GmbH since, as a result of the merger, a new company was created. The assessment whether this company was in difficulty when the guarantee was provided on 9 December 2004 should therefore be based on the opening balance sheet of the newly merged company, which, according to Germany, demonstrates that Biria GmbH does not qualify as a company in difficulty.

(72) The Commission does not agree. The newly merged company Biria GmbH cannot be viewed separately from Biria AG as was and Sachsen Zweirad GmbH since it was created through a merger of the two companies. Otherwise, it would be easy to circumvent the classification as a company in difficulty by merging economic entities or creating new companies. Biria AG as was recorded losses and faced liquidity problems in 2002 as did Sachsen Zweirad GmbH. Biria GmbH inherited all the debts and liabilities of Biria AG as was and Sachsen Zweirad GmbH. It also owns the same assets and carries out the same activities as Biria AG as was and Sachsen Zweirad AG. The Commission therefore considers that Biria GmbH took over the difficulties of Biria AG as was and Sachsen Zweirad AG.

(73) Germany claims that Sachsen Zweirad GmbH dominated the merger economically and was not in difficulty, from which it cannot automatically be assumed that the new Biria GmbH had found itself in difficulty. Contrary to what Germany claims, the Commission is most certainly of the view that Sachsen Zweirad GmbH was a company in difficulty. Consequently, the new Biria GmbH also 'inherited' the difficulties of Sachsen Zweirad GmbH.

(74) Moreover, according to its annual report for 2003, the Biria Group continued its restructuring and reorganisation, which had started in 2002 and included a reordering of its financing. On the basis of the guarantee provided by the Land of Saxony for the EUR 24.875m loan, the Biria Group drew up a new plan for financing its activities in the medium term that included a significant adjustment of interest rates and thus a reduction in the high interest burden.

(75) At the same time, the pool of banks was reorganised: three banks agreed to waive claims amounting to EUR 8.567m, which seems to have represented significantly more than 50 % of their claims, in return for an immediate redemption of remaining claims. Consequently, the loan covered by the 80 % guarantee under Measure 3 consists of EUR 8m to pay off working capital loans, EUR 7.450m in the form of an advance on current account and EU-9.425m for seasonal financing needs.

(76) Biria GmbH (now Biria AG) thus faced serious liquidity problems at the time the guarantee was provided and so was a company in difficulty. This assessment is borne out by the fact that three banks withdrew from the financing of Biria's activities and even agreed to waive a large part of their claims in return for the immediate redemption of remaining claims. This shows that the banks had serious doubts as to whether Biria would be able to service its debts and was to be regarded as a viable company.

(77) Germany argues that the banks withdrew from the financing only because of a refocusing of their business strategy. The Commission notes that the banks agreed to waive probably around 50 % of their claims, which, even if the banks withdrew because of a refocusing of their business strategy, is a sign that the banks considered it unlikely that they would be able to recover the full amount of the loans.

(78) The Commission thus comes to the conclusion that Biria GmbH has to be viewed as a company in difficulty at the time the guarantee was provided and that the guarantee has accordingly to be viewed as a restructuring guarantee. Since the provision of such a guarantee to a large undertaking has to be notified individually to the Commission, the conditions of the approved aid scheme under which the guarantee had allegedly been provided were not met and the guarantee was not covered by the aid scheme.

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

(79) According to Article 87 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. Pursuant to the established case law of the European Courts, the criterion of trade being affected is met if the recipient firm carries out an economic activity involving trade between Member States.

(80) The silent participation (Measure 1) was provided by gbb. Germany claims that this took place under the 'Eigenprogramm' of the gbb so that no state support was involved. The Commission notes nevertheless that, at the time the participation was provided, gbb was fully controlled by the Deutsche Ausgleichsbank, a public-law development bank with the task of supporting the German economy in the public interest. In addition, gbb is also tasked with promotional tasks. For example, it was responsible for the Consolidation and Growth Fund for Eastern Germany ('Konsolidierungs- und Wachstumsfonds Ostdeutschland'), which is entrusted with providing equity capital to medium-sized companies in eastern Germany to strengthen their equity capital base. The Commission therefore considers that the measure is imputable to the State. As pointed out in paragraphs 59 to 62, the measure also conferred on Bike Systems an advantage that the company would not have obtained on the market.

(81) The guarantees under Measures 2 and 3 were provided by the Land of Saxony. They thus stem from state resources and are imputable to the State. The guarantees confer an advantage on Sachsen Zweirad GmbH and Biria GmbH (now Biria AG) as the two companies would not have been able to obtain the guarantees on the market on the same conditions.

(82) Bike Systems as well as Sachsen Zweirad GmbH and Biria GmbH manufacture bicycles. As this product is traded across borders, the measures threaten to distort competition and affect trade between Member States. The Commission concludes therefore that the silent participation and the two guarantees constitute state aid within the meaning of Article 87(1) of the EC Treaty and that the two guarantees were not provided under an approved aid scheme. Measures 1, 2 and 3 thus constitute new aid which has to be assessed accordingly.

Aid element of Measure 1

(83) The Commission considers that the aid element of the silent participation should be calculated as the difference between the remuneration that Bike Systems would have paid on the market for the silent participation and the remuneration actually paid. As Bike Systems was in difficulty when the silent participation was provided and as the associated risk was high, the aid element could amount to as much as 100 % of the silent participation as no market economy investor would have provided the participation (see point 3.2 of the Commission notice on the application of Articles 87 and 88 of the EC Treaty to state aid in the form of guarantees ([7])).

(84) According to the Commission notice on the method for setting the reference and discount rates ([8]), reference rates are supposed to reflect the average level of interest rates charged on medium- and long-term loans backed by normal security. The notice also points out that this reference rate is a floor rate which may be increased in situations involving a particular risk (for example, an undertaking in difficulty or where the security normally required by banks is not provided). In such cases, the premium may amount to 400 basis points or more. The silent participation is not a loan but can nevertheless be compared to a high-risk loan since, in case of bankruptcy, it is subordinated to all other claims including subordinated loans.

(85) As explained in paragraph 61, the situation of Bike Systems after it had come out of insolvency should be considered as insecure. Its future prospects were uncertain as only limited operational restructuring had been carried out. As pointed out in the same paragraph, the company is therefore to be regarded as a company in difficulty. Moreover, no collateral was provided for the silent participation, increasing the risk of default. In addition to the missing collateral, the silent participation is also subordinated to all other loans in the event of insolvency, further increasing the risk of default.

(86) In the present case, therefore, the Commission considers that Bike Systems would have had to pay an interest rate at least equal to the reference rate plus a premium of 400 basis points because it was in difficulty and a premium of a further 400 basis points because of the lack of any collateral. It also considers an additional 200 basis points appropriate because of the low ranking of the silent participation in the event of insolvency. This is in line with the indications given in the Commission notice on the method for setting the reference and discount rates, which states that in situations involving a particular risk (for example, an undertaking in difficulty or where the security normally required by banks is not provided) the premium may amount to 400 basis points or more. The aid element of the silent participation thus consists in the difference between the reference interest rate plus 1 000 basis points and the actual remuneration against which the silent participation was provided.

([7]) OJ C 71, 11.3.2000, p. 14.
([8]) See footnote 5.

(87) In calculating the aid element, the variable remuneration of 3.5 % can be taken only partly into account as it depends on the company realising profits. The company's situation was, however, weak and the profit outlook was unclear. The Commission therefore considers that only 50 % of the variable remuneration should be taken into account, i.e. 1.75 %. In calculating the aid element, the actual remuneration should, therefore, be the fixed rate of 8.75 % plus 50 % of the variable remuneration of 3.5 %, giving a total rate of 10.5 %. The aid element consequently consists in the difference between the reference rate plus 1 000 basis points and the remuneration of 10.5 %.

Aid element of Measures 2 and 3

(88) The guarantees in the case of Measures 2 and 3 enabled Sachsen Zweirad GmbH and Biria GmbH to obtain better financial terms for loans than otherwise normally available on the financial markets. The aid element of these guarantees is the difference between the interest rate that Sachsen Zweirad GmbH and Biria GmbH would have had to pay on a loan on market conditions, i.e. without a guarantee, and the interest rate at which the guaranteed loan was actually provided. This should correspond to the premium that a market economy guarantor would have required for these guarantees. As Sachsen Zweirad GmbH and Biria GmbH were in difficulty at the time the guarantees and the loans were provided, the aid element can amount to as much as 100 % of the guarantees as no lender would have provided the loans without a guarantee ([9]).

(89) According to the Commission notice on the method for setting the reference and discount rates ([10]), the Commission establishes reference rates which are supposed to reflect the average level of interest rates charged on medium- and long-term loans backed by normal security. The notice also points out that this reference rate is a floor rate which may be increased in situations involving a particular risk (for example, an undertaking in difficulty or where the security normally required by banks is not provided). In such cases, the premium may amount to 400 basis points or more.

(90) As explained above in paragraphs 66 to 78, Sachsen Zweirad GmbH and Biria GmbH were companies in difficulty at the time the guarantees were provided. The loan and the guarantee to Sachsen Zweirad GmbH involved an additional risk as the collateral provided was particularly low. The guarantee for the loan to Sachsen Zweirad GmbH was secured only by an absolute guarantee ('selbstschuldnerische Bürgschaft') provided by the group companies. The economic value of such general guarantees is very low.

(91) Therefore, in the present case, the Commission considers that, without the guarantee, Sachsen Zweirad GmbH would have had to pay an interest rate at least equal to the reference rate plus 400 basis points because it was a company in difficulty and plus a further 400 basis points because of the very low collateral. The aid element of the guarantee thus consists in the difference between the reference rate plus 800 basis points and the actual rate at which the guaranteed loan was provided.

(92) As regards the loan and the guarantee to Biria GmbH, the collateral provided had a higher economic value than that for the guarantee to Sachsen Zweirad GmbH. Nevertheless, the collateral is still lower than that normally required. The guarantee to Biria GmbH is secured by a first-rank mortgage on property of Bike Systems amounting to EUR 15m. The mortgage is, however, subordinated to another loan of EUR 2m. This first-rank mortgage therefore covers only just over 50 % of the total sum of the loan. The other forms of collateral (mortgages, assignment of claims, assignment of materials in the possession of the group companies and absolute guarantee on the part of the owner of Biria) were of low economic value.

(93) Consequently, the Commission takes the view that, without the guarantee, Biria GmbH would have had to pay an interest rate at least equal to the reference rate plus 400 basis points because it was a company in difficulty and plus a further 300 basis points because of the low collateral (compared with the premium of 400 basis points for the guarantee to Sachsen Zweirad GmbH because of the very low collateral). The aid element of the guarantee thus consists in the difference between the reference rate plus 700 basis points and the actual rate at which the guaranteed loans were provided.

6.5. **Derogations under Article 87(2) and (3) of the EC Treaty**

(94) Article 87(2) and (3) of the EC Treaty provides for exemptions to the general prohibition of state aid as spelt out in Article 87(1).

([9]) See footnote 7.
([10]) See footnote 5.

(95) The exemptions in Article 87(2) do not apply in the present case because the aid measures neither have a social character nor are granted to individual consumers; moreover, the measures do not make good the damage caused by natural disasters or exceptional occurrences and are not granted to the economy of certain areas of the Federal Republic of Germany affected by its division.

(96) The exemptions provided for in Article 87(3)(b) and (d) do not apply either. They refer to aid to promote the execution of an important project of common European interest and aid to promote culture and heritage conservation.

(97) This leaves the exemptions provided for in Article 87(3)(a) and (c) and in the relevant Community guidelines.

Measure 1

(98) Firstly, the Commission notes that Bike Systems is located in an assisted area under Article 87(3)(a) of the EC Treaty that is eligible for regional aid. Nevertheless, despite the doubts raised by the Commission when initiating the formal investigation procedure, Germany did not provide any information to show that the conditions for the granting of regional aid as laid down in the Guidelines on national regional aid ([11]) were met.

(99) Further exemptions are laid down in the Community Guidelines. As the aid was granted in March 2001, the Community Guidelines of 9 October 1999 ([12]) apply. The Commission does not possess any information to show that the aid can be considered to be compatible with the EC Treaty on the basis of the Community Guidelines. Under the Community Guidelines, the granting of restructuring aid is conditional on the existence of a sound restructuring plan, with undue distortions of competition being avoided and the aid being limited to the minimum. Despite the doubts raised by the Commission when initiating the formal investigation procedure, Germany did not provide any information to show that these conditions had been met. The Commission concludes therefore that the conditions of the Community Guidelines have not been met.

([11]) OJ C 74, 10.3.1998, p. 9.
([12]) See footnote 4.

(100) In addition, none of the other Community guidelines and regulations governing aid for research and development, for the environment, for small and medium-sized enterprises, for employment and training, risk capital, etc. apply to the present measure. Since it does not correspond to any objective of common interest, the aid constitutes operating aid that is incompatible with the EC Treaty.

Measures 2 and 3

(101) The Commission notes that Sachsen Zweirad GmbH and Biria GmbH are located in an assisted area under Article 87(3)(a) of the Treaty. Nevertheless, the provisions of that indent and the regional provisions of indent (c) are not applicable as Sachsen Zweirad GmbH and Biria GmbH were in difficulty and the objective of the aid measures was not the economic development of a certain region.

(102) The Commission concludes that only the Community Guidelines could be applicable. As the aid was granted in March and December 2003, the Community Guidelines of 9 October 1999 ([13]) apply.

(103) The granting of aid is conditional on the implementation of a restructuring plan the duration of which must be as short as possible and which restores the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to the future operating conditions. Despite the doubts raised by the Commission when initiating the formal investigation procedure, Germany did not provide any information to show that the guarantees had been based on a sound restructuring plan that would have restored the group's viability.

(104) Measures must also be taken to mitigate as far as possible any adverse effects of the aid on competitors. This usually takes the form of a limitation on the presence which the company can enjoy on its market or markets after the end of the restructuring period. The Commission was not provided with any information on the relevant market or on the share of the Biria Group on that relevant market. It was not provided either with any information on compensatory measures to limit the company's presence on the market. Instead, the Biria Group seems to have expanded with the takeover of Checker Pig and Bike Systems in 2001.

([13]) See footnote 4.

(105) The amount of aid must be limited to the strict minimum required to enable restructuring to be undertaken in the light of the existing financial resources of the company and its shareholders. In addition, the beneficiary must make a substantial contribution to the restructuring costs from its own resources or from external financing on market conditions. As the granting of the aid was not based on a restructuring plan, the Commission has no information on the contribution of the beneficiary and as to whether the aid was limited to the strict minimum.

(106) According to the Community Guidelines, restructuring aid should be granted only once. If the firm concerned has received restructuring aid in the past and if less than ten years have elapsed since the restructuring period came to an end, the Commission will normally allow further restructuring aid only in exceptional and unforeseeable circumstances.

(107) In April 1996 and March 1998 Sachsen Zweirad GmbH received restructuring aid in form of a public participation amounting to a total of EUR 1 278 200 under an approved aid scheme. Since less then ten years have elapsed since the restructuring period of Sachsen Zweirad GmbH came to an end and since the Commission is not aware of any exceptional and unforeseeable circumstances, the 'one time — last time' condition has not been met in granting the two guarantees.

(108) The Commission therefore comes to the conclusion that the conditions of the Community Guidelines are not met.

(109) In addition, none of the other Community guidelines and regulations governing aid for research and development, for the environment, for small and medium-sized enterprises, for employment and training, for risk capital, etc. apply to Measures 2 and 3. Since the measures do not correspond to any objective of common interest, the aid constitutes operating aid that is incompatible with the EC Treaty.

VII. **CONCLUSION**

(110) The Commission thus comes to the conclusion that the participation of gbb in Bike Systems of EUR 2 070 732, the 80 % guarantee for a loan of EUR 5.6m to Sachsen Zweirad GmbH and the 80 % guarantee for a loan of EUR 24.875m for Biria GmbH (now Biria AG) constitute state aid and do not meet the necessary conditions for them to be considered compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The state aid for Bike Systems GmbH & Co. Thüringer Zweiradwerk KG, Sachsen Zweirad GmbH and Biria GmbH (now Biria AG) is incompatible with the common market. The aid consisted of the following measures:

(a) Measure 1: a silent participation of EUR 2 070 732 provided to Bike Systems GmbH & Co. Thüringer Zweiradwerk KG. The aid element corresponds to the difference between the reference interest rate plus 1 000 basis points and the remuneration against which the silent participation was provided (fixed remuneration plus 50 % of the variable remuneration);

(b) Measure 2: a guarantee of EUR 4.480m to Sachsen Zweirad GmbH. The aid element corresponds to the difference between the reference interest rate plus 800 basis points and the interest rate at which the guaranteed loan was provided;

(c) Measure 3: a guarantee of EUR 19.9m to Biria GmbH (now Biria AG). The aid element corresponds to the difference between the reference interest rate plus 700 basis points and the interest rate at which the guaranteed loan was provided.

Article 2

1. Germany shall take all necessary measures to recover from the beneficiary the aid referred to in Article 1 and unlawfully made available to the beneficiary.

2. The silent participation and the guarantee for Biria GmbH (now Biria AG) shall be discontinued within two months following notification of this decision.

3. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision.

4. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiary until the date of its recovery.

5. Interest shall be calculated in conformity with Chapter V of Commission Regulation (EC) No 794/2004 [14].

Article 3

Germany shall inform the Commission, within two months following notification of this decision, of the measures already taken or planned to comply with it. It shall provide this information using the questionnaire annexed to this Decision. In particular, it shall submit to the Commission all documents proving that recovery proceedings have been initiated against the beneficiary of the unlawful aid.

Article 4

This decision is addressed to the Federal Republic of Germany.

Done at Brussels, 24 January 2007.

For the Commission

Neelie KROES

Member of the Commission

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

ANNEX

Information regarding the implementation of the Commission Decision C(2007) 130

1. **Calculation of the amount to be recovered**

1.1. Please provide the following details regarding the amount of unlawful state aid that has been put at the disposal of the beneficiary:

Date(s) of payment (*)	Amount of aid (**)	Currency	Identity of beneficiary

(*) Date or dates on which the aid or individual instalments of aid were put at the disposal of the beneficiary; if the measure consists of several instalments and reimbursements, use separate rows.
(**) Amount of aid put at the disposal of the beneficiary, in gross aid equivalents.

Comments:

1.2. Please explain in detail how the interest payable on the amount to be recovered will be calculated.

2. **Measures planned and already taken**

2.1. Please describe in detail what measures have already been taken and what measures are planned to effect the immediate and effective recovery of the aid. Please also explain what alternative measures are available under national law to effect recovery. Where relevant, please indicate the legal basis for the measures taken or planned.

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

3. **Recovery already effected**

3.1. Please provide the following details of aid that has been recovered from the beneficiary:

Date(s) (*)	Amount of aid repaid	Currency	Identify of beneficiary

(*) Date or dates on which the aid was repaid.

3.2. Please attach supporting documents for the repayments shown in the table at point 3.1.

COMMISSION DECISION

of 7 February 2007

on aid scheme C 34/2005 (ex N 113/2005) under Law No 17/2004 (Article 60) of the Region of Sicily which Italy is planning to implement

(notified under document number C(2007) 284)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2007/493/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 of 9 March 2005, the Italian authorities, acting pursuant to Article 88(3) of the EC Treaty, notified the Commission of an aid measure under Article 60 of Regional Law No 17/2004 laying down planning and financial provisions for 2005.

(2) By letters of 29 March and 10 June 2005, the Commission requested further information on the measure notified.

(3) The Italian authorities replied by letter of 18 May 2005 following a reminder from the Commission dated 27 April 2005 and by letters of 12 July and 14 July 2005.

(4) By letter of 21 September 2005, the Commission informed Italy 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 Decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission invited interested parties to submit their comments on the aid.

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

(7) By letter of 10 November 2005, registered as received by it on 15 November 2005, the Italian authorities asked the Commission to suspend the procedure pending the ruling by the Court of Justice in Case C-475/2003 concerning the compatibility of the Italian regional tax on productive activity (IRAP) with Article 33(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment [3]. The Commission accepted the request by letter of 2 August 2006. On 3 October 2006 the Court of Justice declared the IRAP to be compatible with Article 33(1) of Directive 77/388/EEC [4].

(8) By letter of 8 May 2006, registered as received by it on 11 May, the Italian authorities informed the Commission about an amendment to Article 60 of Regional Law No 17/2004, stating that the measure was subject to Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (the *de minimis* Regulation) [5] not only until authorisation by the Commission but also 'in the case of a negative decision being adopted by the Commission'.

II. DESCRIPTION OF THE MEASURE

II.1. Objective of the measure

(9) According to the Italian authorities, the measure is designed to promote the setting up of new companies and to narrow the gap between companies in Sicily and companies located in other regions of Italy where the standard of living is abnormally low or where there is serious underemployment within the meaning of Article 87(3)(a) of the EC Treaty.

[1] OJ C 82, 5.4.2006, p. 71.
[2] See footnote 1.
[3] OJ L 145, 13.6.1977, p. 1.
[4] Case C-475/2003 *Banca popolare di Cremona Soc.coop.arl* v *Agenzia Entrate Ufficio Cremona*, not yet published.
[5] OJ L 10, 13.1.2001, p. 30.

(10) Moreover, the measure in question is aimed at improving investment prospects in Sicily by raising security levels and preventing criminal behaviour.

II.2. **Legal basis of the measure**

(11) Article 60(1) of Regional Law No 17/2004 provides for a reduction in the rate of IRAP by 1 % in 2005, 0.75 % in 2006 and 0.5 % in 2007 for cooperatives (more precisely, 'società cooperative a mutualità prevalente') as defined in the Italian Civil Code ([6]).

(12) Article 60(2) of Regional Law No 17/2004 extends the same benefit to private security firms as defined in Royal Decree No 773/1931 of 18 June 1931, which defines the conditions under which entities and private persons may be authorised by the provincial prefect ('prefetto') to provide security services for movable and immovable property and private investigation services ([7]).

(13) Reductions in the IRAP rate are decided by the Region of Sicily by virtue of the power to modify the rate conferred on all regions in Italy under the relevant national legislation ([8]).

II.3. **Budget for the measure**

(14) The Italian authorities estimate that the budgetary impact of Article 60 will be around EUR 2 million for the entire period 2005-2007.

II.4. **Cumulation**

(15) The measure in question may be cumulated with aid received under other local, regional, national or Community schemes to cover the same eligible costs.

II.5. **Duration of the measure**

(16) Regional Law No 17/2004 entered into force on 29 December 2004, but Article 60 states that the measure is subject to the *de minimis* Regulation until authorisation by the Commission. By letter of 16 May 2006, the Italian authorities stated that the measure was subject to the *de minimis* Regulation also in the case of a negative decision being adopted by the Commission.

(17) The scheme runs for three tax years, from 2005 to 2007.

III. **GROUNDS FOR INITIATING THE PROCEDURE**

(18) In its letter of 21 September 2005, the Commission took the view that the notified scheme constituted State aid within the meaning of Article 87(1) of the EC Treaty since state resources are involved, since it is selective through being targeted at particular sectors and/or particular categories of undertaking, since it confers an advantage on such undertakings relative to other undertakings that provide the same services and since it might distort competition and affect trade at Community level.

(19) One of the reasons for initiating the procedure was that the Commission was not able to rule out the possibility that the effects of the measure on intra-Community trade would be contrary to the common interest, considering also that, under the scheme, the beneficiaries are not required to offset such distortions.

(20) The Commission also had doubts whether the measure fulfilled the conditions set out in the Guidelines on national regional aid ([9]) ('the Guidelines'). In fact, according to the notification, the measure would grant operating aid to Sicilian cooperatives and to security firms.

(21) In point 4.15 of the Guidelines, operating aid may be granted if the measure is justified in terms of its contribution to regional development and its nature and if its level is proportional to the handicaps it seeks to alleviate. In this regard, the Commission doubted whether the Italian authorities had succeeded in justifying the granting of operating aid by demonstrating the existence of any handicaps and gauging their importance.

(22) The Commission doubted whether the operating aid provided for in Article 60(1) of Regional Law No 17/2004 was compatible with the common market on the grounds that it would contribute to the creation of new firms and reduce the gap between Sicilian firms and firms operating elsewhere in Italy. In this respect, it noted that the link between the lowering of IRAP for all cooperatives and the creation of new firms in Sicily is unclear and left unexplained by the Italian authorities.

([6]) See *Titolo VI del Libro* V of the Civil Code, as amended by Article 8 of Legislative Decree No 6/2003 of 17 January 2003.

([7]) See *Titolo IV* of Royal Decree No 773/1931 of 18 June 1931, as subsequently amended. The provincial prefect can refuse the licence also on the basis of the number and importance of existing entities.

([8]) Legislative Decree (IRAP) No 446 of 15 December 1997.

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

(23) In the notification, the Italian authorities argued that Sicilian firms are structurally disadvantaged because Sicily is an outermost island remote from the 'continental economic centres'. The Commission observes here that the outermost regions are exhaustively listed in Declaration 26 on the outermost regions of the Community, annexed to the Treaty on the European Union ([10]). Moreover, the aid does not seem to be tailored to tackling the problems associated with the island status of Sicily because it is unrelated to the extra costs due to insularity, like transport costs.

(24) Furthermore, the Italian authorities claimed that the prevalence of micro enterprises resulted in higher financing costs and greater labour intensity; labour and debt costs constitute a large part of the IRAP's tax base, thereby placing Sicilian firms at a disadvantage. The Commission noted that, even if the problem facing the Sicilian economy was the high ratio of micro enterprises and its consequences, a general IRAP reduction for cooperatives of all sizes would not address the issue because it was not targeted at micro enterprises. Nor should the aid be granted only to micro cooperatives.

(25) The Commission also stressed that differences in effective tax rates such as those referred to by the Italian authorities are present for every tax and are implicit in their nature. This does not, however, seem to be a sufficient reason to grant state aid differentiated by type of enterprise and, in the present case, the Italian authorities did not provide concrete evidence that cooperatives are excessively penalised by high effective rates of IRAP.

(26) Moreover, the Commission doubts the robustness of the data used by the Italian authorities to demonstrate that the 'normal' Sicilian firm with a turnover of less than EUR 10 million and fewer than 10 workers operating in industry, except for the chemical and petrochemical sectors, and in the ITC and tourist sectors pays a higher rate of IRAP than a comparable 'normal' company operating in Lombardy. In actual fact, as Article 60(1) of Regional Law No 17/2004 provides aid to cooperatives of all sizes and in all sectors, the use of data that concern only firms with a turnover of less than EUR 10 million and fewer than 10 workers operating in industry, except for the chemical and petrochemical sectors, and in the ITC and tourist sectors does not seem to demonstrate the proportionality of the measure in question.

([10]) See footnote 27 to the Guidelines (see footnote 9).

(27) Other doubts related to the information submitted by the Italian authorities to show that the operating aid provided for in Article 60(2) of Regional Law No 17/2004 is compatible with the common market.

(28) In the notification the Italian authorities argued that Article 60(2) of Regional Law No 17/2004 would help to improve investment prospects in Sicily by raising security levels and preventing criminal behaviour. They stressed that the average Sicilian security firm pays a higher rate of IRAP than the average firm operating elsewhere in Italy because the labour costs/net output value ratio for Sicilian security firms is on average higher than elsewhere in Italy and because of the rigidity of Sicilian labour market, which is characterised by low manpower turnover.

(29) In this connection, the Commission claims that the existence of a link between Article 60(2) of Regional Law No 17/2004 and the improvement in investment prospects in Sicily by raising security levels as well as the reasons for the higher costs of Sicilian security firms relative to firms operating in other regions of Italy are not sufficiently explained. It does not seem that, compared with the labour market in other regions of Italy, the Sicilian labour market has characteristics such as to justify higher wages in this sector.

(30) Furthermore, the Commission doubts that the arguments presented by the Italian authorities asserting that the provincial prefect may impose price restrictions on services provided in the sector ('tariffe di legalità') as well as the necessity of rewarding the professionalism of workers in the sector have to be taken into account. The Commission is of the opinion that these reasons do not explain the impact of differences in 'tariffe di legalità' on the increase in labour costs in Sicily.

(31) The Commission has therefore explained that it considered a more thorough analysis of the issue to be necessary. Such an analysis would need to include any comments made by interested third parties. Only after considering such comments could the Commission decide whether the measure proposed by the Italian authorities affects trading conditions to an extent contrary to the common interest.

IV. COMMENTS FROM ITALY

(32) The Commission received no comments from the Italian authorities or from interested third parties to allay the doubts raised when the formal investigation procedure was initiated.

V. ASSESSMENT OF THE MEASURE

V.1. Legality

(33) By notifying the aid scheme with a standstill clause and implementing it under the *de minimis* Regulation pending authorisation from the Commission, the Italian authorities have complied with the procedural requirements of Article 88(3) of the EC Treaty.

V.2. State aid character of the scheme

(34) The Commission considers that the measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty for the following reasons:

V.2.1. *Presence of state resources*

(35) The measure involves the use of state resources in terms of tax revenues forgone by the Region of Sicily and corresponding to the reduced tax liability of the beneficiary.

V.2.2. *Economic advantage*

(36) The measure confers on the beneficiary an economic advantage resulting from the reduction in the effective tax burden, which translates into a financial advantage in terms of a reduced payment of tax from which the firms benefit immediately in the years when the reduction is applied.

V.2.3. *Presence of selectivity in that the measure favours 'certain undertakings or the production of certain goods'*

(37) The national legislation on the IRAP establishes that all regions have the power to increase or reduce the basic tax rate of 4.25 % by up to one percentage point in either direction; this reflects a symmetrically applied tax system in which all regions are equally entitled, both legally and in practice, to increase or reduce the tax and which does not in itself entail State aid.

(38) The Commission has previously decided [11] that these limited powers to adjust the tax rate are symmetrical in nature provided that the individual regions do not use their powers to apply, within their margin of autonomous discretion, tax rates that differ between sectors and between taxable persons and do not constitute State aid. This finding is not invalidated by the ruling in Case C-88/2003 *Azzorre* [12].

(39) However, in the case notified, the Region of Sicily has not limited its intervention to the margin of autonomous discretion established by national law but has used its power to introduce for certain sectors and taxpayers tax rates that are different from, and lower than, the standard regional tax rates. In fact:

(a) Article 60(1) of Regional Law No 17/2004 confers an advantage only on Sicilian cooperatives, thereby excluding from the possible beneficiaries under the scheme Sicilian firms operating in all sectors and not in the form of cooperatives.

(b) Article 60(2) of Regional Law No 17/2004 confers an advantage in that the measure favours the economic activity consisting in providing security services. Firms providing such services also offer the following services: (i) transport, escort and temporary deposit of valuable goods or persons; (ii) guarding of property; (iii) management of specialized archives; and (iv) production of security equipment and systems. The Commission considers that some of these services can be provided by firms which are not private security firms within the meaning of Royal Decree No 773/1931.

V.2.4. *Distortion of competition*

(40) In accordance with settled case law [13], for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.

(41) The Commission observes that the measures contained in Article 60(1) and (2) of Regional Law No 17/2004 seem to distort competition and affect trade between Member States because they have the effect of relieving beneficiaries of a burden that they would otherwise have to bear.

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[11] Commission Decision C(2005)4675 of 7 December 2005 — State aid case N 198/05 — 'Tax aid for job creation in assisted areas, IRAP reductions — Law No 80/2005, Art. 11b', against which the Commission raised no objections (OJ C 42, 18.2.2006, p. 3).

[12] Judgment of the Court of 6 September 2006, *Portuguese Republic* v *Commission of the European Communities*, not yet published.

[13] Case T-214/95 *Het Vlaamse Gewest* v *Commission* [1998] ECR II-717.

(42) In the present case, according to the information provided by the Italian authorities, the beneficiaries are cooperatives (Article 60(1)) of all sizes operating in all sectors. Therefore, the cooperatives compete with other undertakings on markets open to competition so that Article 60(1) potentially distorts competition and affects trade under settled case law. Similarly, the Commission considers that the measure contained in Article 60(2) distorts competition and affects trade between Member States.

(43) Accordingly, the Commission concludes that the proposed scheme constitutes State aid.

V.3. **Compatibility**

(44) In so far as the measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty, its compatibility must be assessed in the light of the exemptions provided for in Article 87(2) and (3). The exemptions in Article 87(2), which concern aid having a social character granted to individual consumers, aid to make good the damage caused by natural disasters or exceptional occurrences and aid granted to certain areas of the Federal Republic of Germany, do not apply in this case. The measure cannot be considered to be an important project of common European interest or to remedy a serious disturbance in the Italian economy, as provided for in Article 87(3)(b). Nor can the measure qualify for the exemption under Article 87(3)(c), which provides for authorisation to be granted for aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent that is contrary to the common interest. Lastly, the measure does not have as its objective the promotion of culture and heritage conservation as provided for in Article 87(3)(d).

(45) Article 87(3)(a) provides for the authorisation of aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. Sicily is a region eligible for that exemption.

(46) In its decision to initiate the formal investigation procedure, the Commission explained the reasons, summarised in paragraphs 18 to 31, why it doubted that the measure could qualify for the exemption in Article 87(3)(a). In the absence of any comments from Italy or interested third parties, the Commission can simply note that these doubts are confirmed.

VI. **CONCLUSION**

(47) The Commission concludes that the measure notified by Italy and described in paragraphs 11 to 17 is not compatible with the common market and is not covered by any of the exemptions laid down in the EC Treaty. The measure must therefore be prohibited. According to the Italian authorities, the aid has not been granted and so there is no need to recover it,

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme which Italy is planning to implement under Article 60 of Regional Law No 17/2004 constitutes State aid.

The aid referred to in the preceding paragraph is incompatible with the common market and may not therefore be implemented.

Article 2

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

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 7 February 2007.

For the Commission

Neelie KROES

Member of the Commission

COMMISSION DECISION

of 7 March 2007

on State aid C 41/2004 (ex N 221/2004) Portugal Investment aid to ORFAMA, Organização Fabril de Malhas S.A.

(notified under document number C(2007) 638)

(Only the Portuguese version is authentic)

(Text with EEA relevance)

(2007/494/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 of 5 May 2004 (registered as received on 19 May), Portugal notified the Commission of its intention to provide aid to Organização Fabril de Malhas S.A. (hereinafter 'ORFAMA') in order to help finance an investment by the company in Poland. The Commission requested further information by letter of 15 July 2004, to which Portugal replied by letter of 30 September 2004 (registered as received on 5 October).

(2) By letter of 6 December 2004, the Commission informed Portugal that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(3) By letter of 4 February 2005 (registered as received on 9 February), the Portuguese authorities presented their comments in the context of the above-mentioned procedure.

(4) The Commission 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. There were no comments from third parties.

II. DETAILED DESCRIPTION OF THE AID

The beneficiary

(5) ORFAMA is a producer of fashion knitwear located in Braga, a region falling under Article 87(3)(a) of the EC Treaty. It was set up in 1970. It has 655 employees and an annual turnover of about EUR 25 million. It owns 45 % of another garment producer 'Marrantex'. The company sells most of its products in the European Union (50 %), the United States and Canada (38 %) and Japan (5 %) [3].

The project

(6) The project consists in the acquisition of two textile companies, Archimode SP and Wartatex SP, located in Lodz, Poland. Both companies are involved in clothing production.

(7) ORFAMA started working with the Polish companies in 1995 under a subcontracting arrangement whereby these companies accounted for some 30 % of ORFAMA's turnover. ORFAMA then decided to consolidate its presence in Poland and in Eastern European markets by acquiring the two Polish companies.

(8) The Portuguese authorities noted that ORFAMA will maintain the capacity currently installed in Portugal without relocating activities to Poland. The objective of the project is to raise the volume of production, to free up capacity in Portugal for the manufacture of higher-value-added products and to gain access to the German and Eastern European markets.

(9) The Portuguese authorities considered that this project would contribute to strengthening the competitiveness of the textile industry in the European Union, given that both ORFAMA and the Polish companies face mounting competition from Asian countries, in particular China. The project was completed in December 1999.

[1] OJ C 14, 20.1.2005, p. 2.
[2] See footnote 1.
[3] All figures as provided in the notification.

The aid

(10) The investment in acquiring both companies amounted to EUR 9 217 516 (EUR 8 900 205 for Archimode and EUR 317 311 for Wartatex). ORFAMA financed 97 % of the investment with bank loans and the remainder with own capital.

(11) Portugal intends to grant ORFAMA a tax credit of EUR 921 752, corresponding to 10 % of the total eligible investment costs for the above-mentioned project.

(12) The measure was notified under a Portuguese scheme for promoting the modernisation and internationalisation of economic agents ([4]). This scheme requires aid to large companies to be notified on an individual basis.

(13) The Portuguese authorities explained that the request for aid was presented on 31 March 2000. The project was carried out just before this date for strategic reasons, on the assumption that it would be eligible for aid under the relevant Portuguese legislation. Internal delays meant that the Portuguese authorities notified the aid only in January 2004.

III. **GROUNDS FOR INITIATING THE PROCEDURE**

(14) The Commission, in its decision to initiate the procedure in respect of the present case, stated that it would examine the measure in the light of the derogation under Article 87(3)(c) of the EC Treaty in order to determine whether the aid could be considered as facilitating the development of a certain economic activity without adversely affecting trading conditions to an extent contrary to the common interest.

(15) The Commission also stated that it would examine the measure on the basis of the criteria normally used for assessing aid to large companies for foreign direct investment (FDI) projects, given the similarity of this case to cases of investment aid outside the European Union. The measure was notified under a Portuguese scheme for promoting the internationalisation of Portuguese companies. It shuld be noted that, at the time the project was carried out and the aid applied for, Poland was not yet a member of the European Union. The investment thus qualifies as foreign direct investment under the relevant Portuguese aid scheme.

(16) In these cases the Commission normally weighs the benefits of the measure, in terms of its contribution to the international competitiveness of the EU industry concerned, against possible negative effects in the Community, such as the risks of relocation and any adverse impact on employment. The Commission also takes into account the necessity of the aid by reference to the risks associated with the project in the country concerned as well as to the deficiencies of the company, such as those faced by SMEs. One other criterion relates to a possible positive regional impact. Lastly, the Commission excludes any aid to export-related activities.

(17) In this connection the Commission noted that, as the investment was taking place in a Member State of the European Union, the impact of the aid on the Community market was likely to be greater than in the case of aid for a project in a third country.

(18) The Commission also questioned what the impact would be on employment and other factors for the regions concerned or indeed for the relevant industries in both Member States, as well as whether the same project would receive aid from Poland.

(19) It was also doubtful whether the aid was necessary and/or provided any incentive for the applicant to carry out the investment since the project had been completed even before ORFAMA applied for State aid. Lastly, the Commission questioned whether the project could qualify as 'initial investment' within the meaning of the Commission national regional aid guidelines ([5]). It requested Portugal to submit comments and provide any information that might help with the assessment of the case.

([4]) N 96/99 (OJ C 375, 24.12.1999, p. 4).

([5]) See point 4.4 of the Guidelines on national regional aid (OJ C 74, 10.3.1998, p. 9). According to these guidelines, initial investment is investment in fixed capital relating to the setting-up of a new establishment, the extension of an existing establishment or the starting-up of an activity involving a fundamental change in the product or production process of an existing establishment (through rationalisation, diversification or modernisation). Initial investment is defined by reference to a set of eligible items of expenditure (land, buildings and plant/machinery, intangible assets and/or wage costs).

IV. COMMENTS SUBMITTED BY THE PORTUGUESE AUTHORITIES

(20) The Portuguese authorities noted that, although the investment took place within the European Union, it contributed to strengthening economic links with Eastern European markets. They stated that ORFAMA, Archimode and Wartatex were located in assisted regions with high unemployment rates. The textile industry accounts for 331 000 jobs in Poland and 95 446 jobs in Portugal. Employment rates in the industry declined by 15 percentage points between 2000 and 2003 in Portugal. The Portuguese authorities considered that, in this context, ORFAMA's investment contributed to maintaining employment in both the source and the host country and would have a positive impact on the regions concerned.

(21) The Portuguese authorities considered that the necessity of the aid was justified by the fact that this was the first foreign direct investment project by ORFAMA. It required a significant financial effort of EUR 9 217 516, of which EUR 8 978 362 was financed by bank loans and the remainder by the company's own capital. The aid would compensate ORFAMA for part of this effort.

(22) The project also aims to modernize production and information technologies in the Polish companies with a view to increasing productivity and improving product quality and energy efficiency. ORFAMA intended to replace industrial equipment. In the opinion of the Portuguese authorities, the project thus contributes to facilitating the development of an economic activity within the meaning of Article 87(3)(c) of the EC Treaty.

(23) Lastly, the Portuguese authorities argued that the aid would not have a negative impact on intra-Community trade. The investment in question concerned simply consolidates a pre-existing commercial relationship, from a subcontracting situation to one of ownership. In support of this argument, the Portuguese authorities provided statistics showing that between 1999 (when the investment took place) and 2003 ORFAMA's sales in Poland remained stable. In the same period ORFAMA's overall sales in the EU actually declined.

(24) Similarly, Poland's own exports to the EU of the products concerned also declined during this period.

(25) There were no comments from third parties.

V. ASSESSMENT

Presence of aid within the meaning of Article 87(1) of the EC Treaty

(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 shall, in so far as it affects trade between Member States, be incompatible with the common market'.

(27) The Commission, in its decision of 6 December 2004, concluded that the aid fell within the scope of Article 87(1) of the EC Treaty for the following reasons: by helping ORFAMA to carry out an investment in Poland, the notified measure favours a certain undertaking or the production of certain goods; the industry concerned (textiles) is the subject of substantial trade within the European Union and the aid may thus distort competition there; and the aid is financed through state resources. These conclusions have not been contested by the Portuguese authorities and are hereby confirmed.

Compatibility of the aid with the EC Treaty

(28) The Commission indicated that it would assess the compatibility of the aid with the EC Treaty in the light of the derogation under Article 87(3)(c) of the Treaty, which authorises aid 'to facilitate the development of certain economic activities' where such aid does not adversely affect trading conditions to an extent contrary to the common interest. It must, therefore, assess whether the aid will contribute to the development of fashion knitwear and clothing production and/or other economic activities in the European Union without adversely affecting trading conditions between Member States.

(29) In the decision to initiate the procedure, the Commission also noted that it would take into account certain criteria which it had applied in previous cases of aid to large companies for outward foreign direct investment projects (see paragraph 16) with a view to striking a balance between the benefits of the measure in terms of contributing to the international competitiveness of the EU industry concerned (e.g. whether the aid is necessary by reference to the risks associated with the project in the country of investment) and its possible negative effects on the EU market.

The necessity of the aid

(30) As a general principle of State aid legislation, in order for aid to be compatible with the common market, it must be demonstrated that the aid leads to an additional activity by the beneficiary which would not be carried out without the aid. Otherwise, the aid would simply distort without having any positive counter-effect.

(31) The Commission doubted already in the decision to initiate the procedure that the aid was necessary for ORFAMA to carry out this investment.

(32) According to the information available, ORFAMA is a well-established producer in the EU market, producing for well-known brands as well as under its own brand. The Portuguese authorities argued here that this was the first foreign direct investment project of ORFAMA and that the project involved risks relating to structural and cyclical aspects of the Polish market (namely the fact that Poland was in the process of negotiating accession to the European Union) and to conditions inherent in the structural factors of the promoter and of the country of origin. However, they did not specify the exact form that such risks took.

(33) The Portuguese authorities considered that the necessity of the aid was justified by the fact that this was the first foreign direct investment project of ORFAMA. The Commission, however, notes here that ORFAMA's business relations with Archimode and Wartatex started in the 1990s, when ORFAMA began producing garments under a subcontracting arrangements with these companies. In 1995 these two Polish companies already accounted for some 30 % of ORFAMA's turnover. ORFAMA was therefore familiar with the functioning of these companies before carrying out the project and thus has experience of both the Polish and international markets. Indeed, the beneficiary's objective of expanding production and gaining access to the Polish and neighbouring markets was already partly met even prior to acquiring these companies or applying for aid. Portugal itself seemed to confirm this assessment when it stated in the notification that ORFAMA's decision to invest in Poland was determined partly by the knowledge that the beneficiary already had of the Polish market and of the companies it acquired, thereby limiting the risks associated with the investment. The Commission, therefore, considers that the investment in question was essentially a financial operation for acquiring the Polish companies concerned in the context of an existing commercial relationship, rather than a first substantive foreign investment ([6]).

(34) The Commission also emphasises that ORFAMA applied for the aid only after the project had been completed and so did not comply with the 'incentive effect' criterion normally required by the Community rules on national regional aid ([7]). It also notes that ORFAMA was apparently able to finance the investment out of own resources and by resorting to commercial loans obtained even before it applied for the aid.

(35) Accordingly, the Commission concludes that Portugal has failed to demonstrate that the proposed aid is necessary to compensate for any specific risks associated with the project.

The impact of the aid on the Community market

(36) The Commission has maintained in previous cases that aid for foreign direct investment is likely to strengthen the beneficiary's overall financial and strategic position and thus affect its relative position with regard to competitors on the EU market ([8]).

(37) Portugal has argued in this respect that the objective of the investment is to allow ORFAMA to expand production, which has reached its capacity limits in Portugal, and to increase productivity by taking advantage of lower costs and a generally skilled and younger workforce in Poland. However, according to the Portuguese authorities, this project will also contribute to strengthening the European industry concerned by increasing the supply of products of EU origin and by promoting EU brands in the face of increasing competition from imports. For Portugal, granting aid to companies such as ORFAMA (and, indirectly, Archimode and Wartatex) is essential to ensuring that the EU textile industry remains competitive on EU and international markets.

([6]) A similar concept to that applied in point 4.4 of the Guidelines on national regional aid, which relates to 'initial investment'; see footnote 5.

([7]) See point 4.2 of the Guidelines on national regional aid, which states that an application for aid must be submitted before work on the project is started in order to ensure that the required incentive effect exists (OJ C 74, 10.3.1998, p. 13).

([8]) See Commission Decision 1999/365/EC in Case C 77/97 (Austrian LiftGmbH – Doppelmayr).

(38) The Commission notes, however, that the present investment is located in a country (Poland) that is now a member of the EU. The aid would affect a sector (textiles) which is presently under considerable pressure from the liberalisation of imports in January 2005. Other EU companies may be interested in reorganising themselves along similar lines to ORFAMA and the aid would thus give ORFAMA an advantage in comparison with companies that do not benefit from such aid.

(39) Portugal also stressed that the aid would benefit employment in both the Portuguese and the Polish regions concerned (Braga and Lodz respectively), which are assisted regions with high unemployment rates (see paragraph 20), but did not specify the way in which the aid could have an impact on employment in those regions.

(40) Lastly, the Commission notes that, even if the investment by ORFAMA could have a positive impact on the regions concerned (which was not demonstrated), this cannot, in principle, be attributable to the aid since, as explained above, the aid has no incentive effect in this case as the project was concluded prior to ORFAMA's requesting the aid and was not necessary to carry out the investment.

(41) When assessing the compatibility of aid, the Commission takes a close look at the balance between its positive and negative effects and determines whether its beneficial effects for the Community outweigh its negative effects on competition and trade on the Community market. On the basis of the above, it is not convinced that granting aid to ORFAMA in respect of its investment in Poland would help to improve the competitiveness of the European industry or would have a positive impact on the EU regions concerned. On the contrary, the aid would be likely to strengthen the position of the beneficiary to the detriment of its competitors not receiving State aid in a market that is characterised by intensive competition and trade. Therefore, the Commission considers that the aid does not have any positive effects for the Community that would outweigh its negative impact on competition and trade on the Community market.

VI. **CONCLUSION**

(42) On the basis of the above, the Commission concludes that the Portuguese authorities have failed to demonstrate that the aid is necessary for ORFAMA to carry out the investment concerned. The aid would thus simply have a distorting effect on competition in the common market without contributing to any additional activity on the part of the beneficiary. On this basis, the aid cannot be considered to facilitate the development of an economic activity within the meaning of Article 87(3)(c) of the EC Treaty without adversely affecting trading conditions to an extent contrary to the common interest and is therefore incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The tax incentive of EUR 921 752 proposed by Portugal for ORFAMA (Organização Fabril de Malhas S.A.) for its investment in Poland is incompatible with the common market since it does not meet the criteria under Article 87(3)(c) of the EC Treaty and must not therefore be implemented.

Article 2

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 7 March 2007.

For the Commission

Neelie KROES

Member of the Commission

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL DECISION 2005/495/CFSP

of 11 October 2005

concerning the conclusion of an Agreement in the form of an Exchange of Letters between the European Union and Brunei, Singapore, Malaysia, Thailand and the Philippines on the participation of those States in the European Union Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 24 thereof,

Having regard to the recommendation from the Presidency,

Whereas:

(1) On 9 September 2005 the Council adopted Joint Action 2005/643/CFSP [1] on the European Union Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM).

(2) Article 10(4) of that Joint Action provides that detailed arrangements regarding the participation of third States shall be the subject of an Agreement, in conformity with Article 24 of the Treaty on European Union.

(3) On 13 September 2004 the Council authorised the Presidency, assisted where necessary by the Secretary-General/High Representative, in case of future EU civilian crisis management operations, to open negotiations with third States with a view to concluding an Agreement on the basis of the model Agreement between the European Union and a third State on the participation of a third State in an European Union civilian crisis management operation. On this basis, the Presidency negotiated an Agreement in the form of an Exchange of Letters with Brunei, Singapore, Malaysia, Thailand and the Philippines on the participation of those States in the European Union Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM).

(4) The Agreement in the form of an Exchange of Letters should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an Exchange of Letters between the European Union and Brunei, Singapore, Malaysia, Thailand and the Philippines on the participation of those States in the European Union Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM) is hereby approved on behalf of the European Union.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in the form of an Exchange of Letters in order to bind the European Union.

Article 3

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

Article 4

This Decision shall be published in the *Official Journal of the European Union*.

Done at Luxembourg, 11 October 2005.

For the Council
The President
G. BROWN

[1] OJ L 234, 10.9.2005, p. 13. Joint Action as last amended by Joint Action 2006/607/CFSP (OJ L 246, 8.9.2006, p. 16).

AGREEMENT

in the form of an exchange of letters between the European Union and Brunei on the participation of Brunei in the European Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM)

A. *Letter from the European Union*

Jakarta, 26 October 2005

Your Excellency,

The Memorandum of Understanding (MoU) between the Government of Indonesia (GoI) and the Free Aceh Movement (GAM) signed at Helsinki on 15 August 2005, provides *inter alia* for the establishment by the European Union and ASEAN Contributing Countries of an Aceh Monitoring Mission (AMM) in Aceh (Indonesia). This MoU also provides that the status, privileges and immunities of the AMM and its members will be agreed between the GoI and the European Union (EU).

Accordingly, I have the honour to propose, in the Annex to this letter, the provisions which would apply to the participation of your country in the AMM, and the personnel deployed by your country, the status, privileges and immunities of which are set out in the agreement between the GoI, the EU and the ASEAN Contributing Countries.

I would be grateful if you could confirm your acceptance of the provisions set out in the Annex, and also confirm your understanding that this letter and its Annex, together with your reply, shall constitute a legally binding agreement between the EU and the Government of Brunei Darussalam, which shall enter into force on the day of signature of your reply, and shall remain in force for the duration of your country's participation in the AMM.

Please accept, Excellency, the assurances of my highest consideration.

H.E. MR. CHARLES HUMFREY, CMG

Ambassador of the United Kingdom to Indonesia

ANNEX I

1. Brunei Darussalam shall, as provided in the MoU, participate in the AMM, in accordance with the following provisions and any required implementing arrangements, without prejudice to the decision-making autonomy of the European Union.

2. The EU participation is based on the Joint Action adopted by the Council on 9 September 2005 on the European Union Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM). Brunei Darussalam shall associate itself with those provisions of the Joint Action that concern its participation and that of its personnel in the AMM, subject to the provisions of this Annex.

3. The decision to end the EU participation in the AMM shall be taken by the Council of the European Union, following consultation with Brunei Darussalam and provided that Brunei Darussalam is still contributing to the AMM at the date at which that decision is taken.

4. Brunei Darussalam shall ensure that its personnel participating in the AMM undertake their mission in conformity with:

   — the relevant provisions of the Joint Action adopted by the Council of the European Union on 9 September 2005 and possible subsequent amendments,

   — the Operation Plan (OPLAN) as approved by the Council of the European Union on 9 September 2005,

   — implementing arrangements under this agreement.

5. Personnel seconded to the AMM by Brunei Darussalam shall carry out their duties and conduct themselves solely with the interest of the AMM in mind.

6. Brunei Darussalam shall inform in due time the AMM Head of Mission of any change to its contribution to the AMM.

7. Personnel seconded to the AMM as of the start of the mission shall undergo a medical examination, vaccination and be certified medically fit for duty by a competent authority from Brunei Darussalam. Personnel seconded to the AMM shall produce a copy of this certification.

8. The status of the AMM personnel, including the personnel contributed to the AMM by Brunei Darussalam, shall be governed by the agreement on the status, privileges and immunities of the AMM between the GoI, the European Union and the ASEAN Contributing Countries.

9. Without prejudice to the agreement on the status of mission referred to in Section 8, Brunei Darussalam shall exercise jurisdiction over its personnel participating in the AMM.

10. Brunei Darussalam shall, in accordance with its national law and subject to any immunities conferred by the agreement on the status, privileges and immunities of the AMM, be responsible for answering any claims linked to the participation in the AMM, from or concerning any of its personnel. Brunei Darussalam shall be responsible for bringing any action, in particular legal or disciplinary, against any of its personnel, in accordance with its laws and regulations.

11. Brunei Darussalam undertakes, on the basis of reciprocity, to make a declaration as regards the waiver of claims against any State participating in the AMM, and to do so when signing this Exchange of Letters. A model for such a declaration is set out in Annex II.

12. The European Union shall ensure that its Member States make, on the basis of reciprocity, a declaration as regards the waiver of claims, for the participation of Brunei Darussalam in the AMM, and to do so when signing this Exchange of Letters. A model for such a declaration is set out in Annex II.

13. The rules regarding the exchange and security of classified information are set out in Annex III. Further guidance may be issued by competent authorities, including the AMM Head of Mission.

14. All personnel participating in the AMM shall remain under the full command of their national authorities.

15. National authorities shall transfer operational control to the AMM Head of Mission, who shall exercise that command through a hierarchical structure of command and control.

16. The Head of Mission shall lead the AMM and assume its day-to-day management.

17. Brunei Darussalam shall have the same rights and obligations in terms of the day-to-day management of the operation as participating European Union Member States taking part in the AMM, in accordance with the legal instrument referred to in Section 2.

18. The AMM Head of Mission shall be responsible for disciplinary control over AMM personnel. Where required, disciplinary action shall be taken by the national authority concerned.

19. A National Contingent Point of Contact (NPC) shall be appointed by Brunei Darussalam to represent its national contingent in the AMM. The NPC shall report to the AMM Head of Mission on national matters and shall be responsible for day-to-day contingent discipline.

20. Brunei Darussalam shall assume all the costs associated with its participation in the mission.

21. Brunei Darussalam shall not contribute to the financing of the operational budget of the AMM.

22. In case of death, injury, loss or damage to natural or legal persons from the State in which the mission is conducted, Brunei Darussalam shall, when its liability has been established, pay compensation under the conditions foreseen in the agreement on the status, privileges and immunities of the AMM as referred to in Section 8.

23. Any necessary technical and administrative arrangements to implement this agreement shall be concluded between the Secretary General of the Council of the European Union/High Representative for the Common Foreign and Security Policy or by the Head of Mission, and the appropriate authorities of Brunei Darussalam.

24. Either Party shall have the right to terminate this agreement by serving a written notice of one month.

25. Disputes concerning the interpretation or application of this agreement shall be settled only by diplomatic means between the Parties.

ANNEX II

Texts for reciprocal declarations referred to in Sections 11 and 12

Text for the EU Member States:

'The EU Member States applying the Joint Action adopted by the Council of the European Union on 9 September 2005 on the EU Monitoring Mission in Aceh (Aceh Monitoring Mission — AMM) will endeavour, insofar as their internal legal systems so permit, to waive as far as possible claims against Brunei Darussalam for injury, death of their personnel, or damage to, or loss of, any assets owned by themselves and used by the AMM if such injury, death, damage or loss:

— was caused by personnel from Brunei Darussalam in the execution of their duties in connection with the AMM, except in case of gross negligence or wilful misconduct, or

— arose from the use of any assets owned by Brunei Darussalam, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of AMM personnel from Brunei Darussalam using those assets.'

Text for Brunei Darussalam:

'Brunei Darussalam participating in the AMM as referred to in paragraph 5.3 of the MoU and in the Joint Action adopted by the Council of the European Union on 9 September 2005 on the European Union Monitoring Mission in Aceh (Aceh Monitoring Mission — AMM) will endeavour, insofar as its internal legal system so permits, to waive as far as possible claims against any other State participating in the AMM for injury, death of its personnel, or damage to, or loss of, any assets owned by itself and used by the AMM if such injury, death, damage or loss:

— was caused by personnel in the execution of their duties in connection with the AMM, except in case of gross negligence or wilful misconduct, or

— arose from the use of any assets owned by States participating in the AMM, provided that the assets were used in connection with the mission and except in case of gross negligence or wilful misconduct of AMM personnel using those assets.'

ANNEX III

Rules on the exchange and security of classified information

In order to establish a framework for exchanging classified information relevant in the context of the AMM up to classification level RESTRICTED (RESTREINT UE) between the European Union and Brunei Darussalam, the following rules will apply.

Brunei Darussalam will ensure that EU classified information (i.e. any information (namely knowledge that can be communicated in any form) or material determined to require protection against unauthorised disclosure and which has been so designated by a security classification) released to it retains the security classification given to it by the EU and will safeguard such information in accordance with the following rules, based on the Council Security Regulations [1], in particular:

— Brunei Darussalam will not use the released EU classified information for purposes other than those for which those EU classified information have been released to Brunei Darussalam and for other than those established by the originator,

— Brunei Darussalam will not disclose such information to third parties without the prior consent of the EU,

— Brunei Darussalam will ensure that access to EU classified information released to it will be authorised only for individuals who have a valid need-to-know,

— Brunei Darussalam will ensure that, before being given access to EU classified information, all individuals who require access to such information are briefed on and comply with the requirements of the protective security regulations relevant to the classification of the information they are to access,

— taking into account their level of classification, EU classified information will be forwarded to Brunei Darussalam by diplomatic bag, military mail services, secure mail services, secure telecommunications or personal carriage. Brunei Darussalam will notify in advance to the General Secretariat of the Council of the EU the name and address of the body responsible for the security of classified information and the precise addresses to which the information and documents must be forwarded,

— Brunei Darussalam will ensure that all premises, areas, buildings, offices, rooms, communication and information systems and the like, in which EU classified information and documents are stored and/or handled, are protected by appropriate physical security measures,

— Brunei Darussalam will ensure that EU classified documents released to it are, on their receipt, recorded in a special register. Brunei Darussalam will ensure that copies of EU classified documents released to it which may be made by the recipient body, their number, distribution and destruction, are recorded in this special register,

— Brunei Darussalam will notify the General Secretariat of the Council of the EU about any case of compromise of EU classified information released to it. In such a case, Brunei Darussalam will initiate investigations and take appropriate measures to prevent a recurrence.

For the purposes of the present rules, classified information released to the European Union by Brunei Darussalam will be treated as if it were EU classified information and will be granted an equivalent level of protection.

Once the present agreement has expired or been terminated, all classified information or material provided or exchanged pursuant to it shall continue to be protected in accordance with the provisions set forth herein.

[1] OJ L 101, 11.4.2001, p. 1. Document annexed to the present letter.

B. *Letter from Brunei*

Jakarta, 9 February 2006

Your Excellency,

I refer to your letter dated 26 October 2006 proposing the provisions which will apply to the personnel deployed by Brunei Darussalam related to the status, privileges and immunities of the Aceh Monitoring Mission (AMM) and its members, which are set out in the Annexes to this letter.

I have the honour to confirm the acceptance by the Government of Brunei Darussalam of the provisions set out in the said Annexes. I have the further honour to confirm that the above letter and this letter hereby constitutes an agreement between the Government of Brunei Darussalam and the European Union on the status, privileges and immunities of the AMM, which shall enter into force on the date of this letter. The agreement shall remain in force for the duration of Brunei Darussalam's participation in the AMM.

Brunei Darussalam participating in the AMM as referred to in paragraph 5.3 of the MoU and in the Joint Action adopted by the Council of the European Union on 9 September 2006 on the European Union Monitoring Mission in Aceh (Aceh Monitoring Mission — AMM) will endeavour, insofar as its internal legal systems so permits, to waive as far as possible claims against any other State participating in the AMM for injury, death of its personnel, or damage to, or loss of any assets owned by itself and used by the AMM if such injury, death or loss:

— was caused by personnel in the execution of their duties in connection with the AMM, except in case of gross negligence or willful misconduct, or

— arose from the use of any assets owned by States participating in the AMM, provided that the assets were used in connection with the mission and except in case of gross negligence or willful misconduct of AMM personnel using those assets.

Please, accept. Excellency, the assurances of my highest consideration.

ABU BAKAR HAJI DONGLAH
Charge d'Affaires a.i.

AGREEMENT

in the form of an exchange of letters between the European Union and Singapore on the participation of Singapore in the European Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM)

A. *Letter from the European Union*

Jakarta, 26 October 2005

Your Excellency,

The Memorandum of Understanding (MoU) between the Government of Indonesia (GoI) and the Free Aceh Movement (GAM) signed at Helsinki on 15 August 2005, provides *inter alia* for the establishment by the European Union and ASEAN Contributing Countries of an Aceh Monitoring Mission (AMM) in Aceh (Indonesia). This MoU also provides that the status, privileges and immunities of the AMM and its members will be agreed between the GoI and the European Union (EU).

Accordingly, I have the honour to propose, in the Annex to this letter, the provisions which would apply to the participation of your country in the AMM, and the personnel deployed by your country, the status, privileges and immunities of which are set out in the agreement between the GoI, the EU and the ASEAN Contributing Countries.

I would be grateful if you could confirm your acceptance of the provisions set out in the Annex, and also confirm your understanding that this letter and its Annex, together with your reply, shall constitute a legally binding agreement between the EU and the Government of the Republic of Singapore, which shall enter into force on the day of signature of your reply, and shall remain in force for the duration of your country's participation in the AMM.

Please accept, Excellency, the assurances of my highest consideration.

H.E. MR. CHARLES HUMFREY, CMG

Ambassador of the United Kingdom to Indonesia

ANNEX I

1. The Republic of Singapore shall, as provided in the MoU, participate in the AMM, in accordance with the following provisions and any required implementing arrangements, without prejudice to the decision-making autonomy of the European Union.

2. The EU participation is based on the Joint Action adopted by the Council on 9 September 2005 on the European Union Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM). The Republic of Singapore shall associate itself with those provisions of the Joint Action that concern its participation and that of its personnel in the AMM, subject to the provisions of this Annex.

3. The decision to end the EU participation in the AMM shall be taken by the Council of the European Union, following consultation with the Republic of Singapore and provided that the Republic of Singapore is still contributing to the AMM at the date at which that decision is taken.

4. The Republic of Singapore shall ensure that its personnel participating in the AMM undertake their mission in conformity with:

   — the relevant provisions of the Joint Action adopted by the Council of the European Union on 9 September 2005 and possible subsequent amendments,

   — the Operation Plan (OPLAN) as approved by the Council of the European Union on 9 September 2005,

   — implementing arrangements under this agreement.

5. Personnel seconded to the AMM by the Republic of Singapore shall carry out their duties and conduct themselves solely with the interest of the AMM in mind.

6. The Republic of Singapore shall inform in due time the AMM Head of Mission of any change to its contribution to the AMM.

7. Personnel seconded to the AMM as of the start of the mission shall undergo a medical examination, vaccination and be certified medically fit for duty by a competent authority from the Republic of Singapore. Personnel seconded to the AMM shall produce a copy of this certification.

8. The status of the AMM personnel, including the personnel contributed to the AMM by the Republic of Singapore, shall be governed by the agreement on the status, privileges and immunities of the AMM between the GoI, the European Union and the ASEAN Contributing Countries.

9. Without prejudice to the agreement on the status of mission referred to in Section 8, the Republic of Singapore shall exercise jurisdiction over its personnel participating in the AMM.

10. The Republic of Singapore shall, in accordance with its national law and subject to any immunities conferred by the agreement on the status, privileges and immunities of the AMM, be responsible for answering any claims linked to the participation in the AMM, from or concerning any of its personnel. The Republic of Singapore shall be responsible for bringing any action, in particular legal or disciplinary, against any of its personnel, in accordance with its laws and regulations.

11. The Republic of Singapore undertakes, on the basis of reciprocity, to make a declaration as regards the waiver of claims against any State participating in the AMM, and to do so when signing this Exchange of Letters. A model for such a declaration is set out in Annex II.

12. The European Union shall ensure that its Member States make, on the basis of reciprocity, a declaration as regards the waiver of claims, for the participation of the Republic of Singapore in the AMM, and to do so when signing this Exchange of Letters. A model for such a declaration is set out in Annex II.

13. The rules regarding the exchange and security of classified information are set out in Annex III. Further guidance may be issued by competent authorities, including the AMM Head of Mission.

14. All personnel participating in the AMM shall remain under the full command of their national authorities.

15. National authorities shall transfer operational control to the AMM Head of Mission, who shall exercise that command through a hierarchical structure of command and control.

16. The Head of Mission shall lead the AMM and assume its day-to-day management.

17. The Republic of Singapore shall have the same rights and obligations in terms of the day-to-day management of the operation as participating European Union Member States taking part in the AMM, in accordance with the legal instrument referred to in Section 2.

18. The AMM Head of Mission shall be responsible for disciplinary control over AMM personnel. Where required, disciplinary action shall be taken by the national authority concerned.

19. A National Contingent Point of Contact (NPC) shall be appointed by the Republic of Singapore to represent its national contingent in the AMM. The NPC shall report to the AMM Head of Mission on national matters and shall be responsible for day-to-day contingent discipline.

20. The Republic of Singapore shall assume all the costs associated with its participation in the mission.

21. The Republic of Singapore shall not contribute to the financing of the operational budget of the AMM.

22. In case of death, injury, loss or damage to natural or legal persons from the State in which the mission is conducted, the Republic of Singapore shall, when its liability has been established, pay compensation under the conditions foreseen in the agreement on the status, privileges and immunities of the AMM as referred to in Section 8.

23. Any necessary technical and administrative arrangements to implement this agreement shall be concluded between the Secretary General of the Council of the European Union/High Representative for the Common Foreign and Security Policy or by the Head of Mission, and the appropriate authorities of the Republic of Singapore.

24. Either Party shall have the right to terminate this agreement by serving a written notice of one month.

25. Disputes concerning the interpretation or application of this agreement shall be settled only by diplomatic means between the Parties.

ANNEX II

Texts for reciprocal declarations referred to in Sections 11 and 12

Text for the EU Member States:

'The EU Member States applying the Joint Action adopted by the Council of the European Union on 9 September 2005 on the EU Monitoring Mission in Aceh (Aceh Monitoring Mission — AMM) will endeavour, insofar as their internal legal systems so permit, to waive as far as possible claims against the Republic of Singapore for injury, death of their personnel, or damage to, or loss of, any assets owned by themselves and used by the AMM if such injury, death, damage or loss:

— was caused by personnel from the Republic of Singapore in the execution of their duties in connection with the AMM, except in case of gross negligence or wilful misconduct, or

— arose from the use of any assets owned by the Republic of Singapore, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of AMM personnel from the Republic of Singapore using those assets.'

Text for the Republic of Singapore:

'The Republic of Singapore participating in the AMM as referred to in paragraph 5.3 of the MoU and in the Joint Action adopted by the Council of the European Union on 9 September 2005 on the European Union Monitoring Mission in Aceh (Aceh Monitoring Mission — AMM) will endeavour, insofar as its internal legal system so permits, to waive as far as possible claims against any other State participating in the AMM for injury, death of its personnel, or damage to, or loss of, any assets owned by itself and used by the AMM if such injury, death, damage or loss:

— was caused by personnel in the execution of their duties in connection with the AMM, except in case of gross negligence or wilful misconduct, or

— arose from the use of any assets owned by States participating in the AMM, provided that the assets were used in connection with the mission and except in case of gross negligence or wilful misconduct of AMM personnel using those assets.'

ANNEX III

Rules on the exchange and security of classified information

In order to establish a framework for exchanging classified information relevant in the context of the AMM up to classification level RESTRICTED (RESTREINT UE) between the European Union and the Republic of Singapore, the following rules will apply.

The Republic of Singapore will ensure that EU classified information (i.e. any information (namely knowledge that can be communicated in any form) or material determined to require protection against unauthorised disclosure and which has been so designated by a security classification) released to it retains the security classification given to it by the EU and will safeguard such information in accordance with the following rules, based on the Council Security Regulations [1], in particular:

— the Republic of Singapore will not use the released EU classified information for purposes other than those for which those EU classified information have been released to the Republic of Singapore and for other than those established by the originator,

— the Republic of Singapore will not disclose such information to third parties without the prior consent of the EU,

— the Republic of Singapore will ensure that access to EU classified information released to it will be authorised only for individuals who have a valid need-to-know,

— the Republic of Singapore will ensure that, before being given access to EU classified information, all individuals who require access to such information are briefed on and comply with the requirements of the protective security regulations relevant to the classification of the information they are to access,

— taking into account their level of classification, EU classified information will be forwarded to the Republic of Singapore by diplomatic bag, military mail services, secure mail services, secure telecommunications or personal carriage. The Republic of Singapore will notify in advance to the General Secretariat of the Council of the EU the name and address of the body responsible for the security of classified information and the precise addresses to which the information and documents must be forwarded,

— the Republic of Singapore will ensure that all premises, areas, buildings, offices, rooms, communication and information systems and the like, in which EU classified information and documents are stored and/or handled, are protected by appropriate physical security measures,

— the Republic of Singapore will ensure that EU classified documents released to it are, on their receipt, recorded in a special register. The Republic of Singapore will ensure that copies of EU classified documents released to it which may be made by the recipient body, their number, distribution and destruction, are recorded in this special register,

— the Republic of Singapore will notify the General Secretariat of the Council of the EU about any case of compromise of EU classified information released to it. In such a case, the Republic of Singapore will initiate investigations and take appropriate measures to prevent a recurrence.

For the purposes of the present rules, classified information released to the European Union by the Republic of Singapore will be treated as if it were EU classified information and will be granted an equivalent level of protection.

Once the present agreement has expired or been terminated, all classified information or material provided or exchanged pursuant to it shall continue to be protected in accordance with the provisions set forth herein.

[1] OJ L 101, 11.4.2001, p. 1. Document annexed to the present letter.

B. *Letter from Singapore*

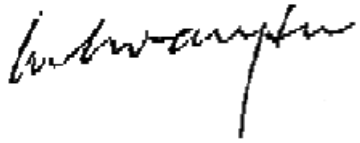
Jakarta, 9 February 2006

Your Excellency

I write to you in your capacity as the European Union President in Indonesia. With reference to your predecessor H.E. Mr Charles Humphrey's letter of 26 October 2005, I have the honour, on behalf of the Government of Singapore, to confirm our acceptance of the provisions set out in the Annexes to that letter.

We also confirm that this reply, together with Mr Humphrey's letter and its Annexes, shall constitute a legally binding agreement between the EU and our country, which shall enter into force on the day of signature of this letter. We would also like to record our understanding that, specifically, Annex II to Mr Humphrey's letter constitutes the binding reciprocal declarations envisaged by paragraphs 11 and 12 of Annex I to his letter.

Please accept, Excellency, the assurances of my highest consideration.



EDWARD LEE
Ambassador

AGREEMENT

in the form of an exchange of letters between the European Union and Malaysia on the participation of Malaysia in the European Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM)

A. *Letter from the European Union*

Jakarta, 26 October 2005

Your Excellency,

The Memorandum of Understanding (MoU) between the Government of Indonesia (GoI) and the Free Aceh Movement (GAM) signed at Helsinki on 15 August 2005, provides *inter alia* for the establishment by the European Union and ASEAN Contributing Countries of an Aceh Monitoring Mission (AMM) in Aceh (Indonesia). This MoU also provides that the status, privileges and immunities of the AMM and its members will be agreed between the GoI and the European Union (EU).

Accordingly, I have the honour to propose, in the Annex to this letter, the provisions which would apply to the participation of your country in the AMM, and the personnel deployed by your country, the status, privileges and immunities of which are set out in the agreement between the GoI, the EU and the ASEAN Contributing Countries.

I would be grateful if you could confirm your acceptance of the provisions set out in the Annex, and also confirm your understanding that this letter and its Annex, together with your reply, shall constitute a legally binding agreement between the EU and the Government of Malaysia, which shall enter into force on the day of signature of your reply, and shall remain in force for the duration of your country's participation in the AMM.

Please accept, Excellency, the assurances of my highest consideration.

H.E. MR. CHARLES HUMFREY, CMG

Ambassador of the United Kingdom to Indonesia

ANNEX I

1. Malaysia shall, as provided in the MoU, participate in the AMM, in accordance with the following provisions and any required implementing arrangements, without prejudice to the decision-making autonomy of the European Union.

2. The EU participation is based on the Joint Action adopted by the Council on 9 September 2005 on the European Union Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM). Malaysia shall associate itself with those provisions of the Joint Action that concern its participation and that of its personnel in the AMM, subject to the provisions of this Annex.

3. The decision to end the EU participation in the AMM shall be taken by the Council of the European Union, following consultation with Malaysia and provided that Malaysia is still contributing to the AMM at the date at which that decision is taken.

4. Malaysia shall ensure that its personnel participating in the AMM undertake their mission in conformity with:

   — the relevant provisions of the Joint Action adopted by the Council of the European Union on 9 September 2005 and possible subsequent amendments,

   — the Operation Plan (OPLAN) as approved by the Council of the European Union on 9 September 2005,

   — implementing arrangements under this agreement.

5. Personnel seconded to the AMM by Malaysia shall carry out their duties and conduct themselves solely with the interest of the AMM in mind.

6. Malaysia shall inform in due time the AMM Head of Mission of any change to its contribution to the AMM.

7. Personnel seconded to the AMM as of the start of the mission shall undergo a medical examination, vaccination and be certified medically fit for duty by a competent authority from Malaysia. Personnel seconded to the AMM shall produce a copy of this certification.

8. The status of the AMM personnel, including the personnel contributed to the AMM by Malaysia, shall be governed by the agreement on the status, privileges and immunities of the AMM between the GoI, the European Union and the ASEAN Contributing Countries.

9. Without prejudice to the agreement on the status of mission referred to in Section 8, Malaysia shall exercise jurisdiction over its personnel participating in the AMM.

10. Malaysia shall, in accordance with its national law and subject to any immunities conferred by the agreement on the status, privileges and immunities of the AMM, be responsible for answering any claims linked to the participation in the AMM, from or concerning any of its personnel. Malaysia shall be responsible for bringing any action, in particular legal or disciplinary, against any of its personnel, in accordance with its laws and regulations.

11. Malaysia undertakes, on the basis of reciprocity, to make a declaration as regards the waiver of claims against any State participating in the AMM, and to do so when signing this Exchange of Letters. A model for such a declaration is set out in Annex II.

12. The European Union shall ensure that its Member States make, on the basis of reciprocity, a declaration as regards the waiver of claims, for the participation of Malaysia in the AMM, and to do so when signing this Exchange of Letters. A model for such a declaration is set out in Annex II.

13. The rules regarding the exchange and security of classified information are set out in Annex III. Further guidance may be issued by competent authorities, including the AMM Head of Mission.

14. All personnel participating in the AMM shall remain under the full command of their national authorities.

15. National authorities shall transfer operational control to the AMM Head of Mission, who shall exercise that command through a hierarchical structure of command and control.

16. The Head of Mission shall lead the AMM and assume its day-to-day management.

17. Malaysia shall have the same rights and obligations in terms of the day-to-day management of the operation as participating European Union Member States taking part in the AMM, in accordance with the legal instrument referred to in Section 2.

18. The AMM Head of Mission shall be responsible for disciplinary control over AMM personnel. Where required, disciplinary action shall be taken by the national authority concerned.

19. A National Contingent Point of Contact (NPC) shall be appointed by Malaysia to represent its national contingent in the AMM. The NPC shall report to the AMM Head of Mission on national matters and shall be responsible for day-to-day contingent discipline.

20. Malaysia shall assume all the costs associated with its participation in the mission.

21. Malaysia shall not contribute to the financing of the operational budget of the AMM.

22. In case of death, injury, loss or damage to natural or legal persons from the State in which the mission is conducted, Malaysia shall, when its liability has been established, pay compensation under the conditions foreseen in the agreement on the status, privileges and immunities of the AMM as referred to in Section 8.

23. Any necessary technical and administrative arrangements to implement this agreement shall be concluded between the Secretary General of the Council of the European Union/High Representative for the Common Foreign and Security Policy or by the Head of Mission, and the appropriate authorities of Malaysia.

24. Either Party shall have the right to terminate this agreement by serving a written notice of one month.

25. Disputes concerning the interpretation or application of this agreement shall be settled only by diplomatic means between the Parties.

ANNEX II

Texts for reciprocal declarations referred to in Sections 11 and 12

Text for the EU Member States:

'The EU Member States applying the Joint Action adopted by the Council of the European Union on 9 September 2005 on the EU Monitoring Mission in Aceh (Aceh Monitoring Mission — AMM) will endeavour, insofar as their internal legal systems so permit, to waive as far as possible claims against Malaysia for injury, death of their personnel, or damage to, or loss of, any assets owned by themselves and used by the AMM if such injury, death, damage or loss:

— was caused by personnel from Malaysia in the execution of their duties in connection with the AMM, except in case of gross negligence or wilful misconduct, or

— arose from the use of any assets owned by Malaysia, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of AMM personnel from Malaysia using those assets.'

Text for Malaysia:

'Malaysia participating in the AMM as referred to in paragraph 5.3 of the MoU and in the Joint Action adopted by the Council of the European Union on 9 September 2005 on the European Union Monitoring Mission in Aceh (Aceh Monitoring Mission — AMM) will endeavour, insofar as its internal legal system so permits, to waive as far as possible claims against any other State participating in the AMM for injury, death of its personnel, or damage to, or loss of, any assets owned by itself and used by the AMM if such injury, death, damage or loss:

— was caused by personnel in the execution of their duties in connection with the AMM, except in case of gross negligence or wilful misconduct, or

— arose from the use of any assets owned by States participating in the AMM, provided that the assets were used in connection with the mission and except in case of gross negligence or wilful misconduct of AMM personnel using those assets.'

ANNEX III

Rules on the exchange and security of classified information

In order to establish a framework for exchanging classified information relevant in the context of the AMM up to classification level RESTRICTED (RESTREINT UE) between the European Union and Malaysia, the following rules will apply.

Malaysia will ensure that EU classified information (i.e. any information (namely knowledge that can be communicated in any form) or material determined to require protection against unauthorised disclosure and which has been so designated by a security classification) released to it retains the security classification given to it by the EU and will safeguard such information in accordance with the following rules, based on the Council Security Regulations [1], in particular:

— Malaysia will not use the released EU classified information for purposes other than those for which those EU classified information have been released to Malaysia and for other than those established by the originator,

— Malaysia will not disclose such information to third parties without the prior consent of the EU,

— Malaysia will ensure that access to EU classified information released to it will be authorised only for individuals who have a valid need-to-know,

— Malaysia will ensure that, before being given access to EU classified information, all individuals who require access to such information are briefed on and comply with the requirements of the protective security regulations relevant to the classification of the information they are to access,

— taking into account their level of classification, EU classified information will be forwarded to Malaysia by diplomatic bag, military mail services, secure mail services, secure telecommunications or personal carriage. Malaysia will notify in advance to the General Secretariat of the Council of the EU the name and address of the body responsible for the security of classified information and the precise addresses to which the information and documents must be forwarded,

— Malaysia will ensure that all premises, areas, buildings, offices, rooms, communication and information systems and the like, in which EU classified information and documents are stored and/or handled, are protected by appropriate physical security measures,

— Malaysia will ensure that EU classified documents released to it are, on their receipt, recorded in a special register. Malaysia will ensure that copies of EU classified documents released to it which may be made by the recipient body, their number, distribution and destruction, are recorded in this special register,

— Malaysia will notify the General Secretariat of the Council of the EU about any case of compromise of EU classified information released to it. In such a case, Malaysia will initiate investigations and take appropriate measures to prevent a recurrence.

For the purposes of the present rules, classified information released to the European Union by Malaysia will be treated as if it were EU classified information and will be granted an equivalent level of protection.

Once the present agreement has expired or been terminated, all classified information or material provided or exchanged pursuant to it shall continue to be protected in accordance with the provisions set forth herein.

[1] OJ L 101, 11.4.2001, p. 1. Document annexed to the present letter.

B. *Letter from Malaysia*

Jakarta, 23 December 2005

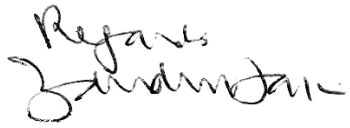
Your Excellency,

I have the honour to refer to the abovementioned subject.

Firstly, I would like to express my appreciation to your letter dated 26 October 2005 regarding the participation of Malaysia in the Aceh Monitoring Mission (AMM) which was established after the signing of the Memorandum of Understanding (MoU) between the Government of Indonesia and the Free Aceh Movement (GAM) in Helsinki on 15 August 2005.

I have the honour to confirm, on behalf of the Government of Malaysia, its acceptance of the provisions set out in the Annexes as attached in your letter. I have further the honour to confirm that this letter, together with your letter and its Annexes, shall constitute a legally binding agreement, between the Government of Malaysia and the European Union, which shall enter into force on the date of this letter, and shall remain in force for the duration of Malaysia's participation in the AMM.

Please accept, Excellency, the assurances of my highest consideration.



(DATO' ZAINAL ABSDIN ZAIN)

Ambassador of Malaysia to the Republic of Indonesia

AGREEMENT

in the form of an exchange of letters between the European Union and Thailand on the participation of Thailand in the European Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM)

A. *Letter from the European Union*

Jakarta, 26 October 2005

Your Excellency,

The Memorandum of Understanding (MoU) between the Government of Indonesia (GoI) and the Free Aceh Movement (GAM) signed at Helsinki on 15 August 2005, provides *inter alia* for the establishment by the European Union and ASEAN Contributing Countries of an Aceh Monitoring Mission (AMM) in Aceh (Indonesia). This MoU also provides that the status, privileges and immunities of the AMM and its members will be agreed between the GoI and the European Union (EU).

Accordingly, I have the honour to propose, in the Annex to this letter, the provisions which would apply to the participation of your country in the AMM, and the personnel deployed by your country, the status, privileges and immunities of which are set out in the agreement between the GoI, the EU and the ASEAN Contributing Countries.

I would be grateful if you could confirm your acceptance of the provisions set out in the Annex, and also confirm your understanding that this letter and its Annex, together with your reply, shall constitute a legally binding agreement between the EU and the Government of the Kingdom of Thailand, which shall enter into force on the day of signature of your reply, and shall remain in force for the duration of your country's participation in the AMM.

Please accept, Excellency, the assurances of my highest consideration.

H.E. MR. CHARLES HUMFREY, CMG

Ambassador of the United Kingdom to Indonesia

ANNEX I

1. The Kingdom of Thailand shall, as provided in the MoU, participate in the AMM, in accordance with the following provisions and any required implementing arrangements, without prejudice to the decision-making autonomy of the European Union.

2. The EU participation is based on the Joint Action adopted by the Council on 9 September 2005 on the European Union Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM). The Kingdom of Thailand shall associate itself with those provisions of the Joint Action that concern its participation and that of its personnel in the AMM, subject to the provisions of this Annex.

3. The decision to end the EU participation in the AMM shall be taken by the Council of the European Union, following consultation with the Kingdom of Thailand and provided that the Kingdom of Thailand is still contributing to the AMM at the date at which that decision is taken.

4. The Kingdom of Thailand shall ensure that its personnel participating in the AMM undertake their mission in conformity with:

   — the relevant provisions of the Joint Action adopted by the Council of the European Union on 9 September 2005 and possible subsequent amendments,

   — the Operation Plan (OPLAN) as approved by the Council of the European Union on 9 September 2005,

   — implementing arrangements under this agreement.

5. Personnel seconded to the AMM by the Kingdom of Thailand shall carry out their duties and conduct themselves solely with the interest of the AMM in mind.

6. The Kingdom of Thailand shall inform in due time the AMM Head of Mission of any change to its contribution to the AMM.

7. Personnel seconded to the AMM as of the start of the mission shall undergo a medical examination, vaccination and be certified medically fit for duty by a competent authority from the Kingdom of Thailand. Personnel seconded to the AMM shall produce a copy of this certification.

8. The status of the AMM personnel, including the personnel contributed to the AMM by the Kingdom of Thailand, shall be governed by the agreement on the status, privileges and immunities of the AMM between the GoI, the European Union and the ASEAN Contributing Countries.

9. Without prejudice to the agreement on the status of mission referred to in Section 8, the Kingdom of Thailand shall exercise jurisdiction over its personnel participating in the AMM.

10. The Kingdom of Thailand shall, in accordance with its national law and subject to any immunities conferred by the agreement on the status, privileges and immunities of the AMM, be responsible for answering any claims linked to the participation in the AMM, from or concerning any of its personnel. The Kingdom of Thailand shall be responsible for bringing any action, in particular legal or disciplinary, against any of its personnel, in accordance with its laws and regulations.

11. The Kingdom of Thailand undertakes, on the basis of reciprocity, to make a declaration as regards the waiver of claims against any State participating in the AMM, and to do so when signing this Exchange of Letters. A model for such a declaration is set out in Annex II.

12. The European Union shall ensure that its Member States make, on the basis of reciprocity, a declaration as regards the waiver of claims, for the participation of the Kingdom of Thailand in the AMM, and to do so when signing this Exchange of Letters. A model for such a declaration is set out in Annex II.

13. The rules regarding the exchange and security of classified information are set out in Annex III. Further guidance may be issued by competent authorities, including the AMM Head of Mission.

14. All personnel participating in the AMM shall remain under the full command of their national authorities.

15. National authorities shall transfer operational control to the AMM Head of Mission, who shall exercise that command through a hierarchical structure of command and control.

16. The Head of Mission shall lead the AMM and assume its day-to-day management.

17. The Kingdom of Thailand shall have the same rights and obligations in terms of the day-to-day management of the operation as participating European Union Member States taking part in the AMM, in accordance with the legal instrument referred to in Section 2.

18. The AMM Head of Mission shall be responsible for disciplinary control over AMM personnel. Where required, disciplinary action shall be taken by the national authority concerned.

19. A National Contingent Point of Contact (NPC) shall be appointed by the Kingdom of Thailand to represent its national contingent in the AMM. The NPC shall report to the AMM Head of Mission on national matters and shall be responsible for day-to-day contingent discipline.

20. The Kingdom of Thailand shall assume all the costs associated with its participation in the mission.

21. The Kingdom of Thailand shall not contribute to the financing of the operational budget of the AMM.

22. In case of death, injury, loss or damage to natural or legal persons from the State in which the mission is conducted, the Kingdom of Thailand shall, when its liability has been established, pay compensation under the conditions foreseen in the agreement on the status, privileges and immunities of the AMM as referred to in Section 8.

23. Any necessary technical and administrative arrangements to implement this agreement shall be concluded between the Secretary General of the Council of the European Union/High Representative for the Common Foreign and Security Policy or by the Head of Mission, and the appropriate authorities of the Kingdom of Thailand.

24. Either Party shall have the right to terminate this agreement by serving a written notice of one month.

25. Disputes concerning the interpretation or application of this agreement shall be settled only by diplomatic means between the Parties.

ANNEX II

Texts for reciprocal declarations referred to in Sections 11 and 12

Text for the EU Member States:

'The EU Member States applying the Joint Action adopted by the Council of the European Union on 9 September 2005 on the EU Monitoring Mission in Aceh (Aceh Monitoring Mission — AMM) will endeavour, insofar as their internal legal systems so permit, to waive as far as possible claims against the Kingdom of Thailand for injury, death of their personnel, or damage to, or loss of, any assets owned by themselves and used by the AMM if such injury, death, damage or loss:

— was caused by personnel from the Kingdom of Thailand in the execution of their duties in connection with the AMM, except in case of gross negligence or wilful misconduct, or

— arose from the use of any assets owned by the Kingdom of Thailand, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of AMM personnel from the Kingdom of Thailand using those assets.'

Text for the Kingdom of Thailand:

'The Kingdom of Thailand participating in the AMM as referred to in paragraph 5.3 of the MoU and in the Joint Action adopted by the Council of the European Union on 9 September 2005 on the European Union Monitoring Mission in Aceh (Aceh Monitoring Mission — AMM) will endeavour, insofar as its internal legal system so permits, to waive as far as possible claims against any other State participating in the AMM for injury, death of its personnel, or damage to, or loss of, any assets owned by itself and used by the AMM if such injury, death, damage or loss:

— was caused by personnel in the execution of their duties in connection with the AMM, except in case of gross negligence or wilful misconduct, or

— arose from the use of any assets owned by States participating in the AMM, provided that the assets were used in connection with the mission and except in case of gross negligence or wilful misconduct of AMM personnel using those assets.'

ANNEX III

Rules on the exchange and security of classified information

In order to establish a framework for exchanging classified information relevant in the context of the AMM up to classification level RESTRICTED (RESTREINT UE) between the European Union and the Kingdom of Thailand, the following rules will apply.

The Kingdom of Thailand will ensure that EU classified information (i.e. any information (namely knowledge that can be communicated in any form) or material determined to require protection against unauthorised disclosure and which has been so designated by a security classification) released to it retains the security classification given to it by the EU and will safeguard such information in accordance with the following rules, based on the Council Security Regulations [1], in particular:

— the Kingdom of Thailand will not use the released EU classified information for purposes other than those for which those EU classified information have been released to the Kingdom of Thailand and for other than those established by the originator,

— the Kingdom of Thailand will not disclose such information to third parties without the prior consent of the EU,

— the Kingdom of Thailand will ensure that access to EU classified information released to it will be authorised only for individuals who have a valid need-to-know,

— the Kingdom of Thailand will ensure that, before being given access to EU classified information, all individuals who require access to such information are briefed on and comply with the requirements of the protective security regulations relevant to the classification of the information they are to access,

— taking into account their level of classification, EU classified information will be forwarded to the Kingdom of Thailand by diplomatic bag, military mail services, secure mail services, secure telecommunications or personal carriage. The Kingdom of Thailand will notify in advance to the General Secretariat of the Council of the EU the name and address of the body responsible for the security of classified information and the precise addresses to which the information and documents must be forwarded,

— the Kingdom of Thailand will ensure that all premises, areas, buildings, offices, rooms, communication and information systems and the like, in which EU classified information and documents are stored and/or handled, are protected by appropriate physical security measures,

— the Kingdom of Thailand will ensure that EU classified documents released to it are, on their receipt, recorded in a special register. The Kingdom of Thailand will ensure that copies of EU classified documents released to it which may be made by the recipient body, their number, distribution and destruction, are recorded in this special register,

— the Kingdom of Thailand will notify the General Secretariat of the Council of the EU about any case of compromise of EU classified information released to it. In such a case, the Kingdom of Thailand will initiate investigations and take appropriate measures to prevent a recurrence.

For the purposes of the present rules, classified information released to the European Union by the Kingdom of Thailand will be treated as if it were EU classified information and will be granted an equivalent level of protection.

Once the present agreement has expired or been terminated, all classified information or material provided or exchanged pursuant to it shall continue to be protected in accordance with the provisions set forth herein.

[1] OJ L 101, 11.4.2001, p. 1. Document annexed to the present letter.

B. *Letter from Thailand*

Jakarta, 9 December 2005

Your Excellency,

I have the honour to refer to your letter of 26 October 2005, together with its Annex, which reads as follows:

'The Memorandum of Understanding (MoU) between the Government of Indonesia (GoI) and the Free Aceh Movement (GAM) signed at Helsinki on 15 August 2005, provides *inter alia* for the establishment by the European Union and ASEAN Contributing Countries of an Aceh Monitoring Mission (AMM) in Aceh (Indonesia). This MoU also provides that the status, privileges and immunities of the AMM and its members will be agreed between the GoI and the European Union (EU).

Accordingly, I have the honour to propose, in the Annex to this letter, the provisions which would apply to the participation of your country in the AMM, and the personnel deployed by your country, the status, privileges and immunities of which are set out in the agreement between the GoI, the EU and the ASEAN Contributing Countries.

I would be grateful if you could confirm your acceptance of the provisions set out in the Annex, and also confirm your understanding that this letter and its Annex, together with your reply, shall constitute a legally binding agreement between the EU and the Government of the Kingdom of Thailand, which shall enter into force on the day of signature of your reply, and shall remain in force for the duration of your country's participation in the AMM.

Please accept, Excellency, the assurances of my highest consideration.'

In reply, I have the honour to confirm, on behalf of the Government of the Kingdom of Thailand, its acceptance of the provisions set out in the Annex, and also confirm its understanding that this letter, together with your letter and its Annex, under reply, shall constitute a legally binding agreement between the Government of the Kingdom of Thailand and the EU, which shall enter into force on the date of this letter.

Accept, Excellency, the renewed assurances of my highest consideration.

(ATCHARA SERIPUTRA)

Ambassador Extraordinary and Plenipotentiary of the Kingdom of Thailand to the Republic of Indonesia

AGREEMENT

in the form of an exchange of letters between the European Union and the Philippines on the participation of the Philippines in the European Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM)

A. *Letter from the European Union*

Jakarta, 26 October 2005

Your Excellency,

The Memorandum of Understanding (MoU) between the Government of Indonesia (GoI) and the Free Aceh Movement (GAM) signed at Helsinki on 15 August 2005, provides *inter alia* for the establishment by the European Union and ASEAN Contributing Countries of an Aceh Monitoring Mission (AMM) in Aceh (Indonesia). This MoU also provides that the status, privileges and immunities of the AMM and its members will be agreed between the GoI and the European Union (EU).

Accordingly, I have the honour to propose, in the Annex to this letter, the provisions which would apply to the participation of your country in the AMM, and the personnel deployed by your country, the status, privileges and immunities of which are set out in the agreement between the GoI, the EU and the ASEAN Contributing Countries.

I would be grateful if you could confirm your acceptance of the provisions set out in the Annex, and also confirm your understanding that this letter and its Annex, together with your reply, shall constitute a legally binding agreement between the EU and the Government of the Republic of the Philippines, which shall enter into force on the day of signature of your reply, and shall remain in force for the duration of your country's participation in the AMM.

Please accept, Excellency, the assurances of my highest consideration.

H.E. MR. CHARLES HUMFREY, CMG

Ambassador of the United Kingdom to Indonesia

ANNEX I

1. The Republic of the Philippines shall, as provided in the MoU, participate in the AMM, in accordance with the following provisions and any required implementing arrangements, without prejudice to the decision-making autonomy of the European Union.

2. The EU participation is based on the Joint Action adopted by the Council on 9 September 2005 on the European Union Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM). The Republic of the Philippines shall associate itself with those provisions of the Joint Action that concern its participation and that of its personnel in the AMM, subject to the provisions of this Annex.

3. The decision to end the EU participation in the AMM shall be taken by the Council of the European Union, following consultation with the Republic of the Philippines and provided that the Republic of the Philippines is still contributing to the AMM at the date at which that decision is taken.

4. The Republic of the Philippines shall ensure that its personnel participating in the AMM undertake their mission in conformity with:

   — the relevant provisions of the Joint Action adopted by the Council of the European Union on 9 September 2005 and possible subsequent amendments,

   — the Operation Plan (OPLAN) as approved by the Council of the European Union on 9 September 2005,

   — implementing arrangements under this agreement.

5. Personnel seconded to the AMM by the Republic of the Philippines shall carry out their duties and conduct themselves solely with the interest of the AMM in mind.

6. The Republic of the Philippines shall inform in due time the AMM Head of Mission of any change to its contribution to the AMM.

7. Personnel seconded to the AMM as of the start of the mission shall undergo a medical examination, vaccination and be certified medically fit for duty by a competent authority from the Republic of the Philippines. Personnel seconded to the AMM shall produce a copy of this certification.

8. The status of the AMM personnel, including the personnel contributed to the AMM by the Republic of the Philippines, shall be governed by the agreement on the status, privileges and immunities of the AMM between the GoI, the European Union and the ASEAN Contributing Countries.

9. Without prejudice to the agreement on the status of mission referred to in Section 8, the Republic of the Philippines shall exercise jurisdiction over its personnel participating in the AMM.

10. The Republic of the Philippines shall, in accordance with its national law and subject to any immunities conferred by the agreement on the status, privileges and immunities of the AMM, be responsible for answering any claims linked to the participation in the AMM, from or concerning any of its personnel. The Republic of the Philippines shall be responsible for bringing any action, in particular legal or disciplinary, against any of its personnel, in accordance with its laws and regulations.

11. The Republic of the Philippines undertakes, on the basis of reciprocity, to make a declaration as regards the waiver of claims against any State participating in the AMM, and to do so when signing this Exchange of Letters. A model for such a declaration is set out in Annex II.

12. The European Union shall ensure that its Member States make, on the basis of reciprocity, a declaration as regards the waiver of claims, for the participation of the Republic of the Philippines in the AMM, and to do so when signing this Exchange of Letters. A model for such a declaration is set out in Annex II.

13. The rules regarding the exchange and security of classified information are set out in Annex III. Further guidance may be issued by competent authorities, including the AMM Head of Mission.

14. All personnel participating in the AMM shall remain under the full command of their national authorities.

15. National authorities shall transfer operational control to the AMM Head of Mission, who shall exercise that command through a hierarchical structure of command and control.

16. The Head of Mission shall lead the AMM and assume its day-to-day management.

17. The Republic of the Philippines shall have the same rights and obligations in terms of the day-to-day management of the operation as participating European Union Member States taking part in the AMM, in accordance with the legal instrument referred to in Section 2.

18. The AMM Head of Mission shall be responsible for disciplinary control over AMM personnel. Where required, disciplinary action shall be taken by the national authority concerned.

19. A National Contingent Point of Contact (NPC) shall be appointed by the Republic of the Philippines to represent its national contingent in the AMM. The NPC shall report to the AMM Head of Mission on national matters and shall be responsible for day-to-day contingent discipline.

20. The Republic of the Philippines shall assume all the costs associated with its participation in the mission.

21. The Republic of the Philippines shall not contribute to the financing of the operational budget of the AMM.

22. In case of death, injury, loss or damage to natural or legal persons from the State in which the mission is conducted, the Republic of the Philippines shall, when its liability has been established, pay compensation under the conditions foreseen in the agreement on the status, privileges and immunities of the AMM as referred to in Section 8.

23. Any necessary technical and administrative arrangements to implement this agreement shall be concluded between the Secretary General of the Council of the European Union/High Representative for the Common Foreign and Security Policy or by the Head of Mission, and the appropriate authorities of the Republic of the Philippines.

24. Either Party shall have the right to terminate this agreement by serving a written notice of one month.

25. Disputes concerning the interpretation or application of this agreement shall be settled only by diplomatic means between the Parties.

ANNEX II

Texts for reciprocal declarations referred to in Sections 11 and 12

Text for the EU Member States:

'The EU Member States applying the Joint Action adopted by the Council of the European Union on 9 September 2005 on the EU Monitoring Mission in Aceh (Aceh Monitoring Mission — AMM) will endeavour, insofar as their internal legal systems so permit, to waive as far as possible claims against the Republic of the Philippines for injury, death of their personnel, or damage to, or loss of, any assets owned by themselves and used by the AMM if such injury, death, damage or loss:

— was caused by personnel from the Republic of the Philippines in the execution of their duties in connection with the AMM, except in case of gross negligence or wilful misconduct, or

— arose from the use of any assets owned by the Republic of the Philippines, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of AMM personnel from the Republic of the Philippines using those assets.'

Text for the Republic of the Philippines:

'The Republic of the Philippines participating in the AMM as referred to in paragraph 5.3 of the MoU and in the Joint Action adopted by the Council of the European Union on 9 September 2005 on the European Union Monitoring Mission in Aceh (Aceh Monitoring Mission — AMM) will endeavour, insofar as its internal legal system so permits, to waive as far as possible claims against any other State participating in the AMM for injury, death of its personnel, or damage to, or loss of, any assets owned by itself and used by the AMM if such injury, death, damage or loss:

— was caused by personnel in the execution of their duties in connection with the AMM, except in case of gross negligence or wilful misconduct, or

— arose from the use of any assets owned by States participating in the AMM, provided that the assets were used in connection with the mission and except in case of gross negligence or wilful misconduct of AMM personnel using those assets.'

ANNEX III

Rules on the exchange and security of classified information

In order to establish a framework for exchanging classified information relevant in the context of the AMM up to classification level RESTRICTED (RESTREINT UE) between the European Union and the Republic of the Philippines, the following rules will apply.

The Republic of the Philippines will ensure that EU classified information (i.e. any information (namely knowledge that can be communicated in any form) or material determined to require protection against unauthorised disclosure and which has been so designated by a security classification) released to it retains the security classification given to it by the EU and will safeguard such information in accordance with the following rules, based on the Council Security Regulations ([1]), in particular:

— the Republic of the Philippines will not use the released EU classified information for purposes other than those for which those EU classified information have been released to the Republic of the Philippines and for other than those established by the originator,

— the Republic of the Philippines will not disclose such information to third parties without the prior consent of the EU,

— the Republic of the Philippines will ensure that access to EU classified information released to it will be authorised only for individuals who have a valid need-to-know,

— the Republic of the Philippines will ensure that, before being given access to EU classified information, all individuals who require access to such information are briefed on and comply with the requirements of the protective security regulations relevant to the classification of the information they are to access,

— taking into account their level of classification, EU classified information will be forwarded to the Republic of the Philippines by diplomatic bag, military mail services, secure mail services, secure telecommunications or personal carriage. The Republic of the Philippines will notify in advance to the General Secretariat of the Council of the EU the name and address of the body responsible for the security of classified information and the precise addresses to which the information and documents must be forwarded,

— the Republic of the Philippines will ensure that all premises, areas, buildings, offices, rooms, communication and information systems and the like, in which EU classified information and documents are stored and/or handled, are protected by appropriate physical security measures,

— the Republic of the Philippines will ensure that EU classified documents released to it are, on their receipt, recorded in a special register. The Republic of the Philippines will ensure that copies of EU classified documents released to it which may be made by the recipient body, their number, distribution and destruction, are recorded in this special register,

— the Republic of the Philippines will notify the General Secretariat of the Council of the EU about any case of compromise of EU classified information released to it. In such a case, the Republic of the Philippines will initiate investigations and take appropriate measures to prevent a recurrence.

For the purposes of the present rules, classified information released to the European Union by the Republic of the Philippines will be treated as if it were EU classified information and will be granted an equivalent level of protection.

Once the present agreement has expired or been terminated, all classified information or material provided or exchanged pursuant to it shall continue to be protected in accordance with the provisions set forth herein.

([1]) OJ L 101, 11.4.2001, p. 1. Document annexed to the present letter.

B. *Letter from the Philippines*

Jakarta, 17 January 2006

Your Excellency,

I have the honor to refer to the letter of your predecessor as representative of the President of the Council of the European Union, H.E. Charles Humfrey, CMG, dated 26 October 2005, together with its Annex, which read as follows:

'The Memorandum of Understanding (MoU) between the Government of Indonesia (GoI) and the Free Aceh Movement (GAM) signed at Helsinki on 15 August 2005, provides *inter alia* for the establishment by the European Union and ASEAN Contributing Countries of an Aceh Monitoring Mission (AMM) in Aceh, (Indonesia). This MoU also provides that the status, privileges and immunities of the AMM and its members will be agreed between the GoI and the European Union.

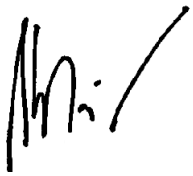
Accordingly, I have the honour to propose, in the Annex to this letter, the provisions which would apply to the participation of your country in the AMM, and the personnel deployed by your country, the status, privileges and immunities of which are set out in the agreement in the GoI, the EU and the ASEAN Contributing Countries.

I would be grateful if you could confirm your acceptance of the provisions set out in the Annex, and also confirm your understanding that this letter and its Annex, together with your reply, shall constitute a legally binding agreement between the EU and the Government of the Republic of the Philippines, which shall enter into force on the day of signature of your reply, and shall remain in force for the duration of your country's participation in the AMM.

Please accept, Excellency, the assurances of my highest consideration.'

In reply to this letter dated 26 October 2005, together with its Annex, I have the honor to confirm, on behalf of the Government of the Republic of the Philippines, its acceptance of the provisions set out in the Annex, and also confirm its understanding that this letter, shall constitute a legally binding agreement between the Government of the Republic of the Philippines and the European Union, which shall enter into force on the date of this letter.

Accept, Excellency, the renewed assurances of my highest consideration.



SHULAN O. PRIMAVERA

Ambassador Extraordinary and Plenipotentiary of the Republic of the Philippines